

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

JOHN WILKINSON
December 18, 2017

neelsons

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

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

- and -

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

--- This is the Continued Rule 39.03 Examination of
JOHN WILKINSON, a non-party witness herein, taken
at the offices of Neeson Court Reporting Inc.,
77 King Street West, Suite 2020, Toronto, Ontario,
Canada, M5K 1A2, on Monday, the 18th of December,
2017.

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

2

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

4 & Ian C. Matthews, Esq.

5

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

7 & Eunice Machado, Esq.

8

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

10 Lottery and Gaming

11 Corporation.

12

13 ALSO IN ATTENDANCE:

14 Ms. Michele Valentini - Articling Student,

15 Ministry of the

16 Attorney General.

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25 REPORTED BY: Bonnie Lynn van der Meer, CSR

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

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

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

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: 409:18.

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

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

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

2 The questions/requests refused are noted by O/B and
3 appear on the following pages/lines: 390:13,
4 416:23, 488:11, 495:9.

5
6

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

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

10
11

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

13	EXHIBIT NO.	DESCRIPTION	PAGE/LINE
14	31:	An e-mail dated February 28th, 2014,	
15		from Seelster Farms to Mr. Snobelen; Doc ID	
16		Number SB 17230.....	381:18
17	32:	Undated letter on Seelster Farms letterhead	
18		addressed to Ms. Wynne, Minister McMeekin,	
19		Minister Leal, and members of the Liberal	
20		government, copied to a number of other people;	
21		Doc ID Number 4509.....	392:2
22	33:	April 4, 2014 letter from Ms. Wynne to	
23		Mr. Parkinson; Doc ID Number SB 4516.....	394:3
24	34:	A letter dated April 14, 2014 from	
25		Mr. Parkinson to Mr. Snobelen, cc'd to Premier	

1 Wynne, Mr. McMeekin and Mr. Leal; Doc ID Number
2 SB 4518.....401:4
3 35: An April 15, 2014 e-mail from Mr. Snobelen
4 copied to K. Wynne, J. Leal and Ted McMeekin;
5 Doc ID Number 5153.....402:25
6 36: An April 21, 2014 e-mail from Mr. Parkinson
7 to Mr. Snobelen; Doc ID Number 5154.....411:22
8 37: An e-mail string; Doc ID Number SB
9 005137.....413:11
10 38: A letter from Mr. Lissus, dated April 23,
11 2014, to the attention of Messrs. Ratcliffe and
12 Kelly; Doc ID Number SB 5139.....413:18
13 39: An e-mail from Mr. Ratcliffe to Mr. Lissus
14 and others, dated April 30, 2014; Doc ID Number
15 SB 5138.....417:10
16 40: May 8th, 2012 MD&A of Great Canadian
17 Gaming Corporation.....431:22
18 41: New Ontario Horse Racing Model Options;
19 Doc ID Number CRE 0336260.....443:19
20 42: A document produced by OMAFRA entitled
21 Information Note, September Yearling Racehorse
22 Sales, Doc ID Number CRE 0230844.....500:6
23 -----
24
25

16:03:55 1 ---Upon commencing at 4:03 p.m.

16:03:55 2 JOHN WILKINSON; PREVIOUSLY SWORN.

16:03:55 3 EXAMINATION BY MR. LISUS: (CONT'D)

16:03:55 4 1509 Q. Mr. Wilkinson, welcome back.

16:03:56 5 When we broke, I think we were

16:03:57 6 discussing Exhibit 30 and the events of the spring

16:04:00 7 of 2014.

16:04:02 8 Do you remember that?

16:04:03 9 A. Yes.

16:04:05 10 1510 Q. And what we were discussing was

16:04:07 11 the announcement by the Ontario Racing Commission

16:04:21 12 in March of 2014 that breeder support programs were

16:04:27 13 being finalized.

16:04:28 14 Do you recall that?

16:04:29 15 A. Yes.

16:04:31 16 1511 Q. And do you also recall us

16:04:33 17 discussing the fact that the Standardbred breeders

16:04:37 18 had communicated their intention to start

16:04:41 19 litigation?

16:04:43 20 Do you remember that?

16:04:43 21 A. You showed -- yes. You showed me

16:04:45 22 a letter to the Ministry, I think.

16:04:47 23 1512 Q. And you also, before I showed you

16:04:50 24 the letter, made reference to a recollection you

16:04:52 25 had of a tolling agreement or an agreement with

16:04:55 1 respect to limitation periods.

16:04:57 2 You recall that?

16:04:57 3 A. Yes.

16:04:58 4 1513 Q. All right. And it was late in the
16:05:00 5 day and we were all probably a little tired, so I
16:05:05 6 thought that we would try and wrap this up today.

16:05:11 7 A. Sure.

16:05:11 8 1514 Q. In March and April of 2014, you
16:05:16 9 still had a mandate from the government with
16:05:19 10 respect to the transition.

16:05:22 11 Is that correct?

16:05:22 12 A. Yes. As an advisor.

16:05:24 13 1515 Q. Okay. And you were working with
16:05:26 14 Mr. Snobelen and Mr. Buchanan?

16:05:29 15 A. Uh. Yes. I was hired by the
16:05:31 16 Ontario Racing Commission--

16:05:31 17 1516 Q. Okay.

16:05:33 18 A. --to provide support to
16:05:35 19 Mr. Snobelen and to Mr. Buchanan.

16:05:36 20 1517 Q. And Mr. Snobelen had told you
16:05:38 21 about communications he was having with the
16:05:42 22 breeders in the first quarter of 2014 about
16:05:45 23 potential litigation; correct?

16:05:48 24 A. That there was -- there had always
16:05:50 25 been, from the time when we got involved, umm, the

16:05:54 1 -- the concern raised by some Standardbred breeders
16:05:56 2 that they would be suing the government no matter
16:06:00 3 what.

16:06:01 4 1518 Q. Okay. And particularly in March
16:06:11 5 of 2014, Mr. Snobelen had kept you abreast of
16:06:15 6 discussions that he was having with Standardbred
16:06:18 7 breeders about the possibility of litigation;
16:06:22 8 correct?

16:06:22 9 A. Yes. And to be complete, he kept
16:06:26 10 me briefed on the negotiations or discussions he
16:06:30 11 was having with all three breeds and how they were
16:06:32 12 going.

16:06:32 13 1519 Q. Okay. And who did he tell you he
16:06:34 14 was speaking with regarding Standardbred breeders?

16:06:40 15 A. Well, there was -- my recollection
16:06:44 16 is there were really kind of two groups. There was
16:06:46 17 the Standardbred breeders'/owners' association
16:06:51 18 (sic) which we had, umm, I remember Anna Meyer
16:06:53 19 (sic) particularly as part of that.

16:06:55 20 During our initial reports that we were
16:06:59 21 doing, that's who we met with as stakeholders, umm,
16:07:03 22 and then we had subsequent meetings. We had
16:07:09 23 recommended that the breeding program was -- was
16:07:12 24 not the problem. It should continue.

16:07:16 25 There needed to be some reform because

16:07:18 1 it had to fit in within the allocation that had
16:07:21 2 been made by the government, umm, and there were
16:07:24 3 many competing interests there.
16:07:28 4 Umm. And, umm, I don't recall being
16:07:32 5 directly involved with the to and fro of any -- any
16:07:36 6 discussions on that. I wasn't as involved. Umm...
16:07:42 7 1520 Q. So I showed you Exhibit 29 last
16:07:45 8 time, which--
16:07:45 9 A. Mm-hmm.
16:07:46 10 1521 Q. --was a letter that Mr. Wilkinson
16:07:55 11 (sic) sent to Ms. Wynne?
16:07:58 12 A. Mr. Snobelen.
16:08:00 13 1522 Q. Excuse me. Mr.--
16:08:00 14 A. Yeah.
16:08:00 15 1523 Q. --Snobelen sent to Ms. Wynne on
16:08:07 16 March 11.
16:08:07 17 A. Yeah. "John" will do, Jonathan.
16:08:10 18 1524 Q. Yeah. Both "Johns".
16:08:10 19 A. Right, yeah.
16:08:14 20 1525 Q. This was a letter Mr. Snobelen
16:08:15 21 sent to Ms. Wynne on March 11,--
16:08:18 22 A. Yes.
16:08:18 23 1526 Q. --Exhibit 29.
16:08:20 24 Now, were you aware of that letter when
16:08:21 25 it was sent?

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A. Yes.

1527 Q. Okay. And I presume that Mr. Snobelen discussed this letter with you before it went or told you it was going?

A. Yes. And we agreed to that, uh, an agreement had been reached that he could recommend to the Minister, which in this case was Premier Wynne.

1528 Q. Okay. And then, I also showed you Exhibit 30 last day, which is an article in the Standardbred Canada the day after Mr. Snobelen's letter to Ms. Wynne.

Do you recall looking at Exhibit 30 with me?

A. Yes. Yes, I do. Yeah.

1529 Q. And Exhibit 30 refers to the fact that the March 11 announcement made no mention of breeding programs for the Standardbred sector; correct?

A. Yes.

1530 Q. And the Exhibit 30 also said that the exclusion of the Standardbred side from the announcement was not a coincidence with the filing of the \$65-million lawsuit.

Do you see that?

16:09:42 1 A. No, sir. Could you--

16:09:44 2 1531 Q. All right.

16:09:44 3 A. --just show me?

16:09:46 4 1532 Q. If you look at the third

16:09:48 5 paragraph:

16:09:48 6 "On Monday, a group--"

16:09:48 7 A. Oh. Here.

16:09:49 8 1533 Q. "--of Standardbred breeders filed

16:09:52 9 a \$65-million lawsuit against the

16:09:55 10 Ontario Lottery and Gaming Corporation

16:09:55 11 for damages stemming from the

16:09:57 12 cancellation of the Slots at Racetracks

16:10:00 13 Program--"

16:10:00 14 A. Right.

16:10:00 15 1534 Q. "--two years ago."

16:10:02 16 A. Mm-hmm.

16:10:02 17 1535 Q. "Snobelen told Trot Insider on

16:10:02 18 Wednesday morning that the timing of

16:10:05 19 the two announcements is merely

16:10:10 20 coincidence, but the exclusion of the

16:10:12 21 Standardbred side is not." [As read.]

16:10:14 22 Right?

16:10:14 23 A. Okay. And -- and honestly, I'm

16:10:18 24 kind of confused by that statement, just logically.

16:10:21 25 1536 Q. Okay. The -- I understood you to

16:10:24 1 tell me last day that the Standardbred --
16:10:28 2 Standardbred breeders were excluded from the
16:10:35 3 breeder support programs because they continued to
16:10:41 4 express an interest in pursuing litigation?
16:10:44 5 A. No, sir.
16:10:46 6 What I -- I would agree with what
16:10:47 7 Mr. Snobelen had said and I had always said; that
16:10:50 8 would make it difficult. It just makes it more
16:10:53 9 difficult to reach an agreement,--
16:10:54 10 1537 Q. Okay.
16:10:54 11 A. --but not impossible.
16:10:56 12 1538 Q. All right.
16:10:56 13 A. Yeah.
16:10:58 14 1539 Q. So I want to show you a letter.
16:11:19 15 And just before I show you that letter,
16:11:20 16 I want to show you an e-mail--
16:11:22 17 A. Mm-hmm.
16:11:23 18 1540 Q. --which I don't think I marked
16:11:25 19 last day, dated February 28th, from Seelster Farms
16:11:30 20 to Mr. Snobelen.
16:11:33 21 MR. MATTHEWS: SB 15230 (sic).
16:12:01 22 THE WITNESS: Okay.
16:12:01 23 --- (Witness reviewing document.)
16:12:17 24 THE WITNESS: Yes. This is from
16:12:18 25 February.

16:12:21 1 BY MR. LISUS:

16:12:23 2 1541 Q. Okay. Do you recall either

16:12:24 3 getting a copy of this e-mail or being informed of

16:12:27 4 the overture by Mr. Parkinson, by Mr. Snobelen?

16:12:36 5 A. What I recall - and this is

16:12:38 6 consistent - is that the Standardbred

16:12:42 7 breeders'/owners' association - SBOA, I think -

16:12:52 8 raised with John the fact that they found it

16:12:55 9 difficulty to talk to him and us without a tolling

16:12:57 10 agreement.

16:12:58 11 And I understood why that would be from

16:13:00 12 their side. That was explained to me about a

16:13:04 13 tolling agreement, two-year limitation. And so

16:13:06 14 they had shared where they were coming from.

16:13:09 15 1542 Q. Now, you said to me --

16:13:11 16 MR. LISUS: This is Exhibit 31, the

16:13:13 17 e-mail.

16:13:13 18 ---EXHIBIT NO. 31: An e-mail dated

16:13:13 19 February 28th, 2014, from Seelster Farms to

16:13:14 20 Mr. Snobelen; Doc ID Number SB 17230.

16:13:19 21 BY MR. LISUS:

16:13:20 22 1543 Q. You said to me--

16:13:20 23 A. Oh. Sorry. This one.

16:13:20 24 1544 Q. The possibility of litigation made

16:13:22 25 it more difficult to have a breeder support program

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for Standardbred breeders, right?

A. To reach an agreement.

Q. Yes. And why is that?

A. Well, the... Just my own experience, as I explained before, as someone who been in government and been a Cabinet Minister, it had been troubling to me and all my colleagues.

The sub judice rule -- I'm not a lawyer, but my understanding is, is that it's very important that there's a separation between what governments does, what law enforcement does, and what the courts do, and that one should not interfere. And that if there's particularly a matter that is going to go before the courts or is before the courts, the appropriate government people that deal with that is MAG.

Q. So had you and your Panel received an assurance from the Thoroughbred breeders that they would not commence any litigation as of March 12, 2014?

A. I don't recall that specifically, but I -- I believe that that was, umm, an understanding that the agreement, assuming that the Minister, who in that case was the Premier, would agree with Mr. Snobelen's recommendations; that

16:14:40 1 that would settle the matter and people would --
16:14:44 2 would move on.

16:14:44 3 1547 Q. But were you aware of any
16:14:45 4 assurance having been given by Thoroughbred
16:14:48 5 breeders that there would not be any litigation for
16:14:51 6 compensation?

16:14:53 7 A. Uh. If I recall, Mr. Snobelen,
16:14:56 8 because he had to write the Minister - in this
16:14:59 9 case, the Premier - wanted to know whether or not,
16:15:03 10 uh, it was fair for him to characterize that this,
16:15:06 11 if she agreed, would actually allow both sides to
16:15:08 12 move forward; that -- that it wouldn't be going
16:15:11 13 into the courts.

16:15:12 14 1548 Q. I'm going to give you the question
16:15:14 15 again because I don't think you were responsive.

16:15:18 16 Are you aware whether the Thoroughbred
16:15:20 17 breeders gave an assurance to your Panel, you or
16:15:24 18 Mr. Snobelen, that if they got breeding support in
16:15:28 19 the spring of 2014, they would not sue?

16:15:33 20 Are you aware of such an assurance
16:15:36 21 being given or not?

16:15:37 22 A. Look, I -- I do not remember a
16:15:43 23 quid pro quo as you have described it.

16:15:45 24 1549 Q. Okay. But it was your general
16:15:48 25 understanding that some kind of accommodation or

16:15:51 1 agreement had been reached by the Thoroughbred
16:15:53 2 breeders that enhanced breeding support would flow
16:15:56 3 to them, provided they didn't sue; fair?

16:15:59 4 A. Umm. Yes. And my understanding
16:16:03 5 is, is that in return, the government did not ask
16:16:07 6 for them, for a written assurance that they would
16:16:09 7 not sue.

16:16:10 8 1550 Q. Okay. And there was a similar
16:16:12 9 kind of accommodation, I take it, with respect to
16:16:18 10 the Quarter Horse breeders?

16:16:19 11 A. Yes. I think it's... Yeah.

16:16:23 12 1551 Q. Okay.

16:16:23 13 A. Because our understanding was, it
16:16:27 14 was just never on the table, right.

16:16:28 15 1552 Q. What's never on the table?

16:16:29 16 A. Well, I know, all the time that I
16:16:31 17 was there, umm, not the threat, but the possibility
16:16:34 18 of a lawsuit by the Standardbred breeders was
16:16:36 19 something that they told us in good faith was
16:16:38 20 definitely a possibility, and that was not
16:16:41 21 something that Thoroughbred or Quarter Horse were
16:16:45 22 sharing with us.

16:16:46 23 1553 Q. Okay. Now, I want to ask you to
16:17:04 24 look at a letter which is undated, but the record
16:17:06 25 will show it was sent on March 21. It's SB 4509.

16:17:13 1 A. In 2014?

16:17:14 2 1554 Q. Yeah.

16:17:14 3 A. Okay.

16:17:15 4 1555 Q. So it's addressed to Ms. Wynne,
16:17:17 5 Mr. McMeekin, Minister Leal, and members of the
16:17:24 6 Liberal government, and it's copied to a number of
16:17:27 7 other people.

16:17:29 8 A. Oh, yeah. Mm-hmm.

16:17:32 9 MR. RATCLIFFE: Take a moment to look
16:17:33 10 through that.

16:17:34 11 THE WITNESS: Yeah.

16:17:35 12 BY MR. LISUS:

16:17:36 13 1556 Q. Do you remember this letter?

16:17:37 14 A. Yeah. That it had copied
16:17:39 15 everybody?

16:17:40 16 1557 Q. Yeah.

16:17:41 17 A. I haven't read it in--

16:17:42 18 1558 Q. In a few --

16:17:44 19 A. --three or four years. I haven't
16:17:46 20 seen it lately, but I remember... I remember...

16:17:51 21 1559 Q. Just take a moment and read it.

16:17:54 22 A. Sure.

16:17:55 23 --- (Witness reviewing document.)

16:20:05 24 THE WITNESS: And -- and the date of
16:20:08 25 this was March...?

16:20:10 1 BY MR. LISUS:

16:20:10 2 1560 Q. ...21, it was sent.

16:20:11 3 A. March 21?

16:20:12 4 1561 Q. Yeah.

16:20:17 5 A. And they're... Okay. Great.

16:20:19 6 1562 Q. Do you remember the letter?

16:20:20 7 A. Yes. I remember seeing that

16:20:22 8 letter.

16:20:22 9 1563 Q. Okay. Now, how did you come to

16:20:24 10 see it?

16:20:26 11 A. Umm. I don't recall that.

16:20:29 12 I do remember seeing it, particularly

16:20:30 13 the list of all the different owners and... And I

16:20:37 14 know that this was from Seelster Farms,--

16:20:42 15 1564 Q. Right.

16:20:43 16 A. --from Walter. So I don't know if

16:20:46 17 it's from SBOA or whether it was from Seelster, but

16:20:51 18 he did copy a lot of the members.

16:20:54 19 1565 Q. And what was your reaction to this

16:20:58 20 letter when you became aware of it?

16:20:58 21 A. Umm. That I was happy that I was

16:20:59 22 not in government and have to make this decision;

16:21:03 23 that it was going to fall to someone else.

16:21:05 24 I recall receiving letters like this in

16:21:08 25 the course of my, uh, my time, particularly in

16:21:11 1 Cabinet and preceding that, but it wasn't my call
16:21:14 2 to make.

16:21:15 3 1566 Q. Did you discuss it with
16:21:17 4 Mr. Snobelen?

16:21:17 5 A. Umm. Well, I think that, yes, the
16:21:26 6 three of us were aware of it. It wasn't discussed,
16:21:30 7 but...

16:21:30 8 And possibly, there's another letter
16:21:32 9 that had all of the breeders listed, but that's
16:21:35 10 what I recall, so that's where I'm remembering this
16:21:37 11 letter from, noticing that list.

16:21:39 12 1567 Q. Okay. Now, you knew from the
16:21:42 13 letter that the breeders had, as of that date,
16:21:46 14 March 21, not sued government; correct?

16:21:49 15 A. Yeah. I just don't recall what
16:21:52 16 day I saw this; whether I saw this in April or that
16:21:55 17 day.

16:21:56 18 I -- I don't recall saying, 'This just
16:21:58 19 came in to Premier Wynne and these other Ministers
16:22:02 20 and we need you to take a look at it.'

16:22:04 21 I think this--

16:22:04 22 1568 Q. Okay.

16:22:05 23 A. --was given to me for information.

16:22:06 24 1569 Q. And did this letter have effect or
16:22:10 25 impact on the Panel's thinking about whether to

16:22:16 1 provide support to the Standardbred breeders as it
16:22:21 2 had to the Thoroughbred around Quarter Horse?

16:22:27 3 A. No. It -- it would have raised
16:22:29 4 the question about whether or not the government
16:22:30 5 would agree with -- with Mr. Parkinson and send
16:22:33 6 this to mediation; in other words, take us out of
16:22:38 7 the equation and go to mediation.

