

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

JOHN SNOBELEN
November 30, 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 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 Thursday, the 30th of November, 2017.

V O L U M E 1

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.

13

14 IN ATTENDANCE AS OBSERVERS:

15 Robert Burgess and Heather Burgess

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25 REPORTED BY: Bonnie Lynn van der Meer, CSR

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

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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

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The questions/requests refused are noted by R/F and appear on the following pages/lines: 119:12, 121:5, 131:25, 147:9, 265:21.

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10:59:27 1 ---Upon commencing at 10:59 a.m.

10:59:27 2 JOHN SNOBELEN; SWORN.

10:59:16 3 EXAMINATION BY MR. LISUS:

10:59:28 4 1 Q. Good morning, Mr. Snobelen.

10:59:32 5 A. Good morning.

10:59:32 6 2 Q. I take it you understand that you

10:59:35 7 are here pursuant to a Summons to Witness?

10:59:38 8 A. Yes.

10:59:40 9 MR. LISUS: Okay. And I'm going to

10:59:42 10 mark as the first exhibit, the summons.

10:59:42 11 ---EXHIBIT NO. 1: Summons to Witness

10:59:42 12 issued to John Snobelen.

10:59:42 13 BY MR. LISUS:

10:59:45 14 3 Q. Did you actually receive a copy of

10:59:51 15 that or was it accepted on your behalf?

10:59:55 16 A. No. I received a copy of the

10:59:57 17 first summons.

10:59:57 18 4 Q. Okay.

10:59:57 19 A. Yeah.

11:00:04 20 5 Q. And you understood that it

11:00:07 21 summonsed you to come here as well as documents

11:00:08 22 that you had in your possession, right?

11:00:10 23 A. Yes.

11:00:10 24 6 Q. Okay.

11:00:11 25 And did you bring any documents with

11:00:12 1 you, sir?

11:00:12 2 A. I did not.

11:00:13 3 Those documents were surrendered to the
11:00:16 4 Ontario Racing Commission that were required some
11:00:18 5 time ago and they are in the possession of the
11:00:21 6 government.

11:00:21 7 7 Q. Okay.

11:00:22 8 I'm going to ask you just to keep your
11:00:24 9 voice up because--

11:00:25 10 A. Sure.

11:00:25 11 8 Q. --she's got to capture everything.
11:00:28 12 And when you say "those documents", are
11:00:30 13 you referring to the documents that were created in
11:00:35 14 the course of your responsibilities as a member of
11:00:37 15 the Transition Panel?

11:00:38 16 A. That's correct. The documents
11:00:39 17 that were requested.

11:00:40 18 9 Q. Okay.

11:00:41 19 And after you released the final report
11:00:50 20 of the Transition Panel, you then had a subsequent
11:00:53 21 position as a head of Ontario Live Racing.

11:00:56 22 Have I got the term correct?

11:00:57 23 A. Uh. Ontario Racing... No.

11:01:00 24 Ontario Racing.

11:01:01 25 10 Q. Ontario Racing?

11:01:03 1 A. Yes.

11:01:04 2 11 Q. And the documents created by you

11:01:08 3 in that capacity; were they also given to the

11:01:12 4 Ontario Racing Commission?

11:01:13 5 A. Whenever that -- they got all of

11:01:16 6 my documents from the search. I -- I literally

11:01:19 7 took my computer and had them search it, yeah.

11:01:22 8 12 Q. Okay.

11:01:23 9 So, in terms of responding to the

11:01:25 10 summons for the purposes of giving your evidence,

11:01:30 11 what documents, if any, did you collect or find?

11:01:34 12 A. None.

11:01:34 13 13 Q. None?

11:01:35 14 A. All of them had been turned over.

11:01:38 15 14 Q. Okay. And all of them had been

11:01:40 16 turned over, as you say, prior to your receipt of

11:01:43 17 the summons.

11:01:44 18 Am I understanding--

11:01:44 19 A. That's correct.

11:01:45 20 15 Q. --that?

11:01:46 21 A. Yeah.

11:01:47 22 16 Q. Okay. So you didn't have any

11:01:48 23 documents to give to the Crown in response to the

11:01:50 24 summons?

11:01:51 25 A. No.

11:01:51 1 17 Q. Okay.

11:01:52 2 And so, the reason I'm asking you those

11:01:54 3 questions, Mr. Snobelen, is simply to understand

11:01:58 4 what information you looked at for the purpose of

11:02:00 5 refreshing your memory for giving evidence here

11:02:03 6 today.

11:02:05 7 A. I've had a brief look at, uh, the

11:02:08 8 documents that have been, umm, discussed or -- or

11:02:14 9 have come forward, I -- I suspect, between the

11:02:18 10 litigants in the case.

11:02:19 11 18 Q. Okay. And is that recently?

11:02:22 12 A. Yes.

11:02:22 13 19 Q. All right.

11:02:23 14 A. Yeah.

11:02:23 15 20 Q. And have you reviewed e-mails you

11:02:29 16 wrote or received?

11:02:30 17 A. Some of them, yes.

11:02:32 18 21 Q. Okay.

11:02:33 19 A. Yeah.

11:02:33 20 22 Q. So a collection of documents was

11:02:35 21 put together and given to you--

11:02:36 22 A. That's correct.

11:02:37 23 23 Q. --by the Crown?

11:02:37 24 A. That's correct.

11:02:38 25 24 Q. All right.

11:02:43 1 And did you sign a retainer agreement
11:02:44 2 with--
11:02:44 3 A. Yes, I did.
11:02:45 4 25 Q. --the Crown?
11:02:45 5 A. Yes.
11:02:46 6 26 Q. Okay. And do you have a copy of
11:02:47 7 that?
11:02:47 8 A. I do not.
11:02:51 9 MR. LISUS: Mr. Ratcliffe, do you have
11:02:52 10 a copy of the retainer agreement?
11:02:54 11 U/A MR. RATCLIFFE: We'll take that under
11:02:55 12 advisement. I'm not sure that we need to share
11:02:57 13 that with you.
11:02:57 14 MR. LISUS: Okay.
11:02:58 15 MR. RATCLIFFE: He has indicated that
11:02:59 16 he has retained us for representing him on this --
11:03:03 17 on this matter.
11:03:06 18 BY MR. LISUS:
11:03:06 19 27 Q. When did you learn that the
11:03:07 20 Plaintiffs were looking to get your evidence in
11:03:09 21 this case, Mr. Snobelen?
11:03:11 22 A. I would think a year ago.
11:03:15 23 Whenever the -- whenever this was filed.
11:03:17 24 28 Q. Okay. "This" being the lawsuit?
11:03:20 25 A. Yeah. At about that time.

11:03:21 1 29 Q. Okay. So at about the time the
11:03:23 2 lawsuit was started, which was March 2014, you
11:03:28 3 thought that you might be called as a witness at
11:03:30 4 some point.

11:03:31 5 Is that fair?

11:03:31 6 A. Yeah. Certainly, the documents
11:03:33 7 were requested, yes. Yeah. Both of those things
11:03:37 8 are correct.

11:03:37 9 30 Q. All right.

11:03:38 10 And then, in August of this year, 2017,
11:03:42 11 you received a summons.

11:03:46 12 Is that correct?

11:03:46 13 A. I was served, yes.

11:03:47 14 31 Q. Okay.

11:03:48 15 And did you tell the Crown that you did
11:03:53 16 not want to speak with or be interviewed by my
11:03:58 17 office?

11:03:58 18 A. I don't know if that question ever
11:04:02 19 came up.

11:04:02 20 32 Q. Okay.

11:04:04 21 The reason I ask you that, sir, is
11:04:06 22 because we sent you an e-mail, and you may not
11:04:08 23 remember.

11:04:08 24 A. Oh. I do remember it, yes.

11:04:08 25 33 Q. Yeah.

11:04:09 1 A. Yes, yes.

11:04:10 2 34 Q. I'm going to show it to you.

11:04:17 3 You got an e-mail from a chap in my

11:04:19 4 office called Niklas Holmberg--

11:04:21 5 A. Mm-hmm.

11:04:22 6 35 Q. --in August.

11:04:23 7 There's a copy of it there.

11:04:33 8 --- (Witness reviewing document.)

11:04:34 9 BY MR. LISUS:

11:04:34 10 36 Q. Do you remember that?

11:04:35 11 A. Yes.

11:04:35 12 37 Q. Okay. And I think that the e-mail

11:04:37 13 sequence indicated that you responded to him?

11:04:40 14 A. Yes.

11:04:40 15 38 Q. Okay. And were you prepared to be

11:04:42 16 interviewed and give whatever information that you

11:04:46 17 had?

11:04:46 18 A. I was willing to consider it.

11:04:49 19 On second consideration, I thought we

11:04:51 20 might as well go to a more formal...

11:04:54 21 39 Q. Okay. So did you -- you then

11:04:56 22 contacted the Crown or did the Crown contact you?

11:04:59 23 A. On this matter?

11:04:59 24 40 Q. Yes.

11:05:02 25 A. I don't know that the Crown

11:05:03 1 contacted me.

11:05:04 2 41 Q. Did you contact the Crown to tell

11:05:06 3 them you had been summonsed?

11:05:08 4 A. I did, I believe.

11:05:09 5 42 Q. Okay.

11:05:15 6 Now you've spent a fair bit of time

11:05:17 7 around horses in your life?

11:05:18 8 A. Indeed.

11:05:22 9 43 Q. And I, at one point, briefly took

11:05:23 10 a quick look at your Curriculum Vitae, but I -- or

11:05:26 11 a summary of it, anyway, and I noticed, I think,

11:05:29 12 that you are a member of the horsemen hall of fame.

11:05:33 13 Is that right?

11:05:33 14 A. The National Reining Horse

11:05:38 15 Association Hall of Fame.

11:05:41 16 --- (Court reporter appeals.)

11:05:41 17 THE WITNESS: National Reining Horse

11:05:41 18 Association.

11:05:43 19 MR. MATTHEWS: [Sotto voce.]

11:05:43 20 MR. LISUS: Right. So Exhibit 1 is the

11:05:44 21 summons. Exhibit 2 is an e-mail sequence dated

11:05:50 22 August 30, 2017.

11:05:50 23 --- EXHIBIT NO. 2: E-mail sequence

11:05:50 24 dated August 30, 2017, between Niklas Holmberg of

11:05:50 25 Lax O'Sullivan and John Snobelen.

11:05:50 1 BY MR. LISUS:

11:05:58 2 44 Q. And can you just give me that Hall
11:06:01 3 of Fame that you're a member of again?

11:06:01 4 A. National Reining Horse.

11:06:03 5 45 Q. National Reining Horse?

11:06:04 6 A. Mm-hmm.

11:06:05 7 46 Q. What is a "reining horse"?

11:06:06 8 A. Uh. It is a stock horse
11:06:07 9 competition, umm, sometimes compared to dressage in
11:06:10 10 the English side of things.

11:06:12 11 47 Q. Okay. So you are a horseman?

11:06:15 12 A. Yes, indeed.

11:06:16 13 48 Q. Have you ever been involved in
11:06:19 14 breeding of horses?

11:06:20 15 A. Yes, sir. I have.

11:06:22 16 49 Q. Okay.

11:06:22 17 A. Yeah.

11:06:23 18 50 Q. What kind of horses have you bred?

11:06:24 19 A. Quarter Horses.

11:06:26 20 51 Q. Okay. Have you...?

11:06:28 21 And I presume all horses have the same
11:06:31 22 gestation period?

11:06:32 23 A. They -- that is the only thing
11:06:35 24 that they share in common, but yes, they have the
11:06:38 25 same gestation period.

11:06:41 1 52 Q. Eleven months?

11:06:42 2 A. Yes, correct.

11:06:42 3 53 Q. Have you been involved, sir, in
11:06:45 4 Standardbred breeding?

11:06:45 5 A. No, I have not.

11:06:46 6 54 Q. Have you been around Standardbred
11:06:49 7 breeding over the course --

11:06:49 8 A. Yes.

11:06:50 9 55 Q. Okay.

11:06:50 10 A. Yeah.

11:06:51 11 56 Q. And about how long have you been
11:06:52 12 around Standardbred breeding for?

11:06:53 13 A. The area I've grown up in has a
11:06:57 14 lot of Standardbred breeders around it, so most of
11:06:59 15 my life, I guess.

11:07:00 16 57 Q. Okay.

11:07:00 17 A. Yeah.

11:07:00 18 58 Q. Is that Guelph?

11:07:01 19 A. Uh. Georgetown,--

11:07:04 20 59 Q. Georgetown.

11:07:05 21 A. --but the Campbellville region, et
11:07:08 22 cetera.

11:07:08 23 60 Q. Okay. And I don't have a history
11:07:11 24 of exposure to or involvement in the horse racing
11:07:16 25 industry, so I'm going to rely on you to help me

11:07:19 1 out with some--

11:07:20 2 A. Certainly.

11:07:21 3 61 Q. --concepts.

11:07:24 4 And the first one is what I've seen

11:07:28 5 referred to as the "production cycle" for a horse.

11:07:31 6 Are you familiar--

11:07:31 7 A. Yeah.

11:07:32 8 62 Q. --with that term?

11:07:32 9 A. Oh, yeah. Absolutely.

11:07:33 10 63 Q. Okay. And what does the

11:07:37 11 "production cycle" refer to?

11:07:39 12 A. Generally, the time from..., umm,

11:07:45 13 the time from the exposure of the mare to a

11:07:47 14 stallion until that resulting foal is -- is a

11:07:53 15 yearling, a late yearling stage,--

11:07:53 16 64 Q. Okay.

11:07:55 17 A. --so until it's prepared for sale.

11:07:57 18 65 Q. And so that I don't get a record

11:07:59 19 that's not as helpful as it could be, I'm going to

11:08:01 20 focus on my questions on Standardbred because

11:08:03 21 that's--

11:08:03 22 A. Sure.

11:08:04 23 66 Q. --what we are talking about.

11:08:12 24 So your answer is describing a

11:08:15 25 production cycle with respect to Standardbred

11:08:15 1 horses?

11:08:16 2 A. Mm-hmm.

11:08:16 3 67 Q. So the production cycle begins

11:08:17 4 with the exposure of the mare to the stallion, and

11:08:17 5 that results in impregnation?

11:08:19 6 A. Mm-hmm.

11:08:20 7 THE COURT REPORTER: Sorry. Can you

11:08:20 8 say 'yes' or 'no'--

11:08:21 9 MR. LISUS: Yes. Let me --

11:08:21 10 THE COURT REPORTER: --for the record?

11:08:22 11 THE WITNESS: I'm sorry. Yes.

11:08:23 12 THE COURT REPORTER: And also, just

11:08:24 13 wait until he totally finishes his question before

11:08:24 14 you answer.

11:08:26 15 MR. LISUS: I --

11:08:28 16 THE WITNESS: Oh. Thank you.

11:08:30 17 THE COURT REPORTER: Thanks.

11:08:30 18 BY MR. LISUS:

11:08:30 19 68 Q. I should have done that.

11:08:30 20 So, Mr. Snobelen, she's got to --

11:08:32 21 A. I understand.

11:08:32 22 69 Q. Okay.

11:08:32 23 A. Thank you.

11:08:34 24 And I just did it again. Sorry.

11:08:35 25 70 Q. I wasn't going to point that out.

11:08:41 1 So the first step is the -- in the
11:08:45 2 breeding cycle is the connection of the mare and
11:08:52 3 the stallion.

11:08:52 4 Is that fair?

11:08:53 5 A. Not in Standardbred. It's the
11:08:57 6 insemination of the mare.

11:09:00 7 71 Q. Okay.

11:09:00 8 A. Often not done with exposure to
11:09:02 9 stallion.

11:09:02 10 72 Q. Okay. And I presume the
11:09:04 11 insemination of a mare in commercial breeding is
11:09:08 12 arranged in advanced (sic) --

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

11:09:09 14 73 Q. -- in advance?

11:09:10 15 A. That's correct.

11:09:10 16 74 Q. And there's a fee for that
11:09:13 17 service?

11:09:15 18 A. Depending on the circumstances,
11:09:16 19 there often is a fee.

11:09:18 20 75 Q. Okay.

11:09:20 21 So the production cycle, as I'm
11:09:23 22 understanding it, then actually starts before the
11:09:26 23 act of insemination in terms of arranging the
11:09:30 24 insemination.

11:09:31 25 Is that fair?

11:09:31 1 A. Well, at some point.

11:09:32 2 76 Q. Okay. And then there's a
11:09:34 3 gestation period of 11 months?

11:09:36 4 A. That's correct.

11:09:36 5 77 Q. And then, how long before the
11:09:40 6 horse is ready to pull a harness on a racetrack?

11:09:45 7 A. Well, the cycle is, the -- uh, the
11:09:51 8 mare -- the breeding season generally starts in
11:09:55 9 February-ish, probably mid February.

11:09:59 10 It's usually over by June--

11:10:00 11 78 Q. Okay.

11:10:01 12 A. --because all horses age on
11:10:03 13 January 1. So the closer to January 1 you can get
11:10:06 14 within that 11-month gestation period, the better.

11:10:09 15 Uh... The foal then -- the resulting
11:10:13 16 foal is born in January/February/March, becomes a
11:10:19 17 weanling in horsemen's terms, the next year becomes
11:10:24 18 a -- a yearling, and most yearling sales, when they
11:10:28 19 would -- when the horses would leave the breeding
11:10:31 20 cycle and enter into the racing cycle would happen
11:10:34 21 late in that yearling year, so in
11:10:38 22 November/December.

11:10:38 23 79 Q. So am I correct that there's a
11:10:41 24 four- to five-year production cycle for the horse
11:10:50 25 racing industry?

11:10:50 1 A. At a minimum, three.

11:10:51 2 80 Q. Okay.

11:10:52 3 And the reason I say "four to five

11:10:55 4 years", I'm just reading from your Interim Panel

11:10:58 5 Report which -- in which you state:

11:10:59 6 "This results in a four- to

11:11:02 7 five-year production cycle for the

11:11:03 8 industry."

11:11:04 9 Is that a fair statement?

11:11:05 10 A. So, for the -- yes. The -- the

11:11:05 11 horses are in racing, uh, as juveniles when they're

11:11:09 12 two and three years of age.

11:11:10 13 81 Q. Okay.

11:11:10 14 A. So until they're finished with

11:11:12 15 their -- their juvenile racing career, it would be

11:11:15 16 five years.

11:11:15 17 82 Q. And then, what happens after the

11:11:17 18 juvenile racing career phase is done?

11:11:19 19 A. Some of them go on to a more

11:11:22 20 mature phase of racing and some of them go into

11:11:25 21 some other activity.

11:11:26 22 83 Q. Okay.

11:11:27 23 And again, with reference to your

11:11:31 24 interim report, the report states:

11:11:37 25 "From the time a mare is bred,

11:11:39 1 four to five years of time, effort
11:11:40 2 and resources are expended before
11:11:44 3 the horse even reaches the track."

11:11:45 4 Is that an accurate statement?

11:11:46 5 A. Often the case.

11:11:46 6 Breeder has about three years, and then
11:11:48 7 whoever is in the owning cycle of that horse, it
11:11:51 8 would be at least... It's most probably six months
11:11:56 9 to as much as two years.

11:11:57 10 84 Q. Okay. So, it's an accurate
11:12:01 11 statement, what you and your panelists have here,
11:12:04 12 that:

11:12:04 13 "From the time a mare is bred,
11:12:06 14 four to five years of time, effort
11:12:10 15 and resources are expended before
11:12:12 16 the horse even reaches the track."

11:12:13 17 A. In many cases.

11:12:14 18 85 Q. Okay.

11:12:21 19 We are going to talk about the horse
11:12:23 20 racing industry today and your experience in it,
11:12:25 21 and one of the many things I think we will agree
11:12:29 22 on, sir, is that the heart of the horse racing
11:12:33 23 industry is the racehorse?

11:12:35 24 A. Oh, for sure. Yeah. Certainly.

11:12:36 25 86 Q. And we're again talking here about

11:12:40 1 Standardbred horses?

11:12:41 2 A. (Nodding head.) Yes.

11:12:42 3 87 Q. And in terms of the -- have you

11:12:51 4 heard the term "three-legged stool" in reference to

11:12:54 5 the horse racing industry?

11:12:55 6 A. Certainly.

11:12:56 7 88 Q. Okay. And tell me if I've got it

11:12:59 8 right, that the three legs to the stool are the

11:13:03 9 racetrack, the horse, and the riders.

11:13:13 10 Is that accurate?

11:13:13 11 A. That's one of the descriptions of

11:13:17 12 the "three-legged stool", but a very common one,

11:13:20 13 yes.

11:13:20 14 89 Q. Okay.

11:13:20 15 And obviously, it's the breeders who

11:13:23 16 breed the horses, right?

11:13:24 17 A. That's correct.

11:13:26 18 90 Q. And the breeders who supply the

11:13:27 19 product for the horse racing industry?

11:13:29 20 A. That's correct.

11:13:30 21 91 Q. Now, in addition to your

11:13:37 22 distinguished career in horsemanship...

11:13:40 23 Is that the correct term?

11:13:43 24 A. It's close enough. Absolutely,

11:13:44 25 yeah.

11:13:44 1 92 Q. Okay. ...you were a politician?

11:13:46 2 A. Yes.

11:13:48 3 93 Q. Okay. And you were a Cabinet
11:13:50 4 Minister?

11:13:50 5 A. That's correct.

11:13:54 6 94 Q. And I think, sir, you are one of
11:14:01 7 or perhaps the only witness I have summonsed who
11:14:11 8 was actually involved in government at the senior
11:14:16 9 level at the time the Slots at Racetrack initiative
11:14:22 10 was implemented.

11:14:22 11 A. I was there.

11:14:23 12 95 Q. Right.
11:14:25 13 And your term, sir, in government was -
11:14:28 14 correct me if I'm wrong - '99 to two thousand and-
11:14:32 15 -- no?

11:14:33 16 A. I will correct you. '95 to 2002.

11:14:37 17 96 Q. Okay. '95 to 2002.
11:14:39 18 And you were a Cabinet Minister when?

11:14:42 19 A. For that entire time.

11:14:43 20 97 Q. For that entire time.
11:14:44 21 But did you -- were you an MPP prior to
11:14:50 22 '95?

11:14:50 23 A. No.

11:14:50 24 98 Q. Okay. So you won a seat and
11:14:52 25 became Cabinet Minister in '95?

11:14:55 1 A. Yes, sir.

11:14:56 2 99 Q. Right. And I do recall that

11:14:57 3 portfolios you held were Education?

11:14:59 4 A. That's correct.

11:15:00 5 100 Q. And when was that?

11:15:00 6 A. '95 to late '97.

11:15:04 7 101 Q. And I should know this, sir, but I

11:15:07 8 don't. Remind me of the other -- the --

11:15:09 9 A. Ministry of Natural Resources

11:15:11 10 thereafter.

11:15:12 11 102 Q. Okay. And help me out with the

11:15:15 12 election sequence.

11:15:17 13 There was an election in '03 when the

11:15:21 14 Liberals came to power.

11:15:22 15 Is that right?

11:15:23 16 A. That's correct, yeah.

11:15:24 17 103 Q. Okay.

11:15:26 18 And so, working backwards, you were a

11:15:34 19 Cabinet Minister when the initial Slots at

11:15:38 20 Racetrack initiative was imple- -- well, conceived

11:15:40 21 and implemented, I think.

11:15:41 22 A. That's correct.

11:15:43 23 104 Q. Right. Because my understanding

11:15:44 24 from the documents is that it was conceived in or

11:15:47 25 about 1996?

11:15:48 1 A. That's roughly right.

11:15:50 2 105 Q. All right.

11:15:50 3 A. And I think came to fruition in

11:15:53 4 '97,--

11:15:53 5 106 Q. Right.

11:15:53 6 A. --if memory serves. Yeah.

11:15:55 7 107 Q. Right.

11:15:55 8 There's a letter of intent that's

11:15:57 9 signed in June 1998, if that assists you.

11:15:59 10 A. Yeah.

11:16:00 11 108 Q. Does that make sense?

11:16:01 12 A. That's consistent.

11:16:02 13 109 Q. Okay. And, Mr. Snobelen, was --

11:16:06 14 do you recall who the Attorney General was in '98?

11:16:09 15 Was it Mr. Young?

11:16:10 16 A. I don't believe so. I think it

11:16:13 17 was still Charlie Hogds- --

11:16:17 18 110 Q. Harnick.

11:16:17 19 A. Harnick. I'm sorry.

11:16:19 20 111 Q. Okay. And did Mr. Young succeed--

11:16:21 21 A. He did.

11:16:21 22 112 Q. --Mr. Harnick? Okay.

11:16:22 23 A. Where in this process, I'm not

11:16:24 24 entirely certain.

11:16:25 25 113 Q. Okay.

11:16:27 1 Now, you mentioned that you grew up in
11:16:37 2 a rural area around horse breeding and horse--
11:16:37 3 A. Yeah.
11:16:40 4 114 Q. --farms.
11:16:40 5 A. Yes.
11:16:40 6 115 Q. Is that fair?
11:16:41 7 A. That's correct.
11:16:43 8 116 Q. And so, even after your career in
11:16:48 9 politics ended, you maintained an interest both in
11:16:51 10 politics and horse racing; correct?
11:16:54 11 A. That's also correct.
11:16:55 12 117 Q. And from time to time, you would
11:16:59 13 comment on political issues and, in particular,
11:17:05 14 political issues with respect to horse racing;
11:17:08 15 correct?
11:17:09 16 A. Yes.
11:17:14 17 118 Q. And I've had the good fortune of
11:17:18 18 reviewing some of the comments that you've made,
11:17:23 19 and one of the --
11:17:28 20 MR. RATCLIFFE: Do you have a copy that
11:17:29 21 you could share with him or...?
11:17:32 22 MR. LISUS: Yeah.
11:17:34 23 BY MR. LISUS:
11:17:34 24 119 Q. One of the fora that you would
11:17:39 25 offer your views and opinions was OntarioNewsWatch;

11:17:42 1 correct?

11:17:42 2 A. I write a column for the Toronto

11:17:46 3 Sun and they distribute it, so whoever picks it up.

11:17:49 4 120 Q. Right. But what --

11:17:50 5 A. Oh. I did appear on -- on...

11:17:52 6 Yes. That's correct.

11:17:53 7 121 Q. Right.

11:17:54 8 A. I did appear on that show, yes.

11:17:55 9 122 Q. Okay. And OntarioNewsWatch, as I

11:17:58 10 have seen it, is a video--

11:18:01 11 A. Yeah. That's correct.

11:18:02 12 123 Q. --service, right?

11:18:04 13 A. Yeah. (Nodding head.)

11:18:15 14 124 Q. So I'm going to ask you just to

11:18:16 15 think back to February of 2012, okay?

11:18:22 16 A. (Nodding head.)

11:18:23 17 125 Q. And February 2012 is around the

11:18:29 18 time where there was some discussion by members of

11:18:35 19 the Ontario government about the Slots at Racetrack

11:18:41 20 Program.

11:18:42 21 Do you recall that?

11:18:43 22 A. That's correct, yes.

11:18:52 23 126 Q. Okay. And one of those public

11:18:54 24 discussions was a speech given by Mr. Duncan at the

11:18:57 25 Empire Club?

11:18:58 1 A. That's correct.

11:18:59 2 127 Q. Were you there for that speech?

11:19:00 3 A. I was not.

11:19:06 4 128 Q. Okay. And do you know Mr. Duncan?

11:19:07 5 A. Quite well.

11:19:08 6 129 Q. Okay. And were you in

11:19:09 7 communication with him in February 2012?

11:19:11 8 A. I wasn't.

11:19:17 9 130 Q. You were not?

11:19:18 10 A. I was not.

11:19:39 11 131 Q. Okay. So...

11:19:53 12 MR. LISUS: Ian... [Sotto voce.]

11:19:53 13 BY MR. LISUS:

11:19:54 14 132 Q. I'm going to show you a transcript

11:19:55 15 of that speech that Mr. Duncan gave--

11:19:57 16 A. Sure.

11:19:57 17 133 Q. --on February 13, 2012.

11:20:07 18 --- (Document provided to the witness by

11:20:10 19 Mr. Lisus.)

11:20:11 20 THE WITNESS: Thank you.

11:20:13 21 BY MR. LISUS:

11:20:13 22 134 Q. You bet.

11:20:14 23 --- (Witness reviewing document.)

11:20:24 24 BY MR. LISUS:

11:20:24 25 135 Q. Let me know once you've had a

11:20:26 1 chance to look at it.

11:20:30 2 --- (Witness reviewing document.)

11:21:40 3 MR. RATCLIFFE: May I ask what Court

11:21:42 4 File Number this is or what the -- is there a

11:21:43 5 Discovery Production Number?

11:21:45 6 MR. LISUS: CRE0297789.

11:22:10 7 THE WITNESS: Yep.

11:22:11 8 BY MR. LISUS:

11:22:12 9 136 Q. Okay. Do you remember becoming

11:22:13 10 aware of Mr. Duncan's speech about the time he gave

11:22:17 11 it?

11:22:17 12 A. Sure.

11:22:18 13 137 Q. All right. And on February 16,

11:22:20 14 three days later, you appeared on OntarioNewsWatch,

11:22:25 15 and I will show you a transcript of your comments.

11:22:34 16 MR. LISUS: And I'm going to mark

11:22:36 17 Mr. Duncan's speech as Exhibit 3.

11:22:52 18 --- EXHIBIT NO. 3: A transcript of

11:22:53 19 Mr. Duncan's February 13, 2012 speech at the Empire

11:21:47 20 Club, Production Number CRE0297789.

11:23:20 21 THE WITNESS: That sounds vaguely

11:23:23 22 familiar.

11:23:23 23 BY MR. LISUS:

11:23:24 24 138 Q. All right. And before I forget,

11:23:26 25 I'm going to mark this Exhibit 4.

11:23:41 1 ---EXHIBIT NO. 4: Transcript of
11:23:46 2 Mr. Snobelen's February 16, 2012 appearance on
11:23:47 3 OntarioNewsWatch.

11:23:50 4 BY MR. LISUS:

11:23:50 5 139 Q. Now, I take it, Mr. Snobelen, that
11:23:51 6 what you were doing here was responding as you saw
11:23:56 7 appropriate to the speech that Mr. Duncan had
11:24:00 8 given?

11:24:00 9 A. Certainly. In the context of a
11:24:03 10 political narration.

11:24:07 11 140 Q. A political narration?

11:24:09 12 A. Yeah. It's a political TV show.

11:24:11 13 141 Q. But -- and I understand that you
11:24:13 14 were a former politician, Mr. Duncan was a current
11:24:17 15 politician, but the views that you expressed were
11:24:21 16 honestly held?

11:24:22 17 A. Yes.

11:24:23 18 142 Q. And you were sincere in them?

11:24:25 19 A. Yes.

11:24:26 20 143 Q. Okay. And they expressed your
11:24:35 21 opinion of the Slots at Racetrack Program and its
11:24:43 22 relationship to the horse racing industry as you
11:24:45 23 understood it at that time.

11:24:47 24 Is that fair?

11:24:47 25 A. That's correct.

11:24:50 1 144 Q. Okay. And although you are, no
11:24:59 2 doubt, a gifted orator, I do presume that you
11:25:04 3 prepared your remarks before you delivered them on
11:25:07 4 NewsWatch?

11:25:07 5 A. No.

11:25:08 6 145 Q. You just delivered them as -- you
11:25:12 7 just called it as you saw it, so to speak?

11:25:15 8 A. Exactly.

11:25:15 9 146 Q. Okay.

11:25:18 10 MR. LISUS: Now I'm going to mark the
11:25:23 11 --

11:25:23 12 MR. MATTHEWS: It's already marked.

11:25:24 13 MR. LISUS: It's already marked as 4.

11:25:30 14 BY MR. LISUS:

11:25:31 15 147 Q. And can I just ask you, sir, in
11:25:32 16 February of 2012, did you know Mr. McMeekin?

11:25:35 17 A. Yes.

11:25:43 18 148 Q. Was he a colleague of yours?

11:25:44 19 A. He was not a colleague in the
11:25:47 20 sense we were with different political parties, but
11:25:47 21 I had known the Minister for some years.
11:25:49 22 I believe he was in the House during
11:25:50 23 the same time I was there.

11:25:52 24 149 Q. Okay.

11:25:52 25 A. I think he was.

11:25:52 1 150 Q. And in February of 2012, did you
11:25:56 2 reach out to Mr. McMeekin and ask him what his
11:25:58 3 government's plans were in light of Mr. Duncan's
11:26:02 4 comments?

11:26:03 5 A. Yes. We had a -- a telephone
11:26:05 6 conversation. To be honest with you, I can't
11:26:07 7 remember whether I called the Minister or the
11:26:10 8 Minister called me.

11:26:11 9 151 Q. Okay. At or about the time of
11:26:14 10 Mr. Duncan's comments and yours on February 16th?

11:26:18 11 A. Yeah.

11:26:19 12 152 Q. And can you tell me what you
11:26:22 13 remember of that conversation?

11:26:23 14 A. The conversation was, I believe
11:26:27 15 that I had written a column, as well, so I don't
11:26:32 16 know whether Ted was responding to my
11:26:34 17 OntarioNewsWatch or to a column in the Sun.

11:26:37 18 153 Q. Okay. Let me take to you that
11:26:37 19 because--

11:26:37 20 A. Sure.

11:26:39 21 154 Q. --it might refresh your memory.

11:26:40 22 A. Okay.

11:26:41 23 155 Q. So the column you might be
11:26:42 24 thinking of is one that you wrote on February 17 in
11:26:48 25 the Toronto Sun.

11:26:49 1 A. Right.

11:26:50 2 156 Q. You remember that?

11:26:50 3 A. Yes, I do recall that.

11:26:51 4 157 Q. Okay. I'm going to show it to

11:26:53 5 you.

11:27:16 6 While my colleague finds it, why don't

11:27:19 7 you get looking at that,--

11:27:23 8 A. Sure.

11:27:25 9 --- (Document provided to the witness.)

11:27:25 10 BY MR. LISUS:

11:27:28 11 158 Q. --to save time.

11:27:28 12 --- (Witness reviewing document.)

11:27:28 13 BY MR. LISUS:

11:27:55 14 159 Q. Now, you wrote -- I will wait for

11:27:58 15 you to finish. You tell me when you are done.

11:28:08 16 You wrote another one, I think, called

11:28:10 17 "The Sultans of Spin".

11:28:12 18 Do you think it was the opinion that

11:28:22 19 you -- try that began.

11:28:24 20 Do you think it was the February 17 Sun

11:28:27 21 article that caused Mr. McMeekin to reach out to

11:28:32 22 you or do you think it was a subsequent one?

11:28:34 23 A. It was about that time, and to

11:28:35 24 be... I cannot -- I --

11:28:35 25 160 Q. Okay. Fair enough.

11:28:42 1 A. I just don't know where in the
11:28:45 2 cycle it was.
11:28:57 3 MR. LISUS: So I'm going to mark the
11:28:59 4 February 17 column Exhibit 5.
11:29:03 5 ---EXHIBIT NO. 5: A February 17, 2012
11:29:03 6 column written by Mr. Snobelen in the Toronto Sun.
11:29:03 7 BY MR. LISUS:
11:29:07 8 161 Q. Perhaps "article" is a better word
11:29:09 9 than "column" or would you call it a "column"?
11:29:12 10 A. No. It's a column.
11:29:13 11 162 Q. Okay. So you had a discussion
11:29:38 12 with Mr. McKeekin as a result of him calling you.
11:29:42 13 And--
11:29:42 14 A. Yeah.
11:29:42 15 163 Q. --can you --
11:29:42 16 A. That's correct, yes.
11:29:43 17 164 Q. Okay. And did he just call you up
11:29:45 18 direct?
11:29:45 19 A. Yeah. Again, I can't recall who
11:29:46 20 called who, but--
11:29:46 21 165 Q. Okay.
11:29:47 22 A. --it was not an unusual thing.
11:29:48 23 166 Q. And did he -- what did he tell
11:29:50 24 you?
11:29:50 25 A. We traded jabs for a moment or two

11:29:55 1 in good humour about, uh, about, you know, my
11:30:01 2 taking on the Finance Minister in whatever riding
11:30:04 3 that -- that he had, was responding to, which is
11:30:09 4 kind of in the normal course of partisan kind of
11:30:15 5 politics.

11:30:15 6 167 Q. Right.

11:30:16 7 A. All -- all in good fun.

11:30:17 8 And towards the end of that call, I
11:30:20 9 suggested that, uh, I think I told him that in my
11:30:24 10 view, the thought that horse racing would be --
11:30:30 11 could survive the impact of that significant a
11:30:34 12 financial impact was, I thought, badly placed.

11:30:37 13 168 Q. Okay.

11:30:37 14 A. Badly informed.

11:30:39 15 169 Q. And so, may I -- may I understand
11:30:43 16 what you're saying, sir, is what you said to
11:30:46 17 Mr. McMeekin is that, 'If you cancel the revenue
11:30:46 18 sharing--'

11:30:46 19 A. Yeah.

11:30:50 20 170 Q. --'with -- of the Slots at
11:30:52 21 Racetrack Program with industry, with the horse
11:30:53 22 racing industry, the horse racing industry will not
11:30:55 23 survive'?

11:30:56 24 A. That's correct.

11:30:56 25 171 Q. All right. And did he agree with

11:30:58 1

you?

11:30:58 2

A. He did not. He -- he said that

11:31:07 3

that's not the projection that he had seen.

11:31:08 4

172

Q. Okay. And did he explain to you

11:31:11 5

what he thought the consequences of cancelling the

11:31:13 6

revenue sharing would be?

11:31:14 7

A. I don't recall him saying it in

11:31:16 8

any -- in any detail, but he -- he -- he said that

11:31:20 9

his -- their -- his officials or whoever had

11:31:23 10

briefed him didn't -- didn't share that -- that

11:31:27 11

view.

11:31:27 12

173

Q. And I take it you were pretty

11:31:30 13

confident you were correct because we know that in

11:31:34 14

your Panel deliberations and reports, you were

11:31:38 15

firmly of the opinion that the cancellation as

11:31:42 16

initially planned and announced would kill the

11:31:45 17

industry, right?

11:31:46 18

A. We came to that conclusion.

11:31:47 19

I was not as well-informed at that

11:31:49 20

time, but the simple math--

11:31:53 21

174

Q. Right.

11:31:54 22

A. --draw -- drew me to that

11:31:55 23

conclusion.

11:31:56 24

175

Q. So when you became a member of the

11:31:59 25

Industry Panel and had access to a lot more

11:32:01 1 information, it confirmed your view that you held
11:32:03 2 in February--

11:32:03 3 A. That's correct.

11:32:04 4 176 Q. --2012?

11:32:06 5 A. That's correct.

11:32:06 6 177 Q. And I take it that concerned you?

11:32:13 7 A. In -- in two ways.

11:32:14 8 Uh. One, I think it's, uh, good --

11:32:21 9 while I'm not a member of the party that was in
11:32:23 10 power at the time and currently is in power in the
11:32:27 11 Province, I think it's good for -- for people who
11:32:29 12 sit at the Executive Council to have the best
11:32:32 13 information available when they make decisions.

11:32:34 14 And, secondly, I -- I thought that an
11:32:39 15 industry as old as the horse racing industry in the
11:32:43 16 Province of Ontario was one that people should deal
11:32:46 17 with carefully.

11:32:46 18 178 Q. And one of the reasons that you
11:32:49 19 felt people should deal with it carefully was
11:32:51 20 because many livelihoods depended on it?

11:32:53 21 A. That's correct.

11:32:56 22 179 Q. And obviously, sir, based upon
11:32:58 23 what you've told me and what we have seen you
11:33:02 24 having said so far as of mid February 20, 2012, you
11:33:08 25 were of the view in February of 2012 that the issue

11:33:12 1 wasn't being handled carefully?

11:33:18 2 A. I -- I believed at that time that
11:33:20 3 -- that certainly, uh, Mr. McMeekin hadn't been
11:33:23 4 properly briefed.

11:33:24 5 180 Q. Okay.

11:33:25 6 A. Yeah.

11:33:25 7 181 Q. And that was a strong instinct
11:33:32 8 that you had, based upon comments he made to you in
11:33:36 9 the discussion?

11:33:37 10 A. Yes.

11:33:37 11 182 Q. Okay. And were you aware, sir,
11:33:41 12 that in February 2012, that Mr. McMeekin had not
11:33:45 13 been included in the deliberations or discussions
11:33:50 14 about leading up --

11:33:50 15 A. That --

11:33:52 16 183 Q. Let me finish.

11:33:52 17 A. Oh.

11:33:53 18 184 Q. ...leading up to the decision to
11:33:55 19 terminate the revenue share?

