

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

JOHN SNOBELEN
December 04, 2017

neelsons

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Toronto, ON M5K 1A2
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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 Continued Rule 39.03 Examination of
JOHN SNOBELEN, 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 Monday, the 4th of December, 2017.

V O L U M E 2

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

6 Robert H. Ratcliffe, Esq. - for Defendant Crown.

7 Eunice Machado, Esq.

8 & Rodney Kort, Esq.

9

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

11 Lottery and Gaming

12 Corporation.

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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

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---[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: 405:5,
4 414:16, 415:1, 416:24, 425:23, 426:4, 427:23,
5 430:12.

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 43: A letter from Chris Hodgson, Chair of
16 Management Board of Cabinet, to Jane Holmes,
17 Executive Director of OHRIA, Production
18 Number CR0004086.....328:16

19 44: Horse Racing Industry Transition Panel
20 Report, Production Number CRE0024643.....381:3

21 45: March 1st, 2013 Toronto Sun column by
22 Mr. Snobelen, entitled "Horse racing changes
23 tough but necessary.".....400:17

24 46: Transitional Assistance for the Horse Racing
25 Industry, Production Number CRE 259512.....431:8

09:09:19 1 ---Upon commencing at 9:09 a.m.

09:09:19 2 JOHN SNOBELEN; PREVIOUSLY SWORN.

09:09:19 3 EXAMINATION BY MR. ROSENBERG:

09:09:19 4 1235 Q. Good morning, Mr. Snobelen.

09:09:20 5 A. Good morning.

09:09:21 6 1236 Q. My name is Michael Rosenberg. I

09:09:24 7 am the lawyer for the Ontario Lottery and Gaming

09:09:27 8 Corporation and I'm going to ask you some

09:09:29 9 questions.

09:09:29 10 Same rules apply. If you don't

09:09:33 11 understand the question, please ask me to repeat or

09:09:35 12 clarify. If you need a break, let's just take one.

09:09:39 13 Let me know. And I don't want you guessing. I

09:09:42 14 just want the best of your recollection, please.

09:09:45 15 A. I understand.

09:09:46 16 1237 Q. Fair.

09:09:49 17 Last date, you spent some time with my

09:09:53 18 friend, Mr. Lisus, talking about your experience in

09:09:57 19 the horse breeding and horse racing industry--

09:10:00 20 A. That's correct.

09:10:01 21 1238 Q. --and I just wanted to pick up on

09:10:03 22 that discussion.

09:10:04 23 How was the horse racing industry doing

09:10:09 24 in Ontario in the years before the Slots Program

09:10:14 25 began in 1998?

09:10:15 1 A. It had significant difficulties.

09:10:18 2 The government of the day saw, umm,

09:10:22 3 some difficulties with the -- with the industry,

09:10:25 4 umm, declining, a steady decline in -- not a

09:10:29 5 dramatic, but a steady reduction in revenues from

09:10:33 6 wagering, uh, competition, obviously from other

09:10:37 7 forums.

09:10:38 8 1239 Q. What do you mean, "competition

09:10:40 9 from other forums"?

09:10:41 10 A. At one time, umm, the horse racing

09:10:44 11 industry had kind of a carte blanche on -- on

09:10:48 12 gaming. There wasn't any other kind of gaming

09:10:51 13 competition, or very little. And there also wasn't

09:10:53 14 a organized way to, uh, wager.

09:10:58 15 It was easier to wager on local horse

09:11:02 16 racing than it was on international horse racing,

09:11:04 17 so, uh, the industry had faced steeper competition,

09:11:09 18 both from other elements of racing within the --

09:11:12 19 within the genre and external to it, so it was --

09:11:17 20 it was having some difficulties.

09:11:23 21 1240 Q. What do you mean by "having some

09:11:24 22 difficulties"?

09:11:24 23 A. Well, we had a couple of, uh,

09:11:27 24 tracks -- I mean, I -- I wasn't, before 1995,

09:11:29 25 uniquely aware of the -- of the--

09:11:29 1 1241 Q. Sure.

09:11:31 2 A. --of the structure of horse
09:11:33 3 racing, but we had -- certainly had some problems
09:11:35 4 with the financial situation at two or three of
09:11:38 5 the, uh, the more traditional racetracks in the
09:11:41 6 province.

09:11:41 7 Flamboro comes to mind and Fort Erie,
09:11:45 8 and... There were several racetracks that had
09:11:47 9 difficulties.

09:11:47 10 1242 Q. And how were these difficulties
09:11:49 11 impacting the breeding sector?

09:11:51 12 A. Any time that you have, umm...
09:12:03 13 When you have a marketplace that's declining, you
09:12:03 14 are going to have problems with the supply chain,
09:12:05 15 and I think breeding works in that same kind of
09:12:07 16 fashion.

09:12:08 17 It's influenced by -- breeding is
09:12:11 18 influenced by a couple of things. One is available
09:12:15 19 purses which influences yearling sale prices and
09:12:18 20 yearling sale prices impact who is going to breed
09:12:22 21 horses that year. It's -- it's a fairly straight
09:12:24 22 line.

09:12:25 23 1243 Q. Sure.

09:12:25 24 MR. LISUS: Can you keep your voice up
09:12:27 25 a bit, so --

09:12:27 1 THE WITNESS: Oh. Sure. Sorry.

09:12:29 2 Rarely am I asked to speak up.

09:12:31 3 MR. LISUS: I was thinking that as I

09:12:33 4 said it.

09:12:33 5 THE WITNESS: Well, there you -- okay.

09:12:35 6 BY MR. ROSENBERG:

09:12:45 7 1244 Q. Now, you've told us that you have

09:12:46 8 been involved with horses as a breeder and you've

09:12:50 9 also owned racehorses?

09:12:52 10 A. I -- I have not. I have been in

09:12:54 11 the performance horse industry--

09:12:54 12 1245 Q. I see.

09:12:56 13 A. --which -- which operates much the

09:12:57 14 same in terms of the breeding cycles and all of the

09:12:59 15 rest of that and -- and the marketing side of

09:13:00 16 horses, but it's a different business.

09:13:01 17 1246 Q. Right. And what about training

09:13:02 18 horses?

09:13:03 19 A. I have trained horses, yes.

09:13:04 20 1247 Q. And so, if we think back to those

09:13:07 21 years before SARP was introduced, the mid 1990s,

09:13:11 22 was there a sense that this was an industry that

09:13:13 23 needed government support?

09:13:15 24 A. I -- I -- you know, I grew up sort

09:13:26 25 of in the belief that the -- in my early years in

09:13:28 1 the horse industry,--

09:13:29 2 1248 Q. Mm-hmm.

09:13:30 3 A. --that the horse racing sector was
09:13:33 4 pretty much a standalone business on the revenues
09:13:36 5 from pari-mutuels.

09:13:40 6 1249 Q. Right.

09:13:40 7 A. Those of us who don't -- didn't
09:13:42 8 have the revenues from pari-mutuels in the industry
09:13:45 9 were quite envious.

09:13:47 10 But as I said a little bit earlier, the
09:13:49 11 -- there was a -- there's a place in time where
09:13:50 12 pari-mutuel wagering started to be reduced over
09:13:54 13 time and -- and so that advantage to the horse
09:13:56 14 racing community was being lost. It wasn't lost,
09:13:59 15 but it was being lost.

09:14:00 16 1250 Q. I think you said that was in part
09:14:01 17 because of other forms of gambling becoming legal
09:14:03 18 in Ontario?

09:14:06 19 A. My understanding, uh, both in
09:14:08 20 Ontario and just available to people.

09:14:09 21 1251 Q. I think you told my friend
09:14:12 22 Mr. Lisus that your government adopted the policy
09:14:16 23 of putting slots at racetracks for two purposes,
09:14:18 24 one of which was to generate revenue and the other
09:14:21 25 was to invest in the rural economy.

09:14:25 1 Is that fair?

09:14:25 2 A. I think that's fair.

09:14:27 3 1252 Q. And I want to take you to one of

09:14:28 4 the documents that Mr. Lisus showed you.

09:14:31 5 This is Exhibit 11. It is the letter

09:14:34 6 of intent, June 25th, 1998.

09:14:39 7 A. Right.

09:14:40 8 1253 Q. And you remember, you looked at

09:14:43 9 that--

09:14:43 10 A. Yes.

09:14:44 11 1254 Q. --with Mr. Lisus?

09:14:45 12 A. Yeah. Mm-hmm.

09:14:46 13 1255 Q. And I think you told Mr. Lisus

09:14:53 14 that this letter reflected the deal that your

09:14:58 15 government struck with OLG and with OHRIA, the

09:15:04 16 Ontario Horse Racing Industry Association?

09:15:07 17 A. Yes. It's my understanding at the

09:15:09 18 time.

09:15:09 19 1256 Q. And if we look at the second

09:15:15 20 paragraph beginning:

09:15:16 21 "OHRIA representing all

09:15:17 22 segments of the Ontario horse racing

09:15:17 23 industry..." [As read.]

09:15:20 24 Do you see that?

09:15:20 25 A. Mm-hmm. Yes. Sorry.

09:15:21 1 1257 Q. Can we agree that this paragraph
09:15:33 2 sets out a deal to enter into what later became the
09:15:38 3 siteholder agreements between OLG and the
09:15:42 4 racetracks?

09:15:43 5 A. Yes. It mentions the siteholder
09:15:52 6 agreements.

09:15:53 7 1258 Q. Right.

09:15:56 8 And, as I understand it, under those
09:15:59 9 siteholder agreements - and we'll look at one in a
09:16:02 10 moment - OLG would pay 20 per cent of the net win
09:16:07 11 from its slot machines at racetracks to the
09:16:09 12 racetracks?

09:16:11 13 A. That's correct.

09:16:12 14 1259 Q. That was the siteholder
09:16:13 15 commission?

09:16:13 16 A. That's correct.

09:16:14 17 1260 Q. And the racetracks would pay half
09:16:18 18 of that siteholder commission for the benefit of
09:16:20 19 the horsepeople?

09:16:21 20 A. Ten per cent.

09:16:22 21 1261 Q. Right.

09:16:32 22 And in terms of the structure that's
09:16:36 23 set out in this letter of intent, is the letter of
09:16:40 24 intent really about getting the parties to the
09:16:42 25 point where they're signing siteholder agreements

09:16:45 1 and dictating some of the material terms for those
09:16:49 2 siteholder agreements?

09:16:51 3 A. It would be my reading of it now,
09:16:56 4 because I -- I didn't read this document when I
09:17:02 5 was, umm, in Cabinet -- umm, or I may have, but I
09:17:05 6 doubt I did. Umm.

09:17:06 7 1262 Q. Fair enough. But --

09:17:10 8 A. But I think the -- the intent is
09:17:11 9 really -- is certainly clear here.

09:17:13 10 I think the intent is -- uh, umm:

09:17:17 11 "This letter of intent which
09:17:19 12 defines the general agreement with
09:17:21 13 the horse racing industry does not
09:17:23 14 commit individuals racetracks or the
09:17:25 15 Ontario government through the
09:17:26 16 Ontario Lottery Corporation to enter
09:17:29 17 into contracts." [As read.]

09:17:29 18 1263 Q. You're just reading that from
09:17:30 19 the--

09:17:30 20 A. Right.

09:17:30 21 1264 Q. --second paragraph?

09:17:30 22 A. Right, in -- in the absence of any
09:17:33 23 other interpretation.

09:17:35 24 1265 Q. As much as you say -- and I think,
09:17:37 25 in fairness, you did tell Mr. Lisus you weren't

09:17:40 1 involved in the blow by blow of the negotiations.

09:17:42 2 You did say you were generally aware of

09:17:45 3 the course of those negotiations--

09:17:46 4 A. Right.

09:17:47 5 1266 Q. --for this letter of intent when

09:17:49 6 you were in Cabinet?

09:17:50 7 A. Yes.

09:17:51 8 1267 Q. And so the focus, as you've told

09:17:54 9 me is, it seems, on the siteholder agreements

09:17:59 10 and --

09:18:00 11 MR. LISUS: He didn't -- he did not

09:18:01 12 tell you that.

09:18:03 13 MR. ROSENBERG: Well, Mr. Lisus, you

09:18:05 14 can --

09:18:05 15 MR. LISUS: He did not say the focus

09:18:06 16 was on the siteholder agreements, Mr. Rosenberg.

09:18:11 17 BY MR. ROSENBERG:

09:18:11 18 1268 Q. Well, Mr. Snobelen, I think -- I

09:18:12 19 think you said that the letter of intent is about

09:18:14 20 establishing siteholder agreements and that's how

09:18:17 21 the money is going to flow from OLG through the

09:18:20 22 racetracks, and then half of that on to the

09:18:23 23 horsepeople, right?

09:18:23 24 A. It -- it was our intention to have

09:18:26 25 that happen and it mentions siteholder agreements

09:18:31 1 specifically in that second paragraph in -- in this
09:18:33 2 letter of intent.

09:18:33 3 1269 Q. Okay. So perhaps it makes sense
09:18:38 4 to actually look at one of those siteholder
09:18:40 5 agreements.

09:18:40 6 And Mr. Lisus gave you Exhibit 12,
09:18:44 7 which is the siteholder agreement between the
09:18:49 8 Ontario Lottery Corporation, you understand now--

09:18:49 9 A. Yes.

09:18:52 10 1270 Q. --Ontario Lottery and Gaming, OLG,
09:18:56 11 and an entity that goes by the business name of
09:18:59 12 Hiawatha Horse Park, and I'm handing you a copy of
09:19:04 13 Exhibit 12.

09:19:05 14 A. Yes. Thank you.

09:19:07 15 1271 Q. And Mr. Lisus took you to Article
09:19:24 16 5.2 of that agreement last time.

09:19:35 17 A. Which is...

09:19:35 18 MR. LISUS: Page 23, middle top.

09:19:41 19 THE WITNESS: Yeah. Okay. 5.2?

09:19:49 20 BY MR. ROSENBERG:

09:19:49 21 1272 Q. Yes. So it starts on 23 at the
09:19:59 22 bottom there.

09:19:59 23 A. Mm-hmm.

09:20:00 24 --- (Witness reviewing document.)

09:20:03 25 BY MR. ROSENBERG:

09:20:04 1 1273 Q. And this is what we were talking
09:20:07 2 about just a moment ago.

09:20:07 3 A. Yes. I'm reading it.

09:20:09 4 1274 Q. It seems that there is a 20 per
09:20:11 5 cent siteholder commission paid to Hiawatha, and
09:20:13 6 then half of that is to be used for the purpose --
09:20:19 7 and you see that middle, it's underlined.

09:20:21 8 A. Yeah.

09:20:22 9 1275 Q. ...to be used for the purpose of
09:20:24 10 enhancing purses on live horse races--

09:20:24 11 A. Mm-hmm.

09:20:27 12 1276 Q. --conducted at the racetrack,
09:20:29 13 right?

09:20:30 14 --- (Court reporter appeals.)

09:20:31 15 THE WITNESS: Yes. I'm sorry.

09:20:34 16 BY MR. ROSENBERG:

09:20:34 17 1277 Q. And that reflected your general
09:20:37 18 understanding, in Cabinet at the time, of the deal
09:20:40 19 that was being struck with these racetracks?

09:20:43 20 A. Yes. It was generally reflective
09:20:45 21 of the, umm, method of sharing pari-mutuel wagering
09:20:51 22 that went -- that preceded this.

09:20:53 23 1278 Q. Right.

09:20:54 24 When you say it's "generally reflective
09:20:56 25 of the method of pari-mutuel -- of sharing

09:20:59 1 pari-mutuel wagering", what do you mean by that?

09:21:01 2 A. The proceeds from pari-mutuel
09:21:06 3 wagering were traditionally split by -- by an
09:21:09 4 agreement between the horsepersons' group at a
09:21:12 5 track and the track.

09:21:13 6 That had to be -- uh, there had to be
09:21:15 7 an agreement in order for tracks to be licensed to
09:21:17 8 conduct pari-mutuel wagering by the federal
09:21:21 9 government, my understanding, and that revenue, the
09:21:23 10 split that was traditionally negotiated was about
09:21:26 11 50/50; a little bit different from site to site,
09:21:29 12 but about 50/50.

09:21:32 13 1279 Q. All right. I want to come back to
09:21:34 14 that agreement you've just mentioned between
09:21:35 15 horsepeople and the track, but let's park that for
09:21:38 16 the moment.

09:21:38 17 And just focusing on Article 5.2, it
09:21:43 18 seems as though it obliges the racetrack to pay
09:21:51 19 half of the siteholder commission to enhance purses
09:21:56 20 on live horse races.

09:21:57 21 But I don't see much further detail
09:22:00 22 about how exactly that money is to be spent.

09:22:05 23 A. Not in that paragraph.

09:22:05 24 1280 Q. I would go further and to say
09:22:09 25 there's not much detail on how the horsepeople's

09:22:12 1 half of the siteholder commission is to be spent
09:22:15 2 anywhere in this agreement.

09:22:17 3 A. I -- I have not read the whole
09:22:19 4 agreement,--

09:22:19 5 1281 Q. Okay.

09:22:19 6 A. --but the parts that we have been
09:22:21 7 through, that's generally my sense of it.

09:22:24 8 1282 Q. And I don't mean to have you read
09:22:27 9 through the contract in great detail,--

09:22:29 10 A. Thank you.

09:22:30 11 1283 Q. --but what I want to do is just
09:22:31 12 take a step back.

09:22:32 13 In terms of your understanding of this
09:22:36 14 deal, is it fair to say that your government did
09:22:43 15 want to benefit the rural economy, but was not
09:22:46 16 going to get involved in the details of how money
09:22:49 17 flowed to horsepeople?

09:22:50 18 A. The -- I -- I can say that from my
09:22:56 19 point of view, there -- and I believe, from my
09:23:00 20 colleagues' point of view, I'm safe to report, uh,
09:23:02 21 that there was no appetite for being overly
09:23:06 22 prescriptive in the distribution, uh, except
09:23:09 23 that -- which -- which is why the government
09:23:11 24 pursued an agreement with an overall industry, uh,
09:23:14 25 body.

09:23:16 1 And frankly, I think that... I think
09:23:20 2 my colleagues at the time would say that they --
09:23:23 3 they were not particularly knowledgeable about how
09:23:28 4 all of the funds were distributed within the
09:23:30 5 industry, period.

09:23:30 6 But they wanted to make sure that part
09:23:33 7 of it was dedicated to that industry.

09:23:36 8 1284 Q. Right. Do you remember your
09:23:37 9 government putting in place any benchmarks as to
09:23:40 10 how the horsepeople's half of the siteholder
09:23:42 11 commission was to be spent?

09:23:44 12 A. No.

09:23:44 13 1285 Q. And is that reflective of what you
09:23:46 14 were just describing? You weren't hugely
09:23:49 15 knowledgeable about the industry as a government?

09:23:51 16 A. That's correct.

09:23:54 17 1286 Q. And the idea was that you would
09:23:56 18 allow the horsepeople and the other members of
09:24:01 19 OHRIA, racetracks in particular, to sort that out?

09:24:05 20 A. That's correct.

09:24:05 21 1287 Q. And you mentioned a moment ago
09:24:09 22 that there were agreements between horsepeople and
09:24:12 23 racetracks.

09:24:13 24 Was that the kind of agreement that you
09:24:14 25 were looking to, to distribute the horsepeople's

09:24:17 1 half of the siteholder commission?

09:24:18 2 A. I -- I don't know if we were, as a
09:24:21 3 government, that articulate.

09:24:23 4 1288 Q. I see.

09:24:24 5 A. Uh. But it would be nice if we
09:24:26 6 were.

09:24:26 7 I'm not sure that we were, but I think
09:24:29 8 there was a general understanding that there was a
09:24:31 9 distribution method for pari-mutuel that the horse
09:24:37 10 racing community tracks and horsepersons' groups
09:24:40 11 and others had arrived at.

09:24:44 12 And OHRIA, at the time, was the
09:24:45 13 industry body and had been in place for some time.
09:24:48 14 I think that came in under the previous government.

09:24:50 15 1289 Q. All right. I want to come back to
09:24:52 16 that, but I just want to tie off a few loose ends
09:24:55 17 with this document we have in front of you.

09:24:57 18 If you go to the preamble, Mr. Lisus
09:25:17 19 reviewed some of this with you last time, but you
09:25:21 20 will see on, it's numbered page 41 on mine at the
09:25:29 21 top. It's page 5 of 61 of the agreement.

09:25:32 22 A. Right.

09:25:32 23 1290 Q. And third paragraph from the
09:25:32 24 bottom:

09:25:37 25 "And whereas the Province has

09:25:38 1 signed a letter of intent on June
09:25:41 2 25th, 1998 with the Ontario Horse
09:25:45 3 Racing Industry Association, among
09:25:45 4 others, which confirms those
09:25:47 5 parties' intention to participate in
09:25:49 6 a slot program at racetracks and
09:25:51 7 contemplates an agreement between
09:25:53 8 OLC and individual racetracks in
09:25:56 9 Ontario." [As read.]

09:25:57 10 Do you see that?

09:25:58 11 A. Yes.

09:25:59 12 1291 Q. And that's a fair representation
09:26:00 13 of the letter of intent?

09:26:01 14 A. Seems to me, yes.

09:26:03 15 1292 Q. It's about those parties
09:26:05 16 expressing an intention to participate in a slot
09:26:08 17 program at racetracks?

09:26:09 18 A. Correct.

09:26:10 19 1293 Q. And the way that they're going to
09:26:12 20 participate, at least the racetrack and OLG, is by
09:26:19 21 signing this siteholder agreement?

09:26:22 22 A. Yes.

09:26:23 23 1294 Q. Okay. Let me just ask you to hold
09:26:36 24 onto Exhibit 12 for a moment because we are going
09:26:39 25 to come back to it, but I want to come to my next

09:26:42 1 point in a bit of a roundabout way.

09:26:44 2 Last day with Mr. Lisus, you discussed

09:26:46 3 some Liberal Party political ads that ran in

09:26:49 4 February 2012.

09:26:50 5 Do you remember that?

09:26:51 6 A. The radio ads?

09:26:51 7 1295 Q. Yes.

09:26:54 8 A. Yes.

09:26:54 9 1296 Q. And that was Exhibit 8; a

09:26:59 10 transcript of one of those ads.

09:27:07 11 --- (Document provided to the witness by

09:27:10 12 Mr. Rosenberg.)

09:27:11 13 THE WITNESS: Thank you.

09:27:12 14 BY MR. ROSENBERG:

09:27:12 15 1297 Q. So I've given you Exhibit 8.

09:27:14 16 Now, Mr. Lisus asked you to comment on

09:27:16 17 this particular ad and one of the things you said

09:27:21 18 was untrue about the ad was that SARP wasn't

09:27:27 19 Mr. Hudak's idea, right?

09:27:29 20 A. Correct.

09:27:29 21 1298 Q. I think you said, at the time, he

09:27:31 22 was a backbencher?

09:27:32 23 A. A rather well-dressed one, but

09:27:34 24 yes, my recollection was that he was.

09:27:36 25 1299 Q. Fair enough. We're all smiling

09:27:38 1 with that.

09:27:45 2 Another thing you told Mr. Lisus was
09:27:47 3 untrue was that the slots revenue sharing was a
09:27:51 4 secret subsidy.

09:27:54 5 You remember that?

09:27:54 6 A. Yes.

09:27:55 7 1300 Q. And I just wanted to break that
09:27:57 8 down for a moment.

09:28:01 9 Now, was slots revenue sharing, the
09:28:07 10 program we have been discussing, was that a secret?

09:28:10 11 A. No.

09:28:11 12 1301 Q. And why do you say that?

09:28:19 13 A. Because part of that sharing
09:28:21 14 agreement was with the municipalities. And if I
09:28:23 15 recall correctly, the governments of the day went
09:28:25 16 out and gave rather large-sized cheques to the
09:28:29 17 municipalities and had photographs taken for the
09:28:32 18 local papers, so that's not how we normally keep
09:28:35 19 secrets.

09:28:36 20 1302 Q. Right.

09:28:36 21 A. And I believe the government, uh,
09:28:39 22 undertook an -- an inquiry into what might be
09:28:45 23 possible, that they -- that they, uh, chartered and
09:28:50 24 had conducted with Mr. Sadinsky and his Panel.

09:28:56 25 1303 Q. Right.

09:28:56 1 A. I would suspect there wasn't much
09:28:58 2 secret about the agreement by the time that report
09:29:02 3 was filed.

09:29:02 4 1304 Q. Understood.

09:29:02 5 And just as a side tangent, did you
09:29:04 6 have any involvement with that Sadinsky Panel?

09:29:09 7 A. I did, yes. I --

09:29:09 8 1305 Q. What was your involvement?

09:29:12 9 A. I, uh, helped the Ontario Harness
09:29:13 10 Horse Association produce their brief for the
09:29:13 11 Sadinsky Panel and I appeared before the Sadinsky
09:29:15 12 Panel.

09:29:15 13 1306 Q. I see. So you served as an
09:29:19 14 advisor to, it's "OHHA"?

09:29:20 15 A. That's correct.

09:29:20 16 1307 Q. So that's the "secret" part.

