

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

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STEPHEN ORSINI  
February 12, 2018

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neelsons

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1 Court File No. 842/12

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 B E T W E E N :

5  
6 SEELSTER FARMS INC., WINBAK FARM OF CANADA INC.,  
7 STONEBRIDGE FARM, 774440 ONTARIO INC., NORTHFIELDS  
8 FARM INC., JOHN MCKNIGHT, TARA HILLS STUD LTD.,  
9 TWINBROOK LTD., EMERALD RIDGE FARM, CENTURY SPRING  
10 FARMS, HARRY RUTHERFORD, DIANE INGHAM, BURGESS  
11 FARMS INC., ROBERT BURGESS, 453997 ONTARIO LTD.,  
12 TERRY DEVOS, SONIA DEVOS, GLENN BECHTEL, GARTH  
13 BECHTEL, 496268 NEW YORK INC., HAMSTAN FARM INC.,  
14 ESTATE OF JAMES CARR, deceased, by its executor  
15 Darlene Carr, ESTATE OF GUY POLILLO, deceased, by  
16 its executor Carolyn Polillo, DAVID GOODROW,  
17 TIMPANO GAMING INC., CRAIG TURNER, GLENGATE  
18 HOLDINGS INC., KENDAL HILLS STUD FARM LTD., ANDY  
19 KLEMENCIC, TIM KLEMENCIC, STAN KLEMENCIC, JEFF  
20 RUCH, BRETT ANDERSON, DR. BRETT C. ANDERSON  
21 PROFESSIONAL VETERINARY CORPORATION, KILLEAN ACRES  
22 INC., DECISION THEORY INC., 296268 ONTARIO LTD.,  
23 DOUGLAS MURRAY MCCONNELL, QUINTET FARMS INC., KARIN  
24 BURGESS, BLAIR BURGESS, ST. LAD'S LTD., WINDSUN  
25 FARM INC., SKYHAVEN FARMS, HIGH STAKES INC.,

<p style="text-align: right;">Page 2</p> <p>1 1806112 ONTARIO INC., GLASSFORD EQUI-CARE, JOHN                  2 GLASSFORD, GLORIA ROBINSON and KEITH ROBINSON                  3 Plaintiffs                  4 - and -                  5 HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and                  6 ONTARIO LOTTERY AND GAMING CORPORATION                  7 Defendants                  8 -----                  9 --- This is the Rule 39.03 Examination of                  10 STEPHEN ORSINI, a non-party witness herein, taken                  11 at the offices of Neeson Court Reporting Inc.,                  12 77 King Street West, Suite 2020, Toronto, Ontario,                  13 on the 12th day of February 2018.                  14 -----                  15 A P P E A R A N C E S :                  16 Jonathan Lisus, Esq.,                  17 Ian Matthews, Esq.,                  18 &amp; Vivien Milat, Esq , for the Plaintiffs.                  19                  20 Robert Ratcliffe, Esq.,                  21 &amp; Rodney Kort, Esq., for the Defendant                  22 Crown.                  23                  24 Michael Rosenberg, Esq., for the OLG.                  25 REPORTED BY: Carissa Stabbler, RPR, CSR</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">INDEX OF EXHIBITS</p> <p>1 2 3 4 NUMBER/DESCRIPTION PAGE/LINE NO. 5 1: SB0005282. 62:12 6 2: CRE0110499. 67:9 7 3: SB0001482. 77:5 8 4: CRE0056354. 81:6 9 A for Identification: CR0030882. 84:21 10 5: CRE0056668, CRE0056669, 91:10 11 CRE0056670, CRE0056673, and 12 CRE0056674. 13 6: CRE0017331 and CRE0017332. 102:10 14 7: SB0005371. 108:14 15 B for Identification: CRE0075818 and 112:15 16 CRE0075819. 17 8: CRE7967 and CRE7968. 117:19 18 C for Identification: SB0001486. 146:7 19 9: CRE0076373 to CRE0076379. 153:3 20 10: CRE0105084 and CRE0105085. 160:14 21 11: CRE0006095 and CRE0006097. 176:5 22 D for Identification: SB0001490. 177:23 23 12: OLGSB0000699. 187:19 24 13: CRE0085410 and CR0002238. 198:10 25 14: CRE0274150. 211:4</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 2 3 WITNESS: STEPHEN ORSINI 4 PAGE 5 CROSS-EXAMINATION BY MR. LISUS..... 6 6 7 8 **The following list of undertakings, advisements 9 and refusals is meant as a guide only for the 10 assistance of counsel and no other purpose** 11 12 13 INDEX OF UNDERTAKINGS 14 The questions/requests undertaken are noted by U/T 15 and appear on the following pages: 260:3, 263:16 16 17 18 INDEX OF ADVISEMENTS 19 (NONE MARKED) 20 21 INDEX OF REFUSALS 22 The questions/requests refused are noted by R/F and 23 appear on the following pages: 30:6, 126:15, 132:1, 24 132:8, 132:13, 132:25, 133:11, 135:1, 136:24, 25 137:12, 141:14, 189:22, 214:13, 219:10</p>	<p style="text-align: right;">Page 5</p> <p>1 E for Identification: CRE0094799. 221:21 2 F for Identification: CRE0030111 and 227:19 3 CRE0030112. 4 15: OLGSB0000905 and OLGSB0000906. 248:22 5 16: CRE0029705, CRE0029707, and 248:24 6 CRE0029708. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 6</p> <p>1 -- Upon Commencing at 10:05 a.m. --                  2 STEPHEN ORSINI: SWORN.                  3 CROSS-EXAMINATION BY MR. LISUS:                  4 1 Q. Good morning, Mr. Orsini.                  5 A. Good morning.                  6 2 Q. I'd like to just understand a bit                  7 about your employment history with the Ontario                  8 Public Service. Okay?                  9 A. Sure.                  10 3 Q. And as I understand it, you                  11 commenced employment in August of 1986 as an                  12 executive assistant and senior policy advisor in                  13 the office of the chief executive officer of the                  14 Ontario Development Corporation; is that correct?                  15 A. That was one of my positions, but                  16 I was working with the Ontario government prior to                  17 that.                  18 4 Q. Okay. Let's try and do it this                  19 way: When did you complete your post-secondary                  20 education?                  21 A. So my undergrad was '81 from                  22 Ryerson, government regional planning. Then I went                  23 to get my masters at York University, environmental                  24 studies in the area of economic development.                  25 While I was in that program, I applied</p>	<p style="text-align: right;">Page 8</p> <p>1 A. I started off as a director of                  2 public affairs and left in September 2005 as vice                  3 president of policy and public affairs.                  4 8 Q. Okay. And did you say you left                  5 May 2003? I have June '98 to May 2003 Ontario                  6 Hospital Association; is that correct?                  7 A. I have -- it was in the summer of                  8 '98. Could have been July, but that time, June or                  9 July. And I returned to assistant deputy minister                  10 of office of the budget and taxation in September                  11 of 2005, if I recall correctly.                  12 9 Q. Got it. Because between May of                  13 '03 and September '05, you were vice president                  14 policy and public affairs at Ontario Hospital                  15 Association?                  16 A. That's correct.                  17 10 Q. All right. So September '05 to                  18 October '09, you are the assistant deputy minister                  19 office of the budget and taxation in the Ministry                  20 of Finance; right?                  21 A. That's correct.                  22 11 Q. Who was the Minister of Finance                  23 from September '05 to October '09?                  24 A. There was a change. So I started                  25 off in '05 with Minister Greg Sorbara. He left</p>
<p style="text-align: right;">Page 7</p> <p>1 for a job for the summer in the economic                  2 development branch of treasury and economics,                  3 Ministry of Treasury and Economics. And that would                  4 have been probably the -- it's going to be around                  5 1981-82.                  6 5 Q. Okay. I don't have to do this in                  7 exquisite detail, so let me just see if I can get                  8 some of the basics. And I'm going from your                  9 profile that's in the public domain.                  10 From December '89 to May 1998, you were                  11 a senior economist, senior budget advisor at the                  12 taxation policy branch; is that correct?                  13 A. That's correct.                  14 6 Q. Just tell me briefly what your                  15 responsibilities were in that capacity.                  16 A. I started off as a senior                  17 economist initially hired in '89 to work on sales                  18 tax harmonization. Then I moved over to -- as a                  19 manager of corporate tax policy and -- the                  20 corporate tax policy until '98.                  21 7 Q. And then as I understand the                  22 sequence, sir, between June '98 and May 2003, you                  23 had a hiatus from the public service and were the                  24 director policy and research public affairs Ontario                  25 Hospital Association?</p>	<p style="text-align: right;">Page 9</p> <p>1 that fall, and Minister Dwight Duncan stepped into                  2 his shoes. And then Minister Sorbara came back                  3 again for a short period of time, and then he left,                  4 and Minister Dwight Duncan returned to the Minister                  5 of Finance. I don't know the exact dates for those                  6 transitions.                  7 12 Q. And then September 2010 to                  8 December 2011, you were Deputy Minister of Revenue                  9 and Associate Deputy Minister of Taxation,                  10 Agencies, and Pensions in the Ministries of Revenue                  11 and Finance?                  12 A. Yes, that sounds correct.                  13 13 Q. Okay. And then from December 2011                  14 to July 2014, you were the Deputy Minister of                  15 Finance and secretary of Treasury Board; correct?                  16 A. From December 2014 --                  17 14 Q. December 2011 to July 2014, Deputy                  18 Minister of Finance and secretary of Treasury Board                  19 Ontario Ministry of Finance?                  20 A. That sounds correct.                  21 15 Q. All right. So if I just look at                  22 these dates, you were not, as I understand it --                  23 well, maybe I'll just ask you this way: Were you                  24 in government at the time the Slots at Racetrack                  25 Program was implemented in 1998?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. I don't recall, and I wouldn't              2 have had involvement if I was.              3 16 Q. Okay.              4 A. I don't think I had any              5 involvement.              6 17 Q. All right. When was your first              7 involvement with the Slots at Racetrack Program?              8 A. It would be -- and I don't recall              9 exactly, but a general ballpark would be the time I              10 was Associate Deputy Minister of Taxation,              11 Agencies, and Pensions. I had responsibility,              12 oversight for LCBO.              13 At the time, they moved responsibility              14 for OLG -- I forget the ministry -- to Finance, and              15 it would have been under my purview as an associate              16 with an ADM for each of those major areas; so an              17 ADM for taxation, an ADM for agencies, and an ADM              18 for pensions.              19 18 Q. Okay. When you say "agencies," do              20 you include OLG as an agency?              21 A. There was a number of government's              22 business enterprises, LCBO and the OLG.              23 19 Q. All right. And was the ORC one of              24 the agencies that Finance was responsible for at              25 that time?</p>	<p style="text-align: right;">Page 12</p> <p>1 have been part of the different lines of business              2 that I would have been briefed on.              3 23 Q. Right. You would have been              4 generally aware of the different lines of business              5 including the slot machines at racetracks, but you              6 didn't know upon the assumption of that portfolio              7 of the details of --              8 A. I wouldn't have been exposed to              9 the details.              10 24 Q. Thank you. Now, it does appear,              11 sir, from our discussion that from December 2011 to              12 July 2014, you were the Deputy Minister of Finance              13 and secretary of the Treasury Board, right,              14 December 11 to July 2014?              15 A. Yes.              16 25 Q. Now, what were your              17 responsibilities as Deputy Minister of Finance?              18 A. So I had oversight of the Ministry              19 of Finance, so being the most senior public servant              20 within the Ministry of Finance, and responsible for              21 economic policy, taxation policy, pension policy,              22 the various agencies, tax administration and              23 collections.              24 I think financial -- the areas of              25 responsibility that the province would be</p>
<p style="text-align: right;">Page 11</p> <p>1 A. I think it came along with the              2 responsibility.              3 20 Q. Okay. So when the agencies and              4 the government business enterprise came under your              5 responsibility, did you familiarize yourself with              6 the Slots at Racetrack Program?              7 A. I would have been briefed on the              8 entire bundle of different elements of the gaming              9 profile.              10 21 Q. Okay. And by that, I take it you              11 mean that you would have been briefed on what the              12 various business lines of the Ontario Lottery and              13 Gaming Corporation was at the time?              14 A. It might have been at a fairly              15 high level given that there's an ADM responsible              16 for it, who would be much more of the content              17 expert.              18 22 Q. Understood. But I understand you              19 wouldn't have been given details, but would you              20 have been briefed on what the business lines of the              21 Ontario Lottery and Gaming Corporation were?              22 A. I think there was a review that              23 was going on and looking at their land-based              24 casinos, their lottery terminals, and racetracks              25 would be part of -- the slots at racetracks would</p>	<p style="text-align: right;">Page 13</p> <p>1 responsible on financial services, auto insurance,              2 credit unions. There's a property taxation, all              3 the different forms of taxation.              4 So I would have a very high-level              5 overview of all the different lines of business              6 within the Ministry of Finance.              7 26 Q. Okay. And what were your              8 responsibilities as secretary of the Treasury              9 Board?              10 A. As secretary of the Treasury              11 Board, I was responsible for the oversight, the              12 ministry support for Treasury Board discussions.              13 So it's a Cabinet committee, if you will.              14 27 Q. The Treasury Board is a Cabinet              15 committee?              16 A. Yes.              17 28 Q. Okay.              18 A. And as secretary, I attended all              19 meetings. I was briefed on the agenda. I was              20 there when the minister was briefed on the agenda.              21 I was present at the meeting. And my role was to              22 be -- signed minutes to the meetings and make sure              23 that we were providing timely responses to              24 questions raised by ministers.              25 29 Q. Did you have oversight for</p>

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<p>1 transfer payments from the Ontario government in 2 2011 to 2014?</p> <p>3 A. Anything in particular -- I would 4 not be a signatory to any of those transfer payment 5 agreements. A lot of them were done by line 6 ministries working with agencies. But I wouldn't 7 myself be -- I don't recall being a signatory to a 8 transfer payment.</p> <p>9 30 Q. No, I wasn't suggesting you were. 10 I was just trying to understand whether transfer 11 payments from the government to organizations or 12 individuals were part of the portfolio that you 13 were responsible for as Deputy Minister of Finance 14 and secretary of the Treasury Board.</p> <p>15 A. I think most of my attention was 16 put to the accountability mechanisms around our 17 transfer payment mechanisms to ensure value for 18 money.</p> <p>19 31 Q. Were you responsible for oversight 20 over the Ontario economic development programs in 21 2011 to 2014?</p> <p>22 A. Most of those programs were 23 delivered by the Ministry of Economic Development 24 and Growth, currently named Economic Development 25 and Growth. So the oversight would be in various</p>	<p>1 in that.</p> <p>2 35 Q. Are you familiar with the term 3 Project 76?</p> <p>4 A. I've heard of Project 76, and I 5 understood it was a review of our economic 6 development programs.</p> <p>7 36 Q. Okay. Do you recall being 8 involved in -- at any level in Project 76?</p> <p>9 A. Other than to understand it was 10 being commissioned by the Ministry of Economic 11 Development and Growth, they retain an outside firm 12 to help evaluate our industrial program.</p> <p>13 37 Q. Was that outside firm KPMG?</p> <p>14 A. I don't -- I don't know.</p> <p>15 38 Q. I want to make sure I understood 16 you properly. Project 76 was a review of all of 17 the government's economic development programs?</p> <p>18 A. I don't know if it was all of 19 them. It was a review of the -- the ones that the 20 ministry leading it, their programs.</p> <p>21 39 Q. Sir, I want you to help me 22 understand a little bit about the mechanics of 23 these things because I'm learning. Monies paid to 24 individuals or organizations pursuant to an 25 economic development program were subject to</p>
Page 15	Page 17
<p>1 line ministries.</p> <p>2 32 Q. Various line ministries?</p> <p>3 A. Yes.</p> <p>4 33 Q. Okay. What was the ministry that 5 you said was responsible for the Ontario economic 6 development programs?</p> <p>7 A. There was one ministry that had 8 responsibility for the bulk of them but not 9 exclusive to that, and it's currently entitled the 10 Ministry of Economic Development and Growth, but it 11 had different names in the past: Ministry Trade 12 and Technology, Economic Development International 13 Trade.</p> <p>14 The title of that ministry has changed 15 over time, but other ministries also had program 16 responsibility. You had Ministry of Northern 17 Development and Mines. You had the Ministry of 18 Agriculture, Food and Rural Affairs. Tourism, 19 culture, and sport was another ministry that would 20 have a program responsibility.</p> <p>21 34 Q. Did Ministry of Finance have any 22 program responsibility for economic development 23 programs in 2011 to 2014?</p> <p>24 A. We had a number of tax programs 25 that provided tax incentives that would be included</p>	<p>1 government accounting; correct?</p> <p>2 A. Okay, that -- repeat that again. 3 I'm trying to understand the question.</p> <p>4 40 Q. Economic development programs --</p> <p>5 A. Right.</p> <p>6 41 Q. -- would be programs pursuant to 7 which monies were paid to individuals or 8 organizations to advance economic development; 9 correct?</p> <p>10 A. That could be one element. 11 It's -- not charging a fee or a tax would be 12 another form. So instead of giving money, you're 13 not collecting money, so they can repurpose it.</p> <p>14 There's -- other economic development 15 is procurement where you buy services. We've done 16 that for years in transit. So the term "economic 17 development" is quite broad.</p> <p>18 42 Q. Right. And so whatever form of 19 activity is taken, be it the direct disbursement of 20 dollars, the provision of a tax advantage, or 21 procurement on behalf of a recipient, all of those 22 activities would be subject to government audit and 23 control. The monies or benefit supplied would be 24 recorded; correct?</p> <p>25 A. So one of the things that -- part</p>

<p style="text-align: right;">Page 18</p> <p>1 of the transfer payment accountability was better                  2 insights in metrics about monies going out, the                  3 value, the benefit from those monies flowing.                  4 They're all at different stages. Some                  5 are very detailed; some are less detailed, but the                  6 objective is at some level to try to get a handle                  7 on the amounts going out and the benefits from                  8 those amounts.                  9 43 Q. All right. And then with respect                  10 to transfer payments, those were subject to strict                  11 accountability controls pursuant to the management                  12 board directive on transfer payment accountability;                  13 correct?                  14 A. They would be -- over time                  15 continue to be improved.                  16 44 Q. Right. But my understanding, sir,                  17 is that certainly from 1998, there were transfer                  18 payment accountability directives in effect in the                  19 Ontario Public Service. Does that accord with your                  20 recollection?                  21 A. I can't -- I wasn't involved back                  22 in '98, so that's something I -- it's more of a                  23 presumption than my understanding. But I would                  24 presume at some level.                  25 45 Q. Okay. Now, you understand, sir,</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I reviewed the Cabinet submission                  2 that I was a signatory to.                  3 52 Q. All right. Is that it?                  4 A. And the interim and final panel                  5 report.                  6 53 Q. Okay. Did you review emails that                  7 you sent and received?                  8 A. I did review some emails. Not in                  9 great detail.                  10 54 Q. All right. You said you met with                  11 counsel. You met with counsel for Ontario?                  12 A. That's correct.                  13 55 Q. And counsel for OLG, did they                  14 participate in that meeting?                  15 A. One meeting, yes.                  16 56 Q. Okay. Now, did you, sir, review                  17 the siteholder agreements that were entered into                  18 between the Ontario Lottery Corporation or OLG --                  19 I'll use those terms interchangeably -- and the                  20 various racetracks?                  21 A. No, I did not.                  22 57 Q. Okay. Have you ever reviewed                  23 them?                  24 A. No, I didn't.                  25 58 Q. I want to make sure that I'm being</p>
<p style="text-align: right;">Page 19</p> <p>1 that you're here today pursuant to a summons and a                  2 court order; correct?                  3 A. Yes.                  4 46 Q. And you did receive and review the                  5 summons that was issued to you; am I correct?                  6 A. That's correct.                  7 47 Q. And you saw the particular                  8 categories and kinds of documents that were                  9 summonsed in that summons; right?                  10 A. I'm going to have to refresh my                  11 memory.                  12 48 Q. Yes. Take your time.                  13 A. Some of these references are very                  14 broadly speaking, so I can't attest to each aspect                  15 of the list here.                  16 49 Q. But before coming here today, you                  17 did prepare yourself to answer questions; correct?                  18 A. I had met with counsel, and they                  19 took me through the process that I'd be engaged in.                  20 50 Q. Did you review any documents to                  21 refresh your recollection?                  22 A. I did review some of the                  23 documents.                  24 51 Q. All right. And do you recall what                  25 kinds of documents you reviewed?</p>	<p style="text-align: right;">Page 21</p> <p>1 clear. Are you telling me that you have never                  2 reviewed the siteholder agreements?                  3 A. I don't recall in any of my                  4 positions, given the level I was at, to have ever                  5 reviewed a specific siteholder agreement.                  6 59 Q. You do understand, sir, that the                  7 siteholder agreements are the instruments that                  8 describe the manner in which revenue generated from                  9 Slot Machines at Racetrack was shared between OLG                  10 as an agent of the Ontario government, the                  11 racetrack, municipalities, and horse people. You                  12 understand that much?                  13 A. That was the general thrust, as I                  14 understand.                  15 60 Q. Right. And you understood that in                  16 2011; correct?                  17 A. I would say yes. At that time,                  18 yes.                  19 61 Q. And I should correct myself. I                  20 understand that there was a separate arrangement                  21 between the municipalities of OLG outside the                  22 siteholder agreement. Do you understand that to be                  23 the case?                  24 A. I don't know the specifics, but if                  25 you say so.</p>

<p style="text-align: right;">Page 22</p> <p>1 62 Q. All right. You are aware that                  2 Mr. Snobelen has also given evidence under summons?                  3 A. I don't know the full list of                  4 people that --                  5 63 Q. Are you aware that Mr. Snobelen                  6 has testified in this proceeding?                  7 A. Based on your comments, yes. I                  8 didn't know -- I really don't know beforehand                  9 who -- the list of all the people testifying.                  10 64 Q. Did you know that Mr. Wilkinson                  11 has testified?                  12 A. I believe he would be one of the                  13 panel members.                  14 65 Q. Okay. Did you know that                  15 Mr. Drummond has testified?                  16 A. I wouldn't be surprised if                  17 Mr. Drummond had testified.                  18 66 Q. Did you know that Mr. Seiling has                  19 testified?                  20 MR. RATCLIFFE: Counsel, I'm not sure                  21 where this is leading or how this assists in any                  22 way to have him go through the list.                  23 MR. LISUS: I'm not going to go through                  24 the entire list.                  25 BY MR. LISUS:</p>	<p style="text-align: right;">Page 24</p> <p>1 72 Q. And I'm going to ask you to look                  2 at the siteholder agreement with me, sir, which was                  3 exhibit -- it's Exhibit E to the Affidavit of                  4 Mr. Flynn, but it was an exhibit on Mr. Snobelen's                  5 examination as well. Exhibit 12 on the examination                  6 of Mr. Snobelen.                  7 MR. ROSENBERG: SB2460?                  8 MR. LISUS: Yes.                  9 MR. ROSENBERG: Thank you.                  10 MR. RATCLIFFE: Where are we going with                  11 this, Counsel? Mr. Lisus? Does Mr. Orsini have an                  12 opportunity to read through the whole agreement?                  13 MR. LISUS: If he wants --                  14 MR. RATCLIFFE: He already indicated in                  15 his testimony he wasn't familiar with it and he                  16 hadn't seen it before, so I'm not sure how asking                  17 for his views on this really adds merit to the                  18 issues that are in play.                  19 BY MR. LISUS:                  20 73 Q. Mr. Orsini, let me ask you this:                  21 In the first quarter of 2012, you supported the                  22 decision that the government made; correct?                  23 A. I prepared a Cabinet submission                  24 implementing the direction that the minister,                  25 government wanted to bring towards Cabinet.</p>
<p style="text-align: right;">Page 23</p> <p>1 67 Q. Are you aware that Mr. Seiling has                  2 given evidence?                  3 A. I'm not aware that he was giving                  4 evidence.                  5 68 Q. Do you know who Mr. Seiling is?                  6 A. The former head of the Ontario                  7 Racing Commission; is that correct?                  8 69 Q. Yes. You understood, sir, in 2010                  9 and '11 that the Ontario Racing Commission was the                  10 regulator of the horse racing industry?                  11 A. They had a number of                  12 responsibilities oversight -- overseeing the racing                  13 industry.                  14 70 Q. You understood that?                  15 A. Yes.                  16 71 Q. And I take it, sir, that you                  17 understood in the first quarter of 2012, that in                  18 order to implement the government's decision to                  19 terminate the revenue-sharing arrangement between                  20 the racetracks, the OLG, and the horse people, that                  21 the siteholder agreements were going to be                  22 terminated. You understood that?                  23 A. The decision the government made                  24 was to give notice of the termination of those                  25 agreements.</p>	<p style="text-align: right;">Page 25</p> <p>1 74 Q. And that minister is Mr. Duncan?                  2 A. That's correct.                  3 75 Q. And you supported that                  4 recommendation?                  5 A. I implemented the direction that I                  6 received.                  7 76 Q. Did you agree with it?                  8 A. I'm a public servant. My role is                  9 to implement government direction.                  10 77 Q. Did you think it was the right                  11 decision to make?                  12 A. I should -- at that time, given                  13 everything that was going on, the government was                  14 faced with some very difficult --                  15 78 Q. I just need a yes or no, sir. Did                  16 you think it was the right decision?                  17 MR. RATCLIFFE: He can't give a                  18 yes-or-no answer. He already said --                  19 THE WITNESS: I'm just saying the --                  20 providing oversight of the entire fiscal plan. At                  21 that time, the government was faced with a growing                  22 deficit, had implemented a number of cuts right                  23 across the board. No sector was spared in terms of                  24 tough decisions that the government had to make at                  25 that time.</p>



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1 And at that time, given the  
2 circumstances, rating agencies downgrading or  
3 putting the province at a negative outlook, the  
4 Federal Government criticizing the province's  
5 fiscal planning, and the deficit growing, the  
6 government had some very difficult decisions to  
7 make, and that was one of them.  
8 BY MR. LISUS:  
9 79 Q. I'm going to give you the  
10 opportunity to answer my question again, okay? And  
11 if you don't want to answer it, then you don't have  
12 to. Did you agree with the recommendation that  
13 Minister Duncan made?  
14 MR. RATCLIFFE: Mr. Lisus, he's given  
15 an answer to that.  
16 BY MR. LISUS:  
17 80 Q. Is that the answer you want to --  
18 A. As a professional public servant,  
19 my role is to implement the direction that I was  
20 given.  
21 81 Q. So you didn't have a view of it  
22 one way or the other, is what I'm taking from your  
23 answer, sir?  
24 A. I implemented the government's  
25 direction.

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1 82 Q. You were aware, sir, that at the  
2 time that government direction was given, the  
3 revenue generated from the Slots at Racetrack  
4 Program was characterized as a subsidy? You're  
5 aware of that?  
6 A. The issue around support for  
7 various sectors -- and this one in particular,  
8 there was a tax subsidy.  
9 83 Q. That's the Pari-Mutuel --  
10 A. Yes.  
11 84 Q. -- Tax Reduction?  
12 A. That's correct.  
13 85 Q. Yes.  
14 A. And then there was the Slots at  
15 Racetrack Program. And sometimes the term was used  
16 interchangeably.  
17 86 Q. Which terms were used  
18 interchangeably?  
19 A. The tax subsidy with the agreement  
20 with the racetracks.  
21 87 Q. And that interchangeable use of  
22 those terms wasn't an accurate use because they  
23 were two quite different things; correct?  
24 A. I think if you looked at the  
25 review that -- as I recall, what OLG was doing --

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1 as the ministry was looking at getting better value  
2 for money under the Slots at Racetrack Program, the  
3 idea was are we getting the best value for the  
4 money.  
5 88 Q. I'm just asking you a question,  
6 sir.  
7 A. Right.  
8 89 Q. Do you agree with me that at the  
9 time the government direction was made that you  
10 identified a minute ago, the revenue sharing with  
11 the horse racing industry under the Slots at  
12 Racetrack Program was characterized by government  
13 as a subsidy? Do you agree with that?  
14 A. That -- in some situations, it may  
15 have, but as I understand it, it was a combination  
16 of a tax subsidy with an agreement with the  
17 racetracks.  
18 90 Q. Your understanding, you're telling  
19 me, is that the revenues shared with the horse  
20 racing industry was a combination of the tax  
21 subsidy, the Pari-Mutuel Tax Reduction, and the  
22 revenue generated from slot machines; correct?  
23 A. That's correct.  
24 91 Q. Does that mean that you agree that  
25 the government characterized this revenue as a

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1 subsidy?  
2 A. I think bundled together, one  
3 would argue that there was a subsidy component.  
4 92 Q. One would argue that there was a  
5 subsidy component. That's as far as you're  
6 prepared to go?  
7 A. I -- from my understanding of how  
8 we characterize it in the materials that we  
9 prepared, yes.  
10 93 Q. So I want you to take a look at  
11 this agreement, sir, and if you look at the first  
12 page of it in front of you there, did you  
13 understand, Mr. Orsini, that the siteholder  
14 agreements were contracts pursuant to which the  
15 government, through OLC, asked racetracks and  
16 racetracks agreed to develop and licence a portion  
17 of their facilities and provide related services  
18 for the prescribed lottery scheme? Were you aware  
19 of that?  
20 MR. RATCLIFFE: Counsel, he hasn't seen  
21 this before. He's not a lawyer.  
22 MR. LISUS: He should have seen it  
23 before.  
24 MR. RATCLIFFE: Well, again, it's not  
25 relevant in terms of the time periods that he was

<p style="text-align: right;">Page 30</p> <p>1 involved. So in any event, it's a contract. I'm                  2 not going to allow you to have him interpret what                  3 this means.                  4 MR. LISUS: I'm not going to ask him to                  5 interpret anything.                  6 R/F MR. RATCLIFFE: We're refusing to                  7 answer this question.                  8 MR. LISUS: All right. Well, I'll put                  9 the questions on the record, and you can refuse                  10 them.                  11 MR. RATCLIFFE: Okay.                  12 BY MR. LISUS:                  13 94 Q. All right. Were you aware, sir,                  14 in the third quarter of 2011 and the first quarter                  15 of 2012 that the siteholder agreements were                  16 contracts pursuant to which the Ontario Lottery                  17 Corporation asked siteholders, being racetrack                  18 operators, and racetrack operators agreed to                  19 develop and licence a portion of their facilities                  20 and to provide related services for the prescribed                  21 lottery scheme? Were you aware of that?                  22 A. I can't really comment on the                  23 contract.                  24 95 Q. Are you aware that the slots at                  25 racetracks were a prescribed lottery scheme?</p>	<p style="text-align: right;">Page 32</p> <p>1 understanding.                  2 99 Q. Mr. Snobelen testified that the                  3 government had been trying to introduce slot                  4 machines into communities and urban centres, and                  5 there had been problems with that.                  6 And so the solution that presented                  7 itself was that racetracks which were mostly in                  8 rural centres were already designated gaming sites,                  9 and therefore, slot machines could be introduced                  10 into those racetracks.                  11 Does that accord with your                  12 understanding of how slot machines came into                  13 racetracks?                  14 A. Historically, the view was that                  15 they're convenient locations. Gaming was occurring                  16 there already. The whole OLG modernization was to                  17 look at alternative sites for that.                  18 100 Q. Right. And when you say "the                  19 whole OLG modernization," what you're telling me,                  20 sir, is that the modernization review that the OLG                  21 was undertaking in 2010 included looking at whether                  22 it could locate slot machines in urban centres                  23 where there was a greater demand for them; is that                  24 fair?                  25 A. It was -- so the review looked at</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I can't comment on that either.                  2 96 Q. Were you aware, sir, in 2011 and                  3 2012 that slot machines were introduced at                  4 racetracks because the government had tried to                  5 introduce them into municipalities that had been                  6 unsuccessful in doing so?                  7 A. I'm not aware of the history.                  8 97 Q. Okay. You do not know and did not                  9 know in 2011 and 2012 that slot machines were                  10 introduced into racetracks because the government                  11 had wanted to introduce them into municipalities                  12 but had been unsuccessful because municipalities                  13 refused to accept them?                  14 MR. RATCLIFFE: I think he answered                  15 that. I mean, if there's a document you want to                  16 take him to to refresh his memory, that's one                  17 thing, but he's already said he didn't know.                  18 BY MR. LISUS:                  19 98 Q. Do you have an understanding as to                  20 how slot machines came to be introduced into                  21 racetracks in 1998 and thereafter?                  22 A. I wasn't involved back in 1998.                  23 Understanding that it was an existing gaming                  24 facility in a way, and it was more convenient to                  25 locate them there, is the extent of my</p>	<p style="text-align: right;">Page 33</p> <p>1 a number of different aspects; you know, modernize                  2 the lottery side; looking at casinos in urban                  3 areas, not just the slots; looking at more                  4 comprehensive --                  5 101 Q. Slots were just one small part of                  6 an overall --                  7 A. It was one component of gaming                  8 facilities they were looking at, subject to                  9 municipal approval and subject to the government's                  10 approval.                  11 102 Q. Okay. Did you know, sir, in 2011                  12 and 2012 that pursuant to the siteholder                  13 agreements, that the racetrack operators were                  14 required to conduct horse racing operations so as                  15 to provide an entertaining recreational product to                  16 maximize interest in horse racing at the racetrack                  17 with a view to enhancing the success of the                  18 prescribed lottery scheme? Did you know that?                  19 A. I can't recall specifically other                  20 than I do recall that notwithstanding the level,                  21 wagering was not growing. That was one of the                  22 concerns.                  23 103 Q. All I'm asking, though, sir, is                  24 whether you understood that the siteholder                  25 agreements imposed an obligation on racetrack</p>