11:33:56 20 A. No. That didn't come up in our
11:33:58 21 conversations.

11:33:58 22 185 Q. Okay. Did you subsequently learn
11:34:00 23 that?

11:34:00 24 A. Uh. I certainly formed the
11:34:13 25 opinion, uh, that -- that the Minister was -- was

11:34:19 1 better informed as -- as we went along.

11:34:23 2 He did not tell me what was discussed

11:34:25 3 in Cabinet and --

11:34:26 4 186 Q. Okay.

11:34:26 5 A. -- and so, I -- I came to the --

11:34:30 6 the -- personally came to the conclusion that there

11:34:32 7 was a lack of information.

11:34:33 8 187 Q. Okay. And just to understand what

11:34:39 9 you're saying, you personally came to the

11:34:42 10 conclusion, after you were appointed to the

11:34:44 11 Industry Panel, that Mr. McMeekin had not been

11:34:50 12 given the information that would have been

11:34:53 13 beneficial for him to have, to understand the

11:34:56 14 consequences of the decision made in February 2012?

11:35:00 15 A. As represented to me in our call,

11:35:02 16 I thought the information he had was inaccurate.

11:35:04 17 188 Q. Okay. And the information we're

11:35:10 18 referring to, sir - am I correct - is information

11:35:14 19 concerning the impact that this decision would have

11:35:18 20 on the horse racing industry?

11:35:20 21 A. That's correct.

11:35:21 22 189 Q. Including Standardbred breeders?

11:35:23 23 A. That's correct.

11:35:27 24 190 Q. And as we agreed a minute ago, I

11:35:29 25 -- I take it this was of concern to you as a former

11:35:33 1 Cabinet Minister, but also as a citizen of Ontario?

11:35:37 2 A. And as a horse enthusiast, yes.

11:35:40 3 191 Q. And as a horse enthusiast.

11:35:42 4 A. All of those things.

11:35:44 5 192 Q. Okay. Did you tell Mr. McMeekin,

11:35:46 6 'I don't think you've been given the full body of

11:35:49 7 information you need to understand the impact of

11:35:51 8 this decision,' in that February conversation?

11:35:54 9 A. Yes.

11:35:55 10 193 Q. Okay.

11:35:55 11 A. I -- I suggested that he had --

11:35:57 12 that the government, at least -- or he, at least,

11:36:00 13 should try to get an independent look at, umm, in

11:36:05 14 some way, shape or form, at the impact on the

11:36:08 15 industry.

11:36:08 16 194 Q. Okay. And I take it, sir, or may

11:36:16 17 I take it that this was a point of frustration for

11:36:22 18 you, that a decision you felt was being made that

11:36:24 19 hadn't been properly thought and would have very

11:36:29 20 negative impacts on the industry?

11:36:32 21 The reason I ask that, Mr. Snobelen, is

11:36:34 22 because you continued to write and speak. And I --

11:36:38 23 I'm -- my interpretation of your comments is, you

11:36:40 24 were expressing frustration at what you perceived

11:36:45 25 to be a decision made on inadequate or incomplete

11:36:48 1 information.

11:36:48 2 A. Yeah. Something -- I'm not sure I
11:36:50 3 would characterize it as "frustration", but it's
11:36:53 4 close.

11:36:56 5 I -- I -- umm, again, I think that
11:36:58 6 regardless of the partisan stripes, I think
11:37:02 7 governments -- I think the people who sit at
11:37:06 8 Executive Council are owed good information and I
11:37:10 9 -- I certainly found it frustrating when I was at
11:37:15 10 that table if I thought I was not the recipient of
11:37:17 11 good information.

11:37:17 12 195 Q. Okay. And are you today aware,
11:37:20 13 sir, that Ministry of Agriculture had been blacked
11:37:25 14 out of the decision-making process leading up to
11:37:31 15 the decision to cancel the revenue share?

11:37:35 16 A. I don't know what "blacked out"
11:37:41 17 would refer to, but I became aware over time that
11:37:44 18 the Ministry -- that OMAFRA had not been keenly
11:37:47 19 involved. It was -- it was a -- a... It was a --
11:37:51 20 and I don't know exactly how it was brought to
11:37:54 21 Cabinet and what the process was.

11:37:55 22 I'm familiar with the process of
11:37:57 23 bringing things to Cabinet, but this was a Finance
11:37:59 24 lead.

11:37:59 25 196 Q. Okay. And you became aware of

11:38:02 1 that in the course of your work on the Panel.

11:38:05 2 Is that fair?

11:38:05 3 A. Some things, yeah. I think some
11:38:07 4 of that process became obvious in that no part of
11:38:12 5 the -- no part of the industry at the time that
11:38:14 6 decision was made touched OMAFRA.

11:38:17 7 197 Q. Okay. So no... I'm not sure I
11:38:24 8 heard you correctly, but I'm going to try to
11:38:26 9 capture what you told me if I've got it right.

11:38:29 10 In the course of your work on the
11:38:31 11 Panel, you became aware that no part of the
11:38:32 12 decision-making process leading up to the decision
11:38:35 13 to terminate slots at revenue share (sic) -- Slots
11:38:40 14 at Racetrack Program revenue share touched OMAFRA?

11:38:42 15 A. Umm. To be clear, the -- the --
11:38:45 16 and I -- this was some time ago, so I'm -- I'm
11:38:49 17 not... I'm trying to be as accurate as I can in
11:38:53 18 what I saw.

11:38:53 19 But the Ontario Racing Commission and
11:38:55 20 other elements of this decision-making were not
11:38:58 21 attached to the Ministry.

11:39:01 22 198 Q. Okay.

11:39:02 23 A. OMAFRA subsequently had an
11:39:06 24 attachment to those agencies that were involved in
11:39:09 25 horse racing, but at that time, they did not.

11:39:11 1 199 Q. Okay. And I'm just, for my own
11:39:13 2 benefit, sir, trying to understand some of the
11:39:14 3 words you're using.

11:39:15 4 So when you say OMAFRA and Ontario
11:39:21 5 Racing Commission didn't have any attachment to the
11:39:23 6 decision, I understand what you're telling me is
11:39:26 7 that a decision was made to terminate the Slots at
11:39:30 8 Racetrack Program revenue share in February 2012,
11:39:34 9 right?

11:39:34 10 A. Correct.

11:39:36 11 200 Q. And you became aware, during the
11:39:39 12 course of your duties on the Panel, that neither
11:39:41 13 the ORC nor OMAFRA were involved in that process?

11:39:49 14 A. First, I became aware that ORC was
11:39:52 15 not an agency of OMAFRA,--

11:39:54 16 201 Q. Okay.

11:39:54 17 A. --which would, by the nature of
11:39:56 18 that reporting structure, keep the -- professional
11:40:00 19 staff at OMAFRA would not normally be engaged in
11:40:05 20 the file.

11:40:06 21 202 Q. Okay.

11:40:06 22 A. So there was that part.

11:40:07 23 Subsequent to being on the Panel and
11:40:11 24 going and interviewing ORC, I realized that ORC had
11:40:15 25 not had what I would have...

11:40:19 1 203 Q. Expected?

11:40:20 2 A. ...might have thought they -- they

11:40:21 3 would have had -- generated a report or a brief to

11:40:25 4 government.

11:40:26 5 My understanding from the then Chair of

11:40:29 6 the ORC is, they had not.

11:40:31 7 204 Q. Okay. And -- thank you. That's

11:40:32 8 helpful with respect to ORC.

11:40:34 9 But you also learned that OMAFRA hadn't

11:40:36 10 been involved in the--

11:40:38 11 A. That's correct.

11:40:38 12 205 Q. --decision-making process, right?

11:40:41 13 A. That's correct.

11:40:41 14 206 Q. Okay. And going back to your

11:40:43 15 first discuss with Mr. McMeekin, I take it what you

11:40:47 16 learned in the course of your duties as a Panel

11:40:54 17 Member confirmed your instinct in February 2012,

11:40:58 18 that the best decision -- excuse me -- the best

11:41:01 19 information for this decision hadn't been brought

11:41:05 20 forward to Executive; fair?

11:41:08 21 A. I... While I worked as a Panel

11:41:12 22 Member, I certainly formed the opinion that the

11:41:18 23 analysis that was conducted was erroneous.

11:41:21 24 207 Q. And I'm going to show you another

11:41:36 25 document, Mr. Snobelen, which is an e-mail chain of

11:41:45 1 February 22, 2012. And this is a Finance -- an
11:41:55 2 internal Finance e-mail. I'm just going to have
11:42:00 3 you look at it.
11:42:17 4 --- (Witness reviewing document.)
11:42:21 5 MR. ROSENBERG: Could you read out the
11:42:23 6 Production Number, please?
11:42:26 7 MR. LISUS: CRE 84522.
11:42:29 8 MR. ROSENBERG: Thank you.
11:42:34 9 BY MR. LISUS:
11:42:34 10 208 Q. Okay?
11:42:35 11 A. I -- I don't recall being cheered,
11:42:36 12 but that -- that author certainly did.
11:42:39 13 209 Q. All right.
11:42:41 14 MR. LISUS: Exhibit 6.
11:41:44 15 --- EXHIBIT NO. 6: An internal Finance
11:41:44 16 e-mail chain of February 22, 2012, Production
11:42:26 17 Number CRE 84522.
11:42:26 18 BY MR. LISUS:
11:42:42 19 210 Q. But this is an e-mail discussing a
11:42:45 20 protest or a rally at Queen's Park--
11:42:45 21 A. That's correct.
11:42:46 22 211 Q. --where you spoke, right?
11:42:47 23 A. Yes.
11:42:57 24 212 Q. And you recall speaking at that
11:42:58 25 rally?

11:42:59 1 A. To be honest, I don't recall
11:43:01 2 speaking, but I was certainly there--

11:43:01 3 213 Q. Okay.

11:43:03 4 A. --and I certainly spoke to people
11:43:04 5 who were -- who were on the front line.

11:43:06 6 214 Q. Okay. And again, the reason you
11:43:08 7 were there, I take it, Mr. Snobelen, is because you
11:43:10 8 were concerned about the decision which you
11:43:18 9 believed was going to be made or had been made,
11:43:21 10 right?

11:43:24 11 A. I was supporting the -- the,
11:43:30 12 umm... I will tell you this: It's the only
11:43:32 13 protest I have ever voluntarily attended at the
11:43:35 14 Legislature, and I was certainly supporting the
11:43:39 15 horsemen.

11:43:40 16 I believe that that particular protest
11:43:43 17 was organized by the Ontario Harness Horse
11:43:47 18 Association.

11:43:47 19 215 Q. Okay. And we know that the
11:43:49 20 decision to terminate the revenue share was
11:43:52 21 publicly communicated in March, on March 12th,
11:43:56 22 2012, right?

11:43:56 23 A. Budget, I believe.

11:43:58 24 216 Q. Yeah.

11:43:58 25 A. Yeah.

11:44:05 1 217 Q. I think it's communicated in
11:44:08 2 concert--

11:44:08 3 A. Oh.

11:44:09 4 218 Q. --with the release of the
11:44:09 5 modernization report, but it's March, I think,
11:44:09 6 12th?

11:44:10 7 A. In the same time period, yes.

11:44:11 8 219 Q. Yes.
11:44:12 9 So as of mid February when you're
11:44:15 10 writing the columns and appearing on NewsWatch and
11:44:18 11 showing up at the protest and speaking with
11:44:20 12 Mr. McMeekin, did you know that Cabinet -- that a
11:44:24 13 decision had actually been made to terminate
11:44:27 14 revenue share?

11:44:28 15 A. No.

11:44:29 16 220 Q. Did you have an instinct that it
11:44:30 17 had?

11:44:31 18 A. I certainly had an instinct that
11:44:33 19 it had. I didn't know that it had.

11:44:37 20 221 Q. And you had an instinct just based
11:44:42 21 upon your experience with government and how it
11:44:42 22 works?

11:44:43 23 A. And what a communication strategy
11:44:47 24 might look like, how rollouts are done, and when
11:44:47 25 decisions are made in advance of the budget, yeah.

11:44:47 1 222 Q. Okay.

11:44:49 2 A. Given the cycle, that would be my

11:44:50 3 -- that would have been my guess at the time.

11:44:52 4 223 Q. Right. And referring to a

11:44:55 5 communication strategy, I take it you understood

11:45:01 6 this decision to have been telegraphed by

11:45:04 7 Mr. Duncan's speech on February 13, right?

11:45:07 8 A. Yeah, clearly. Yes.

11:45:09 9 224 Q. Okay. And that's what set you off

11:45:13 10 in the direction that you went.

11:45:15 11 You thought there needed to be some

11:45:19 12 commentary and the government needed to slow down

11:45:21 13 and really look at what it was -- what you

11:45:24 14 understood it to be doing, right?

11:45:25 15 A. In terms of... Certainly in my

11:45:29 16 writing,--

11:45:29 17 225 Q. Okay.

11:45:30 18 A. --certainly in my conversation

11:45:33 19 with the Minister, and certainly in supporting

11:45:38 20 horsemen, I -- they -- the Ontario Harness Horse

11:45:46 21 Association came up with the idea of doing --

11:45:49 22 having that particular event at Queen's Park.

11:45:51 23 But I was certainly in support of them

11:45:53 24 making their voices heard as soon as possible--

11:45:53 25 226 Q. Okay.

11:45:55 1 A. --in the process.

11:45:56 2 227 Q. Did you reach out to Mr. Duncan in
11:46:06 3 the February...?

11:46:07 4 A. I didn't.

11:46:08 5 228 Q. ...2012?

11:46:09 6 A. I did not.

11:46:10 7 The first chat I had with -- with
11:46:15 8 Minister Duncan about this file was not long before
11:46:19 9 the Panel was struck.

11:46:20 10 229 Q. Okay.

11:46:21 11 A. Mr. Duncan approached me and asked
11:46:23 12 me if I would -- if they -- if they put together a
11:46:27 13 group to look at the horse racing thing for six
11:46:30 14 weeks, would I be interested in being part of that
11:46:33 15 body.

11:46:33 16 230 Q. And at that point in time when you
11:46:37 17 were approached, the decision had been made and
11:46:40 18 communicated; correct?

11:46:43 19 A. I believe so, yes.

11:46:43 20 231 Q. Right.

11:46:44 21 A. Yeah.

11:46:44 22 232 Q. And the decision that had been
11:46:46 23 made and communicated was, the revenue share would
11:46:48 24 be terminated effective March 2013?

11:46:50 25 A. That's correct.

11:46:51 1 233 Q. And there would be no transition
11:46:53 2 funding; correct?

11:46:55 3 A. That's -- that was the -- what
11:46:58 4 when I met with -- with Minister Duncan, that was
11:47:01 5 the -- the current state, yes.

11:47:02 6 234 Q. And you thought that would be
11:47:04 7 catastrophic for the industry?

11:47:05 8 A. I did, indeed.

11:47:06 9 235 Q. And you therefore felt that you
11:47:13 10 wanted to make a contribution to try and avert a
11:47:18 11 catastrophe or minimize the catastrophe.

11:47:21 12 Is that fair?

11:47:22 13 A. At a minimum, I was willing to --
11:47:26 14 to -- to put some time in, so that -- that the
11:47:30 15 government of the day would have vetted
11:47:33 16 information.

11:47:34 17 236 Q. Okay. In the period
11:47:38 18 February-March 2012, did you reach out to either
11:47:43 19 Mr. Phillips or Mr. Godfrey at OLG?

11:47:45 20 A. No.

11:47:45 21 237 Q. Okay.

11:47:57 22 A. Well, I -- I'm sorry.

11:47:57 23 Subsequent to the OLG report coming
11:47:59 24 out, I did talk to Mr. Godfrey.

11:48:01 25 238 Q. Okay. And did Mr. Godfrey tell

11:48:04 1 you that the termination of revenue share was not
11:48:07 2 the recommendation of OLG?
11:48:09 3 A. He did not.
11:48:09 4 239 Q. Okay. Did he tell you that it was
11:48:15 5 the recommendation of OLG?
11:48:18 6 A. He told me it was a fait accompli.
11:48:20 7 240 Q. Okay. And what did you understand
11:48:21 8 that to mean, sir; that it was dictated by Finance?
11:48:25 9 A. I didn't -- I didn't get that
11:48:27 10 impression from him at that time.
11:48:28 11 We -- we -- uh, Mr. Godfrey is, umm, a
11:48:31 12 very senior person and understands the -- the
11:48:33 13 political world, and he -- he would -- I would not
11:48:36 14 have asked him that question and he would not have
11:48:38 15 told me.
11:48:38 16 241 Q. Okay. Did you speak with
11:48:40 17 Mr. Phillips?
11:48:41 18 A. I did not, no.
11:48:43 19 242 Q. Okay.
11:48:43 20 A. Not at that time.
11:48:44 21 243 Q. Now, in the last days of February,
11:49:02 22 there were some radio ads that ran.
11:49:07 23 Do you remember that?
11:49:07 24 A. I do.
11:49:09 25 244 Q. And... And I'm showing you an

11:49:50 1 e-mail, Mr. Snobelen, SB 12917. And to make it
11:49:57 2 easy for you, if you look at page 2, you will see
11:50:03 3 an e-mail being sent by Laurel Broten, B-r-o-t-e-n,
11:50:16 4 who was a Liberal Cabinet Minister;--

11:50:18 5 A. Mm-hmm.

11:50:18 6 245 Q. --correct?

11:50:18 7 A. Mm-hmm.

11:50:18 8 BY MR. LISUS:

11:50:19 9 246 Q. And she --

11:50:19 10 ----(Court reporter appeals.)

11:50:20 11 THE WITNESS: Yes. I'm sorry. My

11:50:23 12 apologies.

11:50:23 13 BY MR. LISUS:

11:50:23 14 247 Q. She's sending out on e-mail and
11:50:26 15 notifying the addressees about a radio ad.

11:50:29 16 So just take a look at that e-mail.

11:50:29 17 ----(Witness reviewing document.)

11:50:29 18 BY MR. LISUS:

11:51:02 19 248 Q. All right. Now, you're smiling.

11:51:05 20 Were you aware of this e-mail at the
11:51:06 21 time that it was sent? No?

11:51:07 22 A. No.

11:51:08 23 249 Q. Okay. And did you know

11:51:13 24 Ms. Broten?

11:51:14 25 A. I do.

11:51:14 1 250 Q. Okay. Did you speak to her --

11:51:17 2 A. No.

11:51:17 3 251 Q. No. Okay.

11:51:18 4 And I want to show you, please, a copy

11:51:23 5 of the radio ad.

11:51:24 6 Do you remember the radio ad, sir?

11:51:26 7 A. I do. I -- I -- I remember bits

11:51:34 8 and pieces of it, sure.

11:51:37 9 MR. LISUS: So the e-mail from

11:51:43 10 Ms. Broten is the next exhibit.

11:51:45 11 MR. MATTHEWS: 7.

11:51:46 12 ---EXHIBIT NO. 7: An e-mail sent by

11:51:47 13 Ms. Laurel Broten, Production Number SB 12917.

11:51:47 14 BY MR. LISUS:

11:51:48 15 252 Q. And I want to show you a document

11:51:48 16 which is a transcription of the radio ad that ran

11:51:49 17 on February 27; CRE 81193.

11:52:13 18 Have you read it?

11:52:14 19 A. I have, indeed.

11:52:15 20 253 Q. Does that refresh your memory

11:52:16 21 about the ad?

11:52:17 22 A. It does, yes.

11:52:18 23 MR. LISUS: Okay. And the e-mail is

11:52:20 24 from Mr. Barry Goodwin to Mr. Steve Orsini, copied

11:52:26 25 a number of people, February 27, 18:35 p.m., which

11:52:33 1 is the next exhibit.

11:52:35 2 ---EXHIBIT NO. 8: E-mail from

11:52:22 3 Mr. Barry Goodwin to Mr. Steve Orsini and others,

11:52:28 4 dated February 27, 18:35 p.m.; transcription of the

11:51:49 5 radio ad that ran on February 27, Production Number

11:51:49 6 CRE 81193.

11:51:49 7 BY MR. LISUS:

11:52:42 8 254 Q. In February 2012, did you know

11:52:45 9 Barry Goodwin?

11:52:46 10 A. I did not.

11:52:48 11 255 Q. In February 2012, did you know

11:52:50 12 Steve Orsini?

11:52:51 13 A. I did.

11:52:51 14 256 Q. Okay. And how did you know him?

11:52:52 15 A. I knew him through my involvement

11:52:53 16 in -- my time in government.

11:52:54 17 257 Q. All right. What was his role when

11:52:55 18 you were in government?

11:53:02 19 A. Uh. He -- I was -- I was part of

11:53:02 20 some briefings and I don't recall his position or

11:53:04 21 where he was at. He was certainly Secretary of

11:53:10 22 Cabinet at that time.

11:53:10 23 258 Q. Okay. And I know, Mr. Snobelen,

11:53:13 24 that on March the 3rd, you wrote another column in

11:53:20 25 the Sun--

11:53:20 1 A. (Nodding head.)

11:53:22 2 259 Q. --and I want to show you a copy of

11:53:27 3 it; SB 5058.

11:53:44 4 Do you remember writing this?

11:53:46 5 --- (Witness reviewing document.)

11:53:46 6 THE WITNESS: Yes, I do.

11:53:46 7 BY MR. LISUS:

11:53:47 8 260 Q. Okay. And take it, sir, you wrote

11:53:49 9 it because you were offended by the radio ads?

11:53:51 10 A. Yes.

11:53:53 11 261 Q. And I Examined a witness in this

11:54:04 12 case, Mr. Cogan, who worked in Communications at

11:54:07 13 the government at the time, and his testimony was

11:54:08 14 that this ad wouldn't have been run by government,

11:54:11 15 but was likely run by the Liberal Party?

11:54:15 16 A. That would be my assumption.

11:54:17 17 262 Q. Okay. And why do you assume that?

11:54:19 18 A. Because it's clearly a political

11:54:20 19 ad.

11:54:20 20 263 Q. And I also Examined Mr. Phillips

11:54:24 21 who testified that he didn't think that the content

11:54:27 22 of this ad had anything to do with gaming policy.

11:54:30 23 Do you agree with that?

11:54:31 24 A. I... That was my -- certainly my

11:54:37 25 take, yes. Yeah.

11:54:41 1 264 Q. Now, Barry Goodwin was a
11:54:43 2 government bureaucrat, not a member of the...?
11:54:45 3 A. That's correct.
11:54:45 4 265 Q. And Mr. Orsini was a senior
11:54:49 5 government bureaucrat in Finance; correct?
11:54:52 6 A. Yes, sir. That's correct.
11:54:53 7 266 Q. And so, did you -- were you aware
11:54:55 8 that Mr. Goodwin and Mr. Orsini were circulating
11:54:58 9 this ad in Finance?
11:54:59 10 A. No, I was not.
11:55:01 11 267 Q. Do you have a view as to whether
11:55:08 12 that's an appropriate thing to be doing?
11:55:11 13 A. I was surprised to see that
11:55:13 14 heading on the e-mail today.
11:55:14 15 268 Q. Okay. And one of the reasons you
11:55:17 16 were surprised, I take it, is because, as we
11:55:20 17 agreed, this e-mail is an attack ad that hasn't
11:55:25 18 anything do with gaming policy; correct?
11:55:27 19 A. In my view, this is a -- a
11:55:30 20 political ad.
11:55:42 21 MR. LISUS: Okay. And I'm going to
11:55:43 22 call your February -- excuse me -- your March 3
11:55:48 23 article Exhibit...
11:55:52 24 MR. MATTHEWS: ...9.
11:55:53 25 MR. LISUS: ...9, and the e-mail from

11:55:55 1 Mr. Goodwin to Mr. Orsini and others, dated
11:56:04 2 February 27, Exhibit --
11:56:04 3 MR. MATTHEWS: It was already marked as
11:56:05 4 8.
11:56:05 5 ---EXHIBIT NO. 9: A March 3rd, 2012
11:56:18 6 Toronto Sun column written by Mr. Snobelen,
11:56:18 7 Production Number SB 5058.
11:56:18 8 BY MR. LISUS:
11:56:18 9 269 Q. Now, is this the first time you've
11:56:22 10 become aware of this e-mail?
11:56:22 11 A. Yes. I... I may have been shown
11:56:24 12 it at some point in time, but I -- if I was, I
11:56:25 13 certainly don't recall it.
11:56:26 14 270 Q. Okay. And in addition to being a
11:56:31 15 political ad, it also isn't true, right?
11:56:34 16 A. Umm. In whatever way you want to
11:56:38 17 frame "not true", it is absolutely not true.
11:56:41 18 271 Q. Okay. And what aspects of it,
11:56:45 19 sir, looking at it, do you consider to be untrue?
11:56:52 20 A. I think the "did you know" could
11:56:59 21 be accurate, but beyond that, it's a little loose.
11:57:02 22 Tim Hudak I don't believe was in
11:57:05 23 Cabinet when the decision was made.
11:57:07 24 272 Q. Okay.
11:57:09 25 A. So...

11:57:10 1 273 Q. When the decision to initiate
11:57:12 2 the --

11:57:12 3 A. ...the Slots at Racetracks Program
11:57:15 4 was made, I believe Mr. Hudak was serving as a
11:57:18 5 Member of Parliament, but not in Cabinet.

11:57:24 6 Umm. As far as I know, there was never
11:57:25 7 a secret subsidy of any kind--

11:57:28 8 274 Q. Right.

11:57:28 9 A. --going to the industry.

11:57:30 10 And, in fact, at that time I heard the
11:57:32 11 ad, I was... I thought that perhaps the government
11:57:38 12 had forgotten that it had asked for a review of
11:57:41 13 this in 2008.

11:57:42 14 275 Q. Okay. So what did you think the
11:57:45 15 government was up to with this?

11:57:47 16 A. Well, again, I think this is a
11:57:54 17 political ad, in my view.

11:57:56 18 276 Q. But we're just a few months post
11:57:58 19 the fall 2011 election; correct?

11:58:00 20 A. And I thought this was a -- an ad
11:58:05 21 that was intended to -- to suggest that -- what it
11:58:12 22 says; that the then leader of the Conservative --
11:58:15 23 Progressive Conservative Party had a secret subsidy
11:58:21 24 going to a few wealthy friends.

11:58:24 25 277 Q. Which wasn't true, obviously.

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11:58:28
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A. It's obviously not true.

Q. And you also understood, sir, that the airing of this message on the radio would be extremely disruptive to the horse racing industry; correct?

A. I -- I thought two things. I thought it put the, uh, racing community in unfortunately the most negative light possible and that, secondly, I -- I thought that the people who I knew in the racing industry who may not be politically astute would be greatly offended.

Q. And I take it you knew from your background and experience that this would cause panic amongst breeders as to whether or not the revenue share was going to be cancelled?

A. I think all of those early signals from the Empire speech cascade, certainly.

Q. Would cause panic in --

A. Would cause -- would cause concern and -- and, uh, at what point that would become panic, I'm not entirely sure, but would cause very deep concern.

Q. And very deep concern about their livelihoods and the viability of their breeding operations and farms; correct?

11:59:33 1 A. Correct.

11:59:33 2 282 Q. And I take it, sir, that's part of

11:59:35 3 the reason why you were offended by the messaging

11:59:38 4 that was something rolled out.

11:59:40 5 Is that accurate?

11:59:41 6 A. I was offended on three fronts.

11:59:43 7 I thought it -- it did not well serve

11:59:46 8 the industry or the people in the industry.

11:59:50 9 Umm. I -- and I thought it was... I

12:00:03 10 thought it was inaccurate to the point of -- to an

12:00:07 11 unacceptable level, even in a political ad.

12:00:11 12 Uh. And, third, I thought it was a bad

12:00:13 13 piece of political work. I just thought it was not

12:00:15 14 good politics.

12:00:16 15 283 Q. And did you contact Mr. McMeekin

12:00:20 16 and --

12:00:21 17 A. No.

12:00:21 18 284 Q. No?

12:00:22 19 A. No.

12:00:22 20 285 Q. Okay. And the views you expressed

12:00:25 21 in your article, which is Exhibit 9,--

12:00:27 22 A. Yes.

12:00:28 23 286 Q. --were your honestly held views at

12:00:31 24 the time?

12:00:31 25 A. Yes. That's correct.

12:00:31 1 287 Q. And I take it, sir, you were very
12:00:39 2 worried about what was about to happen?

12:00:40 3 A. That's correct.

12:00:41 4 288 Q. And very worried about the impact
12:00:43 5 of what was about to happen on the livelihoods of
12:00:46 6 people in the industry?

12:00:47 7 A. That's correct.

12:00:48 8 289 Q. And, in particular, Standardbred
12:00:50 9 breeders across the Province?

12:00:51 10 A. The Standardbred breeders,
12:00:53 11 Thoroughbred breeders, Quarter Horse breeders,
12:00:56 12 horsemen; all of that whole -- none more so than
12:00:59 13 others, but certainly including Standardbred
12:01:02 14 breeders.

12:01:02 15 290 Q. Okay. And you knew that everyone
12:01:09 16 in OMAFRA certainly would understand that if
12:01:13 17 revenue share was just cut off without any
12:01:17 18 transition, there would be a very negative impact
12:01:20 19 on the breeding community?

12:01:21 20 A. I'm not sure that I can agree
12:01:24 21 that.

12:01:24 22 I -- I did not then know, nor would I
12:01:28 23 have had confidence that -- that a Ministry
12:01:32 24 understood the horse racing industry.

12:01:35 25 291 Q. Okay.

12:01:36 1 A. I had seen no indication of that.

12:01:37 2 292 Q. And when you say the "Ministry",
12:01:39 3 you mean Finance?

12:01:40 4 A. No. OMAFRA, as well. OMAFRA was
12:01:43 5 disengaged from horse racing.

12:01:45 6 293 Q. Okay. So you felt that in the
12:01:50 7 first quarter of 2012, that neither Finance nor the
12:01:55 8 Ministry understood the industry, right?

12:01:58 9 A. That's correct.

12:01:58 10 294 Q. And you were therefore very
12:02:00 11 concerned that they were making decisions that
12:02:02 12 would be catastrophic to the industry without
12:02:05 13 understanding what they were doing?

12:02:08 14 A. I -- I certainly thought that
12:02:11 15 my -- my, uh... I certainly thought that the
12:02:17 16 politicians were not being informed by people who
12:02:21 17 understood the industry.

12:02:22 18 295 Q. And there were people who did
12:02:24 19 understand the industry; correct?

12:02:26 20 A. There were -- there was access, I
12:02:28 21 think, to people who understood the industry.

12:02:31 22 296 Q. Well, you were one of them?

12:02:32 23 A. Certainly, I was one of them.

12:02:37 24 And there -- there was an industry
12:02:39 25 association.

12:02:40 1 The government had a report that, uh,
12:02:44 2 that had a lot of good information in it from 2008
12:02:48 3 from a well-regarded panel who -- who, I think,
12:02:52 4 understood what they were...
12:02:53 5 I didn't agree with everything they
12:02:55 6 reported, but I don't -- I would not question their
12:02:57 7 expertise.
12:02:57 8 297 Q. That's the Sadinsky Report?
12:03:00 9 A. That's correct.
12:03:00 10 298 Q. And the Sadinsky Report
12:03:04 11 recommended maintaining the revenue share?
12:03:05 12 A. It did, indeed, with some
12:03:07 13 significant changes to the program, but it did make
12:03:10 14 that recommendation.
12:03:11 15 299 Q. Right. And you agreed with that
12:03:13 16 at the time?
12:03:13 17 A. I -- umm...
12:03:24 18 300 Q. Let me rephrase.
12:03:25 19 You thought that there could be changes
12:03:27 20 to the program, but you did not favour terminating
12:03:30 21 the revenue sharing with the horse racing industry?
12:03:34 22 A. I thought at the time that
12:03:35 23 Sadinsky was a good expert report; that it was
12:03:43 24 maybe deficient in its recommendations in -- in
12:03:46 25 some -- in some places. I didn't perfectly agree

12:03:48 1 with the report.

12:03:48 2 301 Q. Okay.

12:03:49 3 A. I thought it had some

12:03:50 4 deficiencies, amongst them political deficiencies,

12:03:54 5 and I thought it might stimulate a conversation

12:03:59 6 between the industry and the government.

12:04:00 7 302 Q. Which you thought needed to

12:04:02 8 happen?

12:04:02 9 A. I absolutely thought it needed to

12:04:05 10 happen.

12:04:05 11 303 Q. Right. And in February and March

12:04:06 12 of 2012, what you thought should not happen would

12:04:09 13 be the cancellation of the revenue share.

12:04:13 14 We've discussed that, right?

12:04:15 15 A. I certainly thought that was in

12:04:17 16 the -- it's within the rights of a government to

12:04:20 17 make policy decisions all day long that I

12:04:22 18 personally don't agree with, but I -- I regretted

12:04:27 19 that at that time, I did not think that the members

12:04:30 20 of Executive Council had all the correct

12:04:33 21 information.

12:04:33 22 304 Q. Okay.

12:04:33 23 A. Yeah.

12:04:43 24 305 Q. And you felt that if they had the

12:04:43 25 correct information, they wouldn't make this

12:04:46 1 decision, whatever kind of decision it was, in this
12:04:49 2 way, right?

12:04:49 3 A. I -- I certainly thought that,
12:04:51 4 uh... Again, I -- there are times when decisions
12:04:54 5 are made that are difficult, uh, and I had made
12:05:05 6 some of those, or been part of a government that
12:05:05 7 made some of those.

12:05:06 8 But I... I -- I -- what I really
12:05:07 9 didn't want to have happen is for people to make a
12:05:09 10 decision without understanding the consequences of
12:05:13 11 that decision.

12:05:13 12 If it's consequences they can live
12:05:16 13 with, fine, but they should know the consequences.

12:05:19 14 306 Q. And I'm going to ask...

12:05:21 15 Before do I that, sir, the decision is
12:05:29 16 communicated on March 12.

12:05:35 17 Do you happen to recall that or are you
12:05:38 18 taking my word for it?

12:05:39 19 A. I -- on the date, I'm taking your
12:05:41 20 word for it, but--

12:05:41 21 307 Q. All right.

12:05:42 22 A. --it was in that time frame,--

12:05:42 23 308 Q. Okay.

12:05:43 24 A. --sure.

12:05:44 25 309 Q. And I want to show you an article

12:05:47 1 that you wrote or a column that you wrote in the
12:05:50 2 Sun on March 16, 2012.

12:06:07 3 MR. LISUS: And before I forget, it's
12:06:09 4 the next exhibit in sequence.

12:06:11 5 MR. MATTHEWS: 10.

12:06:11 6 ---EXHIBIT NO. 10: A Toronto Sun
12:06:11 7 column written by Mr. Snobelen, dated March 16,
12:06:11 8 2012.

12:06:11 9 BY MR. LISUS:

12:06:13 10 310 Q. And just let me know when you've
12:06:15 11 read it and if you remember it.

12:06:40 12 --- (Witness reviewing document.)

12:07:30 13 BY MR. LISUS:

12:07:30 14 311 Q. Okay?

12:07:30 15 A. Mm-hmm.

12:07:31 16 312 Q. And in this article, you refer
12:07:33 17 back to the Mike Harris government's introduction
12:07:43 18 of slot machines into racetracks, right?

12:07:43 19 A. That's correct.

12:07:44 20 313 Q. And you were involved in that
12:07:45 21 government?

12:07:45 22 A. I was involved in that government.

12:07:47 23 314 Q. You were a Cabinet Minister?

12:07:50 24 A. That's correct.

12:07:50 25 315 Q. And you say that:

12:07:51 1 "Harris introduced slot
12:07:52 2 machines in racetracks where gaming
12:07:54 3 was already a normal community
12:07:56 4 activity." [As read.]
12:07:57 5 Right?
12:07:57 6 A. That's correct.
12:07:57 7 316 Q. And in a few minutes, sir, we'll
12:07:59 8 discuss the circumstances surrounding the
12:08:02 9 introduction of slots into racetracks, but perhaps
12:08:06 10 if I could short-circuit it, the government had
12:08:10 11 been trying to introduce slot machines into
12:08:12 12 communities in urban centres and there had been
12:08:15 13 resistance to that; correct?
12:08:17 14 A. There had been several problems
12:08:19 15 with it, yes.
12:08:21 16 317 Q. Okay. And so, the solution that
12:08:23 17 presented itself was that racetracks which were
12:08:26 18 mostly in rural centres were already designated
12:08:30 19 gaming sites, right?
12:08:32 20 A. That's correct.
12:08:32 21 318 Q. And therefore slot machines could
12:08:34 22 be introduced into those racetracks?
12:08:36 23 A. That's correct.
12:08:38 24 319 Q. And the... There was a concern
12:08:40 25 that there would be, or could be cannibalization of

12:08:45 1 the racetracks' customers; correct?

12:08:48 2 A. That was my take at the time, yes.

12:08:50 3 320 Q. Okay. So, as you say in this

12:08:54 4 article:

12:08:55 5 "Harris agreed to share the

12:08:57 6 revenue from slot machines with the

12:08:58 7 horsemen, so the race horse industry

12:09:01 8 would not be harmed by the

12:09:03 9 imposition of slots." [As read.]

12:09:04 10 A. Right.

12:09:05 11 321 Q. That was your understa- -- that --

12:09:06 12 A. That was my understanding at the

12:09:06 13 time,--

12:09:06 14 322 Q. Okay.

12:09:08 15 A. --yes.

12:09:08 16 323 Q. And "at the time" being 1998 as

12:09:10 17 well as March 2012?

12:09:11 18 A. That's correct.

12:09:11 19 324 Q. All right.

12:09:16 20 MR. LISUS: Go off the record for a

12:09:17 21 minute.

12:09:53 22 --- (Discussion off the record.)

12:09:53 23 --- Recess at 12:09 p.m.

12:17:06 24 --- On resuming at 12:17 p.m.

12:18:09 25 BY MR. LISUS:

12:18:10 1 325 Q. I can't quite recall where we were
12:18:12 2 before we broke, Mr. Snobelen, but at some point in
12:18:18 3 the recent past, we were talking about these
12:18:19 4 February 27 radio ads.

12:18:21 5 A. That's correct.

12:18:22 6 326 Q. And I think you said that today is
12:18:24 7 the first time you became aware of -- not -- I will
12:18:26 8 reframe that.

12:18:27 9 You were aware of the ads when they ran
12:18:30 10 because you wrote a --

12:18:30 11 A. Yes.

12:18:31 12 327 Q. -- a column in response.
12:18:32 13 You weren't aware today that Mr. Orsini
12:18:37 14 and Mr. Goodwin sent that e-mail around?

12:18:38 15 A. Right. I assume they were purely
12:18:40 16 political ads and it would be unusual,--

12:18:40 17 328 Q. Right.

12:18:43 18 A. --in my view.

12:18:43 19 329 Q. Do you know a fellow called David
12:18:43 20 Gene?

12:18:43 21 A. Yeah.

12:18:43 22 330 Q. Okay. And how do you know
12:18:43 23 Mr. Gene?

12:18:51 24 A. I know -- I know him by
12:18:53 25 reputation. I probably have met him.

12:18:53 1 331 Q. What --

12:18:55 2 A. He's a Liberal, uh, Party, uh...

12:19:00 3 Umm. He's a political guy.

12:19:02 4 332 Q. Okay. And again, I haven't spent

12:19:05 5 any time in government, so when you say "a

12:19:07 6 political guy", what does that mean?

12:19:11 7 A. Umm. He's certainly aware of --

12:19:15 8 of... Uh. He would be a person who was familiar

12:19:19 9 with -- with party politics, with campaigns, with

12:19:23 10 that sort of thing.

12:19:24 11 333 Q. I see. And so, when you say "he's

12:19:26 12 a political guy", you mean he's a partisan

12:19:29 13 political guy?

12:19:30 14 A. That's correct, yeah.

12:19:30 15 334 Q. Okay.

12:19:31 16 A. Mm-hmm.

12:19:31 17 335 Q. He's not involved in the business

12:19:33 18 of governing; he's involved in the -- the business

12:19:37 19 of advancing the interests of the party he's--

12:19:37 20 A. That's correct.

12:19:37 21 336 Q. --affiliated -- okay.

12:19:40 22 Is that accurate?

12:19:41 23 A. As far as I know, yes.

12:19:42 24 337 Q. Okay.

12:19:42 25 A. Yeah.