09:29:28 17 But what about the subsidy part. Was
09:29:31 18 slots revenue sharing a subsidy?

09:29:39 19 A. As a Panel, we were careful about
09:29:41 20 the word "subsidy" because it causes some
09:29:44 21 difficulty with the, uh, industry.

09:29:45 22 And, umm, in light of the fact that it
09:29:48 23 -- the word had been sort of damaged by this sort
09:29:51 24 of political interpretation.

09:29:56 25 It was intended to help the industry,

09:30:01 1 the agreement,--

09:30:01 2 1308 Q. Right.

09:30:02 3 A. --and, in that sense, subsidize

09:30:05 4 the revenues to the industry.

09:30:05 5 1309 Q. Sure.

09:30:07 6 A. So I have no difficulty with the

09:30:08 7 word "subsidy".

09:30:09 8 1310 Q. I don't either, but I understand

09:30:11 9 the political connotations.

09:30:13 10 A. Yes.

09:30:14 11 1311 Q. What exactly do you understand by

09:30:15 12 "subsidy"?

09:30:16 13 A. I think something that helps to --

09:30:18 14 I mean, in this case, a payment that helps to, uh,

09:30:22 15 sustain the industry organization.

09:30:24 16 1312 Q. Right.

09:30:24 17 A. It subsidizes the operations.

09:30:27 18 1313 Q. Is it fair to say it's more than a

09:30:29 19 market rate for whatever you're getting?

09:30:31 20 A. That -- now, in 2017, has been

09:30:33 21 well-established. In terms of the depth of

09:30:35 22 whatever that subsidy may or may not have been,

09:30:37 23 that would have been..., we would have been

09:30:39 24 speculative about that in 2012. But the intention

09:30:42 25 was to support the industry.

09:30:44 1 1314 Q. So I just want to make sure I
09:30:46 2 understand that.

09:30:46 3 When you say the "depth" of the subsidy
09:30:48 4 has been established in 2017, what do you mean by
09:30:51 5 that?

09:30:51 6 A. The difference between a
09:30:53 7 commercial rate agreement on a -- a -- on a
09:30:56 8 siteholder agreement, and that doesn't anticipate
09:30:59 9 support of the industry.

09:31:02 10 So after the cancellation of the Slots
09:31:06 11 at Racetracks Program, the government negotiated
09:31:09 12 rents with racetracks that I don't -- I'm not privy
09:31:14 13 to, but I assume were some reduction to 20 per cent
09:31:17 14 of the net.

09:31:19 15 1315 Q. Right.

09:31:20 16 A. The difference between those two
09:31:22 17 numbers would be a payment that was going for the
09:31:25 18 benefit, one would assume, of an industry.

09:31:28 19 1316 Q. Would be a subsidy?

09:31:29 20 A. Yes.

09:31:30 21 1317 Q. I see.

09:31:31 22 And to the extent that those rents were
09:31:34 23 less than the 10 per cent that was being paid to
09:31:38 24 the siteholder, would it be fair to say that the 10
09:31:44 25 per cent that was going to the horsepeople was

09:31:46 1 entirely a subsidy?

09:31:48 2 A. Uh. It -- it was entirely
09:32:09 3 designed to enhance the indus- -- I mean, there was
09:32:11 4 expectations, I think, in general around what
09:32:13 5 benefit might be received from that 10 per cent,
09:32:17 6 but it clearly subsidized the operation of horse
09:32:21 7 racing.

09:32:21 8 1318 Q. Right. All right.

09:32:23 9 Now, in terms of --

09:32:26 10 A. I'm sorry. I didn't -- for the
09:32:29 11 long pause.

09:32:29 12 It was -- it was, umm, I think, subsidy
09:32:37 13 in the -- in this context of this particular ad,
09:32:41 14 would be, um, a sort of windfall, and I don't think
09:32:46 15 there was an intention in that regard.

09:32:48 16 1319 Q. You don't think there was an
09:32:49 17 intention to give a windfall?

09:32:51 18 A. In the sense of there was a -- a
09:32:53 19 belief that at some level, this would be -- that
09:32:56 20 supporting the horse racing industry was a good
09:32:59 21 thing do.

09:32:59 22 1320 Q. Oh, sure.

09:33:00 23 A. Okay.

09:33:00 24 1321 Q. Understood.

09:33:01 25 A. Yeah.

09:33:02 1 1322 Q. But just so we're on the same page
09:33:03 2 with this, Mr. Lisus asked you last time, 'Did the
09:33:07 3 horsepeople have to work for their siteholder
09:33:11 4 commission?' And you said, 'Yes.'

09:33:14 5 Do you remember?

09:33:14 6 A. Yes. They had to -- they had to
09:33:15 7 compete. They had to do all of the things you
09:33:18 8 would do in the horse racing industry.

09:33:19 9 1323 Q. But when you say "all the things
09:33:21 10 you would do in the horse racing industry", these
09:33:23 11 are all the things you would do whether or not
09:33:24 12 there's SARP, right?

09:33:25 13 These are -- you would breed horses if
09:33:28 14 you're a horse breeder, right?

09:33:30 15 A. If you are engaged in the
09:33:31 16 business, to -- to the extent that there is a
09:33:32 17 business, then you would do those things, yeah.

09:33:33 18 1324 Q. Right. It wasn't like you had to
09:33:35 19 do anything special to get SARP funds?

09:33:38 20 A. Yeah.

09:33:38 21 1325 Q. Okay. Just to make sure we're
09:33:46 22 clear, yes, you didn't have to do anything special?

09:33:49 23 MR. LISUS: What do you mean,
09:33:50 24 "special"?

09:33:51 25 BY MR. ROSENBERG:

09:33:51 1 1326 Q. You didn't have to do anything
09:33:52 2 that you didn't ordinarily do in the course of your
09:33:54 3 business?

09:33:55 4 A. We -- we would normally -- we
09:33:55 5 would expect people in the business to respond
09:33:57 6 to -- to the business parameters, to do the things
09:34:01 7 you would normally do in that business, based on
09:34:03 8 the size and scope of the business.

09:34:04 9 1327 Q. Right.

09:34:05 10 A. Yeah.

09:34:14 11 1328 Q. So, can I understand it, if you're
09:34:17 12 a horse breeder, you know, before SARP is
09:34:23 13 introduced, you're breeding horses. You're
09:34:26 14 providing them to the market. You're employing
09:34:28 15 people.

09:34:28 16 And after SARP is introduced, you're
09:34:31 17 doing those same things, right?

09:34:32 18 A. Correct, yes.

09:34:33 19 1329 Q. You would just expect to receive
09:34:35 20 more money now?

09:34:36 21 A. There was certainly an increase in
09:34:40 22 the value of -- of the production cycle when --
09:34:43 23 when the Slots at Racetracks Program came in, an
09:34:49 24 immediate, uh, increase in the value of -- of the
09:34:51 25 supply chain, and there was a stimulus to increase

09:34:56 1 the supply.

09:34:57 2 1330 Q. (Nodding head.) Okay.

09:35:02 3 And in some of your writing that we
09:35:05 4 looked at last time, some of your columns that
09:35:08 5 Mr. Lisus took you to, you've talked about the
09:35:12 6 siteholder payments under the Slots Program as
09:35:16 7 "rent".

09:35:18 8 There's a piece of them that's rent,
09:35:20 9 right? But it's only now we've sort of seen how
09:35:25 10 that rent payment matches up with a commercially
09:35:27 11 reasonable rent in the market.

09:35:29 12 A. Right. That became, umm... It
09:35:34 13 became kind of granular in 2012.

09:35:37 14 1331 Q. Now, in setting the siteholder
09:35:39 15 commission at 20 per cent, was your government
09:35:43 16 trying to compensate racetracks or horsepeople for
09:35:48 17 their revenue cannibalization that they might
09:35:52 18 suffer when slots were introduced at racetracks?

09:35:55 19 A. There was certainly an element of,
09:36:01 20 umm... There were two objectives. One was to --
09:36:05 21 to assist an industry that was not flourishing at
09:36:09 22 that time, and then to ensure that the imposition
09:36:19 23 of another business practice on the site wouldn't
09:36:23 24 impact that revenue, wouldn't negatively impact.

09:36:27 25 Part of that might have been -- might

09:36:30 1 have been bleeding off of pari-mutuel revenues, but
09:36:36 2 also the presence of a slot parlour, if you will,
09:36:40 3 at -- at the track; the parking, the -- the -- all
09:36:43 4 of those things.

09:36:44 5 So that the attempt was to have a
09:36:46 6 positive effect on the industry.

09:36:48 7 1332 Q. All right. Now, I guess what I
09:36:49 8 just wanted to be clear on is whether there was a
09:36:52 9 calibration exercise where --

09:36:54 10 A. No. There was no calibration --
09:36:56 11 I'm sorry to -- to -- go ahead and finish your
09:36:59 12 question.

09:36:59 13 1333 Q. No.

09:36:59 14 Was there a calibration exercise where
09:37:01 15 your government said, 'Well, 20 per cent is about
09:37:03 16 the right number to compensate for any
09:37:07 17 cannibalization that might happen'?

09:37:08 18 A. I -- I, again, was not at the
09:37:11 19 negotiations, but there was not -- in my
09:37:14 20 understanding, there was not a precise
09:37:16 21 understanding of what may or may not happen to the
09:37:19 22 wager and pari-mutuel as an effect of -- of, uh,
09:37:23 23 slot wagering in the province.

09:37:26 24 1334 Q. You said earlier that the split
09:37:28 25 between the track and the horsepeople was about the

09:37:31 1 same under the Slots Program as it was under
09:37:34 2 pari-mutuel wagering; about 50/50, right?

09:37:38 3 A. That's -- that's correct.

09:37:40 4 1335 Q. Was it fair to say, though, that
09:37:45 5 the racetrack and the horsepeople would expect to
09:37:49 6 get about the same amount for every dollar wagered
09:37:52 7 on a slot machine as they would for every dollar
09:37:55 8 wagered on a horse race?

09:37:57 9 A. No.

09:37:57 10 1336 Q. Why do you say that?

09:37:58 11 A. Umm. When they... The -- the
09:38:07 12 split of pari-mutuel wagering, umm, the -- the
09:38:12 13 takeout on pari-mutuel wagering, which is the
09:38:15 14 amount in excess of -- of what's paid out to the
09:38:19 15 patron, or to the person who is wagering, on -- on
09:38:26 16 onsite is about 13 per cent.

09:38:29 17 It varies a little bit, depending on
09:38:32 18 win, place, show in exotic betting, but that's
09:38:36 19 about 13 per cent.

09:38:38 20 1337 Q. That's 13 per cent of the revenue?

09:38:41 21 A. Of the revenue.

09:38:42 22 However, it's a much more complicated
09:38:45 23 formula in that it -- that is on -- on live racing.

09:38:49 24 On telecast race -- racing, so races
09:38:53 25 that are imported from other jurisdictions that

09:38:55 1 horseplayers in Ontario wager on, whether at the
09:39:00 2 track or by an advance deposit wagering system, the
09:39:06 3 takeout -- the -- the commission for that wager
09:39:09 4 would be about 3 per cent traditionally.

09:39:11 5 1338 Q. I see.

09:39:12 6 A. And again, it varies from minus
09:39:15 7 half a per cent, where you actually lose money on
09:39:17 8 the wager, to about 3 per cent, depending on the
09:39:20 9 particular race and the agreement that's negotiated
09:39:22 10 with the host track.

09:39:23 11 1339 Q. I see.

09:39:25 12 And then, that money is split between
09:39:27 13 the horsepeople and the track.

09:39:29 14 Is that --

09:39:30 15 A. That's correct.

09:39:31 16 1340 Q. All right. And do you have a
09:39:32 17 sense of the breakdown between wagering onsite and
09:39:36 18 wagering offsite?

09:39:37 19 A. Yeah. About -- about 80/20.

09:39:42 20 1341 Q. 80 per cent offsite, 20 per cent
09:39:45 21 onsite?

09:39:45 22 A. Yeah. You know, I don't know what
09:39:47 23 it is now. I haven't looked at it recently, but
09:39:49 24 it's about that.

09:39:50 25 1342 Q. And so, your answer to my earlier

09:39:55 1 question is, you can't compare--

09:39:58 2 --- (Mr. Ratcliffe refills the witness's

09:40:01 3 glass of water.)

09:40:01 4 THE WITNESS: Thank you.

09:40:01 5 BY MR. ROSENBERG:

09:40:03 6 1343 Q. --the take for the racetracks and

09:40:06 7 the horsepeople from pari-mutuel wagering with the

09:40:09 8 siteholder commission that they would have received

09:40:11 9 under the Slots Program?

09:40:12 10 A. Yeah. I don't think they're

09:40:13 11 comparable.

09:40:14 12 The way that amount of money was used

09:40:16 13 is -- is roughly comparable, but the amount -- how

09:40:19 14 the amount was derived, I don't think is --

09:40:23 15 1344 Q. Apples to oranges?

09:40:26 16 A. In my view. (Nodding head.)

09:40:36 17 1345 Q. Now, when you looked at Exhibit 12

09:40:38 18 with Mr. Lisus, you looked at the signature page at

09:40:46 19 the end of the agreement and I think you agreed

09:40:48 20 that it's signed by the owner of Hiawatha

09:40:59 21 Racetrack?

09:40:59 22 A. Mr. Henderson, yes.

09:41:00 23 1346 Q. Right.

09:41:01 24 It's not signed by anyone else--

09:41:08 25 A. That's correct.

09:41:08 1 1347 Q. --other than, of course, the
09:41:10 2 Ontario Lottery and Gaming Corporation, "OLC" as it
09:41:13 3 then was.
09:41:14 4 A. (Nodding head.)
09:41:14 5 1348 Q. So there's no signature by anybody
09:41:16 6 from, say, OHRIA?
09:41:19 7 A. No, there is not.
09:41:19 8 1349 Q. And that's not surprising, of
09:41:32 9 course, because this is an agreement between OLG
09:41:34 10 and the racetrack?
09:41:35 11 A. The site- -- siteholder agreement,
09:41:37 12 yes.
09:41:37 13 1350 Q. Siteholder agreement. Sure.
09:41:47 14 And it's pleaded in this action in the
09:41:50 15 Plaintiffs' Statement of Claim, that the
09:41:53 16 Plaintiffs, as horse breeders, never saw siteholder
09:41:57 17 agreements like the one at Exhibit 12 before the
09:42:01 18 Slots Program was cancelled.
09:42:04 19 Does that surprise you?
09:42:05 20 A. Uh. No, not particularly.
09:42:11 21 I'm, umm... No, not particularly. I
09:42:17 22 mean, I had never seen one until --
09:42:20 23 1351 Q. Sure.
09:42:20 24 A. -- until this action.
09:42:22 25 I'm not sure. Umm. It -- it looks, to

09:42:28 1 me, like an -- an agreement between the government
09:42:30 2 and the siteholder,--

09:42:31 3 1352 Q. Right.

09:42:33 4 A. --so I'm not sure to what extent
09:42:34 5 the siteholder would want that shared.

09:42:36 6 1353 Q. Okay. That comes back to the
09:42:41 7 earlier discussion we were having about the
09:42:42 8 distribution of the half of the siteholder
09:42:45 9 commission that was due to the horsepeople, or for
09:42:50 10 the benefit of the horsepeople.

09:42:52 11 A. (Nodding head.)

09:42:53 12 1354 Q. If the horsepeople weren't seeing
09:42:57 13 these siteholder agreements, I think you mentioned
09:43:01 14 earlier that there would have been an agreement
09:43:03 15 between the horsepeople and the racetrack?

09:43:06 16 A. Correct.

09:43:07 17 1355 Q. And is that how the horsepeople
09:43:09 18 would have been ensuring that, in fact, the 10 per
09:43:16 19 cent siteholder commission that was due for the
09:43:19 20 benefit of the horsepeople was, in fact, paid for
09:43:22 21 the benefit of the horsepeople?

09:43:24 22 A. It would be that agreement between
09:43:25 23 the track and the horsepersons' group that
09:43:30 24 represents horsepersons at the track. That's
09:43:33 25 required for pari-mutuel wagering. That would be

09:43:36 1 one modality.

09:43:38 2 And to my understanding, the

09:43:41 3 horsepersons' groups and, to an extent, the

09:43:46 4 breeders--

09:43:47 5 1356 Q. Mm-hmm.

09:43:47 6 A. --would have been working through

09:43:51 7 the Ontario Racing Commission to ensure that --

09:43:57 8 that, uh, their interests were properly

09:43:59 9 represented.

09:44:00 10 I'm not aware of... I'm aware of many

09:44:04 11 controversies that the Ontario Racing Commission

09:44:07 12 dealt with over the course of the time of SARP, but

09:44:10 13 not one that involved whether a fair share of the

09:44:13 14 -- of the net revenues was coming.

09:44:16 15 It's -- it's more on the disbursement

09:44:18 16 of those that -- where there was arguments.

09:44:21 17 1357 Q. Right. You mean the distribution

09:44:23 18 of that 10 per cent to fund purses for different

09:44:28 19 races--

09:44:28 20 A. Right.

09:44:29 21 1358 Q. --or instead of funding purses, to

09:44:33 22 fund the Horse Improvement Program?

09:44:35 23 A. And -- and -- yes, and a -- umm,

09:44:41 24 and certainly discussions about the amount of

09:44:43 25 number of race days that would be available.

09:44:45 1 1359 Q. Okay. So this isn't about whether
09:44:47 2 you're getting the 10 per cent you're due. This is
09:44:50 3 about how the 10 per cent is spent?

09:44:51 4 A. Correct.

09:44:51 5 --- (Ms. Machado arrives at 9:44 a.m.)

09:44:51 6 BY MR. ROSENBERG:

09:44:53 7 1360 Q. And am I right in thinking that's
09:45:03 8 pursuant to an agreement, it sounds like between
09:45:05 9 the racetrack and the local horsemen's association?

09:45:09 10 A. The horsepersons' group that was
09:45:13 11 representing the local horsemen.

09:45:15 12 1361 Q. I see.

09:45:15 13 A. So--

09:45:15 14 1362 Q. What do you mean by that?

09:45:17 15 A. --OHHA.

09:45:17 16 1363 Q. OHHA.

09:45:18 17 A. Originally, OHHA would have been
09:45:18 18 there for all of the Standardbred tracks,--

09:45:18 19 1364 Q. Right.

09:45:21 20 A. The Horsemen's Benevolent
09:45:25 21 Protection Association for the Thoroughbred people
09:45:26 22 on Thoroughbred tracks,--

09:45:28 23 1365 Q. Okay.

09:45:28 24 A. --and eventually, there were --
09:45:31 25 subsequent to the introduction of the Slots At

09:45:34 1 Racetracks Program, there were three other
09:45:37 2 Standardbred horsepersons' groups that -- that grew
09:45:38 3 out of splits within the Ontario Harness Horse
09:45:44 4 Association.

09:45:44 5 1366 Q. Which ones were these?

09:45:45 6 A. Uh. The Northern Ontario Harness
09:45:50 7 Horsemen's Association, the Ottawa Region or
09:45:53 8 Carleton Region - I can't remember which one -
09:45:54 9 Ottawa Region Horsemen's Association, and... So
09:45:59 10 Northern, Ottawa, and the, umm...

09:46:03 11 1367 Q. Central Ontario?

09:46:05 12 A. Central Ontario..., yes.

09:46:06 13 1368 Q. Yes.

09:46:08 14 A. ...Harness Horsemen's Association.

09:46:08 15 1369 Q. I know I've seen that name around.

09:46:17 16 A. COSA.

09:46:17 17 1370 Q. And why do you say they grew out
09:46:17 18 of OHHA?

09:46:18 19 A. OHHA would have represented all of
09:46:20 20 those -- those track at the time of the -- of the
09:46:28 21 signature with OHRIA.

09:46:29 22 The horse racing industry is not
09:46:32 23 without strongly held opinions and a few
09:46:34 24 occasional, uh, discussions, and so the splinter
09:46:38 25 groups -- so some groups splintered off to better

09:46:41 1 represent, or in their view, better represent the
09:46:44 2 interests of horsemen at specific tracks.

09:46:46 3 1371 Q. So these groups would then
09:46:48 4 negotiate that contract we've been talking about
09:46:52 5 with the racetrack?

09:46:52 6 A. Specific tracks, yes.

09:46:54 7 1372 Q. Now, I've never seen one of these
09:47:03 8 contracts between the horsemen's association and
09:47:03 9 the racetracks.

09:47:07 10 Have you?

09:47:07 11 A. I have not.

09:47:08 12 1373 Q. And is it the kind of thing you
09:47:09 13 would expect horse breeders to see or to have in
09:47:12 14 their possession?

09:47:13 15 A. I don't think many people in the
09:47:15 16 horse industry would have known the details of
09:47:18 17 those agreements.

09:47:19 18 1374 Q. Right.

09:47:20 19 What if they were owning and racing
09:47:22 20 horses at tracks?

09:47:24 21 A. That's why I answered the way I
09:47:26 22 did.

09:47:26 23 I think there's often not a clear line
09:47:30 24 of delineation between activity, as my experience
09:47:33 25 in the industry,--

09:47:34 1 1375 Q. Right.

09:47:34 2 A. --you know, but breeders are also
09:47:39 3 often horse owners and sometimes trainers are
09:47:43 4 breeders, and there's -- they don't -- those
09:47:45 5 activities don't preclude each other. In fact,
09:47:48 6 they... It makes sense for people sometimes to,
09:47:52 7 uh, to both own and breed.

09:47:53 8 There's a gentleman named E.P. Taylor
09:47:55 9 who did some of that somewhat successfully.

09:47:58 10 1376 Q. I might have heard of that name.

09:48:01 11 A. Yeah. Umm. Apparently, he kept
09:48:03 12 the right one.

09:48:09 13 So -- so I answered that question in
09:48:10 14 that way, but I doubt that very many horsepersons
09:48:12 15 who are not breeders would have been truly aware of
09:48:16 16 the..., would have -- would have given witness to
09:48:18 17 the contract.

09:48:20 18 They would -- they would trust their
09:48:21 19 horsepersons' group, whether it's OHHA or COSA or
09:48:25 20 whoever to negotiate that contract. I doubt -- I
09:48:30 21 don't think that they was often ask to see it.

09:48:32 22 1377 Q. I see.

09:48:33 23 A. But...

09:48:33 24 1378 Q. So they would have a sense that
09:48:35 25 it's out there somewhere, but they--

09:48:37 1 A. It exists, yeah.

09:48:38 2 1379 Q. --wouldn't have reviewed it.

09:48:41 3 And just so I'm clear on this, the

09:48:48 4 contract between the horsepersons' association and

09:48:51 5 the racetrack is what determines how SARP funds, at

09:49:00 6 10 per cent siteholder commission for the

09:49:03 7 horsepeople, how it's spent to benefit the

09:49:05 8 horsepeople?

09:49:05 9 A. It's -- it's the determination of

09:49:09 10 how the pari-mutuel funds would be -- would be

09:49:13 11 split.

09:49:13 12 The -- and that would influence the

09:49:20 13 SARP funds. It would also influence the PMTR

09:49:25 14 funds, but I believe ORC had final authority on

09:49:25 15 PMTR,--

09:49:25 16 1380 Q. Okay.

09:49:34 17 A. --subject to the agreement on

09:49:35 18 pari-mutuel tax reduction.

09:49:36 19 1381 Q. Right.

09:49:37 20 A. And I -- I believe they did, as

09:49:39 21 well, on -- on the SARP funds.

09:49:44 22 I -- I may flunk that test, but I think

09:49:47 23 it went through Ontario Racing Commission.

09:49:48 24 1382 Q. I see. So the Ontario Racing

09:49:52 25 Commission would decide how much of that 10 per

09:49:55 1 cent would go to enhance purses on particular
09:49:58 2 races?

09:49:59 3 A. It would have to approve it
09:50:01 4 because it would be an approval--

09:50:03 5 1383 Q. I see.

09:50:04 6 A. --of what was submitted by the --
09:50:06 7 by the track for its annual racing plan--

09:50:08 8 1384 Q. Right.

09:50:09 9 A. --and that has to be agreed to
09:50:11 10 with the horseman's group.

09:50:14 11 1385 Q. I see. Okay. So at heart,
09:50:17 12 there's an agreement between the horsemen's
09:50:20 13 association and the racetrack as to how the SARP
09:50:22 14 funds are going to be distributed to purse
09:50:26 15 enhancements, and that's blessed by the ORC?

09:50:29 16 A. Yes, subject to the agreement, the
09:50:31 17 master agreement on -- with OHRIA or whatever
09:50:34 18 decisions had been made on distribution.

09:50:37 19 I mean, I would think that they would
09:50:39 20 all want to match one up with the industry
09:50:41 21 association had agreed to.

09:50:42 22 1386 Q. When you say "what the industry
09:50:45 23 association had agreed to", you mean particular
09:50:48 24 classes of races that would have particular purses?