16:22:39 8 But that was their -- obviously, that
16:22:41 9 was their preferred route, not to deal with -- not
16:22:44 10 to deal with Mr. Snobelen or me or Mr. Buchanan,
16:22:48 11 but to go to mediation.

16:22:49 12 1570 Q. Well, were you and Mr. Snobelen
16:22:50 13 and Mr. Buchanan prepared to deal with the
16:22:53 14 breeders?

16:22:53 15 A. We had the, or Mr. Snobelen
16:22:56 16 particularly, uh, because I believe at that time,
16:22:59 17 he was running Ontario Horse Racing - OHR, which is
16:23:04 18 what it was called at the time - had a mandate to
16:23:11 19 seek an agreement to which he would then share with
16:23:14 20 his Minister, which by this time was -- was Premier
16:23:17 21 Wynne, and provide his best advice to the Minister.

16:23:22 22 So he didn't have the ability to bind
16:23:24 23 anybody, but -- but he had the ability to talk and
16:23:28 24 he could tell people in good faith, 'If we reach an
16:23:31 25 agreement, I can recommend that to the -- to the,

16:23:34 1 uh -- to the Minister.'

16:23:36 2 1571 Q. But did you, Mr. Snobelen and
16:23:38 3 Mr. Buchanan ever formulate a proposed agreement to
16:23:42 4 put to the Standardbred breeders in -- in March of
16:23:45 5 2014?

16:23:46 6 A. Umm. Well, if I recall, that --
16:23:52 7 that issue fell to what Mr. Snobelen had been asked
16:23:57 8 by Ontario Racing Commission to do.

16:23:59 9 1572 Q. So you aren't aware of any
16:24:01 10 proposal of any kind being put to the Standardbred
16:24:05 11 breeders?

16:24:06 12 A. My recollection was that the same
16:24:09 13 type of proposal that was offered to Thoroughbred
16:24:12 14 and Quarter Horse would have been offered to the
16:24:15 15 Standardbred, and that an agreement was not reached
16:24:19 16 for that -- for the Standardbred breed where the
16:24:21 17 other two, it was reached.

16:24:23 18 1573 Q. Because the Standardbred breed
16:24:24 19 weren't prepared to give up their litigation
16:24:27 20 rights?

16:24:27 21 A. Uh. No. Just that it would be
16:24:31 22 more difficult to reach an agreement, so which --
16:24:36 23 because -- because no one... Like, no one said
16:24:42 24 that we couldn't talk to them and, as matter of
16:24:46 25 fact, we were asked -- Mr. Snobelen, to talk to

16:24:50 1 them, even though it wasn't a -- it was -- it was
16:24:53 2 well-known that litigation might happen and it
16:24:56 3 would be up to the Standardbred breeders or -- to
16:25:00 4 decide that; not the government.

16:25:01 5 1574 Q. See, Mr. Snobelen testified that
16:25:05 6 someone above him in the decision-making chain had
16:25:12 7 determined that there would be no breeder support
16:25:16 8 for the Standardbred breeders in the spring of 2014
16:25:20 9 if they maintained their intention to pursue
16:25:22 10 litigation.

16:25:23 11 That's what his testimony has been in
16:25:26 12 these proceedings.

16:25:27 13 O/B MR. ROSENBERG: I object. I don't
16:25:29 14 think that's an accurate summary of his testimony.

16:25:32 15 THE WITNESS: Well, first, I -- I don't
16:25:33 16 recall that.

16:25:34 17 I do recall that, as Mr. Snobelen said,
16:25:38 18 that it was -- it was going to make things more
16:25:41 19 difficult.

16:25:42 20 We could have been, as you can see what
16:25:45 21 Mr. Parkinson wanted, we could have been called at
16:25:49 22 pulled at any time, saying, 'We're going to go a
16:25:52 23 mediator.' You know, Premier Wynne, the Minister
16:25:54 24 could have said, 'Okay. I -- I want to a
16:25:57 25 mediator.' She didn't. Umm. So I think we just

16:26:00 1 acted in -- in good faith and weren't able to get
16:26:02 2 there.

16:26:02 3 Umm. And I know the other thing is
16:26:05 4 that I know that we live in a country where people
16:26:08 5 have the right to sue the government. There's
16:26:10 6 nothing wrong with that. Thank God we live in a
16:26:13 7 country where that is possible. That's not the
16:26:15 8 case in many countries.

16:26:17 9 So I didn't feel any, umm... I didn't
16:26:20 10 a feel that, uh, the Standardbred breeders, because
16:26:22 11 they had that right under the law, were not being
16:26:25 12 reasonable or -- or didn't want to talk.

16:26:27 13 I just think it was beyond our ability
16:26:30 14 to resolve those issues, and that's all we could do
16:26:33 15 is make a recommendation.

16:26:37 16 MR. LISUS: So this is the next...

16:26:37 17 BY MR. LISUS:

16:26:39 18 1575 Q. And what was the recommendation?

16:26:39 19 A. That when it came to Thoroughbred
16:26:48 20 and Quarter Horse, Mr. Snobelen had -- was able to
16:26:50 21 recommend to the Minister that there was -- there
16:26:52 22 was agreement.

16:26:53 23 MR. LISUS: Okay. This exhibit -- this
16:26:54 24 undated letter is Exhibit...

16:27:00 25 MR. MATTHEWS: ...32.

16:27:01 1 MR. LISUS: ...32.

16:27:11 2 ---EXHIBIT NO. 32: Undated letter

16:27:11 3 addressed to Ms. Wynne, Mr. McMeekin, Minister

16:27:11 4 Leal, and members of the Liberal government, copied

16:27:11 5 to a number of other people.

16:27:11 6 BY MR. LISUS:

16:27:14 7 1576 Q. I want to show you a letter dated

16:27:16 8 April 14 from Mr. Parkinson which is copied to --

16:27:21 9 to Mr. Snobelen, copied to Ms. Wynne, Mr. McMeekin,

16:27:26 10 and Mr. Leal.

16:27:27 11 A. Mm-hmm.

16:27:38 12 MR. ROSENBERG: What's the document

16:27:39 13 number?

16:27:39 14 MR. LISUS: SB 4518.

16:27:47 15 MR. ROSENBERG: Okay.

16:28:01 16 THE WITNESS: Okay. So this is to

16:28:03 17 Mr. Snobelen. I'm sorry. Okay.

16:28:07 18 BY MR. LISUS:

16:28:07 19 1577 Q. Just read the letter to yourself

16:28:09 20 and then I'm going to show you another letter.

16:28:10 21 A. Okay. I thought you said it had

16:28:12 22 been to the Minister. Sorry. I will start at the

16:28:13 23 front again.

16:28:14 24 --- (Witness reviewing document.)

16:29:14 25 THE WITNESS: Okay. I've read that.

16:29:18 1 BY MR. LISUS:

16:29:18 2 1578 Q. All right?

16:29:18 3 A. Yeah.

16:29:19 4 1579 Q. And then, he is... There's a
16:29:21 5 letter here that I want to show you, as well, from
16:29:24 6 Mr. Parkinson to Ms. Wynne, dated April 4.

16:29:27 7 A. This is ten days before.

16:29:30 8 1580 Q. Excuse me. I misspoke. From
16:29:33 9 Ms. Wynne to Mr. Parkinson,--

16:29:33 10 A. Oh.

16:29:34 11 1581 Q. --dated April 4.

16:29:36 12 A. And just to help me, sir, I am
16:29:39 13 assuming that this is the letter that Walter is
16:29:42 14 referring to?

16:29:43 15 1582 Q. Correct.

16:29:45 16 A. Yes. Okay. Yeah. That's fine.
16:29:46 17 --- (Witness reviewing document.)

16:30:26 18 THE WITNESS: Yes. Okay. Thanks.

16:30:28 19 MR. LISUS: So the April 4 letter to
16:30:31 20 Ms. Wynne from Mr. Parkinson will be Exhibit 33.

16:30:31 21 BY MR. LISUS:

16:30:34 22 1583 Q. And you'll see that Ms. Wynne
16:30:34 23 responds to Mr. Parkinson's letter of March 21 that
16:30:51 24 we looked at a few minutes ago in Paragraph --

16:30:51 25 MR. RATCLIFFE: Oh. Just give us a

16:30:54 1 second. It's just being marked as an exhibit.
16:30:55 2 We'll bring it back.
16:30:55 3 ---EXHIBIT NO. 33: April 4, 2014
16:30:55 4 letter from Ms. Wynne to Mr. Parkinson; Doc ID
16:30:56 5 Number SB 4516.
16:30:56 6 BY MR. LISUS:
16:30:57 7 1584 Q. ...in Paragraph 3 to say that?
16:30:58 8 "There is an enhanced breeders
16:31:00 9 program that is available for all
16:31:02 10 racing breeds,--"
16:31:02 11 A. Mm-hmm.
16:31:03 12 1585 Q. "--Standardbred, Thoroughbred and
16:31:05 13 Quarter Horse."
16:31:05 14 Do you see that?
16:31:06 15 A. Yeah.
16:31:20 16 1586 Q. And do you see where she says:
16:31:21 17 "With respect to matters
16:31:22 18 related to litigation, it is
16:31:24 19 inappropriate for me to comment."
16:31:26 20 A. Mm-hmm.
16:31:26 21 1587 Q. Do you see that?
16:31:27 22 "Please have your--"
16:31:27 23 A. Mm-hmm.
16:31:27 24 1588 Q. "--counsel contact counsel at the
16:31:31 25 Ministry of the Attorney General."

16:31:32 1 Right?

16:31:33 2 A. Right. Yes.

16:31:33 3 1589 Q. And then, on April 14, Mr. -- and

16:31:36 4 were you -- before I get to the April 14 letter,

16:31:38 5 were you made aware of Ms. Wynne's response to

16:31:43 6 Mr. Parkinson?

16:31:44 7 A. Umm. I don't recall, uh, drafting

16:31:48 8 this letter or helping her with the -- the Minister

16:31:53 9 with this letter.

16:31:53 10 Umm. I can tell it was crafted by

16:31:58 11 civil servants--

16:32:00 12 1590 Q. Okay.

16:32:00 13 A. --and, umm, the key thing,

16:32:05 14 takeaway for me was that, uh, there had been money

16:32:08 15 set aside. Two breeds had settled for that money

16:32:12 16 and one breed had not yet, but -- and I -- and my

16:32:21 17 recollection is, it wasn't that by settling with --

16:32:23 18 that there was a set amount of money and that by

16:32:26 19 settling by Thoroughbred and Quarter Horse, that

16:32:28 20 that took money away for Standardbred; that the

16:32:30 21 money set aside for Standardbred was still there.

16:32:34 22 There just was no agreement.

16:32:34 23 1591 Q. Okay.

16:32:35 24 A. That's what I recall.

16:32:36 25 1592 Q. Now, in Mr. Parkinson's response

1 of April 14,--

2 A. Mm-hmm.

3 1593

Q. --he writes to Mr. Snobelen--

4 A. Mm-hmm.

5 1594

Q. --in the third paragraph:

6 "On April 4, Premier Wynne
7 wrote back to me.

8 "In her letter, Premium Wynne
9 noted that the Horse Improvement
10 Program includes an enhanced
11 breeders program that is available
12 for all racing breeds, Standardbred,
13 Thoroughbred and Quarter Horse."

14 [As read.]

15 Right?

16 A. Mm-hmm.

17 1595

Q. And he goes on in the letter.

18 Did you become aware of this letter
19 from Mr. Parkinson to Mr. Snobelen?

20 A. Umm. Ultimately.

21 I -- when this came in, it didn't -- I
22 don't recall it immediately coming to me, but I am
23 aware of -- of that; that there was a dispute and
24 it was getting more and more complicated to reach
25 some type of -- of an agreement.

16:33:32 1 1596 Q. Okay. And so, you understood this
16:33:35 2 letter of April 14 to be saying..., Minister Wynne
16:33:43 3 says that there is support available for
16:33:50 4 Standardbred breeders, right?

16:33:51 5 A. Yeah. But it would require an
16:33:55 6 agreement.

16:33:56 7 1597 Q. Okay. And that agreement wasn't
16:34:07 8 in place?

16:34:07 9 A. For Standardbred.

16:34:08 10 1598 Q. Right.
16:34:14 11 See, the issue I'm having, sir, is when
16:34:17 12 I read Premium Wynne's letter, Exhibit 33, I don't
16:34:20 13 see any qualification in that letter about an
16:34:24 14 agreement being required.

16:34:28 15 A. Well, I -- well, with respect, I
16:34:30 16 don't know anybody who gets any money from the
16:34:32 17 government that doesn't have an agreement.

16:34:34 18 1599 Q. So that was --

16:34:36 19 A. The government just -- the
16:34:37 20 government just doesn't hand out a cheque. There
16:34:40 21 has to be an agreement, so I don't think it's...
16:34:43 22 They don't hand out agreements (sic) --
16:34:46 23 or money without agreements.

16:34:47 24 1600 Q. All right. So what you're telling
16:34:48 25 me is, just the way the railroad works and--

16:34:51 1 A. Mm-hmm.

16:34:52 2 1601 Q. --that should be understood from
16:34:56 3 Exhibit 33 because that's the way things work;
16:35:00 4 fair?

16:35:00 5 A. And it would be -- and one could
16:35:03 6 draw that conclusion if you saw that -- what
16:35:07 7 Mr. Snobelen said to Minister Wynne was, 'I can
16:35:11 8 recommend that an agreement has been reached. Of
16:35:14 9 course, it falls to you, as the Minister, to agree.
16:35:17 10 But as your advisor on this, I can tell you that
16:35:21 11 for these two breeds, there is an agreement that I
16:35:23 12 can recommend.'

16:35:24 13 1602 Q. And that's what you are reading
16:35:26 14 into this exchange of correspondence we are
16:35:29 15 discussing?

16:35:30 16 A. Yes. Yeah.

16:35:30 17 1603 Q. Okay.

16:35:30 18 A. Yeah.

16:35:31 19 1604 Q. And Mr. Parkinson obviously wasn't
16:35:41 20 reading into -- wasn't reading the same thing into
16:35:43 21 this exchange of correspondence because in his
16:35:46 22 letter, he says:
16:35:48 23 "I would appreciate it if you
16:35:49 24 could clarify this, so that the
16:35:52 25 membership of the SBOA can

16:35:54 1 understand whether Premier Wynne's
16:35:58 2 statement that there is an enhanced
16:36:01 3 breeders program for all breeders is
16:36:02 4 correct or whether your statement is
16:36:04 5 correct that Standardbred breeders
16:36:06 6 have been excluded because they have
16:36:08 7 asked the courts for an adjudication
16:36:11 8 regarding the manner in which SARP
16:36:13 9 revenue-sharing partnership was
16:36:16 10 cancelled." [As read.]
16:36:16 11 A. Mm-hmm.
16:36:17 12 1605 Q. Right?
16:36:17 13 A. Yes.
16:36:17 14 1606 Q. So --
16:36:18 15 A. He -- he's asked Mr. Snobelen for
16:36:20 16 that.
16:36:20 17 1607 Q. Right.
16:36:21 18 A. Yeah.
16:36:21 19 1608 Q. And so, you understood, because
16:36:25 20 you would become aware of this letter shortly after
16:36:29 21 it was sent, that Mr. Parkinson wasn't
16:36:32 22 understanding Minister Wynne and Mr. Snobelen's
16:36:37 23 letters the way you were understanding them, right?
16:36:40 24 A. Uh. Well, to be frank, what --
16:36:44 25 what I remember, now that I look at that, is, on

1 one hand, Mr. Parkinson writes not representing the
2 Standardbred breeders, but copying them all in for
3 Seelster Farms, and then writes another letter.

4 And then he goes on Seelster Farms,
5 says, 'Oh. But now I'm -- I'm asking on behalf of
6 all of the, umm, of the members.'

7 If I recall, I think, uh... I think
8 some breeders probably raised with Mr. Parkinson
9 some concern about how this was all going to settle
10 out.

11 So I think probably, as the president
12 of his association, he needed to get clarity on
13 that -- on that issue because it wasn't that the
14 Standardbred owners' association launched a
15 lawsuit, I guess, against OLG and -- and the
16 government. Umm. That -- that wasn't the
17 association; that that was -- uh, my understanding
18 is, it's some breeders who decided to opt into
19 that.

20 I think I'm correct there.

21 MR. LISUS: Did you mark the April 14
22 Exhibit 34?

23 MR. MATTHEWS: 35.

24 MR. LISUS: 35.

25 --- (Court reporter appeals.)

16:37:58 1 MR. MATTHEWS: It's 34. My apologies.

16:38:05 2 MR. LISUS: Exhibit 34.

16:38:09 3 MR. MATTHEWS: Exhibit 34 is SB 4518.

16:38:12 4 ---EXHIBIT NO. 34: A letter dated

16:38:12 5 April 14, 2014 from Mr. Parkinson to Mr. Snobelen,

16:38:12 6 cc'd to Premier Wynne, Mr. McMeekin and Mr. Leal;

16:38:14 7 Doc ID Number SB 4518.

16:38:16 8 BY MR. LISUS:

16:38:16 9 1609 Q. And Mr. Snobelen responds on April

16:38:19 10 15 by e-mail and - do you see that - copied to

16:38:24 11 K. Wynne and J. Leal and Ted McMeekin.

16:38:29 12 Were you aware of that e-mail at or

16:38:32 13 about the time it was sent?

16:38:33 14 A. Umm. No. I don't see that I was

16:38:42 15 copied. I don't remember that, though it's

16:38:45 16 consistent with Mr. Snobelen saying... Yeah. He

16:38:52 17 only addressed one issue that Mr. Parkinson raised,

16:38:55 18 but he did -- but he did deal with one issue which

16:38:59 19 was his ability to comment about anything that was

16:39:03 20 -- that could be relevant to a court proceeding.

16:39:05 21 1610 Q. So you don't recall --

16:39:10 22 A. That he --

16:39:10 23 1611 Q. Sorry. Go ahead.

16:39:12 24 A. Sorry. ...that he had -- he

16:39:13 25 acknowledged that he had received, umm, he had

16:39:16 1 received the letter and that he had -- and he had
16:39:21 2 responded very briefly, and his -- the issue that
16:39:26 3 he -- and one issue he arose (sic) was the question
16:39:30 4 about the court.

16:39:30 5 1612 Q. And did you -- were you aware of
16:39:32 6 this response--

16:39:35 7 A. Umm.

16:39:37 8 1613 Q. --from Mr. Snobelen?

16:39:39 9 A. He... I don't -- I don't recall,
16:39:41 10 though I would have supported him making sure that
16:39:46 11 he made that statement, that he was not to be
16:39:48 12 involved in an issue that was subject to a
16:39:52 13 litigation on the government.

16:39:54 14 He did not have a mandate to be
16:39:55 15 representing the government in a -- in a -- in a
16:39:58 16 matter of litigation.

16:39:58 17 1614 Q. And you see that Mr. Parkinson
16:40:02 18 responded--

16:40:06 19 A. Okay. No. I didn't see that.

16:40:07 20 1615 Q. --on April 21, which is going to
16:40:10 21 be Exhibit 36.

16:40:21 22 A. Okay.

16:40:21 23 MR. MATTHEWS: So Exhibit 35 is

16:40:24 24 SB 5153.

16:40:47 25 ---EXHIBIT NO. 35: An April 15, 2014

16:40:47 1 e-mail from Mr. Snobelen copied to K. Wynne, J.

16:40:54 2 Leal and Ted McMeekin; Doc ID Number 5153.

16:40:54 3 --- (Witness reviewing document.)

16:40:54 4 THE WITNESS: Yeah. Yep. I see that
16:40:57 5 response, yeah.

16:40:57 6 BY MR. LISUS:

16:40:57 7 1616 Q. And were you aware of it at or
16:40:59 8 about the time it was sent, April 21?

16:41:01 9 A. Umm. Yes. I wasn't on the
16:41:04 10 back-and-forth, copied into this, but this was just
16:41:04 11 described to me.

16:41:04 12 And again, it goes to that -- that
16:41:06 13 issue, that, umm, what I can testify is that the
16:41:09 14 government made under the transition plan, the new
16:41:11 15 funding model, money available for Standardbred
16:41:14 16 breeders.

16:41:14 17 They weren't excluded, but it had to
16:41:17 18 fit into the envelope and it required agreements
16:41:21 19 for anybody to receive any of this money, uh, and
16:41:23 20 that they had to reach an agreement.

16:41:25 21 And also that, obviously, lawsuits
16:41:28 22 would complicate the ability of people to discuss
16:41:31 23 it.

16:41:31 24 1617 Q. And what was the agreement that
16:41:32 25 had to be reached? What would the Standardbred

16:41:37 1 breeders have to agree to, to receive this money?