12:19:44 1 338 Q. And did you know him in 2012 or
12:19:47 2 know him by reputation in 2012?
12:19:49 3 A. I knew him by reputation. I don't
12:19:52 4 think I knew him at that juncture.
12:19:53 5 339 Q. Okay. And are you aware that he
12:20:00 6 was involved in the Slots at Racing (sic) Program
12:20:05 7 file, so to speak?
12:20:06 8 A. I was not.
12:20:06 9 340 Q. Okay. Are you just becoming aware
12:20:08 10 of that as we talk about it now?
12:20:09 11 A. Yes.
12:20:10 12 341 Q. And does it surprise you that he
12:20:11 13 was involved in the file?
12:20:17 14 A. No, not really.
12:20:18 15 342 Q. Okay.
12:20:19 16 A. No. I -- I -- I'm -- I'm not
12:20:20 17 surprised.
12:20:21 18 I think that horse racing file at that
12:20:25 19 time was -- and still, to a certain extent, is a
12:20:28 20 product of the gaming strategy.
12:20:29 21 And certainly, there would be --
12:20:32 22 politicalized on the gaming strategy. I mean, it's
12:20:35 23 a policy decision, so therefore it has political
12:20:38 24 implication.
12:20:39 25 343 Q. So I'm... When we broke, I have

12:20:41 1 now remembered, we were talking about your column
12:20:48 2 in which you discussed the origins of the Slots at
12:20:48 3 Racetrack--

12:20:48 4 A. That's correct.

12:20:48 5 344 Q. --Program. Okay.

12:21:12 6 So I want to go back to the origins of
12:21:14 7 the program and I want to begin with the letter of
12:21:57 8 intent, June 1998, and that's CR 20345.

12:22:19 9 Now, you were in Cabinet in June of
12:22:21 10 1998;--

12:22:22 11 A. That's correct.

12:22:33 12 345 Q. --correct?

12:22:33 13 A. Yes.

12:22:33 14 346 Q. And do you remember the
12:22:34 15 negotiations that were conducted between the
12:22:35 16 Ontario government and OHRIA, O-H-R-I-A, which
12:22:45 17 culminated in the June 1998 letter of intent?

12:22:47 18 A. I'm aware of it now and I was
12:22:49 19 aware that there was that negotiation at the time.

12:22:51 20 347 Q. Right. And you weren't directly
12:23:06 21 involved in those negotiations?

12:23:07 22 A. I was not.

12:23:09 23 348 Q. Which Ministry was; do you know,
12:23:11 24 sir?

12:23:11 25 A. Well, this was -- this file was

12:23:19 1 assigned to Chris Hodgson, but that would have been
12:23:23 2 an extraordinary assignment which happens from time
12:23:27 3 to time where a Minister who would not normally be
12:23:30 4 responsible for a file gets -- uh, takes on the
12:23:32 5 obligation of working it through.

12:23:33 6 I believe Minister Tabuchi would have
12:23:40 7 been Ministry of Commun..., Community and Social
12:23:42 8 Services at the time.

12:23:42 9 349 Q. Mr. Hodgson signs the letter of
12:23:44 10 intent--

12:23:44 11 A. Right.

12:23:44 12 350 Q. --on behalf of the Ontario
12:23:52 13 government.

12:23:53 14 A. And he would have been Minister of
12:23:53 15 -- I believe -- he may have been at Management
12:23:53 16 Board by that time.

12:23:53 17 351 Q. Chair of Management of Cabinet.

12:23:53 18 A. Okay. So... Yeah. So it would
12:23:54 19 be fairly normal for him. I think he began that
12:23:57 20 before he was at Management.

12:23:57 21 352 Q. Was Mr. Eves involved?

12:23:58 22 A. Mr. Eves was at Finance. Uh.
12:24:07 23 Umm. I would suspect he would certainly be
12:24:07 24 knowledgeable of it.

12:24:07 25 353 Q. Okay.

12:24:09 1 A. Management Board and Finance work
12:24:13 2 hand in hand.
12:24:13 3 354 Q. Okay. But you personally weren't
12:24:15 4 involved in the negotiation;--
12:24:15 5 A. No.
12:24:16 6 355 Q. --correct?
12:24:16 7 A. No.
12:24:17 8 356 Q. And you personally weren't
12:24:19 9 involved in the composition of the terms of the
12:24:21 10 letter of intent, were you?
12:24:22 11 A. No.
12:24:22 12 357 Q. But you understood that what was
12:24:24 13 being negotiated was an overall agreement between
12:24:28 14 the horse racing industry and the Ontario Lottery
12:24:33 15 Corporation as an agent of government for the
12:24:36 16 introduction of slots into racetracks; correct?
12:24:39 17 A. Yes.
12:24:40 18 358 Q. Okay. And what you understood, as
12:24:48 19 well, is that there was going to be an overall
12:24:53 20 agreement between the horse racing industry
12:24:55 21 represented by OHRIA; correct?
12:24:57 22 A. Correct.
12:24:58 23 359 Q. And that would include
12:25:00 24 Standardbred breeders and Thoroughbred breeders?
12:25:03 25 A. The -- the intent at the time was

12:25:05 1 to engage the industry as a whole.

12:25:07 2 360 Q. And that would include breeders?

12:25:09 3 A. That's correct. They were --

12:25:09 4 361 Q. Yeah.

12:25:10 5 A. They were on OHRIA -- they were

12:25:16 6 represented at OHRIA.

12:25:16 7 362 Q. Right.

12:25:16 8 A. Sure.

12:25:18 9 363 Q. Without breeders, there's no

12:25:20 10 horses, right?

12:25:21 11 A. That's... (Nodding head.)

12:25:24 12 364 Q. Right. Without horses, there's no

12:25:24 13 racetracks, right?

12:25:24 14 THE COURT REPORTER: Sorry. You need

12:25:24 15 to say 'yes' or 'no' for the record.

12:25:29 16 THE WITNESS: Horse breeding is a

12:25:31 17 critical element in the supply chain for horse

12:25:33 18 racing; no question.

12:25:33 19 BY MR. LISUS:

12:25:34 20 365 Q. Right. And without the

12:25:39 21 racetracks, there's no gaming sites for slot

12:25:42 22 machines to be introduced into; correct?

12:25:45 23 A. Certainly, they were the choice --

12:25:46 24 eventually, the venue choice for the government.

12:25:49 25 366 Q. Right. And that's because the

12:25:50 1 government ran into a lot of difficulty introducing
12:25:54 2 them into municipalities in urban centres.

12:25:57 3 Councils didn't want them, right?

12:25:59 4 A. I was not on the file at the time,
12:26:03 5 but -- uh, and much of those negotiations would not
12:26:06 6 have come to Cabinet.

12:26:08 7 I think the general, uh, concept of --
12:26:11 8 of venues would have come to Cabinet.

12:26:14 9 367 Q. Okay.

12:26:15 10 A. But there were there was certainly
12:26:21 11 deliberation given to other. I think the
12:26:23 12 government took some steps towards other -- other
12:26:26 13 venues and there were, for a variety of reasons...

12:26:29 14 There were a variety of reasons,
12:26:31 15 amongst which, it might have been municipal
12:26:33 16 resistance, but I'm -- I just know there was
12:26:36 17 some -- there was a series of difficulties with
12:26:38 18 that option.

12:26:39 19 368 Q. Which led to the idea that they
12:26:44 20 would be introduced into racetracks, right?

12:26:47 21 A. Correct.

12:26:47 22 369 Q. And the evidence is that the
12:26:55 23 negotiation leading up to the letter of intent was
12:26:57 24 fairly protracted. It went on for some time?

12:27:01 25 A. That's my understanding.

12:27:02 1 370 Q. Okay. (Nodding head.)

12:27:06 2 And do you know Mr. Willmot?

12:27:08 3 A. I do not.

12:27:09 4 371 Q. Okay.

12:27:12 5 A. I do not.

12:27:12 6 I know his reputation, for sure.

12:27:22 7 372 Q. Okay. And is -- he had a good

12:27:23 8 reputation in the horse racing industry?

12:27:25 9 A. I think there -- like many people,

12:27:26 10 there are mixed opinions. But he certainly was a

12:27:29 11 major -- a -- a major -- a serious and major player

12:27:31 12 in the industry,--

12:27:31 13 373 Q. Okay.

12:27:32 14 A. --for sure.

12:27:32 15 374 Q. Presumably, that's why the

12:27:39 16 government was negotiating with him?

12:27:41 17 A. I believe, at the time, he was the

12:27:42 18 -- the Chair of, uh, Woodbine Entertainment Group.

12:27:45 19 375 Q. Okay.

12:27:52 20 A. Yeah.

12:27:52 21 376 Q. Now, you also understood that in

12:28:00 22 addition to an overall agreement with the industry

12:28:02 23 and the letter of intent, there were going to be

12:28:03 24 site-specific agreements with the racetracks;

12:28:06 25 correct?

12:28:06 1 A. That's correct.

12:28:06 2 377 Q. And these site-specific agreements
12:28:08 3 with racetracks would address the terms and
12:28:13 4 conditions for the introduction of slot machines
12:28:15 5 into those racetracks, right?

12:28:16 6 A. We... At the Cabinet level, we
12:28:21 7 certainly would have been briefed on the -- we
12:28:23 8 would have not been briefed probably on the details
12:28:26 9 of those agreements.

12:28:27 10 We may have been. If we were, I -- I
12:28:30 11 may not have got to that part of my Cabinet binder,
12:28:33 12 but we certainly would have understood that the
12:28:36 13 intent was to have agreements with each of the
12:28:39 14 municipalities, each of those track venues, and
12:28:44 15 that it would be predicated on those -- those
12:28:46 16 venues having an agreement to have a revenue share
12:28:49 17 with -- with -- with the horse industry.

12:28:51 18 378 Q. And I... Sounds a little bit like
12:28:58 19 board meetings, but --

12:28:58 20 A. It -- they're well-named, aren't
12:29:00 21 they.

12:29:00 22 379 Q. Right. And you mentioned you may
12:29:02 23 not have gotten to that part of your Cabinet
12:29:05 24 binder.

12:29:05 25 I've obviously never been to a Cabinet

12:29:08 1 meeting, but I presume at any given Cabinet

12:29:11 2 meeting, a binder is produced in advance?

12:29:13 3 A. That's correct, yes.

12:29:14 4 380 Q. And the... It has a number of

12:29:19 5 agenda items for Cabinet to consider?

12:29:23 6 A. That's correct.

12:29:24 7 381 Q. And I -- I take it that somebody
12:29:25 8 has responsibility for presenting each agenda item?

12:29:28 9 A. Generally the Minister
12:29:30 10 responsible, yes.

12:29:30 11 382 Q. Okay. And sometimes the -- all
12:29:32 12 the Cabinet Ministers have had an opportunity to
12:29:36 13 review the contents of the entire Cabinet binder
12:29:40 14 and sometimes they don't.

12:29:41 15 Is that fair?

12:29:41 16 A. I think that we... It would be
12:29:44 17 fair to say that there's always that opportunity.

12:29:47 18 In most cases -- I can only speak
12:29:49 19 for -- for -- for the government I was part of.

12:29:51 20 Umm. Minis... The staff of the
12:29:56 21 Minister would, for sure, have gone, tab by tab,
12:30:01 22 and -- and -- and, uh -- and produced probably
12:30:02 23 for -- they would produce for me and probably for
12:30:05 24 other Ministers a summation of each of the tabs.

12:30:07 25 And we would at least read the

12:30:09 1 summation and then read the tab if there was an
12:30:11 2 issue that was obvious.

12:30:12 3 383 Q. I see.

12:30:13 4 But the way it would work, I presume,
12:30:16 5 is that there would be that process you've just
12:30:19 6 described, and then there would be reliance on the
12:30:22 7 presenter for the agenda item to make a
12:30:25 8 presentation?

12:30:25 9 A. That's correct.

12:30:28 10 384 Q. And it would be presumed by the
12:30:30 11 Cabinet Minister that the recommendation being made
12:30:33 12 by the presenter or the Minister was a studied,
12:30:39 13 fully developed recommendation; correct?

12:30:42 14 A. In -- in -- with... Yes. In all
12:30:47 15 cases, it would be Cabinet-ready. (Nodding head.)

12:30:50 16 385 Q. Okay. Now, you don't think you
12:31:07 17 were involved in the details of the siteholder
12:31:10 18 agreements, but is it your recollection that
12:31:15 19 Cabinet was generally aware of the--

12:31:15 20 A. Yes.

12:31:17 21 386 Q. --structure? Okay.

12:31:17 22 So I'm going to ask you just to look
12:31:19 23 with me at a particular siteholder agreement that's
12:31:21 24 been put forward by the government in this case.

12:31:22 25 It's the site (sic) agreement between

12:31:26 1 Ontario Lottery Corporation and Hiawatha Horse
12:31:29 2 Park.
12:31:29 3 Do you know Hiawatha--
12:31:29 4 A. I --
12:31:30 5 387 Q. --Horse Park?
12:31:30 6 A. Hiawatha was the first one that
12:31:32 7 was -- that was done, yes.
12:31:33 8 388 Q. Okay.
12:31:35 9 MR. MATTHEWS: Before we do that, can
12:31:36 10 we mark the letter of intent as Exhibit 11, please?
12:31:39 11 MR. LISUS: Yes.
12:31:39 12 THE WITNESS: Sorry.
12:31:40 13 MR. MATTHEWS: Thank you very much.
12:31:40 14 ---EXHIBIT NO. 11: Letter of intent
12:31:42 15 dated June 1998, Production Number CR 20345.
12:31:53 16 MR. LISUS: And if you could give
12:31:55 17 Mr. Snobelen a copy of the -- a legible copy of the
12:32:17 18 Hiawatha track, unlike mine...
10:55:07 19 --- (Sotto voce discussion.)
12:32:19 20 MR. LISUS: I'm trying to give you a
12:32:28 21 nice legible copy, Mr. Snobelen.
12:32:30 22 MR. MATTHEWS: One second.
12:32:31 23 THE WITNESS: Want to make sure Jim
12:32:35 24 Henderson's signature is clear?
12:32:36 25 MR. MATTHEWS: This is SB 2450.

12:32:44 1 MR. LISUS: I don't know whose
12:32:45 2 signature is on it. Let's see.
12:32:47 3 MR. MATTHEWS: James Henderson.
12:32:51 4 BY MR. LISUS:
12:32:51 5 389 Q. James Henderson. You've got a
12:32:52 6 good memory.
12:32:53 7 A. James Henderson is an interesting
12:32:55 8 guy.
12:32:55 9 390 Q. Who is he?
12:32:57 10 A. He's the owner of the -- of that
12:32:58 11 track.
12:32:58 12 391 Q. Right.
12:32:58 13 A. Yeah.
12:32:58 14 392 Q. And that's a private racetrack,
12:33:00 15 right?
12:33:00 16 A. That's correct.
12:33:01 17 393 Q. It's private property, right?
12:33:02 18 A. That's correct.
12:33:03 19 394 Q. And I just want to look at this
12:33:14 20 with you to make sure that I'm understanding it the
12:33:16 21 way you understood it in 1998, Mr. Snobelen.
12:33:29 22 So if we look at the siteholder
12:33:32 23 agreement and we look at the third paragraph, it
12:33:32 24 says:
12:33:37 25 "The Province has signed a

12:33:37 1 letter of intent dated June 25,
12:33:37 2 1998." [As read.]
12:33:41 3 We just discussed that, right?
12:33:41 4 A. Mm-hmm.
12:33:41 5 395 Q. And that letter of intent --
12:33:49 6 --- (Court reporter appeals.)
12:33:49 7 MR. RATCLIFFE: Just wait one second.
12:33:49 8 MR. LISUS: Oh.
12:33:51 9 MR. RATCLIFFE: He's just getting the
12:33:51 10 paragraph here.
12:33:52 11 THE WITNESS: Gotcha.
12:33:54 12 BY MR. LISUS:
12:33:54 13 396 Q. Are you with me?
12:33:55 14 A. Yeah.
12:33:55 15 397 Q. Okay. So if we look at the third
12:33:55 16 paragraph:
12:33:55 17 "And whereas the Province has
12:33:57 18 signed a letter of intent on June
12:33:59 19 25, 1998..." [As read.]
12:33:59 20 Right? We just looked at that
12:34:01 21 together.
12:34:01 22 A. Mm-hmm.
12:34:03 23 398 Q. Yes?
12:34:03 24 A. Yes. Yes. I'm sorry. Yes.
12:34:05 25 399 Q. And that letter of intent is

12:34:09 1 between the..., between OHRIA and the Province;
12:34:14 2 correct?

12:34:14 3 A. That's correct.

12:34:14 4 400 Q. And this -- and that letter of
12:34:18 5 intent also contemplates a siteholder agreement
12:34:23 6 like this one that we're looking at; correct?

12:34:25 7 A. That's correct.

12:34:33 8 401 Q. And this siteholder agreement
12:34:35 9 isn't signed but OHRIA -- by OHRIA, but OHRIA plays
12:34:40 10 a role in the deal that was struck with the
12:34:42 11 siteholder agreement, right? Do you remember that?

12:34:44 12 A. I would not have had direct
12:34:47 13 knowledge of the siteholder agreements.

12:34:49 14 I -- I do remember that the intention
12:34:52 15 was that horsepersons would be a revenue flow of
12:34:58 16 the revenue from -- from -- that -- that came from
12:35:00 17 these agreements.

12:35:01 18 402 Q. Right. That horsepersons,
12:35:02 19 including breeders, would be a beneficiary of the
12:35:06 20 revenue flow that came out of the slot machines,
12:35:08 21 right?

12:35:08 22 A. Yeah. I think that would be the
12:35:10 23 general awareness of -- of Cabinet, for sure.

12:35:12 24 403 Q. And that was the general intent of
12:35:14 25 Cabinet; correct?

12:35:15 1 A. Absolutely. Very clearly.

12:35:17 2 404 Q. And just in general terms, sir,
12:35:20 3 the way I understood these sites to work is that
12:35:23 4 there was an existing racetrack with a parking lot
12:35:26 5 and a stand and facilities and washrooms and
12:35:30 6 kitchens around such, right?

12:35:32 7 A. That's correct, yeah.

12:35:33 8 405 Q. And what the government did with
12:35:36 9 the racetrack operators is they created, inside
12:35:43 10 these racetracks, a separate business.

12:35:45 11 Would --

12:35:45 12 A. Yes.

12:35:46 13 406 Q. Right.

12:35:47 14 A. A separate business line often
12:35:49 15 with a separate entrance, yeah.

12:35:52 16 407 Q. Right.

12:35:54 17 And the racetrack agreed to license a
12:36:00 18 portion of its facilities to provide services for
12:36:08 19 the lottery machines, right?

12:36:09 20 A. That's correct.

12:36:10 21 408 Q. Okay. And the slot machines...
12:36:17 22 The slot machine business within the racetrack is
12:36:20 23 described in these agreements as the "prescribed
12:36:24 24 lottery scheme".

12:36:26 25 Do you remember that term?

12:36:27 1 A. Yeah. I -- I do remember that
12:36:28 2 term, yes.

12:36:29 3 409 Q. Okay. And what these agreements
12:36:34 4 did was create a business within a business, right?

12:36:37 5 A. That's correct.

12:36:38 6 410 Q. And the... If we look at the
12:36:48 7 agreement together, we see, at the bottom of the
12:36:53 8 first page:

12:36:55 9 "OLC..."

12:36:56 10 Which is the predecessors to OLG,--

12:36:59 11 A. Right.

12:36:59 12 411 Q. --right?

12:37:00 13 "...requested, and the
12:37:01 14 racetrack owner agreed to develop
12:37:09 15 and license a portion of the
12:37:10 16 racetrack to provide related
12:37:15 17 services for the prescribed lottery
12:37:17 18 scheme." [As read.]

12:37:17 19 Right?

12:37:17 20 A. Correct.

12:37:18 21 412 Q. Okay. And as you expressed in the
12:37:25 22 article, there was a concern about customers being
12:37:27 23 taken away from the horse racing business, and so
12:37:32 24 it was agreed that the lottery business would be
12:37:40 25 operated to maximize interest in horse racing

12:37:45 1 events at the racetrack, right?

12:37:46 2 A. That's correct.

12:37:47 3 413 Q. And it was also agreed in these

12:37:48 4 agreements that the horsepeople and the racetrack

12:37:51 5 would conduct their affairs to promote and enhance

12:37:56 6 the prescribed lottery scheme, right?

12:37:59 7 A. I am not aware of that particular

12:38:01 8 part, but that's not surprising to me, given the

12:38:04 9 nature of the agreement.

12:38:05 10 414 Q. Let me see if I can just refresh

12:38:08 11 your memory about that.

12:38:13 12 If you take a look at Article 2.1...

12:38:17 13 MR. RATCLIFFE: Just take a moment to

12:38:18 14 read it through.

12:38:21 15 THE WITNESS: All right. First, I'll

12:38:22 16 find it.

12:38:23 17 BY MR. LISUS:

12:38:23 18 415 Q. Yeah. It's page... It's easier

12:38:25 19 to follow the articles. Page 14 of 61, up on the

12:38:29 20 top.

12:38:31 21 Top middle of the page is the page

12:38:34 22 numbers. If you go to page 14.

12:38:42 23 MR. RATCLIFFE: Sorry. Page 40 or --

12:38:45 24 MR. LISUS: Page 14, one-four, Article

12:38:48 25 2.1.

12:38:57 1 THE WITNESS: They... Not at 2.1 yet.

12:39:05 2 BY MR. LISUS:

12:39:05 3 416 Q. See the heading, "Appointment of

12:39:08 4 Siteholder", Article 2?

12:39:10 5 A. So it's got to be right in here.

12:39:10 6 There we go.

12:39:10 7 MR. RATCLIFFE: There's the pages

12:39:10 8 there. There's --

12:39:10 9 THE WITNESS: Yeah. Yeah. We're in

12:39:30 10 the right territory. 2.1?

12:39:30 11 BY MR. LISUS:

12:39:31 12 417 Q. Yeah.

12:39:34 13 A. Yeah. Sorry.

12:39:35 14 418 Q. No problem. It took me a while,

12:39:38 15 too.

12:39:38 16 MR. RATCLIFFE: Take a moment to read

12:39:39 17 it.

12:39:39 18 --- (Witness reviewing document.)

12:40:24 19 THE WITNESS: Gotcha.

12:40:26 20 BY MR. LISUS:

12:40:26 21 419 Q. Okay.

12:40:26 22 So you see, in Article 2, it sets

12:40:29 23 out..., the agreement sets out the expectation

12:40:36 24 that:

12:40:36 25 "The racetrack will also be

12:40:39 1 responsible for and covenants to
12:40:42 2 conduct its horse racing operations
12:40:45 3 so as to provide an entertaining
12:40:48 4 recreational product, to maximize
12:40:51 5 interest in horse racing with a view
12:40:55 6 to enhancing the success of the
12:40:57 7 prescribed lottery scheme."
12:40:57 8 [As read.]
12:41:00 9 Correct?
12:41:00 10 A. Correct, yeah.
12:41:01 11 420 Q. Okay. And so these two businesses
12:41:03 12 were going to work together; correct?
12:41:05 13 A. That's correct.
12:41:05 14 421 Q. Right.
12:41:08 15 And the lottery scheme, the prescribed
12:41:13 16 lottery scheme was going to work to keep people
12:41:16 17 interested in horse racing; correct?
12:41:17 18 A. Correct.
12:41:18 19 422 Q. And the track and the horsepeople
12:41:20 20 were going to conduct their business to enhance the
12:41:24 21 success of the prescribed lottery scheme; fair?
12:41:28 22 A. That's what's written there, yes.
12:41:30 23 423 Q. All right. And in -- and if we
12:41:33 24 look as the agreement, it talks about "Premises"
12:42:06 25 with a capital "P". And the "Premises" were the

12:42:10 1 separate physical premises within the racetrack
12:42:15 2 that housed the prescribed lottery scheme business,
12:42:19 3 right?

12:42:19 4 A. (Nodding head.) Okay.

12:42:22 5 424 Q. And it was agreed that the OLC...,
12:42:43 6 which was an agent of the Crown, right?

12:42:44 7 A. Mm-hmm. It is, yes.

12:42:46 8 425 Q. Yeah.

12:42:46 9 A. Yeah.

12:42:47 10 426 Q. All right. ...would pay to the
12:42:49 11 racetrack a commission?

12:42:53 12 A. That's correct.

12:42:54 13 427 Q. And the commission was a portion
12:42:56 14 of the gaming revenues generated from the business
12:43:00 15 being carried on at the track, right?

12:43:02 16 A. That's my understanding, yes.

12:43:03 17 428 Q. All right. And the commission was
12:43:05 18 paid in consideration for the racetrack providing
12:43:11 19 the premises to the Crown; correct?

12:43:14 20 A. That's correct.

12:43:15 21 429 Q. And providing the services it
12:43:17 22 provided to enhance the prescribed lottery scheme;
12:43:21 23 correct?

12:43:22 24 A. That's correct.

12:43:23 25 430 Q. And then, it was agreed between

12:43:25 1 the parties that the revenue generated from the
12:43:31 2 gaming business on the premises would be shared
12:43:35 3 according to a formula, right?

12:43:37 4 A. Correct.

12:43:38 5 431 Q. 75 per cent of the gaming revenue
12:43:42 6 would go to the government, right?

12:43:44 7 A. Correct.

12:43:44 8 432 Q. 5 per cent to the municipality?

12:43:47 9 A. Correct.

12:43:52 10 433 Q. And the rest to the racetrack and
12:43:56 11 the horsepeople, right?

12:43:57 12 A. That's correct.

12:43:58 13 434 Q. And that would include breeders,
12:44:00 14 right?

12:44:00 15 A. It would -- it certainly included
12:44:04 16 OHRIA, so breeders were part of OHRIA, yes.

12:44:08 17 435 Q. Okay. And we discussed how the
12:44:33 18 racetrack had to conduct its business to enhance
12:44:33 19 the prescribed lottery scheme.

12:44:37 20 It was also expected that the
12:44:37 21 horsepeople would conduct themselves in a way to
12:44:42 22 enhance the prescribed lottery scheme, right?

12:44:42 23 A. Clear in the article we just -- we
12:44:43 24 just looked at.

12:44:43 25 436 Q. Right. And if we look at 5 --

12:44:47 1 Article 5.2, for instance, on page 23, if you look
12:44:55 2 at the top, Mr. Snobelen, page 23.
12:44:56 3 A. Gotcha.
12:44:57 4 437 Q. 5.2 is at the bottom.
12:45:09 5 Do you see where it says --
12:45:10 6 A. Getting there, yeah.
12:45:12 7 MR. RATCLIFFE: Take a moment. Read
12:45:14 8 the whole thing.
12:45:16 9 BY MR. LISUS:
12:45:16 10 438 Q. 5.2.
12:45:17 11 --- (Witness reviewing document.)
12:46:53 12 BY MR. LISUS:
12:46:53 13 439 Q. Okay?
12:46:53 14 A. Gotcha.
12:46:54 15 440 Q. All right. So, what's agreed to
12:46:56 16 in 5.2 is that the horsepeople will conduct their
12:47:01 17 business and affairs so as to provide an
12:47:04 18 entertaining recreational product, to maximize
12:47:08 19 interest in horse racing events at the racetrack,
12:47:11 20 all with a view to enhancing the success of the
12:47:15 21 prescribed lottery scheme, right?
12:47:17 22 A. Yes.
12:47:18 23 441 Q. Okay. And so what the deal was,
12:47:22 24 as you understood it in 1998, sir, is that the
12:47:25 25 racetracks, the horsepeople, and OLC are going to

12:47:28 1 work together at these sites, really promoting each
12:47:37 2 other's respective businesses; fair?

12:47:40 3 A. Certainly not interfering with
12:47:42 4 them, but at -- at -- at the very least, not
12:47:43 5 interfering with, and hopefully working together.

12:47:46 6 I think that's the flavour of the
12:47:48 7 agreement.

12:47:48 8 442 Q. That was the intent?

12:47:49 9 A. Yeah.

12:47:50 10 443 Q. Okay. And, indeed, the
12:47:55 11 horsepeople and the track had an obligation to
12:47:57 12 enhance the success of the prescribed lottery
12:48:01 13 scheme and the OLC had an obligation to maximize
12:48:05 14 interest in horse racing events?

12:48:07 15 A. I think that's fair to say.

12:48:08 16 444 Q. Okay. And as a result of that,
12:48:11 17 those two -- those two kinds of activities going on
12:48:15 18 at racetracks, industry would be... Revenue would
12:48:26 19 be generated and the revenue would be shared,
12:48:28 20 right?

12:48:29 21 A. Correct.

12:48:29 22 445 Q. Okay. And --

12:48:32 23 MR. RATCLIFFE: Just, do you need a
12:48:34 24 moment or are you...?

12:48:34 25 THE WITNESS: No, no. I'm just -- I

12:48:36 1 just found this part. It's okay.

12:48:41 2 BY MR. LISUS:

12:48:41 3 446 Q. And, in fact, the portion of the
12:48:42 4 revenue generated from those activities that was to
12:48:46 5 go to horsepeople went into a trust account, right?

12:48:49 6 A. That's correct.

12:48:51 7 447 Q. And they were trust fund -- that
12:48:52 8 revenue was trust funds for the benefit of the
12:48:56 9 horsepeople; correct?

12:48:57 10 A. Yes. I think that, umm, it says
12:49:00 11 "go to a trust fund", umm...

12:49:03 12 448 Q. ...for the respective horsepeople?

12:49:05 13 A. And not to be used for any purpose
12:49:07 14 other than enhancing purposes on live horse races
12:49:11 15 conducted by the siteholder at the racetrack.

12:49:11 16 449 Q. Right.

12:49:14 17 A. Yes.

12:49:15 18 450 Q. So the portion of the revenue that
12:49:16 19 went to the horsepeople and flowed out to the
12:49:18 20 industry including breeders was, under this
12:49:20 21 business deal, trust funds; fair?

12:49:23 22 A. Well,--

12:49:23 23 MR. RATCLIFFE: Just --

12:49:25 24 THE WITNESS: --that's why I was --

12:49:25 25 MR. RATCLIFFE: I'm just -- is that

12:49:26 1 sort of a legal question you're asking here?

12:49:29 2 MR. LISUS: That's what the deal was.

12:49:30 3 That's what the contract says.

12:49:32 4 THE WITNESS: Well, our understanding,
12:49:33 5 so you obviously don't want my legal interpretation
12:49:36 6 of a contract.

12:49:36 7 BY MR. LISUS:

12:49:37 8 451 Q. No.

12:49:37 9 A. I think that would be pointless.

12:49:38 10 Our -- our understanding from -- as a
12:49:41 11 government, was that...

12:49:45 12 My understanding, as I sat in Cabinet,
12:49:48 13 was that 5 per cent of the revenue generated would
12:49:52 14 go to the municipality for municipality support.

12:49:56 15 20 per cent would go to the -- the racetrack horse
12:49:58 16 community, writ large.

12:50:00 17 10 per cent of that would go, or half
12:50:02 18 of that amount would go to benefit horse racing.

12:50:06 19 452 Q. Right. And it had to go to
12:50:08 20 benefit horse racing,--

12:50:09 21 A. Yes.

12:50:10 22 453 Q. Right?

12:50:10 23 A. Right.

12:50:10 24 454 Q. And it had to go to benefit horse
12:50:14 25 racing because that was what the intent was;

12:50:16 1 correct?

12:50:16 2 A. Yes.

12:50:17 3 455 Q. And the funds from the gaming

12:50:20 4 revenue went into a trust fund for that purpose,

12:50:22 5 right?

12:50:23 6 A. That's correct.

12:50:23 7 456 Q. Okay.

12:50:27 8 A. I -- I am somewhat surprised that

12:50:29 9 it's spelled out in terms of a purse account here,

12:50:32 10 so that's a little bit different, but it's okay.

12:50:35 11 It's fine.

12:50:35 12 457 Q. And let me just ask you generally

12:50:37 13 about purses or the use of that word. You

12:50:42 14 triggered that for me.

12:50:43 15 The way purses work is that as the

12:50:47 16 Slots at Racetrack Program became successful over

12:50:51 17 time, it generated increased purses, right?

12:50:54 18 A. Correct, yes.

12:50:59 19 458 Q. And obviously, when this was first

12:51:01 20 conceived and established, it wasn't known whether

12:51:03 21 it was going to be successful or not, right?

12:51:09 22 A. Yeah. No, that -- that's quite

12:51:10 23 correct, yes.

12:51:11 24 459 Q. It ended up being much more

12:51:13 25 successful than anyone thought, right?

12:51:16 1 A. I believe, if memory serves, that
12:51:18 2 our initial brief on slots, period, would have been
12:51:19 3 a billion-dollar industry, which would have made
12:51:22 4 this revenue sharing, at peak, \$250-million and we
12:51:29 5 -- in fact, it peaked at \$345-million.

12:51:31 6 460 Q. Okay. So it exceeded forecasts.
12:51:33 7 I've seen multiple references to that, but you--

12:51:33 8 A. Yeah.

12:51:37 9 461 Q. --recall that?

12:51:37 10 A. Yes.

12:51:38 11 462 Q. Okay. And just the way -- the
12:51:41 12 connection - because, again, I want to make sure I
12:51:43 13 understand this, Mr. Snobelen, not being a horseman
12:51:47 14 - the connection between purses and breeding is, if
12:51:52 15 the -- if the -- if purses -- the value of purses
12:51:54 16 gets enhanced, there's more races and more breeding
12:51:57 17 to race for those purses?

12:52:00 18 A. Yes.

12:52:00 19 463 Q. Okay. And so, breeders understand
12:52:09 20 that there are purses available at a certain level
12:52:13 21 which, in turn, generates more races.

12:52:17 22 The higher the purses, more races
12:52:20 23 generally. Is that true?

12:52:21 24 A. A point of -- actually, that's a
12:52:22 25 point of contention that the Ontario Racing

12:52:24 1 Commission dealt with for a decade after -- after
12:52:26 2 this agreement.
12:52:26 3 Umm. The question would be how -- what
12:52:33 4 is the right combination of racing opportunities
12:52:36 5 and purses, and that's debatable.
12:52:38 6 But it's not debatable that the amount
12:52:42 7 of purse money available has an effect on breeding.
12:52:47 8 464 Q. Okay. And if there's more purse
12:52:55 9 money available, there will be more breeding.
12:52:57 10 If there's less purse money available,
12:53:00 11 there... In general terms?
12:53:02 12 A. In general terms, that would be
12:53:04 13 accurate.
12:53:04 14 465 Q. Okay. And so, we see this
12:53:06 15 agreement talk about services being provided and
12:53:10 16 commissions being paid.
12:53:10 17 The commissions are from the gaming
12:53:13 18 revenue and they are for the services provided;
12:53:16 19 correct?
12:53:16 20 A. Correct.
12:53:16 21 466 Q. All right. And the horsepeople's
12:53:22 22 share of the gaming revenue generated was their
12:53:29 23 commission from that activity, right?
12:53:31 24 A. That's correct.
12:53:31 25 467 Q. Okay.

12:53:37 1 A. Yes.

12:53:37 2 MR. LISUS: If I might just mark that

12:53:38 3 Hiawatha contract as the next exhibit.

12:53:42 4 MR. MATTHEWS: 12.

12:53:44 5 MR. LISUS: 12.

12:53:45 6 BY MR. LISUS:

12:53:46 7 468 Q. May I have that back,

12:53:48 8 Mr. Snobelen?

12:53:48 9 A. Sure.

12:53:48 10 469 Q. Thank you.

12:53:50 11 ---EXHIBIT NO. 12: Siteholder

12:53:51 12 agreement between Ontario Lottery Corporation and

12:53:51 13 Hiawatha Horse Park, Production Number SB 2450.

12:54:01 14 BY MR. LISUS:

12:54:02 15 470 Q. One of the things that was done

12:54:03 16 with the horsepeople's commission was that monies

12:54:08 17 went directly from the gaming revenues into the

12:54:11 18 Horse Improvement Program?

12:54:15 19 A. I -- I am not clear about the

12:54:17 20 wiring, but certainly the Horse -- yes, the Horse

12:54:21 21 Improvement Program was, in part, supported by --

12:54:25 22 by, uh,--

12:54:26 23 471 Q. The commission?

12:54:26 24 A. --the Slots at Racetracks Program,

12:54:29 25 yes.

12:54:29 1 472 Q. All right.

12:54:30 2 A. That's why I found the "purses"

12:54:34 3 comment in the contract of interest.

12:54:35 4 473 Q. Okay. And we discussed OHRIA's

12:55:00 5 involvement in this deal.

12:55:04 6 I noticed that at a number of places;

12:55:08 7 for example, 3.5, Article 3.5 talking about the

12:55:12 8 capital allowance for the construction of the

12:55:21 9 premises to house the gaming business. OHRIA would

12:55:31 10 approve expenditures --

12:55:35 11 MR. RATCLIFFE: Maybe just give him--

12:55:35 12 MR. LISUS: Yeah.

12:55:36 13 MR. RATCLIFFE: --a moment to read

12:55:39 14 whatever paragraph you're referring to.

12:55:41 15 --- (Witness reviewing document.)

12:56:06 16 BY MR. LISUS:

12:56:06 17 474 Q. Do you see that?

12:56:07 18 A. I do.

12:56:07 19 475 Q. Okay. And I presume the

12:56:09 20 government obviously understood and intended that

12:56:11 21 OHRIA would play a role in the administration of

12:56:14 22 this relationship between the prescribed lottery

12:56:22 23 scheme business at the racetracks and the horse

12:56:26 24 racing activity, right?

12:56:27 25 A. They are named.

12:56:29 1 476 Q. And I want to just show you a
12:56:40 2 document dated September 1, 1998.
12:56:53 3 MR. RATCLIFFE: Thank you.
12:56:53 4 MR. MATTHEWS: CR 13.
12:56:59 5 BY MR. LISUS:
12:57:00 6 477 Q. So this is a... Take a look at
12:57:02 7 the document.
12:57:06 8 --- (Witness reviewing document.)
12:57:46 9 BY MR. LISUS:
12:57:47 10 478 Q. Does this kind of document look
12:57:48 11 familiar to you?
12:57:49 12 A. This kind of document does, yes.
12:57:51 13 479 Q. Okay. And are you able to tell me
12:57:53 14 what it looks like to you?
12:57:54 15 A. This is a rollout plan for a -- a
12:57:58 16 policy, a -- a fairly typical one. Umm. It
12:58:03 17 creates a common fact sheet that would be used by
12:58:07 18 people who are communicating on policy.
12:58:15 19 480 Q. And the fact sheet makes it clear
12:58:19 20 at - I'm looking at Number 6 - that industry
12:58:21 21 revenues from slot machines will be invested back
12:58:24 22 into horse breeding, ownership and racing, right?
12:58:28 23 A. Mm-hmm. It does, indeed.
12:58:30 24 481 Q. And that was the intent at the
12:58:32 25 time?

12:58:32 1 A. That's correct.

12:58:32 2 482 Q. And as this program developed, it
12:58:47 3 became successful; correct, the introduction of
12:58:49 4 slot machines into racetracks?

12:58:51 5 A. It exceeded expectations, yes.

12:58:53 6 483 Q. And it was -- I think I've seen
12:59:00 7 reference in the documents to it being a win/win.

12:59:05 8 The Ontario Lottery Corporation
12:59:08 9 generated a lot of revenue from the slot machines,
12:59:10 10 right?

12:59:10 11 A. Correct. It did, yes.

12:59:12 12 484 Q. And a portion of that revenue in
12:59:15 13 the form of commission was reinvested in the horse
12:59:19 14 racing industry, right?

12:59:20 15 A. That's correct, yes.

12:59:21 16 485 Q. And that reinvestment was
12:59:23 17 beneficial to rural Ontario and the agricultural
12:59:29 18 economy?

12:59:30 19 A. Clearly.

12:59:30 20 486 Q. Including horse breeders?

12:59:32 21 A. Clearly.

12:59:33 22 487 Q. And this demonstrated itself to be
12:59:37 23 a successful arrangement between racetracks,
12:59:42 24 government, and the horsepeople including breeders,
12:59:46 25 right?

12:59:46 1 A. During our time in government, we
12:59:48 2 did not have issue with the program.

12:59:51 3 488 Q. Right.

13:00:02 4 And you actually said something there
13:00:03 5 that resonated with me because I do, in my review
13:00:08 6 of the documents, sort of see a change in approach
13:00:10 7 to the program with the change in government in
13:00:14 8 2003.

13:00:15 9 Is that why you made that statement a
13:00:20 10 minute ago?

13:00:20 11 A. Uh. As of -- you know, I left
13:00:23 12 government in 2002 voluntarily, and at that time,
13:00:29 13 it had -- this program had never come back to a
13:00:33 14 subcommittee of Cabinet or to Cabinet with -- you
13:00:37 15 know, if there were irritants, they did not appear
13:00:42 16 before us.

13:00:42 17 489 Q. Right. And I want to just ask you
13:01:16 18 about a document which is identified as a
13:01:18 19 Management Board fact sheet, CRE 40396, dated May
13:01:18 20 2000.

13:01:37 21 MR. LISUS: And the prior document,
13:01:38 22 dated September 1, 1998, is the next exhibit in
13:01:40 23 sequence.