<p style="text-align: right;">Page 34</p> <p>1 operators and horse people to conduct their                  2 business and affairs in a way that enhanced the                  3 success of the lottery machine business at the                  4 racetracks. Were you aware of that?                  5 A. The specific legal requirement,                  6 no.                  7 104 Q. Okay. Were you aware, sir, that                  8 the racetrack operators licenced certain premises                  9 at the racetrack to OLG?                  10 MR. RATCLIFFE: Counsel, he's indicated                  11 that he's not familiar with the siteholder                  12 agreements. You keep asking these specific                  13 questions about what the siteholder agreement said.                  14 MR. LISUS: Let me be quite clear,                  15 Mr. Ratcliffe. I'm not so much interested in the                  16 specifics of the siteholder agreements. I'm                  17 interested in Mr. Orsini's understanding of what                  18 the terms of the commercial bargain were between                  19 the respective stakeholders because it bears                  20 directly on whether or not this revenue is properly                  21 characterized as a subsidy or not pursuant to the                  22 government's own guidelines. Okay?                  23 BY MR. LISUS:                  24 105 Q. Are you aware, sir, that the                  25 siteholder agreements granted the government a</p>	<p style="text-align: right;">Page 36</p> <p>1 know that in 2011 and 2012?                  2 A. There was a formula used where                  3 net -- I'm not sure precisely how they calculated                  4 that, but it was 20 percent, as I recall, of the                  5 proceeds from the slots at racetracks. The                  6 specific net terms, I'm not quite detailed on the                  7 application, the specifics to the formula.                  8 109 Q. You understand, sir, that a                  9 commission is a payment for services provided?                  10 A. I don't -- I'm not aware of the                  11 legal definition of a commission.                  12 110 Q. What about the financial                  13 definition of a commission?                  14 MR. RATCLIFFE: Well, he said he                  15 doesn't know the answer.                  16 BY MR. LISUS:                  17 111 Q. You are aware that the financial                  18 statements of the Ontario Lottery and Gaming                  19 Corporation were audited every year by KPMG? Are                  20 you aware of that?                  21 A. I presume they're audited every                  22 year. I don't know who the auditing firm is.                  23 112 Q. You're aware that the Ontario                  24 Lottery and Gaming Corporation accounted for the                  25 commission payments as an operating expense?</p>
<p style="text-align: right;">Page 35</p> <p>1 right to occupy certain premises on certain terms                  2 within the racetracks?                  3 A. You're asking me to comment on                  4 provisions in the agreement I'm not familiar with.                  5 People who were working in the division would have                  6 been much more familiar with all those terms and                  7 conditions.                  8 106 Q. Are you aware that pursuant to the                  9 arrangement, the Ontario Lottery and Gaming                  10 Corporation used the premises to conduct, manage,                  11 and operate a prescribed lottery scheme which was                  12 the slot machines?                  13 A. Again, people working in the                  14 division would have been much more familiar with                  15 those provisions.                  16 107 Q. Were you aware, sir, that the                  17 revenue that was shared with the horse racing                  18 industry was a commission?                  19 A. Again, people familiar with the                  20 agreement would have a better -- be in a much                  21 better position to respond to that question.                  22 108 Q. Are you aware, sir, that the                  23 Ontario Lottery and Gaming Corporation paid to the                  24 siteholder a commission equal to 20 percent of the                  25 net win derived from the slot machines? Did you</p>	<p style="text-align: right;">Page 37</p> <p>1 A. I wouldn't know that.                  2 113 Q. You would assume that to be the                  3 case?                  4 A. I wouldn't assume it either.                  5 114 Q. You're aware that an operating                  6 expense is an expense incurred to generate revenue?                  7 A. An operating expense is a cost of                  8 doing business?                  9 115 Q. Sure. You agree with that?                  10 A. An operating expense is a cost of                  11 doing business?                  12 116 Q. Right.                  13 A. I would agree with that.                  14 117 Q. Are you aware, sir, that the                  15 siteholder agreement specifies the remuneration to                  16 be provided to horse people? Are you aware of                  17 that?                  18 A. I'm not sure the specifics of that                  19 provision.                  20 118 Q. Are you aware that the siteholder                  21 agreement required the siteholders to obtain a                  22 covenant from horse people to conduct their                  23 respective business and affairs to provide an                  24 entertaining recreational product to maximize                  25 interest in horse racing events at the racetrack</p>

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<p>1 all with a view to enhancing the success of the 2 prescribed lottery scheme? Did you know that? 3 A. Others would be more familiar with 4 those provisions. 5 119 Q. Let me ask you this, sir: In 2011 6 and 2012 when you supported the government 7 direction to cancel the revenue share, were you 8 aware, sir, that the respective horse people had 9 for 15 years conducted their business and affairs 10 at the racetracks in a manner designed to enhance 11 the success of the prescribed lottery scheme at 12 those tracks? 13 MR. RATCLIFFE: I'm not sure what your 14 question is. 15 BY MR. LISUS: 16 120 Q. Were you aware that the horse 17 people -- 18 A. I think you premise it -- as I 19 said earlier, my role as a public servant is to 20 implement government direction. 21 121 Q. Okay. And that's what you were 22 doing when you signed the Cabinet material was 23 implementing government direction; fair? 24 A. That's correct. 25 122 Q. Okay. So I can ask you more</p>	<p>1 126 Q. In the third quarter of 2011 and 2 first quarter of 2012, what did you know about the 3 business of breeding horses? 4 A. I didn't have very close 5 familiarity of the breeding cycle. 6 127 Q. Did you know what the breeding 7 cycle of a standardbred horse was? 8 A. No. 9 128 Q. Did you know the basis upon which 10 breeders of standardbred horses made investments in 11 their farms and breeding operations? 12 A. I wouldn't be privy to that. 13 People in the ministry would be, though. 14 129 Q. Okay. And the ORC would also 15 understand those facts well; right? 16 A. I presume the ORC would be. 17 130 Q. When did you first become engaged 18 in the question of whether the revenue-sharing 19 arrangement from the Slots at Racetrack Program 20 should be modified or terminated? 21 A. I can't recall precisely, but 22 I think when I was appointed associate deputy 23 minister and OLG was moved under my purview, I was 24 getting briefed at a very high level starting in 25 the fall of 2010.</p>
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<p>1 questions about the siteholder agreements, but it's 2 fair to say you didn't know anything about the 3 siteholder agreements or the obligations they 4 imposed on the various stakeholders in the 5 prescribed lottery scheme; fair? 6 A. Others in the ministry would. 7 Myself, I was -- given my role as a deputy 8 minister, I wouldn't get to that level of detail. 9 123 Q. And I presume neither would 10 Minister Duncan? 11 A. I don't want to presume anything 12 he did or did not know. All I know is there are 13 staff in the ministry that would be familiar with 14 the agreement and the provisions in that agreement. 15 124 Q. Can you tell me who that was? 16 A. I would -- it would be our legal 17 department. It would be staff within the ministry. 18 I wouldn't know offhand who they -- who they are. 19 125 Q. Were you aware, sir, that the 20 funds to be shared with the horse racing industry 21 were trust funds pursuant to the terms of the 22 agreement? 23 A. Again, you're asking me to comment 24 on a provision in an agreement I'm not familiar 25 with.</p>	<p>1 It was all part of OLG modernization, 2 and the -- and then again when Don Drummond was 3 looking at the issue as well. 4 131 Q. Did you understand that Don 5 Drummond recommended the elimination of the revenue 6 sharing from Slots at Racetrack Program with the 7 horse racing industry? 8 A. Could you show me the reference to 9 his recommendation? 10 132 Q. I'm just giving you the question 11 again. In the first quarter of 2012, did you 12 believe that Mr. Drummond recommended the 13 termination of the revenue-sharing arrangement with 14 the horse racing industry -- 15 MR. RATCLIFFE: Mr. Orsini has asked to 16 see the reference to the Drummond report to refresh 17 his memory. If you want to take him to it -- 18 BY MR. LISUS: 19 133 Q. I'm going to take you to the 20 Cabinet briefing document instead, Mr. Orsini. 21 You were involved in the preparation of the Cabinet 22 submission; correct? 23 A. I'm a signatory to the Cabinet 24 submission. There's a team of staff that prepare 25 all the material for it.</p>

<p style="text-align: right;">Page 42</p> <p>1 134 Q. Were you involved in the                  2 composition of the minister's speaking notes?                  3 A. I had -- I'm not engaged in that                  4 level of detail in terms of the specific remarks.                  5 I may see them before they're finalized, but                  6 essentially staff are developing those remarks with                  7 his office.                  8 135 Q. So I want to show you Exhibit 17                  9 in the examination of Mr. Bardeesy.                  10 A. Okay.                  11 136 Q. This is an email sequence, sir,                  12 February 7, 2012, the day before the February 8                  13 Cabinet meeting. Okay? And attached to this email                  14 are a number of documents, a Cabinet submission --                  15 MR. RATCLIFFE: Take your time to look                  16 at that.                  17 BY MR. LISUS:                  18 137 Q. -- a Cabinet submission, a Cabinet                  19 briefing note, minister's speaking notes; right?                  20 You reviewed these materials in preparation for                  21 giving evidence here today as I understood you to                  22 tell me earlier this morning?                  23 A. So I wasn't copied -- I don't see                  24 my name copied on these emails.                  25 138 Q. I'll address that in a minute, but</p>	<p style="text-align: right;">Page 44</p> <p>1 143 Q. Okay. Do you see, if you go over                  2 to page 279 at the bottom, it says:                  3 "It is also worth noting that                  4 the Drummond report will make                  5 several recommendations for OLG that                  6 the government will need to review."                  7 Do you see that? And there's three bubbles or                  8 bullets. Do you see the third one?                  9 A. I do see the third one.                  10 144 Q. All right. It says:                  11 "And several other                  12 recommendations that are consistent                  13 with OLG's proposal including                  14 eliminating the Slots at Racetrack                  15 funding support to the horse racing                  16 industry."                  17 Do you see that?                  18 A. I do see that.                  19 145 Q. Did you understand in the first                  20 quarter of 2012 that Mr. Drummond had recommended                  21 the elimination at the Slots at Racetrack funding                  22 support to the horse racing industry?                  23 A. I know he was actively reviewing                  24 it, and he was concerned about the value for money                  25 that the province was getting from the program.</p>
<p style="text-align: right;">Page 43</p> <p>1 you did review these Cabinet materials before                  2 giving your evidence here today; correct?                  3 A. I did review them, yes.                  4 139 Q. All right. So if we look at the                  5 email from Mr. Goodwin on February 7 at 4:37, we                  6 see where he says:                  7 "Please ensure Steve has, and                  8 we can respond to any further                  9 feedback or questions in the                  10 morning."                  11 Steve would be a reference to you; right?                  12 A. I presume it's me.                  13 140 Q. All right. So we can presume that                  14 you received these materials because you signed                  15 off?                  16 A. That's correct.                  17 141 Q. Right. And the reference I want                  18 to take you to is the minister's speaking points,                  19 which begin immediately after the Qs and As. Look                  20 at page 276.                  21 A. 276?                  22 142 Q. Yes. These are the minister's                  23 speaking points; right?                  24 A. These are suggested speaking                  25 points for the minister.</p>	<p style="text-align: right;">Page 45</p> <p>1 When I spoke to him, he asked for some                  2 suggested wording that I sent him or his office                  3 about substantially reducing the funding. Exactly                  4 where his recommendation would be coming out, at                  5 this point it's presumption of what we think he was                  6 going to say.                  7 146 Q. Well, it's not a presumption, sir.                  8 The minister's speaking point says that                  9 Mr. Drummond recommended the elimination; right?                  10 A. So I can't attest to, again, the                  11 speaking points, per se. I know Don Drummond, in                  12 reviewing the file, thought that the province did                  13 get a much better deal for taxpayers and that he                  14 was looking at separating the slots from                  15 racetracks, exactly how that was going to be                  16 translated into a specific recommendation.                  17 147 Q. Sir, can you and I agree today                  18 that the minister's speaking points, as we see them                  19 here, are intended to convey to Cabinet that                  20 Don Drummond recommended eliminating the Slots at                  21 Racetrack funding support to the horse racing                  22 industry? Can we agree that's what that speaking                  23 point says?                  24 MR. RATCLIFFE: The speaking point --                  25 MR. LISUS: Please don't interrupt,</p>

<p style="text-align: right;">Page 46</p> <p>1 Mr. Ratcliffe.                  2 MR. RATCLIFFE: Well, I will interrupt                  3 because it's inappropriate in the sense that he's                  4 indicated what his understanding was, and now                  5 you're asking --                  6 MR. LISUS: I'm not asking his                  7 understanding.                  8 BY MR. LISUS:                  9 148 Q. Do you agree with me that that is                  10 what the speaking point conveys to Cabinet, that                  11 Mr. Drummond recommended the elimination of Slots                  12 at Racetrack funding support to the horse racing                  13 industry?                  14 MR. RATCLIFFE: The words speak for                  15 themselves.                  16 BY MR. LISUS:                  17 149 Q. Do you agree that's the meaning,                  18 Mr. Orsini?                  19 A. Well, you're asking me to read                  20 back what it says?                  21 150 Q. No. I'm asking you to agree with                  22 me that Cabinet was told in the minister's speaking                  23 points that Mr. Drummond recommended the                  24 elimination of the Slots at Racetrack funding                  25 support to the horse racing industry. Simple;</p>	<p style="text-align: right;">Page 48</p> <p>1 province if the revenue share was                  2 terminated?                  3 A. I did not.                  4 Q. And that wasn't any part of                  5 your mandate; right?                  6 A. That wasn't my mandate, but,                  7 again, I was not recommending to                  8 terminate the program, so why would                  9 I have evaluated that?"                  10 So you are aware, sir, that Mr. Drummond testified                  11 in these proceedings that he was not recommending                  12 the termination of the program?                  13 A. I'm going by what his -- you read                  14 out his testimony. I'm not commenting either way.                  15 152 Q. Does that come as a surprise to                  16 you, sir?                  17 A. His report talks about conducting                  18 a review. His report, as I recall -- and I'm going                  19 to have to look at the precise wording -- talking                  20 about separating the slots from the racetracks.                  21 The implementation of that is open to                  22 debate of how to follow through on his                  23 recommendations. That would have been work that                  24 would have been subsequent to his report.                  25 153 Q. This is what Mr. Drummond</p>
<p style="text-align: right;">Page 47</p> <p>1 right?                  2 A. These are remarks given to the                  3 minister. What he said or how he said it, I can't                  4 comment on that. I don't recall what he would have                  5 said.                  6 151 Q. I want to read you what                  7 Mr. Drummond told me, and you tell me if you                  8 understood this to be his view at the time:                  9 Q. "Right. And specifically, you                  10 had not evaluated what the impact                  11 would be on racetracks if the                  12 revenue share was terminated; right?                  13 A. No, I did not evaluate that.                  14 Q. You did not evaluate what the                  15 impact would be on standardbred                  16 horse breeders if the revenue share                  17 was terminated?                  18 A. I did not evaluate that.                  19 Q. You did not evaluate what the                  20 impact would be on employment in                  21 rural Ontario if the revenue share                  22 was terminated?                  23 A. I did not.                  24 Q. You did not evaluate what the                  25 impact would be on horses in the</p>	<p style="text-align: right;">Page 49</p> <p>1 testified to in these proceedings, sir:                  2 Q. "Okay. Did you ever tell                  3 Mr. Duncan that you thought the                  4 revenue share from Slots at                  5 Racetrack Program should be                  6 cancelled?                  7 A. I did not.                  8 Q. Did you ever tell Mr. McGuinty                  9 that you thought the revenue share                  10 at Slots at Racetrack Program should                  11 be cancelled?                  12 A. I did not.                  13 Q. Did you ever tell anyone that                  14 you thought the revenue share at                  15 Slots at Racetrack Program should be                  16 cancelled?                  17 A. I don't recall ever saying                  18 that, no.                  19 Q. And if you did say that, you                  20 would recall it; right?                  21 A. I would have thought I would                  22 have recalled that, yes.                  23 Q. Did you in the course of                  24 composing your report, sir, ever                  25 speak with Mr. Stephen Orsini?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Oh, yes, definitely.</p> <p>2 Q. Did you ever speak with</p> <p>3 Mr. Orsini about the Slots at</p> <p>4 Racetrack Program?</p> <p>5 A. I don't recall speaking to him</p> <p>6 about that.</p> <p>7 Q. Okay. Did you recommend to</p> <p>8 Mr. Orsini that the Slots at</p> <p>9 Racetrack Program -- the revenue</p> <p>10 share from the Slots at Racetrack</p> <p>11 Program be cancelled?</p> <p>12 A. I did not."</p> <p>13 So why, Mr. Orsini, did you sign Cabinet materials</p> <p>14 telling Cabinet that Mr. Drummond recommended the</p> <p>15 elimination of the Slots at Racetrack funding</p> <p>16 support to the horse racing industry when he did</p> <p>17 not?</p> <p>18 A. If you look at the submission I've</p> <p>19 signed, his speaking points, based on that email,</p> <p>20 had gone without my approval.</p> <p>21 The Cabinet submission talks in detail</p> <p>22 about the review. And because his report was being</p> <p>23 developed as we were speaking, I don't recall the</p> <p>24 submission getting into a lot of detail what he's</p> <p>25 recommending. I did not prepare his speaking</p>	<p style="text-align: right;">Page 52</p> <p>1 the decision was made; correct?</p> <p>2 A. I asked them constantly to update</p> <p>3 their numbers. I would do it before, after and --</p> <p>4 even after the announcement or decisions. I'd be</p> <p>5 asking to update it as more information comes in.</p> <p>6 It's not unusual to constantly update your numbers</p> <p>7 as new information comes in.</p> <p>8 158 Q. We'll review the emails as to when</p> <p>9 that was done, but my question to you, sir, is that</p> <p>10 you didn't specifically inquire as to what the</p> <p>11 consequences would be of a termination of revenue</p> <p>12 share effective March 2013 with no transition</p> <p>13 support; correct?</p> <p>14 A. The office of economic policy does</p> <p>15 ongoing analysis of the budget and its provisions.</p> <p>16 So staff in the ministry would be looking at these</p> <p>17 issues.</p> <p>18 159 Q. Is that the answer to my question?</p> <p>19 A. Do you want to repeat your</p> <p>20 question, please?</p> <p>21 160 Q. Did you satisfy yourself as to</p> <p>22 what the consequences of the decision --</p> <p>23 A. I did --</p> <p>24 161 Q. Excuse me -- to terminate revenue</p> <p>25 sharing with the horse racing industry effective</p>
<p style="text-align: right;">Page 51</p> <p>1 points.</p> <p>2 154 Q. Who was responsible for the</p> <p>3 accuracy of his speaking points?</p> <p>4 A. That is -- as you can see from the</p> <p>5 email, they want to run it by me. I don't recall</p> <p>6 commenting on them. I'm more concerned about the</p> <p>7 submission I'm signing. I did not -- I did not</p> <p>8 sign those speaking points.</p> <p>9 155 Q. Why do you need to sign the</p> <p>10 Cabinet submission?</p> <p>11 A. It's -- deputy minister of all</p> <p>12 ministries is signing the -- to ensure that the</p> <p>13 public service has prepared the material.</p> <p>14 156 Q. And I take it, sir, given what</p> <p>15 you're telling me, you, yourself, hadn't evaluated</p> <p>16 the consequences of the cancellation of the revenue</p> <p>17 sharing with zero transition support on</p> <p>18 standardbred breeders?</p> <p>19 A. There was the Pari-Mutuel tax</p> <p>20 relief that was continuing. We did ask our office</p> <p>21 of economic policy to the best of their ability to</p> <p>22 ascertain both the negative implications of any</p> <p>23 decisions and the positive of where the money would</p> <p>24 be going.</p> <p>25 157 Q. You asked them to do that after</p>	<p style="text-align: right;">Page 53</p> <p>1 March 2013 without transition support would be?</p> <p>2 A. I did ask for analysis on the</p> <p>3 implications with the cancellation after one year's</p> <p>4 notice while maintaining the tax subsidy and then</p> <p>5 the benefits of what that money would go towards.</p> <p>6 So I did ask for that analysis.</p> <p>7 162 Q. When did you ask for that</p> <p>8 analysis?</p> <p>9 A. I explicitly asked it once we</p> <p>10 heard the direction the government was going in,</p> <p>11 but that's not to say that analysis aren't being</p> <p>12 done all the time prior to that.</p> <p>13 163 Q. You're aware that Mr. Wilkinson</p> <p>14 has given evidence in these proceedings?</p> <p>15 A. You mentioned that earlier. I</p> <p>16 presume you're referring to John.</p> <p>17 164 Q. Yes. Are you aware that</p> <p>18 Mr. Wilkinson testified that the analysis</p> <p>19 undertaken by the government when it made the</p> <p>20 decision to terminate the revenue share effective</p> <p>21 March 2013 without transition support was based on</p> <p>22 the wrong assumptions?</p> <p>23 A. He did -- in conversations I had</p> <p>24 with him, was concerned about the analysis that</p> <p>25 went into it and the level of detail of information</p>

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<p>1 we had.</p> <p>2 Staff used the best information they</p> <p>3 had at the time in assessing what they understand</p> <p>4 the implications would be of all budget measures,</p> <p>5 at the same time looking at where the money was</p> <p>6 going to, whether it was for health or education.</p> <p>7 165 Q. Do you know Mr. James Bullock?</p> <p>8 A. The name doesn't ring a bell.</p> <p>9 166 Q. Okay. Do you recall attending a</p> <p>10 meeting or do you know if you attended a meeting on</p> <p>11 Monday, July 20th, 2009, at 2:30 p.m. with</p> <p>12 Dwight Duncan, James Deacey, Robert Locke, and</p> <p>13 James Bullock? No recollection of that?</p> <p>14 A. No.</p> <p>15 167 Q. I'm going to show you a document</p> <p>16 which is a briefing note of that meeting. You</p> <p>17 worked with Steen Hume; right?</p> <p>18 A. He was in the division that</p> <p>19 reported to me.</p> <p>20 168 Q. CRE54505.</p> <p>21 A. What was the date on that?</p> <p>22 169 Q. July 20, 2009, is the meeting.</p> <p>23 A. So 2009, I don't recall having</p> <p>24 responsibility for OLG at that time.</p> <p>25 170 Q. Okay.</p>	<p>1 CRE78614, 16, and 17.</p> <p>2 MR. RATCLIFFE: Is that December 2009</p> <p>3 on the screen?</p> <p>4 MR. LISUS: Yes.</p> <p>5 THE WITNESS: That was before --</p> <p>6 BY MR. LISUS:</p> <p>7 178 Q. I understand you're saying that,</p> <p>8 sir, and so the reason I'm showing this to you is</p> <p>9 if you look at the draft, which is attached to the</p> <p>10 email, you see that you're copied on it. You see</p> <p>11 it says Peter Wallace, Steve Orsini?</p> <p>12 MR. RATCLIFFE: Give him a minute to</p> <p>13 review it.</p> <p>14 MR. LISUS: Sure.</p> <p>15 THE WITNESS: The one you gave me</p> <p>16 doesn't have --</p> <p>17 BY MR. LISUS:</p> <p>18 179 Q. What I gave you is the email. The</p> <p>19 email has got attachments. One of the attachments</p> <p>20 is a letter.</p> <p>21 A. Right.</p> <p>22 180 Q. And then you're copied on the</p> <p>23 letter which suggests to me you're in the loop at</p> <p>24 the time.</p> <p>25 A. Okay.</p>
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<p>1 A. I think I assumed that</p> <p>2 responsibility in the fall of 2010.</p> <p>3 171 Q. Okay. So you wouldn't have been</p> <p>4 at that meeting?</p> <p>5 A. I don't think I was at that</p> <p>6 meeting.</p> <p>7 172 Q. All right. In 2010, you did</p> <p>8 assume responsibility for the OLG?</p> <p>9 A. In the fall.</p> <p>10 173 Q. Right.</p> <p>11 A. That's correct.</p> <p>12 174 Q. And did you also assume</p> <p>13 responsibility for the Ontario Racing Commission?</p> <p>14 A. It would have fallen in that</p> <p>15 gambit (sic). The chair reports to the minister</p> <p>16 directly.</p> <p>17 175 Q. That's Mr. Seiling reporting to</p> <p>18 Mr. Duncan directly?</p> <p>19 A. The chair would report to the</p> <p>20 minister.</p> <p>21 176 Q. Okay.</p> <p>22 A. The CEO would deal with the deputy</p> <p>23 minister.</p> <p>24 177 Q. I want to have you look at a</p> <p>25 document which appears to be a draft. This is</p>	<p>1 181 Q. The only point I'm making, sir, is</p> <p>2 that in December of '09, you appear to be in the</p> <p>3 loop, and one of the things that's going on at that</p> <p>4 time is that the ORC is undertaking an industry</p> <p>5 consultation on race dates.</p> <p>6 Do you recall an ORC industry</p> <p>7 consultation process being underway in December '09</p> <p>8 and 2010?</p> <p>9 A. I don't recall.</p> <p>10 182 Q. Okay. Take a look at the table</p> <p>11 that's attached to the email, Standing Committee on</p> <p>12 Government Agencies, Ontario Racing Commission. Do</p> <p>13 you see that?</p> <p>14 MR. RATCLIFFE: You're looking at topic</p> <p>15 number one, role of the ORC?</p> <p>16 MR. LISUS: Right.</p> <p>17 THE WITNESS: Okay, I'm looking at the</p> <p>18 table.</p> <p>19 BY MR. LISUS:</p> <p>20 183 Q. And the table described the role</p> <p>21 of the ORC. And you were generally aware of the</p> <p>22 role the ORC played with respect to the horse</p> <p>23 racing industry; right?</p> <p>24 A. I would've at the time had a</p> <p>25 general understanding.</p>



<p style="text-align: right;">Page 58</p> <p>1 184 Q. It was the regulator pursuant to                  2 statute; correct? Right?                  3 A. I would have a much more familiar                  4 understanding once I assumed responsibility, but,                  5 yes, at this time, I would have a very vague                  6 understanding.                  7 185 Q. But you certainly understood that                  8 it was the regulator of the horse racing industry?                  9 A. It had, if I recall correctly, two                  10 functions: Regulator and funder.                  11 186 Q. Okay.                  12 A. Let me take a five-minute break.                  13 187 Q. Sure.                  14 -- Recess at 11:19 a.m. --                  15 -- Upon resuming at 11:28 a.m. --                  16 BY MR. LISUS:                  17 188 Q. You were looking at -- I want to                  18 show you SB5282, which is a notice to the industry                  19 from the Ontario Racing Commission, February 1,                  20 2010.                  21 I take it, sir, at some point in 2010,                  22 you became aware that the Ontario Racing Commission                  23 was undertaking a consultation process to review                  24 and come up with a new racing program for the                  25 province?</p>	<p style="text-align: right;">Page 60</p> <p>1 reported directly to the minister.                  2 193 Q. Okay. If I could just look at                  3 this document with you, the notice to the industry,                  4 it talks on page 2 about the founding principles to                  5 create an acceptable model for racing in Ontario.                  6 And do you see the second principle says:                  7 "Provide a fair return on                  8 investment over the short-term while                  9 protecting value for owners and                  10 communities over the long-term."                  11 Right?                  12 A. I see the reference. I'm just                  13 reading it now.                  14 194 Q. Okay. And if we look at the                  15 second bullet, it says:                  16 "Racetrack operators, property                  17 owners, and horse people all invest                  18 time and money into this industry,                  19 and the owners of these investments                  20 must have the confidence that they                  21 will be reasonably rewarded."                  22 Right?                  23 A. I see that reference, correct.                  24 195 Q. You generally understood that                  25 proposition in the fall of 2010, that horse people,</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I think it's fair to say that the                  2 issue of racing days was not a new thing, and it                  3 comes up from time to time.                  4 189 Q. Okay. So were you aware that the                  5 ORC was undertaking a province-wide review?                  6 A. I think if this is -- what you're                  7 referring to is before I took responsibility, but I                  8 would have been made aware afterwards.                  9 190 Q. When do you understand you took                  10 responsibility? The fall of 2010?                  11 A. So there was a number of stages.                  12 So OLG was poured into another minister. They                  13 moved it to Finance. But before they decided what                  14 division it would ultimately rest in, there was a                  15 period of time it was in the ministry before -- as                  16 I recall, before it fell into my responsibility                  17 when I became associate deputy minister.                  18 191 Q. Which was when?                  19 A. I think the fall of 2010. That's                  20 when I became associate deputy minister of taxation                  21 which I had earlier, pensions which I had earlier,                  22 and the new division was agencies, LCBO and OLG,                  23 when eventually it was migrated under my division.                  24 192 Q. And ORC as an agency?                  25 A. The ORC, the chair typically</p>	<p style="text-align: right;">Page 61</p> <p>1 such as breeders, made investments in their                  2 breeding operations; right?                  3 A. I would presume, like any                  4 business, people invest in their operations.                  5 196 Q. And like any business, people who                  6 invest in their operations expect a reasonable rate                  7 of return on that investment; fair?                  8 A. They would, and they also have to                  9 factor in for risks. You know, if you're a farmer,                  10 bad weather, things of that nature.                  11 197 Q. Right. And if we look at 5, what                  12 was being told to the industry by the Ontario                  13 Racing Commission was -- a founding principle was                  14 to encourage and provide incentives for live                  15 racing.                  16 Second point:                  17 "For private property and                  18 resources generated from private                  19 enterprise, the owners of the those                  20 assets (racetrack, racehorse,                  21 breeding farm, et cetera) must have                  22 an incentive to increase its value."                  23 You understood that proposition in 2010; correct?                  24 A. I think like all industries, they                  25 would like incentives.</p>

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<p>1 MR. LISUS: Next exhibit. I think it's                  2 the first exhibit.                  3 MR. ROSENBERG: For identification?                  4 Exhibit A.                  5 MR. LISUS: No, I think he said he was                  6 generally aware of this.                  7 MR. ROSENBERG: I'm not sure he                  8 identified the document, Counsel.                  9 MR. MATTHEWS: We're going to mark it                  10 as Exhibit 1.                  11 MR. ROSENBERG: You have my objection.                  12 EXHIBIT NO. 1: SB0005282.                  13 BY MR. LISUS:                  14 198 Q. Now, the next document I want to                  15 show you is CRE110497, which is an email from you                  16 to yourself. And you appear to be sending yourself                  17 an OLG operational gaming priorities overview                  18 prepared by someone in Finance.                  19 A. This looks like a meeting                  20 scheduling. And it looks like -- if you're saying                  21 it's being -- need to reschedule. It's not quite                  22 an email. It's an electronic-generated note that                  23 the meeting had changed.                  24 199 Q. All right.                  25 A. Or it needed to be rescheduled.</p>	<p>1 "Proposed initiative,                  2 siteholder agreements, OLG proposes                  3 to extend current siteholder                  4 agreements for five years."                  5 Do you see that?                  6 A. I do see that.                  7 204 Q. Okay. And under the heading                  8 "Considerations," it says:                  9 "The option of a 12- to                  10 24-month extension would likely                  11 create concern and instability                  12 within the horse racing industry and                  13 negatively impact the ORC's                  14 consultation on race dates."                  15 Right?                  16 A. I see the reference to that in the                  17 document.                  18 205 Q. So it's fair to say, sir, that in                  19 2010, April 2010, Finance was aware that there were                  20 two initiatives underway: One was an initiative                  21 being undertaken by OLG as to how to improve its                  22 operations; correct?                  23 A. Correct.                  24 206 Q. And another initiative being                  25 undertaken was the ORC's consultation process on</p>
<p>1 200 Q. Okay. The document that was                  2 provided to us with that electronic note is the                  3 attached overview.                  4 MR. RATCLIFFE: Just take a moment to                  5 flip through.                  6 THE WITNESS: Do you want me to go                  7 through the whole document?                  8 BY MR. LISUS:                  9 201 Q. Well, I'm just going to ask you                  10 some questions about it. If you want to go through                  11 the whole document before I do that, you're                  12 entitled to.                  13 A. Okay.                  14 202 Q. All right. So one of the things                  15 that's being considered in this document is the                  16 initiatives that OLG was engaged in; right?                  17 A. So if I look at -- I don't recall                  18 this specifically, but looking at the document,                  19 it's looking at OLG's review to modernization.                  20 203 Q. Okay. If we look at the seventh                  21 page of the deck, there's a specific proposed                  22 initiative with respect to siteholder agreements.                  23 And those are the agreements that you and I looked                  24 at a few minutes ago.                  25 Do you see where it says:</p>	<p>1 race dates and the racing program; right?                  2 A. Yes.                  3 207 Q. Okay. And what the Finance                  4 staffers appear to be saying here is that the                  5 siteholder agreements should be extended for five                  6 years because short-term extensions have a negative                  7 impact on the ORC's consultation because short-term                  8 extensions don't bring stability to the industry;                  9 fair?                  10 A. This was one of many proposals                  11 that staff were looking at, as I understand.                  12 208 Q. That may be, sir, but you and I                  13 can agree that what staff was looking at was the                  14 fact that short-term extensions of the siteholder                  15 agreements was creating instability within the                  16 horse racing industry and negatively impacting the                  17 ORC's consultation on race dates?                  18 A. It says "likely to create."                  19 209 Q. Likely to create instability;                  20 correct?                  21 A. That's what it says, yes.                  22 210 Q. Therefore, they were recommending                  23 a five-year renewal; right?                  24 A. At the time, they were proposing                  25 it.</p>