16:41:39 2 A. It would be terms similar to
16:41:41 3 Thoroughbred and Quarter Horse.

16:41:43 4 1618 Q. Such as?

16:41:43 5 A. Umm. I don't recall. I wasn't
16:41:45 6 part of that, other than I know that, as I said,
16:41:47 7 there would be no transfer of money without an
16:41:52 8 agreement between, in this case, I guess, ORC on --
16:41:56 9 acting on behalf of OMAFRA, that had been given the
16:42:00 10 money by -- from Cabinet to -- to help restructure
16:42:03 11 the horse racing industry.

16:42:05 12 1619 Q. But what was the agreement that
16:42:07 13 the government was looking for from the
16:42:09 14 Standardbred breeders? That's what I'm trying to
16:42:11 15 understand and that's what Mr. Parkinson seems to
16:42:14 16 be trying to understand.

16:42:16 17 MR. RATCLIFFE: Well, I think he said
16:42:17 18 it was similar to the Quarter Horse and
16:42:20 19 Thoroughbreds, but he doesn't -- he is not familiar
16:42:22 20 with what the details are, so I'm not quite sure
16:42:24 21 what you're asking him here.

16:42:26 22 THE WITNESS: But -- but what I can, if
16:42:27 23 I can help, is -- is that the loss of SARP created
16:42:30 24 a hole in the breeding program. So there was the
16:42:35 25 pari-mutuel money that came in and that, but there

16:42:38 1 was a hole, and question was: Could the hole be
16:42:41 2 filled, how would it be filled, and how much of it
16:42:44 3 would be filled?

16:42:46 4 BY MR. LISUS:

16:42:47 5 1620 Q. Okay. And were you aware that
16:42:47 6 some months after this exchange, support for the
16:42:51 7 Standardbred breeders was, in fact, released by the
16:42:52 8 government?

16:42:56 9 A. Yes. My understanding is, is
16:42:58 10 ultimately, there was -- there was some agreement
16:42:59 11 which --

16:42:59 12 1621 Q. What was the agreement?

16:43:00 13 A. Uh. I don't think I was with the
16:43:04 14 Ontario Racing Commission then, so...

16:43:09 15 1622 Q. So, given that you were with the
16:43:11 16 Racing Commission at the time that it was--

16:43:13 17 A. Yeah.

16:43:13 18 1623 Q. --looking for this agreement with
16:43:15 19 the Standardbred breeders, what were you looking
16:43:17 20 for from the Standardbred breeders by way of an
16:43:19 21 agreement? What did you want them to do?

16:43:21 22 A. Umm. Well, first was all, to
16:43:32 23 agree that the money that was available was the
16:43:34 24 money that they would receive.

16:43:34 25 1624 Q. I don't understand that.

16:43:35 1 A. Well, the purpose of the money was
16:43:37 2 to fill -- to help to fill a gap that had been
16:43:41 3 created by the loss of SARP.
16:43:43 4 The whole -- all government money that
16:43:44 5 flowed from SARP was going to be skinned down.
16:43:44 6 1625 Q. Okay.
16:43:44 7 A. There wasn't as much money.
16:43:44 8 1626 Q. Okay.
16:43:44 9 A. So the question of who gets what
16:43:52 10 and how.
16:43:52 11 1627 Q. But, sir, my question to you is,
16:43:54 12 as a member of the Panel who supported the
16:43:56 13 withholding of the support to the Standardbred
16:43:59 14 breeders until an agreement was reached, what were
16:44:03 15 you looking for by way of an agreement from the
16:44:07 16 Standardbred breeders in March and April of 2014?
16:44:11 17 A. An agreement as to, uh, how much
16:44:16 18 money --
16:44:16 19 1628 Q. How much had you proposed?
16:44:18 20 A. How much -- well, just give me one
16:44:18 21 second.
16:44:20 22 In broad strokes, it was how much --
16:44:23 23 what was the consideration and what were the
16:44:25 24 considerations of the -- of the money, umm, of the
16:44:28 25 money being paid. And it had to be congruent to

16:44:31 1 the report that we had written, that that had to be
16:44:35 2 accountable, that it had to be transparent, and
16:44:38 3 that there had to be metrics around the money, so
16:44:43 4 one could, uh, not repeat the mistakes of the past
16:44:47 5 and make sure that -- that the, umm -- that one
16:44:50 6 could judge whether or not the money was going for
16:44:54 7 its intended purpose and getting the intended
16:44:56 8 result, which was to, uh, have world-class, in this
16:45:00 9 case, Standardbred horses in Ontario.

16:45:01 10 1629 Q. And where will I see those
16:45:05 11 elements of the agreement requested of the
16:45:06 12 Standardbred breeders? Where I will see them
16:45:09 13 expressed?

16:45:10 14 A. Well, the -- I'm not the
16:45:13 15 government, so they can do whatever they want. I
16:45:15 16 just know what I -- what I suggested to them.

16:45:19 17 1630 Q. Well, you see, I don't see any of
16:45:20 18 those elements in any of these e-mails or letters,
16:45:25 19 Mr. Wilkinson, is my point.

16:45:26 20 A. Well, the question is, is that if
16:45:28 21 you're dealing with Mr. Snobelen and then you're
16:45:31 22 dealing with the Minister, I think then it's -- I
16:45:34 23 don't know if that was for clarification or just to
16:45:38 24 try to have a divide and conquer because they
16:45:41 25 didn't like what Mr. Snobelen said, so they decided

16:45:45 1 to go to his boss.

16:45:45 2 1631 Q. Well, Mr. Snobelen didn't say
16:45:47 3 anything. Mr. Snobelen said he wasn't going to
16:45:50 4 discuss it with them.

16:45:52 5 MR. RATCLIFFE: Well, he doesn't know
16:45:53 6 that. You're asking him to respond to --

16:45:53 7 MR. LISUS: He can see the e-mails and
16:45:55 8 he was aware of the e-mails.

16:45:55 9 THE WITNESS: But I have a different
16:45:58 10 recollection of this --

16:45:58 11 BY MR. LISUS:

16:45:59 12 1632 Q. Okay. Well, that's what I --
16:45:59 13 A. -- the issue that I went to --

16:45:59 14 1633 Q. Well, I'm asking your, sir.
16:45:59 15 A. Yeah.

16:46:00 16 1634 Q. I am looking at all the e-mails
16:46:02 17 and letters and I don't see, in any of them, any
16:46:05 18 reference to anyone saying to Mr. Parkinson, 'We're
16:46:10 19 waiting for your agreement. We want transparency
16:46:15 20 and accountability.'

16:46:17 21 So have I missed something somewhere?
16:46:19 22 Is there a letter or an e-mail where that is said
16:46:23 23 to him?

16:46:23 24 A. Well, what I would look for is,
16:46:27 25 what is the letter -- the memorandum of

16:46:31 1 understanding between OMAFRA and the Thoroughbred
16:46:33 2 breeders and the Quarter Horse breeders.
16:46:35 3 1635 Q. What is it?
16:46:36 4 A. That would be the -- that's what I
16:46:37 5 would look for. I -- I haven't seen it,--
16:46:39 6 1636 Q. Okay. Are you aware--
16:46:39 7 A. --but --
16:46:40 8 1637 Q. --of such a letter?
16:46:42 9 A. All I know is that the government
16:46:42 10 doesn't hand over money without written
16:46:45 11 acknowledgement of what it's for and what's -- that
16:46:49 12 would be --
16:46:49 13 1638 Q. Okay. I would like,
16:46:51 14 Mr. Ratcliffe, copies of the memorandums of
16:46:53 15 understanding between OMAFRA and the Thoroughbred
16:46:56 16 and the Quarter Horse breeders that Mr. Wilkinson
16:46:59 17 is referring to. I haven't seen them.
16:47:02 18 U/T MR. RATCLIFFE: We'll undertake to look
16:47:03 19 for that. I -- I don't know exactly what document
16:47:07 20 that is or whatever, but we'll -- we'll look for
16:47:09 21 that.
16:47:11 22 BY MR. LISUS:
16:47:11 23 1639 Q. So you were looking, if I am now
16:47:13 24 understanding this, as far as you and Mr. Snobelen
16:47:16 25 and the government was concerned, there would have

16:47:19 1 to be a memorandum of understanding of the kind
16:47:22 2 that exists between the Thoroughbred breeders and
16:47:26 3 the government and the Quarter Horse breeders and
16:47:30 4 the government in order for the Standardbred
16:47:31 5 breeders to receive their enhanced breeding
16:47:35 6 support; fair?

16:47:35 7 A. Fair.

16:47:36 8 1640 Q. Okay. Thank you. That's helpful.
16:47:38 9 I will look forward to receiving those memorandums
16:47:41 10 of understanding.

16:47:43 11 Is there any reason, sir, why that
16:47:45 12 couldn't simply have been said to Mr. Parkinson in
16:47:50 13 these communications? Mr. Parkinson --

16:47:53 14 A. Mr. Parkinson, the president of
16:47:56 15 Seelster Farm (sic) or Mr. Parkinson, the president
16:48:00 16 of SBOA?

16:48:01 17 1641 Q. Well, he writes as president of
16:48:04 18 SBOA, doesn't he?

16:48:04 19 A. In the -- the second letter, but
16:48:05 20 not in the first letter.

16:48:06 21 1642 Q. Okay. But he writes as president
16:48:08 22 of SBOA. So is there any reason why someone
16:48:13 23 wouldn't say, 'Mr. Parkinson, we need a memorandum
16:48:15 24 of understanding from you like we have with the
16:48:19 25 Thoroughbreds and the Quarter Horse?

16:48:21 1 MR. RATCLIFFE: He wasn't the person
16:48:22 2 communicating with Mr. Parkinson.

16:48:25 3 MR. LISUS: Well, he was on the Panel
16:48:25 4 and he was still in authority at the time, and he
16:48:28 5 was aware of these communications. He has told me
16:48:30 6 that.

16:48:30 7 THE WITNESS: Well, first of all, I
16:48:30 8 would not characterize myself of having any
16:48:33 9 authority, Mr. Lisus. I was a consultant to the
16:48:36 10 Ontario Racing Commission; does not make me an
16:48:39 11 authority -- or give me authority, though hopefully
16:48:42 12 my -- because I'd done work and deep dived into it,
16:48:48 13 I had some understanding of how these things--

16:48:48 14 1643 Q. Okay.

16:48:51 15 A. --were all interrelated.

16:48:51 16 1644 Q. I will take those questions up
16:48:52 17 with someone else, then,--

16:48:52 18 A. Okay.

16:48:53 19 1645 Q. --who does have authority.

16:48:55 20 MR. MATTHEWS: We're going to mark SB
16:49:00 21 5154 as Exhibit 36.

16:49:02 22 ---EXHIBIT NO. 36: An April 21, 2014
16:49:02 23 e-mail from Mr. Parkinson to Mr. Snobelen; Doc ID
16:49:04 24 Number SB 5154.

16:49:23 25 BY MR. LISUS:

16:49:23 1 1646 Q. Now I want to just show you
16:49:24 2 another e-mail sequence, SB 005137. If you read
16:49:39 3 the e-mail sequence on that.

16:49:43 4 MR. RATCLIFFE: Okay. I guess --

16:49:46 5 THE WITNESS: Oh. Going backwards.

16:49:48 6 Okay. And then...

16:49:49 7 --- (Witness reviewing document.)

16:50:00 8 THE WITNESS: Mm-hmm.

16:50:01 9 BY MR. LISUS:

16:50:01 10 1647 Q. Do you see that on April 21, at
16:50:04 11 2:49, Mr. Parkinson responds, saying:

16:50:08 12 "Standardbred breeders are not
16:50:09 13 asking you to comment on the
16:50:10 14 lawsuit. All we are trying to get
16:50:12 15 is clarification of whether the
16:50:15 16 Premier's statement in her letter
16:50:16 17 that additional purse enhancements
16:50:20 18 have been made available to all
16:50:21 19 breeders is correct or whether your
16:50:21 20 statement to the media that
16:50:26 21 enhancements to Standardbred
16:50:26 22 breeders are being withheld is
16:50:26 23 correct." [As read.]

16:50:29 24 Right?

16:50:29 25 A. Mm-hmm.

16:50:29 1 1648 Q. And Mr. Snobelen says:

16:50:32 2 "I have your letter. I believe

16:50:32 3 the issues you have raised relate

16:50:34 4 directly to a matter now before the

16:50:37 5 courts." [As read.]

16:50:37 6 Right?

16:50:37 7 A. Yes. Mm-hmm.

16:50:45 8 MR. LISUS: And that's the next

16:50:46 9 exhibit.

16:50:46 10 MR. MATTHEWS: 37.

16:50:48 11 ---EXHIBIT NO. 37: An e-mail string;

16:50:49 12 Doc ID Number SB 005137.

16:50:49 13 BY MR. LISUS:

16:50:49 14 1649 Q. And I want to show you a letter

16:51:00 15 that I wrote. Just take a look at that; April 23,

16:51:02 16 2014, which will be Exhibit 38.

16:51:06 17 MR. MATTHEWS: SB 5139.

16:51:20 18 ---EXHIBIT NO. 38: A letter from

16:51:22 19 Mr. Lisus, dated April 23, 2014, to the attention

16:51:24 20 of Messrs. Ratcliffe and Kelly; Doc ID Number SB

16:51:25 21 5139.

16:51:33 22 --- (Witness reviewing document.)

16:51:50 23 BY MR. LISUS:

16:51:50 24 1650 Q. Have you read that?

16:51:51 25 A. Umm. I -- yeah.

16:51:53 1 --- (Witness reviewing document.)

16:52:42 2 BY MR. LISUS:

16:52:42 3 1651 Q. Did you become aware of this

16:52:45 4 letter at or about the date it was sent, April 23?

16:52:48 5 A. It would have been afterwards.

16:52:51 6 1652 Q. Okay.

16:52:51 7 A. Umm...

16:52:53 8 1653 Q. Shortly afterwards?

16:52:55 9 A. I think, yeah. Within the week, I

16:52:57 10 would think.

16:52:57 11 1654 Q. Okay. And how is it that you

16:52:59 12 became aware of it?

16:53:01 13 A. Just that the matter was ongoing.

16:53:05 14 It seemed to be -- seemed to be definitely going

16:53:09 15 down the litigation route.

16:53:11 16 1655 Q. Okay. And why were you made aware

16:53:13 17 of it?

16:53:13 18 A. Well, I think I was asked -- no.

16:53:16 19 Wait a minute. I have to remember.

16:53:18 20 Well, just in the sense that I was...

16:53:22 21 I would always look at something like

16:53:24 22 this, Mr. Lisus, to try figure, 'Well, look. Where

16:53:27 23 is the problem?' Just kind of the nature of why

16:53:30 24 people have me do what I do.

16:53:32 25 And I remember, umm, I thought -- you

16:53:40 1 had said in the fourth paragraph:

16:53:42 2 "The Ontario government
16:53:43 3 continues to represent that all
16:53:44 4 breeders have received said purse
16:53:53 5 enhancements." [As read.]

16:53:56 6 And I -- I don't remember anything that
16:53:58 7 you've shown me -- and, at that time, that the
16:54:02 8 government was saying that they had given money to
16:54:06 9 the Standardbred.

16:54:07 10 What they said was, that they had given
16:54:09 11 money -- or they had reached an agreement, or
16:54:11 12 Mr. Snobelen had recommended an agreement or
16:54:14 13 referred an agreement to the Minister on
16:54:16 14 Thoroughbred and Quarter Horse, and that I didn't
16:54:18 15 think -- I remember thinking, that was not
16:54:20 16 particularly accurate, sir, to say that they had --
16:54:24 17 that the government was saying that they had
16:54:26 18 received purse enhancements.

16:54:28 19 1656 Q. You thought my letter was not
16:54:31 20 accurate when it said that?

16:54:33 21 A. Yeah.

16:54:33 22 1657 Q. Okay. So you mentioned that you
16:54:35 23 try to see where the problem is, so where did you
16:54:39 24 think the problem was?

16:54:39 25 A. That -- that it seemed to me that

16:54:43 1 -- that, umm, in this matter, it seemed that it was
16:54:46 2 going to get settled by the courts and not by
16:54:51 3 Mr. Snobelen being able to recommend an agreement.
16:54:56 4 And that the more likely it was to be
16:54:58 5 in front of the courts, the less likely there was a
16:55:02 6 possibility of an agreement.
16:55:03 7 1658 Q. Okay.
16:55:04 8 And then, I want to show you...
16:55:08 9 MR. LISUS: Did we mark that letter?
16:55:09 10 MR. MATTHEWS: Yes.
16:55:10 11 BY MR. LISUS:
16:55:10 12 1659 Q. I want to show you an e-mail from
16:55:12 13 my colleague, Mr. Ratcliffe, dated April 30th,
16:55:18 14 SB 5138.
16:55:47 15 --- (Witness reviewing document.)
16:55:48 16 THE WITNESS: Yeah.
16:55:49 17 BY MR. LISUS:
16:55:49 18 1660 Q. Were you aware of this e-mail?
16:55:50 19 A. No.
16:55:50 20 1661 Q. No? And--
16:55:51 21 A. No.
16:55:51 22 1662 Q. --do you see where, now Mr. Ra- --
16:55:53 23 O/B MR. RATCLIFFE: Well, he said he wasn't
16:55:54 24 aware of it, and this is communications between
16:55:57 25 counsel, so I object to you pursuing your line of

16:56:00 1 questioning about the content of this e-mail.

16:56:03 2 MR. LISUS: Well, I was instructed at

16:56:05 3 the time to direct my inquiries to you, so I did.

16:56:08 4 MR. RATCLIFFE: Yes. And that's fine

16:56:12 5 and you did and I responded, so...

16:56:12 6 MR. LISUS: Okay. We'll just mark this

16:56:13 7 as an exhibit. I think it was marked on

16:56:16 8 Mr. Snobelen's.

16:56:16 9 MR. MATTHEWS: 39; SB 5138.

16:56:16 10 ---EXHIBIT NO. 39: An e-mail from

16:56:16 11 Mr. Ratcliffe to Mr. Lisus and others, dated April

16:56:23 12 30, 2014; Doc ID Number SB 5138.

16:56:23 13 MR. LISUS: I think I'm done. I'm just

16:56:24 14 going to take a minute for a health break--

16:56:24 15 THE WITNESS: Sure.

16:56:27 16 MR. LISUS: --and then you can wrap up.

16:56:45 17 ---Recess at 4:56 p.m.

17:02:15 18 ---On resuming at 5:02 p.m.

17:02:43 19 BY MR. LISUS:

17:02:43 20 1663 Q. So what I'm going to do here,

17:02:45 21 Mr. Wilkinson --

17:02:45 22 THE COURT REPORTER: Back on?

17:02:45 23 MR. LISUS: Yeah. We're on.

17:02:45 24 THE WITNESS: Okay.

17:02:45 25 BY MR. LISUS:

17:02:50 1 1664 Q. While my colleague locates an
17:02:52 2 Affidavit for me, I'm going to give you an extract
17:02:55 3 from the Affidavit of Mr. Parkinson sworn on this
17:02:57 4 Motion.

17:02:57 5 A. Mm-hmm.

17:02:58 6 1665 Q. And if you read Paragraphs 142 to
17:03:03 7 144, I'd be grateful.

17:03:09 8 MR. MATTHEWS: Are we still off?

17:03:13 9 THE WITNESS: We're on.

17:03:13 10 MR. LISUS: No. We're on.

17:03:16 11 --- (Witness reviewing document.)

17:03:19 12 THE WITNESS: This is from
17:03:20 13 Mr. Parkinson?

17:03:20 14 BY MR. LISUS:

17:03:22 15 1666 Q. Correct.

17:03:23 16 A. Okay.

17:03:23 17 --- (Witness reviewing document.)

17:03:26 18 THE WITNESS: Okay. Oh, yeah. Jim
17:03:31 19 Bullock -- oh. Sorry. Keep reading?

17:03:35 20 BY MR. LISUS:

17:03:35 21 1667 Q. Yeah. Have you--

17:03:35 22 A. Okay.

17:03:36 23 1668 Q. --read 142, 143 and 144?

17:03:39 24 A. Just give me one sec.

17:03:40 25 --- (Witness reviewing document.)

17:04:39 1 THE WITNESS: Okay.

17:04:40 2 BY MR. LISUS:

17:04:41 3 1669 Q. Okay?

17:04:41 4 A. Sure.

17:04:41 5 1670 Q. So, Mr. Parkinson has deposed

17:04:46 6 that:

17:04:47 7 "In July 2014..."

17:04:48 8 We're now a few months beyond the

17:04:50 9 e-mails and letters we've been discussing.

17:04:53 10 A. Mm-hmm.