13:01:41 24 MR. MATTHEWS: 13.

13:01:42 25 ---EXHIBIT NO. 13: A document dated

13:01:43 1 September 1, 1998, Production Number CR 13.

13:02:02 2 ---(Witness reviewing document.)

13:02:03 3 BY MR. LISUS:

13:02:03 4 490 Q. You left government when, sir;

13:02:06 5 2002?

13:02:06 6 A. 2002.

13:02:07 7 491 Q. Okay. So, as of May 2000, you

13:02:10 8 were still in government and you were a Cabinet

13:02:13 9 Minister?

13:02:14 10 A. That's correct. And serving on

13:02:17 11 the Management Board.

13:02:17 12 492 Q. I didn't hear the last thing you

13:02:19 13 said.

13:02:19 14 A. And serving on Management Board.

13:02:21 15 493 Q. Okay. So, when you are done with

13:02:27 16 that, let me know.

13:02:28 17 ---(Witness reviewing document.)

13:03:21 18 THE WITNESS: Yeah.

13:03:21 19 BY MR. LISUS:

13:03:22 20 494 Q. I just wanted to understand

13:03:23 21 something you said to me.

13:03:24 22 You said, "And serving on Management

13:03:24 23 Board."

13:03:26 24 And so, just to explain that to me, is

13:03:29 25 every Cabinet Minister on Management Board?

13:03:32 1 A. No.

13:03:32 2 495 Q. Okay.

13:03:32 3 A. No. Cabinet Ministers are... In
13:03:36 4 fact, Members of Provincial Parliament can be
13:03:38 5 assigned to work on subcommittees of Cabinet. It
13:03:41 6 would be normal for a Cabinet Minister to serve on
13:03:45 7 one or two of those.

13:03:46 8 496 Q. Okay.

13:03:46 9 A. I believe I was vice-chair of
13:03:48 10 Management Board at that time.

13:03:49 11 497 Q. Okay. And what exactly is
13:03:53 12 Management Board?

13:03:53 13 A. Management Board is a subcommittee
13:03:58 14 of -- of Cabinet, so submissions that required a
13:04:03 15 management overview would often -- most often go to
13:04:08 16 that subcommittee for that subcommittee's
13:04:10 17 consideration before the -- before that item
13:04:15 18 ultimately made it to Cabinet or in some cases
13:04:17 19 didn't make it to Cabinet.

13:04:19 20 498 Q. Okay. And so, here we see slot
13:04:21 21 machine initiative at racetracks being discussed at
13:04:25 22 Management Board in May 2000?

13:04:27 23 A. Yes.

13:04:28 24 499 Q. And do you, perchance, recall
13:04:33 25 there being discussion on slots machine initiative?

13:04:39 1 A. Yeah. It -- it rings a bell, for
13:04:41 2 sure. Mm-hmm.
13:04:42 3 500 Q. Okay. And part of the discussion
13:04:44 4 is the benefits to the horse racing industry of the
13:04:46 5 initiative?
13:04:47 6 A. That's correct.
13:04:49 7 501 Q. And the Management Board is -- or
13:04:53 8 notes that:
13:04:54 9 "Industry revenues will be
13:04:56 10 reinvested in horse breeding,
13:04:58 11 ownership and racing." [As read.]
13:04:59 12 Right?
13:05:00 13 A. That's correct.
13:05:02 14 502 Q. And that reinvestment would occur
13:05:04 15 through the flow of the commission of the gaming
13:05:09 16 revenue flew down to breeders and owners and
13:05:16 17 horsemen who race the horses, right?
13:05:20 18 A. Yes, as specified in the document.
13:05:21 19 503 Q. Okay. And am I correct, sir,
13:05:26 20 there was a moratorium of sorts placed on the
13:05:30 21 creation of new slot machine sites at racetracks in
13:05:34 22 2000?
13:05:35 23 A. That's correct.
13:05:35 24 504 Q. And was that because the
13:05:38 25 government -- the initiative was so successful in

13:05:41 1 terms of its..., in terms of its popularity at
13:05:52 2 racetracks that the government wanted to pause?

13:05:56 3 A. I believe at the time - and I'm
13:05:59 4 relying on memory, which this is some time ago -
13:06:03 5 but if I recall correctly, there were -- the
13:06:06 6 government wanted to make sure that it had
13:06:10 7 community support in all cases.

13:06:13 8 I don't -- I don't think there was a
13:06:15 9 challenge from existing racetracks, but there were
13:06:19 10 proposed racetracks that did not -- if I recall
13:06:22 11 this item correctly, there were proposed racetracks
13:06:28 12 that did not have community support.

13:06:30 13 505 Q. And I take it, that is because
13:06:32 14 horse racing and wagering was very well-established
13:06:36 15 part of Ontario, in particular, rural Ontario's
13:06:40 16 community and cultural experience, right?

13:06:42 17 A. Yeah. That would have been my
13:06:43 18 understanding, yes.

13:06:44 19 506 Q. And it employed a lot of people
13:06:45 20 and had a lot of benefits to the agricultural
13:06:48 21 economy, right?

13:06:49 22 A. Yep. That would be my
13:06:50 23 understanding, as well.

13:06:51 24 507 Q. But there were elements in some
13:06:52 25 communities that perceived slot machines as just

13:06:56 1 pure "gambling", in quotes, and were concerned
13:06:59 2 about some of the possible social issues like
13:07:02 3 addiction and -- and intemperate spending, so to
13:07:09 4 speak?

13:07:09 5 A. Certainly, all communities have an
13:07:11 6 element of that concern.

13:07:13 7 508 Q. All right.

13:07:13 8 A. I believe there was, at the time -
13:07:16 9 again relying on memory - there were some proposals
13:07:19 10 for either dramatic expansion of an existing -- a
13:07:27 11 historic track that was not currently operating or
13:07:31 12 a new track that, uh, was outside of the scope of
13:07:35 13 the initial thinking of the project.

13:07:37 14 509 Q. Okay. So, by 2000, a couple of
13:07:40 15 years into the initiative, it's doing very well
13:07:44 16 economically? It's producing a--

13:07:46 17 A. Correct.

13:07:46 18 510 Q. --lot of revenue; correct?

13:07:49 19 A. Correct.

13:07:49 20 511 Q. The revenue is being shared
13:07:55 21 between OLC and the tracks and the horsepeople,
13:08:01 22 right?

13:08:01 23 A. Certainly.

13:08:02 24 512 Q. And it's -- the revenue that is
13:08:08 25 being received by the horsepeople, including

13:08:12 1 breeders, is being reinvested into breeding
13:08:15 2 operations and the agricultural economy?

13:08:21 3 A. It's being acceptably invested by
13:08:24 4 virtue of the analysis of Cabinet Board -- at -- to
13:08:27 5 Management Board at that time, for sure.

13:08:29 6 513 Q. And so, the government's happy
13:08:31 7 with the program?

13:08:32 8 A. Yeah.

13:08:32 9 514 Q. You were?

13:08:33 10 A. It was my knowledge and it's
13:08:34 11 apparent from this.

13:08:35 12 515 Q. Right. And you were -- you were
13:08:36 13 there. You were a Cabinet Minister?

13:08:38 14 A. Yes. That's correct.

13:08:38 15 516 Q. And a horseman?

13:08:40 16 A. Yes.

13:08:40 17 517 Q. And you saw, both as a Cabinet
13:08:43 18 Minister and as a horseman with ties to rural
13:08:46 19 Ontario, the real benefits that this program
13:08:49 20 provided to breeders and others involved in the
13:08:52 21 industry;--

13:08:52 22 A. Yes.

13:08:52 23 518 Q. --correct?

13:08:53 24 A. Yes. I certainly knew that
13:08:54 25 personally and that was the feeling of the

13:08:59 1 government.

13:09:00 2 --- (Court reporter appeals.)

13:09:01 3 THE WITNESS: ...that was the feeling

13:09:02 4 of the government.

13:09:18 5 MR. LISUS: Did I mark that fact sheet?

13:09:18 6 MR. MATTHEWS: No.

13:09:20 7 MR. LISUS: That's the next exhibit,

13:09:22 8 please.

13:09:30 9 MR. MATTHEWS: 14.

13:09:31 10 ---EXHIBIT NO. 14: Management Board

13:09:31 11 fact sheet, dated May 2000, Production Number CRE

13:09:34 12 40396.

13:09:34 13 BY MR. LISUS:

13:09:34 14 519 Q. And I take it, Mr. Snobelen, it's

13:09:37 15 not controversial, but breeders, for instance, were

13:09:40 16 working hard for the money that was being

13:09:43 17 reinvested back into the industry?

13:09:44 18 A. Certainly.

13:09:46 19 520 Q. They were returning their farms

13:09:47 20 and taking care of their houses and breeding their

13:09:51 21 mares, right?

13:09:51 22 A. Certainly.

13:09:52 23 521 Q. And boarding horses for that

13:09:55 24 purpose?

13:09:56 25 A. All the normal activities of -- of

13:09:57 1 horse breeding. (Nodding head.)

13:09:58 2 522 Q. They weren't receiving money for
13:10:00 3 nothing, right?

13:10:01 4 A. They weren't.

13:10:01 5 523 Q. Uh...?

13:10:03 6 A. They -- they do not receive money
13:10:05 7 for -- for nothing. There is -- the -- the --
13:10:08 8 although I would not have known exactly the details
13:10:11 9 in Cabinet, those programs that come either through
13:10:16 10 purse supports or breeding supports require effort
13:10:19 11 to get.

13:10:19 12 524 Q. Right. Thank you.
13:10:32 13 Now, remind me, sir, because I knew
13:10:32 14 this at one point.
13:10:34 15 You left political life in 2002?

13:10:36 16 A. I did, indeed.

13:10:37 17 525 Q. And that was in between elections,
13:10:39 18 right?

13:10:40 19 A. That's correct.

13:10:40 20 526 Q. And what did you do? You just
13:10:44 21 went into business?

13:10:45 22 A. I resigned shortly after Mike
13:10:50 23 Harris resigned--

13:10:50 24 527 Q. Okay.

13:10:51 25 A. --and I went to operate a ranch in

13:10:55 1 Oklahoma.

13:10:55 2 528 Q. Horse ranch?

13:10:58 3 A. That's correct.

13:10:59 4 529 Q. As opposed to a cattle ranch.

13:10:59 5 A. That's -- we had --

13:11:01 6 MR. LISUS: Mr. Ratcliffe is smiling.

13:11:04 7 THE WITNESS: We had --

13:11:04 8 MR. LISUS: -- all other kinds of

13:11:05 9 ranches, Mr. Ratcliffe.

13:11:05 10 MR. RATCLIFFE: You learn so much about

13:11:07 11 farming --

13:11:07 12 THE WITNESS: We had some -- we had

13:11:08 13 some cattle, but it was -- it was a horse--

13:11:08 14 BY MR. LISUS:

13:11:08 15 530 Q. Okay.

13:11:10 16 A. --operation.

13:11:11 17 531 Q. Okay. Thoroughbred, Standardbred

13:11:13 18 or --

13:11:13 19 A. Quarter Horses.

13:11:14 20 532 Q. Quarter Horses?

13:11:15 21 A. (Nodding head.)

13:11:24 22 533 Q. So you weren't -- you were on your

13:11:26 23 ranch when the government, the political party in

13:11:31 24 power changed from Conservative to Liberal?

13:11:34 25 A. Indeed, I was.

13:11:35 1 534 Q. So you can't take credit for it.

13:11:38 2 A. I... I... I certainly haven't

13:11:40 3 ascribed any to myself, no.

13:11:43 4 535 Q. Okay. And so, I'm going to now

13:11:45 5 show you some documents that you weren't at the

13:11:47 6 table for, okay?

13:11:48 7 A. Yeah.

13:11:48 8 536 Q. And CRE 3904 --

13:12:01 9 MR. MATTHEWS: 39084.

13:12:03 10 BY MR. LISUS:

13:12:04 11 537 Q. Sorry. 39084. And...

13:12:13 12 --- (Witness reviewing document.)

13:12:17 13 BY MR. LISUS:

13:12:17 14 538 Q. So I want to just give you some

13:12:19 15 markers, and you may not need them. You may

13:12:21 16 recognize this kind of document for what it is.

13:12:24 17 But at the bottom, it's got "Gaming

13:12:27 18 Policy and Planning Branch" and it's -- at the top,

13:12:28 19 it says:

13:12:30 20 "MAG..."

13:12:31 21 Which I presume is Ministry of Attorney

13:12:31 22 General.

13:12:34 23 "...to report back to ERPC on

13:12:38 24 four initiatives assigned after

13:12:40 25 budget 2003."

13:12:42 1 Do you see that?

13:12:42 2 A. Mm-hmm.

13:12:45 3 --- (Court reporter appeals.)

13:12:45 4 THE WITNESS: Yes.

13:12:48 5 BY MR. LISUS:

13:12:48 6 539 Q. So, do I understand this

13:12:50 7 document --

13:12:50 8 MR. RATCLIFFE: If he could just have a

13:12:51 9 moment.

13:12:52 10 MR. LISUS: Yes.

13:12:52 11 MR. RATCLIFFE: He's just reading the

13:12:53 12 back there now; Mr. Snobelen is.

13:13:00 13 MR. LISUS: Yes.

13:13:01 14 --- (Witness reviewing document.)

13:13:50 15 THE WITNESS: Okay.

13:13:51 16 BY MR. LISUS:

13:13:51 17 540 Q. Okay?

13:13:51 18 A. Yeah.

13:13:51 19 541 Q. And so, do you read this document,

13:13:55 20 sir, that there's been a directive from the

13:14:03 21 government to explore ways to renegotiate the

13:14:08 22 revenue-sharing agreement that was then in place

13:14:11 23 between OLG, racetracks, and the horse racing

13:14:17 24 industry, as we have discussed?

13:14:19 25 A. That's correct.

13:14:20 1 542 Q. Okay. And were you aware that
13:14:21 2 there was a directive, certainly as of 2003, to try
13:14:29 3 and renegotiate the revenue-sharing agreement?

13:14:31 4 A. No, I was not.

13:14:38 5 543 Q. And that's why I asked you that
13:14:40 6 question a minute ago, that there seems to be a
13:14:42 7 change in approach to this agreement commensurate
13:14:53 8 with the change in government.

13:14:54 9 A. It is certainly a change in
13:14:55 10 approach from the time I left.

13:15:04 11 544 Q. And what is "ERPC"? Do you know
13:15:06 12 what that acronym is?

13:15:06 13 A. I don't know which one of the
13:15:08 14 policy committees that would be.

13:15:08 15 545 Q. Okay.

13:15:09 16 A. They change names sometimes when
13:15:12 17 governments change.

13:15:13 18 546 Q. Okay. And if we go over to the
13:15:14 19 second page, it would appear that what is being
13:15:23 20 considered here is whether the revenue-sharing
13:15:25 21 agreement that we were just discussing a few
13:15:28 22 moments ago can be renegotiated.

13:15:33 23 A. Right.

13:15:33 24 547 Q. Right?

13:15:33 25 A. Right.

13:15:34 1 548 Q. And if you go down to the fourth
13:15:44 2 bullet, it says that:
13:15:47 3 "Alternatively, revenue sharing
13:15:49 4 might be amended through
13:15:51 5 legislation."
13:15:52 6 Right?
13:15:52 7 A. Correct.

13:15:52 8 549 Q. And what you understand that to
13:15:54 9 mean is that the government understood the revenue
13:15:58 10 share agreement to be confirmed in existing
13:16:04 11 contracts which could not be reopened?
13:16:06 12 R/F MR. RATCLIFFE: I think you're really
13:16:07 13 asking him a legal question.
13:16:09 14 You're asking him whether or not --
13:16:10 15 what the impact would be in a way that engages a
13:16:13 16 legal analysis, not -- as opposed to a factual
13:16:17 17 meaning.

13:16:18 18 BY MR. LISUS:

13:16:18 19 550 Q. Well, let me ask you this, sir:
13:16:20 20 When you left government in 2002 as a Cabinet
13:16:23 21 Minister, you understood that there was a
13:16:24 22 contractual revenue-sharing agreement--
13:16:24 23 A. Correct.

13:16:26 24 551 Q. --in place, right?
13:16:27 25 A. Yes.

13:16:28 1 552 Q. And that contractual
13:16:29 2 revenue-sharing agreement in place was between the
13:16:36 3 horsepeople, which included breeders, right?
13:16:38 4 A. Yes.
13:16:39 5 553 Q. And racetracks; correct?
13:16:41 6 A. That's correct.
13:16:41 7 554 Q. And the Ontario Lottery
13:16:44 8 Corporation via government; correct?
13:16:46 9 A. That's my understanding, yes.
13:16:47 10 555 Q. And that contractual
13:16:48 11 revenue-sharing agreement saw commissions from the
13:16:52 12 gaming revenue being flowed to the horse racing
13:16:58 13 industry, including breeders, right?
13:17:00 14 A. Mm-hmm.
13:17:01 15 556 Q. Yes?
13:17:02 16 A. Yes. I'm sorry. Yes.
13:17:03 17 557 Q. And those commissions -- that
13:17:11 18 revenue was in the form of commissions for services
13:17:13 19 provided, right?
13:17:14 20 A. That's correct.
13:17:15 21 558 Q. Including the provision of horses
13:17:17 22 to be raced at tracks?
13:17:19 23 A. Including the provision of live
13:17:21 24 racing, of which horses are an essential element,
13:17:24 25 yes.

13:17:24 1 559 Q. Yes. And if it was -- if that
13:17:28 2 agreement was to be cancelled, one way of
13:17:34 3 cancelling it was by passing legislation to do so,
13:17:38 4 right?
13:17:40 5 R/F MR. RATCLIFFE: Again, you're asking
13:17:40 6 him a legal question.
13:17:42 7 MR. LISUS: No. I'm asking the way
13:17:45 8 government works.
13:17:47 9 MR. RATCLIFFE: Well, again, you're
13:17:47 10 asking him a legal question.
13:17:47 11 MR. LISUS: Okay.
13:17:47 12 MR. RATCLIFFE: You --
13:17:47 13 BY MR. LISUS:
13:17:48 14 560 Q. Well, were you in government when
13:17:48 15 legislation was passed to cancel contracts,--
13:17:48 16 A. I --
13:17:50 17 561 Q. --ever?
13:17:50 18 A. I was on the odd occasion, yes.
13:17:52 19 562 Q. Okay. Can you recall any?
13:17:53 20 A. Uh. The, umm, the spring bear
13:17:56 21 hunt springs to mind.
13:17:59 22 563 Q. Okay. And were you in government
13:18:02 23 when legislation was passed with respect to
13:18:07 24 Ms. Clitheroe's employment agreement with Ontario
13:18:10 25 Hydro?

13:18:10 1 A. I was not directly related with
13:18:12 2 that piece of legislation, but I recall that
13:18:14 3 legislation, yes.

13:18:15 4 564 Q. And was that your government?

13:18:16 5 A. Yes, it was.

13:18:17 6 565 Q. Okay. So you understand that
13:18:19 7 legislation could be passed to cancel a contract?

13:18:22 8 A. That would be my understanding
13:18:24 9 certainly of the contracts that I had--

13:18:28 10 566 Q. Okay.

13:18:28 11 A. --jurisdiction over.

13:18:29 12 567 Q. And do you understand this
13:18:31 13 document to be discussing changing the
13:18:33 14 revenue-sharing contract or agreement through
13:18:35 15 legislation?

13:18:36 16 A. It certainly indicates that that's
13:18:40 17 one of the -- one of the things that might be under
13:18:42 18 consideration--

13:18:42 19 568 Q. Right.

13:18:42 20 A. --by whoever was reviewing it.

13:18:44 21 569 Q. And we can also agree,
13:18:45 22 Mr. Snobelen, that the revenue-sharing agreement
13:18:48 23 that we have been discussing wasn't established by
13:18:53 24 legislation; correct? It was --

13:18:56 25 A. Say that again? I'm sorry.

13:18:57 1 570 Q. The revenue-sharing agreement that
13:18:59 2 we've been talking about between OLG and the
13:19:03 3 horsepeople and racetracks wasn't created by a
13:19:05 4 piece of legislation. It was bargained for?
13:19:08 5 A. It would be a memorandum of
13:19:10 6 understanding that would be at the -- my belief
13:19:14 7 would be that it would be a..., a regulation, so
13:19:20 8 the -- I'm sorry, the Federal Act allowed this.
13:19:24 9 I'm not aware of a piece of legislation
13:19:27 10 that dictated this.
13:19:29 11 571 Q. And when you say "this", you
13:19:30 12 mean...?
13:19:31 13 A. This -- this agreement between
13:19:33 14 racetracks and the Government of Ontario.
13:19:34 15 572 Q. Right. You're not aware of a
13:19:36 16 piece of provincial legislation that--
13:19:36 17 A. No.
13:19:39 18 573 Q. --created it?
13:19:39 19 A. I -- my understanding is, the
13:19:41 20 enabling legislation was federal.
13:19:43 21 574 Q. Right. And do you know what that
13:19:45 22 legislation is?
13:19:45 23 A. It's, I believe, an amendment of
13:19:46 24 the Criminal Act. I'm -- this -- you're way out of
13:19:49 25 my bounds, but I'll try it.

13:19:49 1 It's --

13:19:50 2 MR. RATCLIFFE: Well, don't --

13:19:50 3 MR. LISUS: Okay.

13:19:51 4 MR. RATCLIFFE: Don't guess if

13:19:51 5 you don't know.

13:19:51 6 BY MR. LISUS:

13:19:52 7 575 Q. You believe that pari-mutuel

13:19:57 8 wagering was allowed under the Criminal Code?

13:20:00 9 A. That's correct.

13:20:01 10 576 Q. Okay. But this particular -- this

13:20:03 11 particular agreement between racetracks and the

13:20:06 12 government, pursuant to which slot machines were

13:20:08 13 put in the racetracks and revenue shared wasn't the

13:20:11 14 product of a piece of provincial legislation;

13:20:14 15 correct?

13:20:15 16 A. That's my understanding, yes.

13:20:16 17 577 Q. Okay. It was a bargain negotiated

13:20:19 18 between the various stakeholders; fair?

13:20:21 19 A. We have just reviewed that -- that

13:20:22 20 agreement, yes.

13:20:23 21 578 Q. And that's how you recall it at

13:20:24 22 the time?

13:20:24 23 A. That's how I do recall it.

13:20:26 24 579 Q. Right. Thank you.

13:20:33 25 And we see here, the expression of

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concern, if you look with me, that:

"Passing legislation would send a message to the business community that the government did not honour its contractual obligations."

[As read.]

Do you see that?

A. I do, indeed.

580 Q. And was that a concern that you encountered from time to time when the government was contemplating legislation to override or overrule a contract; that it sent a negative message to the public about contracting with government?

A. I don't recall seeing a statement of the obvious that clear on a piece of paper, but we would have concerns about what... I -- when I put together legislation that changed those circumstances, we would do our best to -- to forecast what that reaction would be in the various stakeholder communities.

581 Q. Okay. And if you continue on, the document says that:

"MAG will be asking Cabinet to endorse a proposal..."

13:21:41 1 Just read that point, okay, to
13:21:43 2 yourself? The...
13:21:44 3 A. Yeah. I've got it.
13:21:45 4 582 Q. The eighth bullet under Paragraph
13:21:50 5 2.
13:21:50 6 A. Mm-hmm.
13:21:51 7 --- (Witness reviewing document.)
13:22:03 8 THE WITNESS: Gotcha.
13:22:03 9 BY MR. LISUS:
13:22:05 10 583 Q. So the Ministry of Attorney
13:22:07 11 General, as I understand this, is going to ask
13:22:10 12 Cabinet to undertake a consultation with
13:22:14 13 horsepeople that would lead to the development of a
13:22:17 14 different revenue-sharing agreement when the --
13:22:20 15 when the contracts come up for renewal.
13:22:22 16 Is that --
13:22:23 17 A. Yes.
13:22:25 18 MR. LISUS: Okay. That's the next
13:22:26 19 exhibit, please.
13:22:26 20 MR. MATTHEWS: Thanks. Exhibit 15.
13:22:30 21 ---EXHIBIT NO. 15: Status update on
13:54:42 22 gaming revenue generation initiative, Production
13:22:31 23 Number CRE 39084.
13:22:45 24 BY MR. LISUS:
13:22:45 25 584 Q. I want to -- I'm going to keep 15

13:22:46 1 at hand.

13:22:48 2 I want to show you another document.

13:22:50 3 MR. RATCLIFFE: It's 25 after one. I'm

13:22:50 4 just wondering if you want to --

13:22:50 5 MR. LISUS: Yes.

13:22:53 6 MR. RATCLIFFE: -- or close to it; if

13:22:53 7 you want to take a break.

13:22:53 8 MR. LISUS: Why don't we take a short

13:22:53 9 break.

13:23:17 10 ---Luncheon recess at 1:23 p.m.

13:53:38 11 ---On resuming at 1:53 p.m.

13:54:08 12 MR. LISUS: All right. We're back on.

13:54:08 13 BY MR. LISUS:

13:54:32 14 585 Q. So, Mr. Snobelen, I'm going to

13:54:33 15 mark the document we were discussion -- excuse

13:54:39 16 me -- the document we were discussing entitled

13:54:41 17 status update on gaming revenue generation

13:54:46 18 initiative as the next -- it is. It's Exhibit 15.

13:54:48 19 Thank you.

13:54:49 20 I'm going to show you another document,

13:54:52 21 please; CRE 42392.

13:55:00 22 MR. RATCLIFFE: What is the date of

13:55:01 23 that document?

13:55:03 24 MR. LISUS: June 25, 2003.

13:55:03 25 BY MR. LISUS:

13:55:06 1 586 Q. This document is entitled

13:55:07 2 "Attorney General speaking notes".

13:55:09 3 MR. RATCLIFFE: Well, if we could just
13:55:10 4 pause here, Mr. Lisus.

13:55:12 5 You're now asking Mr. Snobelen to
13:55:14 6 speculate about certain documents that were after
13:55:16 7 he stepped down from the government in terms of
13:55:18 8 what was --

13:55:19 9 MR. LISUS: I haven't asked him
13:55:21 10 anything yet about this document.

13:55:23 11 MR. RATCLIFFE: Well, on the previous
13:55:24 12 document, it was post his departure and he --
13:55:30 13 again, you're asking him to speculate.

13:55:33 14 --- (Cell phone interruption.)

13:55:49 15 MR. RATCLIFFE: ...to speculate about
13:55:51 16 what the..., you know, the position is with the
13:55:53 17 government and what was intended with documents
13:55:57 18 after he left government.

13:55:59 19 And I don't think --

13:56:01 20 MR. LISUS: I'm not asking him that.

13:56:02 21 I'm asking him whether the positions
13:56:05 22 reflected in these government documents are
13:56:08 23 consistent with, a departure from, contrary to the
13:56:12 24 positions which he has described his government
13:56:14 25 took; that's all.

13:56:15 1 He can read the positions in these
13:56:17 2 documents and tell me whether they are any of those
13:56:22 3 things.

13:56:24 4 MR. RATCLIFFE: Well, it seems that you
13:56:25 5 were asking a bit more than that, than just whether
13:56:27 6 it -- it was different than his government, than
13:56:29 7 the position of the government when he was in
13:56:30 8 government, and --

13:56:32 9 MR. LISUS: I don't remember what I
13:56:32 10 asked, Mr. Ratcliffe. Why don't you let me ask the
13:56:35 11 question and we'll hash it out.

13:56:37 12 This is a Cross-Examination and I
13:56:42 13 invite you not to anticipate my questions and
13:56:46 14 problems with them.

13:56:50 15 BY MR. LISUS:

13:56:50 16 587 Q. So, my first question to you about
13:56:53 17 this document, if you're done reading it,
13:56:56 18 Mr. Snobelen?

13:56:57 19 A. Mm-hmm.

13:56:58 20 588 Q. First of all, it says that the
13:57:00 21 "Attorney General speaking notes for Cabinet",
13:57:04 22 "Attorney General speaking notes, budget report
13:57:07 23 back items for Cabinet".

13:57:09 24 My first question is, the use of
13:57:11 25 speaking notes at Cabinet; can you explain that to

13:57:15 1 me, based on your experience as a Cabinet Minister?

13:57:18 2 A. I did not use speaking notes at

13:57:22 3 Cabinet, but my colleagues may have.

13:57:24 4 589 Q. Okay.

13:57:24 5 A. This would be a staff,

13:57:27 6 generally -- in my case, in our government, it

13:57:29 7 would have been a staff note put in a binder that

13:57:32 8 would sort of remind a -- a Minister of what needed

13:57:36 9 to be put forward to Cabinet; what were the items

13:57:41 10 at issue.

13:57:42 11 590 Q. Okay. So you have seen speaking

13:57:43 12 notes used before?

13:57:44 13 A. I have seen speaking notes used

13:57:46 14 before.

13:57:46 15 591 Q. Okay. And does this look like a

13:57:53 16 -- the kind of speaking note you have seen before?

13:57:55 17 A. They -- umm. It's a bit longer

13:58:04 18 than anything I've seen before, but it follows the

13:58:06 19 general characteristic.

13:58:08 20 592 Q. All right. Do you know who was

13:58:10 21 the Attorney General in June 2003?

13:58:12 22 A. I do not.

13:58:13 23 593 Q. Okay. Was it David Young. Do you

13:58:22 24 -- does that ring a bell?

13:58:24 25 A. It may.

13:58:24 1 MR. RATCLIFFE: I think he said he
13:58:26 2 didn't know.
13:58:26 3 BY MR. LISUS:
13:58:26 4 594 Q. Okay.
13:58:27 5 A. David Young served for a period of
13:58:29 6 time. I'm not sure when that time expired.
13:58:33 7 595 Q. All right. And we see that the
13:58:35 8 Ministry had... The Ministry of the Attorney
13:58:40 9 General had been asked to explore some
13:58:44 10 enhancements.
13:58:44 11 One was the establishment of a floating
13:58:47 12 casino on Lake Ontario.
13:58:50 13 Was that ever under consideration in
13:58:52 14 your government?
13:58:53 15 A. It was not while I was there.
13:58:54 16 596 Q. Okay. Another was:
13:58:55 17 "The reopening of the
13:58:56 18 revenue-sharing agreements we have
13:58:59 19 with the horse industry."
13:59:00 20 Do you see that?
13:59:01 21 A. I do see it.
13:59:02 22 597 Q. And I understand you to say that
13:59:03 23 that was never under consideration in your
13:59:08 24 government?
13:59:09 25 R/F MR. RATCLIFFE: Well, again, you're

13:59:10 1 asking him to speculate about what it was that they
13:59:12 2 were proposing here, even -- it's -- it's a
13:59:15 3 speaking note.

13:59:16 4 BY MR. LISUS:

13:59:17 5 598 Q. Did your government ever consider
13:59:20 6 reopening the revenue-share agreements with --

13:59:22 7 A. No, not while I was in Cabinet.

13:59:23 8 599 Q. -- with -- okay.

13:59:24 9 And now, I want to ask you to look at
13:59:25 10 Item Number 2, "Reopening revenue-sharing
13:59:28 11 agreements". And it says there:

13:59:34 12 "Those of you who were at the
13:59:37 13 Cabinet table when we first looked
13:59:39 14 at putting slot machines at our
13:59:42 15 licensed racetracks will recall the
13:59:44 16 difficulty we had to convince both
13:59:46 17 track owners and the horse racing
13:59:48 18 industry to make the investment."

13:59:50 19 Do you see that?

13:59:51 20 A. Mm-hmm.

13:59:51 21 600 Q. Yes?

13:59:52 22 A. Yes, I do. I'm sorry. Yes, I do.

13:59:54 23 601 Q. Now, you were at the Cabinet table
13:59:56 24 when track owners and the horse racing industry was
14:00:00 25 convinced to make the investment; correct?

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A. That's correct.

Q. And I take it you do recall that it was a protracted and difficult negotiation?

A. It was certainly a -- took a period of time, yeah.

Q. Okay.

A. I wasn't in the negotiations. I can't characterize what they were like, but it took time.

Q. Right. And it took time to -- as this note says, to convince track owners and the horse racing industry to make the investment?

A. Again, I wasn't in the negotiations, so I --

Q. Okay.

A. -- I don't want to characterize them.

Q. And over the page, we see reference to the first agreement expiring in 2008,--

A. Mm-hmm.

Q. --and there's reference to the Attorney General Ministry looking into whether lower rates could be negotiated for any new slots. Do you see that?

14:01:00 1 MR. RATCLIFFE: Well, again, I don't
14:01:01 2 know quite where you're going here, but you're
14:01:04 3 asking Mr. Snobelen to speculate about what was in
14:01:09 4 the mind of the Attorney General through his
14:01:11 5 speaking notes.

14:01:14 6 MR. LISUS: Okay. What I -- I'm not
14:01:15 7 asking him to do that.

14:01:17 8 I am simply asking him to confirm what
14:01:20 9 I believe he told me earlier when we discussed the
14:01:25 10 letter of intent.

14:01:25 11 BY MR. LISUS:

14:01:26 12 608 Q. The June 1998 letter of intent
14:01:29 13 when your Government was in power; do you remember
14:01:31 14 us talking about that?

14:01:31 15 A. I do.

14:01:32 16 609 Q. Okay. And we agreed that the
14:01:37 17 letter of intent reflected an overall agreement
14:01:41 18 between the government and the horse racing
14:01:43 19 industry and the racetracks; correct?

14:01:46 20 A. That's correct.

14:01:46 21 610 Q. And we also agreed that the letter
14:01:49 22 of intent reflected an agreement between those
14:01:54 23 three entities - government, racetrack, and the
14:01:59 24 horse racing industry - that siteholder commissions
14:02:04 25 would be shared?

14:02:04 1 A. Subject to the individual tracks,
14:02:07 2 yeah.
14:02:07 3 611 Q. Okay.
14:02:11 4 A. So as far as I know, there wasn't
14:02:13 5 any master agreement. There was an agreement with
14:02:15 6 each stake- -- each siteholder.
14:02:18 7 612 Q. Right. But there was a master
14:02:23 8 agreement that there would be a sharing of
14:02:26 9 siteholder commissions?
14:02:27 10 A. Correct.
14:02:27 11 613 Q. All right.
14:02:29 12 A. Correct.
14:02:29 13 614 Q. Generated from the gaming revenue
14:02:31 14 at the site?
14:02:31 15 A. That's -- that was my
14:02:32 16 understanding, yes.
14:02:33 17 615 Q. And those commissions would be
14:02:34 18 reinvested in the industry by the people who worked
14:02:39 19 in it, right?
14:02:39 20 A. Yes.
14:02:40 21 616 Q. And that it was also a government
14:02:42 22 investment in the industry?
14:02:44 23 A. Clearly.
14:02:45 24 617 Q. All right. Now, if you look over
14:02:59 25 to page 3 of that briefing document, it has a

14:03:15 1 conclusion in which the Minister appears to request
14:03:22 2 that the Cabinet direct OLG to renegotiate the 20
14:03:27 3 per cent revenue-sharing formula as part of the
14:03:30 4 negotiations to establish additional slot machines
14:03:34 5 at the identified racetracks.

14:03:37 6 Do you see that?

14:03:37 7 A. Yes.

14:03:43 8 618 Q. And it was your understanding, as
14:03:45 9 of the date that you left government, that any
14:03:47 10 changes to the agreement governing the distribution
14:03:50 11 of commissions earned from slot machine revenue
14:03:54 12 would have to be renegotiated if there were to be
14:03:59 13 such changes, right?

14:04:00 14 A. As at the time I left government,
14:04:02 15 there wasn't any being contemplated.

14:04:04 16 619 Q. Right. But if there was to be a
14:04:06 17 change, it would have to be a negotiate change;
14:04:08 18 correct?

14:04:09 19 MR. RATCLIFFE: Well, again, I think he
14:04:10 20 said that he didn't know there.

14:04:12 21 MR. LISUS: Pardon?

14:04:13 22 MR. RATCLIFFE: He said that it -- it
14:04:14 23 wasn't something that was really contemplated,
14:04:16 24 so --

14:04:17 25 MR. LISUS: I understand.

14:04:17 1 BY MR. LISUS:

14:04:17 2 620 Q. You -- when you were in government

14:04:18 3 and when you left government, you understood that a

14:04:20 4 deal had been reached between the government,

14:04:26 5 racetracks, and the horse racing industry; correct?

14:04:27 6 A. That was my understanding.

14:04:28 7 621 Q. And part of that deal is that the

14:04:29 8 money from slot revenue would be shared, right?

14:04:33 9 A. That's correct.

14:04:34 10 622 Q. And you understood when you were

14:04:36 11 in government that if that agreement was to be

14:04:40 12 changed, it would have to be a negotiated change,

14:04:42 13 right?

14:04:42 14 A. I can only comment on the files I

14:04:44 15 was on, and that was the -- that was the protocol

14:04:48 16 for the files I was on.

14:04:48 17 623 Q. Okay. And that was the protocol

14:04:51 18 that Cabinet followed?

14:04:52 19 A. I don't recall an exception.

14:04:55 20 There may be one.

14:04:56 21 624 Q. Okay.

14:05:07 22 --- (Court reporter appeals.)

14:05:09 23 MR. LISUS: Yes. That's the next

14:05:12 24 exhibit, please.

14:05:20 25 --- EXHIBIT NO. 16: Attorney General

14:05:20 1 speaking notes, dated June 25, 2003, Production
14:05:21 2 Number CRE 42392.
14:05:35 3 THE COURT REPORTER: That's Number 16?
14:05:37 4 MR. MATTHEWS: Yes.
14:05:43 5 BY MR. LISUS:
14:05:43 6 625 Q. And do you recall, sir, in 2000,
14:05:45 7 there was an addendum to the letter of intent
14:05:48 8 signed?
14:05:48 9 A. I -- I don't recall that
14:05:51 10 specifically.
14:05:51 11 626 Q. Okay. I'm going to show you a
14:05:54 12 document, CRE 22903. This is an addendum to the
14:06:14 13 June 1998 letter of intent.
14:07:16 14 --- (Witness reviewing document.)
14:07:58 15 BY MR. LISUS:
14:07:58 16 627 Q. Do you -- does that refresh your
14:07:59 17 memory?
14:08:00 18 A. I wasn't -- this document didn't
14:08:05 19 come before me while I was in government, but...
14:08:09 20 MR. LISUS: Okay. That's the next
14:08:10 21 exhibit.
14:08:10 22 MR. MATTHEWS: 17.
14:08:12 23 --- EXHIBIT NO. 17: Addendum to the
14:08:13 24 June 1998 letter of intent, Production Number CRE
14:08:14 25 22903.

14:08:24 1 BY MR. LISUS:

14:08:24 2 628 Q. I want to show you a document

14:08:27 3 dated December 7, CRE 358198.

14:09:01 4 --- (Witness reviewing document.)

14:09:15 5 MR. LISUS: The... Mr. Ratcliffe, the

14:09:19 6 file which this document was attached to and was

14:09:21 7 produced to us says "Premier's Cabinet speaking

14:09:29 8 notes".

14:09:30 9 MR. RATCLIFFE: Mm-hmm. And that's

14:09:31 10 December 7th of what year?

14:09:33 11 MR. LISUS: It's December -- here is

14:09:34 12 the cover e-mail, and maybe I will just show it

14:09:37 13 to...

14:09:37 14 Do you have two of these?

14:09:37 15 MR. MATTHEWS: Yeah.

14:09:40 16 MR. LISUS: ...to Mr. Snobelen.

14:09:45 17 MR. RATCLIFFE: It's from 2004?

14:09:47 18 MR. LISUS: Yeah. It appears to be.

14:10:06 19 --- (Witness reviewing document.)

14:10:17 20 BY MR. LISUS:

14:10:17 21 629 Q. Let me know when you've...

14:10:19 22 A. Yeah. I'm there.

14:10:21 23 630 Q. Okay. So the e-mail, sir, I just

14:10:23 24 gave you is from Frank Denton with the acronym

14:10:24 25 after the e-mail, "CAB", which I presume -- well,

14:10:26 1 do you know what "CAB" acronym is?

14:10:29 2 A. I -- I'm not familiar with it. I

14:10:30 3 would assume it's Cabinet Office, though.

14:10:32 4 631 Q. Okay. Do you know Frank Denton?

14:10:34 5 A. I don't.

14:10:35 6 632 Q. Okay. Steven Davidson and Karen

14:10:38 7 Tilford?

14:10:39 8 A. I -- uh, I know who Karen Tilford

14:10:42 9 is. I don't know --

14:10:43 10 633 Q. Okay. Who is she?

14:10:44 11 A. Uh. I believe she worked in

14:10:45 12 Cabinet Office.

14:10:45 13 634 Q. Okay. And this is "Premier's

14:10:50 14 Cabinet speaking notes".

