

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

DWIGHT DUNCAN
March 15, 2018

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 DWIGHT DOUGLAS DUNCAN, a non-party witness herein, 11 taken at the offices of Neeson Court Reporting 12 Inc., 77 King Street West, Suite 2020, Toronto, 13 Ontario, on the 15th day of March 2018. 14 ----- 15 A P P E A R A N C E S : 16 Jonathan Lisus, Esq., 17 Ian Matthews, Esq., for the Plaintiffs. 18 19 Lisa La Horey, Esq., 20 Eunice Machado, Esq., 21 & Michele Valentini, SAL for the Defendant 22 Crown. 23 24 Michael Rosenberg, Esq., for the OLG. 25 REPORTED BY: Carissa Stabblers, 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: CRE0085399 and CR0025331. 99:10 6 2: CR0030882. 103:1 7 3: CRE0003610.117. 124:1 8 4: CRE0361264. 125:19 9 5: CRE0085414 and CR0002260. 128:12 10 6: CRE0075818 and CRE0075819. 133:14 11 7: CRE0008618. 145:10 12 8: CRE0076198. 147:12 13 9: CRE0105084 and CRE0105085. 149:19 14 10: SB0000989. 153:17 15 11: CRE0085415. 155:3 16 12: CRE0361295. 158:9 17 13: CRE0006095 and CRE0006097. 181:10 18 14: CRE0085410 and CR0002238. 192:3 19 15: CRE0274150. 195:7 20 16: CRE0079579. 197:9 21 17: CRE0079578. 197:23 22 18: Table 23 from the Public Accounts 204:21 23 of Ontario, page 31. 24 19: OLGSB0000905 and OLGSB0000906. 226:18 25 20: OLGSB0001782 to OLBSB0001785. 247:3</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: DWIGHT DOUGLAS DUNCAN 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 (NONE MARKED) 15 16 17 INDEX OF ADVISEMENTS 18 The questions/requests taken under advisement are 19 noted by U/A and appear on the following pages: 20 223:9 21 22 INDEX OF REFUSALS 23 The questions/requests refused are noted by R/F and 24 appear on the following pages: 11:3, 44:4, 67:18, 25 219:16, 240:6</p>	<p style="text-align: right;">Page 5</p> <p>1 21: CRE0018299, CRE0018301, and 257:4 2 CRE0018303. 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 -- Upon Commencing at 10:10 a.m. --</p> <p>2 DWIGHT DOUGLAS DUNCAN: AFFIRMED.</p> <p>3 CROSS-EXAMINATION BY MR. LISUS:</p> <p>4 1 Q. Good morning, Mr. Duncan.</p> <p>5 A. Good morning.</p> <p>6 2 Q. I don't know whether or not you've</p> <p>7 been examined, but the court reporter at the end of</p> <p>8 the table has to capture my questions and your</p> <p>9 answers, and so it's important that three things</p> <p>10 happen: We keep our voices up; two, we not talk</p> <p>11 over each other; and three, you give audible</p> <p>12 answers to questions. Not "mm-hm" or a nod like</p> <p>13 you're nodding now. Okay?</p> <p>14 What was Project 76?</p> <p>15 A. I don't remember.</p> <p>16 3 Q. Do you remember the name?</p> <p>17 A. No, I don't.</p> <p>18 4 Q. So the term "Project 76" means</p> <p>19 nothing to you?</p> <p>20 A. Nothing.</p> <p>21 5 Q. I want to show you Exhibit 34 in</p> <p>22 the examination of Mr. Orsini.</p> <p>23 MS. LA HOREY: Do you have a copy for</p> <p>24 me?</p> <p>25 MR. LISUS: We can pull it up</p>	<p>1 13 Q. Okay. You worked with</p> <p>2 Mr. Shortill?</p> <p>3 A. I did.</p> <p>4 14 Q. What was his role?</p> <p>5 A. He was my chief of staff at the</p> <p>6 time.</p> <p>7 15 Q. Did you work with Mr. Bardeesy?</p> <p>8 A. Yes.</p> <p>9 16 Q. What was his role?</p> <p>10 A. Well, he had two roles. One was</p> <p>11 my policy advisor. I don't recall when he went to</p> <p>12 the Premier's office, so it would have been in one</p> <p>13 of those two roles.</p> <p>14 17 Q. Did you work with Mr. Gene?</p> <p>15 A. David Gene, yes, I did.</p> <p>16 18 Q. What was Mr. Gene's role in 2011</p> <p>17 and 2012?</p> <p>18 A. My recollection, his title was</p> <p>19 deputy chief of staff to the Premier.</p> <p>20 19 Q. And did you work with Mr. Gene on</p> <p>21 the horse racing file?</p> <p>22 A. Yes.</p> <p>23 20 Q. What, in general terms, was the</p> <p>24 work you did with Mr. Gene on the horse racing</p> <p>25 file?</p>
<p>1 digitally. If you want, we can put it on the</p> <p>2 screen in front of you.</p> <p>3 BY MR. LISUS:</p> <p>4 6 Q. So having looked at some of it,</p> <p>5 does this refresh your recollection at all, or you</p> <p>6 still don't have any recollection of what it was?</p> <p>7 A. I'll just have a look at more of</p> <p>8 it. I do not have a recollection of this document.</p> <p>9 7 Q. Okay. In the fourth quarter of</p> <p>10 2011, you were the Minister of Finance; correct?</p> <p>11 A. That's correct.</p> <p>12 8 Q. Mr. Stephen Orsini was your deputy</p> <p>13 minister?</p> <p>14 A. Yes.</p> <p>15 9 Q. And did you work in 2011 and 2012</p> <p>16 with Ms. Yeigh?</p> <p>17 A. I don't recall.</p> <p>18 10 Q. Okay. Do you know her?</p> <p>19 A. I don't believe so.</p> <p>20 11 Q. Okay. Do you know Ms. Watkins?</p> <p>21 A. I do not.</p> <p>22 12 Q. Do you know Ms. Lai? I don't know</p> <p>23 if it's a miss or a mister. L-A-I, first name</p> <p>24 Poland?</p> <p>25 A. I do not.</p>	<p>1 A. Well, it was really a small part</p> <p>2 of the larger gaming file. So typically, I had</p> <p>3 responsibility for the Ontario Lottery and Gaming</p> <p>4 Corporation. He had responsibility for that file</p> <p>5 in the Premier's office.</p> <p>6 21 Q. And you had overall responsibility</p> <p>7 for it?</p> <p>8 A. Yes.</p> <p>9 22 Q. It being an agency of your</p> <p>10 ministry?</p> <p>11 A. Yes. Understanding that the</p> <p>12 Premier and the Premier's office are the lead of</p> <p>13 the government.</p> <p>14 23 Q. Meaning that the Premier and the</p> <p>15 Premier's office has ultimate decision-making</p> <p>16 authority?</p> <p>17 A. Yes.</p> <p>18 24 Q. Another one of the agencies that</p> <p>19 you were responsible for was the Ontario Racing</p> <p>20 Commission; correct?</p> <p>21 A. That is correct.</p> <p>22 25 Q. What was its mandate?</p> <p>23 A. Let me -- I just -- I'm not sure</p> <p>24 that that's entirely correct because there was an</p> <p>25 interface with the Ontario Racing Commission with</p>