17:04:53 11 1671 Q. "...the ORC asked to meet with

17:04:55 12 representatives of the Standardbred

17:04:57 13 breeders to discuss the lawsuit and

17:05:00 14 breeders' awards." [As read.]

17:05:02 15 Were you aware of that request to meet

17:05:04 16 with the Standardbred breeders?

17:05:05 17 A. Not that I recall this,--

17:05:05 18 1672 Q. Okay.

17:05:10 19 A. --no.

17:05:10 20 1673 Q. And Mr. Parkinson deposes that he

17:05:15 21 attended a meeting with Elmer Buchanan and Steve

17:05:19 22 Lehman?

17:05:19 23 A. Yes.

17:05:20 24 1674 Q. Leh...

17:05:22 25 Do you know Steve Lehman?

17:05:24 1 A. Uh. Yes.

17:05:24 2 1675 Q. Okay.

17:05:24 3 A. Yes.

17:05:24 4 1676 Q. And were you aware of that

17:05:26 5 meeting?

17:05:26 6 A. No.

17:05:27 7 1677 Q. Okay.

17:05:29 8 A. Not -- not that I recall.

17:05:30 9 1678 Q. All right. And he describes what

17:05:33 10 happened at that meeting of September 4.

17:05:37 11 A. Mm-hmm.

17:05:37 12 1679 Q. Have you read that in Paragraph

17:05:39 13 one-forty- --

17:05:39 14 A. I have read that, yeah.

17:05:41 15 1680 Q. And you're sort of chuckling when

17:05:44 16 you say that.

17:05:45 17 What's your reaction to that?

17:05:46 18 A. Because the... At the beginning

17:05:48 19 of 144, it says that the two issues are related and

17:05:51 20 at the end of 144, Mr. Buchanan says that they're

17:05:55 21 not.

17:05:55 22 1681 Q. Right.

17:05:58 23 A. I find that to be...

17:06:00 24 So, umm, I guess the question is -- uh,

17:06:03 25 but the first sentence says it was Mr. Buchanan and

17:06:06 1 Mr. Lehman who offered, and I wondered whether it
17:06:10 2 was maybe perhaps one or the other.

17:06:11 3 1682 Q. Why did you wonder that?

17:06:12 4 A. Well, then Mister... It seems to
17:06:17 5 be that in that case, Mr. Lehman could have had an
17:06:20 6 opinion which he shared with his Chair.

17:06:22 7 Then Mr. Parkinson said, 'No, that's
17:06:24 8 not the case.'

17:06:24 9 And then, Mr. Buchanan and the Chair
17:06:27 10 agreed with him.

17:06:30 11 That's a possible, but I... So that's
17:06:32 12 why I found it -- I just had to read it a few times
17:06:36 13 because it didn't seem to make sense to me.

17:06:39 14 1683 Q. Were you aware that at this
17:06:41 15 meeting in September, Mr. Buchanan and Mr. Lehman
17:06:41 16 offered to release breeders' awards to Standardbred
17:06:49 17 breeders if the lawsuit was discontinued?

17:06:49 18 A. Well, as I said, I don't -- no,
17:06:51 19 because I -- I told you, I didn't know about this
17:06:54 20 meeting.

17:06:54 21 1684 Q. Okay. But were you aware of that
17:06:56 22 offer being made?

17:06:56 23 A. No.

17:06:58 24 1685 Q. Okay.

17:06:59 25 A. No.

17:07:20 1 MR. LISUS: Those are my questions for
17:07:22 2 you, Mr. Wilkinson.
17:07:24 3 MR. RATCLIFFE: Did you want that or
17:07:25 4 were going to make that an exhibit?
17:07:28 5 MR. LISUS: No. It's an Affidavit on
17:07:31 6 the Motion, right.
17:07:31 7 MR. MATTHEWS: It's part of an
17:07:31 8 Affidavit.
17:07:32 9 MR. ROSENBERG: Why don't we go off the
17:07:32 10 record and we'll rearrange.
17:07:46 11 ---Recess at 5:07 p.m.
17:09:38 12 ---On resuming at 5:09 p.m.
17:10:19 13 EXAMINATION BY MR. ROSENBERG:
17:10:20 14 1686 Q. Afternoon, Mr. Wilkinson. My name
17:10:22 15 is Michael Rosenberg. I'm counsel for the Ontario
17:10:26 16 Lottery and Gaming Corporation in this matter and I
17:10:27 17 have a few questions for you.
17:10:29 18 The first thing I want to do is talk a
17:10:38 19 bit about your background.
17:10:39 20 I think you told us you've never been a
17:10:42 21 horse breeder or a horse owner?
17:10:44 22 A. No.
17:10:44 23 1687 Q. You've never worked at a
17:10:46 24 racetrack?
17:10:47 25 A. No.

17:10:47 1 1688 Q. And while you were in government,
17:10:48 2 you didn't have responsibility for the horse racing
17:10:50 3 file?

17:10:51 4 A. No.

17:10:51 5 1689 Q. You said that you didn't come to
17:10:59 6 the Horse Racing Industry Transition Panel with any
17:11:03 7 special knowledge about horse racing?

17:11:04 8 A. No.

17:11:05 9 1690 Q. And even after serving on that
17:11:07 10 Panel, you wouldn't consider yourself an expert on
17:11:10 11 horse racing, would you?

17:11:11 12 A. Not an expert, but more informed
17:11:17 13 than most in the Province of Ontario.

17:11:21 14 1691 Q. Understood.
17:11:29 15 We talked last time about what it was
17:11:35 16 that sort of revealed to you, as a member of the
17:11:45 17 Panel, the impact or the likely impact of
17:11:47 18 cancelling of SARP.

17:11:49 19 And you told my friend, Mr. Lisus, that
17:11:53 20 it was a Great Canadian Gaming filing, part of
17:11:56 21 Great Canadian Gaming's continuous disclosure.

17:12:00 22 A. To their shareholders.

17:12:03 23 1692 Q. You remember that?

17:12:03 24 A. Yes.

17:12:04 25 1693 Q. Mr. Lisus put to you two documents

17:12:08 1 that are Exhibit 18, which is a news release marked
17:12:21 2 "March 30th, 2012".
17:12:34 3 As I understand it, that news release
17:12:36 4 is followed by a Material Change Report, April 5th,
17:12:39 5 2012.
17:12:39 6 You remember those--
17:12:41 7 A. Yes.
17:12:42 8 1694 Q. --documents?
17:12:55 9 I'm just handing them to you, sir.
17:13:11 10 A. Mm-hmm.
17:13:12 11 1695 Q. And Mr. Lisus asked you whether
17:13:13 12 these were the documents that caused to you have
17:13:15 13 that aha moment.
17:13:19 14 MR. LISUS: I don't think I said that.
17:13:21 15 He said that.
17:13:22 16 THE WITNESS: Yeah.
17:13:22 17 BY MR. ROSENBERG:
17:13:22 18 1696 Q. Well, that's what I wanted to come
17:13:24 19 back to.
17:13:24 20 A. I did the math.
17:13:25 21 1697 Q. Did the math. And that was the
17:13:27 22 key point that I wanted to ask you about.
17:13:29 23 In terms of the math, when you first
17:13:32 24 described the document that caused you to have this
17:13:37 25 realization, you mentioned a disclosure of the

17:13:41 1 dollar value impact of cancelling SARP.

17:13:45 2 And I reviewed these documents and I

17:13:49 3 didn't see that kind of disclosure.

17:13:52 4 A. And -- and there wasn't.

17:13:53 5 1698 Q. That's why I wanted to show you

17:13:55 6 another document that I was able to pull by

17:13:58 7 reviewing Great Canadian Gaming's filings on SEDAR.

17:14:07 8 This is --

17:14:07 9 MR. LISUS: Do you have copies of

17:14:08 10 those?

17:14:09 11 MR. ROSENBERG: I do not.

17:14:10 12 BY MR. ROSENBERG:

17:14:11 13 1699 Q. This is the company's management

17:14:12 14 discussion and analysis for the three months ended

17:14:14 15 March 31st, 2012. It's dated May 8th, 2012.

17:14:20 16 A. Yeah. The MD&A.

17:14:20 17 1700 Q. Exactly.

17:14:20 18 --- (Court reporter appeals.)

17:14:26 19 THE WITNESS: So MD&A, management

17:14:27 20 discussions and analysis are referred to.

17:14:31 21 MR. LISUS: If you're going to take any

17:14:32 22 time with that, I'm going to need a copy,

17:14:34 23 Mr. Rosenberg.

17:14:34 24 MR. ROSENBERG: I'm happy to provide

17:14:36 25 you a copy as soon as the witness is finished with

17:14:39 1 it.

17:14:39 2 I don't expect that we'll be long, Mr.

17:14:39 3 Lisus.

17:14:39 4 BY MR. ROSENBERG:

17:14:47 5 1701 Q. If you look at page 5 of that

17:14:49 6 document, sir,--

17:14:50 7 A. Mm-hmm.

17:14:50 8 1702 Q. --you will see, under the heading,

17:14:54 9 "Ontario"--

17:14:55 10 A. Yeah. Mm-hmm.

17:14:56 11 1703 Q. --a description of the impact of

17:15:00 12 the cancellation of SARP, and it's phrased in terms

17:15:04 13 of the company's recorded impairments of goodwill,

17:15:09 14 intangible assets, and property, plant and

17:15:13 15 equipment for both Georgian Downs and Flamboro

17:15:13 16 Downs.

17:15:19 17 Do you see that?

17:15:20 18 A. Yes. Yeah.

17:15:20 19 1704 Q. And that really is a

17:15:21 20 quantification of the impact of cancelling SARP in

17:15:24 21 dollar terms; the millions was dollars of

17:15:27 22 impairments that are recorded, right?

17:15:29 23 A. Uh. Yes. Mm-hmm.

17:15:36 24 1705 Q. Was this the document that --

17:15:40 25 A. No.

17:15:41 1 1706 Q. No?

17:15:42 2 A. No.

17:15:42 3 1707 Q. Let me just finish my question--

17:15:44 4 A. Oh. Sorry.

17:15:44 5 1708 Q. --so we have it.

17:15:45 6 A. Okay.

17:15:45 7 1709 Q. Was this the document that caused

17:15:46 8 you to realize the impact of cancelling SARP?

17:15:49 9 A. Uh. No, not this document. I

17:15:50 10 didn't see that.

17:15:51 11 But I can tell you -- I could, if -- if

17:15:55 12 you want me to explain.

17:15:55 13 1710 Q. Sure. Please.

17:15:56 14 A. What I had in my possession, uh,

17:15:59 15 through the briefing notes that were provided to me

17:16:01 16 during the first week, was there was a breakdown of

17:16:05 17 SARP money to -- by track, uh, and so what I did,

17:16:13 18 when I saw the news release that said, 'We have

17:16:19 19 34.4-million dol- --34.4-million revenue and we

17:16:20 20 cleared 17.4-million in EBITDA' -- isn't that an

17:16:25 21 amazing accomplishment? Everybody wishes that they

17:16:30 22 had a 50 per cent margin on their business.

17:16:31 23 1711 Q. You would say that's--

17:16:31 24 A. But --

17:16:32 25 1712 Q. --a rich margin?

1 A. Yeah. That -- yeah. You know,
2 it's -- you know.

3 But what I -- what I did was, then I
4 took the look at the SARP money from Georgian Downs
5 and Flamboro and, uh, backed that out of the, uh,
6 revenue line and that ended -- that 17.4-million
7 positive became a negative, and that's what
8 convinced me that if Georgian and Flamboro were not
9 going to survive, then the smaller tracks would not
10 survive and there would therefore be no feeder
11 system to Mohawk.

12 So that even if Mohawk were to survive,
13 there just would not be horsemen, horses, races to
14 qualify to get to -- to Mohawk, which is different
15 than Thoroughbred because Thoroughbred had
16 different fundamentals.

17 So horses didn't come in to race. They
18 were at Woodbine or Hialeah or, uh -- or, uh, other
19 racetracks, so those horses --

20 --- (Court reporter appeals.)

21 THE WITNESS: ...or other racetracks.

22 THE COURT REPORTER: What did you
23 say --

24 MR. LISUS: Hialeah.

25 THE WITNESS: Hialeah is a -- is

17:17:34 1 another Thoroughbred racetrack.

17:17:34 2 BY MR. ROSENBERG:

17:17:37 3 1713 Q. Hiawatha?

17:17:37 4 A. No. I meant out -- it's
17:17:39 5 Thoroughbred outside of Ontario.

17:17:39 6 1714 Q. I see.

17:17:41 7 A. Right. So we had -- we understood
17:17:46 8 that, in a sense, Standardbred -- the economics of
17:17:48 9 Standardbred horse racing is that it's a local
17:17:52 10 industry and that it's driven by proximity to the
17:17:54 11 track.

17:17:55 12 So when the track -- if the track were
17:17:56 13 to close, the impact would be in the -- the local
17:18:00 14 area because that's where the breeders, the
17:18:01 15 trainers, the farms, the feedlots, the -- the
17:18:06 16 people who make the saddles and make the -- the
17:18:09 17 whole industry.

17:18:13 18 Thoroughbred is an international sport.
17:18:16 19 Horses move usually twice a year from north to
17:18:18 20 south, so it's just a different economic model.

17:18:27 21 And so, that made me believe that the
17:18:30 22 analysis that I had seen that showed that, was it
17:18:33 23 11 of 17 tracks might close, but there would still
17:18:37 24 be six.

17:18:38 25 That led me to believe that if -- if

17:18:39 1 one of those was Woodbine doing Thoroughbred, that
17:18:42 2 left five. So obviously, two of the major tracks
17:18:45 3 other than Mohawk were Flamboro and Georgian.
17:18:48 4 If they were going down, then really there was --
17:18:50 5 there would not be an industry.

17:18:52 6 So -- and then, that's the math that I
17:18:55 7 did.

17:18:55 8 I don't have those SARP numbers in
17:18:57 9 front of me, but I would -- it's -- it's my
17:18:59 10 recollection that that's the piece of math that I
17:19:00 11 did.

17:19:00 12 1715 Q. I see.

17:19:01 13 So it was really a combination of what
17:19:05 14 you got from continuous disclosure, public
17:19:05 15 documents--

17:19:05 16 A. Yeah.

17:19:08 17 1716 Q. --and some additional information
17:19:10 18 you brought to --

17:19:10 19 A. That I had in the briefing -- in
17:19:13 20 my briefing, yeah.

17:19:14 21 MR. ROSENBERG: Why don't we make the
17:19:15 22 Great Canadian Gaming MD&A, May 8th, 2012 as our
17:19:23 23 next exhibit, please.

17:19:24 24 MR. LISUS: Well, he said he hasn't
17:19:26 25 seen it, so it's an exhibit for identification.

17:19:29 1 THE WITNESS: That's right.

17:19:29 2 MR. ROSENBERG: Well, there were lots
17:19:31 3 of documents that you marked that he had never
17:19:34 4 seen, e-mails that went to other people. I think
17:19:36 5 we've been marking them all as exhibits.

17:19:36 6 MR. LISUS: He said he was familiar
17:19:37 7 with those e-mails or the discussion of --

17:19:40 8 BY MR. ROSENBERG:

17:19:41 9 1717 Q. Are you familiar with this
17:19:42 10 document, the MD&A from Great Canadian?

17:19:43 11 A. Well, yes, because I'm a director
17:19:45 12 of a publicly traded company.

17:19:48 13 You can't release this -- you can't
17:19:48 14 release the press release without telling your
17:19:48 15 shareholders, through an MD&A, what the impairment
17:19:48 16 is.

17:19:49 17 MR. ROSENBERG: All right. We're going
17:19:50 18 to mark this as the next exhibit.

17:19:52 19 What exhibit number is that?

17:19:56 20 THE COURT REPORTER: 40.

17:20:01 21 MR. ROSENBERG: Thank you.

17:20:10 22 ---EXHIBIT NO. 40: May 8th, 2012 MD&A
17:20:10 23 of Great Canadian Gaming Corporation.

17:20:35 24 BY MR. ROSENBERG:

17:20:35 25 1718 Q. And I think you've talked about

17:20:37 1 why you found the Securities disclosure so
17:20:45 2 credible.

17:20:45 3 It's sort of a crucible that extracts
17:20:51 4 truth from a stakeholder insofar as it's required
17:20:56 5 by Securities legislation?

17:20:58 6 A. Yes. I'm well aware of what
17:21:00 7 happens if you don't do that if you're -- if you're
17:21:02 8 a publicly listed company in the Province of
17:21:05 9 Ontario.

17:21:05 10 1719 Q. Well, more to the point, I mean,
17:21:09 11 Great Canadian Gaming wasn't going to talk down its
17:21:12 12 own stock by --

17:21:12 13 A. No. Absolutely.

17:21:13 14 1720 Q. Right. It wasn't going to report
17:21:14 15 overly negative views?

17:21:16 16 A. Oh. Yes. Then that's why I knew
17:21:19 17 it was credible; that their lawyers would have
17:21:19 18 said, 'You need --'

17:21:19 19 --- (Court reporter appeals.)

17:21:26 20 THE WITNESS: That's why I felt that
17:21:26 21 the information was credible.

17:21:31 22 BY MR. ROSENBERG:

17:21:31 23 1721 Q. All right. Now, we heard just a
17:21:32 24 moment ago about your views on what would happen to
17:21:34 25 the industry.

1 And this was a document that was
2 produced to us by your counsel. It's New Ontario
3 Horse Racing Model Options, CRE 0336260.

4 MR. LISUS: Do you have a copy?

5 MR. ROSENBERG: I do not.

6 MR. LISUS: Okay. If we're not going
7 to give a copy, Mr. Rosenberg, we're going to have
8 to pause and get photocopies, so I can follow
9 along.

10 MR. ROSENBERG: Well, hold on a second,
11 Mr. Lisus.

12 You've just pulled out any number of
13 documents to the witness in the course of even
14 today's Examination without providing me with a
15 single copy.

16 This is a produced document. It has a
17 number and I don't understand why --

18 MR. LISUS: You've not requested --
19 you've not requested copies. You had told me that
20 you're content with documents numbers, which is
21 what I've been given you all along at your request.

22 MR. ROSENBERG: I have --

23 MR. LISUS: I don't do that. I need
24 the physical copies, so if you're going to do this,
25 then we just have to pause and get me copies so I

17:22:37 1 can follow.

17:22:37 2 MR. ROSENBERG: You have put documents
17:22:41 3 to witnesses that have not been previously ben
17:22:41 4 produced in any form.

17:22:43 5 MR. LISUS: I'm not going to fight with
17:22:44 6 you, Mr. Rosenberg. I need to follow the
17:22:44 7 Examination.

17:22:44 8 You told me you only wanted document
17:22:46 9 numbers, so I gave you document numbers. I
17:22:47 10 provided paper copies of documents every time to my
17:22:53 11 friends from the Crown who weren't operating on
17:22:54 12 that presumption, so --

17:22:55 13 MR. ROSENBERG: Yes. But you haven't
17:22:56 14 produced me with any of the documents that weren't
17:22:56 15 previously produced.

17:22:56 16 But if you're saying you can't continue
17:22:56 17 with the Examination, you know, despite the fact
17:22:56 18 that I want to refer to a document that's been
17:23:02 19 produced, I suppose we have to go off the record
17:23:03 20 and get you a photocopy.

17:23:05 21 MR. LISUS: I suppose.

17:23:07 22 MR. ROSENBERG: All right. Let's go
17:23:08 23 off the record, please.

17:23:09 24 ---Recess at 5:23 p.m.

17:27:11 25 ---On resuming at 5:27 p.m.

17:27:14 1 MR. ROSENBERG: Okay. Why don't we go
17:27:14 2 back on the record.
17:27:16 3 BY MR. ROSENBERG:
17:27:18 4 1722 Q. You've had a chance to read this
17:27:20 5 document?
17:27:22 6 MR. LISUS: Which document--
17:27:22 7 THE WITNESS: Not in --
17:27:23 8 MR. LISUS: --are we talking about?
17:27:23 9 MR. ROSENBERG: New Ontario Horse
17:27:25 10 Racing Model Options, CRE 0336260.
17:27:29 11 THE WITNESS: Not in its entirety,
17:27:31 12 but... But I have started reading it.
17:27:31 13 BY MR. ROSENBERG:
17:27:33 14 1723 Q. Do you recognize the document?
17:27:34 15 A. Uh. Yes. Yeah.
17:27:40 16 1724 Q. It was produced to us as a
17:27:42 17 document in your possession.
17:27:44 18 A. Yep.
17:27:44 19 1725 Q. What is it?
17:27:52 20 A. Well, it was, as I said, what was
17:27:54 21 required to restructure the industry around the
17:27:57 22 principles that we had laid out, there was going to
17:28:00 23 have to be some -- some big changes.
17:28:03 24 1726 Q. Mm-hmm.
17:28:03 25 A. And one of the issues, one of the

17:28:05 1 central issues would be around how many race dates
17:28:08 2 are available at what racetracks for what kind of
17:28:13 3 purse 'cause that's what drove the industry.