14:10:51 15 And I want to just direct your

14:10:53 16 attention to the first paragraph on the second

14:10:56 17 page.

14:10:57 18 Before I ask you that, do you have any

14:10:59 19 idea what "P&P" means?

14:11:02 20 A. Yeah. Policies and priority.

14:11:04 21 635 Q. Policies and priority?

14:11:05 22 A. That's correct.

14:11:06 23 636 Q. And is that a committee of

14:11:09 24 Cabinet?

14:11:09 25 A. Subcommittee of Cabinet.

14:11:10 1 637 Q. Subcommittee of Cabinet.

14:11:12 2 And it says, the note at the top of the

14:11:14 3 second page says:

14:11:15 4 "Expand Slots at Racetracks in

14:11:18 5 the context of a renegotiation of

14:11:20 6 the 20 per cent commission which has

14:11:24 7 given the horse industry massive

14:11:27 8 windfall profits; 300- annually."

14:11:27 9 [As read.]

14:11:33 10 Do you see that?

14:11:33 11 A. Mm-hmm. I do.

14:11:34 12 638 Q. Now, at any time in government,

14:11:36 13 was -- when you were there, was there any concern

14:11:38 14 that the Slots at Racetrack was generating massive

14:11:45 15 windfall profits?

14:11:47 16 A. I was not aware of any problem

14:11:49 17 with that.

14:11:49 18 MR. LISUS: Okay. The next exhibit.

14:11:49 19 BY MR. LISUS:

14:11:55 20 639 Q. And this is this -- December 2004

14:12:02 21 RM (ph), sir, is the second year of Mr. McGuinty's

14:12:06 22 first mandate?

14:12:06 23 A. That's correct.

14:12:07 24 640 Q. And do you know offhand if Mr. --

14:12:09 25 what portfolio Mr. Duncan had then?

14:12:12 1 MR. RATCLIFFE: Don't guess.

14:12:16 2 THE WITNESS: I... I could guess, but

14:12:16 3 no, I don't know.

14:12:18 4 BY MR. LISUS:

14:12:18 5 641 Q. What's your best -- and I'm not

14:12:20 6 going to hold you to it, but there's --

14:12:20 7 MR. RATCLIFFE: Well,--

14:12:22 8 MR. LISUS: It's a fact --

14:12:23 9 MR. RATCLIFFE: --he said he doesn't

14:12:23 10 know.

14:12:26 11 MR. LISUS: He --

14:12:26 12 THE WITNESS: He went from AG to

14:12:28 13 Finance. I'm not sure whether he was AG initially.

14:12:33 14 MR. LISUS: Okay. So the cover e-mail

14:12:35 15 and the Cabinet speaking notes are the next exhibit

14:12:40 16 in sequence.

14:12:40 17 ---EXHIBIT NO. 18: Premier's Cabinet

14:12:42 18 speaking notes and cover e-mail, Production Number

14:12:54 19 CRE 358198, dated December 7, 2004.

14:12:54 20 BY MR. LISUS:

14:12:54 21 642 Q. And I'm going to show you, please,

14:12:58 22 a Cabinet minute, CR 27079.

14:13:08 23 And I just want to ask you, sir, before

14:13:09 24 I ask you particular questions about this document,

14:13:11 25 about your time in Cabinet.

14:13:18 1 Would the -- would Cabinet, among the
14:13:27 2 things it considered, consider business
14:13:33 3 arrangements that it had with private sector?

14:13:37 4 MR. RATCLIFFE: You're asking about his
14:13:39 5 time in Cabinet?

14:13:40 6 MR. LISUS: Yeah.

14:13:41 7 THE WITNESS: I think I -- I can think
14:13:43 8 of occasions when that happened, yes.

14:13:45 9 BY MR. LISUS:

14:13:45 10 643 Q. And on occasions, would Cabinet
14:13:48 11 consider what was to be done about a commercial
14:13:54 12 contract with private sector; for instance, whether
14:14:05 13 government should enter into a particular form of
14:14:09 14 contract, a contract with private sector?

14:14:11 15 A. Certainly. Certainly, those
14:14:13 16 things would come normally from legislation and
14:14:14 17 regulations when they would deal with that contract
14:14:16 18 material, but it would come to Cabinet.

14:14:18 19 644 Q. Okay. And so Cabinet would
14:14:29 20 consider matters of pure policy being the exercise
14:14:31 21 of discretion under certain statutes?

14:14:34 22 A. Obviously.

14:14:35 23 645 Q. And it would also consider matters
14:14:44 24 involving the government doing business, either
14:14:46 25 with private sector or other governments?

14:14:48 1 A. Correct.

14:14:48 2 646 Q. Okay. And it would consider

14:14:57 3 matters relating to commercial contracts with

14:14:59 4 private sector or public sector entities?

14:15:05 5 A. That's correct.

14:15:06 6 647 Q. And so, it's fair to say that

14:15:08 7 Cabinet would consider all matter, or all manner of

14:15:12 8 business which the government conducts, both policy

14:15:16 9 and commerce, right?

14:15:17 10 A. Cabinet certainly would have

14:15:21 11 purview. Not all of those matters would come to

14:15:23 12 Cabinet.

14:15:32 13 648 Q. Right. And -- but some of all of

14:15:34 14 those matters would come to Cabinet?

14:15:36 15 A. Yes.

14:15:47 16 649 Q. So, for instance, if the

14:15:49 17 Government of Ontario was going to enter into a

14:15:51 18 large contract, a billion dollar or more contract

14:15:55 19 for the procurement of vehicles - trains, for

14:15:58 20 instance - would that kind of issue be discussed at

14:16:01 21 Cabinet from time to time?

14:16:04 22 MR. RATCLIFFE: And you're speaking of

14:16:05 23 his time--

14:16:07 24 MR. LISUS: Yes.

14:16:07 25 MR. RATCLIFFE: --in Cabinet.

14:16:08 1 THE WITNESS: In my time, extremely
14:16:11 2 large-scale capital would, uh, or might.

14:16:15 3 Uh. More minor capital issues
14:16:17 4 wouldn't.

14:16:17 5 BY MR. LISUS:

14:16:19 6 650 Q. Okay. Of course. It's just --
14:16:20 7 the size of government.

14:16:20 8 But big-scale capital expenditures
14:16:23 9 pursuant to contracts with private industry would
14:16:25 10 be discussed at Cabinet; correct?

14:16:28 11 A. They -- they -- in my time, there
14:16:30 12 were examples of that, yes.

14:16:30 13 651 Q. Okay. Can you give me a couple,
14:16:32 14 so that I can understand the kind of thing you're
14:16:34 15 thinking of?

14:16:35 16 A. Early on, for instance, there was
14:16:38 17 a private sector development for hockey arena in
14:16:49 18 Ottawa and some municipal assistants --

14:16:51 19 --- (Court reporter appeals.)

14:16:51 20 MR. LISUS: Hockey arena in Ottawa.

14:16:55 21 THE WITNESS: ...which is privately
14:16:57 22 owned.

14:16:57 23 And there was some assistance from both
14:16:58 24 the municipality and the government with that
14:16:59 25 private sector developer.

14:16:59 1 And there would have been private
14:16:59 2 sector suppliers on -- involved in the -- in the
14:17:06 3 construction site. So that would be a private
14:17:08 4 sector/government issue that came before Cabinet.

14:17:08 5 BY MR. LISUS:

14:17:12 6 652 Q. Okay. A private sector -- private
14:17:14 7 sector and government commercial arrangement that
14:17:16 8 government was considering, right?

14:17:17 9 A. That's correct.

14:17:18 10 653 Q. Okay. So that I'm looking at this
14:17:24 11 Cabinet... And so, before I do, the point I am
14:17:27 12 getting at is that the commercial business of
14:17:34 13 government, the commerce of government sometimes,
14:17:37 14 if it's of a sufficient scale, comes to Cabinet for
14:17:40 15 consideration; correct?

14:17:41 16 A. Yes, clearly.

14:17:42 17 654 Q. All right. And if we look at this
14:17:52 18 Cabinet minute, we see - this is in 2004 - under
14:18:03 19 (b), there's a discussion of:

14:18:04 20 "...increasing provincial
14:18:06 21 revenue from racetracks through slot
14:18:08 22 machines and from the introduction
14:18:11 23 of table games working with PO."

14:18:16 24 [As read.]

14:18:16 25 Is that Premier's Office?

14:18:18 1 A. Mm-hmm.

14:18:20 2 655 Q. "MEDT" is what?

14:18:22 3 A. Ministry of Economic Development

14:18:25 4 and Trade.

14:18:25 5 656 Q. And "MOF"?

14:18:28 6 A. Ministry of Finance.

14:18:31 7 657 Q. "...by renegotiating commissions

14:18:31 8 to the horse racing industry"?

14:18:33 9 R/F MR. RATCLIFFE: Well, you're asking him

14:18:34 10 to speculate about what was going on in 2004,

14:18:36 11 again, in terms of this material, and he wasn't --

14:18:39 12 he wasn't there.

14:18:41 13 MR. LISUS: Okay.

14:18:41 14 BY MR. LISUS:

14:18:49 15 658 Q. I want to ask you about the

14:18:50 16 reference below which talks about expanding slot

14:18:53 17 machines at racetracks supported by a business case

14:18:57 18 and as part of the renegotiation.

14:19:00 19 Do you see that?

14:19:00 20 A. Mm-hmm.

14:19:02 21 659 Q. And --

14:19:02 22 --- (Court reporter appeals.)

14:19:03 23 BY MR. LISUS:

14:19:03 24 660 Q. Sorry. You have to say 'yes'.

14:19:05 25 A. Yes.

14:19:05 1 661 Q. All right.

14:19:05 2 A. Sorry.

14:19:05 3 662 Q. And is that statement consistent
14:19:11 4 with the way you understood the agreement between
14:19:19 5 the government, the racetracks, and the horse
14:19:23 6 industry to have been reached as a business
14:19:26 7 arrangement that was negotiated?

14:19:30 8 MR. RATCLIFFE: Well, again, you're
14:19:31 9 asking him to speculate about--

14:19:31 10 MR. LISUS: No. I'm saying--

14:19:33 11 MR. RATCLIFFE: --what was happening
14:19:34 12 when he wasn't there.

14:19:35 13 MR. LISUS: --when he was -- when his
14:19:35 14 government was in power.

14:19:35 15 BY MR. LISUS:

14:19:36 16 663 Q. Is that how you understood -- I
14:19:37 17 think you've told me, that's what you understood
14:19:38 18 the arrangement to be?

14:19:39 19 A. I would have -- I would have
14:19:40 20 characterized it as an arrangement that was built
14:19:43 21 on a business case.

14:19:46 22 MR. LISUS: Okay. That's the next
14:19:47 23 exhibit in sequence.

14:19:48 24 MR. MATTHEWS: 19.

14:19:54 25 ---EXHIBIT NO. 19: Cabinet minute,

14:19:58 1 Production Number CR 27079.

14:20:00 2 BY MR. LISUS:

14:20:00 3 664 Q. Mr. Phillips, who I Examined in
14:20:01 4 May, I think described or agreed that the
14:20:03 5 introduction of slots at racetracks was a bolt-on
14:20:05 6 revenue extension.

14:20:05 7 Would you agree with that
14:20:07 8 characterization?

14:20:08 9 A. "A bolt-on revenue...?"

14:20:11 10 665 Q. A revenue extension of the -- the
14:20:11 11 business of racetracks; the introduction of slot
14:20:12 12 machines.

14:20:12 13 A. The introduction of slots?

14:20:14 14 666 Q. Yes.

14:20:14 15 A. Uh. I think that's a fair
14:20:19 16 characterization, I guess.

14:20:21 17 667 Q. Thank you.

14:20:38 18 And so, we've just been talking about
14:20:40 19 business case and -- and what's been done at
14:20:43 20 Cabinet.

14:20:43 21 What I'm understanding from your
14:20:45 22 explanation to me, Mr. Snobelen, is that a Cabinet
14:20:57 23 does different things. Sometimes it makes pure
14:21:02 24 policy decisions about what's going to be done
14:21:07 25 under legislation or government, right?

14:21:09 1 A. Certainly. That's the bulk of its
14:21:11 2 work.

14:21:11 3 668 Q. And sometimes it also makes
14:21:13 4 business decisions about the business arrangements
14:21:17 5 government is going to get into or is into?

14:21:20 6 A. It's charged with the operation of
14:21:22 7 the business of government.

14:21:22 8 669 Q. Okay. And government does a lot
14:21:31 9 of business, right?

14:21:31 10 A. Yes. It does. It provides an
14:21:35 11 enormous number of services, et cetera, et cetera.

14:21:36 12 670 Q. It enters into a lot of commercial
14:21:38 13 arrangements for the provision of services with the
14:21:39 14 private sector?

14:21:39 15 A. It does so.

14:21:48 16 671 Q. And so not every decision that
14:21:51 17 Cabinet makes about -- that not every decision that
14:21:53 18 Cabinet makes is a pure policy decision.

14:21:55 19 Sometimes it's making pure business
14:21:58 20 decisions, right?

14:21:59 21 A. Any decision that the government
14:22:02 22 made about operating the government's business
14:22:04 23 would be done inside of the context of set policy.

14:22:10 24 So there -- once a policy is arrived
14:22:14 25 at, there are business outcomes from that, some of

14:22:16 1 which would need to be reviewed by Cabinet.

14:22:18 2 672 Q. And when you say any decision the
14:22:20 3 government makes is made within the context of a
14:22:22 4 set policy, what you're saying to me is, the
14:22:26 5 government of the day decides that it has a
14:22:29 6 particular approach to something--

14:22:31 7 A. That's correct.

14:22:32 8 673 Q. --and it makes a decision in the
14:22:33 9 context of that approach, right?

14:22:35 10 A. That -- yes. And that context is
14:22:38 11 normally set in a minute from the Cabinet, which is
14:22:41 12 the record of what the policy is.

14:22:44 13 674 Q. And so there can be a decision
14:22:51 14 that is purely about a business, but it's part of
14:22:53 15 the overall approach or policy orientation of the
14:22:53 16 government.

14:22:57 17 Is that what you're saying?

14:22:58 18 A. That's correct.

14:22:58 19 675 Q. And where business is concerned or
14:23:00 20 contractual relations are concerned, the government
14:23:04 21 understands that it has to abide by contracts it
14:23:08 22 signs?

14:23:09 23 A. I -- I would assume governments,
14:23:16 24 uh... Certainly, when I was in government, we --
14:23:18 25 my colleagues and I certainly understood that, uh,

14:23:24 1 we were subject to all of the normal commercial --

14:23:28 2 we -- we had remedies that were outside of the

14:23:30 3 normal commercial remedies, but we were subject to

14:23:33 4 the commercial, normal commercial, uh...

14:23:37 5 676 Q. Parameters?

14:23:39 6 A. ...parameters, I guess - yeah,

14:23:40 7 thank you - is the -- is the word.

14:23:40 8 677 Q. And normal commercial principles?

14:23:42 9 A. Again, with the caveat that

14:23:46 10 government has -- has an extraordinary opportunity

14:23:50 11 to do what -- its will under legislation.

14:23:55 12 678 Q. Correct. It can legislate away

14:23:57 13 business arrangements?

14:23:59 14 A. It can do that.

14:24:00 15 679 Q. Okay. Now, I take it, from your

14:24:06 16 experience as a Cabinet Minister, you are familiar

14:24:09 17 with transfer payments?

14:24:11 18 A. Yes.

14:24:12 19 680 Q. And were you familiar with the

14:24:13 20 Transfer Payment Accountability Act?

14:24:17 21 A. Not uniquely when I was there, no.

14:24:19 22 681 Q. Okay. And you and I can agree,

14:24:23 23 sir, as we have, that none of the gaming revenue

14:24:26 24 generated by slots -- by the slot machines at

14:24:30 25 racetracks was a transfer payment?

14:24:35 1 MR. RATCLIFFE: Do you know that? Is
14:24:39 2 that a legal question?
14:24:41 3 THE WITNESS: The... In my time,
14:24:49 4 transfer payments were generated by Ministries,
14:24:52 5 generally. It was generally a relationship between
14:24:56 6 a ministry and another for-profit, not-for-profit,
14:24:56 7 whatever, entity.
14:24:56 8 BY MR. LISUS:
14:24:59 9 682 Q. And the payment went from the
14:25:01 10 Ministry--
14:25:01 11 A. To --
14:25:01 12 683 Q. --to the recipient?
14:25:03 13 A. And the transfer payment
14:25:04 14 agreement, as I understand the transfer payment
14:25:06 15 agreement to be, is that relationship.
14:25:06 16 684 Q. All right.
14:25:07 17 A. That is not required in the
14:25:10 18 relationship with the agency of government.
14:25:10 19 685 Q. Okay.
14:25:13 20 A. And so, my understanding is that
14:25:16 21 the arrangement for funding as it relates to the --
14:25:21 22 to the project we have been talking about is
14:25:24 23 through the Ontario Lottery and Gaming Corporation.
14:25:27 24 686 Q. Before you began working with
14:26:27 25 Mr. Wilkinson in 2012 on the Panel, did you know

14:26:30 1 him?

14:26:30 2 A. I did not.

14:26:31 3 687 Q. So, when was the first time you

14:26:33 4 met him?

14:26:33 5 A. Uh. When the Panel was put -- the

14:26:37 6 morning the Panel was put together.

14:26:37 7 688 Q. Okay. That was the first time you

14:26:39 8 met him?

14:26:39 9 A. That's correct.

14:26:40 10 689 Q. And did you know propose him?

14:26:42 11 A. No.

14:26:42 12 690 Q. Okay. And Mr. Wilkinson, as far

14:26:50 13 as I can see from the material, had no experience

14:26:52 14 with horse racing or the horse racing industry?

14:26:54 15 A. That -- that would -- that would

14:26:55 16 be my understanding, as well.

14:26:56 17 691 Q. Okay. And Mr. Buchanan did have

14:27:06 18 some experience with the horse racing industry or

14:27:09 19 no?

14:27:09 20 A. Mr. Buchanan, uh, had no direct

14:27:16 21 involvement in horse racing and I think no previous

14:27:19 22 experience with horse racing.

14:27:20 23 692 Q. Okay. So you were the person on

14:27:21 24 the ---

14:27:21 25 A. I should amend that. Except as it

14:27:24 1 relates his role as the Minister at -- at OMAFRA
14:27:27 2 for many years.
14:27:28 3 693 Q. Okay. Prior to the creation of
14:27:39 4 the Panel, which I believe was June 2012,--
14:27:41 5 A. That would be about right.
14:27:42 6 694 Q. --had you spoken about the
14:27:46 7 government's decision to terminate the
14:27:48 8 revenue-sharing with Mr. Duncan?
14:27:50 9 A. No.
14:27:51 10 695 Q. With Mr. McGuinty?
14:27:52 11 A. No. Let me -- let me make sure
14:27:56 12 I'm clear.
14:27:56 13 696 Q. Yeah.
14:27:58 14 A. Prior to that panel being put
14:27:59 15 together, about two weeks before that, Minister
14:28:05 16 Duncan did ask me if I would be willing to serve if
14:28:10 17 the government did -- created something of that
14:28:12 18 ilk. He did not say "a panel". He did not...
14:28:12 19 697 Q. He phoned you?
14:28:15 20 A. No. I ran into him personally.
14:28:17 21 698 Q. Okay. And just tell me about
14:28:19 22 that.
14:28:19 23 A. I was walking past the east door
14:28:21 24 of Queen's Park and Minister Duncan came down the
14:28:24 25 steps and saw me and said, 'Oh, John,' and we had a

14:28:27 1 two-minute conversation.

14:28:29 2 699 Q. 'Oh, John, would you be interested

14:28:30 3 in... '?

14:28:31 4 A. 'Would you be interested -- would

14:28:32 5 you help us if we decide to review the horse racing

14:28:38 6 program?'

14:28:45 7 700 Q. Okay. And was that the first

14:28:46 8 mention made of it to you?

14:28:47 9 A. That's correct.

14:28:48 10 701 Q. And in the course of --

14:28:49 11 A. He did not mention a panel. He

14:28:51 12 did not say how he would go about doing that.

14:28:52 13 He just asked if I would participate.

14:28:54 14 702 Q. Okay. And then you heard from

14:28:57 15 Mr. McMeekin?

14:28:59 16 A. I'm not sure how I was notified.

14:29:06 17 It might have been from Minister McMeekin.

14:29:08 18 703 Q. Okay.

14:29:09 19 A. I think I probably heard

14:29:10 20 informally before I heard formally.

14:29:12 21 704 Q. All right. Did you speak with

14:29:13 22 Mr. Duncan about the decision that was made during

14:29:18 23 the course of the Panel?

14:29:19 24 A. I don't think directly to the

14:29:24 25 Minister, no.

14:29:25 1 705 Q. Okay. Did you speak with
14:29:27 2 Mr. McGuinty about it?
14:29:27 3 A. No. Certainly not.
14:29:29 4 706 Q. And do you know if Mr. Wilkinson
14:29:32 5 spoke with Mr. Duncan about it?
14:29:33 6 A. I have no idea.
14:29:34 7 707 Q. Do you know if Mr. Wilkinson spoke
14:29:37 8 with Mr. McGuinty about the business of the Panel,
14:29:41 9 the work of the Panel?
14:29:42 10 A. He did not tell me he did, no.
14:29:43 11 708 Q. Okay. And am I correct,
14:29:51 12 Mr. Snobelen, that the idea of the Panel wasn't to
14:29:53 13 investigate how the decision was made, but it was
14:29:58 14 to deal with the consequences of the decision?
14:30:02 15 A. Exactly correct.
14:30:02 16 709 Q. Okay. And the panel was supposed
14:30:05 17 to be completely independent of the
14:30:07 18 decision-makers?
14:30:11 19 A. I don't know that I would
14:30:13 20 characterize it that way.
14:30:14 21 I -- I -- I think the government asked
14:30:17 22 for advice specifically to... It asked for advice
14:30:25 23 on outcomes on -- on horse racing.
14:30:28 24 The initial charge was to provide
14:30:32 25 advice on a \$50-million mitigation plan and when we

14:30:38 1 -- we had made that advice, the government asked
14:30:40 2 the Panel to -- to provide some other advice.
14:30:43 3 But that initial charge was to look at
14:30:49 4 a -- a proposed \$50-million mitigation plan.
14:30:52 5 710 Q. Okay. And I just want to show you
14:30:54 6 what I understand to be a copy of the contract
14:30:57 7 between Ontario and the Panel Members, you being
14:31:03 8 one of them.
14:31:03 9 --- (Witness reviewing document.)
14:31:36 10 MR. ROSENBERG: Can you give us the
14:31:37 11 document number?
14:31:39 12 MR. LISUS: Yeah.
14:31:39 13 MR. MATTHEWS: CRE0257175.
14:32:43 14 --- (Witness reviewing document.)
14:32:44 15 THE WITNESS: Yeah.
14:32:45 16 BY MR. LISUS:
14:32:45 17 711 Q. Okay. You signed this contract?
14:32:46 18 A. I believe I did.
14:32:47 19 712 Q. Okay. And I'm looking at the
14:32:50 20 first page of it, Mr. Snobelen, the sixth paragraph
14:32:57 21 where it says:
14:32:58 22 "To seek non-partisan guidance
14:33:00 23 based on such consultations."
14:33:02 24 A. Mm-hmm.
14:33:03 25 713 Q. Do you see that?

14:33:04 1 A. Mm-hmm.

14:33:05 2 714 Q. And so -- you have to say 'yes',

14:33:06 3 sir.

14:33:06 4 A. I am sorry. Yes, indeed.

14:33:08 5 715 Q. Okay. And what you were -- and

14:33:12 6 your co-panelists were contracted to do was provide

14:33:17 7 non-partisan guidance to the --

14:33:19 8 A. That's correct.

14:33:20 9 716 Q. Right.

14:33:21 10 Which meant that the guidance that you

14:33:24 11 were to give was not to favour any political party,

14:33:31 12 right?

14:33:31 13 A. That's correct.

14:33:32 14 717 Q. And it wasn't to advance the

14:33:39 15 objectives of any political party, right?

14:33:43 16 A. That's correct.

14:33:44 17 718 Q. And that non-partisan aspect of

14:33:48 18 your task was extremely important; correct?

14:33:50 19 A. I thought it was.

14:33:51 20 719 Q. And, in fact, essential to the

14:33:53 21 integrity of the mandate that the Panel was

14:33:56 22 undertaking?

14:33:57 23 A. Certainly unique in my experience.

14:34:00 24 720 Q. Okay. But it was very, very

14:34:02 25 important to the business of the Panel that it be

14:34:06 1 seen to be non-partisan and not doing the bidding
14:34:11 2 of any --

14:34:12 3 A. Yes.

14:34:12 4 721 Q. Right. ...any political party?

14:34:14 5 A. Yeah, yeah. For many reasons,
14:34:17 6 that's true.

14:34:18 7 722 Q. Okay. And, indeed, the contract
14:34:28 8 requires the services of the Panel Members to be
14:34:37 9 provided in an independent manner; correct?

14:34:39 10 A. That's correct.

14:34:41 11 723 Q. Independent of the agenda of any
14:34:44 12 political party; correct?

14:34:46 13 A. That's correct.

14:34:46 14 724 Q. Independent of party politics;
14:34:50 15 correct?

14:34:50 16 A. That's my understanding.

14:34:51 17 725 Q. And it would be very disappointing
14:34:54 18 to you, as a Panel Member, if any one of your
14:34:57 19 co-panelists was not discharging their
14:35:02 20 responsibility in an independent and non-partisan
14:35:06 21 way; correct?

14:35:07 22 A. The... I would be disappointed in
14:35:14 23 -- in anyone who didn't live up to the contractual
14:35:17 24 obligation, for sure.

14:35:22 25 I would say that the Panel regarded --

14:35:23 1 I think it's far to say regarded itself as
14:35:27 2 tripartisan which is some -- a different version of
14:35:30 3 non-partisan.

14:35:31 4 It is, in fact, hard to suggest that
14:35:33 5 Mr. Buchanan and Mr. Wilkinson are not partisans,
14:35:37 6 and some would accuse me of the same.

14:35:37 7 726 Q. Mm-hmm.

14:35:40 8 A. But when we got together, it was
14:35:42 9 the agreement that we would not be partisan in our
14:35:47 10 deliberations and that our recommendations would
14:35:49 11 not be, uh -- would not favour political concern.

14:35:54 12 727 Q. And wouldn't be influenced by
14:35:57 13 political objectives of any party, right?

14:35:59 14 A. To the extent that those can be
14:36:06 15 segregated from the fact that we were, in fact, all
14:36:09 16 three partisans.

14:36:10 17 728 Q. Well, for instance, you wouldn't
14:36:12 18 expect that any of the panelists would be working
14:36:23 19 to advance electoral agendas in the process, right?

14:36:27 20 A. As working for the -- working -- I
14:36:29 21 suspect that all three of us may have worked to
14:36:32 22 occasionally help out a political party during the
14:36:35 23 time that we were on the Panel, but not while we
14:36:38 24 were severing as -- not while we were, umm, working
14:36:42 25 together as a panel.

14:36:43 1 729 Q. Right. Not in your capacity as
14:36:45 2 Panel Members?
14:36:46 3 A. Right. Yes. Sorry. I'm trying
14:36:49 4 -- awkwardly trying to describe that particular
14:36:51 5 situation, yes.

14:36:52 6 730 Q. Right. That in your capacity as
14:36:56 7 Panel Members, no panelist would work to advance
14:37:00 8 the interests of a political party, be it the
14:37:04 9 political party in power or the political party in
14:37:08 10 opposition; correct?
14:37:09 11 A. Uh -- I -- absolutely -- well, my
14:37:13 12 own take on it, that would be consistent. And my
14:37:20 13 concern personally was to ensure that that did not
14:37:23 14 happen for me.

14:37:23 15 731 Q. So, for instance, we discussed
14:37:27 16 David Gene earlier today, who--
14:37:28 17 A. Yes.

14:37:28 18 732 Q. --was on the political side of the
14:37:31 19 Liberal...
14:37:32 20 A. Yes.

14:37:32 21 733 Q. You wouldn't have expected
14:37:34 22 Mr. Gene to be involved in influencing the business
14:37:37 23 of the Panel and the Panel deliberations; correct?
14:37:40 24 A. I know he did not.

14:37:42 25 734 Q. Okay. And what you say you know

14:37:44 1 he did not, you say that because it would have been
14:37:47 2 inappropriate for Mr. Gene to be involved in the
14:37:51 3 deliberations of the Panel, right?

14:37:52 4 A. That's correct.

14:37:53 5 735 Q. It would have been inappropriate
14:37:55 6 for Mr. Gene to be involved in the messaging or
14:37:59 7 the -- the messages that the Panel ultimately
14:38:02 8 delivered?

14:38:02 9 A. Yeah. The Panel did not put its
14:38:09 10 -- it certainly put its, umm, reports through the
14:38:16 11 normal metrics of -- of pre-briefs and edits and
14:38:22 12 whatever with -- with the government, with the
14:38:23 13 Ministries,--

14:38:23 14 736 Q. Right.

14:38:24 15 A. --but there was no political
14:38:25 16 shopping.

14:38:26 17 737 Q. Okay. And it would have been
14:38:40 18 inappropriate, for instance, for any member of the
14:38:41 19 Panel to try to direct the Panel's report in a way
14:38:45 20 that would wedge any particular political party;
14:38:50 21 correct?

14:38:50 22 A. That's correct. Yeah.

14:38:51 23 738 Q. That would undermine the integrity
14:38:54 24 of the Panel process?

14:38:55 25 A. It likely would have been

14:38:57 1 unsuccessful with at least two other Panel Members,
14:39:01 2 regardless of which other Panel Member it was.

14:39:04 3 739 Q. Provided they were aware of such
14:39:08 4 efforts?

14:39:08 5 A. Well, I -- I -- I, uh -- I think
14:39:09 6 that all three gentlemen were pretty politically
14:39:12 7 aware.

14:39:16 8 MR. LISUS: Okay. Mark the contract as
14:39:17 9 the next exhibit, please.

14:39:18 10 MR. MATTHEWS: 20.

14:39:21 11 ---EXHIBIT NO. 20: A copy of the
14:39:22 12 contract between Ontario and the Panel Members,
14:39:24 13 Production Number CRE 0257175.

14:39:27 14 BY MR. LISUS:

14:39:27 15 740 Q. You, I presume, didn't have any
14:39:30 16 communications about the conclusions or opinions
14:39:34 17 that the Panel was forming with Mr. Gene?

14:39:36 18 A. No.

14:39:36 19 741 Q. Okay. And Mr. Buchanan, as far as
14:39:38 20 you know, didn't have any communications or
14:39:41 21 conclusions about..., didn't have any
14:39:42 22 communications about the conclusions or opinions of
14:39:46 23 the Panel with Mr. Gene?

14:39:47 24 A. To the best of my knowledge.

14:39:49 25 742 Q. And the same with Mr. Wilkinson;

14:39:50 1 to the best of your knowledge, he didn't have any
14:39:53 2 communications with --
14:39:54 3 A. To the best of my knowledge.
14:39:56 4 743 Q. Okay. And you didn't have, as an
14:40:13 5 objective in the discharge of your duties as a
14:40:16 6 panelist, wedging either Mr. McGuinty or
14:40:20 7 Ms. Horwath,--
14:40:20 8 A. No.
14:40:22 9 744 Q. --right?
14:40:22 10 A. No. No. No.
14:40:23 11 745 Q. And you believe that Mr. Buchanan
14:40:32 12 didn't, at any level, has -- have as an objective,
14:40:38 13 wedging any particular political party or political
14:40:42 14 leader; correct?
14:40:43 15 A. Yeah. That would be my
14:40:44 16 understanding.
14:40:44 17 746 Q. And your understanding is that
14:40:49 18 Mr. Wilkinson, as a Panel Member, didn't have any
14:40:53 19 objective or goal of wedging Mr. Hudak or
14:41:03 20 Ms. Horwath, right?
14:41:04 21 A. To the best of my knowledge.
14:41:06 22 747 Q. And that would be inappropriate;
14:41:08 23 correct?
14:41:08 24 A. That was our agreement as -- as
14:41:11 25 spelled out in the agreement.

14:41:12 1 748 Q. So you met Mr. Wilkinson for the
14:41:15 2 first time in early June when he was proposed as a
14:41:18 3 co-panelist, right?
14:41:20 4 A. That's correct.
14:42:41 5 749 Q. I want to show you an e-mail dated
14:42:42 6 August 3, 2012; CRE 29291.
14:43:02 7 Just before you read it through, have
14:43:04 8 you seen this e-mail before today?
14:43:05 9 A. I have to read it before I tell
14:43:08 10 you. I don't believe I have.
14:43:09 11 --- (Witness reviewing document.)
14:45:58 12 THE WITNESS: Thank you.
14:45:59 13 BY MR. LISUS:
14:45:59 14 750 Q. You haven't seen that e-mail
14:46:00 15 before today?
14:46:01 16 A. Not in that form, no, no.
14:46:03 17 751 Q. And I take it from the answers you
14:46:05 18 gave me a few minutes ago, that you were aware that
14:46:08 19 Mr. Wilkinson was involving Mr. Gene in the
14:46:13 20 deliberations of the Panel?
14:46:14 21 A. I am not surprised that, umm...
14:46:21 22 I'm not surprised or -- or particularly
14:46:25 23 disappointed that, umm, that the -- that an update
14:46:29 24 on Panel work would be -- would be made through
14:46:35 25 Minister Wilkinson's connections.

14:46:37 1 Umm. I am a bit surprised that there's
14:46:41 2 political, uh, political considerations or
14:46:43 3 political -- purely political considerations--
14:46:43 4 752 Q. Well, you --
14:46:45 5 A. --in -- inside of that report.
14:46:46 6 753 Q. You are being charitable.
14:46:49 7 You're more than a bit surprised;
14:46:51 8 correct?
14:46:51 9 A. Uh. I would characterize it as a
14:46:53 10 bit surprised.
14:46:54 11 754 Q. It's inappropriate, isn't it?
14:46:57 12 A. That's between the government and
14:47:00 13 John.
14:47:00 14 755 Q. I understand, sir.
14:47:02 15 But as a Panel Member who obviously
14:47:05 16 felt strongly about the business of the Panel,
14:47:11 17 it -- with a contractual obligation to be
14:47:14 18 non-partisan and independent, you and I can agree,
14:47:18 19 sir, that this kind of discussion about wedging Tim
14:47:23 20 and Andrea is inappropriate for a Panel Member?
14:47:25 21 A. It's outside the scope of the
14:47:28 22 Panel.
14:47:28 23 756 Q. It's outside of the scope of the
14:47:31 24 Panel and it's contrary to the terms of the
14:47:35 25 contract; correct?

14:47:35 1 A. In my reading of the contract, it
14:47:37 2 is contrary.

14:47:38 3 757 Q. Yeah. Certainly, you wouldn't
14:47:39 4 have done anything like this?

14:47:39 5 A. I definitely did not do anything
14:47:44 6 of that nature with any of the three political
14:47:46 7 parties.

14:47:46 8 758 Q. And you certainly would not have
14:47:48 9 expected one of your co-panelists to have this kind
14:47:52 10 of dialogue, right?

14:47:53 11 A. Umm. Again, I -- I think I said
14:47:54 12 earlier, I'm a little surprised, umm, but that's as
14:47:57 13 far as I'm comfortable critiquing anything of that
14:48:03 14 nature.

14:48:03 15 759 Q. Well, just help me understand
14:48:05 16 that, Mr. Snobelen.

14:48:11 17 You signed a contract to do a very
14:48:20 18 important job; correct?

14:48:21 19 A. (Nodding head.) Yes. Yes. I'm
14:48:23 20 sorry. Yes.

14:48:24 21 760 Q. And you knew that a lot of
14:48:25 22 people's livelihoods depended on what
14:48:28 23 recommendation--

14:48:29 24 A. Yes.

14:48:29 25 761 Q. --you made, right?

14:48:30 1 A. Yes.

14:48:32 2 762 Q. And in that contract, you promised

14:48:34 3 to be non-partisan?

14:48:36 4 A. That's correct.

14:48:37 5 763 Q. And independent?

14:48:38 6 A. That's correct.

14:48:39 7 764 Q. And Mr. Wilkinson signed a

14:48:41 8 contract to do a very important job, right?

14:48:43 9 A. That's correct.

14:48:45 10 765 Q. And he understood that --

14:48:47 11 MR. RATCLIFFE: Well, again, you're

14:48:48 12 asking him to --

14:48:49 13 BY MR. LISUS:

14:48:49 14 766 Q. You expect that your co-panelist

14:48:52 15 understood --

14:48:52 16 A. The conditions.

14:48:53 17 767 Q. Correct.

14:48:54 18 A. I -- I believe that Elmer, John,

14:48:57 19 and I, uh, had the same contract and the same

14:49:00 20 obligation.

14:49:01 21 768 Q. And you and I can agree, sir, that

14:49:08 22 Mr. Wilkinson's communications with Mr. Gene in

14:49:12 23 this e-mail are inconsistent with the obligations

14:49:16 24 of non-partisanship and independence, right?

14:49:19 25 A. As I understand them to be, yes.

14:49:21 1 769 Q. Okay. And certainly,
14:49:23 2 Mr. Wilkinson never told you that he was having
14:49:26 3 this kind of communication with Mr. Gene?
14:49:30 4 A. Uh. Again, he did not.
14:49:34 5 I am not surprised that there would be
14:49:37 6 some communication.
14:49:38 7 770 Q. I'm not talking about "some
14:49:40 8 communication". I'm talking about this kind of
14:49:43 9 partisan political communication.
14:49:45 10 A. I am surprised that communication
14:49:47 11 would include partisan reference.
14:49:50 12 771 Q. Right. And if he had asked you
14:49:52 13 about it before he did it, you would have said,
14:49:56 14 'That's not appropriate, John,' right?
14:49:58 15 A. If he sought my advice on that, I
14:50:01 16 would have probably suggested that it is not
14:50:06 17 helpful.
14:50:06 18 772 Q. All right. Do you know if
14:50:12 19 Mr. Buchanan is aware of these communications?
14:50:14 20 A. I have no idea.
14:50:14 21 773 Q. Did you meet with McKinsey?
14:50:19 22 A. Yes, we did.
14:50:19 23 774 Q. Okay.
14:50:20 24 A. Yeah.
14:50:20 25 775 Q. And how many times?

14:50:23 1 A. At least twice.

14:50:26 2 776 Q. All right. And in addition to

14:50:33 3 meeting with McKinsey...

14:50:35 4 MR. LISUS: I'm just going to mark this

14:50:36 5 as the next exhibit before I forget.

14:50:39 6 ---EXHIBIT NO. 21: An e-mail dated

14:50:40 7 August 3, 2012, Production Number CRE 29291.

14:50:40 8 BY MR. LISUS:

14:50:40 9 777 Q. In addition to meeting with

14:50:54 10 McKinsey... And they did a lot of work, right?

14:50:56 11 A. They worked, uh, with the Ministry

14:50:56 12 of Finance--

14:50:56 13 778 Q. Right.

14:50:59 14 A. --and they produced a report.

14:51:00 15 779 Q. ...OMAFRA also provided a large

14:51:03 16 body of information to the Panel?

14:51:06 17 A. They did, indeed, yes.

14:51:08 18 780 Q. All right. And just to return to

14:51:09 19 Exhibit 21 for a minute, we see Mr. -- did you ever

14:51:15 20 -- we see Mr. Gene replying:

14:51:17 21 "We need to slow them down."

14:51:19 22 Do you see that?

14:51:20 23 A. Yes.

14:51:20 24 781 Q. And he's not -- he's actually

14:51:22 25 forwarding -- to be accurate, he's forwarding

14:51:27 1 Mr. Wilkinson's e-mail to Tim Shorthill.

14:51:31 2 Do you see that?

14:51:32 3 A. Mm-hmm.

14:51:33 4 782 Q. Yes?

14:51:33 5 A. Yes, I do. Sorry.

14:51:35 6 783 Q. It's okay.

14:51:36 7 And Mr. Gene is writing from a

14:51:36 8 "dgene@liberal.ola.org".

14:51:42 9 Do you see that?

14:51:43 10 A. I do, indeed.

14:51:44 11 784 Q. So that's not a government e-mail

14:51:46 12 address. That's a party address?

14:51:48 13 A. As far as I know it, yes.

14:51:50 14 785 Q. Okay. And so, again, this is

14:51:58 15 Mr. Dean (sic) -- excuse me -- Mr. Gene acting in

14:52:04 16 his member -- in his capacity as a member of the

14:52:08 17 Liberal Party, right?

14:52:09 18 A. I would assume so. I mean, that's

14:52:13 19 the address it comes from.