<p style="text-align: right;">Page 10</p> <p>1 the Ministry of Government Services, I believe. 2 I believe I had seen it, but I don't recall 3 specifically if I was the final say in it. 4 26 Q. Okay. And we're talking here, 5 sir, 2011 and 2012. Is it fair to say that as 6 between Finance and MGS, which is Ministry of 7 Government Services -- 8 A. At the time it was. 9 27 Q. -- those two ministries had 10 responsibility for the ORC; is that correct? 11 A. That's my recollection. 12 28 Q. Who did the ORC have direct line 13 reporting responsibility to? Finance? 14 A. Not certain. I certainly met with 15 the ORC periodically, but I'm not certain. 16 29 Q. Would it assist you to refer to a 17 Memorandum of Understanding from 2011 between the 18 Ministry of Finance signed by you and the ORC to 19 clarify the lines of reporting? 20 A. No. 21 30 Q. To your knowledge, was there a 22 Memorandum of Understanding between Ministry of 23 Government Services and the Ontario Racing 24 Commission? 25 A. I don't recall.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Mm-hm. 2 37 Q. And I want you to take a look at 3 page 12 of that, bottom right-hand corner. 4 A. Page 12 you said? 5 38 Q. Yes. Now, we see that this page 6 states that: 7 "KPMG was provided by MEDT an 8 inventory of 68 programs." 9 What is MEDT? 10 A. Ministry of Economic Development 11 and Trade. 12 39 Q. Okay. And if we look at the 13 diagram in the bubble with the heading "In Scope." 14 Do you see that? 15 A. Yes. 16 40 Q. It seems to identify a number of 17 kinds of programs: 18 "Transfer of payment, grants 19 loaned, and equity investments, 20 rebates, and other direct business 21 support programs of Ontario 22 ministries, agencies, and funded 23 NGOs." 24 Do you see that? 25 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. LISUS: Could you find out for me, 2 please, Ms. La Horey? 3 R/F MS. LA HOREY: This is not a discovery, 4 so, no, we won't. 5 BY MR. LISUS: 6 31 Q. You do know there was a 2011 7 Memorandum of Understanding between the Ministry of 8 Finance signed by you and -- 9 A. I don't recall. 10 32 Q. Okay. Do you recall that there 11 were such instruments required between ministries 12 and agencies? 13 A. I do recall that. 14 33 Q. And was such an instrument 15 required between Ministry of Finance and the 16 Ontario Racing Commission? 17 A. I don't recall. 18 34 Q. Okay. A draft final report with 19 respect to Project 66 -- Project 76 was marked on 20 the examination -- 21 A. Sorry, was that 76 or 66? 22 35 Q. 76. 23 A. Okay. 24 36 Q. -- marked on the examination of 25 Mr. Orsini.</p>	<p style="text-align: right;">Page 13</p> <p>1 41 Q. What do you understand those 2 in-scope programs to be? 3 A. I don't. So you've just handed me 4 this 20-page document. I would have never seen 5 this document. I note that it is prepared for 6 deputy minister steering committee. Typically 7 those documents didn't make their way to us. I 8 would just be speculating. 9 42 Q. Okay. Do you know what a transfer 10 payment is? 11 A. Yes. 12 43 Q. Do you know what a transfer 13 payment agreement is? 14 A. Depends. They're different. 15 44 Q. What are the different kinds of 16 transfer payment agreements? 17 A. Well, it depends on the nature of 18 the agency, whether it's a -- you know, a college 19 or university versus any range of others. So it's 20 difficult to answer the question just because it's 21 not clear. 22 45 Q. Are you familiar with the transfer 23 payment directive? 24 A. I remember the name, but I can't 25 recall the specifics of it.</p>

<p style="text-align: right;">Page 14</p> <p>1 46 Q. Were there rules when you were in 2 government regarding the manner in which transfer 3 payments were to be paid and received? 4 A. I assume, but I don't recall. 5 47 Q. Okay. Let me ask you this, sir: 6 When you were Minister of Finance, were you aware 7 of any transfer payment agreement pursuant to which 8 revenue from Slots at Racetrack Program was shared 9 with the horse racing industry? 10 A. I don't recall. 11 48 Q. Are you aware of any instrument or 12 agreement pursuant to which the revenue shared with 13 the horse racing industry was identified, treated, 14 or classified as a grant? 15 A. I don't understand your question. 16 49 Q. Were you aware of any instrument 17 or agreement pursuant to which the revenue shared 18 with the horse racing industry under the Slots at 19 Racetrack Program was identified, treated, or 20 described as a grant? 21 A. I don't have a recollection of 22 that. 23 50 Q. Are you aware of any instrument or 24 agreement pursuant to which the revenue from the 25 Slots at Racetrack Program with the -- revenue from</p>	<p style="text-align: right;">Page 16</p> <p>1 54 Q. I'm just using the terms from 2 government documents, sir. There were direct 3 business support programs. We've heard about -- 4 A. Yes, there were. 5 55 Q. Okay. So are you aware of any 6 agreement, document, record that identifies or 7 describes or treats the revenue that was generated 8 from Slots at Racetrack Program and shared with the 9 horse racing industry as a direct business support 10 program? 11 A. I'm not. 12 56 Q. I want to show you an email that 13 accompanied this production. It's Exhibit 14 Number 17 on Mr. Orsini's examination. This email, 15 sir, is discussing the exhibit you and I just 16 looked at, Number 34. I'll give you some context. 17 This is November -- 18 A. Could I just read it perhaps? 19 57 Q. Sure. 20 MS. LA HOREY: That's the first one. 21 THE WITNESS: So it goes straight. 22 MS. LA HOREY: Yes. 23 THE WITNESS: Okay. 24 BY MR. LISUS: 25 58 Q. You read the entire sequence?</p>
<p style="text-align: right;">Page 15</p> <p>1 the Slots at Racetrack Program was shared with the 2 horse racing industry was treated or identified as 3 a loan? 4 A. I don't recall. 5 51 Q. Are you aware of any instrument or 6 agreement pursuant to which the revenue generated 7 by SARP that was shared with the horse racing 8 industry was identified, treated, or described as 9 an equity investment? 10 A. Not aware of any. 11 52 Q. Are you aware of any instrument, 12 agreement, or other document pursuant to which the 13 revenue generated from SARP that was shared with 14 the horse racing industry is identified, treated, 15 or described as a rebate? 16 A. I don't recall. 17 53 Q. Are you aware of any instrument, 18 agreement, or other document pursuant to which the 19 revenue generated from Slots at Racetrack Program 20 that was shared with the horse racing industry was 21 identified, treated, characterized, or described as 22 a direct business support program of any Ontario 23 ministry? 24 A. Could you define what you mean by 25 "a direct support"?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I have, yes. 2 59 Q. You see that the sequence begins 3 on November the 10th, 2011? 4 A. Yes. 5 60 Q. It's an email from Barry Goodwin 6 to Mr. Orsini? 7 A. Yes. 8 61 Q. Mr. Orsini, as we've discussed, 9 was your deputy minister; right? 10 A. Yes, that's -- this is dated 2011. 11 Yes, he would have been by then. Peter -- I think 12 he was. I just don't recall precisely when 13 Peter Wallace became Cabinet secretary. 14 62 Q. And Barry Goodwin was what in 15 November 2011? 16 A. I remember Barry as being involved 17 in a range of files. He was a -- I don't know what 18 his title was, but he would have been in briefings 19 with me on a variety of issues. 20 63 Q. All right. And in November 2011, 21 were you aware that Mr. Goodwin and Ms. Yeigh were 22 closely examining horse racing and what they 23 describe as the total level of financial support 24 provided to the sector versus the size and economic 25 impact of the sector?</p>