		Page 66			Page 68
1	211	Q. Indeed the siteholder agreements	1		A. When was this again?
2		were extended for five years in 2010. Are you	2	222	Q. Spring of 2010. This is a
3		aware of that?	3		newsletter that went to the horse racing community
4		A. The -- I don't know if I was	4		and the general public. Do you recognize
5		specifically involved in that extension.	5		Mr. Seiling on the second page there?
6	212	Q. All right. But are you aware that	6		A. I do recognize him.
7		there was a five-year extension in 2010?	7	223	Q. Okay. And if we look at the
8		A. My understanding is they were	8		heading "The Planned Approach," it says:
9		extended in 2010. I can't be precise on the date.	9		"Now that the preliminary
10	213	Q. By "the date," you mean for how	10		discussions and background for the
11		long?	11		consultation group is complete, the
12		A. For both, the start date and how	12		ORC is moving to the matter of
13		long.	13		getting underway with the task of
14	214	Q. Okay. If you look at the	14		developing the model."
15		seventeenth page of the deck, do you see in the	15		Do you see that?
16		right-hand side bottom right where it says	16		A. Where's that reference at again?
17		"casino-style gaming"?	17		MR. RATCLIFFE: Down at the bottom,
18		A. Yes, I see that.	18		right-hand side.
19	215	Q. The second bullet point, it says:	19		THE WITNESS: I see that reference.
20		"Extend siteholder agreements	20		BY MR. LISUS:
21		to grant stability to racetrack site	21	224	Q. And then over the page, the
22		owners."	22		newsletter talks about the founding principles that
23		Right?	23		we looked at a few minutes ago. Do you see that?
24		A. I do see that under the reference	24		A. Is that the six principles that
25		of potential initiatives.	25		are referenced?
		Page 67			Page 69
1	216	Q. Correct. If we go over the page,	1	225	Q. Yes.
2		pages 18 and 19, again, there's talk about the	2		A. I do see them.
3		extension of the siteholder agreements for five	3	226	Q. And in particular, number 2 talks
4		years; right?	4		about providing a fair return on investment over
5		A. I see a reference to that.	5		the short-term while protecting value for owners
6	217	Q. All right.	6		and communities over the long-term. Do you see
7		MR. LISUS: That's the next exhibit,	7		that?
8		please.	8		A. I'm looking for it. Okay, the
9		EXHIBIT NO. 2: CRE0110499.	9		main title itself. Yes, I see that.
10		BY MR. LISUS:	10	227	Q. Do you see the three points?
11	218	Q. Do you recall this meeting?	11		A. I see the three bullet points.
12		A. I don't recall.	12	228	Q. And so the Ontario Racing
13	219	Q. Do you recall discussions with	13		Commission is telling the community and the public
14		staff about the extension of siteholder agreements	14		that the process it's undertaking is intended to
15		for five years in or about the spring of 2010?	15		provide a fair return on investment because
16		A. I don't recall.	16		racetrack operators, property owners, and horse
17	220	Q. Okay. Were you aware, sir, in	17		people all invest time and money into the industry,
18		2010 that the Ontario Racing Commission put out a	18		and owners of these investments must have the
19		newsletter for the horse racing community and the	19		confidence that they will be reasonably rewarded;
20		general public?	20		right?
21		A. I'm not aware of that specific	21		A. I see the reference.
22		newsletter.	22	229	Q. And the newsletter also says:
23	221	Q. Okay. I'm just going to show you	23		"The principle acknowledges
24		a copy of the newsletter put out in the spring of	24		that industry participants who make
25		2010, SBI482. It's up on the screen.	25		rational business decisions should

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1	expect a reasonable rate of return	1	A. I'm not exactly sure exactly its
2	on that investment."	2	origins, but it could be legislative.
3	Right?	3 237	Q. Okay. The ORC issued licences to
4	A. I see the reference.	4	the horse racing industry; right?
5 230	Q. And Number 5, the second	5	A. If you say so.
6	reference:	6 238	Q. Okay. The ORC had adjudicated
7	"For private property and	7	authority over --
8	resources generated from private	8	A. They had a multiple number of
9	enterprise, the owners of those	9	functions.
10	assets (racetrack, racehorse,	10 239	Q. The ORC was funded by government?
11	breeding farm) must have an	11	A. Or the industry.
12	incentive to increase its value."	12 240	Q. Did the government fund the ORC?
13	Right?	13	A. I think they -- that one you're
14	A. I see the reference.	14	going to have to confirm. It could be funded by
15 231	Q. All right. So we understand, sir,	15	the industry itself.
16	that in the spring of 2010, what the government,	16 241	Q. Let me tell you what Mr. Seiling
17	through its agency, the Ontario Racing Commission,	17	testified to, and you tell me if you agree with it
18	is telling the public and the breeding industry is	18	or accept it. Okay?
19	that it's undertaking a review designed to ensure	19	Q. "A number of the initiatives
20	that there is a reasonable return on their	20	that you oversaw in your tenure as
21	investment and their farms and breeding operations;	21	chair of the ORC, including,
22	right?	22	for example, the establishment of
23	A. So they're outlining principles	23	the Ontario Racing Program, were
24	they're consulting on.	24	done to encourage breeders to make
25 232	Q. Right. And the principles they're	25	investments in their horses and
Page 71		Page 73	
1	consulting on are intended to ensure that there's a	1	farms with a view to improving the
2	racing model that provides reasonable returns on	2	quality of their horses for racing
3	investments and business decisions; correct?	3	in Ontario; correct?
4	A. So that's the ORC's principles	4	A. Correct."
5	they're consulting on.	5	So that's what Mr. Seiling testified he was doing
6 233	Q. Right. The ORC speaks for	6	in promulgating these initiatives, was to encourage
7	government; right?	7	breeders to make investments in their farms and
8	A. It's an agency of government. It	8	horses. Are you aware of that?
9	doesn't necessarily speak for government. The	9	A. Again, that's his interpretation
10	Cabinet would speak for government.	10	of his role, and I understand that view.
11 234	Q. Well, do you think, sir, that	11 242	Q. Okay. As far as you were aware in
12	horse breeders appreciate that distinction?	12	2010, no one at government thought that Mr. Seiling
13	A. I mean, I'm not sure what they	13	was on a frolic of his own when he was putting out
14	appreciate.	14	these statements to the industry; right?
15 235	Q. You and I can agree, as we sit	15	A. He would be consulting with the
16	here, that when the ORC is making public statements	16	industry.
17	as an agent of government, that the recipient of	17 243	Q. And government knew he was
18	those statements would understand it's the Ontario	18	consulting with industry; correct?
19	government speaking; correct?	19	A. I'm not exactly aware to the level
20	A. They may interpret it as its an	20	of knowledge, but I'm sure there would be some
21	agency consulting and then feeding it to government	21	level of understanding.
22	for a decision. So I don't want to presume what	22 244	Q. We just saw a deck in which
23	they think or don't think.	23	Finance says the siteholder agreement should be
24 236	Q. The ORC was created by a statute;	24	renewed for five years because 12 or 24 months'
25	correct?	25	extension is interfering with the review that the

<p style="text-align: right;">Page 74</p> <p>1 ORC is undertaking. So we can be clear that                  2 Finance was aware of what ORC was doing; right?                  3 A. On the race dates is -- we saw                  4 earlier the race dates, not the siteholder                  5 agreements.                  6 245 Q. I understand.                  7 A. That's OLG.                  8 246 Q. Yes, but what the ORC was doing                  9 was a consultation with the industry to come up                  10 with an appropriate number of race dates and their                  11 locations; correct?                  12 A. That's my general understanding.                  13 247 Q. All right. And you understood,                  14 sir, that there was a direct connection between the                  15 number of race dates and the number of racehorses                  16 to race in those race dates; right?                  17 A. It may not be just a correlation                  18 one to one. It could be the size of the purse, the                  19 number of races outside the province.                  20 248 Q. The more race dates there are in                  21 Ontario, the more racehorses to race in those                  22 dates; fair?                  23 A. One could draw that, extrapolate.                  24 249 Q. It's a reasonable one to draw;                  25 right?</p>	<p style="text-align: right;">Page 76</p> <p>1 conduct their activities with trust                  2 and confidence, you were speaking                  3 for and as an agent of the                  4 government?                  5 A. Correct. And to both of my                  6 knowledge, government would see                  7 these things before they went out                  8 anyway.                  9 Q. And they were aware of major                  10 initiatives of your commission such                  11 as the Ontario Racing Program;                  12 correct?                  13 A. Correct.                  14 Q. They had to approve that as                  15 well; correct?                  16 A. Correct.                  17 Q. And these were things that were                  18 developed in consultation with the                  19 industry; correct?                  20 A. Correct."                  21 So government, Finance, knew full well what the                  22 Ontario Racing Commission was doing and saying to                  23 the industry at the time; right?                  24 A. I think there would be a general                  25 awareness.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. It also depends on the number of                  2 races outside the province too.                  3 250 Q. I'm talking about in Ontario,                  4 Mr. Orsini.                  5 A. Right.                  6 251 Q. If you reduced the number of horse                  7 races, you're going to need fewer horses; right?                  8 A. It may not be one-to-one is what                  9 I'm saying, if you have an integrated North                  10 American circuit.                  11 252 Q. Did you understand that there was                  12 an integrated North American circuit?                  13 A. There was a general understanding                  14 that Ontario had the most race dates, but there was                  15 also racing in other jurisdictions.                  16 253 Q. Let me ask you this: Will you                  17 agree with me, sir, that there's a direct                  18 correlation between the number of race dates and                  19 horse supply?                  20 A. There is a correlation. I would                  21 agree with a correlation.                  22 254 Q. Mr. Seiling testified in these                  23 proceedings that:                  24 Q. "You believed that when you put                  25 out these messages for breeders to</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. LISUS: That's the next exhibit.                  2 MR. ROSENBERG: For identification.                  3 The witness did not identify the document. It                  4 should be marked for identification.                  5 EXHIBIT NO. 3: SB0001482.                  6 BY MR. LISUS:                  7 255 Q. Let me ask you to look at 56354,                  8 please. This is an email from Janet Munroe to you                  9 enclosing a letter from Woodbine Entertainment in                  10 April 2010 about Ontario standardbred racing. Do                  11 you recall --                  12 MR. RATCLIFFE: Take a moment to read                  13 it all the way through.                  14 BY MR. LISUS:                  15 256 Q. Do you recall receiving                  16 information from Woodbine Entertainment Group in                  17 the spring of 2010 regarding standardbred racing                  18 and the Slots at Racetrack Program?                  19 A. I met with Jane Holmes and had a                  20 couple conversations with her.                  21 257 Q. And do you recall being told that                  22 Slots at Racetrack Program was critical to the                  23 industry's survival?                  24 A. I can't remember those terms.                  25 258 Q. Take a look at page 167, first</p>

<p style="text-align: right;">Page 78</p> <p>1 paragraph. And the first paragraph talks about the                  2 establishment of the racetrack slot program; right?                  3 And it goes on to say:                  4 "The program has been a                  5 win-win-win for the government, the                  6 rural economy, and the industry."                  7 Did you agree with that in 2010?                  8 A. I believe that the industry                  9 believed that.                  10 259 Q. Did you believe that, or did you                  11 not have a view?                  12 A. I believe the industry believed                  13 that.                  14 260 Q. Did you believe that?                  15 A. Well, I believe that they believed                  16 it.                  17 261 Q. Mr. Orsini, I'll ask you the same                  18 question all day until you answer it. I'm                  19 interested in your belief. Did you believe the                  20 program --                  21 A. I had done -- I did not do an                  22 exhaustive review at the time.                  23 262 Q. I'm not asking you that. I'm just                  24 asking if you had a belief. If you didn't have a                  25 belief, tell me you didn't have a belief, and I'll</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes, the betting public, the slots                  2 at -- yes.                  3 268 Q. Yes. When you bet on a horse,                  4 you're betting on the outcome of a race. When you                  5 bet on a slot machine, you're betting on the                  6 sequence that appears; right?                  7 A. Yes. I didn't -- I wouldn't                  8 interpret wagering as slots. I just want to get                  9 clarity.                  10 269 Q. Fair enough. But the revenue                  11 stream that the province got was a revenue stream                  12 directly from the people who played the slot                  13 machine?                  14 A. Yes. Yes. Yes.                  15 270 Q. And you did understand, I presume,                  16 because you're told in the letter, that the program                  17 was critical to the industry's survival?                  18 A. I would say the industry believed                  19 that, yes.                  20 271 Q. And you didn't have an                  21 understanding one way or the other?                  22 A. I did not. As I said, we hadn't                  23 done a review of the -- we get a lot of proposals                  24 from industries right across the board how crucial                  25 our tax credit is to the survival of their</p>
<p style="text-align: right;">Page 79</p> <p>1 move on. Did you have a belief --                  2 A. I didn't have a belief, per se.                  3 I believe the industry had that belief.                  4 263 Q. Okay. But you did not have a                  5 belief --                  6 A. I had not done a full review of                  7 how important the funding had been to the sector.                  8 264 Q. All right. But you knew that the                  9 government had received a significant benefit from                  10 the introduction of Slots at Racetrack Program;                  11 right?                  12 A. It was a revenue stream to the                  13 province, yes.                  14 265 Q. And it was a revenue stream to the                  15 province directly from the wagering public;                  16 correct?                  17 A. The -- not the wagering at the                  18 racetracks. You mean the betting on the slots?                  19 266 Q. Yes.                  20 A. You used wagering. I wasn't sure                  21 which you're referring to, the racetracks or the                  22 slots.                  23 267 Q. The revenue to the province was                  24 revenue directly from the betting public at                  25 racetracks?</p>	<p style="text-align: right;">Page 81</p> <p>1 industries, how these grant programs is critical to                  2 the survival of their industries. I'm asked to                  3 look at what the evidence is in those situations.                  4 272 Q. Fair enough.                  5 MR. LISUS: That's the next exhibit.                  6 EXHIBIT NO. 4: CRE0056354.                  7 BY MR. LISUS:                  8 273 Q. You understood, of course, that in                  9 2010 when you were being told that the program had                  10 been in existence at that point for some 12 years?                  11 A. Since 1998.                  12 274 Q. Yes. Right?                  13 A. Correct.                  14 275 Q. I want to show you a document,                  15 CR30882. This is Exhibit 15 on the examination of                  16 Rod Phillips. It appears to be a Finance document.                  17 It says:                  18 "OLG strategic and tactical                  19 decisions and minister chair                  20 discussion."                  21 Do you recall, sir, participating in the spring of                  22 2010 with Minister Duncan in discussions with OLG                  23 and Mr. Godfrey or whoever the chair was at that                  24 time?                  25 A. I wasn't present at many of the</p>

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<p>1 meetings between the chair and the minister. I                  2 don't recall being at this particular one.                  3 276 Q. Let me see if I can refresh your                  4 recollection. Firstly, this document, it's got                  5 three boxes. One says:                  6 "Tactical requiring immediate                  7 action."                  8 Two says:                  9 "Strategic execution in next 12                  10 to 18 months."                  11 Three says:                  12 "Visionary, begin engagement                  13 and planning, execution in 18-plus                  14 months."                  15 Is that a format of the kind that you would see                  16 from time to time?                  17 A. It's not a standard format.                  18 277 Q. I understand, but is that the kind                  19 of format that you would see from time to time for                  20 a briefing document?                  21 A. Is this -- I can't tell who                  22 prepared this document.                  23 278 Q. Neither can we. It was just given                  24 to us by the government. But it seems to be                  25 prepared by --</p>	<p>1 racing industry; correct?                  2 A. I see reference to that, yes.                  3 282 Q. And you saw the prior reference in                  4 April 2010; right? We discussed that a few minutes                  5 ago?                  6 A. I do recall.                  7 283 Q. All right. So does this assist                  8 you in remembering that in the spring of 2010,                  9 there were discussions about the need to renew the                  10 siteholder agreements for five years to provide                  11 long-term stability to the horse racing industry?                  12 A. As I said, I wasn't very actively                  13 involved in that, but I note the references you                  14 cite.                  15 284 Q. Fair enough.                  16 MR. LISUS: So this we'll mark as an                  17 exhibit for identification.                  18 MR. ROSENBERG: We can agree on that,                  19 Counsel.                  20 MR. MATTHEWS: Exhibit A.                  21 EXHIBIT NO. A for Identification:                  22 CR0030882.                  23 BY MR. LISUS:                  24 285 Q. When do you think you started to                  25 get up to speed with the gaming file, Mr. Orsini?</p>
<p>1 A. It might be an OLG document. I                  2 don't know, though.                  3 279 Q. Okay. Let me just ask you this:                  4 If you look in the first box, tactical under                  5 siteholder agreements --                  6 A. Okay. Yes, tactical requiring                  7 immediate action box?                  8 280 Q. Right. And it says:                  9 "Execute five-year extension                  10 option under current terms and                  11 exercise existing clauses re:                  12 benchmarking to introduce a                  13 strengthened financial reporting                  14 requirements developed in                  15 cooperating with the ORC to improve                  16 value derived from the 350 million                  17 funding provided by OLG and ensure                  18 long-term stability for the horse                  19 racing industry."                  20 Right?                  21 A. I see that reference.                  22 281 Q. Okay. So we see now the second                  23 reference in the spring of 2010 to the connection                  24 between the five-year extension of the siteholder                  25 agreements and the long-term stability of the horse</p>	<p>1 A. I think when -- it would have been                  2 late 2010 as I got more gradually exposed to the                  3 issues and throughout 2011 having an ADM that would                  4 lead a lot of the work that was done within the                  5 division.                  6 286 Q. Who was your ADM?                  7 A. At the time, Barry Goodwin.                  8 287 Q. Okay. Is he still with                  9 government?                  10 A. No.                  11 288 Q. I want to show you a document.                  12 Did you work with Steen Hume? I've seen him                  13 sending emails to you from time to time.                  14 A. Steen was a director responsible                  15 for the gaming file.                  16 289 Q. I want to show you a document.                  17 It's an email in late August 2010, August 19, which                  18 encloses a memorandum and the Ontario Racing                  19 Commission business plan for 2010 to 2013.                  20 MR. ROSENBERG: Document number,                  21 please?                  22 MR. LISUS: 56668, 56669, 56670, 56673.                  23 MR. ROSENBERG: Thank you.                  24 BY MR. LISUS:                  25 290 Q. So the email identifies a number</p>

<p style="text-align: right;">Page 86</p> <p>1 of enclosures or attachments including transmittal                  2 memos, the cover letter to the business plan, and                  3 the business plan. And we see that the memorandum                  4 is to Peter Wallace from you enclosing the ORC's                  5 business plan. Do you see that?                  6 A. That's correct.                  7 291 Q. So you didn't report to                  8 Mr. Wallace, did you?                  9 A. I did.                  10 292 Q. You did. Okay. He was a deputy                  11 minister, and you were the associate deputy                  12 minister; right?                  13 A. That's correct.                  14 293 Q. We see here the memorandum, you're                  15 saying:                  16 "This business plan is required                  17 to be submitted under the management                  18 board of Cabinet's revised Agency                  19 Establishment and Accountability                  20 Directive, 2010."                  21 A. That's correct.                  22 294 Q. Can you just explain to me what                  23 that means?                  24 A. The -- under our management board                  25 or Treasury Board guidelines, agencies have to file</p>	<p style="text-align: right;">Page 88</p> <p>1 have me on the CCs. That's not to say I didn't see                  2 it.                  3 300 Q. I don't know if we have a signed                  4 version.                  5 Do you recall, sir, that one of the                  6 context for the consultation that ORC was                  7 undertaking in its formulation of its racing                  8 program had been a reduction in the number of live                  9 racing dates by certain tracks in 2009? Do you                  10 recall that?                  11 A. Repeat that again, please.                  12 301 Q. Do you recall that one of the                  13 factors that led to the Ontario Racing Commission's                  14 consultation process and creation of the Ontario                  15 Racing Program was the reduction in live racing                  16 dates in 2009? Do you recall that?                  17 A. I don't recall.                  18 302 Q. Okay. And if you go to page 207,                  19 under the communication plan, do you see that,                  20 second paragraph? Communication plan, the second                  21 paragraph, second sentence says:                  22 "Industry forums and input                  23 meetings, advisory groups and                  24 working groups have been regularly                  25 implemented throughout the year as</p>
<p style="text-align: right;">Page 87</p> <p>1 either a business plan and have that available and                  2 annual reports, to make those public. So this                  3 would be their business plan that they were                  4 required to submit.                  5 295 Q. Okay. In your memorandum, you                  6 identify the key strategies in the business plan of                  7 ORC; right?                  8 A. Mm-hm.                  9 296 Q. Which included working with the                  10 horse racing industry to create a new approach for                  11 determining live race dates; right?                  12 A. It would have been in their                  13 business -- the ORC's business plan, correct.                  14 297 Q. And you recommended that the                  15 minister -- who I take it at that point in time was                  16 Duncan -- approve the ORC's business plan; right?                  17 A. That's correct.                  18 298 Q. And the business plan is for 2010                  19 to 2013; right?                  20 A. That's the date of the business                  21 plan, correct.                  22 299 Q. Right. If you go with me to page                  23 two-hundred and --                  24 A. Do we have a signed version of                  25 this letter? I wasn't CCed. The email doesn't</p>	<p style="text-align: right;">Page 89</p> <p>1 an integrated and transparent                  2 approach to the regulation of the                  3 industry."                  4 MR. RATCLIFFE: Can you pull that up on                  5 the screen?                  6 THE WITNESS: I do see that.                  7 BY MR. LISUS:                  8 303 Q. Okay. And if we go to page 8 of                  9 the deck, which is 216 of the document.                  10 A. 216?                  11 304 Q. Yes.                  12 A. Yeah.                  13 305 Q. It says:                  14 "Key initiatives for 2010-2011                  15 race date model."                  16 There's a reference --                  17 A. What slide again?                  18 306 Q. Slide 8, key initiatives for                  19 2010-2011.                  20 A. Okay. I have it in front of me                  21 now.                  22 MR. RATCLIFFE: Take a moment to look                  23 at it.                  24 BY MR. LISUS:                  25 307 Q. It explains:</p>



<p style="text-align: right;">Page 90</p> <p>1 "There was a moratorium on the                  2 reduction in the number of live race                  3 dates in 2009 when racetracks asked                  4 for significant reduction in the                  5 number of live race dates for the                  6 2010 racing season.                  7 The ORC board will be presented                  8 with recommendations for a method of                  9 determining the number of live race                  10 dates in 2011 by the fall of this                  11 year."                  12 Did you understand, sir, that by the fall of 2010,                  13 the ORC would make recommendations --                  14 A. The fall 2011?                  15 308 Q. By the fall of 2010, the ORC would                  16 make recommendations for the number of live race                  17 dates in 2011?                  18 A. I see reference to that, yes.                  19 309 Q. All right. Do you recall general                  20 discussions about this process that was underway                  21 with the ORC in the fall of 2010?                  22 A. What I recall is a high-level                  23 debate between the racetracks and the -- by the                  24 number of race dates.                  25 310 Q. Okay.</p>	<p style="text-align: right;">Page 92</p> <p>1 Steen Hume and/or Blair Stransky in the late summer                  2 of 2010 about the ORC consultation results and race                  3 dates?                  4 A. I can't recall exactly, but I was                  5 getting more exposed to the issues as we're                  6 approaching the fall when I assume greater                  7 responsibility.                  8 315 Q. If we look at page 3 of the deck                  9 under "Context," the third bullet, there's a                  10 discussion about sustaining live standardbred horse                  11 racing into the future. Do you see that?                  12 A. "This is recognition that a                  13 broader provincial approach within                  14 the industry is required in order                  15 to sustain live standardbred horse                  16 racing in the future."                  17 That's the reference.                  18 316 Q. Okay. Do you recall in the fall                  19 of 2010 being briefed on what other jurisdictions                  20 were doing about standardbred horse racing and what                  21 the Quebec experience was?                  22 A. I don't recall the briefings.                  23 317 Q. Okay.                  24 A. I do remember Quebec going through                  25 some major restructuring.</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. LISUS: Next exhibit.                  2 MR. ROSENBERG: For identification.                  3 The witness was not able to identify the document.                  4 MR. LISUS: It's directed to the                  5 witness, so it's the next exhibit in sequence.                  6 MR. ROSENBERG: The witness commented                  7 specifically that he wanted to see a signed copy of                  8 the document to show it was actually directed to                  9 the witness.                  10 EXHIBIT NO. 5: CRE0056668, CRE0056669,                  11 CRE0056670, CRE0056673, and CRE0056674.                  12 BY MR. LISUS:                  13 311 Q. CRE17331.                  14 MR. ROSENBERG: You have my objection.                  15 BY MR. LISUS:                  16 312 Q. Now, this is an email again from                  17 Mr. Hume to Mr. Stransky about the race dates                  18 consultation deck, and it says:                  19 "We're briefing Steve O on                  20 Monday using the attached."                  21 Okay?                  22 A. Yes.                  23 313 Q. Steve O would be you; right?                  24 A. I presume that's me, yes.                  25 314 Q. Do you recall being briefed by</p>	<p style="text-align: right;">Page 93</p> <p>1 318 Q. Do you recall whether or not the                  2 Quebec standardbred racing industry collapsed?                  3 A. I understand they went through a                  4 significant restructuring.                  5 319 Q. But you don't recall understanding                  6 that it collapsed after the revenue sharing or                  7 government support was withdrawn?                  8 A. I don't -- I know the industry had                  9 restructured. I don't know the cause and effect.                  10 320 Q. Okay. If we look at page 12 of                  11 the deck, bottom right corner of the slides, first                  12 bullet, I take it that you understood that the                  13 updated race model that the ORC was developing was                  14 intended to better support coordinated horse supply                  15 management across the province?                  16 A. I think that would be the intent                  17 of what they were trying to accomplish.                  18 321 Q. Okay. If you could go to slide                  19 15, please. You understood that the updated race                  20 date model had been developed through ongoing                  21 collaboration with industry and the receipt of                  22 input from stakeholders in one-on-one meetings,                  23 written submissions, and working groups and an                  24 official advisory group?                  25 A. I think the intent was to consult</p>

<p style="text-align: right;">Page 94</p> <p>1 with the industry, so I'm not surprised by that                  2 comment.                  3 322 Q. Okay. And Finance, in Slide 16,                  4 is preparing draft key messages. What are draft                  5 key messages?                  6 A. Not sure on the intent here, but                  7 typically should the government approve that policy                  8 approach, these are the type of messages that would                  9 correspond to that policy.                  10 323 Q. Okay. And a key message was that                  11 the government was supportive of a standardbred                  12 racing industry that reflects strong wagering                  13 numbers, offers a quality race and horse product,                  14 and works collaboratively to sustain the industry                  15 into the future; right? And then the other key                  16 messages are reflected there; correct?                  17 A. That's what it states.                  18 324 Q. And it also states:                  19 "A key message is that ORC was                  20 working to balance the needs of all                  21 sectors of the standardbred horse                  22 racing industry to provide an                  23 outcome that will benefit and                  24 sustain all participants."                  25 Right?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes, the principles for                  2 consultation.                  3 331 Q. Right. And if we look at the deck                  4 at page 17, it identifies -- Slide 17 identifies                  5 the next step of a minister's briefing. Do you see                  6 that, September 2, 2010, minister's briefing                  7 including a meeting with ORC chair?                  8 A. I see reference to that.                  9 332 Q. And if we look at Slide 19 in the                  10 middle -- or Slide 19 describes the consultation                  11 process. And there was an industry advisory group.                  12 Consultations included select industry                  13 representatives, example standardbred and horse                  14 people associations; right?                  15 MR. RATCLIFFE: Just give Mr. Orsini a                  16 moment to read through the slide, if you don't                  17 mind, please.                  18 THE WITNESS: Can you repeat your                  19 question?                  20 BY MR. LISUS:                  21 333 Q. I'm just making the point that the                  22 ORC, as part of its consultations, formed a formal                  23 industry advisory group in early 2010 which                  24 included standardbred associations?                  25 A. From the summary articulated</p>
<p style="text-align: right;">Page 95</p> <p>1 A. That's what it says.                  2 325 Q. All right. So in the fall of                  3 2010, we can agree, sir, that ORC has been in                  4 extensive consultation with the horse racing                  5 industry; correct?                  6 A. Yes, that's my understanding.                  7 326 Q. And it's also reporting its                  8 activities to Finance?                  9 A. Yes.                  10 327 Q. And what the ORC is saying is that                  11 it's important to renew the siteholder agreements                  12 for five years to give stability to the horse                  13 racing industry and the breeding sector; correct?                  14 A. It makes that statement.                  15 328 Q. And we have also seen that the ORC                  16 is communicating to the racing industry and the                  17 public that the process it is undertaking is                  18 intended to benefit their investments in their                  19 breeding operations; right?                  20 A. I mean, there's causality there.                  21 329 Q. We can debate the causality.                  22 That's what they were saying in the newsletters;                  23 right?                  24 A. The ORC?                  25 330 Q. Yes. Correct?</p>	<p style="text-align: right;">Page 97</p> <p>1 there, they had broad consultations.                  2 334 Q. Right. And now, if you'd look at                  3 the next slide, 20. So one of the risks identified                  4 by ORC and Finance in this deck is that horse                  5 supply would be insufficient to meet the                  6 requirements of the proposed model; right?                  7 A. Where's that reference?                  8 335 Q. You see risk, number 3:                  9 "Horse supply is insufficient                  10 to meet the requirements of the                  11 model."                  12 Right? That's the identified risk?                  13 A. I see that.                  14 336 Q. Okay. And the mitigation measure                  15 for that risk is:                  16 "ORC to examine other                  17 concurrent programs, example the                  18 horse improvement program, in order                  19 to seek complementary support that                  20 will increase horse supply in an                  21 appropriate and timely manner."                  22 Right?                  23 A. I see reference to that.                  24 337 Q. Okay. So we can agree, sir, in                  25 2010, ORC is working with those engaged in the</p>