14:52:15 20 786 Q. Was there a lead on the Panel?

14:52:35 21 A. No. The Panel on purpose -- on

14:52:37 22 purpose did not have a chair.

14:52:38 23 787 Q. But you each, as I have understood

14:52:40 24 your answers, had respective expertise?

14:52:43 25 A. Sure. Yeah.

14:52:44 1 788 Q. You had expertise about the horse
14:52:47 2 industry?
14:52:48 3 A. That's correct.
14:52:48 4 789 Q. Mr. Wilkinson had finance
14:52:52 5 expertise?
14:52:52 6 A. Yes.
14:52:56 7 790 Q. And Mr. Buchanan had what?
14:53:00 8 A. Ministry of Agriculture.
14:53:02 9 791 Q. Ministry of Agriculture,--
14:53:04 10 A. Right.
14:53:04 11 792 Q. --but he wasn't a horseman and
14:53:07 12 didn't -- wasn't very knowledgeable about the horse
14:53:09 13 racing industry?
14:53:09 14 A. Uh. No, not directly. He
14:53:11 15 certainly had spent, I think, five years at
14:53:15 16 Agriculture and Rural Affairs, so he was
14:53:19 17 well-acquainted with the rural communities.
14:53:22 18 793 Q. Okay. I want to just go forward a
14:53:33 19 little bit to December of 2012, in which you gave
14:53:55 20 an interview on Trot Radio to Norm Borg.
14:53:59 21 Do you remember that?
14:54:00 22 A. Mm-hmm. Yes.
14:54:01 23 794 Q. This was after the release of your
14:54:06 24 report.
14:54:13 25 And you were known to Trot Radio?

14:54:17 1 A. I, uh, have been on Trot Radio
14:54:19 2 several times. I'm not sure whether this is the
14:54:22 3 first one or --
14:54:22 4 795 Q. Okay. Trot Radio is a horse
14:54:24 5 racing industry radio station?
14:54:26 6 A. That's correct.
14:54:27 7 796 Q. Okay. And you had been on it
14:54:28 8 several times before this appearance?
14:54:29 9 A. I -- I've been on it several
14:54:31 10 times. I'm not sure where in the sequence this --
14:54:31 11 this -- this stands.
14:54:36 12 797 Q. Okay.
14:54:36 13 MR. RATCLIFFE: Is there a number for
14:54:38 14 this in terms of the productions?
14:54:39 15 MR. LISUS: No, because it's a
14:54:40 16 transcription--
14:54:40 17 MR. RATCLIFFE: Oh, okay.
14:54:41 18 MR. LISUS: --of a radio interview.
14:54:41 19 BY MR. LISUS:
14:54:48 20 798 Q. I wanted just to ask you about a
14:54:50 21 comment that you make on the third page of it, in
14:54:52 22 the middle, beginning with:
14:54:54 23 "JS: Oh, yeah. No. Listen,
14:54:57 24 we're a hundred per cent behind
14:54:59 25 that." [As read.]

14:54:59 1 Do you see that?

14:54:59 2 A. Mm-hmm.

14:55:00 3 799 Q. Just read that paragraph.

14:55:01 4 MR. RATCLIFFE: Yeah. I'm just

14:55:02 5 wondering if it would be helpful if he had a chance

14:55:04 6 to skim from the beginning.

14:55:06 7 MR. LISUS: Whatever he wants.

14:55:09 8 THE WITNESS: Let me just read the

14:55:10 9 setup to it.

14:55:11 10 --- (Witness reviewing document.)

14:55:26 11 THE WITNESS: Okay.

14:55:27 12 BY MR. LISUS:

14:55:28 13 800 Q. Okay. And have you now read your

14:55:31 14 comment?

14:55:32 15 A. I have not. I'm reading it now.

14:55:33 16 801 Q. Oh. Okay. Just let me know when

14:55:37 17 you're ready.

14:55:48 18 --- (Witness reviewing document.)

14:56:26 19 THE WITNESS: Okay.

14:56:42 20 BY MR. LISUS:

14:56:42 21 802 Q. And you say there that:

14:56:44 22 "The government didn't

14:56:47 23 understand the impact of the overall

14:56:50 24 horse industry in Ontario."

14:56:52 25 [As read.]

14:56:52 1 A. That's correct.

14:56:55 2 803 Q. And the comments that you make in
14:56:56 3 that paragraph are accurate?

14:56:57 4 A. Yes.

14:56:59 5 804 Q. Okay. And you obviously believed
14:57:05 6 them at the time?

14:57:05 7 A. Yes.

14:57:11 8 MR. LISUS: Okay. Mark that as the
14:57:12 9 next exhibit, please; the transcription.

14:57:23 10 MR. MATTHEWS: 22.

14:57:23 11 ---EXHIBIT NO. 22: A transcription of
14:57:24 12 a December 2012 Trot Radio interview by Norm Borg
14:57:27 13 of John Snobelen.

14:57:38 14 BY MR. LISUS:

14:57:38 15 805 Q. And so, it was your opinion at the
14:57:40 16 time that the data collected by the government on
14:57:41 17 the horse racing industry was sorely lacking.

14:57:44 18 Is that fair?

14:57:45 19 A. Yes.

14:57:48 20 806 Q. And it therefore lacked the kind
14:57:50 21 of information base it needed to make a properly
14:57:53 22 considered decision about the impact of the
14:57:58 23 cancellation of revenue share on the industry,
14:58:01 24 including breeders, right?

14:58:03 25 A. The information that I was

14:58:08 1 speaking about in that file was more granular
14:58:12 2 because it would be information that would involve
14:58:14 3 operating the industry, which I don't think the
14:58:19 4 government contemplated doing at that time, nor
14:58:22 5 should it.

14:58:22 6 As a byproduct of not having that more
14:58:24 7 granular material, it -- it -- the amount of
14:58:27 8 information and the quality of the information the
14:58:29 9 government had at the time of the decision was, in
14:58:32 10 my view, deficient.

14:58:33 11 807 Q. Right.

14:58:34 12 Whatever the reason, in your view, at
14:58:36 13 the time - and we have discussed your views in the
14:58:39 14 first part of 2012 - whatever the reason, your view
14:58:44 15 in the fall of 2012 is that when the government
14:58:47 16 made the decision it did, it didn't have the
14:58:52 17 information it needed to understand the impact of
14:58:56 18 its decision?

14:58:57 19 A. That is accurate.

14:58:58 20 808 Q. Okay. And, in other words, to use
14:59:05 21 a term you used before, the information that was
14:59:10 22 presented to Cabinet in February 2012 was not
14:59:14 23 Cabinet-ready for a decision of this consequence
14:59:18 24 and scale?

14:59:18 25 A. In my view, that's correct.

14:59:20 1 809 Q. Okay. And I want to ask you, sir,
14:59:35 2 about an interview that was given on the television
14:59:41 3 show "The Agenda" with Mr. Steven Paikin,
14:59:49 4 P-a-i-k-i-n.
14:59:50 5 Do you remember that?
14:59:50 6 A. I do, indeed.
14:59:51 7 810 Q. And that was an interview in
15:00:02 8 December of 2012, in which you and Mr. Wilkinson
15:00:05 9 and Mr. Buchanan appeared on Mr. Paikin's show.
15:00:08 10 Do you remember that, sir?
15:00:09 11 A. I do, indeed.
15:00:10 12 811 Q. Okay. Do you want to take a
15:00:11 13 minute and just refresh your memory with the
15:00:14 14 transcript there?
15:00:15 15 --- (Witness reviewing document.)
15:03:30 16 THE WITNESS: Okay.
15:03:31 17 BY MR. LISUS:
15:03:31 18 812 Q. Okay? So you've read the whole--
15:03:31 19 A. Yeah.
15:03:33 20 813 Q. --transcript?
15:03:33 21 A. Yeah.
15:03:33 22 814 Q. Okay. And I want to ask you to
15:03:36 23 look at the second page of the document.
15:03:40 24 A. Okay.
15:03:41 25 815 Q. And in the middle there,

15:03:42 1 Mr. Paikin says, "SARP; what was it?"

15:03:47 2 Do you see that? Right in the middle

15:03:54 3 of the page, "SARP; what was it?"

15:03:54 4 MR. MATTHEWS: [Sotto voce.]

15:04:00 5 THE WITNESS: I'll see -- I'll tell you

15:04:01 6 what; I will skip around until I find Steve's --

15:04:01 7 BY MR. LISUS:

15:04:08 8 816 Q. Okay. I've got a condensed

15:04:10 9 version, apparently.

15:04:10 10 A. Did we speak less in your version?

15:04:15 11 817 Q. Thankfully, yes.

15:04:53 12 Okay. This, by the way, is CRE 25235.

15:05:03 13 So do you see where it says on page

15:05:05 14 3 --

15:05:05 15 MR. RATCLIFFE: That's page 2.

15:05:07 16 BY MR. LISUS:

15:05:07 17 818 Q. Page 3.

15:05:08 18 MR. RATCLIFFE: There it is. The one

15:05:09 19 that begins, "John Snobelen"?

15:05:09 20 BY MR. LISUS:

15:05:13 21 819 Q. "Steve: Let's --"

15:05:13 22 MR. RATCLIFFE: Okay.

15:05:13 23 BY MR. LISUS:

15:05:14 24 820 Q. "Because I think there may be

15:05:15 25 people watching this who either don't

15:05:15 1 got to the track or aren't completely
15:05:18 2 familiar with how this works. Let's do
15:05:19 3 background here. John Wilkinson; the
15:05:22 4 slots at the racetracks program. What
15:05:25 5 was that in the first place? What was
15:05:26 6 it...?" [As read.]
15:05:26 7 A. I'm there. I'm looking at it.
15:05:27 8 821 Q. Do you see that?
15:05:28 9 A. Yeah, mm-hmm.
15:05:29 10 822 Q. All right. And Mr. Wilkinson
15:05:31 11 says:
15:05:31 12 "The government, which John was
15:05:34 13 part of, and maybe John is better to
15:05:36 14 answer the question because he was
15:05:37 15 around the table."
15:05:39 16 That's accurate, right?
15:05:40 17 A. That's right.
15:05:41 18 823 Q. And he said:
15:05:42 19 "...as we understand it, it was
15:05:44 20 simply the government was trying to
15:05:46 21 increase revenue."
15:05:47 22 Right?
15:05:48 23 A. Yeah. That's what it said.
15:05:50 24 824 Q. And is that a fair statement?
15:05:52 25 A. It's an incomplete statement, but

15:05:57 1 it's fair.

15:05:58 2 825 Q. They wanted to increase revenue

15:06:00 3 and they also wanted there to be reinvestment of

15:06:05 4 that revenue in the horse racing--

15:06:05 5 A. Now it's more complete.

15:06:07 6 826 Q. --industry.

15:06:08 7 Pardon?

15:06:08 8 A. Now it's more complete.

15:06:09 9 827 Q. Okay. And he says at the end:

15:06:17 10 "They created what they thought

15:06:18 11 was a win-win deal that the slots

15:06:21 12 were going to the racetrack. The

15:06:23 13 racetracks, both the owners of the

15:06:25 14 tracks and the horsemen, the people

15:06:26 15 running the horses, would actually

15:06:28 16 split that money."

15:06:29 17 That's an accurate characterization;

15:06:31 18 correct?

15:06:32 19 A. That's correct, yeah.

15:06:32 20 828 Q. "It was quite a bit. It wasn't

15:06:34 21 initially a lot of money but it ended

15:06:36 22 up being a lot of money." [As read.]

15:06:37 23 That's correct, too; correct?

15:06:39 24 A. If \$345-million is "a lot of

15:06:42 25 money", then it would be a lot of money.

15:06:45 1 829 Q. It is to me.

15:06:52 2 And I want to ask you to look over the

15:06:54 3 page in the middle where Mr. Buchanan is answering.

15:06:57 4 Do you see where he...?

15:07:01 5 A. "Well, I think you need to look at

15:07:03 6 the circumstances."

15:07:04 7 Is that the...?

15:07:06 8 830 Q. Yeah.

15:07:09 9 MR. RATCLIFFE: Sorry. Which paragraph

15:07:11 10 is it?

15:07:11 11 BY MR. LISUS:

15:07:15 12 831 Q. Mr. Buchanan says:

15:07:17 13 "I think the slots went to

15:07:19 14 racetracks to help the government

15:07:21 15 get money in order to answer the

15:07:22 16 questions of deficits and put more

15:07:25 17 money in the coffers.

15:07:27 18 "This particular government

15:07:28 19 this time round, looking for money,

15:07:30 20 looking at a major deficit, looking

15:07:32 21 to go see where they could find some

15:07:34 22 money, it was Slots at the Racetrack

15:07:37 23 Program that was given, that was

15:07:39 24 drawing to their attention by

15:07:41 25 Mr. Drummond when he did his

15:07:43 1 report." [As read.]

15:07:43 2 Do you see that?

15:07:43 3 A. I do, indeed.

15:07:44 4 832 Q. And he says:

15:07:45 5 "For them, it was an easy and

15:07:46 6 quick way of getting money."

15:07:46 7 [As read.]

15:07:48 8 Do you see that?

15:07:48 9 A. Yes.

15:07:50 10 833 Q. And in 2012, sir, were you of the

15:07:54 11 opinion of that the reason the government decided

15:07:56 12 to cancel the revenue share was because it was an

15:07:59 13 easy and quick way of getting money, as

15:08:04 14 Mr. Buchanan states?

15:08:05 15 MR. RATCLIFFE: Are you in a position

15:08:06 16 to answer that?

15:08:07 17 MR. LISUS: Well, he was there. This

15:08:08 18 is Cross-Examination, Mr. Ratcliffe. This is

15:08:11 19 exactly part of his mandate. He was there. His

15:08:14 20 co-panelists -- he's expressing an opinion.

15:08:18 21 I'm asking him whether he thinks,

15:08:21 22 whether he shares that view.

15:08:26 23 THE WITNESS: I agree that with -- I

15:08:27 24 would agree on my -- my fellow panelists with -- in

15:08:30 25 part, but not in whole.

15:08:31 1 I think the government was... I think
15:08:37 2 the government was attempting to -- to "modernize",
15:08:42 3 in their vernacular, the gaming industry in the
15:08:45 4 Province, and one of the steps that was necessary
15:08:47 5 for that was to change the Slots at Racetracks
15:08:54 6 Program; in fact, cancel the Slots at Racetracks
15:08:54 7 Program.

15:08:54 8 BY MR. LISUS:

15:08:55 9 834 Q. And the reason you believe that,
15:08:58 10 sir, is because you understood in 2012 that OLG had
15:09:01 11 recommended terminating the revenue share with the
15:09:04 12 horse racing industry as part of its Modernization
15:09:07 13 Plan, right?

15:09:08 14 A. That's how it was presented, yes.

15:09:09 15 835 Q. Okay. So the basis for the
15:09:11 16 opinion you just expressed is that OLG conducted a
15:09:16 17 long study and said to government, 'The best
15:09:18 18 Modernization Plan for OLG is to cancel the revenue
15:09:23 19 share with the horse racing industry,' and that's
15:09:26 20 the baseline that you started from?

15:09:27 21 A. I assume that that was a second
15:09:30 22 step of -- of potentially relocate the slot
15:09:36 23 parlours.

15:09:37 24 836 Q. So, to be complete, your
15:09:43 25 understanding of the basis of the decision being

15:09:46 1 made was a recommendation of OLG to terminate the
15:09:48 2 revenue share with the horse racing industry as
15:09:52 3 part of moving slot machines out of rural centres
15:09:54 4 into urban centres; correct?

15:09:57 5 A. That was my understanding of the
15:09:59 6 Modernization Plan.

15:09:59 7 837 Q. Including a big casino in Toronto?

15:10:01 8 A. That's correct.

15:10:02 9 838 Q. And potentially in other big urban
15:10:04 10 centres, right?

15:10:05 11 A. That's correct.

15:10:06 12 839 Q. And that's how you understood the
15:10:07 13 decision was made?

15:10:08 14 A. Yes.

15:10:09 15 840 Q. And who do you think...? And you
15:10:10 16 thought that decision was made after a period of
15:10:12 17 some many months of study and consultation, right?

15:10:15 18 A. I thought it was a very deliberate
15:10:18 19 strategy that had evolved in the way government
15:10:21 20 strategies evolve, yes.

15:10:23 21 841 Q. So, are you aware of the
15:10:25 22 circumstances in which the decision was made to
15:10:30 23 cancel the revenue share without any transition
15:10:33 24 funding?

15:10:34 25 Are you aware of the circumstances in

15:10:37 1 which that decision was made?

15:10:38 2 A. I'm aware the decision was made
15:10:40 3 and I believe we saw the minute. I believe we did.
15:10:44 4 If not, we saw -- we saw a -- a
15:10:47 5 representation of the minute. We may not have seen
15:10:49 6 the direct minute.

15:10:49 7 842 Q. But you're not aware as to whether
15:10:52 8 or not that decision was made, in fact, in advance
15:10:55 9 of the Cabinet meeting by Mr. Duncan, Mr. McGuinty,
15:10:59 10 Mr. Orsini, Mr. Bardeesy?

15:11:03 11 A. Those would be privileged
15:11:05 12 conversations.

15:11:05 13 843 Q. You don't know that?

15:11:06 14 A. I do not know that.

15:11:08 15 844 Q. Okay. And is it also your
15:11:09 16 understanding that Mr. Drummond recommended
15:11:12 17 cancelling the sharing of slot revenue with the
15:11:16 18 horse racing industry, and that was part of the
15:11:19 19 reason on which the decision was made?

15:11:20 20 A. I certainly was, and am of the
15:11:28 21 opinion that Mr. Drummond flagged the horse racing
15:11:32 22 program. He -- I -- if I recall his report
15:11:32 23 correctly, he couched that a little differently
15:11:43 24 than just simply "cancel it", but I think he said
15:11:43 25 "review", "deserves review" or something of that

15:11:45 1 ilk.

15:11:45 2 845 Q. Did you speak with Mr. Drummond

15:11:47 3 about what his recommendation was in the work you

15:11:49 4 did as a panelist?

15:11:50 5 A. We did not. It was not germane to

15:11:52 6 our work.

15:11:53 7 846 Q. Okay. And did you ask

15:11:57 8 Mr. Phillips what exactly OLG had recommended?

15:12:00 9 A. We did not. Again, not --

15:12:02 10 847 Q. Okay.

15:12:02 11 A. Our directive was -- was not on

15:12:03 12 the modernization; it was strictly on...

15:12:07 13 848 Q. ...what to do now?

15:12:08 14 A. ...what to do now,--

15:12:08 15 849 Q. Okay.

15:12:08 16 A. --yes.

15:12:10 17 850 Q. Mr. Buchanan expressed the view,

15:13:04 18 for them, it was an easy and quick way of getting

15:13:05 19 money.

15:13:06 20 And you said that was part of the

15:13:07 21 reason, right?

15:13:08 22 A. Yes, yes.

15:13:09 23 851 Q. But what you learned from your

15:13:12 24 time on the Panel was that it was, unless there was

15:13:22 25 something done to assist transition through funding

15:13:33 1 the consequences would have been catastrophic,
15:13:36 2 right?

15:13:36 3 A. In my view, yes.

15:13:37 4 852 Q. Okay. And you had that very
15:13:39 5 strong belief, as well, when you first intuited an
15:13:43 6 intention to terminate revenue share in February
15:13:46 7 and March of 2012; correct?

15:13:48 8 A. That's correct.

15:13:49 9 853 Q. And your instincts, as a Cabinet
15:13:55 10 Minister and a horseman in February and March of
15:13:59 11 2012, was that this decision could not be based on
15:14:04 12 the correct information?

15:14:07 13 A. That's correct.

15:14:08 14 854 Q. Made no sense, right?

15:14:10 15 A. That's correct.

15:14:10 16 855 Q. And when you got into the process
15:14:12 17 as a Panel Member, your instinct was confirmed when
15:14:15 18 you saw that there was a completely inadequate body
15:14:21 19 of information and analysis and study underlying
15:14:27 20 the decision to terminate revenue share with no
15:14:31 21 transition funding; correct?

15:14:33 22 A. The information that was available
15:14:36 23 to the Panel as we began our deliberations was
15:14:40 24 insufficient, in my view, to make that -- that --
15:14:44 25 to understand the outcome of the policy.

15:14:46 1 856 Q. And, therefore, insufficient for
15:14:50 2 the government to understand the consequences of
15:14:53 3 its decision because it didn't even have the
15:14:56 4 information you had, right?

15:14:58 5 A. In, uh... Yes. In my view, it --
15:15:03 6 the government was not -- did not benefit from a
15:15:05 7 perfect understanding of the consequence of the
15:15:08 8 action.

15:15:09 9 857 Q. Well, it benefited from an
15:15:11 10 entirely incomplete understanding of the
15:15:13 11 consequences of its decision?

15:15:14 12 A. Which is exactly -- yes.

15:15:16 13 858 Q. Right.

15:15:17 14 A. Yes. It -- it could not
15:15:18 15 accurately -- based on the information available,
15:15:20 16 it could not accurately, in my view, predict the
15:15:20 17 outcome.

15:15:23 18 859 Q. Right. All that it could predict
15:15:28 19 is that it would get \$345-million that formerly
15:15:32 20 went to the horse racing industry; correct?

15:15:34 21 A. It could... Based on the
15:15:43 22 estimates that we saw in the modernization program,
15:15:46 23 there would have been a significant net uptake in
15:15:51 24 -- in revenue to the government, although not
15:15:56 25 \$345-million. That would have been predicated,

15:15:58 1 though, on a lot of other assumptions inside of the
15:16:02 2 Modernization Plan.

15:16:04 3 860 Q. Which didn't come to fruition?
15:16:05 4 A. Which did not come to fruition.
15:16:08 5 And the ones that -- that did, in part,
15:16:10 6 were -- were not consistent with the estimates.

15:16:12 7 861 Q. Correct. And you've read the
15:16:15 8 auditor general's report of 2014?
15:16:17 9 A. With some interest, yes.

15:16:18 10 862 Q. Yes. And the reason you were
15:16:20 11 interested in it was because it was highly critical
15:16:24 12 of the manner in which the government made this
15:16:26 13 decision; correct?
15:16:27 14 A. The auditor general has a look at
15:16:29 15 information that we would not have had a look at,
15:16:31 16 and came to conclusions that were similar to the
15:16:34 17 conclusion that we came to.

15:16:35 18 863 Q. Right. And were similar to the
15:16:36 19 conclusions that you, yourself, held in February
15:16:39 20 and March of 2012, right?
15:16:41 21 A. Not completely, but it was in the
15:16:43 22 same realm of thinking, yes.

15:16:45 23 864 Q. Pretty close?
15:16:46 24 A. Fairly close. Yes, mm-hmm.

15:16:48 25 865 Q. Right. And did you agree with the

15:17:02 1 auditor general's comments on the process that the
15:17:05 2 government went through in making its decision to
15:17:06 3 terminate the revenue -- revenue share?

15:17:09 4 MR. RATCLIFFE: Can you be specific
15:17:11 5 about what recommendations you're speaking of?

15:17:11 6 BY MR. LISUS:

15:17:12 7 866 Q. Well, she felt there wasn't proper
15:17:12 8 consultation with the breeding industry, for
15:17:12 9 instance.

15:17:15 10 Do you agree with that?

15:17:16 11 A. I wasn't surprised by her comments
15:17:18 12 and they were not inconsistent with my
15:17:21 13 observations.

15:17:21 14 The auditor general again approaches
15:17:24 15 the file from a different place.

15:17:25 16 867 Q. She found that the assumptions of
15:17:27 17 Ontario Lottery and Gaming Corporation were way too
15:17:30 18 optimistic, right?

15:17:31 19 A. She did.

15:17:32 20 We did not have -- that would be my
15:17:34 21 take on what -- what she said.

15:17:35 22 She -- she -- we did not -- we had
15:17:39 23 information on modernization. We ha a brief on
15:17:42 24 modernization.

15:17:42 25 We did not question...

15:17:46 1 868 Q. You didn't -- you didn't interview
15:17:49 2 people at OLG?
15:17:50 3 A. We -- we -- we did not.
15:17:52 4 869 Q. Okay.
15:17:52 5 A. And -- and it was information,
15:17:54 6 background information for us, not..., that did not
15:17:59 7 directly pertain to our responsibility.
15:18:01 8 870 Q. She found that the -- Standardbred
15:18:08 9 breeders in rural Ontario were particularly
15:18:12 10 hard-hit by the decision to terminate revenue
15:18:16 11 sharing from slots at racetracks.
15:18:19 12 Do you remember that finding?
15:18:20 13 A. I did.
15:18:21 14 871 Q. And is that consistent with your
15:18:25 15 own beliefs, sir?
15:18:26 16 A. That is the math, yes.
15:18:28 17 872 Q. And she found that rural
15:18:36 18 communities where horsepeople, horse owners
15:18:39 19 trainers and breeders live were negatively
15:18:43 20 impacted; correct?
15:18:44 21 A. That was my understanding of her
15:18:45 22 report.
15:18:45 23 873 Q. And that's consistent with your
15:18:48 24 own views and your findings?
15:18:49 25 A. We made some assumptions in that

15:18:52 1 regard, umm, that -- that would not be
15:18:53 2 inconsistent, but we did not have very good
15:18:57 3 measurement tools for those impacts. I mean again,
15:19:00 4 that would be more of -- the auditor general would
15:19:03 5 have better tools for that.

15:19:04 6 874 Q. Okay. And you did read with some
15:19:06 7 interest the auditor general report?

15:19:07 8 A. Yes.

15:19:08 9 875 Q. And, as I say, it validated your
15:19:13 10 own views you had about the decision-making process
15:19:17 11 of the government in cancelling revenue sharing?

15:19:20 12 A. It did to the extent they overlap,
15:19:22 13 yeah.

15:19:24 14 MR. LISUS: Okay. We'll mark the
15:19:24 15 auditor general's report as the next exhibit.

15:19:24 16 THE COURT REPORTER: Did you mark The
15:19:24 17 Agenda...?

15:19:32 18 MR. MATTHEWS: No.

15:19:32 19 MR. LISUS: No. Let's mark The Agenda
15:19:35 20 transcript.

15:19:35 21 MR. MATTHEWS: The transcript from The
15:19:39 22 Agenda interview is Exhibit 23.

15:19:40 23 ---EXHIBIT NO. 23: Transcript of The
15:19:40 24 Agenda interview by Steve Paikin of Messrs.
15:04:54 25 Wilkinson, Buchanan and Snobelen, Production Number

15:04:54 1 CRE 25235.

15:19:44 2 MR. MATTHEWS: The auditor general's

15:19:47 3 report is Exhibit 24.

15:19:47 4 BY MR. LISUS:

15:19:47 5 876 Q. Can I have that, John?

15:19:47 6 A. Oh. I'm sorry.

15:19:47 7 MR. MATTHEWS: Thank you.

15:19:47 8 ---EXHIBIT NO. 24: Ontario Lottery and

15:19:47 9 Gaming Corporation's Modernization Plan, Special

15:16:17 10 Report, April 2014, Office of the Auditor General

15:20:07 11 of Ontario, Production Number SB 5062.

15:20:07 12 BY MR. LISUS:

15:20:07 13 877 Q. We talked a minute ago, sir, about

15:20:09 14 breeders in rural communities and I wanted to ask

15:20:12 15 you about a comment I recollect you saying.

15:20:12 16 You concluded that as a result of the

15:21:40 17 decision, a great many jobs were at risk in rural

15:21:45 18 communities?

15:21:45 19 A. Yes.

15:21:45 20 878 Q. And do you recall being asked by

15:21:47 21 Mr. Paikin, on page 3, third paragraph:

15:22:05 22 "If that many jobs were at

15:22:08 23 risk, John Snobelen, in the auto

15:22:08 24 sector, you can believe that we

15:22:09 25 would be hearing the trumpets

15:22:11 1 blasting about it. We haven't heard
15:22:13 2 the trumpets blasting about this in
15:22:15 3 some corners. Obviously in the
15:22:17 4 industry, in parts of rural Ontario,
15:22:19 5 it's been big news. In Toronto, I'm
15:22:21 6 sorry, in Ottawa, I'm sorry, it
15:22:23 7 hasn't been. Why hasn't this got
15:22:25 8 that much attention?"
15:22:26 9 Do you remember that discussion--
15:22:26 10 A. Mm-hmm.
15:22:30 11 879 Q. --point?
15:22:30 12 A. Mm-hmm.
15:22:31 13 --- (Court reporter appeals.)
15:22:32 14 THE WITNESS: Yes. I'm sorry.
15:22:39 15 BY MR. LISUS:
15:22:39 16 880 Q. Okay. And what you explained is:
15:22:45 17 "...that the horse industry is
15:22:47 18 unorganized. It's actually
15:22:49 19 anti-organized."
15:22:52 20 A. Yes.
15:22:52 21 881 Q. And what did you mean by that?
15:23:00 22 A. The horse industry is very
15:23:02 23 competitive. It's in the business of being
15:23:04 24 competitive.
15:23:05 25 The -- the people who are involved

15:23:07 1 are -- are not homogeneous in the sense of don't
15:23:16 2 always share the same frame of opinion, and the
15:23:22 3 industries competes with itself for resources, so
15:23:26 4 between breeds, between tracks and obviously
15:23:28 5 between horsemen, so there's a competitive nature
15:23:31 6 to it. It's -- it's an industry that's used to
15:23:34 7 come from a degree of insufficiency, that
15:23:38 8 notwithstanding the -- the influx of SARP, that
15:23:41 9 insufficiency mindset I don't think altered much.

15:23:45 10 882 Q. Right. It's speaking specifically
15:23:48 11 with respect to breeders, they are scattered across
15:23:53 12 the Province on small farms and breeding
15:23:56 13 operations; correct?

15:23:57 14 A. The majority of breeders are on
15:23:59 15 very small operations, yes.

15:24:00 16 883 Q. Right. And there's no union for
15:24:04 17 them?

15:24:04 18 A. (Shaking head.)

15:24:05 19 884 Q. That's what you're explaining in
15:24:08 20 the answer, isn't it?

15:24:08 21 A. Yes.

15:24:08 22 885 Q. Okay.

15:24:09 23 A. Yes.

15:24:09 24 886 Q. And you're aware that racetrack
15:24:19 25 operators receive compensation?

15:24:20 1 A. That's correct.

15:24:21 2 887 Q. And I Examined Mr. Phillips about

15:24:22 3 that and he said that in his view, they receive

15:24:26 4 compensation because when it became clear that slot

15:24:32 5 machines weren't going to go into cities, the

15:24:35 6 racetrack owners had a lot of leverage again.

15:24:38 7 Do you agree with that?

15:24:39 8 A. In -- in the post-SARP world?

15:24:45 9 888 Q. Yes. Some \$80-million was paid in

15:24:47 10 compensation to racetrack owners.

15:24:49 11 Are you aware of that?

15:24:50 12 A. I'm aware that there was some --

15:24:52 13 there were the extensions to the agreements -- or

15:24:55 14 the extension to the rental agreements, however you

15:24:59 15 would characterize those, lease agreements, were

15:25:02 16 certainly significantly -- significantly larger

15:25:07 17 than had been anticipated by OLG.

15:25:10 18 889 Q. Okay.

15:25:10 19 A. The commercial value of that

15:25:12 20 property was, as it turns out, significantly

15:25:16 21 undervalued.

15:25:17 22 890 Q. Okay. But were you involved in

15:25:18 23 the decision to compensate racetrack owners for --

15:25:21 24 A. No.

15:25:21 25 891 Q. No? Okay.

15:25:31 1 And in the material, Mr. Snobelen,
15:25:33 2 including the reports of the Panel, interim and
15:25:37 3 final, I have seen expressions of concern that
15:25:40 4 there was that lack of accountability with respect
15:25:43 5 to SARP funds in the hands of the horse racing
15:25:47 6 industry.

15:25:47 7 A. That's correct.

15:25:48 8 892 Q. And my understanding of the
15:25:49 9 material is that the concerns regarding the lack of
15:25:53 10 accountability was directed at racetracks in
15:26:00 11 terms -- and racetrack operators in terms of
15:26:04 12 benchmarks and reporting and such.

15:26:09 13 Is that correct?

15:26:09 14 A. I would characterize it as saying
15:26:13 15 that the industry, as a whole, did not benefit from
15:26:21 16 benchmarks that it could report against, so as to
15:26:26 17 true up investments and -- and ensure that the
15:26:29 18 betterment of the industry was -- was a -- a result
15:26:32 19 of whatever was spent.

15:26:35 20 That includes track revenues. That
15:26:37 21 includes revenues throughout the system.

15:26:39 22 893 Q. Okay. But there wasn't, in your
15:26:44 23 mind -- the breeders weren't doing anything they
15:26:46 24 weren't supposed to be doing; fair?

15:26:48 25 A. They were not doing anything that

15:26:50 1 the system did not incent them to do,--

15:26:50 2 894 Q. Okay.

15:26:52 3 A. --quite obviously.

15:26:53 4 895 Q. And they weren't breaking any

15:26:55 5 rules or...?

15:26:55 6 A. Or -- or -- my -- no, no. I --

15:26:57 7 896 Q. All right.

15:26:57 8 A. I found no evidence of that.

15:26:58 9 897 Q. Okay. And they were behaving

15:27:04 10 entirely properly, in accordance with what the

15:27:07 11 expectations of them were under the system as it

15:27:10 12 was; correct?

15:27:10 13 A. As far as I know, that's correct.

15:27:12 14 898 Q. Okay. Are you aware of there

15:27:26 15 being significant concerns in government about

15:27:30 16 executive compensation at racetracks?

15:27:33 17 A. I -- we, as a panel, did not have

15:27:35 18 any representations on that.

15:27:38 19 That certainly was the backstory--

15:27:38 20 899 Q. Okay.

15:27:40 21 A. --that we heard.

15:27:40 22 900 Q. All right.

15:27:50 23 MR. LISUS: Do you want to take a

15:27:52 24 break?

15:27:52 25 THE COURT REPORTER: Sure.

15:27:52
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MR. LISUS: Okay.

---Recess at 3:28 p.m.

---On resuming at 3:38 p.m.

BY MR. LISUS:

Q. Okay. Mr. Snobelen, I just want you to orient me to some dates.

After you released the final report, you accepted an appointment to some position in the horse racing industry, and just remind me what that was.

A. I believe I was a -- an advisor to the Ontario Racing Commission. I think that's how that worked.

Q. Okay. And you...

A. I also did a stint at OLG, so I'm not sure what -- what order that happened, but...

Q. In December of 2013, you had a government appointment, didn't you, with respect to horse racing?

Sir, I'm just -- I'm looking, for instance, at a letter of March 11, 2014, on ORC letterhead from you.

A. Yes. I would have been at ORC.

Q. Okay.

A. I don't know that I had a

15:41:53 1 capacity. I was not executive director or
15:41:56 2 whatever.
15:41:56 3 905 Q. Were you -- okay. Were you on the
15:41:58 4 payroll?
15:41:58 5 A. I certainly was being paid, yes.
15:42:00 6 906 Q. Okay.
15:42:00 7 A. Yeah.
15:42:01 8 907 Q. So you were an employee of the
15:42:03 9 ORC?
15:42:03 10 A. Yes.
15:42:04 11 908 Q. Okay.
15:42:08 12 A. Technically, I think I was
15:42:10 13 contract labour to -- to them. I don't believe I
15:42:12 14 was ever an employee, but--
15:42:12 15 909 Q. Okay.
15:42:13 16 A. --that's okay.
15:42:13 17 910 Q. That's all right. I mean, you --
15:42:15 18 A. Yeah.
15:42:15 19 911 Q. You had a contract either of
15:42:19 20 employment or consultancy--
15:42:22 21 A. Whatever.
15:42:22 22 912 Q. --with ORC?
15:42:23 23 A. Yeah. Yes, correct.
15:42:24 24 913 Q. And I want you to think back now
15:42:34 25 to late 2013, early 2014 after the release of the

15:42:38 1 final report, after some of interviews that we have
15:42:43 2 talked about.

15:42:53 3 And when did Ms. Wynne become Premier
15:43:00 4 of the Province? Was it February '13?

15:43:02 5 A. It would have to be.

15:43:03 6 914 Q. Okay. And did you speak with
15:43:16 7 Ms. Wynne about the SARP issue when she became
15:43:19 8 Premier?

15:43:19 9 A. Yes.

15:43:20 10 915 Q. Directly?

15:43:22 11 A. Yes.

15:43:22 12 916 Q. In 2013?

15:43:22 13 A. Yes.

15:43:23 14 917 Q. In 2014?

15:43:24 15 A. Yes.

15:43:37 16 918 Q. Okay. And Ms. Wynne was a Cabinet
15:43:41 17 Minister at the time that the decision to terminate
15:43:43 18 revenue share was made; correct?

15:43:45 19 A. Uh. She was in -- she went
15:43:49 20 into --

15:43:49 21 919 Q. March --

15:43:50 22 A. She went into Cabinet in 2006.

15:43:52 23 920 Q. Yeah. So you told me February
15:43:57 24 2012.

15:43:58 25 A. Yes, yeah.

15:43:59 1 921 Q. Did you ever speak with her about
15:44:01 2 how the decision was made?

15:44:03 3 A. No.

15:44:05 4 922 Q. Okay. Have you spoken with her
15:44:07 5 about the fact that you had been summonsed and are
15:44:11 6 going to give evidence in this case?

15:44:12 7 A. No.

15:44:12 8 923 Q. Okay. Now, I want to just ask you
15:44:16 9 about some comments that Ms. Wynne made. And in
15:44:29 10 2013, you were contracted with the ORC.

15:44:31 11 Is that right?

15:44:31 12 A. That's correct.

15:44:32 13 924 Q. Okay. So -- and you were in -- in
15:44:34 14 the process of trying to manage the fallout from
15:44:43 15 the termination of revenue share, right?

15:44:47 16 A. That's correct.

15:44:48 17 925 Q. That was your job?

15:44:49 18 A. Yes.

15:44:49 19 926 Q. Okay. To try and shepherd the
15:44:55 20 industry through the consequences of the loss of
15:44:59 21 the gaming revenue?

15:45:00 22 A. An evolving government policy
15:45:03 23 through a variety of Ministries. (Nodding head.)

15:45:08 24 927 Q. Right. And I presume it was in
15:45:09 25 that context that you were speaking with Ms. Wynne

15:45:12 1 about the horse racing industry?

15:45:13 2 A. Yes.

15:45:14 3 928 Q. Okay. And forgive me if I asked

15:45:19 4 you this, but did you discuss with her the

15:45:22 5 circumstances under which the March 2012 or

15:45:27 6 February 2012 decision was made?

15:45:30 7 A. We did not.

15:45:31 8 929 Q. Okay. And is there any reason you

15:45:36 9 didn't or was that just...?

15:45:38 10 A. It wasn't germane to the file at

15:45:41 11 that juncture.

15:45:41 12 930 Q. Okay. So I want to show you a

15:45:45 13 document, SB 3434, which is a document which --

15:46:03 14 it's a news story and it says "QP Briefing".

15:46:12 15 Are you familiar with...?

15:46:12 16 A. Yeah. I'm familiar with QP

15:46:16 17 Briefing.

15:46:16 18 931 Q. What is it?

15:46:18 19 A. It's put out by a -- a small

15:46:19 20 government relations firm and it's, I think, every

15:46:22 21 couple of weeks, they...

15:46:24 22 932 Q. When you were a Cabinet Minister,

15:46:27 23 would you give interviews to QP briefing?

15:46:30 24 A. Under duress. No. Yes, I would.

15:46:33 25 933 Q. All right. So it's a reputable --

15:46:34 1 A. Yeah. Yeah. They're okay.

15:46:35 2 934 Q. Okay. And the QP Briefing article

15:46:49 3 I'm showing you is from the 22nd of November, 2013,

15:46:52 4 okay?

15:46:52 5 A. Yeah.

15:46:52 6 935 Q. And if you go to the second page,

15:47:01 7 she says -- the article says, at the bottom of the

15:47:04 8 column:

15:47:05 9 "But Wynne admits in an

15:47:07 10 exclusive interview after the

15:47:09 11 announcement that she had qualms

15:47:12 12 about SARP being cancelled in 2012."

15:47:12 13 [As read.]

15:47:18 14 Were you -- were you aware whether

15:47:21 15 Ms. Wynne had qualms about --

15:47:23 16 A. No, I wasn't.

15:47:23 17 936 Q. Okay. And she says:

15:47:26 18 "When then Agriculture Minister

15:47:28 19 Ted McMeekin fought for and won a

15:47:32 20 three-member panel and transition

15:47:33 21 funding for the industry in June

15:47:35 22 2012, Wynne said she was one of the

15:47:38 23 Cabinet Members to back him."

15:47:38 24 [As read.]