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<p>1 A. No.</p> <p>2 64 Q. Okay. But that examination</p> <p>3 process hadn't yet made its way up to your</p> <p>4 attention?</p> <p>5 A. Well, typically I wouldn't know</p> <p>6 who's involved. I would have known later than that</p> <p>7 that Barry Goodwin was involved in the file, but I</p> <p>8 typically didn't know which specific officials in</p> <p>9 the ministry, in other departments were involved</p> <p>10 and any of the research.</p> <p>11 And this is a -- and typically</p> <p>12 documents that are prepared for the deputy minister</p> <p>13 steering committee don't make their way either to</p> <p>14 the minister, at least certainly not in my case.</p> <p>15 65 Q. Were you aware, sir, in November</p> <p>16 2011 that OLG, along with individuals at Finance,</p> <p>17 were examining ways in which the slot machine</p> <p>18 business of the OLG could generate more revenue for</p> <p>19 the province?</p> <p>20 A. Yes. We had -- the process and</p> <p>21 extensive consultations began, I think, in 2010.</p> <p>22 Involved a great deal of research on the part of</p> <p>23 OLG. I had periodic reports from the chair of the</p> <p>24 OLG and the CEO of the OLG.</p> <p>25 66 Q. Mr. Godfrey and Mr. Phillips</p>	<p>1 A. Broadly, yes. On terms of the</p> <p>2 specifics of those siteholder agreements, no.</p> <p>3 70 Q. So is it fair to say that you knew</p> <p>4 there was such siteholder agreements, but you</p> <p>5 hadn't familiarized yourself and didn't feel the</p> <p>6 need to with respect to their specific terms?</p> <p>7 A. I was familiar with them from the</p> <p>8 perspective of what they were supposed to do. Did</p> <p>9 I ever read them or was I briefed on their</p> <p>10 specifics? Not by that point in time, no.</p> <p>11 71 Q. Were you subsequently briefed on</p> <p>12 their specifics?</p> <p>13 A. I don't recall.</p> <p>14 72 Q. And did you subsequently ever read</p> <p>15 them yourself?</p> <p>16 A. I don't recall.</p> <p>17 73 Q. So what was your general</p> <p>18 understanding of how these agreements worked and</p> <p>19 what they did?</p> <p>20 A. They were agreements between</p> <p>21 Ontario and the racetracks which specified, among</p> <p>22 other things, the number of slot machines as I</p> <p>23 recall, how the monies were to be disbursed, also</p> <p>24 the conditions that the individual siteholders had</p> <p>25 to adhere to.</p>
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<p>1 respectively?</p> <p>2 A. That's correct. And so yes.</p> <p>3 67 Q. Okay. And so you were aware that</p> <p>4 that exercise was ongoing, but you weren't</p> <p>5 personally involved in it other than receiving</p> <p>6 periodic reports; is that fair to say?</p> <p>7 A. At -- I was briefed periodically</p> <p>8 by the Chair and by Mr. Phillips. I would have --</p> <p>9 they would have asked my opinion on certain</p> <p>10 matters, a range of matters. But they were still</p> <p>11 doing their own consultations, and there was work</p> <p>12 going on both at OLG and the Ministry of Finance.</p> <p>13 I don't recall when we had our first</p> <p>14 sort of kind of briefing on their findings and what</p> <p>15 potentially could be the recommend -- I don't</p> <p>16 recall the specific date.</p> <p>17 68 Q. You did subsequently have</p> <p>18 briefings on their findings and their</p> <p>19 recommendations?</p> <p>20 A. Yes.</p> <p>21 69 Q. So in the fourth quarter of 2011,</p> <p>22 were you familiar with the siteholder agreements</p> <p>23 which governed the terms pursuant to which</p> <p>24 prescribed lottery schemes were implemented at</p> <p>25 racetracks?</p>	<p>1 74 Q. And what was your understanding,</p> <p>2 sir, with respect to the conditions as to how the</p> <p>3 monies were to be disbursed?</p> <p>4 A. Well, they were to be shared</p> <p>5 equally among the track owners and the horse</p> <p>6 people.</p> <p>7 75 Q. And the monies that we're talking</p> <p>8 about, they're the monies generated from the slot</p> <p>9 machines?</p> <p>10 A. The slot machines that -- as my</p> <p>11 understanding is were at the individual racetracks.</p> <p>12 76 Q. Right.</p> <p>13 A. I don't know if they were</p> <p>14 aggregated or -- so yes.</p> <p>15 77 Q. And so that's a fair</p> <p>16 characterization of your understanding of the</p> <p>17 nature of those agreements --</p> <p>18 A. Yes.</p> <p>19 78 Q. -- in 2011 and 2012?</p> <p>20 A. Well, in 2011. That was -- well,</p> <p>21 your original question --</p> <p>22 79 Q. Yes.</p> <p>23 A. -- referred, I think, to the third</p> <p>24 or fourth quarter of 2011.</p> <p>25 80 Q. Right. I think I referred to</p>

<p style="text-align: right;">Page 22</p> <p>1 2012, but in the event I didn't, was that your 2 general understanding in 2012 as well? 3 A. Yes. 4 81 Q. Okay. And I understood you to say 5 to me, sir, a minute ago that you never yourself 6 reviewed these agreements? 7 A. Not in 2011. I may have been 8 briefed on them as we got closer to budget 9 decisions. 10 82 Q. Okay. And do you recall whether 11 or not you were? 12 A. Were? I'm sorry. 13 83 Q. Briefed on that. 14 A. Yes. 15 84 Q. You do recall? 16 A. Yes. 17 85 Q. Was the nature of your briefing 18 the ability to terminate those agreements with 19 one-year notice? 20 A. No. They were designed to 21 familiarize myself and my staff with how the 22 program operated for the purposes of being informed 23 in terms of making decisions. 24 86 Q. All right. As a result of those 25 briefings, what did you learn in 2012 about those</p>	<p style="text-align: right;">Page 24</p> <p>1 legislative mandate. 