09:50:50 25 A. Whatever the -- whatever the -- I

09:50:55 1 mean, some of this -- some of that distribution
09:50:57 2 would -- would come before OHRIA--
09:51:00 3 1387 Q. Right.
09:51:00 4 A. --as an industry--
09:51:02 5 1388 Q. Right.
09:51:03 6 A. --issue. And on OHRIA at the
09:51:05 7 time, for-profit, not-for-profit tracks, breeders,
09:51:09 8 horsepersons' groups were represented.
09:51:12 9 1389 Q. It sounds like this is a pretty
09:51:14 10 complicated formula to get money from slot machines
09:51:17 11 to purses.
09:51:18 12 A. I think it's simple on the -- in
09:51:20 13 the -- from the government's point of view.
09:51:22 14 It's a little more complex when an
09:51:27 15 industry has to work in all various circumstances
09:51:31 16 on the ground and also work with its supply chain.
09:51:37 17 1390 Q. It's simple from the government's
09:51:39 18 point of view because you say that the horsepeople
09:51:42 19 and the racetracks work it out amongst yourselves?
09:51:45 20 A. 'Here is 20 per cent. 10 per cent
09:51:48 21 goes to the track, 10 per cent goes to the purses.
09:51:51 22 See you.'
09:51:52 23 1391 Q. Right.
09:51:53 24 A. Right.
09:51:53 25 1392 Q. And the rest, you understand,

09:51:55 1 though, when the horsepeople and the racetracks are
09:51:57 2 working out amongst themselves, which you've just
09:52:00 3 been describing, sounds pretty complicated?

09:52:03 4 A. I... I think I described this
09:52:05 5 industry at one time as being not complicated, but
09:52:08 6 very complex.

09:52:12 7 And so, yeah, those discussions at an
09:52:14 8 industry level are -- are, uh -- are complex.

09:52:20 9 1393 Q. Right. And I think, adding to
09:52:25 10 that complexity, Mr. Lisus took you last time to
09:52:30 11 the addendum to the letter of intent which was
09:52:33 12 Exhibit 17.

09:52:43 13 And if you look at Paragraph 4, IV, sub
09:52:49 14 (1), it appears that this is a carve-out from all
09:52:56 15 of the money going to purse enhancements by
09:52:57 16 agreement. It looks like some of the money,
09:53:02 17 there's been agreement between the siteholder and
09:53:04 18 the respective horsepeople, some of the money can
09:53:07 19 go to the Horse Improvement Program?

09:53:11 20 A. Right.

09:53:11 21 1394 Q. Right.

09:53:12 22 And you said you were surprised that it
09:53:15 23 was also to go to purse enhancements.

09:53:17 24 It looks like there was an agreement
09:53:18 25 that some of it could go to the Horse Improvement

09:53:22 1 Program.

09:53:22 2 A. Correct.

09:53:23 3 1395 Q. And at that point, OHRIA was

09:53:25 4 running the Horse Improvement Program?

09:53:27 5 A. That's correct.

09:53:28 6 1396 Q. And it did so until about 2005?

09:53:31 7 A. That's correct, when it was

09:53:33 8 transferred to the Ontario Racing Commission.

09:53:35 9 1397 Q. Right.

09:53:35 10 And so this is more of what we were

09:53:37 11 talking about earlier. I hate to use the term

09:53:39 12 "horse trading", but it's agreements amongst the

09:53:42 13 horsepeople and the racetracks?

09:53:45 14 A. Correct.

09:53:46 15 1398 Q. Okay. So let's step back for a

09:53:52 16 moment.

09:53:53 17 You told Mr. Lisus that the letter of

09:53:57 18 intent was an agreement between the government, OLG

09:54:00 19 and OHRIA.

09:54:03 20 And I understand that OHRIA represented

09:54:08 21 a lot of different players in the horse racing

09:54:10 22 industry, right?

09:54:11 23 A. Yes.

09:54:13 24 1399 Q. Did it represent all of the

09:54:14 25 participants in the horse racing industry?

09:54:17 1 A. It did not represent horseplayers
09:54:24 2 or anyone on the customer side of the horse racing
09:54:27 3 industry.
09:54:27 4 1400 Q. What about, say, veterinarians?
09:54:32 5 A. Not specifically.
09:54:33 6 1401 Q. Blacksmiths?
09:54:35 7 A. Not specifically.
09:54:37 8 1402 Q. Stablehands?
09:54:38 9 A. Only those that would be licensed
09:54:42 10 through one of the, uh... So those stablehands
09:54:48 11 that were licensed by the Ontario Racing Commission
09:54:50 12 and were then members of OHHA or one of the other
09:54:54 13 groups--
09:54:54 14 1403 Q. But --
09:54:54 15 A. --would have been represented by
09:54:56 16 their -- by that group.
09:54:57 17 1404 Q. But not otherwise?
09:54:59 18 A. But not otherwise.
09:55:00 19 1405 Q. So there are people not just on
09:55:02 20 the customer site but who are working in the horse
09:55:05 21 racing industry who weren't represented by OHRIA?
09:55:07 22 A. That's correct.
09:55:08 23 1406 Q. And it was still your government's
09:55:09 24 intention to benefit these people with the Slots at
09:55:14 25 Racetracks Program?

09:55:14 1 A. That would be correct.

09:55:23 2 1407 Q. So if OHRIA doesn't represent
09:55:25 3 everybody in the horse racing industry or even
09:55:28 4 everybody on the business side, why was your
09:55:30 5 government entering into an agreement with OHRIA?

09:55:32 6 A. OHRIA was the construct that was
09:55:36 7 in place at the time. There -- there was no other
09:55:44 8 industry body to -- to negotiate with.

09:55:47 9 1408 Q. It was sort of their way or the
09:55:51 10 highway, if you're going to negotiate with the
09:55:55 11 industry?

09:55:55 12 A. It -- again, I believe, if memory
09:55:58 13 serves, that OHRIA was designed by the -- was --
09:56:01 14 was brought into effect by the previous -- the
09:56:04 15 government previous to the government that brought
09:56:06 16 in SARP, I think by the Ministry of Agriculture and
09:56:14 17 Rural Affairs who were represented by a very
09:56:15 18 articulate and intelligent minister at the time, so
09:56:18 19 perhaps we thought that that was a -- a perfect
09:56:23 20 design.

09:56:23 21 It was the entity that was there.

09:56:24 22 1409 Q. Right.

09:56:25 23 A. Yeah.

09:56:26 24 1410 Q. In as much as it was the entity
09:56:29 25 that was there, in as much as your government was

09:56:32 1 negotiating with it, was it your government's
09:56:35 2 intention, in concluding the letter of intent June
09:56:39 3 25th, 1998, to enter into contracts with every
09:56:45 4 member of the horse racing industry?

09:56:47 5 A. No.

09:56:49 6 1411 Q. And, in particular, with respect
09:56:53 7 to this action, in signing that letter of intent,
09:56:58 8 was it your government's intention to enter into
09:57:01 9 contracts with the Standardbred horse breeders who
09:57:07 10 are Plaintiffs in this action?

09:57:08 11 A. Well, our intention was to do
09:57:10 12 what, I assume... Again, I was not at the
09:57:17 13 negotiating table on this particular contract, but
09:57:19 14 it's clear we entered an agreement with the -- with
09:57:22 15 the, uh, horse racing industry, writ large, through
09:57:25 16 the body called OHRIA, which included in this case,
09:57:30 17 the representatives of horse breeding, I think, on
09:57:33 18 all -- on at least two of the three breeds -- two
09:57:35 19 of the three breeds at that time.

09:57:37 20 1412 Q. Okay. So at that level, but not
09:57:39 21 at the level of --

09:57:41 22 A. Not a direct one-of (sic)
09:57:42 23 contract, no.

09:57:43 24 1413 Q. Right. Not direct contracts with
09:57:45 25 the Plaintiffs in this action?

09:57:47 1 A. Not a one-of contract, no.

09:57:59 2 1414 Q. What do you mean by "a one-of
09:57:59 3 contract"?

09:58:02 4 A. Not a -- not a, uh, a contract
09:58:02 5 that would name that individual organization.

09:58:04 6 1415 Q. All right.

09:58:05 7 A. It was a collective agreement with
09:58:08 8 a -- with the industry representative body.

09:58:09 9 1416 Q. And as we've seen, what the
09:58:11 10 agreement was for was to enter into the siteholder
09:58:14 11 agreements that we've -- one of which, we have--

09:58:14 12 A. Correct, yes.

09:58:17 13 1417 Q. --just reviewed?

09:58:17 14 A. Yeah.

09:58:18 15 1418 Q. Sorry. Yes?

09:58:19 16 A. Yes. Yes. That's correct.

09:58:21 17 1419 Q. When your government was
09:58:30 18 negotiating with OHRIA, was it under the impression
09:58:32 19 that OHRIA had attained the authority of every
09:58:36 20 member of the horse racing industry to enter into
09:58:39 21 contracts on their behalf?

09:58:45 22 A. I wasn't at the negotiating table.
09:58:48 23 I was at the Executive Council and my
09:58:58 24 memory is that the..., that representation was made
09:59:01 25 that an agreement had been made with the horse -- a

09:59:03 1 letter of intent had been made with the industry
09:59:06 2 through the industry association.

09:59:08 3 I am not aware of what we would have
09:59:11 4 expected OHRIA to do with its members.

09:59:13 5 1420 Q. Okay. And, in fairness, you know,
09:59:19 6 you don't remember going to that level of detail
09:59:22 7 because really what this was, was a framework under
09:59:26 8 which you were then going to execute the siteholder
09:59:29 9 agreements, and presumably the siteholder would
09:59:32 10 have authority to enter that contract?

09:59:34 11 A. Just that level of granularity
09:59:39 12 wasn't something I would have been aware of in '96,
09:59:42 13 '7, '8.

09:59:44 14 1421 Q. Right.

09:59:45 15 Now, this may be the only new document
09:59:47 16 that I show you, sir, but I'm handing you Document
09:59:54 17 Number CR0004086, which is a letter from Chris
10:00:03 18 Hodgson, Chair of Management Board of Cabinet, to
10:00:07 19 Jane Holmes, H-o-l-m-e-s, Executive Director of
10:00:12 20 OHRIA.

10:00:20 21 And I think you've told us last time
10:00:23 22 that Mr. Hodgson was leading negotiations for the
10:00:25 23 Government of Ontario?

10:00:25 24 A. That's my understanding, yes.

10:00:27 25 1422 Q. And Ms. Holmes was certainly

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involved in these negotiations for OHRIA?
A. Yes, she was.
Q. And this letter, I don't actually see a date, but the fax at the top appears to be June 3rd, 1998.
Is this the kind of letter that would have been going back and forth between Mr. Hodgson and OHRIA in the course of these negotiations?
MR. LISUS: What does that mean, "Is this the kind of letter that would have been going back and forth?"
BY MR. ROSENBERG:
Q. Well, do --
MR. LISUS: What do you mean by "kind of letter"? There's no evidence of "back and forth" that he's aware of. There's no evidence from Mr. Hodgson or Ms. Holmes and they are not identified as witnesses.
MR. ROSENBERG: Well, Mr. Lisus, you asked him whether there were negotiations and he told you, 'Yes.'
MR. LISUS: I'm just responding to the characterization of this document as "the kind of letter that might have been -- that might have gone back and forth."

10:01:36 1 I don't know what that means and
10:01:38 2 there's no foundation for it.

10:01:45 3 MR. ROSENBERG: Well...

10:01:46 4 MR. LISUS: Is there any evidence of a
10:01:48 5 back-and-forth in the summary judgment motion
10:01:51 6 materials or on the evidence to date?

10:01:52 7 BY MR. ROSENBERG:

10:01:52 8 1425 Q. Well, to satisfy Mr. Lisus, why
10:01:52 9 don't we come at it steps, then.

10:01:55 10 You told Mr. Lisus that there were
10:01:57 11 negotiations--

10:01:57 12 A. Yes.

10:01:58 13 1426 Q. --and I think he asked you whether
10:01:59 14 they were protracted, and I don't think you
10:02:01 15 accepted that characterization, but--

10:02:04 16 MR. LISUS: I didn't ask him --

10:02:04 17 BY MR. ROSENBERG:

10:02:04 18 1427 Q. --they certainly were.

10:02:05 19 MR. LISUS: I didn't ask him that.

10:02:06 20 I put a document to him that referred
10:02:08 21 to them being protracted or long and difficult.

10:02:13 22 MR. ROSENBERG: Right. So -- so we
10:02:14 23 discussed those negotiations last time, Mr. Lisus.

10:02:19 24 MR. LISUS: They're pre 1998,
10:02:21 25 Mr. Rosenberg.

10:02:21 1 You've asked him about a June 2000
10:02:24 2 letter and put a proposition about "back and
10:02:27 3 forth".

10:02:27 4 MR. ROSENBERG: No. Mr. Lisus, you are
10:02:29 5 looking at the wrong document.

10:02:30 6 MR. LISUS: Where are you?

10:02:31 7 MR. ROSENBERG: You don't have the
10:02:33 8 right document in front of you.

10:02:34 9 This is a June 1998 letter from the
10:02:37 10 negotiations for SARP.

10:02:40 11 MR. LISUS: Okay.

10:02:40 12 MR. ROSENBERG: So if you get the right
10:02:40 13 document in front of you, I think you'll be able to
10:02:40 14 follow along.

10:02:41 15 MR. LISUS: Do you have a copy of it
10:02:42 16 for me?

10:02:42 17 MR. ROSENBERG: I don't.

10:02:42 18 You didn't have them for me, so I'm
10:02:45 19 afraid I only have the two copies, but I did give
10:02:47 20 you the document number.

10:02:52 21 I'm going to make it an exhibit, so you
10:02:55 22 can take a look at it there.

10:03:00 23 I'm sorry. I thought we were all
10:03:02 24 bringing databases with us to these Examinations.

10:03:06 25 MR. LISUS: Just go off the record for

10:03:08 1 a moment while I find it.

10:04:00 2 --- (Discussion off the record.)

10:04:00 3 MR. ROSENBERG: Okay. Back on.

10:04:00 4 BY MR. ROSENBERG:

10:04:10 5 1428 Q. Were you aware that Mr. Hodgson

10:04:12 6 was exchanging correspondence with Ms. Holmes in

10:04:14 7 the course of these negotiations for the Slots at

10:04:25 8 Racetracks Program?

10:04:25 9 A. I was aware that Minister Hodgson

10:04:27 10 was engaged in those -- those, uh, negotiations.

10:04:31 11 I know that Jane was representing

10:04:36 12 OHRIA. I would have known her at that time.

10:04:40 13 Umm. Neither of those parties asked me

10:04:42 14 to -- to -- to, uh, participate.

10:04:45 15 Umm. I suspect that Jane might have if

10:04:48 16 she thought there was some way I might -- she might

10:04:51 17 need help, but she did not. So, I mean, I'm not

10:04:54 18 surprised that, uh, there would be a correspondence

10:04:58 19 on those -- about those meetings.

10:05:00 20 1429 Q. I see. But Jane might have asked

10:05:04 21 you for help?

10:05:05 22 A. Had -- I was serving on Management

10:05:07 23 Board at the time.

10:05:08 24 1430 Q. Mm-hmm.

10:05:08 25 A. I -- I would have -- if she was

10:05:09 1 unhappy with the negotiations, she might have
10:05:13 2 reached out to me.

10:05:15 3 People do that fairly regularly. She
10:05:17 4 did not.

10:05:17 5 1431 Q. Have you seen this letter before?

10:05:19 6 A. I don't believe I have.

10:05:20 7 1432 Q. If I could just direct your
10:05:24 8 attention to the last paragraph.

10:05:26 9 "The individual racetracks and
10:05:27 10 horsemen..." [As read.]

10:05:28 11 The last paragraph on the first page.

10:05:30 12 A. Okay.

10:05:30 13 1433 Q. "The individual racetracks and
10:05:33 14 horsemen must make their own decisions
10:05:35 15 based on the existing deal and current
10:05:38 16 site commission. We will respect any
10:05:39 17 decision not to participate in the slot
10:05:41 18 machine program." [As read.]

10:05:44 19 As much as you may not have seen this
10:05:47 20 particular letter, do you remember whether that was
10:05:49 21 effectively the way that your government presented
10:05:53 22 the Slots Program to the horse racing industry?

10:05:56 23 A. I am not surprised by that
10:05:59 24 sentence and I am not surprised that this
10:06:03 25 government -- that government would take the

10:06:06 1 position put forward in the letter.

10:06:10 2 1434 Q. Was that ultimately the way that
10:06:12 3 your government presented it; that, 'We're willing
10:06:14 4 to pay a particular siteholder commission and, you
10:06:20 5 know, you, racetrack, can either decide you want
10:06:24 6 slots on that basis or you don't'?

10:06:26 7 A. Right. Yes. That would be...
10:06:34 8 Minister Hodgson's take on this is consistent with
10:06:39 9 how it was repres- -- with what I would have
10:06:40 10 thought would have been a normal way of negotiating
10:06:42 11 this particular type of contract.

10:06:44 12 1435 Q. And so that would be the first
10:06:45 13 level.
10:06:46 14 So the racetrack has to decide they
10:06:48 15 want to participate in Slots at Racetracks Program,
10:06:52 16 and once they have made that decision to
10:06:54 17 participate, at that point, it's about making an
10:06:57 18 agreement with the horsepeople at that track as to
10:07:01 19 how the 10 per cent for the horsepeople is going to
10:07:04 20 be spent?

10:07:04 21 A. Correct.

10:07:06 22 1436 Q. So that's the two levels to
10:07:08 23 participating in the Slots Program?

10:07:10 24 A. Correct.

10:07:12 25 1437 Q. And if your racetrack doesn't want

10:07:17 1 to participate in the Slots Program on the terms
10:07:22 2 that were being offered, then the government is
10:07:23 3 saying they're not going to force you to take
10:07:25 4 slots?

10:07:25 5 A. Fair enough, yes.

10:07:27 6 1438 Q. And, you know, in so far as it's a
10:07:28 7 private racetrack, they can't force to you take
10:07:31 8 slots, right?

10:07:32 9 A. Yes. That's -- would be my
10:07:34 10 understanding.

10:07:35 11 MR. ROSENBERG: Okay. Why don't we
10:07:36 12 mark that as the next exhibit. This is Exhibit 42,
10:07:46 13 I think.

10:07:47 14 THE COURT REPORTER: No. 43.

10:07:48 15 MR. ROSENBERG: 43. Thank you.

10:07:51 16 ---EXHIBIT NO. 43: A letter from Chris
10:07:51 17 Hodgson, Chair of Management Board of Cabinet, to
10:07:51 18 Jane Holmes, Executive Director of OHRIA,
10:07:53 19 Production Number CR0004086.

10:08:31 20 BY MR. ROSENBERG:

10:08:31 21 1439 Q. Just to close things off on that
10:08:33 22 last discussion, in order for a racetrack to
10:08:35 23 participate in the Slots Program, it would have had
10:08:38 24 to do something different than what it had
10:08:40 25 previously been doing.

10:08:41 1 It would have to furnish space for a
10:08:45 2 slots parlour, right?
10:08:46 3 A. Yes.
10:08:47 4 1440 Q. And that might require some
10:08:48 5 capital investments?
10:08:49 6 A. Yes.
10:08:55 7 1441 Q. And so, for the racetrack, it was
10:08:57 8 a meaningful decision to either participate or not
10:09:00 9 participate in the Slots at Racetrack Program?
10:09:02 10 A. Yes.
10:09:03 11 1442 Q. It wasn't just a case of sort of
10:09:05 12 doing what you were always doing?
10:09:06 13 A. That's correct.
10:09:07 14 1443 Q. So I said we were going to come
10:09:10 15 back to Exhibit 12, which is the Hiawatha
10:09:13 16 siteholder agreement that Mr. Lisus put to you last
10:09:17 17 day.
10:09:17 18 One of the clauses that Mr. Lisus did
10:09:27 19 not take you to is Article 18, and if I could ask
10:09:37 20 you to turn there, please.
10:09:38 21 A. Yes. (Clearing throat.) Yes.
10:09:46 22 1444 Q. So you see that Article 18
10:09:50 23 concerns the termination of the siteholder
10:09:54 24 agreement?
10:09:54 25 A. Yes.

10:09:55 1 1445 Q. And if I could ask you just to
10:09:56 2 read it over, please.
10:10:03 3 ---(Witness reviewing document.)
10:12:57 4 THE WITNESS: Gotcha.
10:12:58 5 BY MR. ROSENBERG:
10:12:59 6 1446 Q. Okay. So you've now had an
10:13:02 7 opportunity to review Article 18 of the siteholder
10:13:04 8 agreement?
10:13:04 9 A. That's correct.
10:13:04 10 1447 Q. And you remember, Mr. Lisus, I
10:13:08 11 think, took you to Article 4. That was 4.6 and
10:13:09 12 4.7.
10:13:11 13 I don't think you need to turn it up
10:13:12 14 now. It just -- it establishes that this
10:13:15 15 siteholder agreement has a term, right?
10:13:16 16 A. Correct.
10:13:16 17 1448 Q. And you remember that being a
10:13:18 18 feature of the siteholder agreements; they had
10:13:20 19 terms?
10:13:20 20 A. Yes.
10:13:20 21 1449 Q. This one was five years, to begin
10:13:27 22 with?
10:13:28 23 A. (Nodding head.)
10:13:30 24 ---(Court reporter appeals.)
10:13:31 25 THE WITNESS: Yes, yes.

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BY MR. ROSENBERG:

1450 Q. But, as you see from Article 18, these siteholder agreements could be terminated for various reasons?

A. Yes.

1451 Q. So that's Article 18.1. For example, if you look under 18.1(b), if the siteholder ceases to..., or substantially ceases to operate live horse racing at the racetrack, that's one of the grounds for termination of the siteholder agreement?

A. That's correct.

1452 Q. And if the racetrack stops offering horse racing, there's nothing that the horsepeople can do. The siteholder agreement just could be terminated, right?

A. Correct.

1453 Q. Okay. If you look at 18.3, though - and this is page 48 - you see there's early termination, and under (a), it says that:

"OLG, in its sole discretion, may at any time terminate this agreement in accordance with this Section 18.3, upon providing siteholder with written notice of

10:14:38 1 termination..." [As read.]

10:14:40 2 Do you see that?

10:14:41 3 A. Yes.

10:14:43 4 1454 Q. "...and on providing 270 days'
10:14:46 5 written notice..."
10:14:48 6 You see that?

10:14:49 7 A. Yes.

10:14:49 8 1455 Q. "...OLG can terminate the
10:14:51 9 siteholder agreement for any reason."
10:14:53 10 A. Yes.

10:14:53 11 1456 Q. And that was your -- your
10:14:59 12 government's understanding of the deal they were
10:15:01 13 striking? The siteholder agreements would be
10:15:04 14 terminable by OLG at its discretion?

10:15:07 15 A. It's... It would have been the
10:15:10 16 government's understanding that there would have
10:15:12 17 been a normal, uh, commercial cancellation clause
10:15:17 18 generally in favour of the Crown, umm, in these
10:15:23 19 agreements, and this is consistent with those sorts
10:15:26 20 of agreements.

10:15:31 21 1457 Q. Okay. If the siteholder agreement
10:15:35 22 gets cancelled, what happens to the 20 per cent
10:15:39 23 siteholder commission?

10:15:42 24 A. If the agreement is cancelled,
10:15:46 25 there -- it would be cancelled in its entirety.

10:15:48 1 1458 Q. So what happens to the siteholder
10:15:52 2 portion?

10:15:52 3 A. It would extinguish all the -- it
10:15:54 4 would extinguish that along with all the other
10:15:55 5 provisions.

10:15:56 6 1459 Q. So the money stops flowing to the
10:15:58 7 racetrack and the money then doesn't flow from the
10:16:00 8 racetrack to the horsepeople?

10:16:01 9 A. Yes.

10:16:10 10 1460 Q. And with that cancellation, I
10:16:12 11 suppose what also follows is that OLG loses its
10:16:15 12 right to put slot machines at the racetracks unless
10:16:19 13 it forms some other agreement with the racetrack?

10:16:21 14 A. The racetrack, yeah, because these
10:16:23 15 are individual agreements.

10:16:24 16 1461 Q. Right.

10:16:25 17 A. Yes.

10:16:25 18 1462 Q. OLG is effectively back to square
10:16:29 19 one to sort of negotiate a right to put slot
10:16:32 20 machines at the racetrack?

10:16:33 21 A. With Jim Henderson in Sarnia in
10:16:37 22 the case of this particular contract, but these are
10:16:39 23 individual racetrack -- yes.

10:16:42 24 1463 Q. Right.

10:16:43 25 A. In that context.

10:16:44 1 1464 Q. There's a formula in 18.3 that you
10:16:47 2 were just reviewing as to what OLG has to pay the
10:16:53 3 racetrack on early termination of the agreement, so
10:16:58 4 termination before the end of the term in addition
10:17:03 5 to giving 270 days notice.

10:17:06 6 You see that? It's under sub (c),
10:17:08 7 18.1(c).

10:17:10 8 A. I do, indeed, yes.

10:17:11 9 1465 Q. It looks complicated, but this is
10:17:13 10 about a payment to the racetrack?

10:17:14 11 A. Yes.