15:47:41 25 Are you aware as to whether it was

15:47:42 1 controversial within Cabinet for the Transition
15:47:47 2 Panel to be appointed.

15:47:48 3 A. I have no direct knowledge of
15:47:49 4 that.

15:47:49 5 937 Q. Did you -- do you have indirect
15:47:52 6 knowledge of that or did you hear that? Was there
15:47:56 7 a tussle?

15:47:56 8 A. I -- I, uh --

15:47:57 9 MR. RATCLIFFE: Well, he has no direct
15:47:59 10 knowledge, he said.

15:48:00 11 MR. LISUS: Doesn't matter.

15:48:01 12 THE WITNESS: I --

15:48:01 13 MR. RATCLIFFE: It does.

15:48:03 14 THE WITNESS: I understand that
15:48:05 15 Minister McMeekin -- my -- people I talked --
15:48:05 16 people who told me that Minister McMeekin was a
15:48:09 17 very strong proponent of -- of, uh, immediately
15:48:11 18 doing something.

15:48:11 19 BY MR. LISUS:

15:48:12 20 938 Q. And did you understand there was
15:48:13 21 opposition?

15:48:18 22 A. Uh...

15:48:18 23 MR. RATCLIFFE: Don't speculate.

15:48:20 24 THE WITNESS: Yeah. I mean, I -- I'd
15:48:21 25 would have to -- I can't put myself in the room.

15:48:21 1 BY MR. LISUS:

15:48:24 2 939 Q. Okay.

15:48:24 3 A. Yeah.

15:48:25 4 940 Q. So Ms. Wynne is quoted as saying:

15:48:27 5 "I can remember sitting in

15:48:28 6 Cabinet meetings with Ted saying,

15:48:33 7 'We've got to take a second look at

15:48:35 8 this,' Wynne said in an interview

15:48:37 9 Friday. 'The way the SARP program

15:48:39 10 was cancelled was not thoughtful.

15:48:42 11 It needed another look and that's

15:48:43 12 what we're doing.' "

15:48:45 13 A. (Nodding head.) She -- she was in

15:48:45 14 the room.

15:48:46 15 941 Q. Yeah.

15:48:47 16 Did she express those same kind of

15:48:50 17 sentiments to you?

15:48:51 18 A. No. By the time I had -- was

15:48:52 19 speaking to the Premier, she was the Premier,--

15:48:56 20 942 Q. Okay.

15:48:56 21 A. --so this would have been...

15:49:00 22 943 Q. And she didn't express anything

15:49:01 23 like this to you as the Premier, right?

15:49:03 24 A. I didn't ask her, no.

15:49:06 25 MR. LISUS: Okay. Next exhibit,

15:49:06 1 please.

15:49:06 2 ---EXHIBIT NO. 25: QP Briefing article

15:49:07 3 from November 22, 2013, Production Number SB 3434.

15:49:07 4 BY MR. LISUS:

15:49:07 5 944 Q. You didn't ask her because it

15:49:10 6 really wasn't your mandate; it was outside your

15:49:11 7 mandate?

15:49:11 8 A. That and, umm, Cabinet's

15:49:13 9 privileged conversation, so I try not to...

15:49:16 10 945 Q. Unless it's waived, of course.

15:49:18 11 A. Unless it's waived.

15:49:24 12 946 Q. And commenting on whether or not

15:49:25 13 the decision was good public policy or bad public

15:49:29 14 policy or public policy, at all, was also outside

15:49:31 15 of the mandate of your panel?

15:49:32 16 A. It was, indeed, yes.

15:49:33 17 947 Q. All right. And I want to just ask

15:49:41 18 you about a quote in The Flamborough Review on

15:50:00 19 March 4, 2013.

15:50:03 20 Do you know The Flamborough Review?

15:50:04 21 A. I've never been a subscriber, but

15:50:06 22 I believe it's a newspaper.

15:50:07 23 948 Q. Okay.

15:50:08 24 A. Yeah.

15:50:09 25 949 Q. It's an industry newspaper?

15:50:10 1 A. I...

15:50:22 2 950 Q. Or just a regular newspaper?

15:50:22 3 A. I -- I thought it was a local
15:50:22 4 community newspaper. That's my understanding.

15:50:23 5 951 Q. All right. And I want to just ask
15:50:23 6 you to take a look at the second page of that
15:50:25 7 article where there's a quote from Minister Wynne.
15:50:36 8 She's then the Minister of Agriculture?

15:50:39 9 A. Yeah.

15:50:39 10 952 Q. She says --

15:50:41 11 A. She is Premier and Minister of
15:50:44 12 Agriculture.

15:50:44 13 953 Q. ...and Minister of Agriculture,
15:50:44 14 yes.

15:50:46 15 Is it incorrect to refer to her as
15:50:47 16 "Minister Wynne" then?

15:50:49 17 A. No.

15:50:49 18 954 Q. No?

15:50:49 19 A. That would be fine, but, umm --
15:50:51 20 anyway...

15:50:51 21 955 Q. Okay.

15:50:51 22 "I think you know that some of
15:50:53 23 the decisions that were made were
15:50:54 24 possibly not as well thought through
15:50:56 25 as they needed to be, and my

15:50:57 1 predecessor knew that,' she said."

15:51:03 2 And she said:

15:51:04 3 "The former Minister of
15:51:05 4 Agriculture, Food and Rural Affairs
15:51:08 5 understood that we needed to take a
15:51:09 6 second look at some of those
15:51:10 7 decisions that were made.'"

15:51:10 8 [As read.]

15:51:13 9 And that is your understanding of Mr.
15:51:16 10 McMeekin's views, based on what he told you, as
15:51:17 11 well, right?

15:51:17 12 A. That's correct.

15:51:18 13 956 Q. Okay.

15:51:23 14 A. Yes.

15:51:24 15 957 Q. And did you understand Minister
15:51:26 16 McMeekin to have been upset that he was not
15:51:30 17 included in the decision-making process prior to
15:51:35 18 the actual Cabinet meeting?

15:51:36 19 A. He did not make that --

15:51:39 20 MR. RATCLIFFE: Is this something you
15:51:41 21 have knowledge of?

15:51:42 22 THE WITNESS: No. He did not make that
15:51:43 23 -- he did not make that representation to me, no.

15:51:46 24 BY MR. LISUS:

15:51:46 25 958 Q. All right. But he did make the

15:51:47 1 representation to you, as you put it, that a second
15:51:50 2 look needed to be taken--
15:51:52 3 A. Yeah.
15:51:52 4 959 Q. --at the decisions that were made?
15:51:54 5 A. Yes.
15:51:54 6 That was my advice to him and he, uh,
15:51:57 7 gave me the impression that he agreed with it.
15:52:00 8 960 Q. And as we've discussed, you didn't
15:52:03 9 have a mandate to evaluate the wisdom of the
15:52:03 10 decision?
15:52:08 11 A. That's correct.
15:52:08 12 961 Q. And you knew that there was no way
15:52:12 13 that the McGuinty government was going to reverse
15:52:15 14 its decision, right?
15:52:16 15 A. I was certain of that.
15:52:17 16 962 Q. All right. And so, the task that
15:52:21 17 you had, really, was how do you try and make the
15:52:25 18 best of a very bad situation as it was presented to
15:52:29 19 you in June 2012?
15:52:31 20 A. That's entirely correct.
15:52:32 21 963 Q. Now...
15:52:32 22 MR. MATTHEWS: Mark that as an exhibit?
15:52:42 23 MR. LISUS: Yes.
15:52:45 24 ---EXHIBIT NO. 26: A March 4, 2013
15:52:47 25 article in The Flamborough Review.

15:52:49 1 BY MR. LISUS:

15:52:51 2 964 Q. Who was instructing you on behalf

15:52:51 3 of government on the horse -- on the SARP file or

15:52:52 4 the transition file when you were at the ORC?

15:52:56 5 A. ORC was then reporting to OMAFRA.

15:53:04 6 965 Q. So you didn't have decision-making

15:53:05 7 authority with respect to the expenditure of

15:53:10 8 government funds on horse racing, right?

15:53:12 9 A. No.

15:53:13 10 966 Q. You didn't have decision-making

15:53:19 11 authority on how gaming revenue would--

15:53:22 12 A. No.

15:53:22 13 967 Q. --be...?

15:53:23 14 And to be clear, we know that although

15:53:29 15 the revenue sharing with the horse racing industry

15:53:34 16 stopped, the slot machines remained in racetracks,

15:53:38 17 right?

15:53:38 18 A. That's correct.

15:53:38 19 968 Q. They continued to generate all of

15:53:40 20 the revenue they were before?

15:53:41 21 A. That's correct.

15:53:42 22 969 Q. And more?

15:53:42 23 A. I don't know what the revenue

15:53:45 24 generation is, but yeah, it continued operating.

15:53:47 25 970 Q. And all of the money that was

15:53:49 1 previously shared with the horse racing industry
15:53:52 2 being some \$345-million a year in 2012, now was
15:53:58 3 simply kept by OLG?
15:54:02 4 A. Less the cost of rents, less the
15:54:06 5 supports to the horse racing industry.
15:54:11 6 971 Q. Right.
15:54:11 7 A. So whatever is--
15:54:12 8 972 Q. Less the --
15:54:12 9 A. --ahead of that.
15:54:12 10 973 Q. Less the supports to the horse
15:54:14 11 racing industry that came out of the Panel process?
15:54:16 12 A. Correct.
15:54:16 13 974 Q. My point was, slot machines
15:54:19 14 remained in racetracks--
15:54:19 15 A. That's correct.
15:54:19 16 975 Q. --just as they did before?
15:54:20 17 A. Yes.
15:54:21 18 976 Q. What was lost was the investment
15:54:22 19 of the revenue from them in the horse racing
15:54:25 20 industry?
15:54:25 21 A. That's correct.
15:54:26 22 977 Q. Right.
15:54:45 23 Now, do you recall, sir, in the latter
15:54:45 24 part of 2013, you and I having discuss- --
15:54:48 25 A. Yes. Yeah.

15:54:48 1 978 Q. And you recall discussions about
15:54:51 2 entering into a tolling agreement to suspend the
15:54:53 3 operation of a two-year limitation period?

15:54:56 4 A. Yes.

15:55:03 5 979 Q. And we had communications in which
15:55:05 6 you asked me to send to you, on behalf of breeders,
15:55:08 7 a form of tolling agreement.

15:55:09 8 Do you recall that?

15:55:09 9 A. That's correct.

15:55:10 10 980 Q. And I'm just showing you the
15:55:12 11 e-mail I sent you with the form of tolling
15:55:15 12 agreement.

15:55:23 13 Do you remember that?

15:55:23 14 A. Yes, I do.

15:55:24 15 981 Q. Okay. And who were you reporting,
15:55:25 16 for the purposes of -- let me back up.

15:55:28 17 You were, at that point, authorized to
15:55:31 18 speak with me as a representative of Standardbred
15:55:34 19 breeders who may wish to pursue a claim against the
15:55:37 20 Ontario government and OLG; correct?

15:55:39 21 A. It was consistent with my, uh, my
15:55:43 22 function of helping out the horse racing industry,
15:55:49 23 yeah.

15:55:49 24 982 Q. Right. But the government was
15:55:51 25 aware of the role that you were playing and --

15:55:54 1 A. I would not have otherwise taken
15:55:59 2 the meeting, yes.
15:55:59 3 983 Q. Of course.
15:56:04 4 And the draft form of limitation period
15:56:11 5 suspension agreement I sent you, I presume you sent
15:56:16 6 on to the government?
15:56:17 7 A. Yes.
15:56:18 8 MR. LISUS: And I'm just going to mark
15:56:20 9 the e-mail with the attachment as the next exhibit.
15:56:20 10 BY MR. LISUS:
15:56:35 11 984 Q. And...
15:56:35 12 MR. MATTHEWS: Exhibit 27.
15:56:37 13 ---EXHIBIT NO. 27: E-mail from
15:56:37 14 Mr. Lisus to Mr. Snobelen with attached form of
15:56:40 15 tolling agreement.
15:56:40 16 BY MR. LISUS:
15:56:40 17 985 Q. And was it OMAFRA you were dealing
15:56:40 18 with, Finance or Attorney General?
15:56:41 19 A. No. I was dealing directly with
15:56:41 20 OMAFRA.
15:56:42 21 986 Q. OMAFRA?
15:56:43 22 A. Mm-hmm.
15:56:43 23 987 Q. Okay. And who at OMAFRA? Was it
15:56:44 24 Mr. Keegan?
15:56:47 25 A. Yes.

15:56:47 1 988 Q. Okay. And so, Mr. Keegan was
15:56:47 2 instructing you on whether or not there would be
15:56:47 3 any kind of a compensation for Standardbred
15:56:47 4 breeders and whether there would be any kind of a
15:56:56 5 tolling of the limitation period?
15:56:56 6 A. He -- he would be my end of what
15:56:58 7 that decision tree was.
15:56:59 8 989 Q. Okay. And the government refused
15:57:01 9 to sign a tolling agreement; correct?
15:57:03 10 A. In the end, yeah, that's correct.
15:57:05 11 990 Q. And they knew that that would
15:57:06 12 require a claim to be issued on or before the
15:57:10 13 two-year anniversary of the announcement of the
15:57:12 14 cancellation of revenue share; correct?
15:57:15 15 A. I assume they would understand
15:57:17 16 their contractual obligations.
15:57:20 17 991 Q. And I just want to refresh your
15:57:27 18 memory.
15:57:27 19 On February the 6th, I sent you an
15:57:27 20 e-mail--
15:57:27 21 A. Yes.
15:57:35 22 992 Q. --just giving you--
15:57:36 23 A. Mm-hmm.
15:57:37 24 993 Q. --a heads up--
15:57:38 25 A. Mm-hmm.

15:57:40 1 994 Q. --that a Proceedings Against the
15:57:41 2 Crown Act notice would have to be issued.
15:57:43 3 Do you remember that?
15:57:44 4 A. Mm-hmm.
15:57:45 5 995 Q. Yes?
15:57:45 6 A. Yes, I do. I'm sorry.
15:57:46 7 996 Q. Okay. And you thanked me for the
15:57:51 8 heads up.
15:57:51 9 MR. LISUS: And that's the next
15:57:52 10 exhibit.
15:57:53 11 MR. MATTHEWS: 28.
15:57:53 12 ---EXHIBIT NO. 28: A February 6, 2014
15:57:54 13 e-mail from Mr. Lisus to Mr. Snobelen re: PACA
15:57:54 14 notice.
15:57:54 15 BY MR. LISUS:
15:58:08 16 997 Q. And on February the 20th, I
15:58:10 17 communicated up with you in follow-up on the
15:58:11 18 question of the tolling agreement.
15:58:12 19 Do you remember that?
15:58:13 20 A. I do.
15:58:13 21 998 Q. And in which I said I presume, not
15:58:17 22 having heard back from you from December, there's
15:58:22 23 no tolling agreement, right?
15:58:23 24 A. Yes. That's the substance of
15:58:24 25 the -- of the -- of the e-mail.

15:58:25 1 999 Q. And that was the instruction that
15:58:29 2 you receive from Mr. Keegan; fair?
15:58:31 3 A. Or lack thereof.
15:58:32 4 1000 Q. Or lack thereof. Okay.
15:58:34 5 And so you likely understood that
15:58:41 6 there's going to be a claim for compensation from
15:58:43 7 the breeders?
15:58:44 8 A. Mm-hmm.
15:58:44 9 1001 Q. Yes?
15:58:45 10 A. Yes. I was not surprised.
15:58:46 11 1002 Q. Okay. And --
15:58:49 12 MR. MATTHEWS: Just--
15:58:49 13 MR. LISUS: Yeah.
15:58:49 14 MR. MATTHEWS: --interject.
15:58:50 15 I'm marking as Exhibit 29 the February
15:58:53 16 21st, 2014 e-mail.
15:58:54 17 ---EXHIBIT NO. 29: February 21st, 2014
15:58:57 18 e-mail from Mr. Lisus to Mr. Snobelen in follow-up
15:59:09 19 on the question of the tolling agreement.
15:59:09 20 BY MR. LISUS:
15:59:10 21 1003 Q. And did Mr. Keegan -- was he the
15:59:10 22 sole person with authority for instructing you or,
15:59:11 23 as far as you knew, he was the only person that was
15:59:11 24 instructing you?
15:59:12 25 A. To my -- to -- did I have

15:59:13 1 discussions with others? Probably.

15:59:15 2 1004 Q. Okay.

15:59:15 3 A. But Mr. Keegan would have been my

15:59:17 4 -- my main point of reference.

15:59:18 5 1005 Q. Did you have any discussions with

15:59:20 6 anyone in the Premier's Office?

15:59:22 7 A. No.

15:59:33 8 1006 Q. Anyone in Finance?

15:59:34 9 A. No.

15:59:34 10 1007 Q. All right.

15:59:34 11 A. I may have briefed Finance from

15:59:36 12 time to time, but, uh, it -- it would -- would have

15:59:37 13 started with OMAFRA.

15:59:40 14 1008 Q. Okay. And you received an e-mail

15:59:41 15 on February the 28th from the president of the

15:59:46 16 Standardbred Breeders of Ontario Association,

15:59:51 17 February 28th, in which - it's SB 17199 - in which

16:00:08 18 Mr. Parkinson says:

16:00:08 19 "I wanted to take this

16:00:08 20 opportunity to convey to you--"

16:00:08 21 A. Right.

16:00:10 22 1009 Q. "--that SBOA's continued

16:00:13 23 willingness to engage in meaningful

16:00:14 24 discussions..."

16:00:14 25 Et cetera.

16:00:15 1 A. Yes.

16:00:15 2 1010 Q. "...with you and the government
16:00:18 3 for achieving a fair compensation
16:00:20 4 package for Standardbred breeders."
16:00:20 5 [As read.]
16:00:22 6 Right?
16:00:22 7 A. Yes.

16:00:23 8 1011 Q. And at that time, I presume
16:00:32 9 compensation for Standardbred breeders was
16:00:35 10 something that you were prepared to contemplate
16:00:38 11 as --
16:00:38 12 A. Yes.

16:00:38 13 1012 Q. And you were of the opinion that
16:00:46 14 they had been harmed by the decision that was made?
16:00:46 15 A. I was supportive of, uh, an
16:00:47 16 additional amount of support for the breeding
16:00:50 17 community in all three breeds in the Province of
16:00:57 18 Ontario, so certainly that would include
16:01:00 19 Standardbreds.

16:01:03 20 1013 Q. Okay. And you responded
16:01:05 21 immediately to Mr. Parkinson, umm -- well, not
16:01:07 22 immediately, but a couple of days later, saying:
16:01:10 23 "Walter, thank you for this.
16:01:11 24 Is there a number I can reach you at
16:01:14 25 today?" [As read.]

16:01:14 1 Do you remember that?

16:01:14 2 A. Right.

16:01:15 3 1014 Q. And did you speak with him?

16:01:16 4 A. I believe I did.

16:01:18 5 1015 Q. And did you tell him that you

16:01:19 6 believed that compensation was fair, was a fair

16:01:21 7 ask?

16:01:21 8 A. I -- I can't recall that -- that

16:01:25 9 conversation.

16:01:26 10 1016 Q. Okay.

16:01:28 11 MR. RATCLIFFE: Can you clarify what

16:01:29 12 you mean by "compensation"?

16:01:29 13 BY MR. LISUS:

16:01:36 14 1017 Q. Do you recall your conversation

16:01:37 15 with Mr. Parkinson?

16:01:38 16 A. I recall having a conversation

16:01:39 17 with him.

16:01:41 18 1018 Q. Okay.

16:01:42 19 A. My view at the time was that some

16:01:44 20 form of enhanced breeder support was required by

16:01:48 21 the industry.

16:01:48 22 1019 Q. Okay.

16:01:49 23 A. So that's not inconsistent with --

16:01:51 24 I would suspect that was what I would relay to

16:01:54 25 Walter.

16:01:55 1 1020 Q. All right. And you knew -- this
16:01:56 2 is now March 3 on which you're speaking with him?

16:01:59 3 A. Yes.

16:01:59 4 1021 Q. You know, from your communications
16:02:02 5 with me, that there's a two-year limitation period
16:02:06 6 of March 12; correct?

16:02:07 7 A. It's -- the clock is ticking.

16:02:13 8 1022 Q. You knew that, OMAFRA knew -- I
16:02:17 9 should be more precise because this is not directed
16:02:20 10 at you, sir.

16:02:20 11 A. Right.

16:02:21 12 1023 Q. OMAFRA knew that the two-year
16:02:24 13 limitation period would come due on March 12?

16:02:27 14 A. I understand them to be aware of
16:02:29 15 that.

16:02:29 16 1024 Q. Right. And --

16:02:34 17 THE COURT REPORTER: Sorry. Is that
16:02:34 18 the 12th of March?

16:02:37 19 MR. LISUS: Correct. 12th of March,
16:02:38 20 2014.

16:02:38 21 BY MR. LISUS:

16:02:45 22 1025 Q. And you knew --

16:02:45 23 MR. MATTHEWS: Could I just say, as
16:02:46 24 Exhibit 30, it's the e-mail chain of March 3rd and
16:02:50 25 February 28th, 2014.

16:02:52 1 ---EXHIBIT NO. 30: E-mail chain of
16:02:52 2 March 3rd and February 28th, 2014.
16:03:03 3 BY MR. LISUS:
16:03:03 4 1026 Q. And there was going to -- as of
16:03:04 5 March 3rd, OMAFRA and Finance, I understand, had
16:03:09 6 made the decision that they were going to afford
16:03:22 7 compensation to the breeders in the form of
16:03:25 8 enhanced breeders' awards; correct?
16:03:28 9 A. At about that time--
16:03:31 10 1027 Q. All right.
16:03:33 11 A. --there -- there was an agreement
16:03:34 12 around -- I'm not sure what point the funding was
16:03:37 13 locked in place, but at some juncture there was
16:03:39 14 funding locked in place.
16:03:40 15 1028 Q. Right. And you and OMAFRA knew
16:03:50 16 March 12th was the two-year anniversary; correct?
16:03:53 17 A. That's correct.
16:03:54 18 1029 Q. And you became aware on March 11
16:04:01 19 that the Standardbred breeders, as they said they
16:04:05 20 had to,--
16:04:05 21 A. Yes.
16:04:05 22 1030 Q. --commenced a lawsuit, right?
16:04:07 23 A. Yes.
16:04:07 24 1031 Q. And this received a fair amount of
16:04:11 25 press?

16:04:11 1 A. I was aware of it.

16:04:12 2 1032 Q. All right. And OMAFRA was aware
16:04:15 3 of it, right?

16:04:15 4 A. Yes.

16:04:17 5 1033 Q. So, for instance, I'm showing you
16:04:27 6 an article in the London Free Press with a picture
16:04:34 7 of Mr. --

16:04:36 8 A. A nice shot of Walter.

16:04:38 9 1034 Q. It's a nice shot of Walter and a
16:04:40 10 horse. Do you know which horse that is?

16:04:41 11 A. I do not.

16:04:42 12 1035 Q. Okay. Anyway, Walter was the
16:04:46 13 president of the Standardbred Breeders of
16:04:48 14 Ontario --

16:04:48 15 A. Which horse is it?

16:04:50 16 1036 Q. I don't know.

16:04:50 17 A. Oh, okay.

16:04:50 18 1037 Q. Standardbred --

16:04:50 19 A. Oh.

16:04:51 20 1038 Q. They all look the same to me.

16:04:53 21 A. It's a mare, I think.

16:04:54 22 1039 Q. Is it a mare?

16:04:54 23 A. Yeah.

16:04:54 24 1040 Q. How do you know that?

16:04:58 25 A. Number on the halter.

16:05:00 1 1041 Q. Oh. What; mares have even
16:05:00 2 numbers?
16:05:00 3 A. No. In a breeding farm, mares
16:05:00 4 would be tagged.
16:05:00 5 1042 Q. Oh.
16:05:06 6 A. Studs wouldn't be.
16:05:07 7 1043 Q. Okay. And the lawsuit was
16:05:10 8 obviously no surprise to you or OMAFRA; correct?
16:05:14 9 A. Yes.
16:05:15 10 1044 Q. Yes, I'm correct?
16:05:16 11 A. Yes, you're correct.
16:05:17 12 1045 Q. And over the page, you gave a
16:05:21 13 quote. It's at the top third:
16:05:24 14 "This has been considered..."
16:05:26 15 Do you see that?
16:05:27 16 A. Yes.
16:05:28 17 1046 Q. And you say:
16:05:29 18 "'This has been considered by
16:05:31 19 some Standardbred breeders for some
16:05:32 20 time.'"
16:05:33 21 A. Mm-hmm.
16:05:34 22 1047 Q. "'It does relate to losses from
16:05:36 23 two years ago,' said John Snobelen who
16:05:41 24 is working with the Ontario Racing
16:05:43 25 Commission." [As read.]

16:05:43 1 Is that an accurate quote?

16:05:45 2 A. Yes.

16:05:46 3 1048 Q. Okay. And then, at the bottom of

16:05:51 4 the article, there's a statement that says:

16:05:54 5 "Wynne has said she thinks the

16:05:56 6 decision under her predecessor,

16:05:58 7 Dalton McGuinty, to cut the horse

16:06:02 8 racing industry off from slots

16:06:05 9 revenue sharing was wrong."

16:06:05 10 [As read.]

16:06:08 11 Did you ever become aware of Ms. Wynne

16:06:10 12 expressing that view?

16:06:11 13 A. It's my opinion, she's expressed

16:06:13 14 that publicly--

16:06:13 15 1049 Q. All right.

16:06:15 16 A. --I believe including in the

16:06:15 17 Legislature.

16:06:16 18 1050 Q. Yes, she has. Right.

16:06:20 19 A. Now, I just want to make that as

16:06:22 20 the next exhibit.

16:06:23 21 That's an article on March 11th;

16:06:26 22 correct?

16:06:26 23 A. Yeah.

16:06:36 24 ---EXHIBIT NO. 31: March 11th article

16:06:40 25 in the London Free Press.

16:06:42 1 BY MR. LISUS:

16:06:43 2 1051 Q. And then, there's also an article

16:06:44 3 on the CBC, March 11. Do you have it?

16:07:06 4 A. Yeah.

16:07:06 5 1052 Q. And do you see the comment made by

16:07:09 6 a representative -- let me see it for a minute.

16:07:14 7 A. Yes. Tony.

16:07:14 8 1053 Q. Of OLG?

16:07:16 9 A. Yeah.

16:07:23 10 1054 Q. ...in which he says:

16:07:26 11 "It's important to note that

16:07:28 12 the Standardbred horse breeders are

16:07:30 13 part of the horse racing industry

16:07:32 14 which received 3.4-billion over 10

16:07:34 15 years from the Slots at Racetrack

16:07:37 16 Program." [As read.]

16:07:46 17 Right?

16:07:46 18 A. Yes.

16:07:46 19 1055 Q. Okay. And --

16:07:47 20 A. This is in response, I think, to

16:07:48 21 the -- to the -- to us, yes.

16:07:48 22 1056 Q. To the claim?

16:07:49 23 A. To the claim.

16:07:50 24 1057 Q. Correct.

16:07:50 25 A. Yes.

16:07:51 1 MR. LISUS: That's the next exhibit.

16:07:54 2 MR. ROSENBERG: Can you give us the

16:07:55 3 document number, please?

16:07:58 4 MR. LISUS: Didn't have one on it.

16:07:59 5 MR. ROSENBERG: Oh.

16:08:00 6 MR. MATTHEWS: It's just a...

16:08:02 7 MR. LISUS: What number is it?

16:08:03 8 MR. MATTHEWS: This is a CBC News

16:08:05 9 article of March 11th, 2014, entitled Ontario

16:08:08 10 Standardbred Breeders suing OLG for 65-million.

16:08:35 11 ---EXHIBIT NO. 32: A CBC News article

16:08:35 12 of March 11th, 2014, entitled Ontario Standardbred

16:08:35 13 Breeders suing OLG for 65-million.

16:08:36 14 MR. ROSENBERG: And just to be clear,

16:08:37 15 these aren't in the productions anywhere. They're

16:08:37 16 just being shown to us for the first time today?

16:08:38 17 MR. MATTHEWS: They may be in the

16:08:39 18 productions, but they're also available online.

16:08:39 19 MR. LISUS: Is this marked?

16:08:40 20 (Indicating)

16:08:41 21 MR. MATTHEWS: Yes.

16:08:41 22 MR. LISUS: What number?

16:08:42 23 MR. MATTHEWS: 31.

16:08:42 24 BY MR. LISUS:

16:08:42 25 1058 Q. Now, the same day, Mr. Snobelen,

16:08:45 1 March 11, as those articles and the same day as the
16:08:47 2 commencement of the lawsuit, you send a letter to
16:08:49 3 Ms. Wynne.

16:08:51 4 Do you remember that?

16:08:52 5 A. Yes, I do.

16:08:52 6 1059 Q. And I am deducing from this
16:09:09 7 sequence and the prior communications that OMAFRA
16:09:10 8 knew that a claim was going to come the day or so
16:09:13 9 before March 11; correct?

16:09:14 10 A. I would certainly assume so.

16:09:16 11 1060 Q. And OMAFRA had, as part of its
16:09:25 12 communication strategy regarding a claim, arranged
16:09:31 13 for you to inform Ms. Wynne that the government was
16:09:37 14 going to enhance the Horse Improvement Program for
16:09:41 15 30- -- by \$30-million, right, as part of a
16:09:44 16 communication strategy in anticipation of the claim
16:09:48 17 being issued?

16:09:55 18 A. Uh. Let me -- let me just -- I
16:09:55 19 want to make sure that I'm --

16:09:55 20 1061 Q. Yeah. Sure.

16:09:57 21 A. -- I'm on the right side of the --

16:09:59 22 1062 Q. And again, I'm not suggesting,
16:10:01 23 sir, that this was you.

16:10:01 24 A. No, no.

16:10:02 25 1063 Q. I'm suggesting --

16:10:02 1 A. No, no. I'm...

16:10:03 2 1064 Q. That's what the dots look like, to

16:10:06 3 me.

16:10:06 4 MR. RATCLIFFE: Read it through.

16:10:08 5 --- (Witness reviewing document.)

16:10:34 6 THE WITNESS: All right.

16:10:34 7 BY MR. LISUS:

16:10:36 8 1065 Q. Am I correct?

16:10:37 9 A. This... So I don't -- I can't

16:10:40 10 tell you exactly the -- the -- I can tell you the

16:10:45 11 process for a letter like this being generated,

16:10:49 12 which would have been, this would have gone into

16:10:51 13 the shop. I would have written it. I wrote it.

16:10:54 14 It would have gone into the shop and

16:10:55 15 would have come back to me with an -- with, umm, an

16:11:02 16 approval to release it.

16:11:03 17 I mean, I would not release this

16:11:05 18 without--

16:11:05 19 1066 Q. Right.

16:11:06 20 A. --it being acknowledged.

16:11:07 21 1067 Q. But we can agree, sir, that this

16:11:11 22 letter and the sequence of it is not a coincidence?

16:11:15 23 A. I -- I cannot imagine that March

16:11:18 24 11th would -- would not have occurred on the

16:11:21 25 calendar -- it occurred on my calendar as the date

16:11:25 1 at which or around the time of which a filing had
16:11:27 2 been made.

16:11:28 3 1068 Q. Okay. And so, what OMAFRA is
16:11:31 4 doing here is conducting a counter-messaging or
16:11:35 5 responsive messaging campaign to the commencement
16:11:38 6 of the claim; correct?

16:11:47 7 MR. RATCLIFFE: You drafted the letter.

16:11:49 8 THE WITNESS: Yeah, I drafted the
16:11:50 9 letter.

16:11:50 10 My purpose in the letter, uh, was to --
16:11:54 11 we -- I had, before this letter, been working with
16:11:59 12 the government and encouraging the government to
16:12:02 13 put aside a fund for improving the breeding.

16:12:10 14 As it turns out, the fund included a
16:12:13 15 sufficient -- a similar amount of money to the
16:12:17 16 amount of money announced in this for the
16:12:17 17 Standardbred support.

16:12:18 18 So that was a part of the package. It
16:12:20 19 could not be released until it's authorized, and
16:12:25 20 so --

16:12:25 21 1069 Q. You wanted to -- I presume, sir,
16:12:28 22 given your views, that you wanted to release it at
16:12:31 23 the earliest possible time to get--

16:12:31 24 A. Right.

16:12:32 25 1070 Q. --help to breeders; correct?

16:12:34 1 A. It's in that time of year. So
16:12:37 2 it's March, and -- and we're under some pressure, I
16:12:39 3 suspect, all the way around from the breeding
16:12:41 4 community.

16:12:42 5 It's very -- beginning of the pinnacle
16:12:46 6 of their breeding season, so this information does
16:12:49 7 them no good in -- in... It does them more good in
16:12:52 8 February than in March, but absolutely more good in
16:12:55 9 March than it would in June.

16:12:56 10 1071 Q. Sure. So if you had your
16:12:57 11 druthers, it would have been released in February?

16:13:00 12 A. That's correct.

16:13:00 13 1072 Q. But the government wouldn't allow
16:13:02 14 it to be released in February?

16:13:04 15 A. The agreement that -- that the
16:13:08 16 letter is predicated on had pretty fresh ink on it
16:13:08 17 in March.

16:13:17 18 I -- I can't remember how far before
16:13:17 19 that we concluded that agreement, but it wasn't
16:13:22 20 very long; a matter of days.

16:13:23 21 1073 Q. And what the letter says is:
16:13:25 22 "I am delighted to inform you
16:13:27 23 that we have reached agreements that
16:13:28 24 will enhance the \$30-million Horse
16:13:31 25 Improvement Program.

16:13:31 1 "Specifically, we are now
16:13:33 2 finalizing five-year breeder support
16:13:35 3 program with the Ontario division of
16:13:37 4 the Canadian Thoroughbred Horse
16:13:40 5 Society and the Quarter Horse Racing
16:13:42 6 Owners of Ontario Inc.."
16:13:45 7 A. Yes.
16:13:45 8 1074 Q. Correct? And --
16:13:46 9 A. It says, I believe, that we have
16:13:51 10 completed the Thoroughbred and are actively engaged
16:13:54 11 on the Quarter Horse side, I think.
16:13:56 12 I don't think we had... We... Let me
16:14:00 13 read it again. I don't think we inked Quarter
16:14:08 14 Horse then.
16:14:08 15 MR. RATCLIFFE: Take your time.
16:14:08 16 --- (Witness reviewing document.)
16:14:08 17 THE WITNESS: Yeah.
16:14:10 18 "We are currently working with
16:14:12 19 QROOI, Bob Broadstock, and the Board
16:14:16 20 of Directors to finalize a similar
16:14:19 21 program..."
16:14:19 22 BY MR. LISUS:
16:14:34 23 1075 Q. So, are you saying that the
16:14:37 24 announcement of the breeder support for Quarter
16:14:39 25 Horse was made in March 11, when it hadn't yet been

16:14:41 1 finalized?

16:14:41 2 A. It was -- it was in front of their

16:14:42 3 board of directors.

16:14:43 4 1076 Q. So it hadn't been approved and

16:14:44 5 finalized?

16:14:45 6 A. It had not been stamped by the

16:14:47 7 board, no.

16:14:47 8 1077 Q. Okay. Had the support for the

16:14:49 9 Thoroughbreds been stamped?

16:14:51 10 A. Yes.

16:14:51 11 1078 Q. So, as of March 11th, there was

16:14:53 12 support for the Thoroughbreds in the amount of

16:14:55 13 \$12-million?

16:14:55 14 A. Yes.

16:14:56 15 1079 Q. And there was support being

16:15:00 16 contemplated for the Quarter Horse?

16:15:03 17 A. Of 6-million, yes.

16:15:05 18 1080 Q. Of 6-million?

16:15:05 19 A. Yes.

16:15:06 20 1081 Q. But not approved?

16:15:06 21 A. Not by them.

16:15:07 22 1082 Q. And so what you're announcing on

16:15:11 23 March 11, the day the claim is announced, is that

16:15:14 24 there's funding for breeder enhancements for

16:15:21 25 Thoroughbreds and you're working on it for--

16:15:23 1 A. Quarter Horse.

16:15:24 2 1083 Q. --Quarter Horse, but nothing for
16:15:26 3 Standardbred, right?

16:15:26 4 A. There's no mention of it in the
16:15:28 5 letter.

16:15:28 6 1084 Q. And that's because you weren't
16:15:30 7 authorized to...? There's no mention of it because
16:15:42 8 there wasn't any funding. Is that correct? Or had
16:15:44 9 funding been put aside and you weren't allowed to
16:15:47 10 mention it?

16:15:49 11 A. Uh. Funding had nominally been
16:15:53 12 allocated, so --

16:15:54 13 1085 Q. By who?

16:15:57 14 A. Umm. Funding would have -- well,
16:15:58 15 that's actually a really good question.

16:16:00 16 The... There was an agreement amongst
16:16:07 17 OMAFRA, the people who I reported to --

16:16:07 18 1086 Q. Which was Keegan at OMAFRA?

16:16:10 19 A. Keegan at OMAFRA. ...that a
16:16:13 20 package of supports, in total, of I think it was
16:16:16 21 \$28-million or it may have been, you know, rounded
16:16:19 22 to 30-million.

16:16:21 23 That general... That pocket of money
16:16:26 24 would have been agreed to before I went out to talk
16:16:29 25 to..., before I went out and finalized an agreement

16:16:33 1 with the Thoroughbred industry.

16:16:35 2 1087 Q. So it was, you're saying, before
16:16:37 3 you finalized the agreement of the Thoroughbred
16:16:40 4 industry, which was days before March 11,--

16:16:43 5 A. Yes.

16:16:44 6 1088 Q. --you knew that a package of
16:16:47 7 \$30-million had been approved?

16:16:50 8 A. In -- in some fashion. Certainly
16:16:54 9 at the level that I reported to, that it was -- I
16:16:57 10 was greenlighted on that.

16:16:59 11 1089 Q. And that 30-million was to be
16:17:01 12 shared between the three breeds; Standardbred,
16:17:04 13 Thoroughbred, and Quarter Horse?

16:17:05 14 A. That's correct. In -- in a share
16:17:08 15 -- my understanding was, uh, equally between
16:17:12 16 Thoroughbred and Quarter Horse -- Thoroughbred and
16:17:16 17 Standardbred, and half to the Quarter Horse,
16:17:17 18 reflective of the size of the -- relative to the
16:17:20 19 size of the program.

16:17:24 20 1090 Q. But... So who was to give final
16:17:26 21 approval?

16:17:27 22 A. Final approval on this would have
16:17:28 23 to go through... That's a very good question
16:17:34 24 because I don't know, at that point in time, where
16:17:36 25 the bucket of money rested, whether it rested

16:17:40 1 with --

16:17:40 2 1091 Q. Fair enough.

16:17:40 3 You weren't -- you weren't very high up

16:17:42 4 on the food chain in terms of authorizing the

16:17:45 5 release of these funds.

16:17:46 6 Is that fair?

16:17:48 7 A. Uh. I was certainly, uh -- I had

16:17:49 8 no authority, but some influence.

16:17:54 9 1092 Q. Okay. And so, you therefore were

16:17:58 10 following direction in March and April of 2014

16:18:04 11 about the release of any funds for breeder support

16:18:09 12 programs, right?

16:18:10 13 A. I would not have put a -- a

16:18:13 14 communication out without -- without having that

16:18:16 15 been vetted, yes.

16:18:17 16 1093 Q. And so, on March 11, 2014, you

16:18:19 17 were authorized to communicate that there was

16:18:22 18 \$12-million for breeder support for Thoroughbreds,

16:18:25 19 right?

16:18:26 20 A. Yes.

16:18:26 21 1094 Q. And you were authorized to report

16:18:29 22 that there was..., that you were finalizing support

16:18:34 23 for Quarter Horse, but -- correct?

16:18:40 24 A. Correct.

16:18:40 25 1095 Q. 6-million.

16:18:41 1 But you were not authorized to say
16:18:44 2 anything about Standardbred; correct?
16:18:46 3 A. I was not.
16:18:47 4 1096 Q. And, in fact, you were told not to
16:18:49 5 say anything about Standardbred, right?
16:18:52 6 A. I was... Uh. I don't know that I
16:18:55 7 would -- I don't know that I had a direct order at
16:18:58 8 any time not to say something.
16:18:59 9 I had permission to say what I said.
16:19:01 10 1097 Q. Okay. But it was made clear to
16:19:03 11 you, you were not to announce that there was
16:19:08 12 breeder support for Standardbreds in the works?
16:19:11 13 A. I had no approval to say that,
16:19:13 14 no.
16:19:16 15 MR. LISUS: Did we mark that letter?
16:19:17 16 MR. MATTHEWS: Not yet.
16:19:17 17 BY MR. LISUS:
16:19:20 18 1098 Q. Do you recall whether a prior
16:19:23 19 draft of this letter included reference to
16:19:24 20 Standardbred support?
16:19:25 21 A. I don't believe so.
16:19:26 22 1099 Q. It did not?
16:19:26 23 A. I don't -- I think this was...
16:19:29 24 This was pretty much the first. I think this first
16:19:34 25 draft and the last draft were not very much

16:19:36 1 different.