2 Our concern was to ensure that the 3 corporation and its management were being maximized 4 for the government's dividend. We didn't have any 5 preconceived notions about where this would go. 6 The one issue that was front and centre 7 in the public's mind at that time were lottery 8 tickets. You'll recall there were instances where 9 there were allegations made that certain retailers 10 didn't -- stole or took winnings from people. 11 So that was there. There was also the 12 issue of the performance of all of the assets and 13 how they were managed, but there was not a -- 14 MS. LA HOREY: I just want to caution 15 you, Mr. Duncan. We've only got two days here, so 16 if you just answer Mr. Lisus's questions. He's got 17 a certain order he's going to want to go in, and 18 all this may be germane and may be covered later. 19 BY MR. LISUS: 20 90 Q. Well, I found your answer quite 21 helpful. So if I don't find it helpful, I'll ask 22 you to refocus, but that is helpful context for me. 23 And so you were saying the other issues 24 were maximizing other assets. And when you say 25 that, are you meaning assets of the OLG</p>
<p style="text-align: right;">Page 23</p> <p>1 agreements that you didn't know based on your 2 general understanding from them in 2011 which you 3 gave to me a few moments ago? 4 A. I don't recall. 5 87 Q. Okay. Do you recall -- 6 A. If I -- if I just may add, you 7 know, this three-year consultation that went on 8 that involved members of the industry, you know, 9 without outside consults and so on, there was an 10 iterative process whereby officials properly tried 11 to make sure that I had the information necessary 12 to make final decisions on a range of issues. 13 And I don't recall -- I mean, the 14 mandate of OLG went far beyond the horse racing 15 industry, and it wasn't -- it was not even kind of 16 central to our thinking when we began this. 17 88 Q. The horse racing industry? 18 A. No. 19 89 Q. I'm correct; right? When you say 20 it was not even central to our thinking, you're 21 referring to -- 22 A. When we began this process -- and 23 I believe -- and I believe it was 2009 when 24 Mr. Godfrey was appointed -- we were concerned that 25 the OLG, first of all, had vastly exceeded its</p>	<p style="text-align: right;">Page 25</p> <p>1 corporation? 2 A. Yes. 3 91 Q. Okay. 4 A. But there were other works going 5 on on other Crown assets as well -- 6 92 Q. Right. 7 A. -- as reflected in the 2012 8 budget. 9 93 Q. Right. And when you say other 10 works and other Crown assets, I presume you are 11 referring to other government business enterprises? 12 A. Government business enterprises, 13 government ministries, relationship between 14 transfer payment agencies and so on, the range of 15 government. 16 94 Q. Right. And just listening to what 17 you explained to me -- thank you -- you refer to 18 the iterative process that had gone on for about a 19 year and a half. 20 And the iterative process I presume 21 that you're referring to is the stakeholder 22 consultation process and the engagement of experts 23 that the OLG utilized in conducting its review of 24 its operations in 2010 and '11. That's the 25 iterative process; correct?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 95 Q. Okay. And is it your</p> <p>3 understanding, sir, that the decision that was made</p> <p>4 in February 2012, which included the decision to</p> <p>5 terminate the revenue sharing with the horse racing</p> <p>6 industry, was a decision made based on the</p> <p>7 recommendation of OLG at the conclusion of that</p> <p>8 consultation and review process?</p> <p>9 A. I don't recall.</p> <p>10 96 Q. You don't recall how it was made?</p> <p>11 A. I recall how it was made. I don't</p> <p>12 recall -- there were different iterations,</p> <p>13 different discussions.</p> <p>14 97 Q. Right. But I've understood you to</p> <p>15 say that the decision that was ultimately made was</p> <p>16 made as a result of that iterative process?</p> <p>17 A. That's correct, yes.</p> <p>18 98 Q. And, therefore, it was the product</p> <p>19 of the consultation and study done by OLG over the</p> <p>20 prior 18 months or whatever the period of time was?</p> <p>21 A. Yes.</p> <p>22 99 Q. Okay. Now, at the same time as</p> <p>23 that process was going on, sir, the Ontario Racing</p> <p>24 Commission was also undertaking a study of its own.</p> <p>25 Do you recall that?</p>	<p style="text-align: right;">Page 28</p> <p>1 106 Q. OLG was and is an agency of</p> <p>2 Finance; correct?</p> <p>3 A. At the time, it was. My</p> <p>4 recollection of how the process works is it would</p> <p>5 depend on which minister and ministry. Like in</p> <p>6 previous, it wasn't always the Ministry of</p> <p>7 Finance they'd report to. So at the time, yes.</p> <p>8 107 Q. I understood that. And when we</p> <p>9 say "at the time," sir, we're talking 2011, '12,</p> <p>10 and '13; right?</p> <p>11 A. Well, I wasn't there in 2013.</p> <p>12 Well, I was there until February 13th, 2013.</p> <p>13 108 Q. That's when you left?</p> <p>14 A. Yes.</p> <p>15 109 Q. February 13th?</p> <p>16 A. February 13th, yes.</p> <p>17 110 Q. And among some of the other</p> <p>18 government business enterprises that Finance was</p> <p>19 responsible for was the LCBO; is that</p> <p>20 A. LCBO. Hydro One and OPG were, by</p> <p>21 legislation, the responsibility not of the ministry</p> <p>22 but of the Minister of Energy. I'm trying to</p> <p>23 remember some of the other agencies. We had -- we</p> <p>24 had responsibility for MPAC, the Municipal Property</p> <p>25 Assessment Corporation.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. There were different things done.</p> <p>2 Are you referring to the Sadinsky report --</p> <p>3 100 Q. No.</p> <p>4 A. -- or something later than that?</p> <p>5 101 Q. The Sadinsky report, I believe,</p> <p>6 was released in 2007 --</p> <p>7 A. '07 or '08.</p> <p>8 102 Q. Yeah. I'm referring to the study</p> <p>9 which culminated in the Ontario Racing Program</p> <p>10 which was announced in the fall of 2010. Do you</p> <p>11 remember that?</p> <p>12 A. I don't recall that.</p> <p>13 103 Q. Okay. Are you aware, sir, as to</p> <p>14 how the revenue generated from the slot machines at</p> <p>15 racetracks was accounted for?</p> <p>16 A. No.</p> <p>17 104 Q. Are you aware which government</p> <p>18 agency accounted for the revenue from the slots</p> <p>19 generated at the racetracks?</p> <p>20 A. No.