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<p>1 consultation process including standardbred                  2 breeders about increasing horse supply to meet the                  3 demands of the racing program model that it is                  4 going to propose; right?                  5 A. So it's proposing a model that had                  6 other risks too, not improving wagering. So                  7 there's a number of risks that their proposed model                  8 would entail.                  9 338 Q. And one of the risks was that                  10 there wouldn't be enough horses to service the                  11 proposed race dates; right?                  12 A. They also have an assessment                  13 column that gives a likelihood. So that is --                  14 339 Q. Why don't you want to answer my                  15 question, Mr. Orsini? It's a straightforward                  16 question, sir.                  17 MR. RATCLIFFE: What was the question                  18 again? Could you please repeat it?                  19 THE WITNESS: Could you please repeat                  20 it?                  21 MR. LISUS: Read the question back,                  22 please.                  23 THE REPORTER:                  24 Q. "And one of the risks is there                  25 wouldn't be enough horses to service</p>	<p>1 is reporting on the fact that -- what the breeder's                  2 position will be? Do you see that?                  3 A. The second row?                  4 345 Q. Yes.                  5 A. So it states here:                  6 "The breeders will be positive                  7 to neutral."                  8 346 Q. Right.                  9 "Will likely be supportive.                  10 New model is designed to place an                  11 emphasis on overall industry                  12 collaboration and coordination to                  13 improve the quality of horse supply                  14 to support competitive live horse                  15 racing in Ontario. New model will                  16 give breeders more predictability                  17 regarding the demand for yearlings                  18 in the future."                  19 Right?                  20 A. That's what it says.                  21 347 Q. Okay. And no question that                  22 breeders were a stakeholder in this process; right?                  23 A. That's correct.                  24 348 Q. And the approach or response                  25 recommend by Finance was for ORC to communicate how</p>
<p>1 the proposed race dates; right?"                  2 THE WITNESS: That's what the deck                  3 says. Yes, that's correct.                  4 BY MR. LISUS:                  5 340 Q. All right. One of the ways the                  6 ORC was going to mitigate that risk was to increase                  7 horse supply in order to service the number of race                  8 dates proposed in the racing program; fair?                  9 A. So assuming that proposal was                  10 approved, they had another proposal to provide                  11 additional support to increase the horse supply.                  12 341 Q. Right.                  13 A. That's what it says.                  14 342 Q. And we can agree that increased                  15 horse supply is achieved by increased breeding;                  16 right?                  17 A. I presume, unless you import                  18 horses from other jurisdictions.                  19 343 Q. And if we look at the next slide,                  20 21, this slide is identified as a stakeholder                  21 management. What does that mean?                  22 A. In general, it identifies how                  23 different parts of the broader community will react                  24 to a particular proposal should it be implemented.                  25 344 Q. And do you see where the Finance</p>	<p>1 the new model supports breeding and will improve                  2 overall quality of horse supply; right?                  3 A. For that proposed approach, that                  4 was the response.                  5 349 Q. And the role of the Ministry of                  6 Finance was to defer to the ORC on that initiative;                  7 right?                  8 A. Yes, that's what it states.                  9 350 Q. Okay. Now, do you recall being                  10 briefed, sir, as this email says, on these issues                  11 in late summer 2010?                  12 A. I don't recall precisely. Not to                  13 say I wasn't, but I don't recall.                  14 351 Q. Okay. And do you have any general                  15 recollection of being briefed by Finance officials                  16 about the ORC racing program and one of its                  17 objectives being to bring stability to horse supply                  18 for breeders?                  19 A. I do recall the ORC looking at                  20 race dates and trying to juggle between racetracks                  21 that was looking to reduce the number of race dates                  22 and the horse people looking at increasing it.                  23 And that was a juggling act that the                  24 ORC had to find a balance, and they were proposing                  25 different options to government for its</p>

<p style="text-align: right;">Page 102</p> <p>1 consideration.</p> <p>2 352 Q. And the ORC did ultimately find a</p> <p>3 balance that was approved by government; correct?</p> <p>4 A. I can't recall what was approved,</p> <p>5 but...</p> <p>6 353 Q. We'll come to that in a minute.</p> <p>7 MR. LISUS: This deck and the note is</p> <p>8 the next exhibit.</p> <p>9 MR. MATTHEWS: Exhibit 6.</p> <p>10 EXHIBIT NO. 6: CRE0017331 and</p> <p>11 CRE0017332.</p> <p>12 MR. LISUS: Just go off for a minute.</p> <p>13 -- OFF THE RECORD DISCUSSION --</p> <p>14 -- Recess at 12:32 p.m. --</p> <p>15 -- Upon resuming at 12:37 p.m. --</p> <p>16 BY MR. LISUS:</p> <p>17 354 Q. Mr. Orsini, I'm going to show you</p> <p>18 a document dated August 31, 2010, which was</p> <p>19 publicly released by the ORC in August 2010, was on</p> <p>20 their website and is on Standardbred Canada's</p> <p>21 website. This is the document which summarizes the</p> <p>22 outcome of the consultation process and the new</p> <p>23 model.</p> <p>24 Just take a look at it and tell me if</p> <p>25 you recollect being aware of -- SB5371 -- aware of</p>	<p style="text-align: right;">Page 104</p> <p>1 investment in racing, measure and</p> <p>2 balance the potential funds</p> <p>3 available for breeders, racing horse</p> <p>4 people, and racetracks to ensure</p> <p>5 stability in all sectors of the</p> <p>6 industry."</p> <p>7 A. I see that.</p> <p>8 362 Q. And are you aware, sir, that in</p> <p>9 2010, there was a concern about stability in the</p> <p>10 industry because of racetracks wanting to reduce</p> <p>11 the number of live racing dates and a decline of</p> <p>12 live wagering?</p> <p>13 A. I do recall there was a general</p> <p>14 concern about wagering was declining over time, and</p> <p>15 the racetracks were looking at restricting the</p> <p>16 number of race dates.</p> <p>17 363 Q. Okay. And so as a consequence of</p> <p>18 those two factors, there was concern about</p> <p>19 stability within the horse racing industry and, in</p> <p>20 particular, breeding of horses; right?</p> <p>21 A. The concern varied within the</p> <p>22 industry.</p> <p>23 364 Q. But it included those concerns?</p> <p>24 A. It did include those concerns.</p> <p>25 365 Q. Okay. And this process, this</p>
<p style="text-align: right;">Page 103</p> <p>1 the release of this document.</p> <p>2 A. I don't recall the release of it</p> <p>3 or the document itself.</p> <p>4 355 Q. And you see where the document in</p> <p>5 the executive summary identifies a number of</p> <p>6 principles?</p> <p>7 A. What page is that?</p> <p>8 356 Q. Page 1 of 16.</p> <p>9 A. Right. Is that the --</p> <p>10 357 Q. Executive summary.</p> <p>11 A. Right.</p> <p>12 358 Q. It's a table that says</p> <p>13 "Principles."</p> <p>14 A. I see it now.</p> <p>15 359 Q. It says:</p> <p>16 "The principle is enhanced live</p> <p>17 racing and provide benefit to the</p> <p>18 Ontario agricultural sector."</p> <p>19 A. I see that.</p> <p>20 360 Q. "Objective: Demonstrate</p> <p>21 reinvestment into live racing."</p> <p>22 A. I see that.</p> <p>23 361 Q. Okay. And do you see the</p> <p>24 principle below:</p> <p>25 "Allow a fair return on</p>	<p style="text-align: right;">Page 105</p> <p>1 year-long process culminating with this program was</p> <p>2 intended to address those concerns and bring</p> <p>3 stability to the industry; right?</p> <p>4 A. It was ORC's attempt to do so.</p> <p>5 366 Q. Okay. I take it, sir, this issue,</p> <p>6 being the ORC's racing program and its attempts to</p> <p>7 bring stability, was not for you a priority in the</p> <p>8 fall of 2010; is that fair?</p> <p>9 A. Repeat that. It was or was not?</p> <p>10 367 Q. Was not a priority for you in the</p> <p>11 fall of 2010.</p> <p>12 A. I would say given all my</p> <p>13 responsibility, I would say that the lead for this</p> <p>14 would be lower within the organization.</p> <p>15 368 Q. Understood. And who would that</p> <p>16 be? Do you know?</p> <p>17 A. As associate, there's an ADM,</p> <p>18 there's a director, and then there's a manager or</p> <p>19 several managers that are responsible for different</p> <p>20 aspects of the whole gaming file.</p> <p>21 There's also a broader review of</p> <p>22 gaming, period, that the OLG was engaged in. So</p> <p>23 there's many different facets, but this was one</p> <p>24 aspect of part of a comprehensive set of issues.</p> <p>25 369 Q. But given the number of other</p>

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<p>1 issues you were involved in and the extent to which 2 this issue was specific to the horse racing 3 industry, I take it that Finance relied on the 4 Ontario Racing Commission to conduct a proper 5 consultation process and make sensible 6 recommendations? 7 A. I think as an agency, the ministry 8 would look to the agency to conduct its affairs, 9 but always would have an independent view to be 10 able to give government advice down the road. 11 370 Q. Okay. And the agency you're 12 talking about there, when you say "agency," is the 13 ORC; right? 14 A. We had a number of different 15 agencies, but in this particular issue, it would be 16 the ORC. It really depends on the topic area. 17 371 Q. And as you say, it depends on the 18 topic area, and with respect to horse racing, the 19 ORC was the expert agency? 20 A. It was the agency that was 21 providing oversight to the horse racing industry. 22 372 Q. Was it, therefore, the agency that 23 knew the most about the horse racing industry and 24 its constituent elements? 25 A. I think it would be fair to say it</p>	<p>1 ORC? 2 A. The chief veterinarian responsible 3 at OMAFRA would be very understanding of particular 4 aspects of animals, for example. So that might be 5 one area. I'm not saying they are. I'm just 6 saying I can't rule out as to whether or not 7 someone else would have expertise in different 8 aspects of the sector. 9 377 Q. But you don't know -- 10 A. I didn't say I had anyone in mind. 11 I just didn't want to generalize. 12 MR. LISUS: All right. I would like to 13 mark that report, please, as the next exhibit. 14 EXHIBIT NO. 7: SB0005371. 15 BY MR. LISUS: 16 378 Q. The next document is Exhibit 9 on 17 Mr. Stransky's examination, CRE75818. Before I ask 18 you specifically about this document, sir, just a 19 process question: I presume the ORC couldn't put 20 out press releases about a major initiative without 21 Finance approval of the press release? 22 A. They would typically seek Finance 23 approval at some level, to some degree. 24 379 Q. So this email sequence appears to 25 be Finance providing its approval to an ORC news</p>
<p>1 was very knowledgeable in the sector. 2 373 Q. Would there be any other 3 government agency or group that would be more 4 knowledgeable than the ORC about the horse racing 5 industry and its constituent elements? 6 A. It would be hard for me to assess 7 whether or not individuals might have a really good 8 handle within the Ministry of Agriculture, Food and 9 Rural Affairs. As a collective organization, it 10 would have a pretty good understanding. 11 374 Q. But we've seen that the Ministry 12 of Agriculture and Rural Affairs played no part in 13 this consultation process and the design of this 14 new model. It was all done by the ORC; right? 15 A. On this particular -- on the race 16 date, yes, the ORC. On other aspects of the 17 sector, they may have particular expertise. 18 375 Q. Such as what? 19 A. The -- I'm just -- you asked me 20 would they be the only ones, and my premise is I 21 can't rule out other people being familiar with the 22 sector. 23 376 Q. But are you able to tell me what 24 other aspects of the sector you think that the 25 Ministry of Agriculture might know more than the</p>	<p>1 release for September 2010. 2 A. Just give me a second, please. 3 380 Q. Sure. 4 A. I wasn't copied on this email 5 trail, but I presume this is the actual document 6 they're referring to. 7 381 Q. The news release, yes. 8 A. So it wouldn't be unusual for 9 the -- any agency to be sharing communications with 10 the ministry. 11 382 Q. And do you see where the news 12 release is announcing that: 13 "The board of the ORC approved 14 in principle a framework for race 15 date allocation, which confirms a 16 commitment to the sport of live 17 horse racing in industry (sic)." 18 Do you see that? 19 A. Show me exact. 20 MR. RATCLIFFE: Where in the release is 21 that? 22 MR. LISUS: The first paragraph. 23 THE WITNESS: 24 "Approved in principle a 25 framework for race date allocation,</p>

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<p>1 which confirms a commitment to the            2 sport of live horse racing in            3 Ontario."            4 Correct. That's what it states.            5 BY MR. LISUS:            6 383 Q. And that's what Finance approved            7 it would state; correct?            8 A. It appears from the email traffic,            9 yes.            10 384 Q. All right. And if we look at the            11 second paragraph from the bottom, it says:            12 "To all stakeholders involved,            13 this commitment to live horse racing            14 means they can see themselves            15 reinvesting, building, and growing a            16 racing industry for the future."            17 Do you see that?            18 A. I see that reference.            19 385 Q. Mr. Seiling testified that -- with            20 respect to this quote I just read you in the news            21 release:            22 Q. "Was that a quote that you gave            23 for this news release, sir?            24 A. It would be.            25 Q. And this would have been a</p>	<p>1 BY MR. LISUS:            2 388 Q. Do you recall that message being            3 communicated to the horse racing industry in            4 September 2010?            5 A. I don't recall the message being            6 communicated.            7 389 Q. Okay.            8 MR. LISUS: That's the next exhibit,            9 please.            10 MR. ROSENBERG: For identification.            11 The witness was not able to identify the document.            12 MR. MATTHEWS: Sure, we'll make it B.            13 I don't think it makes a difference. It's already            14 been marked in Mr. Stransky's examination.            15 EXHIBIT NO. B for Identification:            16 CRE0075818 and CRE0075819.            17 BY MR. LISUS:            18 390 Q. I want to ask you to look at            19 CRE7967 and 7968. What this is, Mr. Orsini, is an            20 email sequence attaching a Q and A sent to you for            21 estimates. I think it's an estimates committee.            22 So if you look at the second from the top,            23 Steen Hume sends an email to Elizabeth Yeigh            24 saying:            25 "Can you send me the estimates</p>
<p>1 quote that you would have given with            2 the understanding that what you're            3 saying would be aligned with what            4 you believe to be the position of            5 the government regarding the horse            6 racing industry; correct?            7 A. Correct.            8 Q. And when you say to all            9 stakeholders involved, you include            10 in that standardbred breeders;            11 correct?            12 A. Yes."            13 So do you recall, sir, that in the fall of 2010,            14 Finance approved a press release to the industry,            15 including standardbred breeders, informing them of            16 the government's commitment to live horse racing            17 that would see them reinvesting in the racing            18 industry for the future?            19 A. This news release you're referring            20 to?            21 386 Q. Yes.            22 A. So your question is did the            23 government see this and approve its release?            24 387 Q. We know that it did, sir.            25 MR. RATCLIFFE: Do you recall?</p>	<p>1 Q and A that was sent to Steve O.            2 Need them before 8:45."            3 Steve O is you; right?            4 A. I presume so.            5 MR. RATCLIFFE: Take a moment and just            6 read through.            7 BY MR. LISUS:            8 391 Q. Let me just ask you first, what is            9 estimates? Is that a committee of some kind?            10 A. So every year, the government            11 publishes, shortly after the budget, estimates            12 which lists all the spending by voting item, which            13 has all the different programs. And the government            14 indicates the amount of spending for that            15 particular year.            16 Estimates committee is a committee of            17 all three parties in the legislature, called            18 estimates committee, that reviews the estimates.            19 392 Q. Okay. And this is mid-September            20 2010. The budget has passed in the spring --            21 A. They have until November to            22 conclude their review of estimates.            23 393 Q. Okay. So what's going on here?            24 A. So as part of -- I don't recall            25 the specifics. Based on the email -- I haven't had</p>

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<p>1 time to review the Qs and As.                  2 394 Q. Okay. If we look at the Qs and As                  3 together, it says -- and I'm only going to ask you                  4 about one of them. It says:                  5 "Minister's Qs and As estimates                  6 defence, September 14, 2010."                  7 A. So the minister -- the deputy                  8 minister appear before estimates.                  9 395 Q. Were you a deputy minister at this                  10 time?                  11 A. No, but I'd be in the gallery                  12 called up. I'd be in the first row or second row                  13 to be called up should a question involving my area                  14 be raised.                  15 396 Q. So why did you get the Q and As?                  16 A. There's a question on -- when we                  17 harmonize with the federal Goods and Services Tax                  18 to create the Harmonized Sales Tax, it affected the                  19 gaming industry. I don't remember the specifics.                  20 I do remember there was what we called an HST,                  21 Harmonized Sales Tax, issue.                  22 397 Q. If we look at question 6, it's --                  23 do you see question 6?                  24 "2010 provincial budget                  25 indicates that the horse racing</p>	<p>1 the budget, if I recall correctly, the amounts                  2 would be set out there. I just don't have them in                  3 front of me.                  4 401 Q. Okay. And so then question 7 is                  5 composed with an answer. Do you see that?                  6 A. That's correct. I see it.                  7 402 Q. The position of the Minister of                  8 Finance in the fall of 2010 was that the objective                  9 of the Slots at Racetrack Program is to promote                  10 live horse racing and breeding and provide indirect                  11 support to the broader agricultural and rural                  12 sectors of Ontario; right?                  13 A. I see that, yes.                  14 403 Q. And the position of the Minister                  15 of Finance at the time as well was that the Slots                  16 at Racetrack Program had, as of 2010, been a                  17 success for all parties, including the horse racing                  18 and breeding industry; right?                  19 A. That's the statement.                  20 404 Q. And it was also the position of                  21 the Minister of Finance that Ontario horse racing                  22 and breeding industry remains a vital part of rural                  23 and agricultural Ontario; right?                  24 A. That's the response, correct.                  25 405 Q. Does that accord with your</p>
<p>1 industry has received over                  2 2.9 billion since 1998. Why does                  3 the horse racing industry receive so                  4 much money?"                  5 Do you recall these questions and proposed answers                  6 in 2010?                  7 A. I don't recall this specific                  8 question.                  9 398 Q. Okay. But you recall generally --                  10 A. The amount of money that was going                  11 to the horse racing industry year after year -- it                  12 was 2.9 in 2010, and every year they would increase                  13 the amount they would cite over that period of                  14 time.                  15 399 Q. You say it was 2.9 in --                  16 A. So it says here received                  17 2.9 billion since 1998. That was in 2010. 2011                  18 would have 3 point something. 2012 would have                  19 another number.                  20 400 Q. Do you know what the government                  21 had received from the Slots at Racetrack Program by                  22 2010?                  23 A. I do not have that number                  24 available. There was a legislative requirement to                  25 invest the money in hospitals, for example. And in</p>	<p>1 recollection as to what the Minister of Finance and                  2 the Ministry of Finance's position was with respect                  3 to the Slots at Racetrack Program in the fall of                  4 2010?                  5 A. I think the question points to a                  6 concern that people might have thought it was too                  7 generous, and the government was giving its reasons                  8 why.                  9 406 Q. No, I understand that, sir. I'm                  10 asking a different question. Do you recollect that                  11 that was the view of the Ministry of Finance and                  12 indeed the government in the fall of 2010?                  13 A. That was the government's public                  14 positioning on the program.                  15 407 Q. Okay.                  16 MR. LISUS: That's the next exhibit,                  17 please.                  18 MR. MILAT: Exhibit 8.                  19 EXHIBIT NO. 8: CRE7967 and CRE7968.                  20 MR. LISUS: And that takes us to                  21 1 o'clock.                  22 -- Recess at 1:00 p.m. --                  23 -- Upon resuming at 1:30 p.m. --                  24 BY MR. LISUS:                  25 408 Q. I just wanted to ask you a couple</p>

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1 more questions about the Q and A for the estimates  
 2 committee. I understood you to say the estimates  
 3 committee is a committee with representation from  
 4 all parties; is that correct?  
 5 A. That's correct.  
 6 409 Q. If we look at Exhibit 8, there's  
 7 questions and answers about the Ontario Racing  
 8 Commission as well?  
 9 A. Correct.  
 10 410 Q. And if we just go back to question  
 11 7 about Slots at Racetrack Program, on page 4 of  
 12 the Q and A, I understood you, Mr. Orsini, to say  
 13 that this was the response the minister was to  
 14 deliver if asked why \$340 million was being shared  
 15 with the provincial horse racing industry; right?  
 16 Yes? You have to give an audible answer because  
 17 she can't record --  
 18 A. No, I'm saying the -- to the --  
 19 including the racetracks, when you say "horse  
 20 racing," it's all included, yes.  
 21 411 Q. And then question 45, this was the  
 22 answer to the specific question of how can the  
 23 government justify using 350 million in revenue  
 24 from Slots at Racetrack Program to prop up the  
 25 racing industry; right?

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1 A. I'm just reading the question now.  
 2 Yes.  
 3 412 Q. Okay. And so that was the  
 4 position of the Ministry of Finance and the  
 5 government with respect to that question?  
 6 A. That would be the response that  
 7 the minister would have to use in his response to  
 8 any questions at estimates. I don't recall if a  
 9 question was asked and whether or not that was the  
 10 response.  
 11 413 Q. Okay. Now, if we go over the  
 12 page, there's another set of questions and answers  
 13 called soft lobs.  
 14 A. I see that.  
 15 414 Q. Is that collection of questions  
 16 and answers composed for the purpose of having  
 17 Liberal members of the estimates committee put  
 18 questions to the minister?  
 19 A. Often they put some questions for  
 20 caucus members to ask or anyone else that -- even  
 21 outside estimates.  
 22 415 Q. I'm just trying to understand the  
 23 process. These are questions that are developed in  
 24 advance with suggested answers to be put to the  
 25 minister to get the minister's message across; is

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1 that fair?  
 2 A. Generally, yes.  
 3 416 Q. Okay. And question 2 specifically  
 4 refers to the ORC race date allocation process in  
 5 response to the question; correct? The answer to  
 6 question 2 specifically refers to the ORC race date  
 7 allocation process in response to the question  
 8 about live racing being important to the community  
 9 and the agricultural sector in Ontario; right?  
 10 MR. RATCLIFFE: Take time to read  
 11 through it.  
 12 THE WITNESS: There's a general  
 13 reference to the ORC's -- a process. So when  
 14 given -- when asked a question, the minister is  
 15 referring to a process the ORC is engaged with.  
 16 BY MR. LISUS:  
 17 417 Q. How many people are on the  
 18 estimates committee?  
 19 A. I don't recall offhand, but  
 20 maybe -- less than a dozen.  
 21 418 Q. All right. I want to have you  
 22 look at SB1486, please. This is a fall 2010 news  
 23 and information bulletin for the horse racing  
 24 community and the general public put out by the  
 25 ORC.

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1 And, again, this is a release that  
 2 would have been approved by Finance, right, before  
 3 it went out?  
 4 A. I don't recall seeing this. I  
 5 don't recall that their general newsletters would  
 6 get approved, but I don't recall.  
 7 419 Q. Okay. And do you see on the  
 8 second page under the picture of Mr. Seiling --  
 9 A. Yes.  
 10 420 Q. -- where he says:  
 11 "Since the framework was  
 12 approved, I have spoken of the  
 13 importance of this opportunity in  
 14 Paddock meetings, one-on-one  
 15 discussions with racing folks, as  
 16 well as interviews with the trade  
 17 media. I have emphasized that this  
 18 fundamentally represents a  
 19 commitment to live racing and  
 20 accountability, and more to the  
 21 point, it is a firm commitment from  
 22 our provincial government that it  
 23 wants live racing and the jobs and  
 24 growth that racing represents for  
 25 rural Ontario."



<p style="text-align: right;">Page 122</p> <p>1 Do you see that?</p> <p>2 A. I do see that.</p> <p>3 421 Q. And if you go over the page where</p> <p>4 it says "something for everybody in this</p> <p>5 framework."</p> <p>6 A. I see that.</p> <p>7 422 Q. Under the heading "Breeders."</p> <p>8 A. Yes.</p> <p>9 423 Q. "Support for sale prices that</p> <p>10 exceed production costs, promotion</p> <p>11 of Ontario-based horses."</p> <p>12 Right?</p> <p>13 A. I see that.</p> <p>14 424 Q. So we can agree, sir, that if we</p> <p>15 look at the communications in this newsletter, as</p> <p>16 well as the messaging that the Ministry of Finance</p> <p>17 was giving at the estimates committee, both the ORC</p> <p>18 and the Ministry of Finance were of the view that</p> <p>19 horse racing and breeding were important activities</p> <p>20 to the province and should be encouraged and</p> <p>21 protected; right?</p> <p>22 A. I think the message is --</p> <p>23 certainly from the proposed responses from the</p> <p>24 Minister of Finance were positive towards the</p> <p>25 industry.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. And when you say 'across the</p> <p>2 province,' I take it, then, you</p> <p>3 understood that it was important to</p> <p>4 widely promote this new program?</p> <p>5 A. Correct, and answer questions.</p> <p>6 Q. Because this was going to be</p> <p>7 the new program on a go-forward</p> <p>8 basis in terms of the Ontario racing</p> <p>9 industry; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And as it relates to breeders</p> <p>12 in particular, some of the</p> <p>13 principles that I've read out would</p> <p>14 be directed specifically towards</p> <p>15 breeders; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Provide a fair return on</p> <p>18 investment over the short-term while</p> <p>19 protecting value for owners and</p> <p>20 communities over the long-term, that</p> <p>21 includes long-term investments made</p> <p>22 by breeders; correct?</p> <p>23 A. And owners.</p> <p>24 Q. And encouraging and providing</p> <p>25 incentives for live racing, that</p>
<p style="text-align: right;">Page 123</p> <p>1 425 Q. And they're quite consistent with</p> <p>2 what the ORC is putting out in its newsletter to</p> <p>3 the industry and the public; correct?</p> <p>4 A. Not the exact same words but the</p> <p>5 general direction.</p> <p>6 426 Q. Right. Were you aware, sir, that</p> <p>7 the purpose of the racing program was actively</p> <p>8 promoted by the ORC to the industry and the public?</p> <p>9 A. I mean, I'm not familiar with what</p> <p>10 their marketing or promotion campaign may have</p> <p>11 been.</p> <p>12 427 Q. You saw the newsletter we just</p> <p>13 discussed, and I want to tell you what Mr. Seiling</p> <p>14 testified to in these proceedings.</p> <p>15 Q. "And because it was the</p> <p>16 byproduct of this consultation, once</p> <p>17 it was finalized and went to your</p> <p>18 governing board, the result of the</p> <p>19 program was promoted to the</p> <p>20 industry; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Actively promoted?</p> <p>23 A. Correct. And we did meetings</p> <p>24 across the province to get the word</p> <p>25 out.</p>	<p style="text-align: right;">Page 125</p> <p>1 included incentives to have horses</p> <p>2 bred for live racing at Ontario</p> <p>3 racetracks; correct?</p> <p>4 A. By extension, yes.</p> <p>5 Q. And so this program launched</p> <p>6 and was rolled out and highly</p> <p>7 publicized in 2011; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And this program was</p> <p>10 specifically brought to the</p> <p>11 attention of the Ministry of</p> <p>12 Finance; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you understood that the</p> <p>15 Ministry of Finance not only was</p> <p>16 aware of this program but supported</p> <p>17 and endorsed it; correct?</p> <p>18 A. Correct. You have</p> <p>19 communication from the minister</p> <p>20 accepting it."</p> <p>21 Were you aware that the ORC actively promoted the</p> <p>22 program in the way that Mr. Seiling testified</p> <p>23 across the province to the breeding sector?</p> <p>24 A. I wouldn't have that knowledge to</p> <p>25 the extent that he may have been promoting it.</p>

<p style="text-align: right;">Page 126</p> <p>1 428 Q. Okay. If the program was to begin                  2 at the beginning of 2011 with a set number of race                  3 dates going forward, right, you can understand that                  4 breeders who had been consulted in the process,                  5 received the kinds of communications we've just                  6 seen, would make breeding decisions in reliance on                  7 the new program; right?                  8 A. I mean, I can't put myself in                  9 their minds, but they'd be looking at that and                  10 making investment decisions that entail some risk                  11 and some opportunity.                  12 429 Q. And that would be a reasonable                  13 thing for them to do given the public statements                  14 that the ORC is making; right?                  15 R/F MR. ROSENBERG: Objection. How is he                  16 to determine reasonableness in the circumstances,                  17 Counsel?                  18 BY MR. LISUS:                  19 430 Q. Mr. Orsini?                  20 A. They would have to judge it for                  21 themselves facing other risk and opportunities.                  22 431 Q. But the regulator, the ORC is                  23 telling them to do that, to increase supply and                  24 improve racing; right?                  25 A. Again, they would have to make</p>	<p style="text-align: right;">Page 128</p> <p>1 government telling them to invest in their breeding                  2 operations. That was a piece of information they                  3 had; right?                  4 MR. RATCLIFFE: Well, he's answered the                  5 question.                  6 BY MR. LISUS:                  7 435 Q. Right?                  8 MR. RATCLIFFE: He said there's factors                  9 you have to weigh.                  10 BY MR. LISUS:                  11 436 Q. Mr. Orsini, one of the pieces they                  12 had was the government telling them, through the                  13 ORC, to invest in their breeding operations; fair?                  14 That's just what we've seen, isn't it, sir?                  15 A. If you look at all the information                  16 they may have been receiving, that was one piece of                  17 it. But they're also hearing that the Sadinsky                  18 report and others talking about --                  19 437 Q. When was the Sadinsky report?                  20 A. 2008? I don't recall.                  21 438 Q. Correct. And what did the                  22 Sadinsky report recommend about Slots at Racetrack                  23 Program revenue share with the horse racing                  24 industry?                  25 A. It recommended the continuation,</p>
<p style="text-align: right;">Page 127</p> <p>1 their own judgment as to what level risk they want                  2 to take with any investment. There's not one                  3 business that doesn't entail risk when they make                  4 investment decisions.                  5 There could be a recession. We just                  6 came through a severe recession that a lot of                  7 investments, even in areas where the government                  8 might have been promoting, fell through the floor.                  9 They have to think through the risks and                  10 opportunities any time they're making investments.                  11 432 Q. There was no recession in the                  12 horse racing industry subsequent to the                  13 communication of the ORC's racing plan; correct?                  14 A. We came out of recession in                  15 2008-09 that was -- it sent a number of sectors                  16 almost --                  17 433 Q. There was no recession in 2011 and                  18 2012; correct?                  19 A. There was no recession. It                  20 doesn't prevent one from being in 2013. I'm saying                  21 that businesses have to, based on the best                  22 information they have, make an assessment of what                  23 the risks are and the opportunities.                  24 434 Q. And one of the best pieces of                  25 information that these businesses had was the</p>	<p style="text-align: right;">Page 129</p> <p>1 as I recall.                  2 439 Q. All right.                  3 A. It did point out that the poor                  4 performance, the need for review. So all these                  5 factors would have to come into play. I'm not                  6 disagreeing, per se, that the messaging from the                  7 ORC was the continued support of the industry.                  8 People making investment decisions have to weigh in                  9 all the risks, external and internal.                  10 440 Q. Okay. So you understood, though,                  11 that people were making investing decisions?                  12 A. I'm presuming that in any course                  13 of a sector, they'd be making investment decisions.                  14 441 Q. And you would expect them to make                  15 investment decisions based upon information being                  16 provided to them; right?                  17 A. All available information.                  18 442 Q. And the information being provided                  19 to them by the regulator of the industry they were                  20 investing in was to invest in the breeding                  21 operations and make investments for the long-term;                  22 right?                  23 MR. RATCLIFFE: Mr. Lisus, you're                  24 asking the same question that you asked two or                  25 three minutes ago.</p>