10:17:16 12 1466 Q. Other than giving that 270 days
10:17:19 13 notice to the siteholder, the racetrack, and paying
10:17:23 14 what that formula requires, was there any
10:17:31 15 requirement to give notice to anyone else on taking
10:17:34 16 a decision to cancel a siteholder agreement?

10:17:36 17 A. I have not read one, not -- not in
10:17:39 18 the contract.

10:17:40 19 1467 Q. And what about a broader decision
10:17:43 20 to cancel the revenue sharing portion of the Slots
10:17:50 21 at Racetracks Program? Do you need to give notice
10:17:52 22 to anybody other than your siteholders?

10:17:54 23 A. I am not aware of one.

10:17:55 24 1468 Q. And the Plaintiffs in this action
10:17:59 25 have pleaded that Ontario and OLG had to give

10:18:04 1 notice of their decision to cancel slots revenue
10:18:09 2 sharing that was commensurate with what they say is
10:18:12 3 a five-year production cycle a horse.

10:18:15 4 Was that the deal your government
10:18:17 5 struck?

10:18:18 6 A. I think the, uh... Without
10:18:27 7 drifting into law, which you will appreciate I am
10:18:31 8 reluctant to do,--

10:18:34 9 1469 Q. Understood.

10:18:36 10 A. --for good reason, the agreement
10:18:39 11 that I understood my -- the government to enter was
10:18:44 12 a -- a -- an agreement to share revenues from slots
10:18:50 13 that would have had specific agreements that --
10:18:53 14 that backed up that policy decision,--

10:18:56 15 1470 Q. Right.

10:18:58 16 A. --including the agreement that's
10:19:01 17 before us now, that I have, that is in this
10:19:05 18 exhibit.

10:19:05 19 1471 Q. The siteholder agreement.

10:19:06 20 A. This siteholder agreement.

10:19:13 21 And, umm, I would have understood at
10:19:15 22 the time, and I think the government would -- my
10:19:17 23 colleagues on Management Board and Executive
10:19:19 24 Council would have understood that these agreements
10:19:22 25 were -- were, uh, in good faith for whatever period

10:19:26 1 of time the agreement was in place, uh, and subject
10:19:28 2 to all the normal termination clauses, including a
10:19:35 3 notification for termination.

10:19:36 4 This would be normal in these sorts of
10:19:39 5 -- of contracts.

10:19:41 6 I'm not -- I don't believe that we were
10:19:51 7 presented with a five-year cancellation. I don't
10:19:53 8 believe that that would have been how it was
10:19:56 9 represented to those of us who served on Management
10:19:58 10 Board or on Executive Committee.

10:20:00 11 That would have been an extraordinary
10:20:03 12 document and I don't recall this being represented
10:20:06 13 in that regard.

10:20:07 14 1472 Q. Right. And we are not just
10:20:08 15 talking about the document before you, which is the
10:20:10 16 siteholder agreement, but -- but SARP more
10:20:13 17 generally; you don't remember having some period of
10:20:15 18 notice that you had to give to the horse racing
10:20:18 19 industry before you backed away from that policy?

10:20:20 20 A. No. I am not aware of any
10:20:23 21 extraordinary agreement that -- that would have
10:20:26 22 been different than normal government agreements.

10:20:29 23 1473 Q. And if you look at 18.3(d), which
10:20:37 24 is the top of page 49 - and this may give you some
10:20:41 25 comfort - it looks as though if you give the notice

10:20:49 1 and make the payments contemplated in 18.3, that
10:20:53 2 OLG gets a full release from all liability,
10:20:56 3 damages, claims, actions or judgments arising from
10:20:59 4 or relating to this agreement.

10:21:01 5 Is that consistent with your
10:21:04 6 understanding of what you've just been describing
10:21:07 7 as the deal?

10:21:07 8 A. That -- yes. It's fairly -- it's
10:21:11 9 consistent with the kinds of agreements governments
10:21:15 10 normally make.

10:21:28 11 1474 Q. So if you think back to what it
10:21:31 12 was, was the deal that your government struck with
10:21:34 13 the horse racing industry, was it your
10:21:36 14 understanding that if a decision was taken, as was
10:21:43 15 in fact taken, to stop sharing revenue from slots
10:21:46 16 with horsepeople, that the government would have to
10:21:53 17 pay -- legally be required to pay some kind of
10:21:56 18 compensation to the horsepeople?

10:21:57 19 A. To the extent that attention might
10:22:06 20 have been paid to termination, I don't think it
10:22:08 21 would have been to that level of granularity.

10:22:11 22 1475 Q. Right.

10:22:12 23 A. So, umm, I'm trying to -- to
10:22:18 24 recall what -- what a person on Management Board or
10:22:23 25 Executive Council would have -- what I would have

10:22:27 1 thought in those circumstances, no, we would -- we
10:22:29 2 would not have anticipated a very long-term payout.

10:22:32 3 I would not have anticipated that in
10:22:34 4 the event that a contract was cancelled -- that
10:22:37 5 this contract was cancelled or that this program
10:22:39 6 was cancelled.

10:22:40 7 Uh. Governments are normally fairly
10:22:43 8 careful about... Governments of the day are fairly
10:22:47 9 -- are generally concerned with, umm, being able to
10:22:51 10 change policy.

10:22:52 11 1476 Q. And so, as much as you might have
10:22:55 12 felt - and you talked about this last day with
10:22:58 13 Mr. Lisus - that it was the wrong decision to
10:23:01 14 abruptly terminate the levels of funding that --
10:23:05 15 that were being offered to the horse racing
10:23:07 16 industry, that's a policy decision. That's not a
10:23:10 17 legal requirement?

10:23:11 18 A. I'm quite happy to critique policy
10:23:15 19 and, in fact, enjoy doing it weekly, uh, but I
10:23:24 20 believe that my -- my -- most of my comments on
10:23:28 21 Thursday, uh, would have pointed to the fact that
10:23:30 22 the government, in my view, did not have all of the
10:23:35 23 information about the consequence of termination.

10:23:38 24 I -- I don't think I debated its right
10:23:41 25 to terminate.

10:23:42 1 1477 Q. Right. Because it had the right.
10:23:43 2 It just may not have been the best decision?

10:23:47 3 A. And again, I -- although I made
10:23:49 4 comment about whether it was the best decision in
10:23:51 5 light of political comment, governments can make
10:23:54 6 whatever decision they want to make.

10:23:56 7 There are consequences to those
10:23:58 8 decisions and it's always best to understand those
10:24:01 9 consequences, in my view, before you -- before you,
10:24:04 10 uh, before you make that decision.

10:24:05 11 1478 Q. And the consequences I think you
10:24:08 12 talked about were harm to the horse racing
10:24:11 13 industry?

10:24:11 14 A. Yes.

10:24:14 15 1479 Q. Okay.
10:24:34 16 I think you told Mr. Lisus that you
10:24:36 17 don't remember whether Ontario Lottery and Gaming
10:24:40 18 Corporation recommended a particular level of horse
10:24:43 19 racing funding at the end of 2011/start of 2012
10:24:50 20 before this decision to terminate slots revenue
10:24:53 21 sharing was taken.

10:24:54 22 Is that right?

10:24:55 23 A. Uh. My, uh, knowledge of the
10:25:00 24 OLG's input on policy would have been from my
10:25:03 25 participation in the OMAFRA Panel and we were not

10:25:08 1 presented with that information.

10:25:09 2 1480 Q. At the end of the day, who makes

10:25:12 3 the decision about what is the appropriate level of

10:25:15 4 funding for the horse racing industry?

10:25:17 5 A. Executive Council.

10:25:19 6 1481 Q. Of Cabinet?

10:25:20 7 A. Yes.

10:25:31 8 1482 Q. And from what you saw - and I

10:25:32 9 understand you don't have perfect information, but

10:25:34 10 you have looked at this issue in the context of

10:25:38 11 your work on the Horse Racing Transition Panel -

10:25:45 12 was the decision of Cabinet to set a particular

10:25:50 13 level of horse racing funding in February and March

10:25:57 14 of 2012 taken in bad faith?

10:25:59 15 A. Umm. I would be reluctant to call

10:26:16 16 it "bad faith", umm, I... For a couple of reasons.

10:26:27 17 Umm. (1), again, I believe that it --

10:26:31 18 that it made the decisions it made in -- leading up

10:26:35 19 to February and March of 2012 in the absence of,

10:26:41 20 uh, in my view, good information or complete

10:26:46 21 information.

10:26:47 22 And, secondly, the good faith argument

10:26:50 23 would -- I would have difficulty with good faith --

10:26:53 24 with not acting in good faith because when the

10:26:57 25 government became aware of the fact that it perhaps

10:26:59 1 did not have the correct information, it did things
10:27:02 2 to resolve the decision; put the Panel in place and
10:27:05 3 contemplated, I think, that initial \$50-million
10:27:10 4 over three years in transition funding.

10:27:13 5 So bad faith, in my view, would have
10:27:17 6 been to cancel a program, knowing that it was going
10:27:23 7 to have an effect that -- that -- that you were not
10:27:27 8 willing to take responsibility for.

10:27:29 9 1483 Q. And that's not what happened here?

10:27:31 10 A. That's not what happened.

10:27:32 11 1484 Q. And, as you said, the government,
10:27:37 12 in fact, took measures to address the consequences
10:27:40 13 of its decision?

10:27:42 14 A. Subsequent to the decision.

10:27:43 15 1485 Q. Right.

10:27:45 16 A. (Nodding head.)

10:27:46 17 1486 Q. And that, to you, showed good
10:27:49 18 faith?

10:27:49 19 A. I don't believe cancellation in
10:27:58 20 the way that it came -- I don't believe the
10:28:00 21 cancellation in the way it was cancelled was
10:28:03 22 ultimately to the -- to the benefit -- ultimately,
10:28:07 23 it reflected what the government came to realize
10:28:09 24 was its policy objective, so, umm, I have trouble
10:28:15 25 with bad faith and good faith.

10:28:18 1 To me, bad faith is a -- is a -- good
10:28:20 2 faith is -- should be the normal operating
10:28:25 3 position.
10:28:26 4 1487 Q. I see.
10:28:26 5 A. Right.
10:28:26 6 1488 Q. So not bad faith. We can leave it
10:28:29 7 at that?
10:28:29 8 A. Right. Yes.
10:28:29 9 1489 Q. Okay.
10:28:39 10 Did the decision to cancel SARP revenue
10:28:42 11 sharing feel like a political decision, one that
10:28:48 12 was, say, intended to hurt Tory ridings?
10:28:59 13 A. Understanding that the people who
10:29:00 14 made the decision are accused, probably correctly,
10:29:05 15 of being politicians, some element of politics
10:29:08 16 likely creeps into the thinking from time to time.
10:29:12 17 I believe the overall policy
10:29:15 18 modernization of gaming was not driven by a
10:29:18 19 specific political outcome or -- or, umm -- or
10:29:21 20 politics at the riding level.
10:29:25 21 The communications post that decision
10:29:28 22 were clearly politically driven.
10:29:31 23 1490 Q. And those were by the Liberal
10:29:33 24 Party?
10:29:33 25 A. Correct.

10:29:34 1 1491 Q. And in terms of who is impacted by
10:29:36 2 the specific decision to terminate SARP revenue
10:29:40 3 sharing; for example, the Minister of Finance,
10:29:43 4 Dwight Duncan, would have felt that impact in his
10:29:47 5 Windsor riding?

10:29:48 6 A. Yes. Mr. -- the -- the Minister
10:29:56 7 of Finance was -- was in -- represented a riding
10:29:59 8 that was engaged in horse racing.

10:30:01 9 1492 Q. And was going to be hurt by this
10:30:04 10 decision?

10:30:04 11 A. Oh. I -- to the extent that this
10:30:06 12 is a political decision, yes.

10:30:08 13 1493 Q. Right.

10:30:10 14 A. Yeah.

10:30:10 15 1494 Q. And suffice it to say, you have
10:30:13 16 been a long-time critic of this Liberal government?

10:30:17 17 A. (Nodding head.) That is fair to
10:30:19 18 say, yes. I think the government of the day would
10:30:23 19 represent me as that, of course.

10:30:25 20 1495 Q. Right. And not that it's anything
10:30:27 21 personal, but you would like to see this government
10:30:30 22 lose the next election?

10:30:31 23 A. I -- I want to be clear. I don't
10:30:32 24 want to see this government lose the next election.
10:30:35 25 I just would like to see another -- another party

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be successful.

Q. Spoken like a true politician, sir. That's very diplomatic of you. All right.

Now, last day, Mr. Lisus referred to a decision to go to zero on funding for the horse racing industry, and I just want to make sure that we understand what's meant by that because you mentioned it earlier; the pari-mutuel tax reduction, right?

A. (Nodding head.)

Q. What is that?

A. Umm. The pari-mutuel tax reduction is an agreement subject to a memorandum of understanding between the horse racing industry and the government, uh, which came into effect, uh, which was created by the same government that brought in the SARP -- the racetracks program.

Q. Your government?

A. Yes. Again, witness to the fact that the horse racing industry was struggling at that time, umm, the government agreed to give up all but 0.5 per cent of its revenue from -- to forego all but 0.5 per cent of its revenue from gaming on pari-mutuel wagering in favour of a distribution to the industry established in a

10:32:06 1 memorandum of understanding with OHRIA--

10:32:08 2 1499 Q. Right.

10:32:08 3 A. --or the members of OHRIA.

10:32:10 4 1500 Q. Am I right in thinking that means

10:32:14 5 that the tax on pari-mutuel wagering goes from 7.5

10:32:18 6 per cent to 0.5 per cent?

10:32:19 7 A. 7.4 per cent, I think.

10:32:21 8 1501 Q. I see?

10:32:22 9 A. Umm. If memory serves, it's 7.4

10:32:25 10 per cent to -- to -- 0.5, yes.

10:32:26 11 So 6.9 per cent tax--

10:32:27 12 1502 Q. Right.

10:32:28 13 A. --is put aside for use by the

10:32:34 14 industry in a prescribed program to support

10:32:39 15 industry function.

10:32:39 16 1503 Q. And about how much money was that

10:32:42 17 by, say, 2012?

10:32:43 18 A. I'm sorry, I don't know what the

10:32:47 19 pari-mutuel wager was then. I know what it is now,

10:32:50 20 umm, but it would have been substantial. It would

10:32:52 21 have been \$40-, \$50-million. \$35- to \$50-million,

10:32:58 22 my guess.

10:32:58 23 1504 Q. Was there ever any discussion

10:33:01 24 about cancelling that funding for the horse racing

10:33:03 25 industry?

10:33:03 1 A. Not to my understanding, no.

10:33:04 2 1505 Q. So when we talk about "going to
10:33:07 3 zero", we are talking about pulling out the money
10:33:14 4 that was coming from slots revenue sharing, but not
10:33:17 5 the money that's coming from the pari-mutuel tax
10:33:19 6 reduction?

10:33:20 7 A. Correct.

10:33:20 8 1506 Q. Did Ontario see big job losses in
10:33:29 9 the horse racing industry following the
10:33:33 10 cancellation of slots revenue sharing?

10:33:40 11 A. I'm not sure that would have been
10:33:42 12 quantified. I think we -- we intuitively know
10:33:44 13 there was some job loss.

10:33:45 14 1507 Q. Mm-hmm.

10:33:46 15 A. I'm not -- I'm not sure we were
10:33:48 16 able to quantify it during our reports because of
10:33:51 17 the time frame.

10:33:52 18 1508 Q. "Your reports" meaning the Panel
10:33:55 19 reports, the Horse Racing--

10:33:55 20 A. The Panel -- I'm sorry. The Panel
10:33:56 21 reports, yes.

10:33:56 22 1509 Q. --Transition?

10:33:57 23 A. Yeah.

10:33:57 24 1510 Q. Okay. But did you see the
10:33:59 25 apocalyptic figures that were predicted

10:34:04 1 potentially; you know, tens of thousands of jobs
10:34:08 2 lost?

10:34:09 3 A. There was job loss, for sure, umm,
10:34:10 4 and again, inside of the -- the -- my previous
10:34:14 5 statement, which is I don't think that those were
10:34:17 6 quantified, uh, while the -- the Panel was
10:34:21 7 observing this, they were not, uh, as bad as the
10:34:26 8 worst fears--

10:34:27 9 1511 Q. Mm-hmm.

10:34:27 10 A. --or as good as the best
10:34:30 11 estimates.

10:34:35 12 So anyone who predicted no job loss
10:34:38 13 would have been Pollyannish and those who -- who
10:34:40 14 predicted that there would be no jobs in the
10:34:43 15 industry were -- were certainly -- overestimated
10:34:50 16 the impact.

10:34:50 17 1512 Q. What about euthanized horses?
10:34:57 18 Were the dire --

10:34:57 19 A. Do you--

10:34:59 20 1513 Q. --predictions of euthanized
10:34:59 21 horses --

10:34:59 22 A. --want the modality or...?

10:35:01 23 1514 Q. No. Sorry, sir. It's my fault
10:35:03 24 with the question there.

10:35:04 25 There had been predictions that a large

10:35:08 1 number of horses would have to be euthanized--

10:35:08 2 A. Yes.

10:35:11 3 1515 Q. --following the termination of
10:35:14 4 slots revenue sharing.

10:35:16 5 Did that materialize?

10:35:16 6 A. The government put a mitigation
10:35:18 7 program in place so as to avoid that, and largely
10:35:22 8 it was avoided.

10:35:23 9 1516 Q. And what about the impact on horse
10:35:26 10 prices at yearling sales?

10:35:29 11 A. Well, they are on record.

10:35:33 12 There was a significant drop-off in
10:35:35 13 prices in the first year, umm, when these horses
10:35:40 14 went -- when the yearling went to sale, so the sale
10:35:43 15 in the fall of 2012 was particularly bad.

10:35:49 16 We were in a -- a place at that time
10:35:51 17 where the mitigation strategy by the government was
10:35:55 18 still not completed.

10:35:57 19 1517 Q. Mm-hmm.

10:35:57 20 A. Rumoured about to a certain
10:36:00 21 extent, at least, but not totally agreed to.

10:36:03 22 And -- and the cancellation of SARP was
10:36:09 23 imminent, so those sales were 50 per cent and more
10:36:12 24 off.

10:36:13 25 1518 Q. What about the subsequent years?

10:36:19 1 A. In subsequent years, that --
10:36:27 2 that... The industry began to recover rather
10:36:31 3 rapidly and it's recovered differently.

10:36:36 4 Uh. Parts of it have recovered, uh,
10:36:39 5 extraordinary narrowly well. In fact, we've had
10:36:42 6 record sales, uh, in the last couple of years.

10:36:44 7 1519 Q. "Record sales" meaning record
10:36:47 8 sales of yearlings?

10:36:48 9 A. Yes.

10:36:48 10 1520 Q. Including Standardbred yearlings?

10:36:51 11 A. That's the specific part that has
10:36:53 12 recovered to -- to the largest extent.

10:36:55 13 It -- it had the... It had a
10:36:57 14 significant collapse in 2012 and a significant
10:37:00 15 recovery in the time period between now and last
10:37:02 16 year's yearling sales.

10:37:04 17 1521 Q. So prices roughly back to where
10:37:07 18 they were before slots revenue sharing was
10:37:09 19 terminated?

10:37:10 20 A. It's difficult to, umm, say that
10:37:13 21 with precision, but yes, I think that's fair to say
10:37:17 22 as a generality.

10:37:18 23 1522 Q. If we think about the years prior
10:37:31 24 to the cancellation of slots revenue sharing in
10:37:35 25 2012 - this is perhaps a natural follow-up to my

10:37:39 1 initial question to you - what was the health of
10:37:41 2 the horse racing industry in those pre-cancellation
10:37:45 3 years?

10:37:45 4 A. Depending on how you want to
10:37:51 5 measure health, uh, it had declining, umm... It
10:37:53 6 had a steady rate of decline in terms of
10:37:57 7 pari-mutuel wager. It certainly had a decline in
10:38:06 8 terms of public awareness of horse racing, so if
10:38:10 9 that's measured by, uh, its place in media, et
10:38:13 10 cetera, et cetera.

10:38:13 11 To the extent that anyone monitored it,
10:38:17 12 there was a clear -- there was clearly a decline
10:38:20 13 in -- in some venues in fan base, fan support;
10:38:27 14 however, it was, uh, doing well in terms of
10:38:32 15 ownership, uh, number of horses, number of races,
10:38:36 16 purses, that sort of thing.

10:38:37 17 1523 Q. And was that because the way that
10:38:45 18 SARP worked disconnected the ability to attract
10:38:53 19 wagers or a fan base from the ability to fund
10:38:59 20 purses?

10:38:59 21 A. Yes. It put horse racing... It
10:39:07 22 set purses and, to a certain extent, race dates in
10:39:13 23 parts of the Province where the condition was, 'How
10:39:17 24 much revenue can you raise from slots?'

10:39:18 25 1524 Q. Right.

10:39:22 1 And I understand that there was - and
10:39:24 2 you alluded to this earlier - a tension between
10:39:28 3 racetracks that wanted fewer race dates and the ORC
10:39:32 4 that had imposed, as I understand it, a moratorium
10:39:36 5 on cancelling race dates?

10:39:39 6 A. That's correct.

10:39:39 7 There was a long series of -- of -- of
10:39:41 8 negotiations between racetracks and the
10:39:44 9 horsepersons' groups that, uh, that led to appeals
10:39:50 10 to the ORC over time.

10:39:54 11 1525 Q. And was this because the
10:40:00 12 racetracks didn't need the races to make money;
10:40:05 13 they needed the slots? They just needed the races
10:40:06 14 to get the slots money?

10:40:06 15 A. The horsepersons' groups would
10:40:08 16 have said that the racetracks looked as horse
10:40:11 17 racing as a cost of doing business, not as a
10:40:16 18 revenue generation and--

10:40:17 19 1526 Q. That's what it had become?

10:40:17 20 A. --therefore, they were incented to
10:40:20 21 have one race for \$80-million instead of...

10:40:22 22 They were incented to... They were
10:40:25 23 certainly not incented to offer more racing
10:40:28 24 opportunities.

10:40:28 25 1527 Q. And what's the impact of that

10:40:30 1 dynamic on the horsepeople?

10:40:32 2 A. Depends on which part of the
10:40:34 3 industry. And there's an argument about what the
10:40:40 4 best balance is and there always has been, but in
10:40:44 5 the Standardbred industry, it's generally thought
10:40:46 6 that there's a -- there's a sweet spot, if you
10:40:53 7 will, in terms of purses where when you exceed
10:40:57 8 that -- that amount in purses, you're better off to
10:41:01 9 have more racing opportunities.

10:41:04 10 Again, this is absent the need to
10:41:07 11 generate pari-mutuel revenue. So if you don't have
10:41:11 12 to have competitive racing and you don't have to
10:41:13 13 have deep pools of pari-mutuel wagering in order to
10:41:18 14 attract horseplayers, then it's just down to having
10:41:22 15 race opportunities.

10:41:23 16 MR. LISUS: How much longer are you
10:41:25 17 going to be? If you're going to be any period
10:41:27 18 longer, then we should take a break. It's 10:40.

10:41:27 19 BY MR. ROSENBERG:

10:41:31 20 1528 Q. I'm not going to be much longer;
10:41:35 21 10 minutes, if that's all right with you, sir.

10:41:37 22 A. That's fine.

10:41:41 23 1529 Q. And for breeders, though, the
10:41:44 24 breeders would have wanted more races, so there
10:41:47 25 would be more demand for horses?

10:41:49 1 A. Depending on where you are in the
10:41:50 2 breeding business, umm, if you're breeding a middle
10:41:55 3 product, so a horse that's not... Uh. If you're
10:42:02 4 breeding a very high quality animal, it probably
10:42:05 5 doesn't matter.

10:42:06 6 If you're breeding a middle quality
10:42:12 7 animal, it -- it matters. The number of racing
10:42:15 8 opportunities matters to the sale value of the
10:42:17 9 horse, yes.

10:42:17 10 1530 Q. All right. And were Ontario
10:42:19 11 tracks having trouble filling competitive cards?

10:42:21 12 A. The tracks would say they were,
10:42:22 13 yes. They didn't have agreement with the
10:42:24 14 horsepersons' organizations about that.

10:42:26 15 1531 Q. I see. So there was some tension
10:42:29 16 there, as well?

10:42:29 17 A. Correct, yes.

10:42:31 18 1532 Q. Was there a sense that the horse
10:42:33 19 racing industry was defying gravity, to some
10:42:37 20 extent, because of the SARP funds?

10:42:39 21 A. I think there was certainty about
10:42:43 22 that. Umm. Whether that was a good or bad thing
10:42:47 23 to defy gravity would have been depending on where
10:42:52 24 you were.

10:42:52 25 But if you look at the number of horse

10:42:54 1 races that were available in previously, umm, not
10:42:58 2 well-known horse racing meccas like Sudbury,
10:43:01 3 Ontario, it was clear that there was an effect of
10:43:03 4 -- an unusual effect of, uh...

10:43:06 5 One of the features of the Slots at
10:43:09 6 Racetracks Program was to have a lot of racing in
10:43:11 7 places that -- where there would not normally have
10:43:13 8 been racing, or lots of racing.