</p> <p>21 105 Q. So you're not aware that the slot</p> <p>22 revenue was accounted for by OLG and its auditors,</p> <p>23 KPMG, as an operating expense in the form of a</p> <p>24 commission?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 29</p> <p>1 But in terms of what I used to term</p> <p>2 "the Big 4," there's the LCBO and OLG, which the</p> <p>3 Minister of Finance has direct responsibility for</p> <p>4 at that time.</p> <p>5 111 Q. In Q4 2011, did you know what the</p> <p>6 breeding cycle of a standardbred horse was?</p> <p>7 A. No.</p> <p>8 112 Q. In Q1 2012, did you know what the</p> <p>9 breeding cycle of a standardbred horse was?</p> <p>10 A. No.</p> <p>11 113 Q. Do you today know what the</p> <p>12 breeding cycle of a standardbred horse is?</p> <p>13 A. Yes.</p> <p>14 114 Q. What is it?</p> <p>15 A. Eight years.</p> <p>16 115 Q. You, sir, had a long career in</p> <p>17 provincial politics. You were first elected, if I</p> <p>18 have understood the documents correctly, in 1995?</p> <p>19 A. That's correct.</p> <p>20 116 Q. And can you just remind me, was</p> <p>21 that as an MPP for Windsor, Tecumseh?</p> <p>22 A. At the time, it was Windsor,</p> <p>23 Walkerville.</p> <p>24 117 Q. Windsor, Walkerville.</p> <p>25 The Liberal government was in power --</p>

<p style="text-align: right;">Page 30</p> <p>1 excuse me --</p> <p>2 A. No. We were in opposition.</p> <p>3 118 Q. Opposition. So your first term as</p> <p>4 a member of the governing party was 2003?</p> <p>5 A. '03. I worked as a staff member</p> <p>6 in the first Peterson government as well.</p> <p>7 119 Q. So you were an MPP when the Slots</p> <p>8 at Racetrack Program was implemented in 1998?</p> <p>9 A. Yes.</p> <p>10 120 Q. I understand you were in</p> <p>11 opposition, but did you have any role or</p> <p>12 participation in the implementation of that</p> <p>13 program?</p> <p>14 A. I don't recall. I had -- like</p> <p>15 everyone else in the province, I had a sense of why</p> <p>16 it was being done, but I have no recollection</p> <p>17 whether I participated in any debates or -- around</p> <p>18 that.</p> <p>19 121 Q. What was your sense of why it was</p> <p>20 being done?</p> <p>21 A. It was -- as I understood, it was</p> <p>22 part of a broad set of tax cuts by the government</p> <p>23 of the day as well as that government's interest in</p> <p>24 assisting an industry which had been in some</p> <p>25 difficulty for many years.</p>	<p style="text-align: right;">Page 32</p> <p>1 some of the witnesses that I've examined and the</p> <p>2 documents is that slot machines were installed at</p> <p>3 racetracks because the government of the day had</p> <p>4 been trying to have them installed in</p> <p>5 municipalities, and the municipalities had refused</p> <p>6 to permit them. Does that refresh your</p> <p>7 recollection?</p> <p>8 A. No.</p> <p>9 128 Q. Okay. And my understanding from</p> <p>10 the documents and other witnesses is that when the</p> <p>11 municipalities had refused to permit them,</p> <p>12 attention was turned to racetracks because there</p> <p>13 already were designated gaming sites under the</p> <p>14 legislation.</p> <p>15 A. I wasn't part of that</p> <p>16 decision-making process.</p> <p>17 129 Q. And Mr. Phillips, for instance,</p> <p>18 when I asked him what he understood the genesis of</p> <p>19 the program to be was that -- I'm reading you his</p> <p>20 answer:</p> <p>21 "I'd say my principal</p> <p>22 understanding of it was that it was</p> <p>23 instituted to allow the government</p> <p>24 to install slot machines in various</p> <p>25 locations and that had been a</p>
<p style="text-align: right;">Page 31</p> <p>1 122 Q. Okay. And you mention broad tax</p> <p>2 cuts. I think you might be thinking of the</p> <p>3 Pari-Mutuel Tax Reduction which occurred --</p> <p>4 A. Well, that was one of many. There</p> <p>5 were -- that government spoke of 69 tax cuts,</p> <p>6 Pari-Mutuel among them.</p> <p>7 123 Q. Okay. And you say that it was</p> <p>8 part of a plan or initiative to assist an industry</p> <p>9 that was --</p> <p>10 A. That was my understanding of it.</p> <p>11 I wasn't an author of that.</p> <p>12 124 Q. Okay. You did come to understand</p> <p>13 that the program was very, very lucrative for the</p> <p>14 government?</p> <p>15 MS. LA HOREY: Which program?</p> <p>16 THE WITNESS: Which program are you</p> <p>17 referring to, yeah?</p> <p>18 BY MR. LISUS:</p> <p>19 125 Q. The Slots at Racetrack Program.</p> <p>20 A. No, that wasn't my impression.</p> <p>21 126 Q. You didn't understand that it</p> <p>22 exceeded all of its original forecasts?</p> <p>23 A. No, I didn't understand it that</p> <p>24 way.</p> <p>25 127 Q. Okay. My understanding, sir, from</p>	<p style="text-align: right;">Page 33</p> <p>1 challenge through other means, and</p> <p>2 so that this was the solution of the</p> <p>3 day that had been successful</p> <p>4 commercially in terms of putting</p> <p>5 gaming in a place where gaming</p> <p>6 already existed."</p> <p>7 Does that refresh your recollection?</p> <p>8 A. No.</p> <p>9 130 Q. All right. Now, you are here,</p> <p>10 sir, pursuant to a Summons to Witness; correct?</p> <p>11 A. Yes.</p> <p>12 131 Q. And did you review the summons at</p> <p>13 some point before coming here?</p> <p>14 A. Yes, I did.</p> <p>15 132 Q. And if you could just turn it up.</p> <p>16 MS. LA HOREY: I didn't bring it.</p> <p>17 BY MR. LISUS:</p> <p>18 133 Q. You reviewed the summons before</p> <p>19 coming here today, I presume?</p> <p>20 A. I did.</p> <p>21 134 Q. And you are aware that it asked</p> <p>22 you to bring with you any documents that you may</p> <p>23 have; correct?</p> <p>24 A. That's correct.</p> <p>25 135 Q. Okay. And specific requests are</p>