<p style="text-align: right;">Page 130</p> <p>1 BY MR. LISUS:                  2 443 Q. That's what the documents show,                  3 isn't it?                  4 MR. RATCLIFFE: Mr. Orsini has provided                  5 you an answer to the question.                  6 BY MR. LISUS:                  7 444 Q. I understand this is a sensitive                  8 point for you.                  9 A. I can't put myself in their shoes                  10 as to how they're interpreting all this information                  11 in front of them.                  12 445 Q. Well, let's just have a look at                  13 what it says. Newsletter:                  14 "I have emphasized that this                  15 fundamentally represents a                  16 commitment to live racing and                  17 accountability, and more to the                  18 point, it is a firm commitment from                  19 our provincial government that it                  20 wants live racing and the jobs and                  21 growth that racing represents for                  22 rural Ontario."                  23 That's what the Ontario Racing Commission told                  24 breeders in the fall of 2010; correct?                  25 A. Where's that reference again?</p>	<p style="text-align: right;">Page 132</p> <p>1 R/F MR. ROSENBERG: I object to this                  2 question.                  3 MR. RATCLIFFE: He's answered this                  4 question.                  5 BY MR. LISUS:                  6 450 Q. Can people rely on what the                  7 government tells them, Mr. Orsini?                  8 R/F MR. ROSENBERG: Objection.                  9 MR. RATCLIFFE: He's answered it.                  10 BY MR. LISUS:                  11 451 Q. Should they rely on what the                  12 government tells them?                  13 R/F MR. ROSENBERG: Objection.                  14 MR. LISUS: It's not your witness,                  15 Mr. Rosenberg.                  16 MR. ROSENBERG: You've sued my client,                  17 Mr. Lisus, and therefore, I am objecting.                  18 BY MR. LISUS:                  19 452 Q. Is Mr. Rosenberg your lawyer, sir?                  20 A. Robert is my counsel.                  21 453 Q. Thank you. When the Ontario                  22 government tells Ontarians that it's made a                  23 fundamental commitment to live horse racing, is                  24 that something that Ontarians can rely on?                  25 R/F MR. ROSENBERG: Objection.</p>
<p style="text-align: right;">Page 131</p> <p>1 446 Q. Second page of the fall 2010                  2 newsletter, first column. See that?                  3 A. Right. Yes, I see that.                  4 447 Q. Okay. And we saw earlier that the                  5 spring 2010 newsletter, principle 2 was saying the                  6 principle --                  7 "This principle, therefore,                  8 acknowledges that industry                  9 participants who make rational                  10 business decisions should expect a                  11 reasonable rate of return on their                  12 investment."                  13 Correct?                  14 A. I remember that citation earlier.                  15 448 Q. Mr. Orsini, would you agree with                  16 me that it's rational to rely on what the Ontario                  17 government is telling you about its regulation of                  18 an industry? It's a rational thing to do, isn't                  19 it?                  20 A. Again, how they interpret all the                  21 different information --                  22 449 Q. Mr. Orsini, when the Ontario                  23 government tells Ontarians that it's fundamentally                  24 committed to live racing, people can rely on that,                  25 can't they?</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. RATCLIFFE: Mr. Lisus, he's                  2 answered the question in terms of the various                  3 factors that come into play.                  4 BY MR. LISUS:                  5 454 Q. When the Ontario government says                  6 that there's a firm commitment from our provincial                  7 government that it wants live racing and the jobs                  8 and growth that racing represents for rural                  9 Ontario, is it a reasonable thing for breeders of                  10 horses to rely on that, sir?                  11 R/F MR. ROSENBERG: Objection. This is                  12 becoming abusive.                  13 BY MR. LISUS:                  14 455 Q. Mr. Orsini, I'd like an answer.                  15 Is it reasonable for the people of Ontario to rely                  16 on statements from their government that there's a                  17 firm commitment to live racing and the jobs and                  18 growth that racing represents for rural Ontario?                  19 MR. RATCLIFFE: Mr. Lisus, you're                  20 referring to this newsletter. He's answered the                  21 question. That's it.                  22 MR. LISUS: I'll take that I won't hear                  23 anything from counsel about reliance at the                  24 argument of the motion if you're not going to let                  25 him answer these questions.</p>

<p style="text-align: right;">Page 134</p> <p>1 MR. RATCLIFFE: That's fine.                  2 MR. LISUS: I want that very clearly                  3 understood.                  4 MR. RATCLIFFE: That's fine.                  5 THE WITNESS: I thought I did answer                  6 the question.                  7 BY MR. LISUS:                  8 456 Q. That it was a reasonable thing to                  9 do to rely on these statements?                  10 A. I said every investor has to weigh                  11 all the factors.                  12 457 Q. Of course. I'm just asking a                  13 simple question, sir. When the regulator --                  14 A. The fact that the race dates were                  15 always in dispute as to whether or not they're                  16 going to be increased or decreased -- at any given                  17 time, these factors could change --                  18 458 Q. Mr. Orsini, I'll give you the                  19 question again.                  20 A. -- and they have to factor in all                  21 the information available to them.                  22 459 Q. Is it reasonable for participants                  23 in an industry to rely on the regulator's                  24 statements about the government's commitment to                  25 that industry?</p>	<p style="text-align: right;">Page 136</p> <p>1 correct?                  2 A. Could anyone --                  3 463 Q. There wasn't another recession;                  4 correct?                  5 MR. RATCLIFFE: Let him finish his                  6 answer if you want him to answer.                  7 THE WITNESS: At the time, when you're                  8 making an investment decision, you don't know what                  9 the future holds. You're weighing all the risks                  10 and opportunities.                  11 BY MR. LISUS:                  12 464 Q. Totally agree with you,                  13 Mr. Orsini.                  14 A. There's no -- there's a -- when                  15 investors make a decision, they have to factor in                  16 the opportunity and the risk, the risk that the                  17 world could suddenly change or we could be in                  18 recession.                  19 465 Q. Absolutely, sir. And one of the                  20 things they factor into the investment decision is                  21 what the regulator of their industry is telling the                  22 government is committed to; right? That's a factor                  23 they will factor in, isn't it?                  24 R/F MR. ROSENBERG: Objection, Counsel.                  25 This is abusive. You're asking the same question</p>
<p style="text-align: right;">Page 135</p> <p>1 R/F MR. ROSENBERG: Objection. This                  2 witness's --                  3 MR. RATCLIFFE: He's answered that.                  4 MR. ROSENBERG: This witness's opinion                  5 is not relevant.                  6 MR. LISUS: I'm not going to hear                  7 anything from defence counsel about reliance.                  8 MR. ROSENBERG: The objection I'm                  9 making is that this witness's opinion on that                  10 question is not relevant.                  11 BY MR. LISUS:                  12 460 Q. But you are telling me, sir, that                  13 the breeders should have been relying on                  14 uncertainty before the racing program about live                  15 race dates. They should have been relying on that                  16 to make investment decisions; is that what you're                  17 saying?                  18 A. I'm saying any industry by any                  19 investor has to weigh in all the possibilities. As                  20 I said, the world is uncertain. There could have                  21 been another recession.                  22 461 Q. But there wasn't, was there?                  23 A. At the time, no one knows for sure                  24 what the future holds.                  25 462 Q. There wasn't another recession;</p>	<p style="text-align: right;">Page 137</p> <p>1 over again.                  2 THE WITNESS: I can't put myself in                  3 their shoes of how much -- you know, that they are                  4 relying on any factor when they make an investment                  5 decision.                  6 BY MR. LISUS:                  7 466 Q. Can they rely on the fact that                  8 they were directly consulted about the racing                  9 program?                  10 A. In what way?                  11 467 Q. In making an investment decision.                  12 R/F MR. ROSENBERG: Objection.                  13 THE WITNESS: Can they -- I don't get                  14 the question.                  15 BY MR. LISUS:                  16 468 Q. Let's look at this in pieces,                  17 Mr. Orsini. In 2009, there's some concern about                  18 reduction in live race dates; right?                  19 A. In some quarters.                  20 469 Q. In some quarters?                  21 A. Not unanimous across the sector.                  22 470 Q. As a result, the Ontario Racing                  23 Commission, with the knowledge and approval of the                  24 Ministry of Finance, undertakes a comprehensive                  25 consultation process; correct?</p>

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<p>1 A. They undertook a consultation 2 process. 3 471 Q. The purpose of the consultation 4 process is to engage the stakeholders in the 5 industry; right? 6 A. To engage the stakeholders, 7 correct. 8 472 Q. Stakeholders include the breeding 9 sector; correct? 10 A. That's my recollection. 11 473 Q. And at the conclusion of that 12 year-long process, the ORC comes up with a racing 13 program which the Ministry of Finance approves. 14 There's a press release; right? Remember that? 15 A. Yes. Correct. 16 474 Q. And the press release talks about 17 the commitment -- the press release says to all 18 stakeholders involved: 19 "This commitment to live horse 20 racing means they can see themselves 21 reinvesting, building, and growing a 22 racing industry for the future." 23 Right? That's what the ORC with the approval of 24 the Ministry of Finance says to stakeholders; 25 right?</p>	<p>1 fundamentally represents a commitment to live 2 racing and accountability, and more to the point, 3 it is a firm commitment from our provincial 4 government that it wants live racing and the jobs 5 and growth that racing represents for rural 6 Ontario. 7 That is also told by the government, 8 through its agent, the ORC, to the industry in the 9 fall of 2010; correct? 10 A. That's what you cited earlier. 11 479 Q. And those are all important 12 factors that breeders who were making investment 13 decisions at the time were intended to take into 14 account by the government in making these 15 statements; right? 16 A. It would have been one of the many 17 factors that investors would take into 18 consideration. 19 480 Q. Will I see in any of the public 20 statements to the industry anything to the effect 21 of, "Be careful. There might be a recession." Do 22 I see that anywhere, sir? 23 MR. RATCLIFFE: Mr. Lisus, I don't 24 think you need to raise your voice. We're just 25 across the table from you.</p>
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<p>1 A. I see that. 2 475 Q. All right. In the spring of 2010, 3 the government, through its agent, the ORC, tells 4 the industry that racetrack operators, property 5 owners, and horse people all invest time and money 6 into this industry, and the owners of these 7 investments must have the confidence that they will 8 be reasonably rewarded; right? That's what it 9 tells -- 10 A. You're citing something we 11 discussed earlier; correct? 12 476 Q. Yes. 13 A. Yes. 14 477 Q. And what the government, through 15 its agent, the ORC, also tells the industry and the 16 public is that it acknowledges that industry 17 participants who make a rational business decision 18 should expect a reasonable rate of return on the 19 investment they make; right? That's what the 20 government, through its agent, the ORC, told the 21 industry and the public; right? 22 A. That's what you cited earlier. 23 478 Q. In the fall of 2010, what the 24 government, through its agent, the ORC, tells the 25 industry and the public is that the racing program</p>	<p>1 MR. LISUS: I'm not raising my voice, 2 Mr. Ratcliffe. 3 THE WITNESS: I think it's fair to say 4 any investor would have to factor in -- 5 BY MR. LISUS: 6 481 Q. Will I see in any of the material 7 put out by the government, through its agent, the 8 ORC, any kind of warning to breeders that they 9 shouldn't believe the ORC when it tells them that 10 the racing program is a firm commitment from our 11 provincial government that it wants live racing and 12 the jobs and growth that racing represents for 13 rural Ontario? Will I see any kind of warning? 14 R/F MR. ROSENBERG: Objection. You need to 15 be fair to the witness. Read him the next 16 paragraph just after that one. 17 BY MR. LISUS: 18 482 Q. "We, as an industry, need to 19 demonstrate that there is good 20 reason for government's confidence 21 and good value for its investment." 22 Now, will I see any kind of disclaimer or warning 23 in any of these statements that they shouldn't 24 invest or shouldn't accept that it's a firm 25 commitment from our provincial government that it</p>

<p style="text-align: right;">Page 142</p> <p>1 wants live racing and jobs and growth that racing 2 represents for Ontario? 3 A. We just came through, at that time 4 in 2010-11, just a year and a half from the great 5 recession that had one of the biggest impacts in 6 Ontario's history and a negative impact on our GDP. 7 All investors would have been privy to 8 the fact that we just went through a big recession. 9 The province was facing a deficit, and they had 10 their own risks in their communities, horses from 11 other jurisdictions. 12 483 Q. Where will I see that in the 13 material, sir? 14 A. Any investor -- 15 484 Q. Where will I see that in the 16 material, sir? 17 A. Any investor in making an 18 investment decision need to weigh out all the 19 opportunities and all the risks. 20 485 Q. In any of the material you 21 reviewed for the purpose of giving your evidence 22 here today, did you see any statement to 23 stakeholders in the horse racing industry and 24 breeders, in particular, in the fall of 2010 or the 25 summer of 2010 to say, "Be careful. Don't make</p>	<p style="text-align: right;">Page 144</p> <p>1 488 Q. Okay. And you and I have looked 2 at a number of statements in those ORC documents 3 about the provincial government's, for example, 4 commitment to live racing; right? 5 A. There's a number of references, 6 correct. 7 489 Q. All right. And here's my question 8 to you, sir, and I'm going to invite you to give me 9 a responsive answer. 10 Have you seen any government document 11 in the fall of 2010 or the spring or summer of 2010 12 that contains the kinds of statements that you made 13 that notwithstanding what the ORC is telling you, 14 you should be careful about making investments 15 because we've just come out of a recession. Will I 16 see any document like that? 17 A. So you're talking about any 18 document I would have been privy to in the Ministry 19 of Finance about a risk to our credit rating? 20 490 Q. No, I'm not talking about a risk 21 to your credit rating, sir. I'm talking -- 22 A. Because that would have driven up 23 our borrowing costs which would end up costing the 24 government a lot carrying its debt which would lead 25 into further constraint spending.</p>
<p style="text-align: right;">Page 143</p> <p>1 investments. We've just come out of a recession." 2 Did you see anything like that anywhere? 3 A. All investors would -- 4 486 Q. Did you see anything like that 5 anywhere? 6 MR. RATCLIFFE: Just let him finish his 7 answer. 8 MR. LISUS: He has told me the same 9 thing. 10 MR. RATCLIFFE: Well, you keep asking 11 him the same question. 12 MR. LISUS: I don't get an answer to 13 it. 14 MR. RATCLIFFE: Well, he's giving his 15 answer. 16 THE WITNESS: All investors would -- 17 can take into the broad economic opportunities and 18 risk in any decisions they make. 19 BY MR. LISUS: 20 487 Q. I'll give it to you one more time, 21 sir, to give you the opportunity to give a 22 responsive answer, okay? You and I have looked at 23 a number of government documents; correct? 24 A. We have looked at a number of ORC 25 documents, in particular.</p>	<p style="text-align: right;">Page 145</p> <p>1 491 Q. I see. So you think that these 2 breeders who met in paddocks and barns with 3 Mr. Seiling should be looking through Ontario 4 government documents to see if there's any 5 information in there about driving -- 6 A. That was a different question. 7 You asked me a different question. 8 492 Q. I'm going to, again, give you the 9 opportunity to be responsive to my question. Are 10 there any documents which qualify these statements 11 to the breeding sector in 2010 that you have seen? 12 A. I've just indicated -- I haven't 13 seen those documents -- 14 493 Q. Thank you. 15 A. -- but as an investor, you would 16 have to take into consideration all risk and 17 opportunities. 18 494 Q. Let me ask you to look, please, at 19 CRE76373. 20 A. Do you want this one back? 21 495 Q. Sure. 22 MR. LISUS: The fall 2010 Integrity 23 Matters newsletter is the next exhibit in sequence. 24 MR. ROSENBERG: The witness did not 25 identify it.</p>

<p style="text-align: right;">Page 146</p> <p>1 THE WITNESS: I haven't seen that until                  2 today.                  3 MR. ROSENBERG: It should be marked for                  4 identification purposes.                  5 MR. MATTHEWS: Sure. We're at C on the                  6 letter scale.                  7 EXHIBIT NO. C for Identification:                  8 SB0001486.                  9 BY MR. LISUS:                  10 496 Q. So this is the ORC annual report                  11 package in the fall of 2010 for the '08, '09 year,                  12 and it says:                  13 "In terms of preventing stale                  14 dating of the documents, I'm                  15 suggesting using OEP's method where                  16 the dates are highlighted with the                  17 placeholders in the printed                  18 documents and electronic files                  19 accompany the hard copy of the                  20 package so that the DMO can input                  21 the current date themselves when the                  22 package is ready to be sent on to                  23 the MO."                  24 Right? So this was a package that was coming to                  25 you; am I correct?</p>	<p style="text-align: right;">Page 148</p> <p>1 of the report by ministry staff. Section 1 of the                  2 Racing Commission Act 2000:                  3 "Requires the ORC to submit an                  4 annual report to the minister. The                  5 agency establishment and the                  6 accountability directive requires                  7 the minister to table the annual                  8 report in the legislative assembly."                  9 Can you just explain to me what the process that is                  10 described here is?                  11 A. I might have covered some of this                  12 when we talked about the business case. The                  13 business case gets tabled as well as the annual                  14 report.                  15 504 Q. Okay. But my point here, sir, if                  16 I'm understanding this correctly, is that the ORC                  17 has to file --                  18 A. That's correct.                  19 505 Q. -- an annual report; correct?                  20 A. Correct.                  21 506 Q. And the Ministry of Finance has to                  22 review and approve it; correct?                  23 A. The ministry does review the                  24 report.                  25 507 Q. Okay.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. DMO is the deputy minister's                  2 office.                  3 497 Q. Were you in the deputy minister's                  4 office?                  5 A. What's the date of this?                  6 498 Q. It's October 2010.                  7 A. No.                  8 499 Q. Pardon?                  9 A. No.                  10 500 Q. Okay. When did you go into the                  11 deputy minister's office?                  12 A. It was December 2011.                  13 501 Q. In this package, there's a memo                  14 which is addressed to you from Barry Goodwin about                  15 the 2008-2009 annual report of the Ontario Racing                  16 Commission. A draft memo, it appears.                  17 A. Is there a signed version of this                  18 as well?                  19 502 Q. Not that I've seen. This is what                  20 we have. Do you see that?                  21 A. I have the memo in front of me.                  22 503 Q. So the memo says to Peter Wallace                  23 from you; right? And you're giving to Peter                  24 Wallace, according to this draft memorandum, the                  25 2008-09 annual report of the ORC and the analysis</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Because it's an annual report on                  2 factual events, it is what it is. If that's the                  3 audit statements, they have to review it as opposed                  4 to approving it.                  5 508 Q. Well, I understand it has to be                  6 reviewed. Can it be tabled or presented if                  7 Ministry of Finance doesn't approve it?                  8 A. Well, it really depends on what                  9 aspect of the -- if they're financial statements,                  10 it's what the auditor says their financial                  11 statements are, not recalling what was in the                  12 report.                  13 509 Q. The memorandum says:                  14 "The agency establishment and                  15 accountability directive requires                  16 the minister to table the annual                  17 report in the legislative assembly."                  18 A. Correct. That's my understanding                  19 as well.                  20 510 Q. The Minister of Finance has to                  21 table the --                  22 A. Their report.                  23 511 Q. Right. And the Minister of                  24 Finance isn't going to table a report he hasn't                  25 reviewed and approved; correct?</p>

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<p>1 A. It's certainly reviewed. There's                  2 approved -- if their financial statement says X,                  3 it's -- the ministry's perspective is it's --                  4 they're not necessarily approving the financial                  5 statements, per se. It's what the auditor says                  6 they are. They might approve the transmission of                  7 what the financial statements say.                  8 512 Q. But the ministry will certainly                  9 approve what the report says the ORC's role and                  10 responsibility is?                  11 A. If it has government policy in it,                  12 the ministry would review that for consistency.                  13 513 Q. All right. So what's being                  14 proposed here is a tabling of the Ontario Racing                  15 Commission 2008 annual report. If we look at the                  16 first page, it says "suggested response."                  17 A. Sorry, I'm going to find out where                  18 you -- let me just catch up to you.                  19 MR. RATCLIFFE: In the top right-hand                  20 corner, what page number?                  21 THE WITNESS: 313?                  22 BY MR. LISUS:                  23 514 Q. Yes.                  24 A. Okay, I'm on that page.                  25 515 Q. It says:</p>	<p>1 comments.                  2 519 Q. Okay. If we take a look at                  3 CRE76375, which is page 317 --                  4 A. Okay. I have it in front of me.                  5 520 Q. -- it says:                  6 "Program related --                  7 MR. RATCLIFFE: Can he just have a                  8 moment to scan down through the page.                  9 BY MR. LISUS:                  10 521 Q. See where it says:                  11 "Program related highlights of                  12 the 2008-09 annual report include                  13 the implementation of changes to the                  14 horse improvement program based upon                  15 a comprehensive review as                  16 highlighted which should encourage                  17 greater investment in the industry."                  18 A. I see that.                  19 522 Q. So we see here memoranda to                  20 Steve Orsini from Barry Goodwin, memoranda from                  21 Steve Orsini to Peter Wallace. Can we assume that                  22 you were involved in this process?                  23 A. Yes.                  24 523 Q. All right.                  25 MR. LISUS: That's the next exhibit,</p>
<p>1 "The horse racing industry                  2 makes a significant contribution to                  3 the rural economy and employment."                  4 Right?                  5 A. That's what it states.                  6 516 Q. Okay. And you see background,                  7 next page, 314?                  8 A. Yeah.                  9 517 Q. The fourth paragraph:                  10 "The ORC undertakes economic                  11 oversight activities which are                  12 currently related to its                  13 responsibility for the horse                  14 improvement program and the quarter                  15 horse industry development program.                  16 These programs provide incentives                  17 for breeders and purchasers of                  18 Ontario racehorses and are funded                  19 through slot commissions and                  20 wagering levies."                  21 Right?                  22 A. That's what it says.                  23 518 Q. This is the position of Finance at                  24 the time; right?                  25 A. These are the proposed, suggested</p>	<p>1 please.                  2 MR. MATTHEWS: We're at Exhibit 9.                  3 EXHIBIT NO. 9: CRE0076373 to                  4 CRE0076379.                  5 BY MR. LISUS:                  6 524 Q. I want to show you, please, sir,                  7 CRE105084, Exhibit 13 on the examination of                  8 Mr. Stransky. Do you know Mr. Stransky?                  9 A. He worked in the minister's office                  10 at the time.                  11 525 Q. Okay. Did you have communications                  12 with him from time to time?                  13 A. From time to time, but he dealt                  14 mainly with people in the division.                  15 526 Q. Okay. What about Mr. Shortill?                  16 A. He was a chief of staff, so I                  17 would have dealt with him more than Blair.                  18 527 Q. Okay. Did you know Elizabeth                  19 Yeigh?                  20 A. Yes.                  21 528 Q. Did you work with her?                  22 A. She reported through the division                  23 up to me through a number of different managers.                  24 529 Q. Okay. And we know that you did                  25 work with Steen Hume; right?</p>



<p style="text-align: right;">Page 154</p> <p>1 A. Steen, yes.</p> <p>2 530 Q. And Andre Cote?</p> <p>3 A. He might have been in the deputy</p> <p>4 minister's office at the time.</p> <p>5 531 Q. I want to show you this -- now,</p> <p>6 what we have here, sir, is Ms. Yeigh sending to</p> <p>7 Mr. Stransky with a copy to Mr. Steen and Cote an</p> <p>8 ORC update January 18, 2011, okay? See that?</p> <p>9 A. Yes.</p> <p>10 532 Q. And I presume that Finance is</p> <p>11 reviewing this because it has responsibility for</p> <p>12 the ORC at this point in time; right?</p> <p>13 A. So the -- on some occasions,</p> <p>14 agencies may release things without running it by.</p> <p>15 Good practice is they do.</p> <p>16 533 Q. They do run it by?</p> <p>17 A. As a good practice, they should</p> <p>18 run it by.</p> <p>19 534 Q. Okay.</p> <p>20 A. I can't guarantee everything the</p> <p>21 ORC has done or the LCBO or other agencies has run</p> <p>22 everything by the ministry. This one, it doesn't</p> <p>23 indicate whether they've approved it or just</p> <p>24 received.</p> <p>25 535 Q. Okay. But they're certainly aware</p>	<p style="text-align: right;">Page 156</p> <p>1 notice to the industry that updates</p> <p>2 stakeholders on the ORC, Ontario</p> <p>3 Racing Program."</p> <p>4 A. That's what it states.</p> <p>5 540 Q. Okay. So it would appear, sir,</p> <p>6 that the Ministry of Finance understands that it</p> <p>7 has in hand a notice to the industry from its</p> <p>8 agency, the Ontario Racing Commission, that updates</p> <p>9 stakeholders in the racing industry; right?</p> <p>10 A. It appears. That's correct.</p> <p>11 541 Q. All right. And do you see where</p> <p>12 the notice to the stakeholders says on page 2:</p> <p>13 "Ontario Racing Program means</p> <p>14 commitment to live racing."</p> <p>15 A. Oh, this is in the circle you're</p> <p>16 referring to? I see that.</p> <p>17 542 Q. Okay. And do you see at the</p> <p>18 beginning of the document where it says:</p> <p>19 "The start of the new year in</p> <p>20 2011 brings many new challenges and</p> <p>21 opportunities as the new Ontario</p> <p>22 horse racing program moves into the</p> <p>23 implementation phase."</p> <p>24 Right?</p> <p>25 A. I didn't see the first "new" you</p>
<p style="text-align: right;">Page 155</p> <p>1 of it; right?</p> <p>2 A. Whether they seen it before it</p> <p>3 went out or not, I can't attest to it either way.</p> <p>4 536 Q. They're certainly aware of it on</p> <p>5 January 19th --</p> <p>6 A. They're certainly aware of it,</p> <p>7 yes.</p> <p>8 537 Q. And I can tell you, sir, there</p> <p>9 isn't any document or evidence suggesting that</p> <p>10 Finance had any issue with the contents of this</p> <p>11 document put out by ORC, okay?</p> <p>12 A. I wouldn't know either way.</p> <p>13 538 Q. And I want you to take a look at</p> <p>14 this document from the Ontario Racing Commission.</p> <p>15 And before we do, you and I can agree that this is</p> <p>16 a copy of the notice to the industry that updates</p> <p>17 stakeholders on the ORC, Ontario Racing Program;</p> <p>18 right?</p> <p>19 A. It's called the Ontario Racing</p> <p>20 Program update, so I presume that's the case.</p> <p>21 539 Q. Okay. And let me see if I can get</p> <p>22 you to go beyond the presumption, sir. Look at the</p> <p>23 email. Do you see where Elizabeth Yeigh says:</p> <p>24 "Hi Blair. FYI, as discussed</p> <p>25 yesterday, here is a copy of the</p>	<p style="text-align: right;">Page 157</p> <p>1 mentioned, but it does say that.</p> <p>2 543 Q. So what is happening here is the</p> <p>3 Ministry of Finance, through its agency, the ORC,</p> <p>4 is telling the industry and its stakeholders that</p> <p>5 the new Ontario horse racing program is being</p> <p>6 implemented in 2011; right?</p> <p>7 A. It states that it's moving into</p> <p>8 the implementation phase.</p> <p>9 544 Q. Specifically with respect to</p> <p>10 standardbreds; right?</p> <p>11 A. Which is the subtitle to the</p> <p>12 notice.</p> <p>13 545 Q. Right. What the Ministry of</p> <p>14 Finance, through its agency, the Ontario Racing</p> <p>15 Commission, is also telling standardbred</p> <p>16 stakeholders is that this racing program means a</p> <p>17 commitment to live racing; right?</p> <p>18 A. It states that on page 2.</p> <p>19 546 Q. Okay. And at the bottom of page</p> <p>20 2, it says:</p> <p>21 "As advised in previous</p> <p>22 notices, 2011 will be a transition</p> <p>23 year for horse racing in Ontario."</p> <p>24 Right?</p> <p>25 A. I'm trying to find -- oh, yes,</p>

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<p>1 right at the bottom.                  2 547 Q. Yes.                  3 A. It says:                  4 "As advised, will be a                  5 transition year for horse racing in                  6 Ontario."                  7 Also notice that more technical details will be                  8 forthcoming on the following page.                  9 548 Q. Okay. From the ORC. Where are                  10 you seeing that?                  11 A. "What's next? Expecting" --                  12 549 Q. "Next seven to ten days, several                  13 of the technical details that are                  14 currently in development phase will                  15 be ready to be circulated for                  16 input. This information will also                  17 be released in the next update."                  18 Right?                  19 A. Yes.                  20 550 Q. "And horse racing makes a                  21 significant contribution to the                  22 economy and well-being of rural                  23 agricultural Ontario."                  24 A. That's what it states.                  25 551 Q. It goes on to say:</p>	<p>1 the industry that it's now moving into the                  2 implementation phase of the Ontario horse racing                  3 program; right?                  4 A. That's my understanding.                  5 MR. LISUS: That's the next exhibit.                  6 MR. ROSENBERG: For identification,                  7 please.                  8 MR. MATTHEWS: We're going to mark this                  9 as the next number in sequence.                  10 MR. ROSENBERG: The witness did not                  11 identify the document.                  12 MR. MATTHEWS: Exhibit 10.                  13 MR. ROSENBERG: You have my objection.                  14 EXHIBIT NO. 10: CRE0105084 and                  15 CRE0105085.                  16 BY MR. LISUS:                  17 557 Q. As of January 2011, you were                  18 the -- what was your role again January 2011?                  19 A. I was the -- okay, I was also                  20 Deputy Minister of Revenue so I had a joint                  21 portfolio.                  22 558 Q. Deputy Minister of Finance?                  23 Deputy Minister of --                  24 A. Deputy Minister of Revenue and                  25 Associate Deputy Minister of Taxation, Agencies,</p>
<p>1 "Collaboration, open                  2 communication, and decisive, bold                  3 thinking on the part of all members                  4 of the racing community will move                  5 standardbred horse racing forward."                  6 Right?                  7 A. That's what it states.                  8 552 Q. So it's pretty clear that the ORC                  9 is communicating regularly and openly with                  10 stakeholders in the horse racing industry; right?                  11 A. It's still consulting with the                  12 industry as it develops its options.                  13 553 Q. Well, it's already developed the                  14 racing program. It's not implementing it; correct?                  15 A. It's on the technical details that                  16 still have to be sorted out.                  17 554 Q. As of January 2011, the racing                  18 program has been submitted and approved by the                  19 Ministry of Finance; right?                  20 A. I understand that.                  21 555 Q. Okay. It's got a set number of                  22 live race dates; correct?                  23 A. That's my understanding.                  24 556 Q. And in January 2011, the Ministry                  25 of Finance, through its agent, the ORC, is telling</p>	<p>1 and Pensions.                  2 559 Q. Who was the Deputy Minister of                  3 Finance?                  4 A. Peter Wallace.                  5 560 Q. So what was your position in                  6 Finance?                  7 A. Associate Deputy Minister.                  8 561 Q. Associate Deputy Minister of                  9 Finance?                  10 A. With the three areas: Taxation,                  11 pensions, and agencies.                  12 562 Q. Agencies -- ORC was one of your                  13 agencies?                  14 A. It was the OLG and the LCBO.                  15 563 Q. And ORC?                  16 A. ORC as part of the -- again,                  17 reporting more directly to the minister, but yes.                  18 564 Q. Okay. Was John Wilkinson the                  19 Minister of Revenue in 2011 prior to the 2011                  20 election?                  21 A. He was -- I was not his deputy at                  22 the time. He had moved on before I became deputy                  23 minister. Sophia Aggelonitis was the former -- she                  24 was the -- when John Wilkinson moved from                  25 minister --</p>

<p style="text-align: right;">Page 162</p> <p>1 565 Q. Okay. Let me stop you. It                  2 doesn't matter for now.                  3 A. Okay. He went to environment.                  4 Sophia Aggelonitis came to -- and I was her deputy                  5 minister.                  6 566 Q. All right. Now, sir, we're in May                  7 of 2011. I want you to look at CRE6095, which is a                  8 long document. There's an email from Stephanie                  9 Zilinski to a number of people, including you,                  10 Steve Orsini, in Finance. You are about two-thirds                  11 of the way down.                  12 A. I was CCed. As I can see, I was                  13 CCed.                  14 567 Q. Yes. It says:                  15 "Ministry of Finance is                  16 scheduled to appear before the                  17 Standing Committee on Estimates on                  18 Tuesday, May 31. Enclosed is a                  19 revised Q and A document. Enclosed                  20 is a draft PDF version of the                  21 annotating briefing book,                  22 et cetera."                  23 And there's an email before that also from                  24 Stephanie which you're CCed on saying:                  25 "The countdown begins.</p>	<p style="text-align: right;">Page 164</p> <p>1 they have -- they select a number of ministries and                  2 give them a certain amount of time that they                  3 appear.                  4 And so it -- depending on where you are                  5 on the list, it may be shortly after the tabling                  6 estimates or in the fall, as we discussed earlier.                  7 So between the tabling of the budgets,                  8 sometimes 12 days after to November is any time the                  9 ministry could be called for to speak to their                  10 estimates.                  11 569 Q. So what is being prepared here are                  12 the responses that are to be given from -- what is                  13 being composed here are the responses that are to                  14 be given to anticipated questions; is that fair?                  15 A. Yes, covering a wide gamut of                  16 issues, even beyond the ministry's own estimates.                  17 570 Q. And these answers reflect the                  18 government's position on the particular question                  19 asked?                  20 A. These are proposed responses that                  21 the minister may use.                  22 571 Q. If we go to page 513 -- just                  23 before we go there, keep your finger there, if we                  24 look at page 337, email from Stephanie Zilinski                  25 May 12, 2011. Are you with me there?</p>
<p style="text-align: right;">Page 163</p> <p>1 Ministry of Finance is scheduled to                  2 appear before the Standing Committee                  3 on Estimates."                  4 Just explain to me what's going on here.                  5 A. So after every budget, the                  6 government tables estimates. And estimates is for                  7 the current fiscal year that lays out in great                  8 detail spending items for each voting item right                  9 across the government. Ministries are called                  10 forward to speak to their estimates.                  11 Now, a lot of Ministry of Finance                  12 voting items are captured in the briefing book, but                  13 also other things, economic policy, overall                  14 government budgeting.                  15 So a lot of the estimates that would be                  16 prepared for the ministry would also include things                  17 beyond the estimates. Because in front of the                  18 committee of the legislature, they can pretty well                  19 ask you anything that may be on their minds, and                  20 the Ministry of Finance typically speaks to broader                  21 economic societal issues.                  22 568 Q. So as of May 30th or May 31, how                  23 far after the passage of the budget are we?                  24 A. So the estimates committee would                  25 then hear -- call up individual ministries, and</p>	<p style="text-align: right;">Page 165</p> <p>1 A. 337? Okay. I can't really read                  2 this. Is it May 12 at 4 p.m.?                  3 572 Q. Yes. You see where it says:                  4 "Welcome to week three."                  5 A. Yes.                  6 573 Q. And then it says:                  7 "The Ministry of Revenue                  8 conducted their defence on May 10,                  9 and the Ministry of Government                  10 Services started on May 11 and is                  11 scheduled to continue on May 17 and                  12 18."                  13 So I presume that there's a rolling process                  14 pursuant to which the various ministries defend                  15 their spending as described in the budget; is that                  16 right?                  17 A. Yes. So they would speak to their                  18 estimates or broader issues related to their                  19 portfolio.                  20 574 Q. Okay. Fair enough. But whether                  21 or not you're responding to specific line items or                  22 policy questions, you're defending the position of                  23 the ministry with respect to those issues; correct?                  24 A. There could be a variety of                  25 questions raised, and we're trying to present some</p>