10:43:15 9 1533 Q. If we think back to those years
10:43:16 10 before the cancellation of SARP, would it have been
10:43:20 11 surprising to participants in the industry,
10:43:22 12 horsepeople, that significant changes would have to
10:43:27 13 be made to the structure of the industry?

10:43:29 14 A. I think there were signals that --
10:43:31 15 that some change might come, umm, given the
10:43:37 16 Sadinsky -- I think that was probably a feature of
10:43:42 17 Sadinsky, uh, more than anything else.

10:43:44 18 The people in the industry would have
10:43:50 19 paid attention to that, certainly did pay attention
10:43:52 20 to it and, to a certain extent, saw it as a threat.

10:43:55 21 1534 Q. A threat to what?

10:43:56 22 A. To the existing program.

10:43:57 23 1535 Q. The Slots Program?

10:43:59 24 A. They -- yes. They were -- the
10:44:02 25 briefs to Sadinsky were clear. Many of the briefs

10:44:06 1 were clear about the need to preserve the 20 per
10:44:09 2 cent, so clearly that was a perceived threat.

10:44:14 3 1536 Q. (Nodding head.) And the Sadinsky
10:44:17 4 report recognized that there were problems with the
10:44:19 5 way that -- that Slots Program aligned incentives?

10:44:24 6 A. Yes.

10:44:27 7 1537 Q. And that message would have been
10:44:29 8 communicated to the horsepeople in the report?

10:44:33 9 A. Yes. I think most people saw
10:44:40 10 Stanley's report, yeah.

10:44:45 11 --- (Court reporter appeals.)

10:44:45 12 THE WITNESS: Most -- most people would
10:44:45 13 have seen that report and it was fairly clear. It
10:44:48 14 was very --

10:44:48 15 MR. ROSENBERG: I think the witness
10:44:50 16 said "Stanley's report". It's Stanley Sadinsky.

10:44:53 17 THE WITNESS: Yes.

10:44:54 18 BY MR. ROSENBERG:

10:44:55 19 1538 Q. Now, sir, you seem like a man to
10:44:57 20 speak his mind.

10:45:02 21 If anybody told you to present your
10:45:05 22 evidence today in a certain way, to -- to pitch it
10:45:08 23 with a particular spin, how would that have gone
10:45:12 24 down?

10:45:12 25 A. Umm. I would not... Uh. It

10:45:20 1 would not have gone down well. I...

10:45:23 2 1539 Q. And if anyone told you to do

10:45:26 3 anything other than give the evidence that you

10:45:28 4 believe to be true, how would that have gone down?

10:45:31 5 A. I -- I -- it would not have gone

10:45:36 6 down well. I would not do that.

10:45:37 7 1540 Q. Do you see yourself as a witness

10:45:40 8 giving evidence on behalf of the Government of

10:45:42 9 Ontario?

10:45:42 10 A. No. Umm. No. I -- I mean, I was

10:45:48 11 -- I'm conscious of the fact that I was retained by

10:45:50 12 the Province of Ontario to provide advice and I was

10:45:52 13 happy to do that.

10:45:54 14 I have obligations because of that --

10:45:58 15 that -- uh, it's not employment; because of that

10:46:01 16 contract, but I would be here in any event if I had

10:46:05 17 knowledge that was helpful to the parties.

10:46:08 18 1541 Q. Well, I think that's all we ask.

10:46:23 19 Last question, I think, for me.

10:46:24 20 Mr. Lisus took you to Exhibit 5.2 of

10:46:30 21 Exhibit 12, the Hiawatha siteholder agreement.

10:46:35 22 We looked at this a bit earlier.

10:46:36 23 A. Yeah.

10:46:37 24 1542 Q. I think it's bottom of page 23 of

10:46:44 25 that document on to page 24.

10:46:48 1 A. Yes.

10:46:57 2 1543 Q. It's mentioned that:

10:46:58 3 "The siteholder will obtain a

10:46:59 4 written covenant from the

10:47:00 5 horsepeople to conduct their

10:47:03 6 respective business and affairs so

10:47:04 7 as to provide an entertaining

10:47:06 8 recreational product to maximize

10:47:09 9 interest in horse racing events at

10:47:10 10 the racetracks." [As read.]

10:47:11 11 It goes on. But I have never seen a

10:47:14 12 document like that; a written covenant. Have you?

10:47:18 13 A. I'm not aware of one.

10:47:22 14 MR. ROSENBERG: Okay. Why don't we

10:47:23 15 take our morning break. I think I'm done. I just

10:47:26 16 want to briefly confer with counsel. Thanks.

10:47:28 17 ---Recess at 10:47 a.m.

10:58:20 18 ---On resuming at 10:58 a.m.

10:58:20 19 EXAMINATION BY MR. RATCLIFFE:

10:58:28 20 1544 Q. Mr. Snobelen, I am Robert

10:58:30 21 Ratcliffe. I'm here for the Province of Ontario in

10:58:32 22 this litigation.

10:58:37 23 I would like to take you first to the

10:58:43 24 Horse Racing Industry Transition Panel Report.

10:58:46 25 MR. RATCLIFFE: And I have a copy here

10:58:47 1 for you, Mr. Lisus.

10:58:50 2 MR. LISUS: Thank you.

10:58:53 3 MR. RATCLIFFE: And, actually -- and

10:59:10 4 one for...

10:59:11 5 MR. LISUS: ...for Michael.

10:59:11 6 MR. RATCLIFFE: For Michael, yeah. If

10:59:12 7 you could, please. Thanks.

10:59:12 8 MR. ROSENBERG: Thank you.

10:59:13 9 BY MR. RATCLIFFE:

10:59:13 10 1545 Q. And one for you.

10:59:14 11 A. Thank you. I'm vaguely familiar

10:59:14 12 with it.

10:59:15 13 1546 Q. I thought you would be.

10:59:16 14 A. Mm-hmm.

10:59:17 15 1547 Q. And that's... The identification

10:59:19 16 number for that is CRE0024643.

10:59:30 17 Now, perhaps you can just give us a

10:59:33 18 little bit -- a very brief background. I know

10:59:35 19 Mr. Lisus touched on this in his questions on

10:59:38 20 Thursday.

10:59:38 21 But you were invited to be part of a

10:59:40 22 Panel and provide advice to the Ontario government

10:59:43 23 as part of the transition after the cancellation of

10:59:45 24 SARP.

10:59:46 25 Is that correct?

10:59:46 1 A. That's correct.

10:59:47 2 1548 Q. And there were two other people on
10:59:50 3 the Panel. There was Elmer Buchanan and John --
10:59:53 4 and -- excuse me -- John Wilkinson?

10:59:55 5 A. That's correct.

10:59:56 6 1549 Q. And the three of you had come from
11:00:02 7 different directions in terms of your party
11:00:05 8 affiliations?

11:00:05 9 A. Yes. Elmer, uh, was a Cabinet
11:00:10 10 Minister in the Ray government and John Wilkinson
11:00:12 11 was a Cabinet Minister, uh, in the McGuinty
11:00:15 12 government.

11:00:15 13 1550 Q. Yeah. And the Panel's task was to
11:00:17 14 provide advice on a transition strategy for Ontario
11:00:21 15 breeders post 2013.

11:00:24 16 Is that correct?

11:00:24 17 A. The Ontario horse racing industry.

11:00:27 18 1551 Q. Oh. The Ontario horse racing
11:00:29 19 industry. Thanks.

11:00:35 20 And the report that you put together
11:00:35 21 reflects the Panel's views accurately?

11:00:42 22 A. Yes.

11:00:42 23 1552 Q. I would like to just take you to a
11:00:45 24 number of parts of that report.

11:00:46 25 If you could turn to page 2, the

11:00:56 1 second-last paragraph on that page begins:

11:00:58 2 "The cancellation of SARP was
11:00:59 3 reiterated in the 2012 Ontario
11:01:02 4 budget, which notes that 3.7-billion
11:01:07 5 had been provided to the industry
11:01:09 6 since 1998, including 345-million in
11:01:12 7 2011-2012." [As read.]

11:01:15 8 That -- those numbers, I guess, are --
11:01:18 9 they're accurate in terms of reflecting the -- the
11:01:19 10 global sum that had been transferred to the
11:01:22 11 industry since -- since the beginning of SARP, I
11:01:25 12 guess?

11:01:25 13 A. That's correct.

11:01:26 14 1553 Q. And then, it goes on:

11:01:31 15 "The budget said the industry
11:01:33 16 needs to move forward towards
11:01:35 17 greater self-sufficiency without
11:01:37 18 government support, so it can
11:01:39 19 respond competitively to market
11:01:41 20 demands for its racing product."
11:01:42 21 [As read.]

11:01:42 22 That was your understanding at the time
11:01:44 23 in terms of what was intended by -- by the
11:01:48 24 government of the day?

11:01:49 25 A. Yes.

11:01:52 1 1554 Q. And you also, in the report, make
11:01:55 2 reference in the next paragraph:

11:01:57 3 "These measures came in the
11:01:59 4 wake in the report of the Commission
11:02:00 5 on the reform of Ontario's public
11:02:01 6 services, the Drummond Report
11:02:03 7 released in February 2012, which
11:02:05 8 noted that Ontario had more
11:02:06 9 racetracks than any other
11:02:09 10 jurisdiction in North America."

11:02:09 11 [As read.]

11:02:11 12 What -- I mean, again, you had made
11:02:13 13 reference to the Drummond Report.

11:02:14 14 What was it about the Drummond Report
11:02:17 15 that...? Was there anything of significance there
11:02:20 16 or again, here, are you just sort of setting out
11:02:23 17 the history in your report as to what the steps in
11:02:26 18 the process were?

11:02:27 19 A. We were attempting to set that as
11:02:34 20 the preamble to our -- to our -- to our, uh -- we
11:02:37 21 were attempting to set a very limited discussion of
11:02:39 22 the history of, uh, the cancellation as a preamble
11:02:44 23 to our considerations and our recommendations.

11:02:51 24 1555 Q. Yes.

11:02:51 25 Could you turn to page 3? The first

11:02:51 1 subtitle is "Panel's Consultations".

11:02:56 2 Take a moment and just take a look at
11:02:57 3 that to refresh your memory, but can you tell us a
11:03:01 4 little bit about the consultation process that the
11:03:04 5 Panel engaged in?

11:03:08 6 --- (Witness reviewing document.)

11:03:11 7 THE WITNESS: This report deals with
11:03:13 8 the formal, uh, consultations that the Panel
11:03:17 9 Members had.

11:03:18 10 We aggressively sought out opinions
11:03:21 11 from, uh, the industry and people who the industry
11:03:26 12 impact, so that includes the formal members of --
11:03:34 13 of OHRIA and also veterinarians, umm, American
11:03:40 14 Association of Equine Practitioners, Ontario
11:03:44 15 Division, the chief veterinary in medicine --
11:03:52 16 veterinary officer at OMAFRA, and others who were
11:03:54 17 related to the industry.

11:03:54 18 BY MR. RATCLIFFE:

11:03:55 19 1556 Q. So in terms of -- you know, we use
11:03:56 20 this term "horsepeople".

11:03:57 21 In terms of consultation, can you
11:03:59 22 describe -- I mean, was there contact and was there
11:04:01 23 consultation with--

11:04:01 24 A. Yes.

11:04:02 25 1557 Q. --horsepeople generally?

11:04:03 1 A. Yes. We met with... I think that
11:04:06 2 there's an appendix to this, to the report that
11:04:10 3 deals with at least the formal side of that, but
11:04:12 4 yes, we met with lots of people from the industry.

11:04:14 5 1558 Q. Now, would that have included
11:04:16 6 breeders, like the --

11:04:17 7 A. Yes.

11:04:17 8 1559 Q. So that would have included the
11:04:19 9 breeders?

11:04:19 10 A. Yes.

11:04:26 11 1560 Q. Can I take you next to page 11?

11:04:42 12 There's a subtitle, "Driving Forces".

11:04:46 13 The very last two lines in that
11:04:49 14 section:

11:04:50 15 "In the Panel's view, this
11:04:53 16 industry, unlike other industries,
11:04:55 17 is not really motivated by profits.
11:04:57 18 It's motivated by hope, the hope of
11:05:02 19 scoring a big win or finding great
11:05:05 20 horses like Northern Dancer."

11:05:05 21 [As read.]

11:05:06 22 What were you referencing there? Why
11:05:09 23 were you referring to -- to that kind of issue?

11:05:10 24 A. It was our view that -- and we met
11:05:14 25 with, uh -- we reviewed the, uh, economics of the

11:05:19 1 industry along with my two colleagues who were not
11:05:23 2 familiar with the economics in the industry, and
11:05:25 3 some of the folks who had provided, umm, not from
11:05:32 4 the industry had provided economic forecasting to
11:05:35 5 the government.

11:05:37 6 And it -- it became clear to my
11:05:38 7 colleagues that - this is not news to me - that --
11:05:41 8 that the business doesn't necessarily have to make
11:05:45 9 sense. It doesn't have to pencil, in the words of
11:05:50 10 the guys in the horse business or the people in the
11:05:53 11 horse business.

11:05:54 12 It's, umm -- I've often represented
11:05:57 13 it's sort of like a Broadway play. It's... Uh.
11:06:00 14 You can make a killing, but not a living.

11:06:03 15 Umm. You know, there's the opportunity
11:06:05 16 to have very large returns on a horse like Northern
11:06:09 17 Dancer,--

11:06:09 18 1561 Q. Like Northern Dancer.

11:06:11 19 A. --but the odds are not very good.

11:06:13 20 1562 Q. So is what you're saying there
11:06:15 21 that, you know, for a number of these individuals
11:06:19 22 or quite a number of these individuals, it wasn't
11:06:21 23 driven by profit, their -- their involvement in
11:06:24 24 this industry or what are you saying?

11:06:25 25 A. It's not -- it's not -- unlike

11:06:28 1 other industries, it's not, umm, sometimes the
11:06:31 2 principal motivation. Profit is not sometimes the
11:06:37 3 principal motivation and it's not the only
11:06:39 4 motivation.

11:06:40 5 1563 Q. Okay. Now, on the next page, page
11:06:45 6 12, and we've heard this before.

11:06:50 7 The last -- or the paragraph that
11:06:52 8 begins:

11:06:53 9 "SARP distributed 20 per cent
11:06:55 10 of gross slots revenue to horse
11:06:57 11 racing industry participants."
11:06:57 12 [As read.]

11:06:59 13 I mean, this is the paragraph that's
11:07:01 14 halfway down.

11:07:04 15 "Of the 20 per cent, 10 per
11:07:05 16 cent is provided to racetrack
11:07:07 17 operators for race date costs and so
11:07:10 18 on. 10 per cent is provided to
11:07:11 19 horsepeople, almost entirely through
11:07:13 20 purses." [As read.]

11:07:15 21 So this 10 per cent that went to the
11:07:17 22 horsepeople; it found its way into purses
11:07:22 23 primarily?

11:07:23 24 A. Yes.

11:07:25 25 1564 Q. What other areas did it find its

11:07:27 1 way into or was -- was there other aspects of the
11:07:30 2 horse --

11:07:30 3 A. It supported the -- uh, part of
11:07:32 4 the Horse Improvement Program.

11:07:33 5 1565 Q. Yes.

11:07:34 6 A. Umm. And the -- and some parts of
11:07:37 7 the Horse Improvement Program, uh, would have been
11:07:41 8 purses and some part were other -- some parts of
11:07:44 9 the Horse Improvement Program were paid out in
11:07:47 10 other ways.

11:07:48 11 1566 Q. Mm-hmm.

11:07:49 12 A. Direct awards to breeders and
11:07:52 13 other things.

11:07:52 14 1567 Q. So this action has been brought by
11:07:55 15 breeders.

11:07:57 16 Did any part of this per cent or what
11:08:02 17 part of this 10 per cent that went to the
11:08:04 18 horsepeople; did breeders benefit in this in some
11:08:09 19 direct way? Did they get part of that 10 per cent
11:08:12 20 in some way?

11:08:13 21 A. A part of that 10 per cent was
11:08:14 22 used to support or enhance the Horse Improvement
11:08:18 23 Program.

11:08:18 24 1568 Q. Yes.

11:08:24 25 A. A portion of the Horse Improvement

11:08:26 1 Program would have been directed to breeders, a --
11:08:29 2 a relatively small portion. Umm. And it depends
11:08:39 3 on which breed, how that -- how those more direct
11:08:41 4 supports would have gone out.

11:08:43 5 1569 Q. Mm-hmm.

11:08:43 6 A. Uh. But generally, the Horse
11:08:46 7 Improvement Program supported purses for horses
11:08:47 8 that were bred in Ontario. And the size of those
11:08:51 9 programs would have benefited the breeders by
11:08:54 10 virtue of the prices those horses would attract at
11:08:59 11 yearling sales.

11:08:59 12 So there's a direct benefit to -- to
11:09:02 13 breeders if purses are offered for Ontario-bred
11:09:08 14 horses.

11:09:08 15 1570 Q. So the vast majority of that 10
11:09:10 16 per cent went into purses, I think you said as a
11:09:13 17 starting point?

11:09:13 18 A. That's correct.

11:09:14 19 1571 Q. And then, if -- if you have a
11:09:16 20 successful horse, if you're a successful horse
11:09:19 21 owner and a racer, then you -- your winnings are
11:09:28 22 greater, I guess, and it adds value to your horse
11:09:30 23 if you're -- if you have a good racehorse?

11:09:31 24 A. Yeah. To -- I mean, the -- the
11:09:33 25 amount of money available in open and restricted

11:09:37 1 racing for a two- and three-year-old is going to
11:09:41 2 affect the price, the value of that horse as a
11:09:46 3 yearling.

11:09:46 4 1572 Q. So -- and, you know, sort of a
11:09:48 5 step at a time, in some way then, how does that
11:09:52 6 affect the breeders or the price of colts that they
11:09:58 7 -- they sell, or yearlings or whatever?

11:10:01 8 A. So the yearling -- the price at
11:10:03 9 sale for yearlings is the -- is the payday, if you
11:10:10 10 will, for a breeder.

11:10:11 11 Umm. And the effect of the price of
11:10:14 12 yearlings, of a particular yearling sale affects
11:10:18 13 the value of a broodmare based on the value of the
11:10:24 14 broodmare's offspring and certainly a stallion
11:10:27 15 based on sale results on -- on the horses that he
11:10:32 16 has sired.

11:10:33 17 1573 Q. And I was going to take you
11:10:35 18 through HIP a little bit farther down the road.

11:10:37 19 But again, just in terms of getting a
11:10:39 20 sense of the proportion, you said "the vast
11:10:41 21 majority".

11:10:42 22 Do you know the percentage of --

11:10:42 23 A. I don't off the top of --

11:10:43 24 1574 Q. -- that went into purses --

11:10:44 25 A. I don't off the top of mind.

11:10:45 1 1575 Q. Yeah.

11:10:47 2 A. The -- the... Umm. I believe
11:10:51 3 that ultimately, about \$20-million - and I will not
11:10:55 4 be accurate; I'm kind of accurate in the crayon
11:11:03 5 sense of accurate - about \$20-million of the HIP
11:11:05 6 program came from Slots at Racetracks Program and
11:11:11 7 about \$30-million of it at the time that it was
11:11:13 8 cancelled came from PMTR; primarily PMTR.

11:11:21 9 1576 Q. So even with the HIP program - and
11:11:23 10 again, we'll talk about that in a little bit more
11:11:25 11 detail - I mean, there's -- there's not a direct
11:11:33 12 line of money flowing to the breeders as a result
11:11:35 13 of that?

11:11:36 14 Did they have to do something in order
11:11:38 15 to get money under the HIP program?

11:11:40 16 A. A small portion of the HIP -- and
11:11:42 17 I -- I'm going to be -- difficult for me to tell
11:11:44 18 you what proportion.

11:11:45 19 1577 Q. Yeah.

11:11:46 20 A. -- in the Thoroughbred industry,
11:11:47 21 in particular, goes to, uh, an award to breeders
11:11:52 22 for a horse they have sold, if it's successful, a
11:11:55 23 small bit of the purse in those restricted races
11:12:00 24 would go to that -- to that breeder, umm, directly
11:12:02 25 back to the breeder of the horse.

11:12:05 1 1578 Q. Mm-hmm.

11:12:05 2 A. For the vast majority of the

11:12:07 3 money, the money that was put into restrictive

11:12:09 4 racing would go to the owner of the horse when --

11:12:12 5 when it won, and the benefit to the breeder would

11:12:15 6 have been a -- would have been an indirect. It

11:12:17 7 would have been the price that people were willing

11:12:18 8 to pay for yearlings at sale.

11:12:20 9 1579 Q. So it was an indirect benefit that

11:12:22 10 they were getting?

11:12:23 11 A. Yes.

11:12:24 12 1580 Q. Yeah.

11:12:26 13 A. By and large.

11:12:26 14 1581 Q. Just a little farther down on that

11:12:35 15 page, under the subtitle "SARP's Impact", the first

11:12:40 16 paragraph; just take a moment to look at that.

11:12:54 17 --- (Witness reviewing document.)

11:12:54 18 BY MR. RATCLIFFE:

11:12:54 19 1582 Q. Just the first.

11:12:54 20 A. Yes. Mm-hmm.

11:12:54 21 1583 Q. So there, you've said, "SARP --"

11:12:55 22 Well, going back a step:

11:12:57 23 "SARP turned the industry

11:12:58 24 around. In fact, the Panel has

11:13:00 25 heard that revenues generated for

11:13:00 1 both the industry and government far
11:13:04 2 exceeded expectations. SARP did
11:13:05 3 more than stabilize the industry's
11:13:08 4 financial position. It ignited
11:13:09 5 rapid growth, fueled not by the
11:13:11 6 demand for horse racing as an
11:13:13 7 entertainment and gaming product,
11:13:15 8 but by slot money." [As read.]

11:13:17 9 What were you saying there? What was
11:13:19 10 the Panel saying there in terms of this observation
11:13:21 11 about SARP and its impact?

11:13:24 12 A. SARP overwhelmed the revenue...
11:13:31 13 SARP produced more revenue to the industry than
11:13:33 14 would have originally been envisioned because the
11:13:36 15 program was very successful.

11:13:39 16 Umm. And again, I believe Cabinet at
11:13:42 17 the time was -- was -- when SARP came in, was --
11:13:45 18 was under the impression -- I know I was under the
11:13:49 19 impression, as a member of Cabinet, that Slots at
11:13:54 20 Racetracks Program probably had a -- a gross of
11:13:57 21 about a billion dollars, fully mature and, in fact,
11:14:01 22 which would have left, under this scenario,
11:14:06 23 \$200-million going into the tracks and the
11:14:08 24 industry.

11:14:08 25 In fact, it was much more successful

11:14:11 1 than anticipated,--

11:14:11 2 1584 Q. Mm-hmm.

11:14:12 3 A. --so there was -- there was much

11:14:13 4 more revenue going to the government, much more

11:14:15 5 revenue going to the benefactors of SARP, and it

11:14:25 6 created racing in -- at a volume and in places

11:14:28 7 where that would have not been a -- a normal market

11:14:31 8 response,--

11:14:31 9 1585 Q. Okay.

11:14:31 10 A. --a response to fans or

11:14:34 11 horseplayers.

11:14:34 12 1586 Q. I would like to jump forward,

11:14:37 13 then, to page 25. If you could go over there, you

11:14:42 14 get into the Panel's findings.

11:14:53 15 The first subtitle is "Accountability".

11:14:59 16 Just take a moment and read the first paragraph

11:15:01 17 under that, if you would.

11:15:01 18 --- (Witness reviewing document.)

11:15:01 19 BY MR. RATCLIFFE:

11:15:02 20 1587 Q. Just the first paragraph under--

11:15:02 21 A. Sure.

11:15:40 22 1588 Q. --"Accountability".

11:15:41 23 A. Yeah. Mm-hmm.

11:15:42 24 1589 Q. Now, partway through that

11:15:42 25 paragraph, you have a sentence:

11:15:44 1 "The government simply paid
11:15:45 2 over funds to the industry without
11:15:48 3 guidelines or requirements, feeding
11:15:50 4 a 'culture of entitlement'."

11:15:50 5 [As read.]

11:15:50 6 A couple of things here.

11:15:56 7 What are you saying there in terms of
11:15:57 8 the guidelines; a lack of guidelines or -- or
11:16:00 9 requirements? What are you talking about there?

11:16:02 10 A. We found that there were no -- uh,
11:16:06 11 the government had anticipated putting in place,
11:16:11 12 uh, benchmarks that would have informed the -- the
11:16:21 13 government, uh, and the parties to the agreement of
11:16:25 14 progress based on -- on outcomes that were
11:16:28 15 predetermined.

11:16:30 16 They were not -- those benchmarks or
11:16:34 17 outcomes were not in place. They were just never
11:16:37 18 put in place.

11:16:38 19 1590 Q. Can you give me an example of what
11:16:41 20 kind of a benchmark might you have suggested or
11:16:44 21 said should be there and wasn't there?