<p style="text-align: right;">Page 34</p> <p>1 made in paragraph 1? 2 A. Yes. 3 136 Q. Did you search your records to see 4 if you had documents responsive to the request? 5 A. Yes, I did. 6 137 Q. Where did you look? 7 A. My Windsor home and my Toronto 8 home. 9 138 Q. Did you look in any electronic 10 databases like your email account? 11 A. I didn't take any electronic 12 databases with me when I left office. 13 139 Q. Let me ask you about nonelectronic 14 sources. 15 A. Mm-hm. 16 140 Q. When you were the Minister of 17 Finance -- and let's talk about Q4 '11 and Q1 '12. 18 A. Mm-hm. 19 141 Q. You have to say "yes" -- 20 A. Yes. 21 142 Q. -- or "no" as the case may be. 22 A. Yes or no. 23 143 Q. Okay. Did you make notes of 24 important meetings? 25 A. Typically no.</p>	<p style="text-align: right;">Page 36</p> <p>1 lawsuit was when you received a summons? 2 A. No. 3 151 Q. When was the first time? 4 A. When you make decisions in 5 government, you reflect all the time as time goes 6 on. You follow -- I followed with interest what 7 developed subsequent to the decisions that we took. 8 152 Q. You're referring to the panel and 9 the -- 10 A. Because I had -- as you know, I -- 11 that was one of my last duties. I appointed the 12 panel or at least I signed the Order in Council 13 that appointed them. 14 153 Q. Okay. And that, of course, was 15 before the lawsuit commenced, the appointment of 16 the panel -- 17 A. I'm sorry. I don't know when the 18 lawsuit commenced. 19 154 Q. I understand that. The lawsuit 20 commenced in March of 2014. 21 A. Mm-hm. 22 155 Q. So my only question -- have you 23 read the Statement of Claim, by the way? 24 A. I have not. 25 156 Q. Okay. And I presume you haven't,</p>
<p style="text-align: right;">Page 35</p> <p>1 144 Q. Okay. Would you sometimes? 2 A. I don't recall. 3 145 Q. Okay. And I've reviewed a lot of 4 documents in this case. 5 A. Mm-hm. 6 146 Q. We've gotten about 80,000 from the 7 Crown and a lot of emails. There's very few from 8 you. 9 A. Yeah. 10 147 Q. Can you help me -- 11 A. I didn't use email, very little, 12 and typically only for kind of non-substantive 13 issues. I would leave those to my staff, the more 14 substantive things. 15 148 Q. Okay. So you would typically use 16 email for non-substantive issues? 17 A. Yes. People would often -- 18 friends might reach out to me if it's something, 19 like, in a scheduling issue or something like that. 20 149 Q. And it wasn't your habit to keep 21 notes of meetings? 22 A. Nope. No. I'm sorry. 23 150 Q. Nope is fine. That's understood. 24 Was the first time, sir, that you were 25 asked to reflect or think about the issues in this</p>	<p style="text-align: right;">Page 37</p> <p>1 therefore, read the Statement of Defence? 2 A. I have not. 3 157 Q. Do you understand what it is? 4 A. I think I do. 5 158 Q. Can you tell me what you 6 understand this lawsuit is about? 7 A. It's been a while since I've read 8 it, so no. 9 159 Q. Do you, sitting here today, sir, 10 have an understanding what this lawsuit is about? 11 A. Not really. 12 160 Q. You did, however, prepare to give 13 evidence before you came here today? 14 A. Not a lot. 15 161 Q. Okay. 16 A. It's been what? I see the 17 starting of this whole -- the whole OLG 18 reorganizations beginning around 2009. I reflected 19 on my memories. There were numerous speeches I 20 gave, documents all in the public record. I 21 haven't reviewed those, by the way. 22 162 Q. Fair enough. Have you reviewed 23 any documents for the purposes of giving your 24 evidence here today? 25 A. Yes.</p>

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1	163	Q. Okay. What have you reviewed?	1	175	Q. Right. And what is the purpose of
2		A. I'm sorry?	2		doing one of those before every budget?
3	164	Q. What have you reviewed to give	3		A. Just to signal what the
4		your evidence?	4		government's thinking is.
5		A. A range of -- I don't even	5	176	Q. Okay. What the government's
6		remember the specific ones. I didn't, for	6		thinking is about the budget to be released?
7		instance, see these ones that you gave me, but I	7		A. Yes, but in broader sense where
8		have been given documents in order to help prepare	8		the government see -- like, for instance, last
9		myself for your questions, to answer them as	9		month, Mr. Sousa -- or this month -- last month
10		truthfully as I can.	10		now, indicated that there would be a deficit in the
11	165	Q. Thank you. And I presume you met	11		coming year.
12		with counsel for Ontario to do that?	12	177	Q. Right. And was one of the
13		A. I did, yes.	13		documents that you reviewed a transcript of radio
14	166	Q. And did you meet with counsel for	14		ads that were run at the end of February?
15		OLG?	15		A. I recall -- I recall -- I have a
16		A. No.	16		vague memory of that, but I don't recall reading
17	167	Q. They didn't participate in any	17		the document itself.
18		meetings?	18	178	Q. For the purposes of testifying
19		A. Not in the meetings I was at, no.	19		here today?
20	168	Q. All right. And so let's just talk	20		A. Hmm?
21		about some of the documents that you may have	21	179	Q. You don't recall reading --
22		reviewed. Did you review a transcript of your	22		A. I don't recall going through the
23		speech given to the Economic Club in February 2013?	23		document at all, but I probably was provided with
24		A. Yes.	24		it. I had a binder similar in size to that
25	169	Q. Excuse me. It's '12, February	25		documents.
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1		2012.	1	180	Q. You had a binder similar in size
2		A. I did the Economic Club in '13	2		to the document that I have in front of me?
3		too, so maybe -- so I better say no, because -- was	3		A. Mm-hm.
4		it the Economic Club or the Canadian Club in '12?	4	181	Q. Yes?
5	170	Q. Economic Club in February 2012 in	5		A. Yes.
6		which you refer to the fact that the SARP revenue	6	182	Q. Okay. So the speech that we
7		sharing with the horse racing industry was under	7		discussed a minute ago was on February 13, 2012, to
8		review.	8		the Economic Club of Canada. I'm not going to take
9		A. Yes, I do recall that, yes.	9		you to it just yet.
10	171	Q. And you also refer to the success	10		A. Okay.
11		you had enjoyed with your diet. Do you remember	11	183	Q. The radio ads that I referred you
12		that speech?	12		to a minute ago...
13		A. It was a joke. It wasn't part of	13		MS. LA HOREY: Counsel, can we take a
14		the text.	14		short break?
15	172	Q. It was part of the text I've seen.	15		MR. LISUS: Well, we just started.
16		A. Was it? Was it? Okay. I do	16		Let's go off the record.
17		remember, yes.	17		-- OFF THE RECORD DISCUSSION --
18	173	Q. That's the speech I'm referring	18		-- Recess at 10:56 a.m. --
19		to.	19		-- Upon resuming at 11:00 a.m. --
20		A. Okay. Yeah. I don't remember if	20		BY MR. LISUS:
21		it was -- was it the Economic Club?	21	184	Q. So in the break, I take it you
22	174	Q. I think it was.	22		reviewed the copy of those radio ads?
23		A. Because we did -- you do one of	23		A. Yes, I did.
24		those before every budget, and I think the next	24	185	Q. Do you remember them?