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<p>1 responses that the minister may wish to use if                  2 asked the question.                  3 575 Q. Will you agree with me that                  4 because the process has called it defence, that                  5 they're defending the position?                  6 A. Or explaining.                  7 576 Q. Or explaining. Fair enough. So                  8 back to 513, here's an anticipated question with                  9 respect to the horse racing industry.                  10 A. Page 513.                  11 577 Q. Here we are in May 2011. So under                  12 the first question says:                  13 "The 2011 provincial budget                  14 indicates that the horse racing                  15 industry has received over                  16 3.4 billion since 1998. Why does                  17 the horse racing industry receive so                  18 much money?"                  19 And the suggested answer is:                  20 "The Ontario horse racing                  21 industry makes a significant                  22 contribution to the rural economy                  23 and employment."                  24 Right? Among other things; right?                  25 A. That's what it states.</p>	<p>1 that the Slots at Racetrack Program, at least as of                  2 May 2011, was good public policy?                  3 A. These responses explained where                  4 the money is going.                  5 582 Q. Well, they do more than that, sir,                  6 don't they? For instance, the first one says:                  7 "The Ontario horse racing                  8 industry makes a significant                  9 contribution to the rural economy                  10 and employment."                  11 That's good; right?                  12 A. It says that. And providing                  13 340 million to a sector -- any sector of the                  14 economy would make a significant contribution.                  15 583 Q. Sir, I'm just asking you a simple                  16 question. Okay? Would you agree with me that the                  17 tone of these responses indicates that the position                  18 of the Ministry of Finance in May 30, 2011, was                  19 that the Slots at Racetrack Program was good public                  20 policy? Yes or no?                  21 A. It clearly states that the money                  22 was going to support the sector that, in turn,                  23 contributed to the local economy.                  24 584 Q. And you won't agree with me, sir,                  25 that the tone of these responses is intended to</p>
<p>1 578 Q. Okay. The next question is:                  2 "What is the purpose of the                  3 Slots at Racetrack Program? Is it                  4 really necessary to provide                  5 341 million to the provincial horse                  6 racing industry?"                  7 And we've got the suggested answer there; right?                  8 A. That's what it states.                  9 579 Q. And, in particular, it says in the                  10 second paragraph:                  11 "The Slots at Racetrack Program                  12 has been a success for all parties,                  13 including the horse racing and                  14 breeding industry."                  15 Right? See that?                  16 A. That's what it goes on to say.                  17 580 Q. It says:                  18 "As well, Ontario's horse                  19 racing and breeding industry remains                  20 a vital part of rural and                  21 agricultural Ontario."                  22 Right?                  23 A. That's the first paragraph.                  24 581 Q. So can we agree, sir, that these                  25 answers indicate the Ministry of Finance's view</p>	<p>1 explain that the Slots at Racetrack Program was                  2 good public policy and a good use of funds?                  3 A. You say the word "good." It's                  4 very subjective. At the same time, there is                  5 looking at can we get better value for the                  6 taxpayers' money, and two --                  7 585 Q. Do I see any of that here?                  8 A. -- and two --                  9 MR. RATCLIFFE: Just let him finish.                  10 THE WITNESS: -- wagering was still                  11 declining. And the view was -- as part of the OLG                  12 review, was can we get better value for taxpayers'                  13 money. This talks about the use of funds and the                  14 government defending the flow of money to a sector.                  15 BY MR. LISUS:                  16 586 Q. Well, that's a very interesting                  17 explanation, Mr. Orsini, but will I see anywhere in                  18 the proposed answers to questions about Slots at                  19 Racetrack Program, anything about wagering                  20 declining?                  21 A. You asked --                  22 587 Q. Just answer my question.                  23 A. You asked if it was good policy.                  24 588 Q. Just answer my question.                  25 A. That wasn't the question here.</p>

<p style="text-align: right;">Page 170</p> <p>1 589 Q. Will I see anywhere in this answer                  2 anything about wagering declining? Answer that                  3 question.                  4 A. The question wasn't asked --                  5 590 Q. I'm asking you this question, sir.                  6 Will I see anything in this document --                  7 A. Not in these particular answers.                  8 591 Q. Will I see anything in these                  9 particular answers about better value for money                  10 from Slots at Racetrack Program?                  11 A. Not in these particular answers.                  12 592 Q. Will I see anything in these                  13 answers about the Ontario Lottery and Gaming                  14 Corporation strategic business review in these                  15 answers?                  16 A. I -- in the ones you cited here --                  17 I haven't gone through all these questions, but the                  18 ones you've cited, I don't see them.                  19 593 Q. Will I see anything qualified or                  20 negative about the Slots at Racetrack Program in                  21 the answers the Ministry of Finance gave to the                  22 estimates committee?                  23 A. I actually don't know if these                  24 questions came up at estimate's committee.                  25 594 Q. I'll rephrase. Will I see</p>	<p style="text-align: right;">Page 172</p> <p>1 "What is the purpose of OLG's                  2 strategic land-based review and what                  3 is its status?"                  4 A. Okay, this is the top of --                  5 599 Q. Page 520, middle.                  6 A. Middle.                  7 MR. RATCLIFFE: Take a moment to read                  8 it through.                  9 THE WITNESS: Yes, I do see it.                  10 BY MR. LISUS:                  11 600 Q. Not a single word is mentioned                  12 about the Slots at Racetrack Program?                  13 A. "It undertakes a strategic                  14 business review of its land-based                  15 gaming facilities and lottery                  16 distribution network to determine                  17 how to optimize its existing gaming                  18 assets in a responsible manner."                  19 601 Q. That's it; right?                  20 A. And then when its review -- once                  21 its review process is complete, they'll be                  22 developing recommendations for the government.                  23 602 Q. Okay. Now, there's also questions                  24 about the Ontario Racing Commission; correct?                  25 A. You're going to have to refer me</p>
<p style="text-align: right;">Page 171</p> <p>1 anything negative or qualified in the answers that                  2 the Ministry of Finance prepared to be given to                  3 anticipated questions from the estimates committee?                  4 A. I think the nature of the question                  5 itself raises concerns. Why does the horse receive                  6 so much money?                  7 595 Q. And what's the answer to it, sir?                  8 A. The answer is the position that                  9 the money is going to the sector to help the                  10 sector.                  11 596 Q. The message here, sir, is that the                  12 Slots at Racetrack Program has been a success for                  13 all parties, including the horse racing and                  14 breeding industry, local host municipalities and                  15 the people of Ontario. That's the message;                  16 correct?                  17 A. That is the message that's stated                  18 here.                  19 597 Q. All right. And we can, therefore,                  20 assume that that was the view of the Ministry of                  21 Finance in May 31, 2011; fair?                  22 A. For that question, yes.                  23 598 Q. All right. Now, you did mention                  24 the OLG strategic land-based review. And there's a                  25 question about that at page 520. Do you see that?</p>	<p style="text-align: right;">Page 173</p> <p>1 to it.                  2 603 Q. Page 522. Are you with me there?                  3 A. Yes.                  4 604 Q. This question is about the ORC.                  5 It's a Ministry of Finance agency; right?                  6 A. Mm-hm.                  7 605 Q. And there's a question about what                  8 program does the ORC run?                  9 A. Yes, I see that at the bottom.                  10 606 Q. And there's a specific reference                  11 to the Ontario Racing Program which is described                  12 as:                  13 "A new framework for                  14 standardbred race date allocation.                  15 Key features include race car                  16 classification, coordinated purse                  17 management, and standardized racing                  18 conditions."                  19 See that?                  20 A. I do see that.                  21 607 Q. And there's specific reference to                  22 the horse improvement program:                  23 "Thoroughbred and standardbred                  24 supports ongoing improvements in the                  25 quality of Ontario-bred horses and</p>

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<p>1 the racing industry in Ontario." 2 Right? 3 A. I do see that as well. 4 608 Q. And then over the page, there's 5 a question about the Ontario Racing Program? 6 A. I'm on to the next page. 7 609 Q. Where it says: 8 "The ORP was developed by the 9 ORC following in-depth industry 10 consultations that began in December 11 2009 and concluded in September 12 2010. 13 At that time, representatives of 14 racetracks, horse people's 15 associations, and breeders met with 16 ORC to discuss how to develop a 17 collaborative new approach to 18 allocating race dates." 19 See that? 20 A. I do see that. 21 610 Q. And it says: 22 "The ORP is being phased in and 23 implemented and will be closely 24 monitored." 25 Right?</p>	<p>1 the whole thing an exhibit then. 2 MR. RATCLIFFE: I think that's 3 preferable. 4 MR. MATTHEWS: 11. 5 EXHIBIT NO. 11: CRE0006095 and 6 CRE0006097. 7 BY MR. LISUS: 8 614 Q. I'm going to show you SB1490. 9 This is the June 2011 news bulletin put out by the 10 ORC to the horse racing community and the public. 11 And the only thing I want to point you to is in the 12 right-hand column where it says: 13 "The new program represents the 14 industry's" -- 15 A. What page are you on? I'm sorry. 16 615 Q. The first page. 17 "The new program represents the 18 industry's collective thoughts via a 19 14-month consultation program 20 facilitated by the ORC who stepped 21 in to help provide the necessary 22 fix." 23 MR. RATCLIFFE: Which paragraph is 24 that? Paragraph 2. 25 THE WITNESS: It says:</p>
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<p>1 A. I see that as well. 2 611 Q. Okay. Now, did you attend the 3 estimate committee's meetings? 4 A. When the ministry appeared. When 5 other ministries appeared, I wouldn't -- 6 612 Q. So you would attend when Finance 7 appeared? 8 A. Absolutely. 9 613 Q. All right. And do you recall 10 whether there were any questions -- 11 A. I don't recall any questions being 12 asked, but that can be confirmed through Hanser 13 (ph). 14 MR. LISUS: That's the next exhibit. 15 MR. MATTHEWS: Perhaps just to compress 16 the size of the exhibit, we can mark the covering 17 emails together with the pages that we've looked at 18 specifically, so pages 513, 520, 522, 523. 19 MR. RATCLIFFE: Do you have any -- 20 MR. ROSENBERG: I mean, Mr. Lisus put 21 questions to the witness that they weren't things 22 anywhere in the rest of the document. I mean, if 23 there's certain of those propositions, then I'm 24 fine with -- 25 MR. MATTHEWS: All right. We'll make</p>	<p>1 "Nevertheless, it was hoped the 2 industry could come together and 3 provide that fix. Unfortunately 4 that proved not to be the case. 5 Nevertheless --" 6 And then it continues what you read out. 7 BY MR. LISUS: 8 616 Q. Right. And so we've discussed 9 this already, but there was instability in the 10 horse racing industry prior to 2011 and, in 11 particular, the racetrack's request for reduction 12 in live racing dates. You were aware of that? 13 A. I understand there was tension in 14 the industry, and they couldn't come together. 15 617 Q. So the ORC undertook this program 16 in order to resolve those tensions and try and 17 bring a uniform racing program in; correct? 18 A. The ORC tried to bring both 19 parties together and came up with its own plan 20 based on its consultations. 21 MR. LISUS: That's the next exhibit. 22 MR. ROSENBERG: For identification. 23 EXHIBIT NO. D for Identification: 24 SB0001490. 25 BY MR. LISUS:</p>

<p style="text-align: right;">Page 178</p> <p>1 618 Q. Okay. We're now in the summer of          2 2011, sir, and I take it from your answers that you          3 were not at all involved in the implementation of          4 the Ontario Racing Program that the ORC had          5 submitted to Finance for approval and which was          6 approved and was being implemented?          7 A. It'd be a fair assessment given          8 that at the same time, I was responsible for sales          9 tax harmonization implementation on July 1st of          10 2011, and I can tell you that consumed a lot of          11 time.          12 619 Q. Okay. And you were aware,          13 however, that the OLG was undertaking a review of          14 its land-based gaming businesses in 2011?          15 A. I might cast it a little broader          16 because we're looking at internet gaming. It was          17 much broader than just the land-based, but          18 obviously that was a big piece of it.          19 620 Q. Right. You weren't involved in          20 the details of that process either?          21 A. I would, from time to time, get          22 exposed to some element, but I wasn't hands-on,          23 roll up your sleeve, digging into the details.          24 There was people in the ministry that did that.          25 621 Q. Okay. Were you aware that there</p>	<p style="text-align: right;">Page 180</p> <p>1 627 Q. You knew that OHRIA was a          2 signatory to the original 1998 Letter of Intent;          3 right?          4 A. I don't recall exactly, but they          5 could have been.          6 628 Q. Okay. But you knew them to be a          7 representative --          8 A. A key part of the sector.          9 629 Q. The horse racing and breeding          10 sector; right?          11 A. I forget exactly who their members          12 are.          13 630 Q. Okay.          14 A. But they're an industry          15 association.          16 631 Q. Right. Were you aware that          17 Finance was receiving ongoing memoranda from OLG          18 summarizing the information provided to it by          19 stakeholders in the consultation process?          20 A. I wouldn't be surprised if they          21 were keeping the Ministry of Finance apprised of          22 some of their consultations.          23 632 Q. Okay. Were you aware that OHRIA          24 told OLG that changes to the ten-ten revenue share          25 under the Slots at Racetrack Program would be the</p>
<p style="text-align: right;">Page 179</p> <p>1 was an ongoing consultation process by OLG with          2 respect to the stakeholders in the gaming industry?          3 A. Yes.          4 622 Q. And were you aware that one of the          5 stakeholders that the OLG consulted was the          6 breeding sector?          7 A. I believe they consulted with a          8 lot of different groups, and I wouldn't be          9 surprised that was one of them.          10 623 Q. Okay. And were you aware that          11 they consulted with the Central Ontario          12 Standardbred Association?          13 A. I wouldn't know, in particular,          14 who they contacted, other than they were reaching          15 out to all different types of stakeholders.          16 624 Q. Including the breeding sector;          17 right?          18 A. I would presume that would be one          19 of the groups they would have met with.          20 625 Q. Okay. Did you know who the          21 Ontario Harness Horse Association was?          22 A. Didn't know them well at all.          23 626 Q. Did you know who the Ontario Horse          24 Racing Industry Association, OHRIA?          25 A. OHRIA, heard of them often, yes.</p>	<p style="text-align: right;">Page 181</p> <p>1 death knell to the industry?          2 A. I don't recall those specific          3 terms, but I'm sure they would be concerned with          4 any changes.          5 633 Q. Were you aware that the ORC had          6 informed Finance in 2010 that standardbred breeders          7 were particularly dependent on Slots at Racetrack          8 Program for their revenue and cash flow?          9 A. It varied by racetracks. There's          10 a combination of slots at the racetracks plus          11 wagering. I think it was a combination of both.          12 Some tracks or some groups more dependent than          13 others.          14 634 Q. Okay. But my question to you,          15 sir, is whether you were aware that Finance was          16 informed in 2010 that standardbred breeders were          17 particularly dependent on SARP funds for their          18 revenue and cash flow.          19 A. Not knowing the specifics of cash          20 flow, but I would say they were dependent on that          21 type of revenue.          22 635 Q. You knew they were dependent on          23 that type of revenue?          24 A. I think they relied on it. How          25 dependent -- they relied on it.</p>

<p style="text-align: right;">Page 182</p> <p>1 636 Q. Now, were you aware that the                  2 Ontario Racing Commission was a stakeholder that                  3 was consulted by OLG?                  4 A. I presume they would have been.                  5 637 Q. Okay. And were you aware that OLG                  6 assured the ORC that OLG would not take anything to                  7 its board or government without first meeting with                  8 the ORC again?                  9 A. That I'm not familiar with.                  10 638 Q. I'm going to show you a                  11 consultation memo dated March 24, 2011. This is                  12 just a week before you were at the estimates                  13 committee. Do you see where it says:                  14 "ORC was happy to participate                  15 in the strategic business reviews                  16 but emphasized that as they are                  17 concurrently conducting the                  18 strategic review of their own                  19 organization, there were unwilling                  20 to adopt an official position with                  21 respect to OLG's future.                  22 Their review process currently at                  23 18 months has revealed a lot of                  24 distrust between affected parties.                  25 ORC was assured that OLG will not</p>	<p style="text-align: right;">Page 184</p> <p>1 A. Provides oversight of the racing                  2 and some regulatory function, adjudicative, and                  3 I think funding, some program funding.                  4 644 Q. And economic oversight of the                  5 horse racing industry, the ORC?                  6 A. I'm trying to understand what                  7 "economic" means, but they had funding                  8 responsibility and provided oversight to race days.                  9 645 Q. Okay. They had, for instance, the                  10 financial statements of every racetrack. The ORC                  11 did; right?                  12 A. I presume they would. I don't                  13 think I've seen them.                  14 646 Q. OLG did not; right?                  15 A. That I don't know, what they had                  16 or didn't have.                  17 647 Q. So my only point here, sir, is                  18 that you have two agencies both reporting to and                  19 controlled by the Ministry of Finance who are                  20 undertaking business reviews that have an impact on                  21 the horse racing sector; right?                  22 A. There were other reviews going on                  23 at the same time. The Drummond commission was --                  24 648 Q. I'm not asking about the Drummond                  25 commission, sir. I'm just putting to you a</p>
<p style="text-align: right;">Page 183</p> <p>1 take anything to its board or                  2 government without first meeting                  3 with ORC again."                  4 Do you see that?                  5 A. I do see the statement.                  6 639 Q. Okay. Just so that I have things                  7 straight, we have the Ministry of Finance, and then                  8 the OLG is an agency of the Ministry of Finance;                  9 correct?                  10 A. It's an agency of the ministry                  11 reporting through to the Ministry of Finance.                  12 640 Q. The ORC is also an agency of the                  13 Ministry of Finance?                  14 A. That's correct.                  15 641 Q. So you would have two agencies of                  16 the Ministry of Finance both conducting strategic                  17 business reviews; correct? Right?                  18 A. As I understand it, yes.                  19 642 Q. Okay. And we know that the OLG                  20 administers the Slots at Racetrack Program which                  21 shares revenue between OLG racetracks and the horse                  22 racing sector; right?                  23 A. I understand that statement, yes.                  24 643 Q. And we know that ORC regulates the                  25 horse racing sector, correct, including race --</p>	<p style="text-align: right;">Page 185</p> <p>1 question that you had two agencies both conducting                  2 a business review and both of which involved the                  3 horse racing sector. Okay?                  4 MR. RATCLIFFE: He was clarifying that                  5 they weren't the only two.                  6 MR. LISUS: I'm not asking if they were                  7 the only two.                  8 MR. RATCLIFFE: It came across as --                  9 MR. LISUS: I didn't say the only two,                  10 Mr. Ratcliffe. I said there were two agencies.                  11 BY MR. LISUS:                  12 649 Q. Am I right?                  13 A. As soon as you said two, in my                  14 mind, it raised a question if there were others.                  15 If you weren't asking that and you were just saying                  16 those two were conducting reviews, they were                  17 looking at different aspects of the horse racing                  18 industry.                  19 One was looking at race dates. One was                  20 looking at are we getting value for money. And if                  21 you didn't ask about the other reviews, they were                  22 going on, and I presume you would know that.                  23 650 Q. Is Mr. Drummond an agency?                  24 A. He was commissioned by the                  25 government.</p>



<p style="text-align: right;">Page 186</p> <p>1 651 Q. He is not an agency; right? He                  2 was appointed and engaged by the government. He's                  3 not a government agency appointed pursuant to a                  4 statute; correct?                  5 A. He's not an agency under a                  6 statute.                  7 652 Q. Okay. I asked you about agencies,                  8 Mr. Orsini. Okay? Please focus on my questions.                  9 All right?                  10 MR. RATCLIFFE: Counsel --                  11 BY MR. LISUS:                  12 653 Q. Would you do that, sir?                  13 MR. RATCLIFFE: Counsel, stop.                  14 BY MR. LISUS:                  15 654 Q. Mr. Orsini, would you please focus                  16 on my questions?                  17 A. I want to give you full responses                  18 to your questions.                  19 655 Q. The way you can do that is by                  20 answering the questions responsibly or we're going                  21 to be here a very long time.                  22 A. What I was attempting to do was                  23 answer responsibly.                  24 656 Q. We see that the OLG gives the ORC                  25 an assurance that it will not take anything to its</p>	<p style="text-align: right;">Page 188</p> <p>1 658 Q. Okay.                  2 MR. RATCLIFFE: It's three minutes                  3 after 3. Did you want to take the afternoon break                  4 now?                  5 MR. LISUS: Sure.                  6 -- Recess at 3:03 p.m. --                  7 -- Upon resuming at 3:15 p.m. --                  8 BY MR. LISUS:                  9 659 Q. I want to ask you to look at                  10 CRE85410.                  11 MR. MATTHEWS: Which has as an                  12 attachment CR2238.                  13 BY MR. LISUS:                  14 660 Q. What this is, Mr. Orsini, is a                  15 letter from Dwight Duncan to Rod Seiling, chair of                  16 the ORC, approving the ORC's three-year business                  17 plan, 2011 to 2014. Okay?                  18 MR. RATCLIFFE: Let's give him a moment                  19 to review it.                  20 BY MR. LISUS:                  21 661 Q. I take it that as an agency of                  22 Finance, the minister had to approve the ORC's                  23 business plan?                  24 A. Yes. It's clear from this letter.                  25 662 Q. Okay. And you'll see --</p>
<p style="text-align: right;">Page 187</p> <p>1 board or government without first meeting with the                  2 ORC again; correct?                  3 A. That's what the memo states.                  4 MR. LISUS: That's the next exhibit.                  5 MR. ROSENBERG: The OLG consultation                  6 memo? Well, that's for identification.                  7 MR. LISUS: No. That went to the                  8 Ministry of Finance which Mr. Orsini was an                  9 associate deputy minister of.                  10 THE WITNESS: Yeah, I don't recall                  11 seeing that, in particular.                  12 MR. LISUS: That's okay.                  13 MR. ROSENBERG: Let's do it for                  14 identification.                  15 MR. LISUS: Next exhibit in sequence.                  16 MR. MATTHEWS: This is OLGSB699.                  17 Exhibit 12.                  18 MR. ROSENBERG: You have my objection.                  19 EXHIBIT NO. 12: OLGSB0000699.                  20 BY MR. LISUS:                  21 657 Q. Did you know that OLG consulted                  22 with the standardbred breeders of Ontario?                  23 A. The OLG? We talked about the                  24 various groups they would have consulted with. I                  25 wouldn't be surprised if they did.</p>	<p style="text-align: right;">Page 189</p> <p>1 MR. RATCLIFFE: Sorry, Mr. Orsini has a                  2 question in terms of the --                  3 THE WITNESS: No, no, I just -- I was                  4 mentioning I wasn't copied on the letter.                  5 BY MR. LISUS:                  6 663 Q. Right, but in July 2011, you're                  7 the --                  8 A. Associate.                  9 664 Q. -- deputy minister; right?                  10 A. It just underscores the direct                  11 nature of working with the ADM and director and so                  12 forth.                  13 665 Q. Mr. Duncan extends his thanks to                  14 the board of directors and staff for producing the                  15 business plan which highlights a number of key ORC                  16 activities to enhance live horse racing for                  17 industry participants and customers, including the                  18 new Ontario Racing Program; right?                  19 A. That's correct. It states that.                  20 666 Q. Mr. Duncan seems pretty pleased                  21 with the new Ontario Racing Program?                  22 R/F MR. ROSENBERG: Objection.                  23 BY MR. LISUS:                  24 667 Q. Mr. Orsini?                  25 A. The letter states that he thanks</p>

<p style="text-align: right;">Page 190</p> <p>1 the board of directors for their work.</p> <p>2 668 Q. And was Minister Duncan and his</p> <p>3 staff pleased, as this letter suggests, with the</p> <p>4 new Ontario Racing Program?</p> <p>5 MR. RATCLIFFE: Well, Mr. Orsini</p> <p>6 indicated he didn't get a copy of this letter, so</p> <p>7 you're asking him to speculate about what</p> <p>8 Mr. Duncan thought or didn't think.</p> <p>9 MR. LISUS: It's pretty clear what he</p> <p>10 thought from the letter.</p> <p>11 MR. RATCLIFFE: Well, then it's</p> <p>12 self-evident on the face of the letter.</p> <p>13 THE WITNESS: He's pleased to have</p> <p>14 received it. I'm just going by the letter. He's</p> <p>15 pleased they sent it to him, and he extended his</p> <p>16 thanks to the board of directors and the staff for</p> <p>17 what they did.</p> <p>18 BY MR. LISUS:</p> <p>19 669 Q. My question, sir, you're a member</p> <p>20 of Minister Duncan's staff; right?</p> <p>21 A. Not the political staff but a part</p> <p>22 of the ministry staff. There's a difference.</p> <p>23 670 Q. All right. Fair enough.</p> <p>24 Mr. Wallace was ministry staff?</p> <p>25 A. He was -- I reported to</p>	<p style="text-align: right;">Page 192</p> <p>1 A. The ADM of taxation, the ADM of --</p> <p>2 677 Q. I get it. I'm just clarifying</p> <p>3 that you weren't --</p> <p>4 A. Intimately involved in these</p> <p>5 issues at this time.</p> <p>6 678 Q. "These issues" being the Ontario</p> <p>7 Racing Program and the OLG review, modernization</p> <p>8 review; right?</p> <p>9 A. Yes.</p> <p>10 679 Q. All right. So if we look at the</p> <p>11 business plan, we can see what the ORC oversees on</p> <p>12 page 176. You're with me there? The ORC --</p> <p>13 A. I'm turning to the page. Got it.</p> <p>14 680 Q. Oversees racing in all of its</p> <p>15 forms --</p> <p>16 MR. RATCLIFFE: Just let him take a</p> <p>17 look at the page.</p> <p>18 THE WITNESS: You're just going to read</p> <p>19 down the list?</p> <p>20 BY MR. LISUS:</p> <p>21 681 Q. Well, you can go ahead and read it</p> <p>22 to yourself. This document identifies what the ORC</p> <p>23 oversaw in 2011; right?</p> <p>24 A. So I take it from their business</p> <p>25 plan, they're outlining the areas that they</p>
<p style="text-align: right;">Page 191</p> <p>1 Peter Wallace. He's the deputy minister at the</p> <p>2 time.</p> <p>3 671 Q. All right. So we certainly know</p> <p>4 from the letter that Minister Duncan is pleased</p> <p>5 with the new Ontario Racing Program. What was</p> <p>6 Mr. Wallace's view of it?</p> <p>7 A. I would only be speculating.</p> <p>8 672 Q. Do you know?</p> <p>9 A. I don't know.</p> <p>10 673 Q. What was your view of it, or did</p> <p>11 you not know anything about it?</p> <p>12 A. This is at a point in time when</p> <p>13 we're harmonizing this -- you know, just shortly</p> <p>14 after harmonizing with HST. I was highly focused</p> <p>15 on that element of my mandate.</p> <p>16 674 Q. Fair enough.</p> <p>17 A. So I wouldn't have gone through</p> <p>18 this -- the business plan.</p> <p>19 675 Q. Okay. And similarly, you weren't</p> <p>20 focused at all on the review that the OLG was</p> <p>21 undertaking at the same time; right?</p> <p>22 A. At this point in time, I probably</p> <p>23 had less insight into other aspects of my mandate,</p> <p>24 and that's the important role that ADMs play.</p> <p>25 676 Q. Right.</p>	<p style="text-align: right;">Page 193</p> <p>1 oversee.</p> <p>2 682 Q. Yes. And they're also providing</p> <p>3 industry statistics?</p> <p>4 A. Where is that?</p> <p>5 683 Q. It's a little hard to read.</p> <p>6 MR. MATTHEWS: Can you see that all</p> <p>7 right, Mr. Orsini?</p> <p>8 THE WITNESS: I can now. Yes, I see.</p> <p>9 BY MR. LISUS:</p> <p>10 684 Q. Okay. The industry statistics?</p> <p>11 A. That's right.</p> <p>12 685 Q. Right. And if we go over to page</p> <p>13 189, it talks about key initiatives?</p> <p>14 A. Okay. I'm on the page.</p> <p>15 686 Q. It describes the first one being</p> <p>16 the Ontario Race Program implementation; right?</p> <p>17 A. That's what it says.</p> <p>18 687 Q. Okay. And if you have a look at</p> <p>19 page 192 where it talks about the communications</p> <p>20 plan --</p> <p>21 A. Okay, I'm on page 192.</p> <p>22 688 Q. -- and it describes the various</p> <p>23 steps taken over the period 2006 to 2010 to consult</p> <p>24 with stakeholders and, in particular, 2010 Ontario</p> <p>25 Racing Program initiative, approximately 30</p>

<p style="text-align: right;">Page 194</p> <p>1 separate meetings with the industry. Do you see          2 that?          3 A. Ontario -- yes, I see that for          4 2010.          5 689 Q. Right. That's within the context          6 of the Ontario Racing Program initiative; right?          7 A. That's what it states.          8 690 Q. Right. And then it goes on to          9 talk about what it does, the ORC does, by way of          10 regular communications. One is industry notices.          11 See that?          12 A. Yeah, I see that.          13 691 Q. News releases?          14 A. I see that.          15 692 Q. Industry newsletters?          16 A. I see that as well.          17 693 Q. We saw an example of a news          18 release approved by Ministry of Finance of          19 September 9, 2010. Do you remember that?          20 A. I remember us looking at that news          21 release.          22 694 Q. And we looked at a couple of          23 examples of industry newsletters, June --          24 A. Which I haven't seen until today,          25 but you pointed them out to me.</p>	<p style="text-align: right;">Page 196</p> <p>1 What do they do with them?          2 A. The annual reports are tabled in          3 the legislature. I think the business plans may be          4 posted on their website.          5 702 Q. On the Racing Commission's          6 website; correct?          7 A. Yes.          8 703 Q. But what does the ministry do?          9 Does it keep them, or is it just signing off and          10 sending them the letter signing off?          11 A. In principle, the business plans          12 set out what they want to do over the next few          13 years and sort of gives a sense of, you know, what          14 they're working on. And so the ministry would want          15 to be aware of what they're working on so they can          16 keep informed of their activities.          17 704 Q. Got it. So this is a three-year          18 business plan; right?          19 A. I'm just referring to the title.          20 It says 2011 to 2014.          21 705 Q. Right. All right.          22 A. That's what the title says.          23 706 Q. If we look, for instance, where it          24 talks about the implementation plan, the racing          25 program on page 192, we see:</p>
<p style="text-align: right;">Page 195</p> <p>1 695 Q. Right. You may not have seen          2 them, but the industry saw them; right?          3 A. That's correct.          4 696 Q. And industry notices, we saw an          5 example of an industry notice. Do you remember          6 that?          7 A. I saw that.          8 697 Q. It had a website, right, ORC          9 website?          10 A. Is that referenced here?          11 698 Q. Yes, second bullet from the          12 bottom.          13 A. I see that now.          14 699 Q. And industry meetings. And those          15 are the things, sir, that you would expect a          16 regulator who was responsible for an industry that          17 was active and dispersed across the province to do          18 to stay in touch with its stakeholders; correct?          19 A. It's all reasonable steps that an          20 agency would take.          21 700 Q. Thank you.          22 MR. LISUS: That's the next exhibit.          23 BY MR. LISUS:          24 701 Q. What, by the way, is done with          25 these business plans that the minister approves?</p>	<p style="text-align: right;">Page 197</p> <p>1 "The Ontario Racing Program as          2 discussed under the Key Initiatives          3 heading represents a significant          4 undertaking for the industry.          5 The Ontario Racing Program's more          6 provincial principle-based economic          7 approach is continuing to be          8 developed, implemented, and          9 monitored through 2011 to 2012 and          10 beyond."          11 Right?          12 A. That's what it states.          13 707 Q. Okay. And Minister Duncan says          14 that he looks forward to ongoing progress and          15 updates from the ORC on the proposed initiatives          16 highlighted in the business plan, 2011 to 2014;          17 right?          18 A. You're referencing his covering          19 memo?          20 708 Q. His letter to Mr. Seiling.          21 A. Yeah, that's what it says.          22 709 Q. Okay. So we know that as of 2011,          23 July 29, the Minister of Finance has said to the          24 ORC, "I approve your business plan, and thank you          25 for the initiatives, including the new Ontario</p>