11:16:46 22 A. Wager would be one of those that's
11:16:47 23 important in the horse racing industry, so
11:16:48 24 pari-mutuel wager, umm, the effect of the program
11:16:51 25 on pari-mutuel wagers, the effect of the program on

11:16:54 1 fan base, the effect of the program on -- on other
11:16:56 2 -- on financial activities in the community.
11:17:03 3 So that effect on rural Ontario,--
11:17:03 4 1591 Q. Mm-hmm.
11:17:09 5 A. --when we found that that could be
11:17:10 6 a real effect, it was not benchmarked, not reported
11:17:14 7 on, not -- not, uh..., uh, and -- and it had no
11:17:15 8 influence on shaping the program or how the program
11:17:18 9 money was spent.
11:17:19 10 1592 Q. And you used the words "culture of
11:17:22 11 entitlement".
11:17:24 12 What did you mean by that or what did
11:17:25 13 the Panel mean by that?
11:17:27 14 A. I know what I meant by it.
11:17:28 15 The industry had given the -- the
11:17:33 16 industry, writ large, dealing with the Sadinsky --
11:17:39 17 the submissions to Sadinsky, given the
11:17:42 18 presentations to us, the industry had grown to feel
11:17:48 19 that they were entitled to a percentage of revenue
11:17:52 20 from gaming, umm, and that the other issues that
11:18:02 21 were important to the industry of generating its
11:18:05 22 own revenues were less important.
11:18:07 23 1593 Q. Mm-hmm.
11:18:09 24 And under the next subtitle, you have
11:18:11 25 "Subsidy or Partnership".

11:18:13 1 Just take a moment to take a look at
11:18:16 2 that first paragraph there.

11:18:18 3 --- (Witness reviewing document.)

11:18:38 4 THE WITNESS: Yeah.

11:18:40 5 BY MR. RATCLIFFE:

11:18:41 6 1594 Q. Now we're back to this word
11:18:43 7 "subsidy".

11:18:44 8 I think that we heard your views on
11:18:45 9 that this morning. I don't propose to go into
11:18:48 10 this, but again, you said:

11:18:52 11 "The Panel believes SARP's no
11:18:55 12 strings attached approach is one
11:18:57 13 reason the industry has come to
11:18:59 14 think of slot machines or slot
11:19:02 15 revenue as 'their money'."

11:19:02 16 [As read.]

11:19:04 17 What do you have to say about that?

11:19:07 18 A. Absent clear -- clear benchmarks,
11:19:08 19 absent clear expectations from the program, umm, it
11:19:11 20 -- it becomes simply a -- a slice of the action, if
11:19:15 21 you will.

11:19:16 22 And -- and in that sense, there's no
11:19:20 23 articulation of the expectation of -- that a
11:19:24 24 government might have in public policy of benefit
11:19:27 25 to the province from the industry.

11:19:29 1 1595 Q. Okay.

11:19:30 2 A. Doesn't suggest that there isn't

11:19:32 3 some. It just says it's not articulated in the

11:19:36 4 agreement.

11:19:36 5 1596 Q. And then, if you could go to page

11:19:43 6 26, there's a paragraph that begins:

11:19:45 7 "Prior to 1998..."

11:19:50 8 That's about a third of the page --

11:19:56 9 third -- or it's the second full paragraph on that

11:19:59 10 page.

11:19:59 11 A. Yeah.

11:19:59 12 1597 Q. Take a moment and just look at

11:20:01 13 that.

11:20:01 14 --- (Witness reviewing document.)

11:20:06 15 THE WITNESS: Yes.

11:20:07 16 BY MR. RATCLIFFE:

11:20:07 17 1598 Q. So you said:

11:20:10 18 "Prior to 1998, the industry's

11:20:12 19 business model was based on

11:20:15 20 pari-mutuel wagering. Since then,

11:20:18 21 it's been twisted out of shape."

11:20:18 22 [As read.]

11:20:20 23 What did you mean by that? I mean, you

11:20:22 24 reference:

11:20:22 25 "70 per cent of the purses are

11:20:24 1 from slots. In some cases, it's 90
11:20:27 2 per cent of the purses." [As read.]
11:20:28 3 What were you really saying about what
11:20:30 4 had occurred under SARP?
11:20:31 5 A. When SARP became as large it
11:20:34 6 became, it, umm, created not only a stable
11:20:38 7 foundation for horse racing, but, in fact,
11:20:41 8 ballooned parts of the industry that -- that
11:20:45 9 wouldn't, under the need for pari-mutuel -- for the
11:20:48 10 conditions for pari-mutuel wagering, have become so
11:20:52 11 large.
11:20:52 12 Pari-mutuel wagering depends on really
11:20:55 13 two things; competitive races--
11:20:57 14 1599 Q. Mm-hmm.
11:20:58 15 A. --and a deep pool of -- of
11:21:00 16 pari-mutuel funds, so racing that attracts
11:21:04 17 horseplayers.
11:21:04 18 And because we -- because the program
11:21:09 19 didn't require pari-mutuel wager, Sudbury, 90 per
11:21:13 20 cent -- actually, more than 90 per cent of revenues
11:21:16 21 were coming from the slot machines in Sudbury;
11:21:19 22 therefore, it does not matter whether the product
11:21:21 23 that's put on the track is appealing to fans or to
11:21:24 24 horseplayers.
11:21:26 25 And so, you create an environment where

11:21:29 1 horses that normally would not have a long life
11:21:34 2 inside of horse racing or, in fact, maybe not have
11:21:37 3 been started under other circumstances will have an
11:21:40 4 opportunity to race because you've built races with
11:21:45 5 significant purses for categories of horses that
11:21:49 6 would not attract pari-mutuel wagering.

11:21:51 7 So it twists and distorts the way the
11:21:55 8 product is presented, where it's presented, how
11:21:57 9 it's presented, and what kind of horses are
11:21:59 10 successful.

11:21:59 11 1600 Q. Now, in the bottom of that page,
11:22:03 12 there's a subtitle called "Panel Findings".

11:22:06 13 If you want to just take a moment to
11:22:08 14 read that through.

11:22:09 15 --- (Witness reviewing document.)

11:22:33 16 THE WITNESS: Yes.

11:22:34 17 BY MR. RATCLIFFE:

11:22:35 18 1601 Q. Now, it's interesting. In the
11:22:36 19 first sentence, you indicated that it was outside
11:22:38 20 your mandate to comment on the merits of the
11:22:43 21 government's decision to cancel SARP.

11:22:44 22 Why did you feel it was necessary or
11:22:48 23 why did the Panel feel it was necessary to go
11:22:49 24 forward and -- and comment on the decision to
11:22:52 25 cancel?

11:22:52 1 A. Yeah. The -- the, uh, Panel set
11:22:54 2 its own conditions in terms of consensus of the
11:22:57 3 Panel, and we -- Elmer, John and I agreed at the
11:23:01 4 start that we would have consensus around
11:23:04 5 everything that we have in the report, so we do on
11:23:06 6 this.

11:23:06 7 One of the -- this was my personal
11:23:10 8 observation which is reflected in that finding.

11:23:13 9 We had an awful lot of people appear to
11:23:16 10 us in 2012, many of whom, umm, were in some state
11:23:20 11 of angst over the cancellation of the program. I
11:23:24 12 had great empathy for them. Their overwhelming
11:23:28 13 request was to bring back the Slots at Racetracks
11:23:31 14 Program.

11:23:31 15 My belief at the time and now was that
11:23:34 16 that was not going to happen, umm, under the
11:23:38 17 current or any future government, and that it would
11:23:41 18 be harmful to their best interests to bring it back
11:23:43 19 in the form that it was in; in other words, a
11:23:47 20 direct levy on, uh, slot revenue, uh, and while we,
11:23:58 21 again in the report, at some point suggested public
11:24:00 22 funds need to go into this industry, that was an
11:24:02 23 unfortunate way of doing it.

11:24:04 24 1602 Q. Mm-hmm. And then you go on to
11:24:05 25 say:

11:24:06 1 "It's the Panel's view that
11:24:07 2 continuing SARP would be poor public
11:24:09 3 policy." [As read.]
11:24:10 4 What did you mean by that?
11:24:11 5 A. We were of the opinion that
11:24:12 6 supporting horse -- there was a valid case for
11:24:15 7 supporting horse racing, uh, in our view, as a
11:24:19 8 public good, but as a percentage of -- of revenue
11:24:22 9 from a particular gaming product wasn't reflective
11:24:25 10 of that public good.
11:24:26 11 1603 Q. So that, in fact, continuing with
11:24:30 12 SARP would have been -- would have been a problem?
11:24:35 13 A. It would have, in our view, been
11:24:38 14 bad public policy.
11:24:39 15 1604 Q. Now, you said that there was
11:24:47 16 consensus on the Panel.
11:24:49 17 Was there one -- did all Panel Members
11:24:54 18 draft this --
11:24:54 19 A. Yes.
11:24:55 20 1605 Q. -- draft this particular--
11:24:56 21 A. Yes.
11:24:57 22 1606 Q. --recommendation? Okay.
11:25:00 23 MR. RATCLIFFE: I'm going to have that
11:25:02 24 marked as an exhibit, that report. That's 44, is
11:25:10 25 it?

11:25:10 1 THE COURT REPORTER: Yes.

11:25:11 2 MR. MATTHEWS: It's 44, Robert.

11:25:11 3 ---EXHIBIT NO. 44: Horse Racing

11:25:25 4 Industry Transition Panel Report, Production Number

11:25:25 5 CRE0024643.

11:25:40 6 BY MR. RATCLIFFE:

11:25:40 7 1607 Q. Mr. Lisus referred you to a number

11:25:42 8 of your Toronto Sun columns, and one that he didn't

11:25:49 9 get to is the one - I will give you that - dated

11:26:15 10 March 1 of 2013. So, that date; this would have

11:26:30 11 followed the other columns or earlier columns

11:26:32 12 where--

11:26:33 13 A. Yes.

11:26:33 14 1608 Q. --it was clear that you thought

11:26:37 15 that there were some problems with the way this had

11:26:41 16 been handled and so on?

11:26:42 17 A. Yes.

11:26:43 18 1609 Q. I would like to take you through

11:26:49 19 that. There's, about the second paragraph down:

11:26:54 20 "Back then, the McGuinty

11:26:56 21 government had announced the

11:26:57 22 cancellation of Slots, a program

11:27:01 23 initiated by the Harris government.

11:27:02 24 You might have thought the

11:27:04 25 cancellation of SARP would have

11:27:05 1 caused a few arguments between three
11:27:08 2 former Cabinet Ministers from the
11:27:11 3 Ray, Harris and McGuinty
11:27:13 4 governments, but it did not."

11:27:13 5 [As read.]

11:27:16 6 So I think -- I think you touched on
11:27:17 7 this with your Panel Report.

11:27:18 8 A. Right.

11:27:19 9 1610 Q. It's fair to say that there was
11:27:21 10 consensus amongst all three of the Panel Members in
11:27:24 11 terms of...?

11:27:26 12 A. There was, yes.

11:27:26 13 1611 Q. And the next paragraph down:

11:27:28 14 "Early in our deliberations, it
11:27:30 15 became obvious that the SARP program
11:27:32 16 was more than overly rich. It was
11:27:34 17 harmful to the horse racing
11:27:36 18 industry. 'How can a program that
11:27:38 19 dropped \$346-million a year into the
11:27:41 20 racing industry be harmful,' you
11:27:44 21 ask." [As read.]

11:27:44 22 Well, maybe you can answer that for us.
11:27:47 23 In what way was -- was the way it
11:27:49 24 operated harmful to the horse racing industry?

11:27:51 25 A. It incented -- it is my view, my

11:27:58 1 personal view that the industry is best when it's
11:28:02 2 supported in a way that helps it produce a product
11:28:07 3 that is embraced by its principle customers,
11:28:14 4 pari-mutuel wagerers, horseplayers, fans, and to a
11:28:19 5 certain extent owners, horse owners, and produces a
11:28:31 6 product that -- that meets the needs of that -- of
11:28:32 7 those communities.

11:28:34 8 When you have an industry that's
11:28:37 9 producing square wheels, regardless of the fact
11:28:41 10 that the government will provide an income for
11:28:45 11 producing square wheels, it's not in the long term
11:28:47 12 best interest of the folks in the -- in that
11:28:49 13 industry.

11:28:50 14 1612 Q. Mm-hmm. And is that reflected,
11:28:52 15 what you're saying now, in the next paragraph down:

11:28:58 16 "That much money distorted the
11:28:59 17 industry."

11:28:59 18 Is that what--

11:28:59 19 A. Yes.

11:28:59 20 1613 Q. --you're saying here?

11:29:01 21 A. Yes.

11:29:01 22 1614 Q. And distorted it in a negative
11:29:03 23 way,--

11:29:03 24 A. Yes.

11:29:03 25 1615 Q. --you're saying?

11:29:12 1 And a couple of lines down:

11:29:14 2 "We concluded that SARP was bad

11:29:16 3 public policy. It had to go."

11:29:16 4 [As read.]

11:29:22 5 So in your mind's eye - I mean, I think

11:29:24 6 the Panel said the same thing - it was bad public

11:29:27 7 policy to continue SARP.

11:29:28 8 But something different was required, I

11:29:30 9 guess is what you're saying in this?

11:29:32 10 A. Right. Support of the horse

11:29:35 11 racing industry -- I think the -- the, umm, the

11:29:36 12 column would also say that support of the horse

11:29:38 13 racing industry is necessary and, in my view,

11:29:41 14 important.

11:29:42 15 1616 Q. Yeah.

11:29:44 16 A. The modality of doing it by tying

11:29:46 17 it to the revenue from the slot machine was, again,

11:29:50 18 in my view, unfortunate.

11:29:51 19 1617 Q. Yeah.

11:29:52 20 Now, again, I think you indicated in --

11:29:54 21 if you go down two or three paragraphs more, the

11:29:56 22 one that says:

11:29:57 23 "So the answer to the question

11:29:59 24 of taxpayers supporting horse racing

11:30:03 25 is yes."

11:30:04 1 In your mind's eye, government did have
11:30:06 2 a role to play in terms of--
11:30:06 3 A. Yes.
11:30:08 4 1618 Q. --supporting the industry.
11:30:10 5 And then, the line after that:
11:30:12 6 "Turns out that wasn't the
11:30:13 7 answer some in the horse racing
11:30:16 8 industry wanted to hear."
11:30:16 9 [As read.]
11:30:18 10 Can you expand on that? What kind of
11:30:20 11 pushback was the Panel getting from the industry?
11:30:23 12 A. Not shockingly, that, uh, the tie
11:30:30 13 to a percentage of slot revenues had happened for
11:30:34 14 such a long period of time that the changes in the
11:30:38 15 industry they would need to face its ultimate
11:30:41 16 customers, even with public support, were going to
11:30:44 17 be -- were going to be difficult.
11:30:45 18 And, umm, the industry would have
11:30:48 19 preferred, I think, to a person, to continue to
11:30:51 20 have revenue from slot racing machines.
11:30:55 21 1619 Q. Mm-hmm.
11:30:55 22 A. From -- uh -- from slot machines.
11:30:57 23 1620 Q. Was -- I mean, was it the kind of
11:30:59 24 thing that started to get personal, even, in terms
11:31:01 25 of...?

11:31:02 1 A. I have faced more difficult
11:31:04 2 stakeholders, but it was certainly not -- it was --
11:31:10 3 it was very heartfelt and I think many people in
11:31:16 4 the industry felt that the government had not been
11:31:21 5 -- umm, not been fair.

11:31:22 6 And, uh, some took personal offence at
11:31:25 7 some of the advertisement that we -- that was -- we
11:31:29 8 discussed on, you know, the previous...

11:31:34 9 1621 Q. But these are the tough decisions
11:31:36 10 that governments have to make, I guess is what
11:31:38 11 you're saying?

11:31:38 12 A. There were people who took offence
11:31:40 13 at how those tough decisions were made.

11:31:42 14 1622 Q. Mm-hmm.

11:31:42 15 A. And I had some empathy for them,
11:31:45 16 certainly.

11:31:46 17 And there were just other people who --
11:31:51 18 who..., you know, who were maybe not going to be
11:31:56 19 part of a -- of a new industry model.

11:31:58 20 1623 Q. Yeah.

11:31:59 21 And the next paragraph down:

11:32:02 22 "Governments facing tough times
11:32:05 23 are not looking for places to spend
11:32:06 24 money. To its credit, the Wynne
11:32:09 25 government has moved to make the

11:32:10 1 right investments in the horse

11:32:12 2 racing industry." [As read.]

11:32:14 3 What do you mean by "the right

11:32:15 4 investments"?

11:32:16 5 Again, this is 2013 and we're going to

11:32:18 6 be talking about transition a bit more, but...

11:32:21 7 A. Well, in my view, the public good

11:32:23 8 is very -- it's very hard to determine where

11:32:26 9 exactly the right, umm, amount of funding would be.

11:32:29 10 1624 Q. Mm-hmm.

11:32:31 11 A. There's two ways to look at it.

11:32:33 12 One is that there would be a reasonable

11:32:34 13 expectation that the public would be well served by

11:32:38 14 that investment, either by growth in employment,

11:32:41 15 particularly difficult -- people who are -- would

11:32:47 16 find employment -- other employment difficult,

11:32:48 17 where it's reasonable and rational inside of --

11:32:51 18 inside of the jobs created, uh, or the revenue

11:32:54 19 created to the province from -- from taxes and

11:32:57 20 other things.

11:32:58 21 And in the case of horse racing, we

11:33:00 22 found, and I believe to be true, that there's a

11:33:03 23 point of investment where the -- where the industry

11:33:05 24 would literally fall off the cliff and not exist,

11:33:08 25 as an example in other jurisdictions provided us.

11:33:11 1 So we felt the level of investment
11:33:14 2 that... When you look at it over time, the level
11:33:17 3 of investment that creates the most impact on jobs
11:33:22 4 and benefits mostly the -- the rural communities in
11:33:26 5 Ontario is the right level of investment.

11:33:28 6 More than that is, in my view,
11:33:30 7 excessive investment for a government that's having
11:33:33 8 difficulty funding all of the basket of goods the
11:33:36 9 public demand.

11:33:37 10 1625 Q. Mm-hmm.

11:33:38 11 And a couple of paragraphs down from
11:33:40 12 that:

11:33:41 13 "The upside of all this
11:33:42 14 restructuring will be a smaller,
11:33:44 15 more focused Ontario horse racing
11:33:47 16 industry. With more attention on
11:33:48 17 the needs of the racing fan and less
11:33:51 18 on the sounds of slot machines, the
11:33:53 19 industry can build a solid
11:33:56 20 foundation for growth." [As read.]

11:33:58 21 So, you -- I mean, this was a turning
11:34:00 22 point with the cancellation of SARP, but you -- you
11:34:04 23 seem to be saying there was something positive that
11:34:06 24 did come out of this?

11:34:07 25 A. Yeah. I mean, I -- I am bullish

11:34:10 1 on horse racing. I think there's, uh, much good
11:34:17 2 about it for the community and I think that the
11:34:20 3 more exposure it has to people, the more we will
11:34:24 4 find the next generation of people who support
11:34:28 5 horse racing.

11:34:29 6 So an unfortunate effect of -- of the
11:34:33 7 Slots at Racetracks Program was it sort of hid the
11:34:36 8 industry under a basket. You didn't have to
11:34:39 9 attract the public because it just wasn't necessary
11:34:41 10 to fund the industry.

11:34:42 11 1626 Q. Mm-hmm.

11:34:43 12 Now, in your earlier editorials that
11:34:47 13 Mr. Lisus took you to, you were highly critical of
11:34:50 14 what had been done.

11:34:53 15 This falls afterwards. Is it fair to
11:34:56 16 say that there was a shift in terms of how the
11:34:59 17 government was dealing with the cancellation?

11:35:00 18 A. Yes. Yes. When -- when I first
11:35:06 19 wrote those articles, I think that when I first got
11:35:09 20 engaged on this file -- I'm sorry.

11:35:12 21 When the cancellation of -- the
11:35:13 22 possibility cancellation of Slots at Racetracks,--

11:35:17 23 1627 Q. Mm-hmm.

11:35:17 24 A. --I first became aware of that,
11:35:19 25 there was no plan to mitigate -- no plan that I was

11:35:21 1 aware of to mitigate what would be a horrible and
11:35:24 2 damaging effect on the industry.

11:35:26 3 The next phase of that was when the
11:35:34 4 government asked John and Elmer and I to have a
11:35:37 5 look, but the package was \$50-million over three
11:35:41 6 years, which we found to be inadequate.

11:35:42 7 By the time this piece was written, the
11:35:45 8 government was looking at that -- was contemplating
11:35:48 9 a long-term investment, around \$100-million a year
11:35:53 10 with a very long horizon. And so, things had
11:36:02 11 changed remarkably by -- in those two years.

11:36:08 12 1628 Q. So that there -- you know, there
11:36:09 13 were steps in the process. I mean, it -- you know,
11:36:09 14 things moved from \$50-million to \$80-million was
11:36:12 15 one of the fees at one point in time -- or not in
11:36:16 16 fees; in terms of money flowing?

11:36:17 17 A. It was a progress, so it was
11:36:19 18 50-million over three years to 60 plus 20 or
11:36:24 19 \$80-million over I think three initially, to
11:36:30 20 100-million less 6- over five years. And that's
11:36:37 21 been extended now and --

11:36:40 22 1629 Q. Well, just on that,--

11:36:40 23 A. Yeah.

11:36:41 24 1630 Q. --it was 100-million for each
11:36:45 25 year, each of 5 years, I guess --

11:36:46 1 A. \$500-million.

11:36:47 2 1631 Q. \$500-million. And now, as -- as

11:36:50 3 the -- you know, as it moves forward, there's a

11:36:52 4 longer term --

11:36:54 5 A. The government committed in the

11:36:56 6 last budget to negotiate a long-term -- a long-term

11:37:04 7 agreement, and I don't know how clear the Finance

11:37:07 8 Minister was on what his view of long-term was, but

11:37:09 9 the current, uh, window for land-based gaming in

11:37:18 10 the province is, I think, 18 years, so it would be

11:37:22 11 consistent with that.

11:37:23 12 1632 Q. And that was going to be

11:37:26 13 90-something million dollars a year or...?

11:37:36 14 Is there a figure there that you know

11:37:37 15 of or...?

11:37:37 16 A. Yeah. The figure is 100-million,

11:37:40 17 but net of costs, it would be 94-million currently.

11:37:41 18 1633 Q. \$94-million?

11:37:43 19 A. Yes.

11:37:43 20 1634 Q. I would like to just touch on the

11:37:46 21 Horse Improvement Plan, HIP. We touched -- we

11:37:48 22 talked about that a little bit earlier and -- and

11:37:53 23 how it was funded.

11:37:55 24 There was a resolution, I guess, in

11:38:05 25 terms of certain agreements that were made with

11:38:06 1 the, uh, Quarter Horse owners and the, umm,
11:38:08 2 Thoroughbred owners in terms of amount that would
11:38:10 3 be paid out of that, or how does it -- how does it
11:38:14 4 work?

11:38:18 5 A. Well, HIP works differently for --
11:38:20 6 Horse Improvement Program is divided into two
11:38:23 7 parts, the Standardbred Improvement Program and the
11:38:23 8 Thoroughbred Improvement Program, SIP and TIP.

11:38:29 9 The Quarter Horse Program is a separate
11:38:31 10 program because the Quarter Horse industry came
11:38:34 11 into the, uh, Slots at Racetrack Program some time
11:38:42 12 after 2003, so later in the game and, uh, in...,
11:38:48 13 and was negotiated differently than -- than the --
11:38:52 14 than the Horse Racing Improvement Program which
11:38:54 15 predates that.

11:38:55 16 1635 Q. Mm-hmm.

11:38:55 17 A. So, I'm sorry, your question as I
11:38:59 18 was stumbling through all of that?

11:39:01 19 There's a complexity to how the whole
11:39:04 20 thing works.

11:39:04 21 1636 Q. Yeah, yeah. Well, again, were
11:39:06 22 Standardbred owners dealt with in the same fashion
11:39:09 23 as Quarter Horse owners and Thoroughbred owners
11:39:14 24 under HIP or were there differences there of any
11:39:15 25 kind?

11:39:15 1 A. The programs were different and
11:39:17 2 the revenue splits were different, umm, based on a
11:39:19 3 couple of things; (1), the amount of money that
11:39:24 4 each of those breeds would have contributed to the
11:39:27 5 pot, to pari-mutuel tax reduction and, secondly, by
11:39:34 6 the size of the industry and the nature of the
11:39:36 7 industry.

11:39:37 8 1637 Q. Mm-hmm.

11:39:38 9 A. Standardbred breeding --
11:39:41 10 Standardbred -- Ontario-bred Standardbreds are
11:39:44 11 supported by a separate racing program for
11:39:50 12 Ontario-bred horses,--

11:39:51 13 1638 Q. Mm-hmm.

11:39:52 14 A. --largely the Thoroughbreds.
11:39:53 15 Because Standardbreds are very rugged
11:39:56 16 individual -- rugged animal, they can race more
11:40:00 17 often.

11:40:02 18 For Thoroughbreds which can't race so
11:40:05 19 often - maybe two or three or four times a year -
11:40:07 20 the Ontario section or the Ontario breeding
11:40:10 21 supports tend to be as a portion of overnight
11:40:13 22 racing--

11:40:13 23 1639 Q. Mm-hmm.