25		year I did the Canadian Club.	25		A. No.

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1	186	Q. Who ordered these radio ads to	1		A. Yes.
2		run?	2	201	Q. Was she at the Cabinet meeting on
3		A. I don't know.	3		February 8, 2012?
4	187	Q. Who was responsible for ordering	4	R/F	MS. LA HOREY: That's a refusal. As
5		Liberal party partisan radio ads in 2012?	5		I've indicated to you, Mr. Lisus, previously,
6		A. I don't know.	6		questions with respect to that Cabinet meeting are
7	188	Q. Who would be able to answer that	7		being claimed by Ontario as subject to privilege.
8		question for me, Mr. Duncan?	8		MR. LISUS: All content of that Cabinet
9		A. I wouldn't -- I would not be able	9		meeting?
10		to offer advice on that.	10		MS. LA HOREY: All content of that
11	189	Q. Because I've asked a lot of folks	11		Cabinet meeting.
12		who were in your government at the time, and no one	12		BY MR. LISUS:
13		can tell me who ordered these ads. Do you think	13	202	Q. Let me see if I can advance this
14		Mr. McGuinty would know?	14		inquiry. What is dailywire@ontarioliberal --
15		A. No.	15		A. Don't know.
16	190	Q. Do you think Mr. Gene would know?	16	203	Q. -- CP20.com?
17		A. No. I don't know. I just -- I	17		Take a look at this email. It was
18		don't know the answer to that. I don't know. I	18		marked on the examination of Mr. Shortill.
19		was never involved in any of that.	19		MR. ROSENBERG: What's the document
20	191	Q. Any of what?	20		number, Counsel?
21		A. Advertising choices. I was	21		MR. LISUS: Sorry. CR38429. The
22		Minister of Finance at the time.	22		document numbers are on the screen when they come
23	192	Q. And deputy Premier?	23		up, Mr. Rosenberg.
24		A. Yeah. So I was not involved in --	24		MR. ROSENBERG: I can't see them
25		certainly -- well, to your specific point, you	25		because that part of the document is not shown.
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1		asked -- I don't know who did this.	1		MR. MATTHEWS: It indicates that it's
2	193	Q. How would you characterize these	2		Exhibit 13 to Mr. Shortill, so I think that will
3		ads?	3		help you locate the document.
4		A. I don't really have an opinion.	4		THE WITNESS: Is there an English
5	194	Q. Why were these ads run?	5		translation of this? I can't read that.
6		A. I don't know.	6		BY MR. LISUS:
7	195	Q. Can we agree, sir, that this kind	7	204	Q. You don't speak French?
8		of ad could not have run without the authority of	8		A. Not enough to read -- not enough
9		the Liberal party?	9		to understand that.
10		A. No.	10	205	Q. Let's focus on the English part of
11	196	Q. Someone could have just run these	11		the email for now.
12		ads themselves?	12		A. I just -- it's part of the -- I
13		A. They're -- I just don't know --	13		can't comment until I can read the whole thing, so
14		no, I can't agree with your characterization.	14		if you have it translated, I would be happy to, but
15	197	Q. Can't give an explanation about	15		I can't read that.
16		how these ads appeared on the air in February 2012?	16	206	Q. You don't know what I'm asking you
17		A. No.	17		to comment on, Mr. Duncan.
18	198	Q. No explanation at all?	18		A. You've handed me a document, and I
19		A. I was not involved, and I never	19		won't comment on something I can't read in its
20		saw them, never heard them.	20		entirety.
21	199	Q. Who was Laurel Broten in February	21	207	Q. Sir, your obligation here today is
22		2012?	22		answer question unless your counsel objects. I'm
23		A. She was, I believe, at the time	23		not going to ask you about the French. Okay?
24		Minister of Education.	24		MS. LA HOREY: His obligation is to
25	200	Q. A Cabinet minister?	25		answer fair questions. And it depends what your

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<p>1 question is. It may not be fair to ask him a 2 question. He needs to read the whole document. 3 THE WITNESS: You referenced the author 4 of this French email -- 5 BY MR. LISUS: 6 208 Q. Mr. Duncan, you can comfort 7 yourself with the knowledge that I'm not going to 8 examine you about French because I don't understand 9 or read it either. 10 A. So why is this part of the 11 document? 12 209 Q. Because your Cabinet colleague 13 attached it, and I'm going to ask you about what 14 your Cabinet colleague said in English. Okay? 15 A. I just want to state clearly, I -- 16 there's a document that includes a substantial, 17 almost a half page in French that I can't read in 18 its entirety. 19 210 Q. The record will reflect that. 20 A. Thank you. 21 211 Q. So Laurel Broten sends an email 22 out on Sunday, February 26, 2012. From 23 Laurel Broten, dailywire@ontarioliberal.ca. What 24 is dailywire@ontarioliberal -- 25 MS. LA HOREY: You've asked him that,</p>	<p>1 on like health care and education. 2 We simply can't afford to support 3 the 345 million a year horse racing 4 subsidies started by the Hudak PCs, 5 not when the same amount of money 6 could get better health care for our 7 seniors and full-day kindergarten 8 for our 4- and 5-year-olds. 9 But in these times of restraint, 10 Tim Hudak would choose to protect a 11 few wealthy racetrack owners while 12 seniors and kindergarten students 13 are left in the dust. 14 Ontario Liberals choose families 15 every time. That's why starting 16 today, we're spreading the word. 17 Listen to our new radio ads here and 18 share these important messages with 19 your friends and family. 20 Tell Tim Hudak his priorities 21 aren't your priorities. Only the 22 Ontario Liberals will eliminate the 23 deficit while upholding our shared 24 values, and that includes building a 25 workforce second to none starting</p>
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<p>1 and he said he didn't know. 2 THE WITNESS: I don't know. 3 BY MR. LISUS: 4 212 Q. No, I asked him about CP20. But 5 in any event -- 6 MS. LA HOREY: No, you asked him about 7 that. 8 BY MR. LISUS: 9 213 Q. -- she says Ontario Liberal party. 10 She's sending it out to the Liberal party. 11 "Friends, this week our 12 government made more of the 13 thoughtful choices that will see us 14 eliminate the deficit by 2017-18." 15 And you've read the rest of the email; correct? 16 A. No, I have not been able to read 17 part of the document. I can read that email. 18 214 Q. Okay. Well, let's read it 19 together. Then we'll be comfortable that you've 20 got it. 21 "That will see us eliminate the 22 deficit by 2017-18. Working 23 together, we can continue to grow 24 the economy, create jobs, and 25 protect the services families rely</p>	<p>1 with our youngest learners." 2 That's what Minister Broten says; right? 3 A. That is in this email, yes. 4 215 Q. And the text of the radio ads is 5 the document I showed you a minute ago, Exhibit 31 6 to the examination of Mr. Orsini? 7 A. Yes. 8 216 Q. So here we have a Liberal Cabinet 9 minister sending out radio ads or the text of radio 10 ads on behalf of our government. Do you see that? 11 A. Yeah. 12 217 Q. Why is she doing that? 13 A. I notice she's reflecting the 14 information that was contained in the budget 15 documents, eventually in the estimates. I don't 16 know. I don't -- to answer your specific question, 17 I don't know why she's doing that. 18 218 Q. Do the budget documents say that 19 Tim Hudak's PCs started a secret subsidy for a few 20 very wealthy racetrack owners? Because I haven't 21 seen that in any budget documents. 22 A. No, but the -- she's accurate in 23 terms of the 345 million. 24 219 Q. Do the budget documents say that 25 Tim Hudak says these rich payouts should be</p>

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1	protected? Because I haven't seen any reference to	1	229 Q. Sir, I don't say it. Ms. Broten
2	that in the budget documents.	2	says it.