17:28:15 4 And so, how to take a fixed pot of
17:28:19 5 money available from the government, uh, or, in
17:28:22 6 this case, we may have been saying what we think
17:28:26 7 that amount of money -- I don't -- I don't have the
17:28:27 8 date on this, but --

17:28:31 9 1727 Q. Do you remember about when it was
17:28:33 10 written?

17:28:33 11 A. No. It would -- well, it would
17:28:34 12 have been after the, uh... It would have been
17:28:34 13 after the first Panel Report.

17:28:36 14 It could have been part of our second
17:28:38 15 Panel Report where we were kind of structuring
17:28:41 16 things, but it might have been after that, so I
17:28:44 17 don't recall specifically.

17:28:51 18 But it started doing a kind of detailed
17:28:54 19 analysis to try to get to a horse racing industry
17:28:57 20 that made -- that met the criteria that we had set
17:29:00 21 out in the report.

17:29:00 22 1728 Q. And who performed this work?

17:29:02 23 A. Umm. I know that I did not create
17:29:06 24 that document.

17:29:17 25 1729 Q. Are you able to say who did?

17:29:19 1 A. Umm. I don't recall.

17:29:20 2 It's consistent with what we -- we told

17:29:22 3 them, umm, but I know I'm not the author of this

17:29:24 4 document and it doesn't have a date on it or from

17:29:29 5 who to who, umm, and I -- I'm not -- it looks like

17:29:37 6 a close-to-finished document.

17:29:56 7 1730 Q. It looks, to me, like what this

17:29:59 8 document is talking about is taking the

17:30:01 9 \$204-million a year that's available as a

17:30:05 10 pari-mutuel wagering handle and trying to calculate

17:30:08 11 how much more is required to sustain the horse

17:30:13 12 racing industry at a particular level.

17:30:15 13 Is that fair?

17:30:16 14 A. Yes. We had been told that the --

17:30:18 15 the pari-mutuel money would still be available, so

17:30:20 16 the question was, what was the delta? What was the

17:30:23 17 amount that was required?

17:30:25 18 1731 Q. And ultimately, if you look at the

17:30:28 19 last page, that's the fourth page,--

17:30:32 20 A. Mm-hmm.

17:30:32 21 1732 Q. --the required funding -- it's

17:30:35 22 really following a chart over from the third page.

17:30:38 23 The required funding in each of the

17:30:40 24 three years for which these projections are being

17:30:42 25 made is about \$60-million?

17:30:44 1 A. Uh. Yes. But I don't believe
17:30:53 2 that that was our final recommendation.

17:30:54 3 1733 Q. Your final recommendation, I think
17:30:56 4 you've told us, was a higher amount of money?

17:30:57 5 A. It was about 100-, I think it
17:31:00 6 ended up being about \$100-million a year.

17:31:02 7 1734 Q. Now, I guess that's just what I
17:31:04 8 wanted to -- to get at that.

17:31:05 9 I mean, these numbers, \$100-million,
17:31:08 10 \$60-million a year; they're dependent on a lot of
17:31:10 11 assumptions, right?

17:31:11 12 A. Right. Actually doing the work
17:31:14 13 necessary to try to understand the economics of
17:31:17 14 this ecosystem.

17:31:18 15 1735 Q. And you can see, baked into this
17:31:22 16 document is a certain -- a certain kind of outcome
17:31:30 17 that is intended to enhance the economic return for
17:31:36 18 rural Ontario when you talk about, 'What kind of
17:31:39 19 horse racing industry are we trying to sustain?'

17:31:43 20 A. Well, the greatest economic impact
17:31:46 21 is Standardbred, just because of the number of
17:31:48 22 horses, the number of tracks, and the fact that it
17:31:53 23 is -- the economic activity is local to the track.

17:31:56 24 1736 Q. Let me go further than that.

17:31:57 25 If you look at the first page, it says:

17:32:01 1 "Standardbred 'C' race
17:32:02 2 opportunities have been set at 140
17:32:06 3 days." [As read.]
17:32:06 4 A. Yeah.
17:32:08 5 1737 Q. Standardbred "C" is the lowest
17:32:10 6 tier of Standardbred racing?
17:32:11 7 A. Mm-hmm.
17:32:12 8 1738 Q. Sorry. I need a 'yes' or 'no'
17:32:13 9 on --
17:32:13 10 A. Yes, yes.
17:32:14 11 1739 Q. Yes.
17:32:16 12 And it's noted that:
17:32:17 13 "It doesn't attract significant
17:32:19 14 wagering, but it is the most
17:32:22 15 cost-effective racing and provides
17:32:24 16 maximum economic churn on minimal
17:32:27 17 public investment." [As read.]
17:32:28 18 Right?
17:32:28 19 A. Yes.
17:32:29 20 1740 Q. So it's got a lot of economic bang
17:32:33 21 for the buck, right?
17:32:34 22 A. Right, which is one of the
17:32:36 23 criteria we set for the government to look at that.
17:32:39 24 Umm. The analogy we used was, umm,
17:32:42 25 hockey. You know, you can have NHL, but you

17:32:44 1 actually needed the Junior. But before you get to
17:32:47 2 Junior, you need the House League.

17:32:49 3 So if you're going to have hockey
17:32:51 4 players in the NHL, you start -- they have to
17:32:53 5 start.

17:32:54 6 So horses are like that. They have to
17:32:57 7 start -- they don't go to the big house to start.
17:32:59 8 They have to run at races and get used to racing.
17:33:01 9 And if you didn't have that, umm, then you won't a
17:33:04 10 have a healthy Standardbred industry. In this
17:33:07 11 case, we are talking about Standardbred.

17:33:08 12 I can tell you that the "C" tracks --
17:33:14 13 each -- each level of racing would have a different
17:33:17 14 opinion.

17:33:17 15 1741 Q. A different opinion?

17:33:23 16 A. A different opinion.

17:33:23 17 They would think that all the money
17:33:26 18 should come to their level of racing and to their
17:33:28 19 particular breed.

17:33:28 20 1742 Q. Right.

17:33:29 21 A. Our job was to -- to try to
17:33:30 22 provide some rationale about how the money should
17:33:32 23 be distributed.

17:33:33 24 1743 Q. And you were trying to hit a
17:33:34 25 minimum six tracks, I think is what it says here

17:33:36 1 for this plan.

17:33:38 2 A. Uh. Yeah. I haven't read to

17:33:40 3 that. I --

17:33:40 4 1744 Q. If you look at page 4, you will

17:33:42 5 see:

17:33:42 6 "The minimum number of tracks

17:33:44 7 required for the program is six."

17:33:47 8 [As read.]

17:33:47 9 A. Yes. And I think we, umm...

17:33:47 10 --- (Witness reviewing document.)

17:33:47 11 THE WITNESS: Uh. Yes. Yeah.

17:33:47 12 BY MR. ROSENBERG:

17:34:03 13 1745 Q. You will agree, sir, that

17:34:04 14 reasonable people could disagree about whether you

17:34:06 15 actually need 580 days a year of Standardbred

17:34:12 16 racing in Ontario, right?

17:34:22 17 A. Uh --

17:34:22 18 MR. ROSENBERG: Well, that's -- that's

17:34:23 19 the point, but it's a Cross-Examination, Mr. Lisus,

17:34:25 20 so I'd thank you --

17:34:26 21 MR. LISUS: -- appropriate

17:34:26 22 Cross-Examination on relevant issues.

17:34:26 23 What --

17:34:26 24 MR. ROSENBERG: Well, I'm just --

17:34:27 25 MR. LISUS: What does this --

17:34:28 1 MR. ROSENBERG: Mr. Lisus, you can
17:34:29 2 object, but I'm conducting a Cross-Examination, so
17:34:32 3 I would ask you to please leave me to it.
17:34:34 4 THE WITNESS: Sorry. Your question,
17:34:35 5 sir?
17:34:35 6 BY MR. ROSENBERG:
17:34:35 7 1746 Q. My question was: Reasonable
17:34:37 8 people could disagree?
17:34:38 9 If you look at page 3, the target here
17:34:41 10 is 580 days a year of Standardbred racing.
17:34:44 11 A. Umm...
17:34:44 12 1747 Q. Reasonable people could disagree
17:34:47 13 as to whether that's the right target for the
17:34:50 14 Province of Ontario, right?
17:34:51 15 A. Yes. Mm-hmm.
17:34:51 16 1748 Q. And --
17:34:52 17 A. Yes.
17:34:52 18 1749 Q. And similarly, a lot of the
17:35:03 19 assumptions that are baked into this model are --
17:35:03 20 are subject to disagreement.
17:35:08 21 Reasonable people could take a
17:35:09 22 different view of the purses that will be required
17:35:11 23 or the costs the tracks would realize, right?
17:35:14 24 A. Mm-hmm. Or what the wagering
17:35:16 25 would be.

17:35:16 1 1750 Q. Sure.

17:35:17 2 A. Pari-mutuel comes from the

17:35:19 3 wagering, so you have to make assumptions in any of

17:35:22 4 these type of projections about what you think will

17:35:26 5 happen.

17:35:26 6 1751 Q. And so, as much as this chart

17:35:28 7 comes to a figure of \$60-million of required

17:35:32 8 funding, and you've said that you ultimately

17:35:35 9 concluded that \$100-million of funding was

17:35:39 10 required, this is more art than science, right?

17:35:41 11 A. Yes.

17:35:41 12 1752 Q. And reasonable people could

17:35:43 13 disagree about the amount of funding that's

17:35:45 14 required to maintain the horse racing industry?

17:35:48 15 A. Umm. Yes.

17:35:56 16 MR. ROSENBERG: All right. Why don't

17:35:57 17 we mark that as the next exhibit, please. That's

17:36:01 18 41, I think.

17:36:03 19 ---EXHIBIT NO. 41: New Ontario Horse

17:36:04 20 Racing Model Options; Doc ID Number CRE 0336260.

17:36:26 21 BY MR. ROSENBERG:

17:36:26 22 1753 Q. Now, your Panel concluded that

17:36:28 23 SARP was bad public policy?

17:36:32 24 A. Yes.

17:36:32 25 1754 Q. That conclusion was unanimous

17:36:35 1 amongst the Panelists?

17:36:36 2 A. Uh. Yes. In -- by 2012, it was

17:36:39 3 bad --

17:36:39 4 --- (Court reporter appeals.)

17:36:40 5 THE WITNESS: By 2012, it was, in our

17:36:42 6 opinion, bad public policy, entered into in good

17:36:45 7 faith at the time back in 1998, but had driven

17:36:50 8 economic consequences that made the industry, umm,

17:36:59 9 removed from their customer, which was the better.

17:36:59 10 BY MR. ROSENBERG:

17:37:04 11 1755 Q. And whether or not you agreed with

17:37:05 12 the government's proposed transition plan, I take

17:37:08 13 it you accepted the government's right to cancel

17:37:11 14 slots revenue sharing?

17:37:12 15 A. Oh, yes. That was the premise of

17:37:14 16 our -- of our contract. That's the first

17:37:17 17 recital,--

17:37:17 18 1756 Q. Right.

17:37:18 19 A. --right, in the contract.

17:37:26 20 1757 Q. I think you accepted that

17:37:29 21 governments are entitled to make positions that

17:37:31 22 hurt people?

17:37:32 23 A. Yes, yes.

17:37:33 24 1758 Q. When your Panel met with

17:37:39 25 stakeholders, were they generally willing to buy

17:37:39 1 into the idea that SARP couldn't continue, but that
17:37:40 2 the horse racing industry still needed some lower
17:37:43 3 level of support?

17:37:44 4 A. Over time, Mr. Rosenberg.

17:37:47 5 Initially, what everyone asked us to do
17:37:53 6 was to just agree with them and have everything go
17:37:55 7 back to the way it was.

17:37:56 8 And as we delved into it, we had a
17:38:01 9 better understanding of what was driving the
17:38:02 10 economic behaviour of people in good faith; that we
17:38:06 11 saw that not to meet the standard of good public
17:38:09 12 policy in 2012 in regard to the issues that we
17:38:12 13 raised around accountability and transparency, a
17:38:16 14 business that should be focused on -- on the, uh,
17:38:18 15 customer, and that should, at a minimum, return
17:38:21 16 back to the government coffers the amount of money
17:38:23 17 that was going -- that was being foregone.

17:38:26 18 1759 Q. Did anything you saw in government
17:38:30 19 or on the Panel lead you to believe that Ontario or
17:38:35 20 OLG had a contract that required them to pay money
17:38:38 21 to the horsepeople upon deciding to terminate
17:38:41 22 siteholder agreements with racetracks and stop
17:38:48 23 sharing slots revenue?

17:38:48 24 A. Yes, because what I had been
17:38:50 25 briefed is that there was a termination clause that

17:38:52 1 required a full 12 months' worth of notice.

17:39:02 2 1760 Q. 12 months of notice, but nothing
17:39:03 3 beyond that?

17:39:03 4 A. What I was told that what was
17:39:04 5 required was 12 months' notice. So it had to be
17:39:07 6 finalized by the end of March of 2012 to take -- to
17:39:12 7 come into effect the end of March 2013, so I took
17:39:16 8 that as a fact.

17:39:17 9 1761 Q. And that notice was due to
17:39:20 10 racetracks?

17:39:21 11 A. Umm. I didn't know the
17:39:24 12 particulars, other than the fact that the
17:39:27 13 government had clearly stated that when they set
17:39:30 14 the policy.

17:39:32 15 They didn't say, 'Well we're going to
17:39:34 16 stop in six weeks and -- you know, six months and
17:39:38 17 seven weeks.'

17:39:38 18 They were very clear that it was
17:39:39 19 notice, uh, for March 31st of 2013.

17:39:46 20 1762 Q. And that's what was ultimately
17:39:48 21 given?

17:39:48 22 A. Yes.

17:39:49 23 1763 Q. Mr. Lisus quoted some figures to
17:40:02 24 you about horse sales in 2012 following the
17:40:05 25 announcement of the termination of SARP.

17:40:07 1 He didn't give you the document that he
17:40:16 2 was reading from.
17:40:16 3 This is a document titled Information
17:40:19 4 Note, September Yearling Racehorse Sales. I found
17:40:26 5 it at CRE 0230844.
17:40:26 6 A. Mm-hmm.
17:40:41 7 1764 Q. Now, as I understand it, this is a
17:40:43 8 document produced by OMAFRA. It was shown to
17:40:47 9 Mr. Snobelen and, as I said, Mr. Lisus quoted it to
17:40:52 10 you.
17:40:52 11 It appears to be authored, if you look
17:40:55 12 at the last page, by Thom Hagerty.
17:40:59 13 Do you know who Thom Hagerty is?
17:41:00 14 A. Well, yes, but the author is
17:41:02 15 actually David Meinen, who is --
17:41:03 16 1765 Q. I see.
17:41:04 17 A. Yeah. But it was signed off by
17:41:05 18 his direct report, which would be Thom Hagerty.
17:41:08 19 And it was prepared at OMAFRA by the Economic
17:41:08 20 Development Policy Branch, and I believe
17:41:08 21 Mr. Hagerty was the Assistant Deputy Minister of
17:41:08 22 that branch--
17:41:08 23 1766 Q. And who--
17:41:14 24 A. --and -- and we worked with him.
17:41:20 25 1767 Q. --is David Meinen?

17:41:20 1 A. David Meinen would have been, if I
17:41:23 2 recall, an economist for the Economic Development
17:41:27 3 Policy Branch at OMAFRA.
17:41:28 4 1768 Q. And you would consider these
17:41:30 5 figures to be reliable?
17:41:32 6 A. Uh. Yes. I would have no reason
17:41:33 7 not to -- to doubt anything that was prepared by
17:41:37 8 the Minister.
17:41:38 9 1769 Q. Now, just before I jump into this,
17:41:41 10 Mr. Lisus told you that the average volume sold in
17:41:47 11 2012 was down 81 per cent.
17:41:50 12 And if you look at the first page
17:41:53 13 there,--
17:41:54 14 A. Mm-hmm. Okay.
17:41:55 15 1770 Q. --the fourth bullet, it appears to
17:41:57 16 me that that was a misstatement; that the volume
17:42:01 17 sold was 81 per cent, so down 19 per cent from 2011
17:42:06 18 sale.
17:42:07 19 Is that fair?
17:42:17 20 A. So one would assume that the
17:42:19 21 number of horses sold were 81 per cent of 246, as
17:42:25 22 in the volume.
17:42:26 23 1771 Q. Right. 81 per cent of--
17:42:29 24 A. The "volume" being--
17:42:29 25 1772 Q. --the 2011 volume.

17:42:30 1 A. --the number horses.

17:42:31 2 1773 Q. Yes.

17:42:31 3 A. Yeah.

17:42:31 4 1774 Q. Okay.

17:42:34 5 Mr. Lisus drew your attention to the

17:42:38 6 horse prices, and you will see those described on

17:42:41 7 the fourth page. There's a chart that illustrates

17:42:46 8 the--

17:42:47 9 A. Mm-hmm.

17:42:48 10 1775 Q. --decline from 2011 to 2012, the

17:42:54 11 average being \$8,329 in 2012.

17:42:59 12 You see that?

17:42:59 13 A. Mm-hmm.

17:43:01 14 --- (Court reporter appeals.)

17:43:01 15 THE WITNESS: Yes.

17:43:04 16 BY MR. ROSENBERG:

17:43:04 17 1776 Q. But if you look at this chart, you

17:43:06 18 will see that that figure in 2012 is actually

17:43:10 19 higher than the figures in 2005, 2006 and 2007,

17:43:18 20 right?

17:43:18 21 A. Yes.

17:43:19 22 1777 Q. And if you read the paragraph

17:43:21 23 above that chart, it says:

17:43:24 24 "The prices received at the

17:43:26 25 Standardbred yearling sales have

17:43:28 1 been variable over past years."

17:43:28 2 [As read.]

17:43:31 3 You agree with that?

17:43:32 4 A. Yes.

17:43:33 5 1778 Q. "Although prices in 2012 are well

17:43:35 6 off the previous three years, the

17:43:37 7 volume and average price in 2012 is

17:43:40 8 higher than that received in the years

17:43:44 9 2005 through 2007." [As read.]

17:43:46 10 So it appears from that, that it's not

17:43:49 11 just prices that are higher in 2012 than in those

17:43:53 12 three previous years; it's volumes, as well, right?

17:43:56 13 A. Yes.

17:43:57 14 1779 Q. And you will see, the highest

17:44:00 15 price in this chart is actually the first year,

17:44:04 16 2002?

17:44:05 17 A. Yes.

17:44:06 18 1780 Q. Do you know why the average sale

17:44:14 19 price of Standardbred yearlings fell so

17:44:16 20 precipitously from \$18,492 in 2002 to \$7,217 in

17:44:25 21 2005?

17:44:25 22 A. Uh. No. I couldn't testify to

17:44:32 23 that.

17:44:32 24 1781 Q. And, of course, SARP was in effect

17:44:36 25 for the period, 2002 to 2011 here, right?

17:44:42 1 A. Yes.

17:44:43 2 1782 Q. So when Mr. Lisus asked you about
17:44:47 3 the link between SARP and horse prices, I think,
17:44:52 4 suffice to say it's, at the very least, more
17:44:55 5 complicated than that, right?

17:44:56 6 A. Uh. Yes. There's not a direct
17:45:00 7 correlation.

17:45:05 8 MR. ROSENBERG: I want to go off the
17:45:07 9 record for just a moment.

17:45:11 10 ---Off the record at 5:45 p.m.

17:45:41 11 ---On resuming at 5:45 p.m.

17:45:42 12 BY MR. ROSENBERG:

17:45:42 13 1783 Q. Okay. Last question. Oh. Two
17:45:42 14 questions.

17:45:47 15 Did anything you saw in government or
17:45:49 16 on the Panel lead you to believe that Ontario or
17:45:51 17 OLG had represented to horsepeople that they would
17:45:54 18 be given at least five years' notice of a decision
17:45:59 19 to terminate slots revenue sharing?

17:46:03 20 A. No.

17:46:03 21 1784 Q. And I understand that you had
17:46:07 22 occasion to read a transcript of a session that
17:46:10 23 Stanley Sadinsky had with horsepeople in London
17:46:11 24 during his panel's consultations?

17:46:11 25 A. I believe after he wrote his

17:46:13 1 report, if I recall.

17:46:14 2 1785 Q. And what do you remember from that
17:46:18 3 transcript?