11:40:14 24 A. --or regular non-restricted racing
11:40:17 25 purses.

11:40:18 1 I'm sorry. It just gets more
11:40:20 2 complicated the more I ramble on about it, but
11:40:22 3 there are different programs because -- because the
11:40:26 4 animals require different supports.

11:40:27 5 1640 Q. They have different
11:40:29 6 requirements,--

11:40:29 7 A. Yes, yes.

11:40:29 8 1641 Q. --the animals themselves.

11:40:31 9 Now, Mr. Lisus, on Thursday, took you
11:40:37 10 to an issue with respect to an agreement being
11:40:40 11 reached with the Quarter Horse owners and the
11:40:43 12 Thoroughbred owners, but an agreement wasn't
11:40:46 13 reached with the Standardbred owners.

11:40:48 14 Can you take us back to that again,
11:40:50 15 just in terms of --

11:40:51 16 MR. LISUS: I didn't say an agreement
11:40:52 17 with Standardbred owners or an agreement with
11:40:55 18 Quarter Horse owners.

11:40:56 19 It was the decision to provide funding
11:40:59 20 or breeding enhancements.

11:41:02 21 BY MR. RATCLIFFE:

11:41:02 22 1642 Q. Okay. Well, just -- there's that
11:41:04 23 refinement in terms of decisions for providing
11:41:07 24 breeding enhancements.

11:41:08 25 Can you tell us a little bit more about

11:41:11 1 that issue and--

11:41:14 2 A. Yeah.

11:41:15 3 1643 Q. --what those enhancements were,
11:41:18 4 and why the enhancement was provided to the two
11:41:22 5 types of horses, but not Standardbred horses?

11:41:25 6 A. The... So this is during a time
11:41:31 7 when I was providing advice to the government on
11:41:34 8 what -- what, umm, levels of support would be
11:41:36 9 appropriate in the industry and how -- uh, and the,
11:41:46 10 uh, the government came to those funding decisions
11:41:48 11 a piece at a time.

11:41:50 12 So, the program that was -- of supports
11:41:54 13 that was originally announced was a \$60-million
11:41:58 14 program, to which there was a subsequent
11:42:00 15 \$20-million added on to, and another -- another
11:42:05 16 tranche of funding, if you will, and that is the
11:42:07 17 way those approvals came through.

11:42:09 18 Part of that process was to find a way
11:42:16 19 of adding to the benefits for breeders -- breeders
11:42:19 20 of horses, racehorses in Ontario, uh, and -- and
11:42:25 21 some feeling of what the need was in that -- in
11:42:29 22 that community and what the government's
11:42:33 23 availability of funding for that would be.

11:42:36 24 1644 Q. Mm-hmm.

11:42:36 25 A. Or whether the government had a

11:42:38 1 willingness to put forward those monies.

11:42:41 2 In the end, when the letter that was --
11:42:47 3 was brought forward the other day came out, I had
11:42:50 4 been able to reach agreement with, or nearly reach
11:42:54 5 agreement with two sectors. Umm. I hadn't been
11:42:57 6 successful at that juncture with the Standardbred
11:43:02 7 breeders, uh, not -- not suggesting there's any ill
11:43:05 8 will there, at all.

11:43:06 9 Umm. And as I said the other day, at
11:43:11 10 that juncture, at the juncture of the claim being
11:43:15 11 put forward, it -- it was no longer in my purview,
11:43:20 12 although I recommended at the time that there be a
11:43:23 13 bulk amount of funds available over the course of
11:43:27 14 five years and that that amount that I recommended
11:43:30 15 included an amount that I anticipated would go to
11:43:34 16 Standardbred breeders.

11:43:34 17 1645 Q. Okay. Now you were able to reach
11:43:37 18 a resolution with the Quarter Horse and the
11:43:43 19 Thoroughbred.

11:43:44 20 Why was it that you weren't able to
11:43:46 21 reach a resolution with the Standardbred owners?

11:43:48 22 A. Well, I -- I -- my -- my good or
11:43:50 23 bad offices in terms of my ability to be -- to help
11:43:56 24 with that, I felt, were -- I felt, was no longer --
11:44:01 25 I was no longer able to do that when the -- the

11:44:06 1 breeders, uh, some of the breeders involved put a
11:44:09 2 claim forward. It -- it became a matter of law
11:44:12 3 that I was not comfortable with and nor did the
11:44:15 4 government ask me to have an opinion on it at that
11:44:19 5 juncture.

11:44:19 6 Prior to that time, I was cognizant of
11:44:28 7 two things; one, that -- that the amount that the
11:44:32 8 government put aside or nominally put aside to
11:44:35 9 support breeding had to obviously include all of
11:44:38 10 the breeders in the province.

11:44:40 11 1646 Q. Mm-hmm.

11:44:41 12 A. It is easier to reach a resolution
11:44:44 13 with Thoroughbred and Quarter Horse than it is
11:44:48 14 Standardbred inherently because there are less of
11:44:52 15 them.

11:44:53 16 --- (Court reporter appeals.)

11:44:53 17 THE WITNESS: There is less of them, so
11:44:55 18 it would follow that it would be simpler to reach a
11:44:55 19 resolution.

11:44:59 20 The complexities of the industry are
11:45:02 21 more complex at the Standardbred end than they are
11:45:05 22 at the Thoroughbred or Quarter Horse end.

11:45:05 23 BY MR. RATCLIFFE:

11:45:13 24 1647 Q. So, is there any basis -- there
11:45:13 25 seems to be a suggestion that the Standardbred

11:45:16 1 owners were being dealt with differently because of
11:45:19 2 the litigation. You said inherently, they're
11:45:23 3 different?

11:45:23 4 A. Post the -- post that letter that
11:45:27 5 we discussed where I -- where I outlined that a
11:45:30 6 resolution had been in place with Thoroughbreds and
11:45:33 7 was in, uh, in progress with the Quarter Horses, it
11:45:38 8 was silent on Standardbreds, post that letter, I --
11:45:40 9 I was no longer engaged on this.

11:45:43 10 And I believe that the Ontario Racing
11:45:45 11 Commission was engaged in ultimately reaching the
11:45:50 12 Standardbred program and it took about 12 months, I
11:45:53 13 think, from that point.

11:45:55 14 1648 Q. Just a couple more things.

11:45:56 15 You know, earlier this morning, there
11:46:02 16 was a question about job losses and the number of
11:46:05 17 horses that were put down.

11:46:07 18 There were some really quite draconian
11:46:11 19 predictions. You know, 23,000 jobs lost. 27,000
11:46:14 20 horses would have to go to the abattoir.

11:46:17 21 That never materialized, at all, from
11:46:20 22 what you're saying?

11:46:20 23 A. Well, I think there was job
11:46:21 24 displacement and job loss, but not at that
11:46:24 25 magnitude in part because government came along

11:46:29 1 with a mitigation strategy that was long --
11:46:31 2 long-term and has been effective.

11:46:33 3 Uh. The most serious of those for me
11:46:38 4 personally entering the file would be the
11:46:40 5 euthanizing of a large number of horses. It's
11:46:44 6 difficult for lots of reasons to contemplate that,
11:46:49 7 and we were able to -- the government was able to
11:46:52 8 avoid that outcome.

11:46:53 9 1649 Q. Okay. So that didn't occur or
11:46:55 10 that wasn't --

11:46:55 11 A. It did not.

11:46:56 12 1650 Q. Just one other question.

11:47:05 13 I know that you were critical or you
11:47:09 14 indicated you were critical of the government for
11:47:11 15 making decisions with incomplete information.

11:47:14 16 As a Cabinet Minister for seven years,
11:47:18 17 have you looked back on your experience and said to
11:47:21 18 yourself, 'Well, that occurs sometimes'?

11:47:27 19 Did you ever --

11:47:27 20 A. Are you suggesting --

11:47:29 21 1651 Q. Did you ever make decisions in
11:47:30 22 your time as part of Cabinet where, you know,
11:47:33 23 subsequently, you felt that there was incomplete
11:47:37 24 information?

11:47:37 25 A. Certainly, yes. Yeah.

11:47:40 1 MR. RATCLIFFE: Those are my questions.

11:47:43 2 MR. LISUS: Okay. I'm going to take

11:47:46 3 about a half-an-hour break and then I will have

11:47:49 4 some questions for you, Mr. Snobelen, and then we

11:47:51 5 will be done.

11:47:52 6 THE WITNESS: Okay. Fine.

11:47:52 7 MR. ROSENBERG: If we're taking half an

11:48:02 8 hour, we can be done before lunch.

11:48:02 9 MR. RATCLIFFE: Oh. Sorry. I was just

11:48:03 10 -- before -- I was going to mark the...

11:48:07 11 MR. LISUS: Yeah. Go ahead.

11:48:07 12 MR. RATCLIFFE: Yeah.

11:48:28 13 --- (Discussion off the record.)

11:48:28 14 MR. RATCLIFFE: So that will be -- this

11:48:31 15 is 45.

11:48:32 16 THE COURT REPORTER: Yes.

11:48:34 17 --- EXHIBIT NO. 45: March 1st, 2013

11:48:38 18 Toronto Sun column by Mr. Snobelen, entitled "Horse

11:49:53 19 racing changes tough but necessary."

11:49:53 20 --- Recess at 11:49 a.m.

12:16:30 21 --- On resuming at 12:16 p.m.

12:16:30 22 FURTHER EXAMINATION BY MR. LISUS:

12:16:32 23 1652 Q. Good afternoon, Mr. Snobelen.

12:16:36 24 A. Is it already?

12:16:37 25 1653 Q. Barely.

12:16:37 1 A. Ah. All right. In that case,
12:16:39 2 good afternoon.

12:16:39 3 1654 Q. Mr. Rosenberg asked you some
12:16:43 4 questions about the June 1998 letter of intent.
12:16:48 5 Do you remember that?

12:16:48 6 A. Yes.

12:16:49 7 1655 Q. And I noted an answer you gave to
12:16:51 8 one of his questions - this might not be verbatim,
12:16:52 9 but it's pretty close - I understood you to say
12:16:55 10 that the government of the day, 1998, wanted to
12:17:03 11 make sure that part of the revenue that was
12:17:05 12 generated from the introduction of Slots at
12:17:10 13 Racetrack Program was dedicated to the industry.

12:17:12 14 Do you remember saying that?

12:17:13 15 A. Correct.

12:17:13 16 1656 Q. And when you says "dedicated to
12:17:19 17 the industry", you're including, of course,
12:17:21 18 Standardbred breeders in that?

12:17:22 19 A. Correct.

12:17:23 20 1657 Q. And the -- the government of the
12:17:31 21 day understood that - and when I say "breeders",
12:17:35 22 I'm only referring to Standardbred breeders - that
12:17:38 23 Standardbred breeders were going to be part of this
12:17:40 24 overall agreement with respect to the introduction
12:17:42 25 of slot machines at racetracks; correct?

12:17:45 1 A. It certainly would have saw --
12:17:47 2 seen Standardbred breeders and all breeders as
12:17:48 3 benefactors to the program that would enhance the
12:17:52 4 horse industry.

12:17:54 5 1658 Q. Right. So they were benefactors
12:17:57 6 and they were also suppliers of the essential
12:17:59 7 product, being the horse; correct?

12:18:01 8 A. Supply chain. Absolutely, yes.

12:18:02 9 1659 Q. Okay. And I also made a note of
12:18:15 10 what you said this morning, that SARP was a
12:18:18 11 stimulus to increase the supply of horses.

12:18:20 12 Is that...?

12:18:21 13 A. That's correct.

12:18:21 14 1660 Q. And what we are talking about
12:18:30 15 there is increasing the supply, of course, of
12:18:34 16 Standardbred horses?

12:18:34 17 A. Correct.

12:18:35 18 1661 Q. And I think you also told us this
12:18:37 19 morning, sir, that the success of the Slots at
12:18:51 20 Racetrack program was far greater than originally
12:18:53 21 anticipated?

12:18:55 22 A. That's correct.

12:18:55 23 1662 Q. And I -- I think you said to
12:19:02 24 Mr. Ratcliffe, but it might have been Rosenberg,
12:19:04 25 that there's a direct line between enhanced purses

12:19:07 1 and the supply of Standardbred horses?

12:19:08 2 A. Correct.

12:19:08 3 1663 Q. And the enhanced purses created by

12:19:18 4 the success of the Slots at Revenue (sic) Program

12:19:26 5 led to the enhanced supply of racehorses; correct?

12:19:31 6 A. Increased number of horses, bigger

12:19:34 7 purses.

12:19:34 8 1664 Q. And not only increased number, but

12:19:36 9 a better quality of horse than before the program?

12:19:43 10 That was the intention, at least?

12:19:49 11 A. Well, to -- to the extent that

12:19:51 12 that was the intention, it wasn't spelled out, but

12:19:53 13 I wouldn't disagree that that was the intention of

12:19:55 14 -- of certainly myself and others.

12:19:57 15 1665 Q. At the time?

12:19:57 16 A. At the time.

12:19:58 17 1666 Q. Okay. And we -- we discussed

12:20:06 18 benchmarks, and I think you told Mr. Ratcliffe that

12:20:09 19 there were supposed to be benchmarks, but none were

12:20:12 20 put in place; correct?

12:20:13 21 A. That's correct.

12:20:14 22 1667 Q. And these were benchmarks to be

12:20:15 23 put in place by OLG, or OLC as it was named at the

12:20:19 24 beginning of the program; correct?

12:20:20 25 A. One would assume, yes. I... Yes.

12:20:22 1 1668 Q. There wasn't any expectation that
12:20:28 2 Standardbred breeders were to have benchmarks in
12:20:30 3 place; correct?
12:20:31 4 A. There was no, uh, specific request
12:20:34 5 of the industry, including Standardbred breeders,
12:20:37 6 to create their own benchmarks.
12:20:39 7 1669 Q. Right.
12:20:39 8 The creation of benchmarks was the
12:20:42 9 responsibility of the government and its agent,
12:20:45 10 Ontario Lottery Corporation; fair?
12:20:47 11 A. I think fair, in cooperation with
12:20:49 12 all the other signatories--
12:20:51 13 1670 Q. Right.
12:20:51 14 A. --who had agreed that some -- at
12:20:54 15 some point, benchmarks would be created.
12:20:55 16 1671 Q. Right.
12:20:55 17 A. Yes.
12:20:56 18 1672 Q. But the point I'm making, sir -
12:20:58 19 and I think we agreed to this last day - that the
12:21:00 20 breeders didn't fail to do anything they were
12:21:02 21 required to do?
12:21:03 22 A. No.
12:21:03 23 1673 Q. And they didn't do anything that
12:21:06 24 they were not required to do; correct?
12:21:08 25 A. That is correct.

12:21:09 1 1674 Q. Now, what the Standardbred
12:21:38 2 breeders did, as this program became more and more
12:21:43 3 successful, was rely on the enhanced purses and
12:21:48 4 increased racing to breed more horses, right?
12:21:52 5 O/B MR. ROSENBERG: I--
12:21:52 6 THE WITNESS: Correct.
12:21:53 7 MR. ROSENBERG: --object to that.
12:21:53 8 How can he speak to what Standardbred
12:21:55 9 breeders did and their reliance?
12:22:04 10 MR. LISUS: He's an industry expert,
12:22:08 11 Mr. Rosenberg. He sat on the Panel.
12:22:10 12 MR. ROSENBERG: You have my objection.
12:22:16 13 BY MR. LISUS:
12:22:16 14 1675 Q. Now, but that's how you understood
12:22:16 15 the industry moved together with the success of the
12:22:17 16 Slots at Racetrack Program; correct?
12:22:18 17 A. Clearly, as the, uh, purse money
12:22:21 18 increased, which it did rather dramatically and
12:22:24 19 suddenly, there was a sudden and dramatic increase
12:22:27 20 in the breeding of horses.
12:22:28 21 1676 Q. Okay. And although the government
12:22:29 22 of the day may not have predicted it, it certainly
12:22:35 23 intended there to be a commensurate increase in
12:22:39 24 breeding with success if there was to be success of
12:22:43 25 the -- of the Slots at Racetrack Program?

12:22:45 1 A. (Nodding head.) To -- to the
12:22:48 2 extent that the government was that articulate,
12:22:52 3 they expected all parts of the industry would, (a),
12:22:57 4 stabilize and, (b), grow.

12:22:58 5 1677 Q. That was the intention and --
12:23:00 6 A. That was the intention of the
12:23:04 7 Slots at Racetracks Program.

12:23:05 8 1678 Q. And, of course, by "all parts of
12:23:06 9 the industry", you include Standardbred--
12:23:06 10 A. Yes.

12:23:09 11 1679 Q. --breeding? Yes?
12:23:10 12 A. Yes.

12:23:10 13 1680 Q. Thank you.
12:23:19 14 I listened to your exchange with
12:23:21 15 Mr. Rosenberg about bad faith, the questions he
12:23:25 16 asked you about faith -- about bad faith.
12:23:26 17 Do you remember that?
12:23:26 18 A. Yes, I do.

12:23:27 19 1681 Q. And the note I made of your
12:23:32 20 answer, sir, was that you felt that it would be bad
12:23:38 21 faith if the government cancelled a program knowing
12:23:42 22 it would have an effect, but was not willing to
12:23:45 23 take responsibility for that effect; correct?
12:23:48 24 A. Correct.

12:23:48 25 1682 Q. And when you say "effect", you

12:23:50 1 mean a harmful effect; correct?

12:23:53 2 A. Yes.

12:23:53 3 1683 Q. And in this particular case, the
12:24:02 4 responsibility that the government took for its
12:24:03 5 decision to cancel the revenue share was the
12:24:07 6 appointment of the Panel that you sat on; correct?

12:24:09 7 A. Correct.

12:24:09 8 1684 Q. And you and I can agree that the
12:24:11 9 decision to appoint that Panel was made only after
12:24:15 10 the decision to cancel the revenue share was made;
12:24:17 11 correct?

12:24:18 12 A. That's correct.

12:24:20 13 1685 Q. And one of the reasons you said
12:24:22 14 the things you did in your opinion pieces in
12:24:25 15 February and March is because you saw that the
12:24:29 16 government did not appear prepared to take
12:24:31 17 responsibility for the decision it was going to
12:24:31 18 make?

12:24:38 19 A. I would say that it was not aware
12:24:40 20 of the consequence of the decisions it had made and
12:24:43 21 therefore had -- was not in a position to take what
12:24:45 22 I thought were reasonable steps.

12:24:46 23 1686 Q. Right. And just so that I'm
12:24:50 24 clear, sir, when the Panel was struck and you were
12:24:53 25 put on it, the chap with the horse racing

12:24:55 1 expertise, as you told us this morning, was you?

12:24:58 2 A. That's correct.

12:24:59 3 1687 Q. And all of the information that
12:25:03 4 the Panel relied on to come up with a mitigation
12:25:07 5 plan was information that was available to the
12:25:14 6 government prior to the appointment of the Panel.

12:25:16 7 It was there to be had; correct?

12:25:18 8 A. Yes. That's correct.

12:25:19 9 1688 Q. And, in fact, you marshalled all
12:25:23 10 of this information in a fairly short period of
12:25:27 11 time, between June and the release of your
12:25:31 12 preliminary report in August 2012?

12:25:33 13 A. Yes.

12:25:39 14 1689 Q. With the help of some expertise
12:25:42 15 from McKinsey?

12:25:43 16 A. We read a report that McKinsey had
12:25:46 17 done, yes.

12:25:51 18 1690 Q. Okay. The information that you
12:25:53 19 used principally came from OMAFRA.

12:25:55 20 Is that right?

12:25:56 21 A. The information we had came from
12:25:57 22 several sources. Umm. We reviewed information
12:26:00 23 that was provided to us by the Ministry of Finance,
12:26:03 24 OMAFRA, and by the industry bodies and
12:26:09 25 constituencies, yes.

12:26:11 1 1691 Q. And it was your understanding that
12:26:13 2 -- that all of the information that you reviewed
12:26:14 3 was not reviewed by the people who made the
12:26:17 4 decision in February 2012; correct?

12:26:20 5 A. Certainly, much of what we looked
12:26:22 6 at had not been looked after prior.

12:26:25 7 I should say that we also looked at
12:26:27 8 external reviews, external to the Province of
12:26:31 9 Ontario.

12:26:31 10 1692 Q. Right. And by that, you mean
12:26:33 11 other jurisdictions?

12:26:34 12 A. Other jurisdictions.

12:26:35 13 1693 Q. And just speaking of other
12:26:37 14 jurisdictions, sir, we can agree that there isn't a
12:26:39 15 viable horse racing industry in the world that does
12:26:43 16 not have some degree of government participation in
12:26:47 17 it; correct?

12:26:48 18 A. Some public support is -- is
12:26:50 19 necessary for horse racing to, uh, to exist.

12:26:53 20 1694 Q. Everywhere in the world?

12:26:56 21 A. Everywhere in the world.

12:26:58 22 1695 Q. My... My colleague,
12:27:07 23 Mr. Rosenberg, asked you to look at Article 18 of
12:27:09 24 the siteholder agreement which he correctly pointed
12:27:13 25 out I did not discuss with you.

12:27:20 1 Why don't we just have you turn that
12:27:22 2 up?
12:27:22 3 A. My memory is not that bad. I
12:27:30 4 think I can remember most of it without reference
12:27:33 5 to it, but just in case it is that bad.
12:27:36 6 1696 Q. Right.
12:27:36 7 --- (Document provided to the witness by
12:27:36 8 Mr. Lisus.)
12:27:37 9 THE WITNESS: Right. Thank you.
12:27:37 10 BY MR. LISUS:
12:27:39 11 1697 Q. Now, just before we talk about
12:27:40 12 that particular provision, I noted a comment that
12:27:47 13 you made about the nature of the agreement
12:27:49 14 generally between the horse racing industry and the
12:27:52 15 Ontario government through OLC. You described it
12:27:56 16 as a kind of "collective agreement".
12:27:58 17 Do you remember using that term?
12:28:00 18 A. Yes.
12:28:00 19 1698 Q. And I take it what you meant by a
12:28:02 20 "collective agreement" is that the government
12:28:07 21 intended to have an overall agreement between the
12:28:10 22 various segments of the horse racing industry and
12:28:15 23 OLG; correct?
12:28:15 24 A. Yes.
12:28:18 25 1699 Q. And as you told my friend, as I

12:28:20 1 understood your evidence, the government obviously
12:28:24 2 couldn't force individual racetracks to have slot
12:28:27 3 machines introduced into them--
12:28:29 4 A. That's correct.
12:28:30 5 1700 Q. --because they were private
12:28:35 6 businesses on private property; correct?
12:28:37 7 A. It -- they were a range of
12:28:39 8 different organizations including not-for-profits,
12:28:42 9 for-profits, yeah.
12:28:48 10 1701 Q. It was up to each racetrack owner
12:28:49 11 as to whether or not it entered into a siteholder
12:28:52 12 agreement, right?
12:28:53 13 A. That's correct.
12:28:53 14 1702 Q. And the introduction of Slots at
12:28:57 15 Racetrack very quickly became very successful,
12:29:00 16 right?
12:29:00 17 A. Oh. That's correct.
12:29:01 18 1703 Q. It exceeded everyone's
12:29:04 19 expectations?
12:29:05 20 A. That's correct.
12:29:08 21 1704 Q. And as a result, there was a very
12:29:10 22 good takeup amongst racetrack operators and
12:29:17 23 government with respect to the introduction of slot
12:29:20 24 machines at their facilities, right?
12:29:22 25 A. I believe it was a hundred per

12:29:23 1 cent and threatening to be much more than a hundred
12:29:26 2 per cent, yes.

12:29:27 3 1705 Q. Right. And, in fact, that's why
12:29:30 4 there was a moratorium in 2000?

12:29:33 5 A. That's correct.

12:29:35 6 1706 Q. And the moratorium in 2000 was to
12:29:44 7 provide a pause to try and evaluate whether this
12:29:47 8 was the right direction to go in for the province
12:29:50 9 and the industry; correct?

12:29:51 10 A. That's correct.

12:29:51 11 1707 Q. And --

12:29:53 12 A. And -- I'm sorry to - and another
12:29:55 13 partner, the municipalities.

12:29:56 14 1708 Q. Correct. And after that pause,
12:29:58 15 the government and the industry pushed on, full
12:30:01 16 steam ahead, right?

12:30:02 17 A. That is correct.

12:30:03 18 1709 Q. And I noted a comment that you
12:30:11 19 made. I understood it to be that at the time that
12:30:16 20 this program was being implemented, thought really
12:30:21 21 wasn't given by the government to the way in which
12:30:23 22 it would be terminated if it was --

12:30:30 23 --- (Cell phone interruption.)

12:30:30 24 THE WITNESS: My apologies.

12:30:30 25 BY MR. LISUS:

12:30:30 1 1710 Q. No problem.

12:30:33 2 A. And I don't know how to play that

12:30:35 3 song either, which is why it's my ringtone.

12:30:36 4 MR. LISUS: Mr. Snobelen is referring

12:30:38 5 to the fact that his cell phone just went off.