16:19:37 2 MR. LISUS: Okay. This is the next

16:19:38 3 exhibit in sequence.

16:19:40 4 ---EXHIBIT NO. 33: A letter from

16:19:41 5 Mr. Snobelen to Ms. Wynne, dated March 11th, 2014.

16:19:41 6 BY MR. LISUS:

16:19:43 7 1100 Q. And I assume, Mr. Snobelen, that

16:19:44 8 you wanted to give to breeder support to

16:19:44 9 Standardbreds, as well; you personally, right?

16:19:49 10 A. I --

16:19:49 11 --- (Court reporter appeals.)

16:19:49 12 BY MR. LISUS:

16:19:51 13 1101 Q. You wanted to see Standardbred

16:19:53 14 breeders get breeder support, as well?

16:19:55 15 A. Some, uh... Some many months

16:20:02 16 after this, it became evident that -- that I had

16:20:06 17 supported a package that would have included

16:20:07 18 Standardbred --

16:20:07 19 1102 Q. I'm talking about in March of

16:20:10 20 2014, support for Thoroughbred had been approved?

16:20:12 21 A. I believe that this -- that there

16:20:12 22 should have -- that there was a need for support

16:20:15 23 for the breeding industry writ large across the

16:20:19 24 three breeds.

16:20:19 25 1103 Q. And that does include

16:20:21 1 Standardbreds?

16:20:21 2 A. That does include Standardbred.

16:20:22 3 1104 Q. And on April 14, Mr. Parkinson...

16:20:22 4 --- (Sotto voce discussion between

16:20:22 5 Mr. Lisus and Mr. Matthews.)

16:20:22 6 BY MR. LISUS:

16:20:58 7 1105 Q. You became aware on March 12th of

16:20:59 8 a communication in Standardbred Canada; correct?

16:21:39 9 A. Yep.

16:21:39 10 1106 Q. Do you remember that?

16:21:40 11 A. Yep.

16:21:41 12 1107 Q. So, Standardbred reports that:

16:21:41 13 "In a letter issued to Premier

16:21:41 14 Wynne on March 11, John Snobelen of

16:21:47 15 Ontario Horse Racing, announced

16:21:47 16 support programs for Thoroughbred

16:21:49 17 and Quarter Horse breeders."

16:21:49 18 [As read.]

16:21:51 19 That's accurate; correct?

16:21:52 20 A. That's correct.

16:21:52 21 1108 Q. "Not mentioned in this

16:21:54 22 announcement was the Standardbred

16:21:57 23 sector." [As read.]

16:21:57 24 That's accurate; correct?

16:21:58 25 A. Correct.

16:21:58 1 1109 Q. "On Monday, a group Standardbred
16:22:01 2 breeders filed a \$65-million lawsuit
16:22:05 3 against the Ontario Lottery and Gaming
16:22:06 4 Corporation for damages stemming from
16:22:08 5 the cancellation of the Slots at
16:22:12 6 Racetrack Program two years ago today."
16:22:12 7 [As read.]
16:22:14 8 That's correct?
16:22:15 9 A. That's correct.
16:22:15 10 1110 Q. "Snobelen told Trot Insider on
16:22:20 11 Wednesday morning that the timing of
16:22:21 12 the two announcements is merely
16:22:24 13 coincidence, but the exclusion of the
16:22:26 14 Standardbred side is not."
16:22:28 15 That is correct?
16:22:28 16 A. That is correct.
16:22:29 17 1111 Q. And so, you were instructed by
16:22:35 18 OMAFRA not to include Standardbred in your
16:22:40 19 announcement of funding; correct?
16:22:42 20 A. I -- what I said is what I believe
16:22:45 21 to be true.
16:22:45 22 1112 Q. Okay. And what you said is:
16:22:55 23 "On the Standardbred side,
16:22:57 24 there's an interest in maintaining a
16:22:58 25 healthy breeding sector in Ontario,

16:22:58 1 and the current litigation that the
16:23:00 2 Standardbred Breeders of Ontario
16:23:02 3 have entered into won't impede the
16:23:05 4 program we currently have, but they
16:23:06 5 do make agreements on future
16:23:09 6 programs more difficult because no
16:23:12 7 one - the government or the breeders
16:23:13 8 - want to interfere with the matters
16:23:15 9 that are before the courts."

16:23:15 10 [As read.]

16:23:17 11 Right? That's what you said?

16:23:19 12 A. That's what I said.

16:23:20 13 1113 Q. And that's what you were
16:23:21 14 instructed to say; correct?

16:23:22 15 A. I would... I don't think that's
16:23:37 16 accurate.

16:23:37 17 I -- I, uh, was not of a position -- I
16:23:39 18 was not in a position... Once there is impending
16:23:42 19 litigation and, in fact, some -- some -- a claim,
16:23:47 20 uh, I was an advisor to the government. I was not
16:23:51 21 an employee of or director of, and so from my pen,
16:24:01 22 from my lips, from my -- from -- anything I said or
16:24:02 23 did would -- would place, frankly, me incorrectly
16:24:08 24 in what was a properly filed claim, so that would
16:24:12 25 be my caution. That was my personal caution.

16:24:13 1 1114 Q. Are you telling me it was your
16:24:15 2 decision to...?
16:24:19 3 A. No.
16:24:19 4 1115 Q. No.
16:24:20 5 A. No. I could not get -- at that
16:24:22 6 time, I could not, from my position, get an -- get
16:24:25 7 an agreement to enhance, uh, the Standardbred
16:24:28 8 program in light of all the things that were going
16:24:30 9 on.
16:24:30 10 1116 Q. Right. That's what I expected you
16:24:33 11 to say, sir.
16:24:33 12 A. Right.
16:24:34 13 1117 Q. I, listening to you, wouldn't have
16:24:36 14 thought it was your preference not to have the
16:24:41 15 Standardbred breeders participate in the announced
16:24:50 16 breeding programs because of the court action.
16:24:53 17 That wouldn't be your preference or
16:24:56 18 decision, right?
16:24:57 19 A. My preference is, we would have
16:24:58 20 been able to treat all of these, uh, segments in
16:25:01 21 somewhat the same manner.
16:25:03 22 1118 Q. Right. And you -- the decision
16:25:10 23 was made by people other than you that because of
16:25:13 24 the commencement of the claim, Standardbred
16:25:14 25 breeders weren't going to get the same -- or get

16:25:20 1 breeding assistance or awards that Quarter Horse
16:25:26 2 and Thoroughbred were, right?

16:25:29 3 A. I can't speak to what that
16:25:30 4 decision was made. I -- I was not --

16:25:33 5 1119 Q. You just know that it was made?

16:25:35 6 A. I -- I know there was no landing
16:25:40 7 spot for a breeding support program at that time.

16:25:40 8 --- (Court reporter appeals.)

16:25:40 9 BY MR. LISUS:

16:25:40 10 1120 Q. No landing spot for a breeding
16:25:42 11 support program for the Standardbreds.

16:25:43 12 A. At that time.

16:25:44 13 1121 Q. And that was because they went to
16:25:46 14 court, right?

16:25:47 15 A. It involves several pay grades
16:25:49 16 above me at that juncture, yes.

16:25:51 17 1122 Q. But you understand -- and, sir,
16:25:52 18 I'm not attributing the decision --

16:25:54 19 MR. RATCLIFFE: Well, I think he --

16:25:54 20 MR. LISUS: Excuse me.

16:25:54 21 MR. RATCLIFFE: He answered your
16:25:55 22 question.

16:25:55 23 BY MR. LISUS:

16:25:56 24 1123 Q. I'm not attributing the decision
16:25:57 25 to you. I want you to understand that.

16:25:59 1 A. No. I understand that.

16:26:00 2 1124 Q. The decision was, however, was
16:26:02 3 made several pay grades above you, as you put it,
16:26:05 4 because the Standardbred breeders went to court for
16:26:08 5 \$65-million; fair?

16:26:10 6 A. I would assume that to be the
16:26:12 7 case.

16:26:14 8 MR. LISUS: That's the next exhibit.

16:26:14 9 THE WITNESS: Oh.

16:26:16 10 MR. MATTHEWS: That's SB 4297.

16:26:16 11 ---EXHIBIT NO. 34: A communication in
16:26:19 12 Standardbred Canada, March 12, 2014, Production
16:26:22 13 Number SB 4297.

16:26:32 14 BY MR. LISUS:

16:26:38 15 1125 Q. And on April 14, Mr. Snobelen
16:26:39 16 (sic) wrote to you --

16:26:39 17 A. Mr. --

16:26:39 18 1126 Q. Excuse me.

16:26:39 19 A. Walter wrote me.

16:26:39 20 1127 Q. Mr. Parkinson wrote to you--

16:26:40 21 A. Right.

16:26:40 22 1128 Q. --with a copy to Ms. Wynne,
16:26:44 23 Mr. McMeekin, and Mr. Leal.

16:26:46 24 Do you remember getting this letter?

16:26:48 25 A. Oh, yeah.

16:26:48 1 1129 Q. Do you remember it well?

16:26:49 2 A. Yes.

16:26:49 3 1130 Q. What did you do with it?

16:27:03 4 A. I'm not sure if I responded

16:27:05 5 directly to Walter. I suspect I probably did.

16:27:08 6 1131 Q. Right. But I presume you also

16:27:08 7 sent it on to whoever you were...?

16:27:08 8 A. Oh, yeah.

16:27:08 9 1132 Q. Who were you reporting to;

16:27:10 10 Mr. Keegan at this point?

16:27:11 11 A. Probably, yes.

16:27:12 12 1133 Q. And we're now April. In April, we

16:27:18 13 were sort of three months into the breeding season;

16:27:21 14 correct?

16:27:21 15 A. Yeah.

16:27:21 16 1134 Q. And you knew, as a horseman, that

16:27:24 17 these -- this breeder support was very sorely

16:27:27 18 needed; correct?

16:27:28 19 A. Yes.

16:27:29 20 1135 Q. Because we know this is now 2014

16:27:32 21 and, in fact, all slot revenue sharing has ended

16:27:42 22 because it ended a year after 2013, right?

16:27:45 23 A. And this -- and the secondary

16:27:48 24 program had -- had commenced.

16:27:49 25 1136 Q. Right. But not for the

16:27:51 1 Standardbred breeders?

16:27:53 2 A. Uh. The... So, the supports that

16:27:56 3 were going in were, uh, \$80-million, of which

16:28:00 4 30-million was going into HIP, so HIP was being

16:28:03 5 maintained.

16:28:03 6 1137 Q. But in any --

16:28:05 7 A. But the enhanced part of it was

16:28:07 8 not.

16:28:07 9 1138 Q. Right. The breeders really needed

16:28:09 10 this money at this point, right? They could have

16:28:11 11 really used it?

16:28:12 12 A. There's two critical calendar

16:28:14 13 dates for the Standardbred breeders and this is one

16:28:17 14 of them.

16:28:17 15 1139 Q. Right. And someone well above you

16:28:20 16 had made the decision that they were going to be

16:28:24 17 left out of the Enhanced Breeders' Program at that

16:28:28 18 point; correct?

16:28:29 19 A. At that juncture, it was certainly

16:28:33 20 out of my hands.

16:28:34 21 1140 Q. Right. Hard ball, right?

16:28:35 22 A. I... It's not my -- it's not my

16:28:38 23 world. It was just out of my hands.

16:28:40 24 1141 Q. Did Ms. Wynne speak to you about

16:28:40 25 this?

16:28:40 1 A. No.

16:28:40 2 1142 Q. Did Mr. McMeekin?

16:28:40 3 A. No.

16:28:55 4 1143 Q. Did Mr. Leal?

16:29:01 5 A. I would have briefed, uh, Minister

16:29:04 6 Leal about the overall support program.

16:29:05 7 1144 Q. But not about the withholding of

16:29:07 8 the --

16:29:07 9 A. I would not have talked to him

16:29:09 10 about the litigation, no, not at all -- or, I'm

16:29:11 11 sorry -- the claim. I -- I would not have been,

16:29:14 12 uh, briefed.

16:29:15 13 1145 Q. And you responded to --

16:29:21 14 MR. LISUS: That letter is the next

16:29:22 15 exhibit.

16:29:22 16 BY MR. LISUS:

16:29:22 17 1146 Q. You responded to --

16:29:22 18 THE COURT REPORTER: Sorry. The letter

16:29:22 19 is...?

16:29:31 20 MR. LISUS: April 14, 2014,

16:29:33 21 Mr. Parkinson to Mr. Snobelen.

16:29:35 22 ---EXHIBIT NO. 35: Letter dated April

16:29:35 23 14, 2014, from Mr. Parkinson to Mr. Snobelen, with

16:29:35 24 a copy to Ms. Wynne, Mr. McMeekin, and Mr. Leal.

16:29:35 25 BY MR. LISUS:

16:29:39 1 1147 Q. You responded on April 15 with a
16:29:41 2 carbon copy to Ms. Wynne and Mr. Leal and
16:29:42 3 Mr. McMeekin, saying:
16:29:45 4 "As you have noted, the matters
16:29:46 5 you referred to are now before the
16:29:48 6 courts." [As read.]
16:29:51 7 Right?
16:29:52 8 A. Mm-hmm.
16:29:52 9 1148 Q. Yes?
16:29:53 10 A. Yes, I did.
16:29:54 11 1149 Q. And I presume you took some -- it
16:30:01 12 wasn't customary for you to copy the Premier of the
16:30:05 13 Province and a Cabinet Minister on your e-mails;
16:30:08 14 correct?
16:30:08 15 A. That's correct.
16:30:08 16 1150 Q. And I presume you did that in this
16:30:10 17 case because you wanted them both to know what was
16:30:12 18 going on?
16:30:16 19 A. Uh. I would have done that
16:30:17 20 because, in my view, the -- uh, I wasn't in a
16:30:20 21 position to answer Walter's request, and --
16:30:25 22 1151 Q. But you thought that at a personal
16:30:27 23 level, he actually deserved an answer and you
16:30:31 24 wanted to make sure that someone could perhaps give
16:30:35 25 an answer saw what was going on?

16:30:36 1 That's how I read that, sir.

16:30:38 2 A. I would certainly have been

16:30:40 3 interested in having Walter get an answer, yeah.

16:30:42 4 1152 Q. Thank you.

16:31:01 5 MR. LISUS: The next exhibit.

16:31:04 6 MR. MATTHEWS: SB 5137.

16:31:06 7 ---EXHIBIT NO. 36: Mr. Snobelen's

16:29:40 8 response on April 15, 2014, with a carbon copy to

16:29:41 9 Ms. Wynne and Mr. Leal and Mr. McMeekin, Production

16:31:08 10 Number SB 5137.

16:31:08 11 BY MR. LISUS:

16:31:48 12 1153 Q. I missed a letter in the sequence.

16:31:53 13 Minister Wynne writes back to

16:31:55 14 Mr. Parkinson on April 4.

16:31:57 15 Do you remember that or did you know

16:31:58 16 about that?

16:32:21 17 --- (Witness reviewing document.)

16:32:22 18 THE WITNESS: I -- I don't remember

16:32:23 19 whether I received this or not, but it's not a

16:32:25 20 shocking... Yeah.

16:32:29 21 BY MR. LISUS:

16:32:30 22 1154 Q. And when you say "it's not a

16:32:32 23 shocking", what do you mean?

16:32:33 24 A. Umm. It's pretty pro forma to

16:32:36 25 what I would expect a Minister's office would

16:32:39 1 generate.

16:32:40 2 1155 Q. Meaning a non-answer to the direct

16:32:42 3 question?

16:32:42 4 A. It's -- I'm sure that those have

16:32:46 5 gone under my signature at some point in time when

16:32:49 6 I was working for the government.

16:32:51 7 1156 Q. Those kind of responses?

16:32:52 8 A. Yes.

16:32:53 9 1157 Q. And that's exactly how you viewed

16:32:55 10 this response from Minister Wynne, right?

16:32:58 11 A. Yeah. I -- I think this is a --

16:33:03 12 she recites the things that had been done in the

16:33:06 13 partnership plan and all that sort of stuff.

16:33:08 14 1158 Q. But doesn't respond to his

16:33:10 15 question, 'Why are Standardbred breeders having

16:33:14 16 breeder enhancements withheld from them when

16:33:17 17 Quarter Horse and Thoroughbreds are not,' right?

16:33:20 18 A. She directs him, I believe. She

16:33:22 19 suggested it's before -- in some way, shape or form

16:33:25 20 before the courts and she can't comment.

16:33:27 21 1159 Q. But, of course --

16:33:28 22 MR. LISUS: Let's mark this as the

16:33:29 23 next.

16:33:30 24 ---EXHIBIT NO. 37: April 4, 2014

16:33:35 25 letter from Minister Wynne to Mr. Parkinson.

16:33:35 1 BY MR. LISUS:

16:33:36 2 1160 Q. But, of course, it's not before

16:33:36 3 the courts, right? What's before -- correct?

16:33:37 4 MR. RATCLIFFE: Well, that's a legal

16:33:37 5 question--

16:33:38 6 MR. LISUS: It's not.

16:33:39 7 MR. RATCLIFFE: --in terms of whether

16:33:39 8 it's before the court. If section 7 notice had

16:33:40 9 been provided, then it's in litigation. It's --

16:33:42 10 it's litigation that has been commenced.

16:33:45 11 MR. LISUS: So your position is that it

16:33:47 12 was before the courts, Mr. Ratcliffe?

16:33:50 13 MR. RATCLIFFE: Well, what I'm

16:33:52 14 suggesting is that litigation has been commenced

16:33:57 15 once you serve that section 7 notice.

16:33:59 16 MR. LISUS: Yes. And is that

16:34:02 17 litigation about the Standardbred breeders being

16:34:03 18 left out of just-announced breeder enhancements?

16:34:09 19 MR. RATCLIFFE: Well, I didn't draft

16:34:10 20 the letter. I can't speculate exactly as to what

16:34:12 21 was said in that letter, but --

16:34:14 22 MR. LISUS: Letter Ms. Wynne is the

16:34:16 23 next exhibit in sequence.

16:34:30 24 BY MR. LISUS:

16:34:31 25 1161 Q. In her letter, does Ms. Wynne say

16:34:33 1 that enhanced breeders -- that an Enhanced
16:34:37 2 Breeders' Program is available for all breeds?
16:34:39 3 --- (Witness reviewing document.)
16:34:51 4 THE WITNESS: She makes reference to
16:34:53 5 other breeding programs and other incentives.
16:34:53 6 BY MR. LISUS:
16:34:57 7 1162 Q. So, am I reading this correctly,
16:34:58 8 that she's saying there is an Enhanced Breeders'
16:35:01 9 Program for Standardbred breeders, right?
16:35:05 10 Isn't that what she's saying or you
16:35:08 11 can't tell what she's saying?
16:35:13 12 A. My read of it would be that she is
16:35:14 13 speaking about, uh, the HIP program and other parts
16:35:19 14 of the -- of the --
16:35:20 15 1163 Q. Right?
16:35:21 16 A. -- of the horse racing partnership
16:35:22 17 plan.
16:35:22 18 1164 Q. And not addressing the
16:35:25 19 just-announced enhanced breeders' assistance;
16:35:33 20 correct?
16:35:33 21 A. I don't see a -- I -- I don't read
16:35:39 22 a reference that's --
16:35:39 23 1165 Q. Right. And so --
16:35:39 24 --- (Court reporter appeals.)
16:35:39 25 THE WITNESS: I don't -- I don't see a

16:35:39 1 reference in this letter that specifically
16:35:42 2 addresses that; not in my reading of it.
16:35:48 3 MR. LISUS: The next exhibit.
16:35:51 4 MR. MATTHEWS: Okay. That's Exhibit
16:35:52 5 37.
16:36:01 6 BY MR. LISUS:
16:36:02 7 1166 Q. And Mr. Parkinson responds to you
16:36:04 8 on April 21, saying...
16:36:28 9 --- (Witness reviewing document.)
16:36:28 10 BY MR. LISUS:
16:36:36 11 1167 Q. Do you remember that?
16:36:36 12 A. I don't remember it specifically,
16:36:37 13 but it's consistent with -- with communications
16:36:40 14 with Walter, yeah.
16:36:43 15 MR. LISUS: Okay. That's the next
16:36:45 16 exhibit.
16:36:57 17 MR. MATTHEWS: SB 17086.
16:36:59 18 --- EXHIBIT NO. 38: A letter from
16:37:00 19 Mr. Parkinson to Mr. Snobelen, dated April 21,
16:37:04 20 Production Number SB 17086.
16:37:04 21 BY MR. LISUS:
16:37:07 22 1168 Q. And are you aware, sir, that
16:37:08 23 shortly after that, I write a letter to Crown
16:37:13 24 counsel, Mr. Ratcliffe, and Mr. Kelly (ph) on
16:37:13 25 April 23rd? Were you aware of this?

16:37:15 1 A. I don't know whether I have seen
16:37:19 2 this before or not. I don't specifically recall
16:37:21 3 seeing it.

16:37:21 4 1169 Q. Okay. You don't need to read it
16:37:34 5 if you haven't seen it before. It wasn't addressed
16:37:35 6 to you, and you don't recall seeing a copy of it.

16:37:38 7 MR. LISUS: The next exhibit.

16:37:39 8 MR. MATTHEWS: 39. SB 5139.

16:37:50 9 ---EXHIBIT NO. 39: An April 23rd
16:37:50 10 letter from Mr. Lisus to Crown counsel,
16:37:50 11 Mr. Ratcliffe, and Mr. Kelly (ph), Production
16:37:51 12 Number SB 5139.

16:37:57 13 BY MR. LISUS:

16:37:57 14 1170 Q. And I want to show you a response
16:37:58 15 I got from government counsel.

16:38:00 16 Would you read it, please?

16:38:18 17 --- (Witness reviewing document.)

16:38:39 18 BY MR. LISUS:

16:38:39 19 1171 Q. So, you see, the last paragraph of
16:38:41 20 that e-mail from the government, it says:

16:38:42 21 "With respect to your request
16:38:44 22 for clarification regarding the
16:38:46 23 availability of purse enhancements
16:38:48 24 to Standardbred breeders, these
16:38:49 25 issues do not form part of the

16:38:51 1 litigation and, accordingly, we
16:38:53 2 cannot assist with this inquiry."
16:38:53 3 [As read.]
16:38:54 4 Do you see that?
16:38:55 5 A. Mm-hmm.
16:38:55 6 1172 Q. Yes?
16:38:56 7 A. Yes, I did.
16:38:57 8 MR. RATCLIFFE: Okay.
16:38:57 9 BY MR. LISUS:
16:38:57 10 1173 Q. So, let's just review the state of
16:38:57 11 the bidding.
16:38:58 12 MR. RATCLIFFE: He's not -- he's not
16:38:59 13 going to comment on that, so...
16:39:02 14 BY MR. LISUS:
16:39:02 15 1174 Q. Let's review the state of the
16:39:12 16 bidding, Mr. Snobelen.
16:39:14 17 MR. MATTHEWS: This is Exhibit 40; SB
16:39:14 18 5138.
16:39:15 19 ---EXHIBIT NO. 40: A response from
16:39:15 20 government counsel to Mr. Lisus, Production Number
16:39:15 21 SB 5138.
16:39:17 22 BY MR. LISUS:
16:39:17 23 1175 Q. You announced on March 11 that
16:39:31 24 there are enhanced breeder supports in the works
16:39:36 25 for Thoroughbred and Quarter Horse; correct?

16:39:39 1 A. That's correct.

16:39:39 2 1176 Q. In the amount of 12-million and
16:39:44 3 6-million respectively; correct?

16:39:45 4 A. That's correct.

16:39:46 5 1177 Q. You are not authorized to announce
16:39:55 6 an amount for Standardbred breeders, right?

16:39:58 7 A. That's correct.

16:40:11 8 1178 Q. You inform Standardbred Canada
16:40:16 9 that the exclusion of the Standardbreds from the
16:40:36 10 enhanced breeder support is as a result of
16:40:38 11 litigation?

16:40:39 12 A. That is correct.

16:40:40 13 1179 Q. Mr. Parkinson writes to you and
16:40:51 14 say, 'why aren't Standardbred breeders getting
16:40:56 15 enhanced breeder support like Thoroughbreds and
16:41:00 16 Quarter Horse?'

16:41:01 17 Correct?

16:41:01 18 A. He does.

16:41:04 19 1180 Q. And you say, 'I can't respond to
16:41:09 20 you because it's the subject of litigation';
16:41:11 21 correct?

16:41:12 22 A. Yes.

16:41:13 23 1181 Q. Mr. Parkinson then writes to the
16:41:17 24 Premier and Minister of Agriculture and says:
16:41:22 25 "Why are Standardbred breeders

16:41:24 1 being left out for enhanced
16:41:30 2 support?"
16:41:30 3 Correct?
16:41:31 4 A. (Nodding head.)
16:41:31 5 1182 Q. Yes?
16:41:32 6 A. Yes. Sorry.
16:41:33 7 1183 Q. Ms. Wynne gives him a pro forma
16:41:39 8 non-answer; correct?
16:41:39 9 A. Ms. Wynne informs him of all the
16:41:42 10 good things that have happened on the file, yes.
16:41:44 11 1184 Q. But doesn't respond to that
16:41:45 12 particular question?
16:41:46 13 A. She directs him to, uh, the, uh,
16:41:52 14 Attorney General.
16:41:54 15 1185 Q. And so, I write on behalf of
16:41:59 16 Mr. Parkinson to the Attorney General, right?
16:42:06 17 A. Yes.
16:42:06 18 1186 Q. Seeking an answer to the same
16:42:07 19 question?
16:42:08 20 A. Yes.
16:42:08 21 1187 Q. And the Attorney General tells me
16:42:10 22 there's no answer for Mr. Parkinson because it
16:42:14 23 doesn't form part of the litigation; correct?
16:42:16 24 A. That's correct.
16:42:17 25 1188 Q. Which appears to be the exact

16:42:19 1 opposite of what you told Mr. Parkinson?

16:42:23 2 A. That's correct.

16:42:23 3 1189 Q. And the exact opposite of

16:42:25 4 Ms. Wynne -- of what Ms. Wynne told Mr. Parkinson?

16:42:28 5 A. That would be my interpretation,

16:42:30 6 as well.

16:42:30 7 1190 Q. And so, at the end of the day,

16:42:32 8 Mr. Parkinson has got a pro forma non-answer and

16:42:37 9 two contradictory answers, right?

16:42:39 10 A. That would be my interpretation.

16:42:41 11 1191 Q. But no enhanced breeding support

16:42:44 12 like the Thoroughbreds and the Quarter Horses,

16:42:47 13 right?

16:42:47 14 A. Not at that juncture.

16:42:49 15 1192 Q. And that juncture was a juncture

16:42:52 16 at which it was very sorely needed by Standardbred

16:42:56 17 breeders; correct?

16:42:56 18 A. It was at one of the two critical

16:42:58 19 junctures of the year.

16:42:59 20 1193 Q. And this was occurring at the

16:43:10 21 instruction of Mr. Keegan?

16:43:16 22 MR. RATCLIFFE: Again, are you speaking

16:43:18 23 instruction to Mr. Snobelen or who?

16:43:22 24 THE WITNESS: That's the only one I

16:43:23 25 could answer on.

16:43:24 1 With the knowledge of Mr. Keegan. I'm
16:43:34 2 not -- I --
16:43:34 3 BY MR. LISUS:
16:43:35 4 1194 Q. You don't know where it came from?
16:43:36 5 A. I don't know that -- I -- and I
16:43:37 6 don't know that it came in a direct order. I --
16:43:39 7 I'm...
16:43:40 8 1195 Q. I take it, sir, at a personal
16:43:42 9 level, you were uncomfortable with this?
16:43:44 10 A. Uh. I'm -- at a personal level
16:43:49 11 I'm uncomfortable getting... I think that the
16:43:54 12 potential for a claim on all parts of this file
16:44:00 13 were -- were made -- made navigation very careful
16:44:05 14 while we were consulting with people in the
16:44:07 15 industry, including Standardbred breeders, but not
16:44:09 16 limited to them.
16:44:10 17 I mean..., because at the earlier onset
16:44:17 18 of our work with government in trying to provide
16:44:19 19 good advice to government on supporting the
16:44:21 20 industry, uh, it would have been very, uh... It
16:44:26 21 might have been very difficult to talk to
16:44:28 22 government if there was that chain of letters back
16:44:32 23 in 2012.
16:44:33 24 So, from the beginning, I know I felt,
16:44:43 25 uh... I feel very cautious when things go to -- go

16:44:47 1 into court personally, from my experience in
16:44:51 2 government, and you -- I -- I find -- I'm not
16:44:54 3 comfortable in that position. I'm not comfortable
16:44:57 4 in that position.

16:44:58 5 1196 Q. But the offer was made to
16:45:01 6 government in December 2013--

16:45:07 7 A. I --

16:45:08 8 1197 Q. --to avoid this going to court,
16:45:09 9 right?

16:45:09 10 A. I understand that.

16:45:10 11 1198 Q. Right. And you also understood,
16:45:15 12 sir, that by refusing to enter into the limitation
16:45:19 13 period tolling agreement, the government was
16:45:21 14 pushing this into court, right?

16:45:23 15 MR. RATCLIFFE: Well, I don't know that
16:45:25 16 that's a fair question for this witness to answer.
16:45:29 17 He's...

16:45:32 18 THE WITNESS: You know, I mean the
16:45:33 19 government is receiving legal advice from its legal
16:45:36 20 branch. I mean, it doesn't retain me to provide
16:45:39 21 them with legal advice, I think thankfully all the
16:45:46 22 way around.

16:45:55 23 MR. LISUS: We'll take a brief break,
16:46:09 24 okay?

16:46:09 25 THE WITNESS: Perfect.

16:46:14 1 ---Recess at 4:46 p.m.

16:53:05 2 ---On resuming at 4:53 p.m.

16:54:07 3 BY MR. LISUS:

16:54:08 4 1199 Q. Okay. I asked you this morning,
16:54:56 5 Mr. Snobelen, about receiving a summons from my
16:55:01 6 office from Mr. Holmberg or receiving an e-mail.
16:55:04 7 Do you remember that?

16:55:06 8 A. Yes.

16:55:06 9 1200 Q. And asking to be interviewed?

16:55:09 10 A. Yes.

16:55:09 11 1201 Q. Asking if you would meet and be
16:55:11 12 interviewed by me or from someone from my office?
16:55:14 13 A. Yes.

16:55:14 14 1202 Q. You and I have never spoken about
16:55:16 15 this case; correct?
16:55:17 16 A. That's correct.

16:55:17 17 1203 Q. You have not spoken with anyone
16:55:20 18 from my office about this case?
16:55:21 19 A. That's correct.

16:55:22 20 1204 Q. I am asking you the questions and
16:55:26 21 getting you -- getting answers from you today cold;
16:55:28 22 correct?
16:55:28 23 A. That's correct.

16:55:30 24 1205 Q. And are you aware that I was
16:55:31 25 informed by Ontario that I was not to speak with

16:55:36 1 you?

16:55:36 2 A. I was not informed of that.

16:55:38 3 1206 Q. Okay. You aren't aware of having

16:55:43 4 received -- of me having received an e-mail saying

16:55:46 5 that Ontario represents all summonsed witnesses?

16:56:00 6 See the end of the first paragraph:

16:56:02 7 "Accordingly, please do not

16:56:03 8 contact any of these witnesses."

16:56:04 9 A. That's correct.

16:56:05 10 MR. LISUS: Okay. I'm going to mark

16:56:06 11 that as an exhibit.

16:56:06 12 ---EXHIBIT NO. 41: A letter from

16:56:06 13 Ms. La Horey to Mr. Lisus, dated August 30, 2017.

16:56:06 14 BY MR. LISUS:

16:56:07 15 1207 Q. But you did, however, meet with

16:56:09 16 counsel for the Ontario Lottery and Gaming

16:56:12 17 Corporation; correct?

16:56:12 18 A. I did.

16:56:12 19 1208 Q. You did? Yes?

16:56:17 20 A. Yes.

16:56:17 21 1209 Q. And they -- the Ontario -- counsel

16:56:18 22 for Ontario Lottery and Gaming Corporation does not

16:56:20 23 represent you; correct?

16:56:21 24 A. That's correct, as far as I know.

16:56:29 25 1210 Q. But you met with them and reviewed

16:56:31 1 documents in this case?

16:56:32 2 A. They were present when I reviewed
16:56:33 3 the documents, yes.

16:56:34 4 1211 Q. They discussed the issues in this
16:56:36 5 case with you and what you might testify about,
16:56:38 6 right?

16:56:38 7 A. They were certainly present. I
16:56:42 8 don't recall that kind of question but.

16:56:44 9 1212 Q. When you say they were present,
16:56:46 10 was it a meeting with counsel for OLG and counsel
16:56:51 11 for Ontario at one time?

16:56:51 12 A. That's correct.

16:56:52 13 1213 Q. I see.

16:56:52 14 MR. RATCLIFFE: How is this relevant?

16:56:54 15 MR. LISUS: Well, Mr. Rosenberg is
16:56:56 16 going to Cross-Examine the witness.

16:56:59 17 MR. RATCLIFFE: Yes. So how is that --
16:57:00 18 how is it relevant?

16:57:02 19 MR. LISUS: I don't think I have to
16:57:03 20 tell you the relevance of that.

16:57:05 21 BY MR. LISUS:

16:57:06 22 1214 Q. You discussed, in advance of the
16:57:09 23 Cross-Examination that you are about to undergo,
16:57:10 24 the kinds of issues that you would be Examined on?

16:57:12 25 A. Correct.

16:57:13 1 1215 Q. And what were they?

16:57:16 2 MR. RATCLIFFE: Well, you know what?

16:57:17 3 We're getting into legal advice here and --

16:57:21 4 MR. LISUS: Well, there's no

16:57:24 5 solicitor-client relationship between Mr. Rosenberg

16:57:26 6 and Mr. Snobelen. We have already established

16:57:26 7 that.

16:57:28 8 O/B MR. ROSENBERG: So, I object on that,

16:57:30 9 and we have a common interest privilege that

16:57:33 10 applies here.

16:57:34 11 MR. LISUS: Do you have a common

16:57:35 12 interest privilege agreement?

16:57:38 13 MR. RATCLIFFE: Yes.

16:57:39 14 MR. LISUS: May I see it?

16:57:41 15 U/A MR. RATCLIFFE: I don't have it with

16:57:42 16 me. We'll take that under advisement in terms of

16:57:43 17 whether we need to provide it to you.

16:57:46 18 BY MR. LISUS:

16:57:47 19 1216 Q. When was the common interest

16:57:48 20 privilege agreement executed.

16:57:52 21 R/F MR. ROSENBERG: I'm refusing that.

16:57:54 22 MR. LISUS: I'm not asking you.

16:57:55 23 U/A MR. RATCLIFFE: Your request for the

16:57:56 24 details of the common interest privilege agreement;

16:57:58 25 I'll take that under advisement.

16:58:01 1 MR. LISUS: So I take it, the position
16:58:03 2 of the Defendants is that there is a common
16:58:06 3 interest in this litigation
16:58:17 4 MR. RATCLIFFE: I think there is,
16:58:18 5 but...

16:58:19 6 BY MR. LISUS:
16:58:19 7 1217 Q. When did you meet with counsel for
16:58:20 8 OLG for the purposes of preparing you to give
16:58:22 9 evidence here today, Mr. Snobelen?

16:58:25 10 A. I believe it was Monday of this
16:58:27 11 week.

16:58:27 12 1218 Q. Okay. And how long did you meet
16:58:28 13 for?

16:58:28 14 A. An hour or so.

16:58:42 15 1219 Q. And were you given any questions
16:58:44 16 in writing to consider?

16:58:45 17 A. No.

16:58:45 18 MR. RATCLIFFE: Well --

16:58:46 19 THE WITNESS: I don't believe so.

16:58:51 20 BY MR. LISUS:
16:58:51 21 1220 Q. I want to just ask you about what
16:58:53 22 is called an "information note", CRE 0230844, dated
16:59:05 23 September 17, 2012.
16:59:19 24 And do you know who imposed -- well,
16:59:21 25 maybe there's a clue on the back; "Economic

16:59:24 1 Development Policy, Thom Hagerty, David Meinen."

16:59:24 2 Do you know those fellows?

16:59:27 3 A. OMAFRA.

16:59:28 4 1221 Q. Okay. And the fourth bullet point

16:59:38 5 on page 1...

16:59:40 6 Before I ask you about the fourth

16:59:43 7 bullet point on page 1, did you see this document

16:59:48 8 in or about September 2012?

16:59:50 9 A. I don't recall seeing it.

16:59:51 10 1222 Q. You saw this kind of information--

16:59:55 11 A. Sure.

16:59:56 12 1223 Q. --during your work on the Panel?

16:59:58 13 A. Sure.

16:59:58 14 1224 Q. Okay. And the fourth bullet point

17:00:03 15 says:

17:00:04 16 "The Standardbred 2012 Canadian

17:00:07 17 yearling sale on September 15 and 16

17:00:11 18 resulted in 246 horses selling for a

17:00:15 19 total of 2,048,950 with an average

17:00:20 20 price of 8,329." [As read.]

17:00:21 21 Right?

17:00:22 22 A. That's correct.

17:00:22 23 1225 Q. And the total value of the 2012

17:00:25 24 sale was 46 per cent of the 2011 sale, right?

17:00:30 25 A. That's correct.

17:00:32 1 1226 Q. And so, the value of the
17:00:34 2 Standardbred yearlings dropped by 50 per cent, 2011
17:00:41 3 to 2012?

17:00:41 4 A. That's what the numbers indicate.

17:00:43 5 1227 Q. And you and I can agree, sir, that
17:00:45 6 that was the result of the manner in which the slot
17:00:53 7 at racetrack revenue share was cancelled and
17:00:53 8 communicated; correct?

17:01:00 9 A. Nothing else happened in that time
17:01:02 10 period that would have produced that dramatic a
17:01:04 11 result.

17:01:04 12 1228 Q. And that was a result that you
17:01:06 13 predicted would occur in February 2012 when you
17:01:08 14 formed the opinion that there likely was to be a
17:01:11 15 termination of revenue sharing, right?

17:01:14 16 A. Yes. This is consistent with what
17:01:16 17 I would have thought.

17:01:17 18 1229 Q. Okay. And if you go over...
17:01:29 19 So, in your view, that kind of loss in
17:01:34 20 value was, in February 2012, entirely foreseeable;
17:01:39 21 correct?

17:01:39 22 A. There -- a... A drop in value of
17:01:45 23 that magnitude was predictable.

17:01:47 24 1230 Q. Right.
17:01:53 25 And if you look at the last bullet

1 point on the second page, it says:

2 "Standardbred racing has been
3 viewed as the most vulnerable to
4 contraction without revenue from the
5 Slots at Racetrack Program."

6 [As read.]

7 And do you agree with that?

8 A. Yeah. That's a fair evaluation.

9 --- (Court reporter appeals.)

10 BY MR. LISUS:

11 1231 Q. Sorry?

12 A. That's -- that's a fair
13 evaluation.

14 1232 Q. All right.

15 A. Sorry.

16 1233 Q. And that vulnerability also was
17 known in February and March of 2012; correct?

18 A. Yes. It's just the math in the
19 industry.

20 1234 Q. Right.

21 MR. LISUS: That's the next exhibit.

22 MR. ROSENBERG: What's the document
23 number?

24 MR. MATTHEWS: CRE 0230844.

25 --- EXHIBIT NO. 42: An information

1 Note, dated September 17, 2012, Production Number
2 CRE0230844.

3 MR. LISUS: Did we mark the August 30,
4 2017 e-mail?

5 MR. MATTHEWS: Yes.

6 MR. LISUS: Those are my questions for
7 now, Mr. Snobelen. Thank you very much.

8 THE WITNESS: Thank you.

9 ---[Adjourned at 5:03 p.m.; to resume
10 on Monday, December 4, 2017 at 9:00 a.m.]

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REPORTER'S CERTIFICATE

I, BONNIE LYNN VAN DER MEER, C.S.R.,
Chartered Shorthand Reporter, hereby certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness and
all objections made at the time of examination were
recorded stenographically by me and were thereafter
transcribed by me;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 22nd day of December,
2017.



BONNIE LYNN VAN DER MEER, CSR
NEESON COURT REPORTING INC.

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