17:46:18 4 A. That the -- I think it was at
17:46:23 5 Western Raceway. It was where -- I wasn't at the
17:46:26 6 meeting, but I saw a transcript of it.

17:46:27 7 Stanley was explaining his report that
17:46:32 8 he had been asked to do, and there was a
17:46:36 9 discussion. And from that discussion, uh, there
17:46:42 10 were those in the room who said that, you know,
17:46:48 11 'The government could cancel this on us,' and --
17:46:53 12 and that that was a possibility that it could be
17:46:58 13 cancelled; that there was an agreement, but an
17:47:02 14 agreement with the government, under the terms of
17:47:07 15 an agreement, could be cancelled.

17:47:08 16 1786 Q. Do you remember anything else from
17:47:10 17 that transcript?

17:47:11 18 A. Umm. I believe some people said,
17:47:12 19 'That would never happen. Our government would
17:47:15 20 never do that.'

17:47:15 21 And other people said, maybe less
17:47:17 22 charitably inclined to the -- to the consistency of
17:47:22 23 government, that that could happen because it went
17:47:24 24 to the -- the meeting, if I remember correctly,
17:47:26 25 Stanley was trying to tell people that they needed

17:47:29 1 to change with the times, that they needed to
17:47:31 2 modernize, that there were -- that more and more
17:47:33 3 SARP money was -- was warping the economics and
17:47:36 4 that they needed to take steps accordingly, other
17:47:40 5 than just fighting constantly between horse owners
17:47:44 6 and racetracks about how to split up the money.

17:47:47 7 MR. ROSENBERG: Thank you, sir. Those
17:47:49 8 are my questions.

17:47:50 9 MR. RATCLIFFE: Do you want to go off
17:47:51 10 the record for a minute?

17:48:25 11 ---Recess at 5:48 p.m.

17:48:25 12 ---(Ms. Machado withdraws at 5:48 p.m.)

17:49:31 13 ---On resuming at 5:49 p.m.

17:49:51 14 MR. RATCLIFFE: We'll go back on the
17:49:53 15 record then.

17:49:54 16 EXAMINATION BY MR. RATCLIFFE:

17:49:55 17 1787 Q. Just for the record, I am Robert
17:49:58 18 Ratcliffe and I'll be asking you a few questions.
17:50:00 19 I represent the Province of Ontario in this matter.

17:50:03 20 We've -- I'm going to be taking you to
17:50:08 21 the Horse Racing Industry Transition Panel Interim
17:50:12 22 Report from August 17 in a minute or two, but just,
17:50:16 23 I had some preliminary questions there in terms of
17:50:21 24 the Panel Members.

17:50:23 25 It was the Panel's task to provide

17:50:26 1 advice on the transition strategy, you indicated.

17:50:30 2 Is that correct?

17:50:30 3 A. Yes.

17:50:31 4 1788 Q. And I believe you described it as

17:50:33 5 a tripartisan group where each of the members had a

17:50:37 6 previous affiliation with a different political

17:50:42 7 party.

17:50:42 8 Is that correct?

17:50:42 9 A. Yes. And the government noted

17:50:44 10 that when they announced the three of us.

17:50:46 11 1789 Q. Was there any discussion when the

17:50:52 12 Panel first met about having a chairperson?

17:50:54 13 A. Yes.

17:50:55 14 1790 Q. And what came of that discussion?

17:50:56 15 A. Well, Elmer and John thought it

17:50:58 16 should be me, uh, and I said, 'No,' uh, and I

17:51:04 17 thought -- and I shared with them that I thought

17:51:05 18 the smartest thing that we could do was not to have

17:51:08 19 a chair.

17:51:09 20 There are many government panels that

17:51:11 21 have had a chair and -- but that we would send a

17:51:15 22 signal, if we didn't have a chair, that all

17:51:18 23 stakeholders would have to see all three of us and

17:51:20 24 that you had to come and talk to all three of us,

17:51:23 25 not to one of us.

17:51:24 1 And I think that was, umm -- and I
17:51:29 2 think when we met with stakeholders, of course, who
17:51:32 3 were very upset at the time, I think they
17:51:34 4 understood why we -- why we did that.

17:51:36 5 And we reached an agreement with all of
17:51:39 6 our stakeholders that came to us, with rare
17:51:41 7 exception, that we would not make any public
17:51:44 8 comments. We would not tweet, we would not press
17:51:46 9 release or anything like that as long as they
17:51:49 10 didn't, and that we could actually have a fulsome
17:51:52 11 discussion.

17:51:52 12 They could actually tell us what the
17:51:55 13 problem was, as far as they could see, and we could
17:51:57 14 share with them what we -- what we were learning as
17:51:59 15 we -- as we worked on this together.

17:52:00 16 And I think that level of trust that we
17:52:02 17 established with the shareholder -- with the
17:52:03 18 stakeholders helped us get to our conclusions
17:52:07 19 quicker.

17:52:07 20 1791 Q. So it was really your suggestion
17:52:10 21 that there not be a chair of this Panel; that each
17:52:13 22 Panel Member had equal input in terms the...?

17:52:16 23 A. Yes. And beyond that, it was --
17:52:19 24 it was -- and that we would communicate that with
17:52:21 25 -- with the stakeholders.

17:52:23 1 We had been in government long enough
17:52:24 2 to realize that sometimes people try to one-off you
17:52:29 3 and have side conversations and that that just was
17:52:31 4 not -- we were not going to allow the stakeholders,
17:52:34 5 including the government, to do a divide and
17:52:37 6 conquer.

17:52:38 7 1792 Q. Mm-hmm?

17:52:38 8 A. That they had to talk to all three
17:52:41 9 of us.

17:52:41 10 1793 Q. Now, this was a unanimous
17:52:43 11 recommendation that was put forward; a report by
17:52:44 12 all three people?

17:52:45 13 A. Yes.

17:52:45 14 1794 Q. Was there any discussion amongst
17:52:48 15 yourselves as to a dissenting opinion?

17:52:51 16 A. Well, we hashed things out.

17:52:53 17 1795 Q. Yeah.

17:52:53 18 A. We hashed things out, so that we
17:52:57 19 could -- we -- and if I recall again,
17:53:00 20 Mr. Ratcliffe, what we had -- the Minister was very
17:53:02 21 clear that he was intent on receiving the best
17:53:05 22 advice possible, that he was not trying to get a
17:53:08 23 report to buy himself some time or for a report to
17:53:12 24 go onto a shelf and gather dust one day; that he
17:53:16 25 was -- which is why I believe the three of us

17:53:19 1 agreed to help Ted when he asked us to,--

17:53:19 2 1796 Q. Mm-hmm.

17:53:20 3 A. --being Minister McMeekin, that he

17:53:24 4 wanted our very best advice.

17:53:25 5 And we told him that having a report

17:53:29 6 from two of us with a -- with a dissenting opinion

17:53:32 7 would not give Minister McMeekin what he actually

17:53:36 8 needed.

17:53:36 9 1797 Q. Mm-hmm.

17:53:37 10 A. So he said, 'I know the situation

17:53:39 11 is difficult, so I know you guys are going to have

17:53:41 12 to hash this out. Please give me the best advice

17:53:41 13 possible.'

17:53:45 14 But -- but we all agreed that it should

17:53:46 15 be consensus.

17:53:47 16 1798 Q. Okay.

17:53:48 17 A. That was our intent going into it

17:53:49 18 and we actually maintained that.

17:53:51 19 1799 Q. I'm going to provide you with a

17:53:54 20 copy of Exhibit 24, which is the report itself.

17:53:56 21 There's just three or four passages I

17:54:02 22 was going to take you to.

17:54:05 23 If you could turn to page 3--

17:54:08 24 A. Of the report?

17:54:09 25 1800 Q. --of the report,--

17:54:09 1 A. Mm-hmm.

17:54:12 2 1801 Q. --there is a subtitle, "Panel's
17:54:14 3 Consultations".

17:54:15 4 A. Mm-hmm.

17:54:16 5 1802 Q. I think you alluded to this a
17:54:17 6 minute or two ago, but can you talk a little bit
17:54:21 7 about the stakeholders that you reached out to?
17:54:23 8 What kind of consultation was there and
17:54:26 9 how did that take place?

17:54:27 10 A. Those consultations primarily were
17:54:33 11 on the top floor of 1 Stone Road West in Guelph,
17:54:36 12 which is the, umm, Ministry of Agriculture, Food
17:54:40 13 and Rural Affairs' headquarters.

17:54:44 14 Umm. The meetings were, umm, were
17:54:45 15 arranged by our, uh, the Secretariat of -- of civil
17:54:50 16 servants who supported our work, so we -- we did
17:54:55 17 not reach out to various stakeholders.

17:54:58 18 Obviously, stakeholders were getting
17:55:00 19 ahold of the Ministry, self-identifying that they
17:55:04 20 wanted to talk to somebody. And once the Panel was
17:55:07 21 empowered, they immediately said it was important.

17:55:10 22 And then, the civil servants also made
17:55:14 23 suggestions about other people that we could speak
17:55:16 24 to and they were invited to come. And those
17:55:18 25 meetings were organized.

17:55:19 1 We were given schedules in advance and
17:55:21 2 our efforts were supported from an administrative
17:55:24 3 point of view.

17:55:25 4 1803 Q. And in that short paragraph, it
17:55:26 5 indicates that there were 53 different groups of
17:55:29 6 individuals through a total of 68 meetings.

17:55:31 7 A. Mm-hmm.

17:55:32 8 1804 Q. Were any of those groups there
17:55:34 9 representing the interests of the Standardbred
17:55:37 10 breeders?

17:55:37 11 A. Umm. Well, if we did, it would be
17:55:41 12 in the appendix.

17:55:42 13 1805 Q. Mm-hmm.

17:55:43 14 A. And I believe, because we met
17:55:45 15 with -- we also did meet with a few individuals.

17:55:48 16 Yes. And so we met with Standardbred
17:55:50 17 breeders, which was for Ontario, and Standardbred
17:55:50 18 Canada.

17:55:54 19 And then, umm, I'm not sure... I
17:56:02 20 recall looking at the list of individuals. I
17:56:04 21 believe Mr. Juravinski had raised horses and
17:56:08 22 Mr. Burgess had raised horses, but I -- I could be
17:56:10 23 wrong. Those two names pop out as people that had
17:56:15 24 -- that were horsemen.

17:56:17 25 1806 Q. Mm-hmm.

17:56:18 1 A. Yeah.

17:56:18 2 1807 Q. Could I take you to page 18 now,
17:56:24 3 please?

17:56:24 4 A. Yes.

17:56:26 5 1808 Q. I understand from your earlier
17:56:29 6 testimony that you didn't know much about horse
17:56:32 7 racing when you first started this exercise.

17:56:34 8 But the first two lines of that, under
17:56:37 9 the subtitle, "Source of Purse Money", it sets out:

17:56:42 10 "The horse racing industry is
17:56:44 11 driven by purses which are
17:56:45 12 distributed 90 per cent to the horse
17:56:47 13 owner, 5 per cent to the jockey or
17:56:50 14 driver, and 5 per cent to the
17:56:52 15 trainer." [As read.]

17:56:52 16 A. Yes.

17:56:52 17 1809 Q. There's no reference there to the
17:56:54 18 -- the breeders. I mean, what's your understanding
17:56:59 19 of how purse monies were distributed?

17:57:03 20 A. Well, breeders are paid by owners
17:57:05 21 who buy their horses.

17:57:06 22 1810 Q. Okay.

17:57:07 23 A. But as we had discussed, there
17:57:09 24 were other programs available to incent the quality
17:57:12 25 breeding of Ontario horses.

17:57:15 1 1811 Q. So page 25, at the bottom, there's
17:57:19 2 a subtitle, question mark, "Subsidy or
17:57:24 3 Partnership?"

17:57:26 4 A. Mm-hmm.

17:57:30 5 1812 Q. "The Panel believes SARP's 'no
17:57:34 6 strings attached' approach is one
17:57:36 7 reason the industry has come to think
17:57:38 8 of slots revenue as 'their money'. In
17:57:43 9 fact, in the Panel's view, it is public
17:57:44 10 money belonging to the people of
17:57:46 11 Ontario and the government can redirect
17:57:48 12 it to other purposes if it concludes
17:57:50 13 this is in the public interest."

17:57:50 14 [As read.]

17:57:52 15 What was the Panel saying there?

17:57:54 16 A. Well, it -- it was -- it was
17:58:00 17 saying that we had listened intently to people who
17:58:03 18 had told us that, umm, that it should go back to
17:58:05 19 the status quo ante; that -- that this was -- the
17:58:14 20 government was taking their money.

17:58:15 21 Umm. And, you know, our review of that
17:58:17 22 showed that, umm, that it was important for the
17:58:21 23 industry to understand that they were worthy of
17:58:26 24 support, but that SARP had morphed into something
17:58:30 25 that we didn't think was good public policy.

17:58:32 1 As we told the government in the same
17:58:35 2 report, Mr. Ratcliffe, that cancelling SARP would
17:58:40 3 lead to the -- to the collapse of the interest --
17:58:43 4 of the industry, which was not the stated opinion
17:58:46 5 of the government when we started.

17:58:48 6 When we started, it was: They believed
17:58:50 7 it would restructure on its own.

17:58:52 8 1813 Q. Mm-hmm.

17:58:53 9 A. And, as I said, Mr. -- I think it
17:58:56 10 was Mr. Snobelen who helped us with the analogy
17:58:58 11 that helped so much by saying that the problem we
17:59:04 12 encountered was that a horse, a racehorse and the
17:59:06 13 government had something in common, which was they
17:59:08 14 both didn't know how to back up, and that we had to
17:59:11 15 lead people, umm, as a horseman would do, to get a
17:59:14 16 horse to be where you want.

17:59:16 17 And you don't take a horse that can
17:59:18 18 only go forward and try to get it to back up. And
17:59:22 19 it's the same thing with government. Very
17:59:24 20 difficult.

17:59:24 21 1814 Q. And at the top of the next page,
17:59:38 22 the first paragraph that begins, "As we have
17:59:38 23 suggested," if you could just--

17:59:38 24 A. Mm-hmm.

17:59:38 25 1815 Q. --look at that.

17:59:39 1 The first sentence there; what is your
17:59:39 2 understanding of what had happened to SARP over the
17:59:43 3 years?

17:59:43 4 A. Well, that it had been entered
17:59:46 5 into in good faith, that the government that John
17:59:50 6 Snobelen had been part of, umm, had wanted to have
17:59:56 7 -- expand slot machines, umm, and was trying to
18:00:01 8 find a publicly acceptable -- publicly acceptable
18:00:05 9 location, uh, and that they came to the conclusion,
18:00:12 10 as many had recommended, that the acceptable place
18:00:15 11 in Ontario for gambling was where gambling was
18:00:19 12 already legal, which had been for well over 150
18:00:22 13 years, at racetracks.

18:00:24 14 And that they had reached an agreement
18:00:26 15 with the industry which at the time was
18:00:27 16 struggling--

18:00:28 17 1816 Q. Mm-hmm.

18:00:29 18 A. --and they reached what they
18:00:31 19 thought was a win-win agreement for both sides,
18:00:37 20 umm, but the industry reached an agreement with the
18:00:39 21 government about the government's money, not their
18:00:42 22 money.

18:00:43 23 And that's why I said earlier that it
18:00:45 24 appeared over time, because it was the underpinning
18:00:48 25 of the industry, that people thought it really was

18:00:51 1 their money.

18:00:51 2 1817 Q. Now, a couple of paragraphs down,
18:00:56 3 you begin a paragraph by saying:

18:00:57 4 "Another problem with SARP has
18:00:59 5 been the lack of transparency."

18:01:01 6 A. Mm-hmm.

18:01:01 7 1818 Q. What did the Tribunal mean by
18:01:03 8 that?

18:01:03 9 A. Well, there was no -- uh, there
18:01:07 10 was no requirement, from what we could see, as to
18:01:10 11 how that money was spent.

18:01:12 12 And we knew, from beyond meeting with
18:01:16 13 people at 1 Stone Road, we also went on the road.
18:01:20 14 We also went to tracks. We could see, for example,
18:01:22 15 that half of the money was going to tracks and we
18:01:24 16 could see the difference in the tracks, just
18:01:26 17 physically. Were they modern, up-to-date,
18:01:30 18 welcoming places for entertainment or were they
18:01:33 19 dumps?

18:01:34 20 And it was quite -- it was quite
18:01:36 21 shocking to see the different level.

18:01:38 22 So just on that side, just to see, umm,
18:01:42 23 whether that money had been reinvested in their --
18:01:45 24 in their product and their customer experience or
18:01:47 25 not.

18:01:52 1 And so... But I couldn't -- we
18:01:52 2 couldn't answer that question specifically because
18:01:54 3 there was no requirement for them to disclose, for
18:01:56 4 example, the tracks, how the money was being spent.

18:02:00 5 There was more transparency on the
18:02:02 6 horsemen's side because of the -- of -- of the
18:02:04 7 programs.

18:02:04 8 One, Ontario Racing Commission saw the
18:02:07 9 purses. They were all reported.

18:02:07 10 1819 Q. Mm-hmm.

18:02:09 11 A. You could see where the -- excuse
18:02:10 12 me -- you could see where the money was going, in
18:02:11 13 large measure.

18:02:12 14 1820 Q. And at the bottom of that page,
18:02:13 15 there's a subtitle, "Panel Finding" (sic), and--

18:02:13 16 A. Mm-hmm.

18:02:17 17 1821 Q. --Mr. Rosenberg took you to this:

18:02:18 18 "It's the Panel's view that
18:02:20 19 continuing SARP would be poor public
18:02:23 20 policy." [As read.]

18:02:24 21 Again, was that a unanimous decision of
18:02:27 22 the Panel?

18:02:28 23 A. Yes. And we felt it was very
18:02:30 24 important that, to move forward, umm, we would not
18:02:34 25 be able to move forward and reach an agreement or

18:02:38 1 help the industry restructure if the industry did
18:02:40 2 not get past their position, which was, 'We're
18:02:44 3 entitled to SARP. You can't take it away from us.
18:02:48 4 Please bring it back,' and, on the other hand, to
18:02:52 5 say to government, 'Okay. We believe you made the
18:02:54 6 decision in good faith, but the consequences that
18:02:55 7 you think are going to happen, you're wrong.

18:02:57 8 You've made a mistake on the economic assessment.'

18:03:00 9 And it's ironic, but a lot of that had
18:03:03 10 to do with a lack of transparency.

18:03:05 11 It was the Great Canadian disclosure
18:03:07 12 that allowed us to see something that people
18:03:09 13 wouldn't see, that normally you wouldn't see
18:03:12 14 because there was no transparency on where that
18:03:15 15 money was going.

18:03:16 16 And Great Canadian provided the window.
18:03:18 17 And the only reason the window was there because
18:03:21 18 they didn't tell, in their discussion in their --
18:03:24 19 in their, uh, press release, how much of that money
18:03:25 20 was SARP.

18:03:27 21 They -- I had to go figure that out. I
18:03:29 22 had go take the other information and do the
18:03:31 23 calculations.

18:03:31 24 They actually showed, umm, that it
18:03:34 25 would impact them and how much it would impact

18:03:37 1 their shares, but they didn't say how much they
18:03:39 2 were getting from SARP.

18:03:40 3 1822 Q. Mm-hmm.

18:03:40 4 A. That was has kind of closely held
18:03:42 5 fact for all of the tracks.

18:03:43 6 1823 Q. Now, last week, Mr. Lisus took you
18:03:47 7 to an e-mail where you shared certain information
18:03:53 8 about the proposed recommendations with the
18:03:56 9 Premier's Office.

18:03:58 10 Do you recall that?

18:03:58 11 A. Yes. An e-mail I wrote to
18:04:02 12 Mr. Gene.

18:04:02 13 1824 Q. And I believe you indicated that
18:04:03 14 Mr. Snobelen and Mr. Buchanan, they -- they weren't
18:04:07 15 copied on that e-mail?

18:04:08 16 A. No.

18:04:08 17 1825 Q. Was there ever any discussion
18:04:15 18 amongst the Panel Members about reaching out in any
18:04:17 19 kind of way?

18:04:19 20 A. Well, now -- and I don't -- as I
18:04:22 21 testified, I don't recall the conversation with
18:04:24 22 Mr. Sorbara, though I don't doubt that he did call
18:04:27 23 me. Umm. But I do remember now, after seeing
18:04:30 24 these documents after all these years, why I wrote
18:04:33 25 Dave Gene.

1 I wrote Dave Gene because this was
2 really not, I don't think, in the Premier's Office
3 radar until all of a sudden, a former Minister was
4 opining about the Panel and the work, and so that
5 created the e-mail chain that Mr. Lisus showed me,
6 that a bunch of people within government were
7 trying to figure out what was going on, that a
8 former Minister was -- of Finance was speaking on
9 this issue, on an issue that was the
10 responsibility, in large part, by the current
11 Minister of Finance.