12:30:42 6 BY MR. LISUS:

12:30:43 7 1711 Q. So do you want the question again?

12:30:44 8 A. Please.

12:30:44 9 1712 Q. That at the time the slot machines

12:30:47 10 were being introduced into racetracks in 1998 to

12:30:51 11 2000 and on, the government was focused on the

12:30:54 12 introduction of the slot machines and wasn't really

12:30:57 13 thinking about how or when or why they would be

12:30:59 14 terminated; correct?

12:31:00 15 A. That's correct.

12:31:01 16 1713 Q. Obviously, there were events of

12:31:04 17 default, et cetera, articulated in the agreements

12:31:07 18 which was, as I understood, standard commercial

12:31:10 19 practice?

12:31:11 20 A. Yes. And especially in a highly

12:31:14 21 regulated industry where AGCO and the ORC were

12:31:17 22 involved in the regulation.

12:31:20 23 1714 Q. Right. But because the program

12:31:23 24 was extremely successful and considered to be

12:31:26 25 extremely successful, there wasn't any thought

12:31:28 1 given to a mass termination of all siteholder
12:31:31 2 agreements at one time; correct?

12:31:33 3 A. Very little, if any,
12:31:34 4 consideration--

12:31:34 5 1715 Q. Right.

12:31:34 6 A. --would have been given that by my
12:31:37 7 colleagues on Management Board.

12:31:38 8 1716 Q. That was, in fact, the -- the
12:31:39 9 furthest thing from government's mind at the time
12:31:41 10 because the program was so successful; correct?

12:31:44 11 A. Correct.

12:31:44 12 1717 Q. And the ability to terminate for
12:31:50 13 convenience under Article 18.3, which Mr. Rosenberg
12:31:53 14 directed to you, was only understood as a means to
12:31:57 15 terminate any one particular racetrack; correct?

12:32:00 16 O/B MR. ROSENBERG: I am objecting to this
12:32:01 17 question. This is not proper Recross.

12:32:03 18 You chose not to take the witness to
12:32:06 19 Article 18 when you put this very document to him
12:32:09 20 in your initial Examination.

12:32:10 21 It's not proper to take him to these
12:32:14 22 articles now.

12:32:18 23 BY MR. LISUS:

12:32:18 24 1718 Q. Answer my question, please,
12:32:19 25 Mr. Snobelen.

12:32:20 1 O/B MR. ROSENBERG: You have my objection.

12:32:22 2 THE WITNESS: Umm. Well, each of these

12:32:23 3 agreements, siteholder agreements are specific to

12:32:25 4 the siteholder.

12:32:25 5 BY MR. LISUS:

12:32:25 6 1719 Q. Okay.

12:32:27 7 A. So all of the conditions inside of

12:32:30 8 the agreement are subject to that siteholder. And

12:32:36 9 as I said earlier today, this type of termination

12:32:40 10 is anticipated in most transfer payment agreements,

12:32:44 11 most other commercial contracts with the Crown.

12:32:47 12 The Crown generally takes this sort of

12:32:53 13 -- of position in its authority to terminate.

12:32:55 14 1720 Q. Right. But as we agreed a minute

12:32:57 15 ago, there wasn't any thought given or

12:32:59 16 contemplation about a mass termination of all

12:33:01 17 agreements at one time?

12:33:02 18 A. There... Uh. As far as I know,

12:33:06 19 these are individual agreements,--

12:33:08 20 1721 Q. Right.

12:33:08 21 A. --yes.

12:33:08 22 1722 Q. Now, I wanted to understand

12:33:17 23 something else about these agreements.

12:33:20 24 You looked at a compensation formula in

12:33:25 25 them--

12:33:25 1 A. Yes.

12:33:26 2 1723 Q. --with Mr. Rosenberg.

12:33:27 3 Do you remember that?

12:33:28 4 A. Yes, I do.

12:33:29 5 1724 Q. And you are aware, sir, that in

12:33:33 6 2014 or so, certain racetracks were compensated...

12:33:45 7 --- (Sotto voce discussion between

12:33:46 8 Mr. Lisus and Mr. Matthews.)

12:33:50 9 BY MR. LISUS:

12:33:51 10 1725 Q. ...were compensated by OLG for

12:33:53 11 losses incurred as a result of the termination of

12:33:56 12 their siteholder agreement.

12:33:57 13 You're aware of that?

12:33:58 14 A. I am aware that they -- that OLG

12:34:01 15 entered into rental agreements with those -- with

12:34:06 16 those tracks.

12:34:06 17 1726 Q. Right.

12:34:08 18 A. And I have... And I was precluded

12:34:13 19 from the particulars of those agreements.

12:34:15 20 1727 Q. When you say you were precluded

12:34:18 21 from the particulars of the agreements, what are

12:34:21 22 you referring to?

12:34:21 23 A. I was not in --

12:34:24 24 O/B MR. ROSENBERG: I am objecting to this

12:34:28 25 question on the basis that you already covered this

12:34:28 1 subject--

12:34:28 2 MR. LISUS: No, I didn't.

12:34:29 3 MR. ROSENBERG: --and asked these same

12:34:29 4 questions in Mr. Snobelen's initial Examination.

12:34:30 5 The transcript will certainly speak for

12:34:30 6 itself.

12:34:30 7 MR. LISUS: All right.

12:34:32 8 MR. ROSENBERG: You have my objection.

12:34:35 9 BY MR. LISUS:

12:34:35 10 1728 Q. When you say you were precluded

12:34:37 11 from it, are you talking about at the time in 2014

12:34:39 12 or are you talking about --

12:34:39 13 A. At the time.

12:34:40 14 1729 Q. Okay.

12:34:41 15 A. And I subsequently have not seen

12:34:43 16 any of those.

12:34:44 17 1730 Q. Right. But you know that the

12:34:45 18 Auditor General reported that OLG reached

12:34:48 19 settlements with four racetracks in March 2013,

12:34:52 20 totalling 80.6-million?

12:34:55 21 A. Yes.

12:34:56 22 1731 Q. Okay.

12:34:56 23 A. Yes.

12:34:56 24 1732 Q. And you're aware that the

12:35:01 25 agreements, the siteholder agreements with those

12:35:04 1 racetracks permitted the termination of the
12:35:07 2 agreements without that level of compensation?

12:35:11 3 A. I am not aware what their
12:35:14 4 termination --

12:35:15 5 1733 Q. Okay.

12:35:16 6 A. I'm sorry. Is that reflective of
12:35:18 7 -- of this document? Is that what your question
12:35:21 8 is?

12:35:21 9 1734 Q. Yes. That sums in excess were
12:35:24 10 paid to -- sums were paid to racetrack in excess of
12:35:27 11 the compensation formula in Article 18.

12:35:31 12 Are you aware of that?

12:35:31 13 MR. RATCLIFFE: And where does that
12:35:33 14 come from? Is that in the Auditor General's
12:35:36 15 report? Perhaps he should be referred to it.

12:35:38 16 MR. LISUS: Well, I just read it to
12:35:39 17 him.

12:35:40 18 THE WITNESS: I'm -- I'm aware of the
12:35:41 19 Auditor General's report and I'm aware that there
12:35:44 20 was a long-term or a longer term agreement put in
12:35:48 21 place, uh, the provisions of which I'm not aware
12:35:51 22 of. And precisely--

12:35:51 23 BY MR. LISUS:

12:35:51 24 1735 Q. Okay.

12:35:53 25 A. --what was being compensated, I'm

12:35:54 1 not aware.

12:35:56 2 1736 Q. Okay.

12:36:00 3 You weren't involved in the decision to

12:36:03 4 compensate racetracks for losses sustained?

12:36:08 5 A. No, I was not.

12:36:09 6 1737 Q. Okay. Remind me when you left

12:36:33 7 government?

12:36:34 8 A. By my own volition, in 2002.

12:36:37 9 1738 Q. Right.

12:36:59 10 I was listening to your discussion with

12:37:05 11 Mr. Ratcliffe a little while -- a little while ago

12:37:09 12 about compensation for the Standardbred breeders

12:37:16 13 when you were on the Panel.

12:37:17 14 A. Yes.

12:37:18 15 1739 Q. Do you remember that?

12:37:18 16 A. (Nodding head.)

12:37:24 17 1740 Q. And I do recall you saying to me

12:37:34 18 last day that the Standardbred breeders were the

12:37:35 19 most vulnerable to harmful consequences following

12:37:42 20 from the cancellation of the revenue share?

12:37:44 21 A. That's correct.

12:37:45 22 1741 Q. And I've got a document here.

12:37:50 23 It's entitled Transitional Assistance for the Horse

12:37:54 24 Racing Industry, CRE 259512.

12:37:59 25 MR. LISUS: I've got a paper copy

12:38:00 1 there, if you could perhaps share with
12:38:03 2 Mr. Snobelen, Mr. Ratcliffe.

12:38:03 3 BY MR. LISUS:

12:38:17 4 1742 Q. And I want to just ask you to look
12:38:18 5 at page 11 of it, which is a slide, "Breeder
12:38:22 6 Support Program Funding". Do you see that?

12:38:23 7 A. I'm sorry. On 5?

12:38:24 8 1743 Q. It's page 11 of the document.

12:38:26 9 A. I'm sorry.

12:38:26 10 MR. RATCLIFFE: Page 11. There it is,
12:38:27 11 down in the corner.

12:38:35 12 THE WITNESS: Yeah.

12:38:37 13 BY MR. LISUS:

12:38:37 14 1744 Q. And this is what you were looking
12:38:39 15 at in -- well, you were looking at this, once you
12:38:41 16 were appointed to the Panel, "this" being Breeder
12:38:44 17 Support Program Funding, among other things;
12:38:44 18 correct?

12:38:47 19 A. That's correct.

12:38:47 20 1745 Q. And to be clear, when the decision
12:38:50 21 to cancellate -- excuse me -- when the decision to
12:38:53 22 terminate revenue share was made in February 2012,
12:38:57 23 there was no funding or support put in place for
12:39:01 24 breeders; correct?

12:39:01 25 A. Oh. When it was cancelled, no,

12:39:08 1 there was not.

12:39:08 2 1746 Q. All right. And this document, if

12:39:12 3 you go over to page 12, says that:

12:39:19 4 "Standardbred is the largest

12:39:20 5 segment of the horse racing industry

12:39:22 6 and most at risk from the

12:39:25 7 cancellation of SARP." [As read.]

12:39:26 8 Do you see that?

12:39:27 9 A. Yes.

12:39:28 10 1747 Q. Do you agree with that?

12:39:29 11 A. I -- I think it's... In the sense

12:39:34 12 of, from a breeder point of view, it is the largest

12:39:38 13 segment of the breeding part of the horse racing

12:39:40 14 industry, yes.

12:39:41 15 1748 Q. Right. And it says that:

12:39:47 16 "Standardbred horses have

12:39:49 17 limited uses beyond racing. The

12:39:51 18 non-racing value of Standardbred

12:39:53 19 horses is low." [As read.]

12:39:55 20 Do you agree with that?

12:39:57 21 A. Yes.

12:39:57 22 1749 Q. Okay.

12:39:57 23 A. Yes. Yes. I think "low" is

12:39:59 24 optimistic.

12:40:00 25 1750 Q. What you're saying is that in the

12:40:02 1 wake -- the immediate wake of the cancellation, the
12:40:09 2 term "low" is optimistic because they had no value?
12:40:13 3 A. A portion of the Standardbred herd
12:40:16 4 would have had no -- no value.
12:40:18 5 1751 Q. A substantial portion?
12:40:21 6 A. Certainly, the middle part, yes; a
12:40:24 7 substantial part. A substantial part.
12:40:27 8 1752 Q. Yes. And:
12:40:28 9 "As of termination,
12:40:30 10 approximately 70 per cent of all
12:40:32 11 current SARP dollars flows to
12:40:32 12 Standardbred. This represents
12:40:41 13 approximately 117-million annually
12:40:41 14 to Standardbred horsepeople."
12:40:41 15 [As read.]
12:40:42 16 Do you see that?
12:40:44 17 A. Yes.
12:40:44 18 1753 Q. And can you explain that?
12:40:45 19 A. Uh. The largest portion -- there
12:40:49 20 are several ways of describing the same effect, but
12:40:53 21 because the slot -- the -- 14 of 17 racetracks were
12:40:59 22 Standardbred racetracks, so therefore -- which is
12:41:02 23 not entirely accurate. It would be 15 of -- of 17,
12:41:06 24 to be accurate, because one of those participated
12:41:08 25 in both Thoroughbred and Standardbred racing. That

12:41:12 1 would be Woodbine.

12:41:18 2 So a portion of the -- so the lot
12:41:19 3 revenue from more places went into Standardbred
12:41:22 4 racing than went into Quarter Horse or Thoroughbred
12:41:26 5 racing; therefore -- uh, and Standardbred racing
12:41:28 6 attracts less of the traditional horseplayer wager;
12:41:33 7 therefore, it's more dependent on the -- the
12:41:35 8 revenue generated from slots than would be other
12:41:37 9 sections of the -- of the industry.

12:41:39 10 1754 Q. And you understood that -- you
12:41:41 11 understood that, sir, in February of 2012, you as a
12:41:44 12 person knowledgeable about the industry?

12:41:46 13 A. Yes.

12:41:46 14 1755 Q. Okay. And there were many other
12:41:49 15 people like you who understood that in February
12:41:51 16 2012, right?

12:41:53 17 A. Oh. That's correct.

12:41:54 18 1756 Q. And you made reference to
12:41:59 19 Mr. Sadinsky and his report earlier on?

12:42:04 20 A. Yes.

12:42:04 21 1757 Q. And we can agree, sir, that one of
12:42:06 22 the things Mr. Sadinsky recommended was that the 20
12:42:12 23 per cent revenue share be continued, but that
12:42:18 24 benchmarks be put in place, right?

12:42:19 25 A. That's a fair assessment of his

12:42:21 1 report.

12:42:22 2 1758 Q. And was that the position that the
12:42:26 3 OHAA (sic) took in its submission that you assisted
12:42:30 4 in composing?

12:42:37 5 A. That's very similar to the
12:42:38 6 position of, uh, the Ontario Harness Horse
12:42:47 7 Association, yes.

12:42:47 8 1759 Q. And that was your position at the
12:42:47 9 time, as a -- as a person who participated in the
12:42:49 10 composition of the Ontario Harness --

12:42:49 11 A. From the point of view of the
12:42:51 12 Ontario Harness Horse Association, I understood and
12:42:54 13 was consistent with -- with my thoughts from the
12:42:58 14 industry side, from that portion of the industry's
12:43:00 15 point of view, yes.

12:43:01 16 1760 Q. Okay. And, in fact, as we said,
12:43:02 17 Mr. Sadinsky made that -- made the recommendation
12:43:05 18 of a 20 per cent continuation or, in fact, an
12:43:08 19 increase; correct?

12:43:09 20 A. He -- he -- umm. Yes. He voted
12:43:15 21 to continue -- his report -- his Panel Report, I
12:43:19 22 should say - there was three on the Panel - --

12:43:22 23 1761 Q. Okay.

12:43:22 24 A. -- umm, reported that they would
12:43:25 25 recommend, uh, keeping and enhancing parts and

12:43:27 1 putting proper benchmarks in place, et cetera, et
12:43:31 2 cetera, et cetera.
12:43:32 3 But he did not -- he did not recommend
12:43:33 4 reducing that amount.
12:43:34 5 1762 Q. Right. And he certainly didn't
12:43:37 6 recommend sudden termination; correct?
12:43:38 7 A. He did not.
12:43:39 8 1763 Q. And I didn't actually appreciate
12:43:45 9 that you were involved in the composition of the
12:43:48 10 Ontario Harness Horse submission.
12:43:51 11 I presume you then watched closely as
12:43:53 12 to what the government did after the release of
12:43:57 13 Mr. Sadinsky's report?
12:43:58 14 A. Indeed.
12:43:59 15 1764 Q. And the industry did, as well?
12:44:01 16 A. Elements of the industry did, for
12:44:05 17 sure.
12:44:05 18 1765 Q. And in 2010, the government
12:44:07 19 announced that it was renewing all of the
12:44:10 20 siteholder agreements?
12:44:11 21 A. Yes. That was represented to us
12:44:13 22 when we were on the Panel, yes.
12:44:15 23 O/B MR. ROSENBERG: I am objecting to this
12:44:17 24 line of questioning. It's just not proper Recross.
12:44:17 25 BY MR. LISUS:

12:44:25 1 1766 Q. And the extension of all of the
12:44:28 2 siteholder agreements sent a message of confidence
12:44:29 3 to the horse racing industry?
12:44:32 4 O/B MR. ROSENBERG: Object. How could he
12:44:33 5 speak to that, Mr. Lisus? He wasn't in government
12:44:36 6 at the time.
12:44:36 7 MR. LISUS: No. But he was very much
12:44:37 8 in the horse racing industry.
12:44:39 9 MR. ROSENBERG: You have my objection.
12:44:41 10 THE WITNESS: The -- the members of the
12:44:42 11 horse racing industry represented that to us as a
12:44:46 12 -- as the OMAFRA Panel.
12:44:50 13 BY MR. LISUS:
12:44:51 14 1767 Q. Right. And that was the way you
12:44:52 15 understood it at the time, being 2010; correct?
12:44:54 16 That it was seen as an expression of confidence
12:45:00 17 that -- by the government, that the program would
12:45:03 18 continue?
12:45:03 19 A. I -- umm, I am not -- my memory of
12:45:08 20 what I would have personally thought in 2010 is
12:45:12 21 pretty -- pretty -- is not foggy exactly.
12:45:15 22 My attention on the file was, 'What was
12:45:17 23 the government going to do differently?' And so
12:45:19 24 that probably didn't pique my attention because it
12:45:23 25 wasn't different.

12:45:24 1 1768 Q. The 2010 extension?

12:45:25 2 A. The 2010 extensions; that would

12:45:27 3 not have been probably foremost in my thinking at

12:45:29 4 that time.

12:45:29 5 1769 Q. Because it was a continuation of

12:45:31 6 what it had been doing to that point?

12:45:33 7 A. Yes. There was no change in

12:45:34 8 policy, so I would not have...

12:45:35 9 1770 Q. And can we also agree, sir, that

12:45:39 10 the Ontario Racing Commission encouraged breeders

12:45:43 11 to invest in breeding?

12:45:46 12 MR. RATCLIFFE: Does this arise out of

12:45:48 13 the Cross-Examination--

12:45:50 14 MR. LISUS: Yes.

12:45:55 15 MR. RATCLIFFE: --that we did?

12:45:55 16 THE WITNESS: The ORC at that time

12:45:58 17 managed the HIP program, and the purpose of the HIP

12:46:01 18 program was to encourage breeding.

12:46:04 19 BY MR. LISUS:

12:46:04 20 1771 Q. And in order to encourage

12:46:06 21 breeding, you need to have breeding facilities?

12:46:09 22 A. Correct.

12:46:10 23 O/B MR. ROSENBERG: I am objecting.

12:46:11 24 This does not arise from anything that

12:46:13 25 came out in my Cross or Mr. Ratcliffe's and this is

12:46:17 1 not proper Recross.

12:46:19 2 These questions, if they should have

12:46:20 3 been asked at all, should have been asked in your

12:46:23 4 initial Examination, Mr. Lisus.

12:46:25 5 BY MR. LISUS:

12:46:27 6 1772 Q. And the investment in breeding

12:46:29 7 facilities includes investment in farms?

12:46:31 8 A. Yes.

12:46:33 9 1773 Q. And horses?

12:46:33 10 A. Yes.

12:47:00 11 1774 Q. My friend, Mr. Ratcliffe, spoke to

12:47:07 12 you about euthanization.

12:47:07 13 Do you remember that?

12:47:08 14 A. I do.

12:47:21 15 1775 Q. And job losses?

12:47:21 16 A. Yes.

12:47:23 17 1776 Q. And I understood your evidence to

12:47:25 18 be that the feared euthanizations did not occur?

12:47:33 19 A. Yes.

12:47:34 20 1777 Q. And that the extent of the job

12:47:37 21 losses did not occur?

12:47:39 22 A. Extensive job loss did not occur.

12:47:42 23 1778 Q. Okay. But there were job losses,

12:47:45 24 nevertheless?

12:47:45 25 A. There were.

12:47:46 1 1779 Q. And I take it that the -- you were
12:47:47 2 of the view that the reason the widespread
12:47:50 3 euthanization and extensive job losses didn't occur
12:47:55 4 was because of -- because of measures that were put
12:47:58 5 in place as a result of the Panel's
12:47:59 6 recommendations?

12:48:00 7 A. In major part.

12:48:02 8 1780 Q. And if those recommendations were
12:48:04 9 not put in place, there would have been extensive
12:48:07 10 job losses and euthanizations?

12:48:09 11 A. Almost certainly.

12:48:10 12 1781 Q. So that if we look at Exhibit 21
12:48:25 13 on your Examination from last day, which is
12:48:28 14 Mr. Wilkinson's e-mail...

12:48:29 15 A. I recall this, yes.

12:48:30 16 1782 Q. If the Panel wasn't appointed...
12:48:31 17 And it was the initiative of
12:48:31 18 Mr. McMeekin to appoint the Panel. Is that right?

12:48:31 19 A. That's my understanding, yes.

12:48:31 20 1783 Q. ...your view was that there would
12:48:40 21 have been 13,000 job losses and 16,000 euthanized
12:48:45 22 horses? That was what McKinsey advised you?

12:48:50 23 A. I don't remember the -- it was
12:48:52 24 directly to McKinsey. I'm not sure that McKinsey
12:48:55 25 had any, uh, estimation on euthanized horses. It

12:48:59 1 may have. I don't recall it.

12:49:00 2 1784 Q. But these numbers which

12:49:05 3 Mr. Wilkinson is describing reflects the extent of
12:49:08 4 the euthanization and job losses that you believed
12:49:13 5 would have followed the government decision?

12:49:19 6 A. I believe these are -- it's fair
12:49:21 7 to characterize these as Mr. Wilkinson's estimates,
12:49:25 8 which are not entirely -- which are not
12:49:27 9 inconsistent with what my observations would have
12:49:31 10 been at that stage.

12:49:32 11 1785 Q. Okay.

12:49:35 12 O/B MR. RATCLIFFE: On this point,
12:49:36 13 Mr. Lisus, I mean, you're going in -- you're asking
12:49:37 14 him to speculate about what would have happened if
12:49:42 15 things didn't unfold the way they did, so I'm not
12:49:44 16 sure how this is really, uh, is really relevant.

12:49:46 17 MR. LISUS: Well, I think it's relevant
12:49:48 18 at multiple levels, including the bona fides of the
12:49:51 19 decision, but we will leave that to argument.

12:49:58 20 Those are my questions, Mr. Snobelen.
12:49:59 21 Thank you.

12:50:00 22 THE WITNESS: Thank you.

12:50:03 23 MR. MATTHEWS: Thank you, John.

12:50:04 24 THE WITNESS: Thank you.

12:50:07 25 THE COURT REPORTER: Oh. Did you want

12:50:08 1 to mark CRE 259512?

12:50:10 2 MR. LISUS: Yes, I did.

12:50:13 3 MR. ROSENBERG: So what exhibit is

12:50:15 4 that?

12:50:23 5 MR. LISUS: CRE 259512.

12:50:23 6 MR. RATCLIFFE: Is that 46?

12:50:39 7 MR. MATTHEWS: Yes.

12:50:39 8 ---EXHIBIT NO. 46: Transitional

12:50:39 9 Assistance for the Horse Racing Industry,

12:50:40 10 Production Number CRE 259512.

12:50:49 11 MR. KORT: Can I just get confirmation?

12:50:51 12 At the very end of Mr. Ratcliffe's

12:50:52 13 questioning, he offered the Sun article as an

12:50:57 14 exhibit.

12:50:57 15 Which number was that?

12:50:58 16 MR. RATCLIFFE: That's 45.

12:50:59 17 MR. KORT: 45.

12:51:00 18 MR. MATTHEWS: Yeah. Like I said, I

12:51:02 19 will send them around.

12:51:04 20 MR. LISUS: Thank you. You're free to

12:51:05 21 go.

12:51:05 22 ---[Ending time: 12:51 p.m.]

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REPORTER'S CERTIFICATE

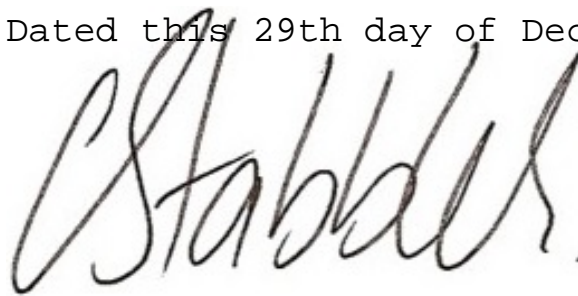
I, BONNIE LYNN VAN DER MEER, C.S.R.,
Chartered Shorthand Reporter, hereby certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness continued to be
oath;

That the testimony of the witness and
all objections made at the time of examination were
recorded stenographically by me and were thereafter
transcribed by me;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 29th day of December,
2017.



BONNIE LYNN VAN DER MEER, CSR
NEESON COURT REPORTING INC.

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