<p style="text-align: right;">Page 198</p> <p>1 Racing Program, and I look forward to ongoing                  2 progress and updates over the next three years."                  3 Right?                  4 A. As he mentions in his memo or                  5 letter.                  6 MR. LISUS: And that's the next                  7 exhibit.                  8 MR. MATTHEWS: So this is Exhibit 10 on                  9 Mr. Seiling's examination, now Exhibit 13.                  10 EXHIBIT NO. 13: CRE0085410 and                  11 CR0002238.                  12 BY MR. LISUS:                  13 710 Q. I want to show you a Memorandum of                  14 Understanding between the Minister of Finance and                  15 the Ontario Racing Commission, CRE28815. Do you                  16 have it there, sir?                  17 A. Can you repeat what document you                  18 want me to --                  19 711 Q. It's a Memorandum of                  20 Understanding.                  21 A. Yes. I see a memo from                  22 Steen Hume.                  23 712 Q. The Minister of Finance and the                  24 Ontario Racing Commission.                  25 A. No, I had a different memo up.</p>	<p style="text-align: right;">Page 200</p> <p>1 it was required of the transfer payment                  2 accountability to enter into MOUs with their                  3 agency.                  4 716 Q. So this was a requirement?                  5 A. I'm not sure, but I think it would                  6 be good practice to do so.                  7 717 Q. Okay. But you weren't aware of                  8 this MO --                  9 A. I may not have been involved in                  10 the drafting of this only because it's more of a                  11 technical exercise, and the director was the lead                  12 for it.                  13 718 Q. What is the purpose of this MOU?                  14 A. I'm not sure what the MOU sets out                  15 to do, but most MOUs try to establish a working                  16 relationship and understanding with the agency.                  17 719 Q. So take a look at Article 3.4.                  18 A. I don't have -- do you have a hard                  19 copy of it?                  20 MR. MATTHEWS: I don't, but I'll put it                  21 on the screen.                  22 THE WITNESS: Just put it on the                  23 screen. Okay. So what page?                  24 BY MR. LISUS:                  25 720 Q. Article 3.4, page 4.</p>
<p style="text-align: right;">Page 199</p> <p>1 MR. MATTHEWS: Just if it assists, for                  2 the purpose of the record, I'm showing the witness                  3 Exhibit 12 to Mr. Seiling's examination. It's a                  4 covering letter from Steen Hume to the chief                  5 administrative officer of the Ontario Racing                  6 Commission, and it attaches a Memorandum of                  7 Understanding between the Minister of Finance and                  8 the Ontario Racing Commission for 2001.                  9 THE WITNESS: Could you go back up? I                  10 didn't see the CCs on the list. If you could just                  11 scroll up a bit on that one page. Okay.                  12 BY MR. LISUS:                  13 713 Q. Now, were you aware of the                  14 existence of a Memorandum of Understanding between                  15 the Minister of Finance and the Ontario Racing                  16 Commission signed in the summer of 2011?                  17 A. That's why I asked to see the CCs,                  18 because I don't recall offhand.                  19 714 Q. Okay. This doesn't ring a bell to                  20 you?                  21 A. The -- no. No.                  22 715 Q. Was there required to be MOUs                  23 between the minister and agencies that were                  24 responsible to his or her ministry?                  25 A. I think for -- I can't recall if</p>	<p style="text-align: right;">Page 201</p> <p>1 A. So I'm only looking at that one                  2 section.                  3 MR. MATTHEWS: 3.4, yes.                  4 BY MR. LISUS:                  5 721 Q. Do you see where it says:                  6 "The commission will provide                  7 economic oversight of the horse                  8 racing industry and set out a policy                  9 framework to encourage value for the                  10 government's investment and support                  11 the sport of horse racing and the                  12 sustainability of the industry in                  13 the long-term."                  14 A. That's what it says.                  15 722 Q. You and I can agree, sir, that the                  16 Ministry of Finance agreed with the Ontario Racing                  17 Commission in 2011 that the commission would                  18 provide economic oversight of the horse racing                  19 industry; right?                  20 A. That's what it says.                  21 723 Q. And the commission would set out a                  22 policy framework to encourage value for the                  23 government's investment and support the sport of                  24 horse racing and the sustainability of the industry                  25 in the long-term; right?</p>

<p style="text-align: right;">Page 202</p> <p>1 A. That's what that provision states.                  2 724 Q. Okay. And it was also agreed that                  3 the commission would provide leadership to the                  4 industry; right?                  5 A. There's a number of bullet points.                  6 That's the first sub-bullet point.                  7 725 Q. Just take a look at them for a                  8 minute and see what the ministry and the commission                  9 agreed that the commission would do. Tell me when                  10 you've read them.                  11 A. I've gone through them.                  12 726 Q. If we look at the second one:                  13 "The ministry agreed that the                  14 commission would work                  15 collaboratively with industry                  16 stakeholders which included OLG,                  17 horse people, racetrack operators,                  18 and industry associations to develop                  19 an annual sustainability plan that                  20 reflects the industry's joint                  21 efforts to support the growth and                  22 sustainability of the sport of horse                  23 racing in Ontario over the                  24 long-term."                  25 Right?</p>	<p style="text-align: right;">Page 204</p> <p>1 A. I'm just -- let me just -- in the                  2 interests of time, I might have to refer to it.                  3 730 Q. That's fine. It's not a memory                  4 test. So Article 3.4, the ministry and the ORC                  5 agree that the ORC will provide economic oversight                  6 of the horse racing industry; correct?                  7 A. That's what it states, yes.                  8 731 Q. And it will also set out a policy                  9 framework to encourage value for the government's                  10 investment and support the sport of horse racing                  11 and the sustainability of the industry in the                  12 long-term; right?                  13 A. That's what it states.                  14 732 Q. If we look down below the three                  15 specific bullets, the second one states:                  16 "The ORC will develop an annual                  17 sustainability plan that reflects                  18 the industry's joint efforts to                  19 support the growth and                  20 sustainability of the sport of horse                  21 racing in Ontario over the                  22 long-term."                  23 Right?                  24 A. That's what it states.                  25 733 Q. And so we can agree, sir, that at</p>
<p style="text-align: right;">Page 203</p> <p>1 A. That's what it states.                  2 727 Q. What do you understand that to                  3 mean?                  4 MR. RATCLIFFE: Well, Mr. Lisus, in                  5 fairness to Mr. Orsini, he qualified his answer by                  6 saying this is the only paragraph he's had the                  7 opportunity to read. He hasn't had a chance to                  8 read the whole document.                  9 So in terms of his understanding, it                  10 may well be -- you know, I mean, it's difficult to                  11 answer that without having reviewed this 3.4 in                  12 context.                  13 BY MR. LISUS:                  14 728 Q. Well, take your time and review                  15 the document then.                  16 MR. MATTHEWS: We're having a hard copy                  17 printed right now, but I can navigate this. If you                  18 want me to go anywhere on the document                  19 electronically, Mr. Orsini, just tell me.                  20 MR. LISUS: Take a look at 6.1A.                  21 MR. RATCLIFFE: Can you put that on the                  22 screen? Thanks.                  23 BY MR. LISUS:                  24 729 Q. Have you gone through the document                  25 now?</p>	<p style="text-align: right;">Page 205</p> <p>1 least in July and August of 2011, the Ministry of                  2 Finance is committing to have its agency, the ORC,                  3 develop an annual plan to support the growth and                  4 sustainability of the sport of horse racing in                  5 Ontario over the long-term?                  6 A. Yes, developing an annual plan.                  7 734 Q. Okay. And the Ministry of Finance                  8 and its agency agreed that its agency would report                  9 annually to the Minister of Finance on the                  10 industry's long-term sustainability plan; right?                  11 A. That's what it says.                  12 735 Q. And that report would include a                  13 report on the extent to which industry participants                  14 are implementing or supporting the plan; right?                  15 A. It would -- that's an element that                  16 would be included. That's what it says.                  17 736 Q. And that the report in this plan                  18 will include collaborating with the OLG to report                  19 on how funds generated through the Slots at                  20 Racetrack Program are spent to support objectives                  21 identified in the plan; right?                  22 A. That's another component that's                  23 stated.                  24 737 Q. If we just look back, sir, on the                  25 state of things in mid-2011, we know that for about</p>

<p style="text-align: right;">Page 206</p> <p>1 a year through 2010, the ORC, with knowledge and                  2 approval of Ministry of Finance, consulted broadly                  3 with stakeholders in the industry and came up with                  4 the racing program; correct?                  5 A. As we discussed earlier.                  6 738 Q. The purpose of the racing program                  7 was to stabilize the industry and, in particular,                  8 the breeding sector that was responsible for horse                  9 supply; correct?                  10 A. As part of their purpose.                  11 739 Q. The racing plan and its purpose                  12 was communicated to the industry and to the public.                  13 We saw that in the notices, the press release, the                  14 newsletters; correct?                  15 A. From what we talked about earlier.                  16 740 Q. The ORC presented its business                  17 plan for three years from 2011 to 2014 to                  18 Minister Duncan and his deputy then Minister                  19 Wallace, associate or Deputy Minister Wallace;                  20 correct?                  21 A. Deputy Minister Wallace.                  22 741 Q. That business plan called for the                  23 implementation over the long-term of the racing                  24 program; correct?                  25 A. It did provide some elements that</p>	<p style="text-align: right;">Page 208</p> <p>1 plan.                  2 745 Q. Would you agree, sir, that the                  3 message that those various steps carried to the ORC                  4 was that the Ministry of Finance was committed to                  5 the sustainability of the horse racing industry                  6 over the long-term?                  7 A. The MOU asked the ORC to report                  8 annually on its implementation of its -- on a                  9 sustainability plan. But it's an annual -- as the                  10 environment constantly changes, I think the focus                  11 here as I read it, not being in the -- at the                  12 meetings where they talked about this is to look at                  13 it from an annual perspective.                  14 746 Q. "Support the growth and                  15 sustainability of the sport of                  16 horse racing in Ontario over the                  17 long-term."                  18 Do you see that?                  19 A. Right, report annually and --                  20 747 Q. I'm not looking at that bullet                  21 point, sir. I know that seems to be important to                  22 you, and I'll come to that, but I'm above there.                  23 Let's look at it together, the second bullet point:                  24 "Work collaboratively with                  25 industry stakeholders."</p>
<p style="text-align: right;">Page 207</p> <p>1 the ORC would be conducting annually.                  2 742 Q. Okay. And then also in the summer                  3 of 2011, Finance and the commission agree that the                  4 commission will develop a long-term plan to support                  5 the growth and sustainability of the sport of horse                  6 racing in Ontario over the long-term; right?                  7 A. Would report annually on the                  8 industry's long-term sustainability plan.                  9 743 Q. "To develop an annual                  10 sustainability plan that reflects                  11 the industry's joint efforts to                  12 support the growth and                  13 sustainability of the sport of                  14 horse racing in Ontario over the                  15 long-term."                  16 A. That's the second bullet point.                  17 744 Q. Right. So can you and I agree,                  18 Mr. Orsini, that as of the middle of 2011,                  19 Minister Duncan is telling his agency, the ORC, the                  20 Ministry of Finance supports the long-term                  21 sustainability of the horse racing industry in                  22 Ontario, and you, ORC, are going to oversee it?                  23 A. I think the MOU is clear that they                  24 want the ORC to report annually on their efforts to                  25 stabilize the industry and to develop a longer-term</p>	<p style="text-align: right;">Page 209</p> <p>1 That means that they will communicate with each                  2 other, be full and frank and open and direct;                  3 correct?                  4 A. There's different terms of                  5 collaboration, but certainly reaching out and                  6 engaging them would be what that could imply.                  7 748 Q. "To develop an annual                  8 sustainability plan that reflects                  9 the industry's joint efforts to                  10 support the growth and                  11 sustainability of the sport of                  12 horse racing in Ontario over the                  13 long-term."                  14 Right? There's a direction there to develop an                  15 annual sustainability plan that will support the                  16 growth and sustainability of the sport of horse                  17 racing over the long-term; correct?                  18 A. That's what it states.                  19 749 Q. Okay. And it goes on to state:                  20 "The commission will report                  21 every year to the minister on the                  22 industry's long-term sustainability                  23 plan."                  24 Right?                  25 A. That's what it states.</p>

<p style="text-align: right;">Page 210</p> <p>1 750 Q. Okay. So can you and I now agree,                  2 sir, that the message that the Ministry of Finance                  3 is doing to the racing commission is it is                  4 committed to having the racing commission develop a                  5 long-term sustainability plan which it will report                  6 to the ministry on annually? Will you agree on                  7 that?                  8 A. So the MOU sets out provisions for                  9 the commission to, as you read out, growth and                  10 sustain (sic) of the sport of horse racing in                  11 Ontario over the long-term, to come back annually                  12 with plans. That's what it says.                  13 751 Q. "To come back annually with plans                  14 to support the growth and                  15 sustainability of the sport of                  16 horse racing in Ontario over the                  17 long-term."                  18 Right?                  19 A. That's what it states.                  20 752 Q. Okay. And we can also agree, sir,                  21 that the ministry agreed that the minister would                  22 inform and consult with the chair on the                  23 government's priorities and broad policy directions                  24 for the commission; right?                  25 A. As appropriate, yeah.</p>	<p style="text-align: right;">Page 212</p> <p>1 A. It depends on the level in the                  2 organization, but the ADM would be familiar than                  3 the director and some managers. They would be                  4 hands-on. As you went further down in the                  5 organization, they had more detailed responsibility                  6 to report back to investigate.                  7 758 Q. All right. I want to show you a                  8 document, CRE94799, which is an -- do you know                  9 Tanya Watkins?                  10 A. Yes.                  11 759 Q. I understand she was a manager in                  12 the gaming policy branch working on the horse                  13 racing --                  14 A. That's my understanding.                  15 760 Q. Do you know Salvatore Crisanti?                  16 A. That name doesn't ring a bell.                  17 761 Q. This is CRE94799. This is an                  18 email sequence between Ms. Watkins and Mr. Crisanti                  19 about -- these are the folks who are working on the                  20 horse racing file in the Ministry of Finance.                  21 And we see Mr. Crisanti saying to                  22 Ms. Watkins in respect to a letter from the                  23 standardbred breeders:                  24 "I don't understand why the ORC                  25 just doesn't respond to the letter</p>
<p style="text-align: right;">Page 211</p> <p>1 MR. LISUS: Next exhibit.                  2 MR. MATTHEWS: So this is Exhibit 12                  3 from Mr. Seiling, Exhibit 14.                  4 EXHIBIT NO. 14: CRE0274150.                  5 BY MR. LISUS:                  6 753 Q. When did you finish with your HST                  7 project?                  8 A. It -- can I tell you when it                  9 started? Probably in the fall of 2008 and really                  10 started to come to closure in the fall of 2011.                  11 754 Q. The fall of 2011. And so was it                  12 after the closure in the fall of 2011 that you got                  13 more deeply involved in the horse racing file?                  14 A. I got moved to -- in the fall of                  15 2011, in December, I was appointed deputy minister,                  16 so I was further removed from the file.                  17 755 Q. Further removed from the file?                  18 Further removed from the horse racing file?                  19 A. Yes. Less hands-on. It's further                  20 up the hierarchy.                  21 756 Q. So in December 2011, you became                  22 even more removed from the horse racing file?                  23 A. From the details, yes.                  24 757 Q. Got it. Who was responsible in                  25 Finance for the details of the file?</p>	<p style="text-align: right;">Page 213</p> <p>1 directly - publicly. Not a media                  2 blitz that will just be ignored                  3 because 99 percent of Ontarians                  4 don't care about horse racing."                  5 I want to pause there. Were you aware of a view in                  6 the Ministry of Finance that 99 percent of                  7 Ontarians don't care about horse racing because                  8 it's a rural, agricultural sport?                  9 A. No, I would not have that                  10 understanding anyone would have that view.                  11 762 Q. Do you see where Mr. Crisanti                  12 says:                  13 "Second, the only thing that                  14 keeps me going is the thought that I                  15 might still be here when the entire                  16 Slots at Racetracks Program is                  17 either slashed brutally or purse                  18 pooling and yearly grants based on                  19 yearly applications gets rid of the                  20 notion that horsemen have of slot                  21 money being their money."                  22 Do you see that?                  23 A. I see the reference on the page.                  24 763 Q. And I want to ask you about the                  25 reference to the statement "the only thing that</p>

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1 keeps me going is the thought that I might still be  
 2 here when the entire Slots at Racetracks Program is  
 3 slashed brutally." Do you have a comment on that?  
 4 A. I wasn't in the mind of the person  
 5 that sent it, and I don't think that is the view  
 6 shared by the ministry.  
 7 764 Q. Well, Ms. Watkins says:  
 8 "I hear you. That's the thing,  
 9 the industry could be in for, a big  
 10 change depending on the outcome of  
 11 the SBR."  
 12 She seems to share that view.  
 13 R/F MR. ROSENBERG: Objection.  
 14 THE WITNESS: I'm not sure what the SBR  
 15 is referring to.  
 16 BY MR. LISUS:  
 17 765 Q. Strategic business review of OLG.  
 18 A. I don't get the sense that she's  
 19 concurring. She's acknowledging the statement.  
 20 766 Q. You are aware, sir, that the  
 21 consequences of the government's decision in  
 22 February 2012 carried catastrophic consequences for  
 23 the horse racing industry; right?  
 24 A. So there was a matter of debate  
 25 how significant the implications would be of that

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1 decision. I think at the time, I recall the office  
 2 of economic policy indicating they would be  
 3 downsizing. Some tracks would remain, how much of  
 4 it could absorbed by outside jurisdiction.  
 5 So it was a question of debate as to  
 6 how significant the changes would be, but clearly  
 7 it would mean downsizing the sector.  
 8 767 Q. Well, before the panel completed  
 9 its review and additional funding was extended, it  
 10 was understood that the consequences of the  
 11 decision without any intervention would be  
 12 catastrophic; right?  
 13 A. I don't know if that's the term  
 14 that, when we were preparing the material, people  
 15 had that impression. I think we had to ask the  
 16 office of economic policy to look at the impact it  
 17 would have on the economy based on the information  
 18 they had. I don't recall them using those terms.  
 19 768 Q. No, they certainly didn't. I  
 20 agree with you. But after the decision was made  
 21 and people looked at it, it was understood that the  
 22 consequences of the decision, without any  
 23 intervention or change, would be catastrophic;  
 24 correct?  
 25 A. I think as more and more

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1 information came to light, the government appointed  
 2 a panel to look further. The panel conducted its  
 3 review. We presented to the panel. They met with  
 4 a bunch of different stakeholders to consult on and  
 5 came back with their advice.  
 6 769 Q. Did you review the interim panel  
 7 report?  
 8 A. I did not -- I don't -- I recall  
 9 seeing it. I don't think we had much by way of  
 10 commentary.  
 11 770 Q. No, but did you read it after it  
 12 came out?  
 13 A. Yes.  
 14 771 Q. Did you understand that it said  
 15 the consequences of the decision would be  
 16 catastrophic?  
 17 A. I don't recall them using those  
 18 terms.  
 19 772 Q. Okay. The consequence of the  
 20 decision would be some 20,000 job losses?  
 21 A. I don't recall that number being  
 22 used.  
 23 773 Q. Do you recall the consequences of  
 24 the decision being mass euthanizations?  
 25 A. I think they reference

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1 euthanization over and above what happens annually.  
 2 774 Q. And you just threw that in. What  
 3 do you mean?  
 4 A. My understanding is there was a  
 5 natural tendency for euthanizing some horses, but  
 6 this would result in a significant increase. I  
 7 can't recall --  
 8 775 Q. What is your understanding of the  
 9 natural tendency to euthanizing horses?  
 10 A. I don't recall the specifics,  
 11 other than that was the statement, that it was  
 12 happening in --  
 13 776 Q. It was a statement made by  
 14 Mr. Gene in a draft briefing note for the Premier;  
 15 correct? You were shown that in the course of  
 16 preparing to give your --  
 17 A. I don't know if that's the note.  
 18 I think the --  
 19 777 Q. Just let me finish the question.  
 20 A. Okay.  
 21 778 Q. You were telling me about the  
 22 natural tendency for euthanization because you were  
 23 shown a draft briefing note prepared by Mr. Gene  
 24 for the Premier; correct?  
 25 A. That's not necessarily where I got



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1 that information.  
 2 779 Q. You were shown that draft briefing  
 3 note?  
 4 A. I can't recall seeing that note.  
 5 780 Q. Where did you get that information  
 6 from?  
 7 A. It was the panel discussions.  
 8 781 Q. Well, there's no reference in the  
 9 panel discussions to a large-scale --  
 10 A. We spoke to the panel. I met with  
 11 the panel a couple of times.  
 12 782 Q. Right.  
 13 A. And we -- there's a number of  
 14 conversations. I can't recall exactly where that  
 15 knowledge came from.  
 16 783 Q. What is the knowledge that you  
 17 have of euthanizations before the cancellation of  
 18 the revenue sharing?  
 19 A. My knowledge is that it -- there  
 20 is a process in which there is some natural  
 21 euthanization.  
 22 784 Q. Because of injury, for instance?  
 23 A. There would be a variety of  
 24 different ways. I don't recall.  
 25 785 Q. How many?

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1 A. That I don't recall.  
 2 786 Q. So when Mr. Crisanti is saying the  
 3 only thing that keeps him going is the thought that  
 4 he'll be there when the entire Slots at Racetrack  
 5 Program is slashed brutally, you would agree that  
 6 that is an inappropriate --  
 7 A. That is one person's comment.  
 8 787 Q. Do you agree it's inappropriate,  
 9 sir?  
 10 R/F MR. ROSENBERG: Objection.  
 11 THE WITNESS: It doesn't reflect --  
 12 BY MR. LISUS:  
 13 788 Q. Do you agree it's an inappropriate  
 14 comment?  
 15 A. It doesn't reflect the views of  
 16 the government or the ministry.  
 17 789 Q. Do you agree it's inappropriate?  
 18 MR. RATCLIFFE: He's indicated it  
 19 doesn't reflect --  
 20 BY MR. LISUS:  
 21 790 Q. I didn't ask you, sir, does this  
 22 reflect the government's views. I'm asking you  
 23 whether you agree that a Ministry of Finance  
 24 employee's views on the --  
 25 A. I don't think it's a wise choice

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1 of terms.  
 2 791 Q. Do you see where Mr. Crisanti  
 3 says:  
 4 "It really irks me when the  
 5 industry talks about slot revenue as  
 6 if they do something to actually  
 7 generate it."  
 8 Do you see that?  
 9 A. Yes, I see that.  
 10 792 Q. That's not a wise choice of terms,  
 11 is it?  
 12 A. I'd say that's not a wise choice  
 13 of terms.  
 14 793 Q. Mr. Wilkinson and Mr. Snobelen  
 15 both testified that breeders of horses work very  
 16 hard to do what they were asked to do in terms of  
 17 supply horses to the industry. You're aware of  
 18 that?  
 19 A. I think all aspects of the  
 20 industry have to work hard to do what they do to  
 21 generate the jobs and income.  
 22 794 Q. So you do agree that standardbred  
 23 breeders didn't do anything wrong to warrant the  
 24 cancellation of the revenue-sharing agreement;  
 25 correct?

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1 A. I think the changes announced in  
 2 the 2012 budget was a manifestation of a whole  
 3 bunch of factors that the government was wrestling  
 4 with. There was a number of --  
 5 795 Q. I just asked you a question --  
 6 A. I'm putting the context around  
 7 this.  
 8 796 Q. No, no, but I'm not asking that.  
 9 I'm asking you, sir -- and if you don't know, say  
 10 "I don't know." Can you agree that standardbred  
 11 breeders haven't done anything wrong?  
 12 A. I can't point to anything that  
 13 they would have done that would have been viewed as  
 14 being criticized for what they were doing.  
 15 MR. LISUS: This email is the next  
 16 exhibit.  
 17 MR. ROSENBERG: For identification.  
 18 The witness isn't copied on it.  
 19 MR. LISUS: That's fine.  
 20 MR. MATTHEWS: Exhibit E.  
 21 EXHIBIT NO. E for Identification:  
 22 CRE0094799.  
 23 BY MR. LISUS:  
 24 797 Q. Now, I want to go back to what the  
 25 industry understood in the fall of 2011, sir. And

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1	I'm at CRE301111. This is an email from	1	i.e., betting on standardbred races
2	Tanya Watkins, who we were just talking about, and	2	was dropping significantly."
3	it's sent up to Barry Goodwin, who I understand as	3	Right?
4	of November 2011 is the deputy minister in Finance?	4	A. That's our understanding, yes.
5	A. He's the assistant deputy	5	807 Q. And there were a variety of other
6	minister.	6	problems.
7	798 Q. It's Mr. Wallace that's still the	7	"Ontario races were in
8	deputy minister?	8	competition and feeding on each
9	A. Yes.	9	other. The customer was losing
10	799 Q. And you become deputy in December?	10	interest."
11	A. Deputy associate. ADM, assistant	11	Et cetera. Right?
12	deputy minister.	12	A. Correct.
13	800 Q. All right. Got it.	13	808 Q. "ORC stepped in and managed the
14	A. Then director, then manager.	14	process, incorporating industry
15	801 Q. Where is Mr. Crisanti in all this?	15	consultation."
16	A. Actually, I don't know him.	16	Right?
17	802 Q. All right. So what we have here,	17	A. Are you reading from this?
18	sir, is Ms. Watkins sending on to Barry Goodwin	18	809 Q. Yes.
19	with a copy to Elizabeth Yeigh.	19	A. The ORC was engaged in
20	"A presentation the ORC has	20	consultations to come up with a new racing
21	posted on its website regarding the	21	strategy.
22	Ontario Racing Program. They've	22	810 Q. Right. And so what the new racing
23	used this presentation with various	23	strategy did was improved racing and stabilized the
24	stakeholders, particularly	24	industry; correct?
25	stakeholders in the standardbred	25	A. That was the intent.
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1	industry, to explain the purse	1	811 Q. Right. And on Slide 6, there's
2	surplus for 2011, horse supply	2	"Ontario Racing Program: The Principles."
3	issues, et cetera."	3	"1. Enhance live racing and
4	Do you see this?	4	provide benefit.
5	A. Yes. I'm sure there's other	5	2. Provide a fair return on
6	elements to supply, but certainly I wouldn't be	6	investment over the short-term while
7	surprised breeding is part of it.	7	protecting value for owners and
8	803 Q. Right. So this is what the ORC	8	communities over the long-term.
9	has on its website, which is Finance's reporting?	9	5. Encourage and provide incentives
10	A. This is October 25, 2011?	10	for live racing."
11	804 Q. Yes.	11	Right?
12	A. Okay. The email makes reference	12	A. These are similar to the ones we
13	to it. I'm not copied on the email.	13	talked about earlier.
14	805 Q. Understood. But this is a good	14	812 Q. Sure. They've been saying these
15	summary of state of play at that time. If we look	15	things to the public and the racing industry for
16	at the slide on page 3, which is entitled "Ontario	16	months at this point; right?
17	Racing Program: Why?"	17	A. That's the understanding based on
18	"1. The ORC was faced with	18	what we've seen.
19	applications from tracks for major	19	813 Q. To Finance's knowledge and with
20	reductions."	20	its approval; correct?
21	Right?	21	A. To Finance's, certainly,
22	A. That's what we understood was	22	awareness.
23	happening at the time.	23	814 Q. Right. It talks about the 2011
24	806 Q. Right.	24	programs and the purse accounts; right?
25	"2. Standardbred wagering,	25	A. It does. I'm looking for it.

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1		MR. RATCLIFFE: What page are you	1		Ben Valido to you saying:
2		referring to?	2		"Hi Steve, further to our email
3		BY MR. LISUS:	3		yesterday regarding RAOD's
4	815	Q. Page 18, 19 --	4		foundation research papers, attached
5		A. I'm just turning to those pages	5		are three papers related to our
6		now.	6		gaming portfolio."
7	816	Q. -- 20, 21.	7		Do you see that?
8		MR. RATCLIFFE: Take a moment to look	8		A. Yes, I do.
9		at them.	9	824	Q. Should I understand from this
10		BY MR. LISUS:	10		email that you've now switched your attention from
11	817	Q. And then at Slide 25, it talks	11		the HST mandate you had and are focusing on gaming,
12		about what's going to be done for 2012. And page	12		and you're just getting some background?
13		26, it talks about the 2012 racing program. Pages	13		A. I think as I was -- in my
14		28 and 29, it gives the race -- how many race dates	14		associate role, I'd be briefed on more and more
15		there's going to be for 2012 across the province	15		topics, but I think they were acclimatizing me to
16		and in regions?	16		the topic of OLG and horse racing. So even --
17		A. Yes, I see that on page 28.	17		notwithstanding HST was a very busy period of time,
18	818	Q. And 29. So in October 2011, the	18		I get briefed on topics outside of that.
19		ORC is telling the industry and breeders that	19	825	Q. I take it, sir, in the beginning
20		there's going to be racing into the future, and	20		of November 2011, you had no knowledge about what
21		here's the race dates by region for 2012; correct?	21		SARP was or how revenue was shared?
22		A. For 2011 and 2012.	22		A. I don't know if I would say that,
23	819	Q. Right. Do you know when the	23		but I would say that I didn't have a lot of
24		breeding season for standardbred horses is?	24		familiarity with aspects of it.
25		A. No, I don't. I do not know that.	25	826	Q. Okay.
		Page 227			Page 229
1	820	Q. Did you ever know that?	1		MR. LISUS: I'm just going to take a
2		A. I might have been briefed on the	2		five-minute break. If you want to refresh your
3		cycle, but I can't remember it at this time.	3		memory with these documents.
4	821	Q. I think I might have asked you,	4		-- Recess at 4:18 p.m. --
5		but do you know how long it takes before a breeding	5		-- Upon resuming at 4:27 p.m. --
6		decision is made to when a horse races?	6		BY MR. LISUS:
7		A. I don't know offhand, but I	7	827	Q. So you were given by Ben Valido
8		understand it could be one, two, three years. I'm	8		three papers related to Finance's gaming portfolio;
9		not sure.	9		right?
10	822	Q. Okay. So we know that as of	10		A. I only saw two.
11		November 2011, Finance is aware of this posting on	11	828	Q. Okay.
12		the ORC website; right? Were you aware of it?	12		A. Unless I'm missing something.
13		A. I can't claim to have had any	13		MR. MATTHEWS: I believe the third
14		knowledge at the time.	14		paper overview, First Nations Gaming in Ontario,
15		MR. LISUS: That's the next exhibit.	15		was not produced to us, so it's not part of the
16		MR. ROSENBERG: For identification.	16		package that you have before you.
17		MR. MATTHEWS: F.	17		THE WITNESS: I can't recall if we
18		MR. ROSENBERG: Thank you.	18		scheduled time to take me through the papers.
19		EXHIBIT NO. F for Identification:	19		BY MR. LISUS:
20		CRE0030111 and CRE0030112.	20	829	Q. All right. You do recall --
21		BY MR. LISUS:	21		A. And the email was addressed to me.
22	823	Q. I want to show you 29705. And	22		I presume I got them. I can't recall if they
23		these are papers that were provided to you on the	23		actually briefed me on it.
24		same day as Ms. Watkins provided the ORC website	24	830	Q. Fair enough. I want to -- if you
25		presentation to Mr. Goodwin. This is an email from	25		look at the first page summary --

Page 230		Page 232	
1	A. Which paper?	1	Program."
2	831 Q. The first one, Ministry of Finance	2	Right?
3	Foundation Paper.	3	A. That's what it says.
4	A. Okay. Yeah.	4	839 Q. And if you go to page 9 of the
5	832 Q. Do you see the third paragraph on	5	deck, 721, the box that has "Sector Roles and
6	the bottom, it says:	6	Responsibilities." Do you see that?
7	"Recently, OLG has undertaken a	7	A. Yes.
8	number of initiatives including	8	840 Q. "Horse racing, the ORC regulates
9	commitment to launch internet gaming	9	live horse racing in the province."
10	by 2012."	10	A. It states that. That's correct.
11	Do you see that?	11	841 Q. And if you go over to page 724,
12	A. Yes.	12	horse racing key facts?
13	833 Q. Has internet gaming actually been	13	A. Page 724, horse racing key facts,
14	launched, by the way?	14	yes, I see that page.
15	A. I think it has.	15	842 Q. Ontario racetracks?
16	834 Q. Do you know when it was?	16	A. Yes.
17	A. I think they're a bit delayed, but	17	843 Q. Did you know how many racetracks
18	it was part of the OLG modernization. This came	18	in Ontario were standardbred racetracks in 2011?
19	out a bit sooner than the rest of the package.	19	A. I couldn't remember the details.
20	Part of it is to repatriate money that was going	20	844 Q. Okay. So this told you that there
21	offshore.	21	were 17 racetracks. 15 of them were standardbred;
22	835 Q. "Launch of the charitable bingo	22	right?
23	and gaming revitalization program	23	A. That's what it says, yes.
24	and launch of a strategic business	24	845 Q. And there were over 1,500 live
25	review of its land-based gaming	25	race dates a year; right?
Page 231		Page 233	
1	facilities and lottery distribution	1	A. That's correct, as it states here.
2	network."	2	846 Q. I want to ask you to go to page
3	Right?	3	730 under the heading "Sustainability of Live
4	A. Correct.	4	Horses Racing in Ontario and Greater
5	836 Q. So those were the initiatives that	5	Accountability." And this is a discussion of the
6	OLG was engaged in; correct?	6	Ontario Racing Program.
7	A. As I -- it's stated here, but as I	7	A. I see that on the page.
8	recall -- I can't remember exactly how charitable	8	847 Q. Okay. If you go to page 743.
9	bingo ended up, but those are the elements that I	9	A. Okay. That's in the second paper?
10	remember.	10	848 Q. Correct. We're in the second
11	837 Q. And also the report tells you:	11	paper now. There is a sectoral horse racing
12	"The ORC, in collaboration with	12	overview description, and it --
13	industry stakeholders, developed the	13	A. Yes, I see that title on the page.
14	new Ontario Racing Program in 2011	14	849 Q. All right. And you see the third
15	to improve live racing in the	15	bullet from the bottom, it tells you:
16	province."	16	"In 2010, a number of
17	Right?	17	siteholder agreements required
18	A. That's what it says.	18	extension. In response, the
19	838 Q. Okay. And if you go to page 716,	19	government committed to a five-year
20	second last paragraph:	20	term extension."
21	"The ORC has also recently	21	A. I do see that on the page.
22	taken active steps in collaboration	22	850 Q. If you go over the page to 745, it
23	with industry stakeholders to	23	says:
24	sustain the horse racing industry	24	"Emerging policy issues and
25	through the new Ontario Racing	25	trends."