12 So that's considered to be bad form, so
13 there was concern about that.

14 And I think, as Mr. Gene, I think,
15 asked Mr. Keegan, who was the Chief of Staff, like,
16 'What's goin' on?' Uh. And Mr. Keegan said,
17 'Well, Dave, now the Premier's Office wants to know
18 what's goin' on, so I need to brief him.'

19 And I -- I remember saying, 'Well, do
20 you want -- do you want me to send him an e-mail?
21 I'll copy you.'

22 And he goes, 'Yeah. That would be
23 great,' which is what I did. And within 24 hours,
24 I had provided that for Mr. Gene.

25 And what he was looking for was an

18:05:34 1 assessment of the three things you have to know
18:05:36 2 when you're dealing with policy, like, what's the
18:05:38 3 policy, how much is it going to cost, and what are
18:05:41 4 the politics?

18:05:41 5 1826 Q. Was there any discussion
18:05:44 6 afterwards about the fact that you had reached out
18:05:46 7 or did that issue ever come up with the other Panel
18:05:46 8 Members?

18:05:50 9 A. All I heard was that Finance had
18:05:59 10 yet to agree with our conclusions in total, and now
18:06:01 11 I subsequently see that -- that Mr. Shortill had
18:06:05 12 said that he had agreed with half of what I had
18:06:07 13 said, but not the other half. But he didn't say
18:06:11 14 which half he agreed with and which he didn't,
18:06:14 15 though that would have been progress from where we
18:06:17 16 were.

18:06:17 17 1827 Q. Did anything follow from this
18:06:19 18 exchange of e-mails, I mean, in terms of the report
18:06:22 19 that you ultimately released, the Interim Report?

18:06:25 20 A. Well, yes, because our report
18:06:27 21 became an Interim Report,--

18:06:29 22 1828 Q. Mm-hmm.

18:06:29 23 A. --a report that allowed both sides
18:06:32 24 to, umm, have some of what they had said confirmed
18:06:37 25 and some of what they had said not confirmed by the

18:06:40 1 Panel, and with a clear indication from us that we
18:06:43 2 thought their -- that people of goodwill could
18:06:45 3 actually, umm, restructure the industry with less
18:06:50 4 money if both sides agreed, uh, to what we had
18:06:59 5 said, which was that without -- without any
18:07:00 6 financial support, the industry would collapse.

18:07:02 7 But the idea that we -- that it was a
18:07:04 8 good idea to go back to the status quo ante was --
18:07:08 9 was not good public policy.

18:07:10 10 And then, that led us to do the Final
18:07:12 11 Report that came about two months later, about the
18:07:14 12 -- the whole restructuring.

18:07:15 13 1829 Q. And the Final Report again; was
18:07:18 14 that a unanimous report by the --

18:07:20 15 A. Yes.

18:07:20 16 1830 Q. -- by the Panel Members in
18:07:21 17 terms of--

18:07:21 18 A. Yes.

18:07:22 19 1831 Q. --what should be done?

18:07:23 20 A. Yes.

18:07:43 21 1832 Q. I would like to just take you to
18:07:45 22 the transition funding.

18:07:46 23 I know you indicated, when you were
18:07:46 24 asked questions by Mr. Lisus, that, you know, there
18:07:49 25 was worry at the early -- in the early stages, that

18:07:55 1 there would be disaster if SARP was shut down.

18:08:02 2 Following the release of your report,
18:08:03 3 was the government receptive of the recommendations
18:08:07 4 that you put forward?

18:08:07 5 A. Umm. Minister McMeekin was very,
18:08:18 6 very happy with our reports. He thought that we
18:08:20 7 had done exactly what he had asked us to do, umm,
18:08:29 8 and -- and he told us that that gave him the -- the
18:08:31 9 in-depth analysis that he could seek, from his
18:08:33 10 colleagues around the Cabinet table, what would end
18:08:37 11 up being new money for the horse racing industry
18:08:39 12 and without that, he would not have been able to
18:08:41 13 make that case.

18:08:42 14 1833 Q. So those discussions would have
18:08:49 15 taken place when, in terms of McMeekin? When the
18:08:52 16 Interim Report came out? Is that...?

18:08:54 17 A. Well, under our contract, we
18:08:55 18 reported to the Minister or to his delegate, so--

18:08:55 19 1834 Q. Mm-hmm.

18:08:58 20 A. --Mr. Keegan was kept
18:09:02 21 well-informed of our progress as we -- as we went
18:09:04 22 through.

18:09:04 23 So if we heard it from Mr. Keegan, then
18:09:17 24 we were hearing it from the Minister.

18:09:17 25 1835 Q. And that was part of your

18:09:18 1 contractual responsibilities, you were saying?

18:09:20 2 A. Yes. Yeah. It's in my contract,
18:09:20 3 who we reported to.

18:09:21 4 1836 Q. Now, you continued to be involved
18:09:23 5 over the next couple of years.

18:09:23 6 A. Yes.

18:09:25 7 1837 Q. The interim funding increased over
18:09:28 8 a period of time.

18:09:28 9 A. Mm-hmm.

18:09:29 10 1838 Q. You made certain recommendations
18:09:29 11 and then, at -- in the more recent past, you'll
18:09:39 12 recall that there was \$400-million over four years
18:09:42 13 or five years, was it?

18:09:44 14 A. Yeah. I understand that, yes,
18:09:45 15 that there has been -- there has been increases and
18:09:46 16 greater length of time to the commitment, so that
18:09:49 17 it wasn't -- the industry could -- could move on,
18:09:51 18 not thinking, 'Well, do we have to battle every
18:09:53 19 year with government as to what that amount is?'

18:09:55 20 It would be very hard for them to plan
18:09:57 21 their businesses, whether they were a track or a
18:09:59 22 breeder or a horse owner or a jockey, if they
18:10:02 23 didn't know whether or not the industry was going
18:10:04 24 to continue.

18:10:04 25 1839 Q. And the 400-million turned into

18:10:08 1 \$500-million over five years.

18:10:10 2 Is that correct?

18:10:10 3 A. Yeah. That was after my time, but

18:10:10 4 I--

18:10:10 5 1840 Q. After your time?

18:10:12 6 A. --understand that that was...

18:10:12 7 Yeah.

18:10:15 8 It's around a hundred million dollars a

18:10:19 9 year.

18:10:19 10 1841 Q. So again, you had -- in your

18:10:21 11 testimony, you had these dire predictions, I guess,

18:10:25 12 at the very beginning.

18:10:38 13 Were the kind of job losses that you

18:10:40 14 had worried about; did they occur?

18:10:41 15 A. No. No.

18:10:42 16 1842 Q. And the worry about potentially

18:10:44 17 thousands of horses being put down; did that ever

18:10:47 18 occur?

18:10:47 19 A. No. That didn't happen either.

18:10:53 20 1843 Q. I think, as well, in your

18:10:55 21 testimony, you indicated that part of the problem

18:10:57 22 was government making decisions with incomplete

18:11:03 23 information.

18:11:03 24 A. (Nodding head.)

18:11:04 25 1844 Q. You were in the Cabinet.

1 Is that something that occurs from time
2 to time? You're left to make decisions or you have
3 to make decisions and you work with the best
4 available information at the time?

5 A. Right. You always hope that the
6 information is -- is as good as possible, but
7 again, it goes back to our recommendation.

8 I don't fault -- I don't fault people,
9 but for the government to understand the
10 consequences of a financial decision, they need to
11 have the financial information, and we -- and they
12 had a system which was not transparent, so that
13 information was not there.

14 So a traditional economic analysis was
15 made of the industry by the Ministry, right. But
16 it did not understand what drove the industry.

17 And what drove the auto industry, which
18 is profit for shareholders, is different than what
19 drives gambling. Whether it's OLG or whether it's
20 Vegas or whether it's horse racing, it is driven by
21 everybody having hope and very few people making
22 money.

23 That is a fundamentally different
24 economic driver. That analysis was not done.

25 An analysis was done, but that analysis

18:12:15 1 which we ended up creating over time, understanding
18:12:18 2 that is, I think, what brought clarity to the
18:12:22 3 issue. And that did not exist when we started in
18:12:25 4 June of 2012.

18:12:28 5 1845 Q. But over time, there was this
18:12:29 6 recognition that through the transition period and
18:12:35 7 transition funding, that those -- those issues were
18:12:37 8 addressed?

18:12:38 9 A. Yes, because it took into account
18:12:42 10 the economic motivators of all the people in the
18:12:45 11 ecosystem; why they were doing what they were doing
18:12:48 12 and why they were making their decisions which, on
18:12:50 13 the face of them, are never rational.

18:12:54 14 You hope that the horse you breed is
18:12:59 15 going to be successful. You hope the horse that
18:13:01 16 you own, that you buy is going to be successful.
18:13:02 17 You hope the one you train -- the (sic) hope the
18:13:05 18 one -- you hope you win the race, right. But
18:13:07 19 that's hope. There's no guarantee.

18:13:10 20 1846 Q. Just a couple more questions.

18:13:11 21 You weren't in Cabinet, of course, back
18:13:13 22 at the time that the letter of intent was signed
18:13:15 23 back in 1998?

18:13:16 24 A. No, no.

18:13:17 25 1847 Q. So you're not in a position to say

18:13:19 1 what the intention of the parties was at the time?

18:13:20 2 A. Just what Mr. Snobelen shared with
18:13:23 3 us from his time in government.

18:13:24 4 And, of course, the introduction of
18:13:26 5 slots was something that Mr. Buchanan could talk
18:13:28 6 about from his time of government.

18:13:30 7 Uh. And I shared that when I was in
18:13:33 8 government, I know that Mr. Sorbara had -- had done
18:13:36 9 a review, umm, which I think had come to the
18:13:40 10 conclusion, status quo, that not to touch it. Not
18:13:42 11 to open it up.

18:13:45 12 MR. RATCLIFFE: Okay. Those are my
18:13:45 13 questions.

18:13:48 14 MR. LISUS: I have a few questions for
18:13:49 15 you, Mr. Wilkinson.

18:13:49 16 FURTHER EXAMINATION BY MR. LISUS:

18:13:49 17 1848 Q. Now, Mr. Rosenberg asked you about
18:13:49 18 a transcript that you saw of a meeting that
18:13:49 19 Mr. Sadinsky had with some folks.

18:14:02 20 A. Yes. I think it was at Western
18:14:04 21 Raceway -- Fairway -- Fairgrounds.

18:14:14 22 1849 Q. Where did you see that transcript?

18:14:16 23 A. It was in the, uh, briefing notes.
18:14:18 24 Umm. I'm trying to remember. It was definitely at
18:14:21 25 the beginning of the process, so, as I mentioned,

18:14:22 1 we had about a week of very intensive reading and
18:14:25 2 documents that were provided to us.

18:14:28 3 If I were to look for that, it would be
18:14:33 4 the Sadinsky Report, which was something that we
18:14:35 5 were asked to read, umm, and any kind of subsequent
18:14:40 6 commentary that came out of that.

18:14:42 7 1850 Q. When did you last look at that
18:14:44 8 transcript?

18:14:44 9 A. Oh. 2012.

18:14:46 10 1851 Q. And did you look at the transcript
18:14:48 11 in preparation for giving your evidence here today?

18:14:50 12 A. No.

18:14:50 13 1852 Q. Did you tell -- you obviously told
18:14:54 14 Mr. Rosenberg about that transcript?

18:14:58 15 A. The... Umm. Yeah. The question
18:15:00 16 had to do with, umm, uh, the situation. I mean, I
18:15:11 17 had asked him -- Mr. Rosenberg, the question, so,
18:15:14 18 like, 'I haven't seen these documents in years and
18:15:16 19 years and years. Am I supposed to recall them
18:15:19 20 all?'

18:15:19 21 And he said -- I asked Mr. Ratcliffe
18:15:21 22 and he said, 'No. You don't have to recall them
18:15:23 23 all and if you don't recall something, say you
18:15:26 24 don't recall it. If you subsequently recall it,
18:15:28 25 that's fine. Then just say when you remember it,

18:15:29 1 but don't assume anything. Just try to be as
18:15:32 2 honest as -- as possible.'

18:15:33 3 So with the Sadinsky Report, umm, my
18:15:38 4 sense of it had always been that, umm, there was an
18:15:44 5 open question about, umm, whose money SARP was.

18:15:50 6 1853 Q. You are aware that Mr. Sadinsky
18:15:52 7 recommended that the revenue share from the Slots
18:15:57 8 at Racetrack -- Slots at Racetrack Program be
18:16:00 9 continued?

18:16:01 10 A. Uh. Yes. I think, when we talked
18:16:03 11 to Stan, we had him in to tell us about his work.

18:16:07 12 1854 Q. And he -- you also are aware that
18:16:10 13 at the time he was doing his review, he was
18:16:12 14 appointed in 2007; correct?

18:16:14 15 A. Uh. Yes. I think so.

18:16:15 16 1855 Q. His report was released in 2008;
18:16:18 17 correct?

18:16:18 18 A. Umm. I wouldn't disagree with
18:16:22 19 you.

18:16:22 20 1856 Q. Siteholder agreements were coming
18:16:24 21 up for renewal in 2010?

18:16:29 22 A. Umm. Sure.

18:16:29 23 1857 Q. You're aware that siteholder
18:16:31 24 agreements were renewed for five years in 2010?

18:16:35 25 A. I knew that, yeah, all the tracks

18:16:37 1 had siteholder agreements.

18:16:38 2 When they were renewed, I didn't know,
18:16:40 3 but I know they all had them.

18:16:41 4 1858 Q. And as you sit here today, you
18:16:43 5 don't recall this -- this transcript in any detail;
18:16:46 6 correct?

18:16:46 7 A. Uh. No. I just remember it was
18:16:50 8 kind of a verbatim, Huey (ph) -- was the manager at
18:16:54 9 Great West -- or at Western Raceway. I remember
18:16:59 10 seeing quotes from him. There was this discussion
18:17:00 11 back and forth.

18:17:01 12 1859 Q. And the discussion back and forth
18:17:03 13 was whether siteholder agreements were going to be
18:17:05 14 renewed for a further five term -- further
18:17:09 15 five-year term in 2010.

18:17:11 16 Does that ring a bell?

18:17:13 17 A. No. What I remember is, was the
18:17:17 18 issue, because so many people had said, you know,
18:17:20 19 'It's our money,' I just remember that there had
18:17:25 20 been a meeting with the horse racing industry where
18:17:28 21 a discussion -- there had been an open debate as to
18:17:30 22 whether or not it was their money and I think Stan
18:17:32 23 said, 'Well, no. They could -- they could change
18:17:33 24 this.'

18:17:34 25 And people said, 'Well, the government

18:17:36 1 would never change it.'

18:17:36 2 And he, 'Yeah. But they could and we

18:17:40 3 need to deal with that issue.'

18:17:40 4 1860 Q. Right.

18:17:40 5 A. Or his recommendation was.

18:17:40 6 1861 Q. Right.

18:17:43 7 A. Yeah.

18:17:43 8 1862 Q. And you haven't seen this

18:17:45 9 transcript recently.

18:17:45 10 I'm just --

18:17:46 11 A. No.

18:17:47 12 1863 Q. I'm just curious about--

18:17:47 13 A. No, I haven't.

18:17:48 14 1864 Q. --this transcript that you

18:17:50 15 referred to and told my friend about because I

18:17:51 16 haven't seen any transcript in the productions

18:17:53 17 anywhere. No one has given me a copy.

18:17:55 18 A. Yeah. It was, umm... It's just

18:17:57 19 kind of a verbatim -- just --

18:17:59 20 1865 Q. It --

18:18:01 21 A. It was after Sadinsky and I know

18:18:03 22 it had to do with -- it had to do with a meeting

18:18:04 23 that they had in London.

18:18:06 24 1866 Q. And was it notes that someone made

18:18:07 25 or a recording?

18:18:09 1 A. Umm...

18:18:11 2 1867 Q. Do you know?

18:18:12 3 A. I don't recall whether it was a --

18:18:16 4 like, a transcript of a recording or notes.

18:18:19 5 People were quoted. I remember that.

18:18:21 6 Like, people were quoted.

18:18:23 7 1868 Q. But you don't recall if it was a

18:18:25 8 recording or if people were making notes of the

18:18:29 9 meeting?

18:18:29 10 That's all I'm asking.

18:18:30 11 A. Yeah. I'm -- I'm not sure.

18:18:30 12 1869 Q. All right.

18:18:31 13 A. I'm not sure.

18:18:33 14 1870 Q. Now, you made a comment about

18:18:37 15 whose money this was, right?

18:18:37 16 A. Uh...

18:18:41 17 1871 Q. The SARP revenue.

18:18:43 18 A. Yeah. There was a -- there was,

18:18:45 19 obviously, a disagreement when we arrived as to was

18:18:48 20 it the government's money and they could decide

18:18:49 21 what they could do or not?

18:18:52 22 1872 Q. And have you -- remind me. Have

18:18:55 23 you reviewed any of the siteholder agreements?

18:18:58 24 A. The... Uh. In the package that

18:19:01 25 we received, there was, umm, I know there was a

18:19:07 1 briefing note about siteholder agreements.

18:19:09 2 1873 Q. Have you reviewed any of the
18:19:11 3 siteholder agreements? Have you reviewed their
18:19:15 4 terms and conditions to see how they work?

18:19:25 5 A. Umm. Well, if it was in the
18:19:26 6 package, I read it, but I don't remember reading
18:19:28 7 it, saying, 'I wonder if this is correct or not.'
18:19:31 8 I --

18:19:31 9 1874 Q. Did you analyze the terms and
18:19:34 10 conditions of the siteholders' agreements?

18:19:36 11 A. Umm. No. What I had asked for
18:19:41 12 was, if there's a dollar, how does -- where do all
18:19:45 13 the pennies go?

18:19:47 14 1875 Q. Okay.

18:19:47 15 A. That was the thing that I was
18:19:47 16 focused on.

18:19:49 17 1876 Q. You are aware, sir, that in order
18:19:51 18 for the government to get any revenue from a slot
18:19:54 19 machine, a racetrack operator had to agree to have
18:19:58 20 the slot machine installed at its premises?

18:20:02 21 A. Yeah. It's their premises.
18:20:04 22 Absolutely, yes.

18:20:04 23 1877 Q. Right. And you're also aware that
18:20:07 24 as a result of the requirement to get an agreement
18:20:10 25 from the racetrack operator, the government

18:20:12 1 couldn't just create revenue from slot machines.

18:20:17 2 It needed to partner with the racetrack operator,

18:20:19 3 right?

18:20:20 4 A. Yeah. It had to be -- yeah. Had

18:20:22 5 to be an agreement, yeah.

18:20:23 6 1878 Q. Right.

18:20:23 7 A. And they had to split the money

18:20:25 8 with the horsemen.

18:20:26 9 1879 Q. Correct.

18:20:26 10 A. Yeah.

18:20:27 11 1880 Q. And without that agreement with

18:20:29 12 the racetrack operator, there wouldn't be any

18:20:32 13 revenue, at all, for the government; correct?

18:20:34 14 A. The... Umm. Well, it would

18:20:41 15 depend on whether or not they would subsequently

18:20:43 16 negotiate rent from the track to have the slot

18:20:47 17 machines there.

18:20:47 18 1881 Q. Without the siteholder, being the

18:20:50 19 racetrack operator, agreeing to permit the

18:20:54 20 government to put a slot machine in its premises,

18:20:58 21 there would be no revenue for the government,

18:21:00 22 right?

18:21:01 23 A. From that site.

18:21:02 24 1882 Q. Right. And that is true of every

18:21:05 25 site at which there were slot machines; correct?

18:21:08 1 A. If they didn't reach a subsequent
18:21:10 2 agreement, they would have to have the revenue
18:21:12 3 coming from slot machines at a different location.
18:21:15 4 1883 Q. If they didn't reach an agreement
18:21:17 5 with the racetrack operator, there would be no
18:21:20 6 revenue from slot machines to government, right?
18:21:23 7 A. From that site.
18:21:24 8 1884 Q. Or any other site if there wasn't
18:21:27 9 an agreement at the other site, right?
18:21:29 10 A. They would have to have an
18:21:31 11 agreement where the slot machine was--
18:21:31 12 1885 Q. Right.
18:21:34 13 A. --unless they put it on government
18:21:37 14 property.
18:21:37 15 I suppose they could put it in the
18:21:40 16 Ministry.
18:21:41 17 1886 Q. And none of the racetracks we're
18:21:44 18 talking about have slot machines on government
18:21:46 19 property, right?
18:21:46 20 A. No.
18:21:47 21 1887 Q. Okay.
18:21:47 22 A. No.
18:21:47 23 1888 Q. And there wasn't any transfer
18:21:48 24 payment agreement that covered this revenue from
18:21:50 25 the slot machines; correct?

18:21:52 1 A. Umm. That's one of the things
18:21:59 2 that we found. This -- if there was, then there
18:22:01 3 would be more transparency.

18:22:02 4 1889 Q. There were no transfer payment
18:22:04 5 agreements governing the revenue generated from
18:22:07 6 slot machines; correct?

18:22:09 7 That's just a fact, sir.

18:22:10 8 MR. RATCLIFFE: Well,--

18:22:10 9 THE WITNESS: Okay.

18:22:11 10 MR. RATCLIFFE: --can you explain what
18:22:12 11 you mean by "transfer --"?

18:22:14 12 BY MR. LISUS:

18:22:14 13 1890 Q. Do you know what a "transfer
18:22:16 14 payment agreement" is?

18:22:17 15 A. Well, yeah. It's...

18:22:17 16 1891 Q. Okay. So there were no transfer--

18:22:17 17 A. We mentioned --

18:22:19 18 1892 Q. --payment agreements governing the
18:22:21 19 revenue from slot machines at racetrack, right?

18:22:24 20 A. Umm. I don't -- I don't know
18:22:25 21 that.

18:22:25 22 I know there was--

18:22:25 23 1893 Q. Have you seen any --

18:22:25 24 A. --a split.

18:22:27 25 MR. RATCLIFFE: Well, just, can you let

18:22:28 1 him finish the answer --

18:22:28 2 BY MR. LISUS:

18:22:28 3 1894 Q. Have you seen --

18:22:29 4 MR. RATCLIFFE: -- finish his answer?

18:22:29 5 BY MR. LISUS:

18:22:30 6 1895 Q. Sir, the split was pursuant to the

18:22:32 7 siteholder agreements, right?

18:22:33 8 A. If you say so.

18:22:34 9 1896 Q. You don't know?

18:22:34 10 A. All I know is what I was briefed,

18:22:37 11 which was the money was split 10 and 10.

18:22:39 12 1897 Q. Pursuant to a siteholder

18:22:41 13 agreement; correct?

18:22:43 14 A. Umm. I know that there was an

18:22:44 15 agreement. If it's a siteholder agreement,--

18:22:44 16 1898 Q. Okay.

18:22:47 17 A. --then I -- I don't disagree with

18:22:48 18 you, but you're asking me about transfer agreements

18:22:50 19 and I'm thinking of my time in government and

18:22:54 20 Ministers signing transfer agreements--

18:22:54 21 1899 Q. Correct.

18:22:55 22 A. --with agencies and all that.

18:22:56 23 I --

18:22:56 24 1900 Q. I know you are.

18:22:57 25 And you are aware that there was no

18:23:00 1 transfer agreement governing the generation and
18:23:04 2 split of revenues from slot machines at racetracks;
18:23:07 3 fair?

18:23:07 4 A. Yes. It would be a different
18:23:09 5 agreement that split the money.

18:23:10 6 1901 Q. Yes, you're agreeing with me,
18:23:12 7 right? I'm correct, there was no transfer
18:23:14 8 agreement governing the generation and allocation
18:23:20 9 of revenues from slot machines at racetracks;
18:23:22 10 correct?

18:23:22 11 A. Yes. I think it's called an LOI,
18:23:22 12 a letter of... Whatever they reached at the time
18:23:29 13 with -- you showed me the documents for Mr. Hodgson
18:23:30 14 that he signed. Whatever that's called.

18:23:31 15 1902 Q. Are you telling me, sir, as you
18:23:33 16 sit here today, that the June 1998 letter of
18:23:37 17 agreement is a transfer payment agreement?

18:23:39 18 A. No, it isn't.

18:23:39 19 1903 Q. Okay. Thank you.

18:23:42 20 A. Yeah.

18:23:44 21 1904 Q. Now, the only agreements,
18:24:01 22 therefore, pursuant to which revenues were
18:24:03 23 generated for a split between the government and
18:24:06 24 the horse racing industry was the LOI; correct?
18:24:12 25 One of them, yes?

18:24:14 1 A. Yes.

18:24:16 2 1905 Q. And the various contracts that

18:24:19 3 implemented slot machines at racetracks; correct?

18:24:23 4 A. Umm. Yes. Those two -- those two

18:24:27 5 things exist.

18:24:27 6 1906 Q. Okay. And you're not aware of any

18:24:29 7 other agreements, because I'm not, governing the

18:24:35 8 creation of revenue from slot machines at

18:24:37 9 racetracks and the allocation between government

18:24:40 10 and the horse racing industry?

18:24:42 11 O/B MR. ROSENBERG: I object. We've heard

18:24:44 12 lots of evidence about a contract between the

18:24:45 13 racetracks and the horsepeople's associations that

18:24:48 14 distributed the --

18:24:50 15 MR. LISUS: Those are identified in

18:24:52 16 this as part of the siteholder agreements,

18:24:54 17 Mr. Rosenberg.

18:24:57 18 MR. ROSENBERG: No, they're not part of

18:24:57 19 the siteholder agreements. They're not with OLG as

18:24:57 20 a party.

18:24:57 21 They're between the racetrack and the

18:24:57 22 horsepeople's association.

18:24:58 23 MR. LISUS: Okay.

18:24:58 24 MR. ROSENBERG: They govern how the

18:25:05 25 horsepeople's money gets paid.

18:25:05 1 BY MR. LISUS:

18:25:08 2 1907 Q. So take Mr. Rosenberg's comments.

18:25:08 3 A. Right.

18:25:10 4 1908 Q. No other agreements other than the

18:25:12 5 agreements Mr. Rosenberg is describing, the

18:25:13 6 siteholder agreements, and the letter of intent

18:25:15 7 from '98, right?

18:25:17 8 A. Uh. Yeah, to the best of my

18:25:17 9 recollection.

18:25:18 10 And -- and that's why I was struggling

18:25:20 11 because I knew there were these -- these other

18:25:22 12 arrangements with the horsemen.

18:25:23 13 It wasn't just catch as catch can.

18:25:25 14 There were -- people had agreed to how the money

18:25:28 15 would be spent.

18:25:28 16 1909 Q. Right. And the other arrangements

18:25:32 17 with the horsemen was that they would participate

18:25:34 18 in a share of the revenue generated from the Slots

18:25:37 19 at Racetracks?

18:25:37 20 A. Oh, yes. Yes.

18:25:42 21 1910 Q. Okay. Thank you.

18:25:43 22 Now, I was interested in a couple of

18:25:49 23 answers that you gave Mr. Ratcliffe about this

18:25:52 24 August 3rd e-mail that you sent to Mr. Gene,--

18:25:56 25 A. Mm-hmm.

18:25:56 1 1911 Q. --okay?

18:25:59 2 I understood you to tell him that you

18:26:01 3 -- one of the reasons you sent the e-mail to

18:26:04 4 Mr. Gene was because you were concerned that the

18:26:07 5 work of the Panel wasn't really on the radar of the

18:26:12 6 PO, the Premier's Office.

18:26:14 7 Is that fair?

18:26:15 8 A. The issue was OMAFRA and Finance.

18:26:18 9 I don't think it had gotten to the

18:26:20 10 Premier's Office.

18:26:22 11 1912 Q. And I think you explained that to

18:26:23 12 me last day we were talking to each other, that you

18:26:26 13 wanted the Premier's Office to sort of referee what

18:26:30 14 you perceived to be a growing dispute between

18:26:32 15 OMAFRA and Finance?

18:26:33 16 A. No. I just knew that ultimately,

18:26:35 17 the Premier's Office would have to get involved

18:26:38 18 because the two Ministries were not on the -- on

18:26:40 19 the same page.

18:26:41 20 1913 Q. Okay. And you made reference to

18:26:43 21 Mr. Ratcliffe that Mr. Shortill sent an e-mail

18:26:49 22 saying that he agreed with half of your e-mail, but

18:26:51 23 it wasn't clear which half he agreed with, right?

18:26:54 24 A. Yeah. I had never seen that

18:26:55 25 e-mail until you showed it to me.

18:26:57 1 1914 Q. Well, other -- right. But --

18:26:59 2 A. And I -- and what I recall from

18:27:01 3 seeing it last week is that he said, 'I agree with

18:27:03 4 half, but not the other half.'

18:27:04 5 1915 Q. Right. And you don't know which

18:27:05 6 half he was agreeing to?

18:27:07 7 A. Right.

18:27:07 8 1916 Q. Right.

18:27:09 9 You went on to say to Mr. Ratcliffe

18:27:11 10 that, 'The fact that Mr. Shortill from Finance

18:27:14 11 agreed with half would have been progress from

18:27:17 12 where we were before.'

18:27:19 13 Do you remember saying that?

18:27:20 14 A. Yes.

18:27:20 15 1917 Q. And what did you mean by that,

18:27:23 16 Mr. Wilkinson?

18:27:24 17 A. Oh. That progress had been made

18:27:26 18 in steps. The -- as I -- as I testified before,

18:27:29 19 the government made their decision, made the

18:27:30 20 announcement in end of February/March of 2012 that

18:27:34 21 they were cancelling the Slots at Racetrack

18:27:34 22 Program.

18:27:36 23 I know that I got involved in June,

18:27:39 24 when the Minister of Agriculture, probably end of

18:27:42 25 May, called me, asked me would I be on this Panel

18:27:46 1 with -- with two chaps I didn't know; Elmer and
18:27:48 2 John? And that, uh..., that he needed -- that the
18:27:50 3 industry -- he had -- the industry had come to him
18:27:52 4 and he knew that this needed to be reviewed. It
18:27:55 5 needed to be sort of an independent review.

18:27:58 6 So -- so I know that Finance didn't
18:28:01 7 announce, 'We're going to cancel SARP, but we're
18:28:04 8 going to have 50-million over three years.'

18:28:06 9 So by May, it was 50-million over three
18:28:09 10 years, so that was progress.

18:28:10 11 Then we wrote a report that would not
18:28:12 12 have been well received in Finance because we said,
18:28:14 13 'No. I think you've made a mistake. I think your
18:28:17 14 economic analysis is wrong.'

18:28:19 15 That's not always -- that would not be
18:28:20 16 welcomed news from three former Cabinet Ministers,
18:28:23 17 but we were able to show them why we believe what
18:28:28 18 we believed and that it would -- if they wanted the
18:28:29 19 industry to continue, that it was going to cost
18:28:31 20 them money.

18:28:32 21 1918 Q. Okay.

18:28:32 22 You told Mr. Ratcliffe that very few
18:28:34 23 people were making money from SARP.

18:28:37 24 Do you remember saying that?

18:28:38 25 A. That very few people were making

18:28:42 1 money from... I don't recall that.

18:28:43 2 1919 Q. No?

18:28:45 3 In fact, a lot of people were making a

18:28:49 4 lot of money from SARP, right?

18:28:50 5 A. Yeah. It was the economic driver,

18:28:52 6 so I -- that's why I'm--

18:28:52 7 1920 Q. Right.

18:28:53 8 A. --surprised by that. I don't

18:28:55 9 recall--

18:28:55 10 1921 Q. Okay. Well, that's a helpful--

18:28:55 11 A. --saying that.

18:28:56 12 1922 Q. --clarification. Thank you.

18:28:58 13 How much did the Government of Ontario

18:29:00 14 make from SARP since its inception to the

18:29:04 15 cancellation of revenue share, '98 to 2012? Do you

18:29:08 16 know?

18:29:09 17 MR. RATCLIFFE: Do you know the answer?

18:29:10 18 THE WITNESS: No.

18:29:13 19 BY MR. LISUS:

18:29:13 20 1923 Q. Mr. Drummond said it was about

18:29:17 21 \$16-billion.

18:29:25 22 A. Well, the government gets the

18:29:25 23 revenue from slot machines. They had an agreement

18:29:27 24 to take some of it and give it to the people in the

18:29:27 25 horse racing industry, half to tracks, and half to

18:29:29 1 the horsemen, so -- so it was their money and --

18:29:32 2 1924 Q. Whose money?

18:29:33 3 A. It was, uh... Well, it was the

18:29:35 4 people of Ontario's money because gambling requires

18:29:39 5 -- it's a monopoly owned by the government for slot

18:29:43 6 machines. You just can't have a slot machine,

18:29:46 7 right. And at the--

18:29:47 8 1925 Q. Sure.

18:29:47 9 A. --time, all of the tracks -- or -

18:29:49 10 sorry - all of the slot machines were owned by OLG,

18:29:51 11 which was an agency of the government.

18:29:53 12 1926 Q. Right. And you can't -- you

18:29:55 13 couldn't just have a slot machine. That's why they

18:29:57 14 had to reach an agreement with the horse racing

18:30:00 15 industry to have their slot machines at racetracks,

18:30:03 16 right?

18:30:03 17 A. Oh. In '98, yeah. That was --

18:30:03 18 1927 Q. Yeah.

18:30:05 19 A. That was the solution, yeah.

18:30:06 20 1928 Q. Yeah. And it wasn't only in '98.

18:30:08 21 It was in '99 and 2000, right?

18:30:10 22 A. Yeah. It was until the government

18:30:11 23 decided they wanted to do something different.

18:30:13 24 1929 Q. Right. And what they wanted to do

18:30:15 25 different was move slot machines into cities,

18:30:19 1 right?

18:30:20 2 A. Umm. Yeah. My understanding is
18:30:22 3 that's -- that's -- that was the -- the driver of
18:30:25 4 that, if you just looked at it from one
18:30:27 5 perspective.

18:30:28 6 1930 Q. Right. They wanted to keep slot
18:30:30 7 machines because they had demonstrated themselves
18:30:32 8 to be a good generator of revenue, right?

18:30:35 9 O/B MR. ROSENBERG: I object to this line
18:30:37 10 of questioning. There's no resemblance to recross.

18:30:40 11 BY MR. LISUS:

18:30:40 12 1931 Q. But they wanted to locate them in
18:30:42 13 a place where there could be a higher yield from
18:30:45 14 them, right?

18:30:45 15 A. Mr. -- I'm not OLG. I'm not an
18:30:48 16 expert on the government policy.

18:30:50 17 I was brought in to deal with the issue
18:30:53 18 that they asked me to deal with and I did my best
18:30:57 19 to deal with that issue.

18:30:58 20 1932 Q. Right.

18:31:00 21 Leaving aside whose money you think it
18:31:03 22 was or is, one thing we can agree on is, it wasn't
18:31:05 23 tax revenue, right?

18:31:07 24 A. Uh. It wasn't taxation revenue.
18:31:11 25 It was -- it was revenue to the government.

18:31:12 1 1933 Q. It was gaming revenue?

18:31:14 2 A. Yeah. Gaming revenue.

18:31:16 3 1934 Q. Right.

18:31:17 4 A. Mm-hmm.

18:31:18 5 1935 Q. And it was gaming revenue

18:31:19 6 generated by a for-profit government business

18:31:23 7 enterprise in partnership with the horse racing

18:31:26 8 industry; correct?

18:31:27 9 A. Uh. I'm not a lawyer about

18:31:33 10 partnership. All I know is there was -- there was

18:31:35 11 obviously agreements--

18:31:35 12 1936 Q. Fair enough.

18:31:35 13 A. --that --

18:31:36 14 1937 Q. It was gaming revenue generated by

18:31:40 15 a government business enterprise in a contractual

18:31:42 16 relationship with private racetracks; correct?

18:31:42 17 MR. RATCLIFFE: Well, how does this

18:31:42 18 flow from the --

18:31:42 19 BY MR. LISUS:

18:31:46 20 1938 Q. Isn't that right, sir?

18:31:46 21 A. I'm not a lawyer, so I don't get

18:31:47 22 into questions of contract, corporation and who did

18:31:47 23 what.

18:31:52 24 1939 Q. You were Minister of Revenue.

18:31:52 25 Ontario Lottery and Gaming Corporation is a

18:31:54 1 for-profit government business enterprise; correct?

18:31:58 2 A. Uh. Yes. And -- but it reported
18:32:00 3 to the Minister of Finance, yeah.

18:32:02 4 1940 Q. Fine.

18:32:05 5 And that for-profit government business
18:32:08 6 enterprise that reported to the Minister of Finance
18:32:11 7 had entered into contracts with racetracks, right?

18:32:14 8 A. They had what are referred to as
18:32:17 9 "siteholder agreements".

18:32:18 10 1941 Q. Pursuant to which slot -- their
18:32:21 11 slot machines were put into racetrack premises,
18:32:26 12 right?

18:32:26 13 MR. RATCLIFFE: Well, you're just
18:32:27 14 covering territory you covered on your Examination
18:32:29 15 originally.

18:32:30 16 How does this -- how is this --

18:32:32 17 MR. LISUS: I'm responding to your
18:32:34 18 leading evidence from him as to whose money this
18:32:36 19 was.

18:32:37 20 BY MR. LISUS:

18:32:37 21 1942 Q. Are you with my question,
18:32:39 22 Mr. Wilkinson?

18:32:39 23 A. Umm. Yeah. That there was an
18:32:42 24 agreement, umm, and if the government -- well, if
18:32:46 25 the government didn't agree, then no one would

18:32:48 1 receive any money.

18:32:48 2 So that's why I would think it's the
18:32:50 3 government's money.

18:32:51 4 1943 Q. And if the racetrack didn't agree,
18:32:53 5 no one would receive any money, right?

18:32:54 6 A. They would have to have it
18:32:56 7 someplace else.

18:32:57 8 1944 Q. Another racetrack?

18:32:57 9 A. Or they'd have to convince people
18:33:00 10 to have the slots someplace else.

18:33:01 11 1945 Q. Convince people like
18:33:02 12 municipalities?

18:33:05 13 A. All I know is that -- that -- that
18:33:08 14 governments can do what they do, and if they found
18:33:11 15 the best solution at the time, they found the best
18:33:13 16 solution at the time.

18:33:14 17 1946 Q. So convince them to be -- convince
18:33:20 18 someone to have the machines somewhere else like in
18:33:23 19 a tent or something like that.

18:33:24 20 Is that right?

18:33:25 21 A. Well, that's -- when -- when we
18:33:27 22 were briefed, that seemed to be... Plan "B" didn't
18:33:29 23 seem to be, as I said, didn't seem to be well, uh,
18:33:34 24 ready to go.

18:33:36 25 MR. ROSENBERG: Counsel, we covered

18:33:38 1 this already.

18:33:38 2 MR. LISUS: Okay. Thank you,

18:33:39 3 Mr. Wilkinson. That's helpful.

18:33:40 4 THE COURT REPORTER: Mr. Rosenberg, did
18:33:40 5 you want to mark CRE 0230844?

18:33:43 6 MR. ROSENBERG: Did we not mark that?

18:33:46 7 THE COURT REPORTER: I wrote this down,
18:33:47 8 but I don't have a number.

18:33:50 9 MR. ROSENBERG: Well, let's make sure
18:33:52 10 that's marked.

18:34:02 11 MR. RATCLIFFE: Now, you're not
18:34:03 12 permitted to discuss anything that went on here
18:34:05 13 today with any of the other people, so...

18:34:07 14 THE WITNESS: Oh, okay.

18:34:09 15 MR. RATCLIFFE: Yeah.

18:34:09 16 THE WITNESS: And so, do you guys let
18:34:09 17 me know when that's all done?

18:34:09 18 MR. RATCLIFFE: Yeah.

18:34:09 19 THE WITNESS: Since I know these
18:34:09 20 people, so...

18:34:12 21 MR. RATCLIFFE: Well, you can talk
18:34:13 22 about the weather in the usual Canadian context,
18:34:15 23 but...

18:34:17 24 THE WITNESS: Yeah. But I -- I've not
18:34:18 25 sought to talk to anybody or anything like that.

1 MR. RATCLIFFE: Yeah. No, no. And I
2 understand, of course, but just in terms of...

3 MR. ROSENBERG: So let's mark that as
4 our last exhibit, which is...

5 THE COURT REPORTER: ...42.

6 ---EXHIBIT NO. 42: A document produced
7 by OMAFRA entitled Information Note, September
8 Yearling Racehorse Sales, Doc ID Number CRE
9 0230844.

10 ---[Ending time: 6:34 p.m.]
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REPORTER'S CERTIFICATE

I, BONNIE LYNN VAN DER MEER, C.S.R.,
Chartered Shorthand Reporter, hereby certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness continued to be
under oath;

That the testimony of the witness and
all objections made at the time of examination were
recorded stenographically by me and were thereafter
transcribed by me;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 9th day of January, 2018.



BONNIE LYNN VAN DER MEER, CSR
NEESON COURT REPORTING INC.

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