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<p>1 A. I see that as well.</p> <p>2 851 Q. And there's a specific reference</p> <p>3 to the OLG Slots at Racetrack Program?</p> <p>4 A. I see that at the bottom of the</p> <p>5 page.</p> <p>6 852 Q. And it says:</p> <p>7 "Ontario's horse racing</p> <p>8 industry is greatly dependent on</p> <p>9 revenue from the Slots at Racetracks</p> <p>10 Program. As wagering revenue</p> <p>11 continues to decline, the current</p> <p>12 horse racing industry in Ontario is</p> <p>13 likely not sustainable without this</p> <p>14 revenue."</p> <p>15 Do you see that?</p> <p>16 A. I see that reference, yes.</p> <p>17 853 Q. If we go to page 750, it talks</p> <p>18 about the ORC roles and responsibilities at the</p> <p>19 bottom?</p> <p>20 A. Yes, I see that.</p> <p>21 854 Q. I take it, sir, that you did</p> <p>22 receive and would have reviewed this, but you still</p> <p>23 had a very general understanding of the horse</p> <p>24 racing industry and the extent to which it relied</p> <p>25 on SARP funds for its sustainability; correct?</p>	<p>1 Was that your understanding?</p> <p>2 A. If you're asking my understanding</p> <p>3 at the time, I understand that the overall sector</p> <p>4 was dependent on it, but some tracks were more</p> <p>5 independent or less dependent on it.</p> <p>6 860 Q. And when you say "some tracks," I</p> <p>7 presume what you're saying is that some tracks</p> <p>8 could continue to operate without live horse</p> <p>9 racing?</p> <p>10 A. No. I'm saying that some tracks</p> <p>11 could operate relying on wagering alone, that there</p> <p>12 was some tracks with a Pari-Mutuel tax relief and</p> <p>13 wagering. The view at the time is some tracks --</p> <p>14 and I forget the number of tracks that folks had</p> <p>15 put forward could be sustainable on that new model.</p> <p>16 861 Q. You're now talking about -- you</p> <p>17 said sustainable in that new model. You're now</p> <p>18 talking about February 2012; correct?</p> <p>19 A. Yes, that's what I was referring</p> <p>20 to.</p> <p>21 862 Q. Right. I'm referring to late fall</p> <p>22 2011 when you received this paper. Your</p> <p>23 understanding had to have been that the current</p> <p>24 horse racing industry in Ontario is likely not</p> <p>25 sustainable without this revenue because that's</p>
<p>1 A. I'd say that it's been some time</p> <p>2 since I've gone through this material.</p> <p>3 Understanding that the industry did rely on SARP</p> <p>4 funding.</p> <p>5 855 Q. Did you understand --</p> <p>6 A. And that varied by racetrack too.</p> <p>7 856 Q. Did you understand that the</p> <p>8 industry was, in the opinion of Finance staffers,</p> <p>9 not sustainable, as the paper says, without revenue</p> <p>10 share from SARP?</p> <p>11 A. The word "likely not sustainable,"</p> <p>12 I think the term was "likely."</p> <p>13 857 Q. Did you understand that in</p> <p>14 November 2011, that the current horse racing</p> <p>15 industry in Ontario is likely not sustainable</p> <p>16 without this revenue?</p> <p>17 A. As I understand, it was dependent</p> <p>18 on that revenue.</p> <p>19 858 Q. Okay.</p> <p>20 A. And it varied by tracks.</p> <p>21 859 Q. Well, that's not what this says,</p> <p>22 sir. This says simply:</p> <p>23 "The current horse racing</p> <p>24 industry in Ontario is likely not</p> <p>25 sustainable without this revenue."</p>	<p>1 what this paper tells you?</p> <p>2 A. That's what it says, but if you're</p> <p>3 asking me what was the total understanding at the</p> <p>4 time, I think there was a debate as to whether some</p> <p>5 tracks could continue without that level of support</p> <p>6 or the amount of support because options were being</p> <p>7 developed with different --</p> <p>8 863 Q. Let's just be precise about our</p> <p>9 timing. When you're talking about various options</p> <p>10 being developed and some tracks being sustainable</p> <p>11 without revenue sharing, you're talking in February</p> <p>12 2012; correct?</p> <p>13 MR. RATCLIFFE: Well, I think he</p> <p>14 indicated he was talking in November.</p> <p>15 MR. LISUS: No, he didn't. He</p> <p>16 initially said February 2012.</p> <p>17 THE WITNESS: I'm talking about as that</p> <p>18 was culminating in a lot of work that was being</p> <p>19 done by the ministry looking -- and OLG looking at</p> <p>20 different revenue models for the industry. You're</p> <p>21 asking me what was my understanding around this</p> <p>22 time.</p> <p>23 BY MR. LISUS:</p> <p>24 864 Q. November 2011.</p> <p>25 A. And you're referring to one</p>

<p style="text-align: right;">Page 238</p> <p>1 document, and I'm just saying at the time, there                  2 was other things that were being looked at beyond                  3 just this is a foundation paper.                  4 865 Q. I haven't seen any other thing,                  5 sir, in 2011, and I've looked at a lot of                  6 documents. So what are you referring to?                  7 A. I'm referring to OLG doing its                  8 modernization review, which was looking at the                  9 Slots at Racetrack Program.                  10 866 Q. And I have looked at OLG documents                  11 in the fall of 2011 and December of 2011 and                  12 January 2012, and I haven't seen the kind of debate                  13 you're referring to. So I'm interested to know                  14 where you've seen it.                  15 A. I'm giving you my general                  16 impression of what was going on at that time. I'm                  17 reflecting back six years ago. And so my                  18 understanding whether it was exactly at this time I                  19 got this document or shortly thereafter, around                  20 that time, there was some understanding that if                  21 different funding formulas were going to be                  22 developed, it would have an impact on the industry,                  23 yes.                  24 How the industry would react to it and                  25 the size of the industry was being debated. It</p>	<p style="text-align: right;">Page 240</p> <p>1 to February 2, 2012, that forecast the consequences                  2 on the industry of the termination of SARP revenue                  3 share with one year's notice and zero transition                  4 support?                  5 A. I recall some options that were                  6 being developed that had some analysis related to a                  7 phase-out of the SARP program.                  8 870 Q. I've seen those, sir.                  9 A. Yes.                  10 871 Q. I have not seen any options or                  11 models or forecasts of a termination of revenue                  12 share with one year's notice and no transition                  13 support. Have you?                  14 A. I can't recall specifically on                  15 that. I do recall asking for an analysis on it.                  16 872 Q. And what you're telling me is that                  17 you do recall asking for an analysis of the                  18 consequences of a termination of the revenue share                  19 effective March 2013 with zero transition support?                  20 A. I did ask for, if I recall                  21 correctly, that with one year's notice, I asked                  22 staff to show the implications or impacts of a                  23 one-year notice with termination.                  24 And I've asked them to include a broad                  25 comprehensive, both the downside and the upside, to</p>
<p style="text-align: right;">Page 239</p> <p>1 might have been in early 2012, but that was an                  2 issue under review.                  3 867 Q. Were you involved in those debates                  4 in early 2012?                  5 A. I was involved in a number of                  6 those discussions in terms of staff was working up                  7 an option. The OLG came with an option. There was                  8 various options being developed. Some looking at a                  9 three-year phase-out, some shorter, some longer.                  10 There was a number of options being                  11 looked at as part of our budget consideration. We                  12 were moving into the time that we're preparing                  13 budgets, and budget looks at a variety of different                  14 ways to manage fiscal costs.                  15 And the idea of getting better value                  16 for money was part of that, including right across                  17 the board. Not just horse racing, not just OLG,                  18 but right across the board.                  19 868 Q. And none of the models that I've                  20 seen, sir, reflect the consequences of termination                  21 of revenue sharing with one year's notice and no                  22 transition support. Have you seen any such models?                  23 A. I had asked for an analysis that                  24 was done on that.                  25 869 Q. Had you seen any such models prior</p>	<p style="text-align: right;">Page 241</p> <p>1 include the benefits, health and education, while                  2 at the same time looking at the impact of the                  3 sector. I did ask for that analysis.                  4 873 Q. You asked for that analysis to be                  5 done in March 2012; correct?                  6 A. I don't recall when, but it might                  7 have been in and around that time.                  8 874 Q. Right. I want to show you a                  9 document November 2011 from OLG to Elizabeth Yeigh                  10 and Tanya Watkins. OLG905.                  11 This is a document that OLG is sending                  12 to Elizabeth Yeigh and Tanya Watkins in advance of                  13 a meeting, and it's a document to give an overview                  14 of the gaming innovation project so far.                  15 In November 2011, sir, were you aware                  16 that OLG was proposing a -- making a change to its                  17 gaming operations by changing the location of its                  18 slot machines from racetracks to urban centres?                  19 A. So this is part of OLG                  20 modernization. We're looking at a number of                  21 aspects, but I believe that was one of them.                  22 875 Q. Okay. And they wanted to move                  23 slot machines out of racetracks into casinos in                  24 downtown Toronto and Ottawa, North Bay, and Kenora                  25 based on local demand. Do you recall that?</p>

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1 A. I recall that was a general  
 2 direction, is put them into urban centres.  
 3 876 Q. Right. They also were going to  
 4 make changes to the lottery business line by  
 5 expanding the distribution of lottery through  
 6 internet and mobile sales of lottery tickets?  
 7 A. That's correct. That's what I  
 8 recall.  
 9 877 Q. Right. And what OLG was proposing  
 10 was --  
 11 A. What page are you on?  
 12 878 Q. I'm at 808.  
 13 A. Okay. One second.  
 14 879 Q. And it talks about a funding model  
 15 and an operating model; right?  
 16 A. I see it.  
 17 880 Q. And 1A:  
 18 "Revise horse racing funding  
 19 for greater accountability. The  
 20 plan was to allow OLG to relocate  
 21 slots away from racetracks and build  
 22 new casinos in the GTA and elsewhere  
 23 in the province that cannibalize  
 24 racetrack sites without reducing  
 25 support for horse racing."

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1 Do you see that?  
 2 A. I see that.  
 3 881 Q. Okay. And what OLG wanted to do,  
 4 as you understood it, was relocate its slot  
 5 machines into areas where there was an unmet demand  
 6 for them; right?  
 7 A. Or greater convenience. I think  
 8 it's where people lived.  
 9 882 Q. Right. So they wanted to make the  
 10 operational change to their business line to put  
 11 slot machines closer to where more people lived;  
 12 correct?  
 13 A. That's right. Tourism, where  
 14 people resided.  
 15 883 Q. Right. And OLG recommended that  
 16 the relocation of slot machines could occur without  
 17 changing funding support for the horse racing  
 18 industry; correct?  
 19 A. That was one of their proposals.  
 20 884 Q. And on page 810, it says:  
 21 "Horse racing benefits will  
 22 remain intact and could grow."  
 23 Right?  
 24 A. I see that. That's the title of  
 25 the slide.

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1 885 Q. But that was also what OLG was  
 2 reporting at that time; right?  
 3 A. If I recall, this is one of their  
 4 coming out with a proposal, draft proposal.  
 5 886 Q. You were speaking with  
 6 Mr. Phillips; right? Or did you speak with  
 7 Mr. Phillips, the CEO of OLG?  
 8 A. I've talked to him in the past.  
 9 887 Q. You were aware, sir, during this  
 10 process, being late 2011, early 2012, OLG was  
 11 recommending a change to its operations so that  
 12 slot machines went into cities; right?  
 13 A. That was part of their proposal,  
 14 yes.  
 15 888 Q. But they were recommending that  
 16 funding continued to flow to horsemen?  
 17 A. That was their -- one of their  
 18 elements of their proposal.  
 19 889 Q. Well, that is what the  
 20 recommendation was; fair?  
 21 A. As I said, that was -- they had a  
 22 lot of proposals. That was one of them.  
 23 890 Q. Well, let me tell you what  
 24 Mr. Phillips told me when I examined him. Okay?  
 25 Q. "Just to pick up on what you

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1 said, you would make recommendations  
 2 to the government based on the  
 3 process that you undertook, the  
 4 consulting of experts and  
 5 stakeholders, but the government  
 6 would ultimately tell you what to  
 7 do; fair?  
 8 A. Correct.  
 9 Q. And so we can come to it, but  
 10 there's multiple documents in which  
 11 the OLG and your team recommends  
 12 revised funding model to ensure  
 13 money continues to flow to horsemen.  
 14 And you remember that; right?  
 15 A. Yes.  
 16 Q. And it was your recommendation,  
 17 being OLG, following its process of  
 18 review and consultation that the  
 19 revised funding model could be  
 20 revised but would ensure that money  
 21 continued to flow to horsemen?  
 22 A. We recommended that they  
 23 continue to flow money to horsemen."  
 24 Does that refresh your recollection?  
 25 A. That's what this proposal says.

<p style="text-align: right;">Page 246</p> <p>1 That's what this proposal says in the deck you're                  2 sharing with me. They also recommended multiple                  3 sites in Toronto, which the government didn't agree                  4 with the policy direction.                  5 891 Q. For which there were no business                  6 case; correct?                  7 A. That I don't know.                  8 892 Q. And which there was no municipal                  9 approval; correct?                  10 A. Not at that time.                  11 893 Q. They hadn't even spoken to any                  12 municipal officials responsible for granting                  13 approval; right?                  14 A. That was part of the outreaching                  15 process to modernize.                  16 894 Q. And you were aware that OLG                  17 undertook an extensive process of consultation                  18 including as we've seen with the horse racing                  19 sector; right?                  20 A. Yes.                  21 895 Q. And that it used experts                  22 extensively; correct?                  23 A. Yes. They engaged consultants,                  24 and they had their own experts.                  25 896 Q. And OLG, in that process, was</p>	<p style="text-align: right;">Page 248</p> <p>1 industry received, correct."                  2 A. I don't recall seeing their                  3 proposals indicating --                  4 899 Q. So OLG never recommended after its                  5 extensive consultation process, both with                  6 stakeholders and with experts to the government                  7 that it was in the best interests of gaming to cut                  8 the revenue share with the horse racing industry;                  9 right?                  10 A. As I said, I haven't seen any of                  11 their proposals where they had that in it.                  12 900 Q. All right.                  13 MR. LISUS: We're going to mark this                  14 deck as the next exhibit.                  15 MR. MATTHEWS: Perhaps just to make                  16 things clear, the OLG email and strategic direction                  17 deck OLG905 and 906 will be the next exhibit.                  18 And we have not yet marked the email                  19 from Mr. Valido to Mr. Orsini attaching the two                  20 papers. That will be the next exhibit in sequence                  21 afterwards.                  22 EXHIBIT NO. 15: OLG905 and                  23 OLG906.                  24 EXHIBIT NO. 16: CRE0029705,                  25 CRE0029707, and CRE0029708.</p>
<p style="text-align: right;">Page 247</p> <p>1 formulating an answer what should the gaming                  2 marketplace look like in five years based on what                  3 is in the best interests of Ontarians; right?                  4 A. They were also looking for ways to                  5 enhance their net dividend to the province. At the                  6 time, the province was facing significant deficits.                  7 And I think among all the agencies, LCBO, OLG was                  8 asked to come back with a proposal to maximize the                  9 flow of funds to the province.                  10 897 Q. And OLG never anywhere recommended                  11 terminating or cutting the share of slot revenue                  12 from horse racing; correct?                  13 A. I don't have -- I have not seen                  14 that in any of their proposals, and I don't recall                  15 that.                  16 898 Q. When I asked Mr. Phillips that, he                  17 testified:                  18 Q. "And you and I can agree, sir,                  19 that nowhere in any of the documents                  20 reflecting OLG's review process is                  21 there a recommendation of cutting                  22 the share of slot revenue from horse                  23 racing; right?                  24 A. Or cutting the amount of                  25 revenue that the horse racing</p>	<p style="text-align: right;">Page 249</p> <p>1 BY MR. LISUS:                  2 901 Q. I just want to review what we                  3 discussed today to see if you and I can agree on a                  4 couple points, sir.                  5 As of December 2011, there are two                  6 government agencies that have undertaken an                  7 extensive review of gaming as it relates to the                  8 horse racing industry; right?                  9 A. Two agencies that have done                  10 reviews for different elements.                  11 902 Q. One is the Ontario Racing                  12 Commission; correct?                  13 A. It looked at race dates.                  14 903 Q. And other things: Horse supply                  15 and purses?                  16 A. Primarily -- if I recall what we                  17 went through earlier, it was primarily on the race                  18 dates.                  19 904 Q. Well, there's a record of what                  20 they looked at because there's report, but you've                  21 got the Ontario Racing Commission who did the                  22 year-long study; right? Yes?                  23 A. Correct.                  24 905 Q. And you have the Ontario Lottery                  25 and Gaming Corporation that did approximately a</p>



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<p>1 year-long study with experts and consultant 2 stakeholders; correct? 3 A. I don't know if it was a year or 4 longer. I have no sense of the time frame. It 5 might have been longer; it could have been shorter. 6 906 Q. You're right. It might actually 7 have been longer. 8 A. My recollection is it was a bit 9 longer than that, but I can't be sure on exact 10 dates. 11 907 Q. And neither the ORC nor the OLG 12 recommended that the government change the amount 13 of money that the horse racing industry received 14 from gaming; correct? 15 A. I don't recall seeing any written 16 proposals as such. 17 908 Q. Okay. And, in fact, both 18 government agencies recommended that the funding 19 remain in place; correct? 20 A. They proposed options that 21 included continuation of the funding. 22 909 Q. Right. OLG made proposals that 23 had funding continue with a different mechanism, 24 but the funding continued; right? 25 A. As the document we went through</p>	<p>1 significant impacts on stakeholders; 2 right? 3 A. Yes. 4 Q. And among those impacts could 5 be impacts on a lot of people whose 6 livelihoods could be affected by 7 that decision? I'll give you that 8 again. Among those impacts were 9 livelihoods being affected by the 10 decisions that were going to be 11 made? 12 A. Yes. 13 Q. And you wanted the decisions to 14 be made fairly and in good faith; 15 correct? 16 A. Yes. 17 Q. And you wanted due 18 consideration to be given to the 19 impacts on stakeholders, including 20 standardbred breeders, for instance? 21 A. Yes. As you said, I had 22 experience in politics, so I knew 23 that this was also a function of 24 being able to successfully make 25 changes. And remember as well,</p>
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<p>1 earlier, that's what it proposed. 2 910 Q. And I take it, sir, that you 3 understood that if there was a determination to 4 cancel revenue share with no transition, there 5 would be significant consequences? 6 A. I think during this -- the 7 deliberations, the government was looking at all 8 ways to deliver on fiscal targets, and all parts of 9 government were asked to look for ways to -- 10 911 Q. Sir, I don't want a speech. I 11 just want you to tell me whether you understood 12 that termination of revenue share would have 13 significant impacts. 14 If you don't want to answer the 15 question, just tell me "I don't want to answer the 16 question." I don't want a speech about government 17 policy. I'm asking a very specific question. 18 Okay? If you don't want to answer it, that's fine. 19 I'll tell you what Mr. Phillips 20 answered when I asked him. 21 Q. "And I take it that you 22 understood, as you have told me, in 23 November 2011 that the decisions 24 that were going to be made around 25 these issues could have potentially</p>	<p>1 we're talking about changes within 2 OLG, so we had employees in OLG that 3 would lose their jobs. 4 Q. Fair enough. 5 A. So there's a lot of 6 consideration. 7 Q. You and your organization have 8 devoted a great deal of effort and 9 consumed a great deal of taxpayer 10 money in conducting a process 11 assisted by experts in making a 12 recommendation; right? 13 A. Yes. Not taxpayer money, but 14 money of the OLG. We weren't a 15 taxpayer-funded organization. 16 Q. Where does the money from the 17 OLG come from? 18 A. From the gaming. 19 Q. From the gaming. Fair enough." 20 So Mr. Phillips certainly understood that any 21 decision made to revenue share would have a 22 significant impact on people's livelihoods. Did 23 you understand that? 24 MR. RATCLIFFE: Can you specify what 25 time you're asking for his understanding? Are you</p>

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<p>1 asking in November of 2011? Are you asking in 2 January of 2012? 3 BY MR. LISUS: 4 912 Q. In November of 2011 and December 5 of 2011, you understood that decisions made about 6 changes to the revenue sharing from Slots at 7 Racetrack Program would have a significant impact 8 on people's livelihoods? 9 A. I think there's a general 10 understanding, because the size of money going to 11 the industry, that it would have an impact on the 12 sector. To what degree and how the sector would 13 respond, that was an area that people were still 14 trying to understand. 15 913 Q. And they were trying to understand 16 it in November and December 2011; is that right? 17 A. I think any change to the program, 18 thinking through what it would mean. Certainly as 19 we approach January and February at the peak of the 20 budget cycle, when the government was looking for 21 ways to, you know, get better value for the money 22 to help reduce the deficit, they were looking at 23 what were these changes made to particular sectors 24 of the economy. And this wasn't the only sector. 25 We were looking right across the board.</p>	<p>1 all these programs. 2 918 Q. Can I just pause you there. What 3 is a business support program? 4 A. I think we touched on this 5 earlier. It could be a variety of different 6 things. It was -- it's a grant program. It could 7 be a loan program. It could be a tax subsidy. It 8 could be procurement. A variety of different ways. 9 919 Q. So who was tasked with identifying 10 all of the business support programs? 11 A. It was led by one ministry in 12 support of a number of other deputies. 13 920 Q. What did they do? 14 A. They -- again, I'm trying to 15 recall, but my recollection is they looked at a 16 variety of business support programs and start to 17 measure the effectiveness, are we getting value for 18 money. 19 921 Q. How did they identify all of the 20 business support programs to evaluate them? 21 A. That I don't recall. 22 922 Q. Okay. 23 A. And they may never have captured 24 them all, but I think they were looking at 25 primarily programs in their own bailiwick.</p>
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<p>1 914 Q. I want to show you a document, 2 CRE361148. Just familiarize yourself with this 3 email string. It actually starts with you, 4 Mr. Goodwin to you. 5 A. Okay. I had a chance to scan it. 6 915 Q. Okay. Do you remember discussion 7 of Project 76 in November 2011? 8 A. I remember the Project 76. I 9 can't recall exactly in November 2011 the 10 discussions that ensued. 11 916 Q. What was Project 76? 12 A. So as part of looking for savings 13 in government spending, the Ministry of Economic 14 Development and Growth, as I recall, were asked to 15 look at all the business support programs the 16 government was provided. It was called Project 76. 17 And they hired a consultant. 18 917 Q. Was that KPMG? 19 A. I think it's KPMG. That's what 20 the email says. I can't recall, but that's what 21 the email says. 22 And it was looking at can we get better 23 value for money. This is where the government was 24 looking for savings from our business support 25 programs. And they went out and did a review of</p>	<p>1 923 Q. They were looking at -- I presume 2 they wanted to capture the biggest ones certainly? 3 A. I would imagine they would. 4 924 Q. Okay. The ministry was assisted 5 by KPMG in doing that task; correct? 6 A. That's my understanding. 7 925 Q. Okay. And a list of all of the 8 business support programs that they could find were 9 identified; right? 10 A. Again, not knowing and seeing the 11 work they've done, but the email points that 12 there's some issues with the methodology that 13 Finance had with their approach. So I can't say 14 whether or not it was -- who was included, how they 15 measured the benefits and so forth. 16 926 Q. Well, one thing that we can 17 conclude is that Slots at Racetrack Program was not 18 identified as a business support program; right? 19 A. That I don't know. 20 927 Q. Well, that's what it says: 21 "It's interesting that the 22 Slots at Racetrack Program was not 23 included at all either as an 24 in-scope or out-of-scope program." 25 Do you see that?</p>

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1 A. My question is --

2 928 Q. Do you see that?

3 MR. RATCLIFFE: Which paragraph are you

4 pointing to?

5 BY MR. LISUS:

6 929 Q. At the top:

7 "Very interesting. I love

8 Ministry of Finance's creative

9 titles. A few observations:

10 1. It's interesting that the Slots

11 at Racetrack Program was not

12 included at all either as an

13 in-scope or out-of-scope program."

14 Do you see that?

15 A. I do see that.

16 930 Q. All right. And do you see where

17 the 350 million which was the amount of the revenue

18 share in 2011, the Slots at Racetrack Program

19 represents about 25 of all direct business

20 support -- 25 percent of all direct business

21 support? Do you see that?

22 A. I do see the reference.

23 931 Q. But neither the ministry nor KPMG

24 identified Slots at Racetrack Program revenue share

25 as a business support program?

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1 A. So I can't attest to their

2 methodology, but from what the email says, it

3 wasn't included.

4 MR. LISUS: Mr. Ratcliffe, I would ask

5 you to please produce to me the list that is

6 referred to here or the KPMG deck.

7 MR. RATCLIFFE: We have located the

8 draft report. This is the report that runs to

9 about 404 pages. We're in the process of reviewing

10 it. There's lots of material in there that, again,

11 doesn't have any bearing with these issues, and

12 we're looking at redacting part of it.

13 MR. LISUS: Trust me, I'm not

14 interested in the material that doesn't have

15 anything to do with these issues. So if you want

16 to redact, that's fine, but I don't think you need

17 to take the time. I just want to know what

18 programs were identified in those 404 pages in

19 Slots at Racetrack Program.

20 MR. RATCLIFFE: So indicating what the

21 programs were, and I guess your point is that SARP

22 was not one of those programs. That would be

23 sufficient for your purposes?

24 MR. LISUS: Yes. You'll give me an

25 index or --

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1 MR. RATCLIFFE: Yeah, we can do that.

2 MR. LISUS: Let's start with that.

3 U/T MR. RATCLIFFE: I'll go back and

4 double-check. I can't see a problem with that.

5 MR. LISUS: Thank you.

6 BY MR. LISUS:

7 932 Q. Certainly as of 2011, the

8 government's accountability systems had not

9 classified the Slots at Racetrack Program as a

10 business support program; right?

11 A. I'm just reflecting on the

12 concerns that the office of economic policy had

13 with the methodology, including KPMG. So I'm not

14 sure whether the scope was comprehensive enough,

15 but based on --

16 933 Q. They seemed to have looked at

17 in-scope and out-of-scope programs, Mr. Orsini.

18 A. Again, I can't attest to the

19 concerns they had with the methodology.

20 934 Q. KPMG audited OLG; correct? KPMG

21 audited OLG's financial statements; correct?

22 A. I am -- I wasn't aware. I think

23 we talked about it earlier.

24 935 Q. In the financial statements, OLG

25 identified the revenue sharing as a commission;

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1 right?

2 A. We went through this discussion

3 earlier.

4 936 Q. You're aware of that?

5 A. Did the Project 76 include the tax

6 relief?

7 937 Q. You're asking me?

8 A. Well, I don't have -- I mean, it's

9 a rhetorical question in some respects because

10 there's a variety of ways the sector was being

11 supported.

12 938 Q. We're talking here about business

13 support programs; right? That's what Project 76

14 was looking at.

15 A. If it was looking only at direct

16 support and this was procurement, the Slots at

17 Racetrack is a procurement versus --

18 939 Q. Slots at Racetrack is a

19 procurement?

20 A. No, it's -- let me clarify. It's

21 not a tax subsidy.

22 940 Q. Correct.

23 A. It could be in another category

24 such as procurement, is what I meant to say.

25 941 Q. Any other explanation?

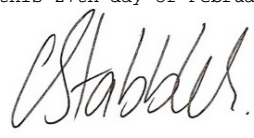
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1 A. That's what I'm saying. I don't  
2 have a clear understanding --  
3 942 Q. How, sir, would Slots at Racetrack  
4 Program be a procurement?  
5 A. No, I said in the category of  
6 other, and I used procurement as another example.  
7 943 Q. Well, my only point here, sir, is  
8 in this exhaustive review covering 400 pages of  
9 business support programs, Slots at Racetrack  
10 Program is not identified as an in-scope or  
11 out-of-scope program; correct?  
12 A. Correct.  
13 944 Q. And what I'm saying to you, sir,  
14 is when I look at the OLG financial statements  
15 authored by KPMG, every year they identify the  
16 Slots at Racetrack Program revenue-share payments  
17 as an operating expense in the nature of a  
18 commission; right?  
19 A. That's how they've characterized  
20 it, correct.  
21 945 Q. Okay. And are you aware of the  
22 accounting treatments and definitions of  
23 commissions?  
24 A. No, I'm not.  
25 946 Q. Okay. And do you think, sir, that

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1 the reason KPMG and the ministry didn't identify  
2 the Slots at Racetrack Program revenue share as  
3 business support is because it was in the nature of  
4 and accounted for as an operating expense of OLG?  
5 MR. RATCLIFFE: Well, you're asking him  
6 to speculate about this report that he's not  
7 familiar with or hasn't seen, and so perhaps we can  
8 assist by reviewing the document, and if we can  
9 provide you with the index or list of programs that  
10 were included --  
11 MR. LISUS: If you can produce the  
12 document to me overnight. I don't want it  
13 discussed with the witness obviously, but I would  
14 like it produced to me, and we'll pick up from  
15 there tomorrow.  
16 U/T MR. RATCLIFFE: Okay. We'll take a  
17 look at that and see if there's -- if that works.  
18 -- Whereupon the cross-examination adjourned at  
19 5:17 p.m. --  
20  
21  
22  
23  
24  
25

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1 REPORTER'S CERTIFICATE  
2  
3 I, CARISSA STABBLER, Court  
4 Reporter, certify;  
5  
6 That the foregoing proceedings were  
7 taken before me at the time and place therein set  
8 forth, at which time the witness was put under oath  
9 by me;  
10 That the testimony of the witness  
11 and all objections made at the time of the  
12 examination were recorded stenographically by me  
13 and were thereafter transcribed;  
14  
15 That the foregoing is a true and  
16 correct transcript of my shorthand notes so taken.  
17  
18 Dated this 27th day of February 2018.  
19  
20   
21  
22  
23 NEESON COURT REPORTING INC.  
24 PER: CARISSA STABBLER, RPR, CSR  
25 COURT REPORTER

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