3	A. I don't know. I can't recall.	3	A. I know and -- I don't know. Don't
4	220 Q. Well, you're responsible for the	4	know. I really don't.
5	budget as minister --	5	230 Q. One thing you and I probably can
6	A. It's a several-hundred-page	6	agree on, sir, is that these radio ads don't have
7	document written six years ago, so I don't recall.	7	anything to do with gaming policy; correct?
8	221 Q. So you think if I looked closely	8	A. I wouldn't agree with you on that.
9	at it, I might find that kind of comment?	9	231 Q. I see. Your view is these radio
10	A. I don't know.	10	ads do reflect gaming policy as --
11	222 Q. I suggest to you, sir, that I	11	A. I don't know what they reflect. I
12	would absolutely not find that kind of commentary	12	wasn't part of them. I didn't approve them.
13	in the budget document because that kind of	13	Wasn't made aware of them. I did -- I first became
14	commentary has no place in a budget document. Do	14	aware of them about -- when did we have our
15	you agree with me?	15	first -- about a month ago.
16	A. I wouldn't agree with you. I	16	232 Q. But you won't agree with me that
17	would say that there are lots of public statements	17	these ads do not reflect --
18	by a lot of people on this issue.	18	A. That's a double negative. Can you
19	But you -- to your specific question, I	19	start again?
20	don't know who generated this. I don't know what	20	233 Q. Would you agree with me that these
21	it was. I would simply refer you to the speeches I	21	ads do not reflect government policy, or do these
22	gave, the answers I gave in the legislature as	22	ads reflect government policy in 2012?
23	being a policy of the government of Ontario.	23	A. They do not reflect government
24	223 Q. And we can agree, sir, that when a	24	policy. They're not published by the government.
25	Cabinet minister disseminates on behalf of our	25	Only the government comments on government policy.
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1	government, that she's also speaking for the	1	234 Q. So these are published by the
2	government of Ontario?	2	Liberal party?
3	A. No, you can't.	3	A. I don't know. I know they're not
4	224 Q. I see. And I also shouldn't	4	published by the government.
5	assume, then, that these radio ads weren't on	5	235 Q. But let me ask you this, sir. If
6	behalf of the Ontario Liberal government in 2012;	6	they're not published --
7	is that correct?	7	MS. LA HOREY: Mr. Lisus, you need to
8	A. I'm sorry. Ask me that question	8	let the witness finish or else the transcript is
9	again.	9	going to get very hard to read.
10	225 Q. Should I also assume that these	10	BY MR. LISUS:
11	radio ads don't reflect the position of the Ontario	11	236 Q. Are you finished?
12	government in 2012?	12	A. Pardon me?
13	A. No.	13	237 Q. Are you finished?
14	226 Q. I should or I should not assume	14	A. I don't know. Can you ask me your
15	that?	15	last question?
16	A. I don't understand your question.	16	238 Q. If they don't reflect --
17	227 Q. Should I assume that these radio	17	A. I couldn't understand it.
18	ads reflect the views and positions of the Ontario	18	239 Q. If they don't reflect government
19	government?	19	policy and they're not put out on behalf of the
20	A. No, these weren't published by the	20	government, why is a government Cabinet minister
21	government of Ontario.	21	disseminating these emails as --
22	228 Q. These were publish by who?	22	A. She is not --
23	A. I don't know. Well, you say it's	23	THE COURT REPORTER: Can you wait for
24	the Ontario Liberal party. I have no idea. I've	24	the question? There's too much overlap.
25	never heard of this before.	25	THE WITNESS: Okay.

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<p>1 BY MR. LISUS: 2 240 Q. Why is she disseminating these ads 3 in an email? 4 A. I don't know. 5 MS. LA HOREY: He's answered that a 6 number of times now. 7 BY MR. LISUS: 8 241 Q. Did anyone after these ads ran in 9 your government, sir, say anywhere these ads don't 10 reflect government policy? 11 A. I don't know. Again, I wasn't 12 aware of them, never heard them. I'm not aware. 13 I'm not copied on any of these emails. 14 242 Q. Somehow they just appeared on the 15 radio; right? 16 A. I don't know. 17 243 Q. Well, that has to be the -- 18 A. I don't know. 19 244 Q. Was Barry Goodwin a senior staffer 20 in Finance? 21 A. On the public sector side, public 22 service side, yes. 23 245 Q. Senior fellow? 24 A. Pardon me? 25 246 Q. A senior fellow? I've seen his</p>	<p>1 A. I don't recall. 2 254 Q. Did you ever hear from Mr. Goodwin 3 anything about these ads? 4 A. I don't recall. 5 255 Q. Do you know who Greg Stajduhar is? 6 A. I'm not sure. I think I do, but I 7 wouldn't have had a lot of contact. 8 256 Q. Who do you think he is? 9 A. A midlevel official in the 10 deputy's office. I think he was his chief of staff 11 at the time. I don't recall precisely. 12 257 Q. So at no point -- we can agree, 13 Mr. Duncan, at no point did your deputy minister, 14 Mr. Orsini, come to you and say, "Have you seen 15 these ads?" 16 A. No, I wouldn't agree. I said I 17 don't remember. 18 258 Q. Do you think he might have? 19 A. I don't remember. You'd have to 20 ask him. He may have a different recollection. We 21 talked about a lot of things, so I can -- I'm sworn 22 to tell the truth. I don't remember him ever 23 raising these ads with me. 24 259 Q. I'm not suggesting he did, sir. 25 I'm just asking you.</p>
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<p>1 name a lot. 2 A. Second -- second tier. Second, 3 third tier. I wouldn't have seen him often. 4 247 Q. Was Mr. Orsini a senior fellow in 5 February 2012? I understood -- 6 A. Yes. 7 248 Q. -- you to say he was the deputy -- 8 A. Yes, he was the deputy minister. 9 249 Q. So here we have Mr. Goodwin 10 sending to the deputy minister and others a copy of 11 these radio ads. 12 MS. LA HOREY: You're now -- 13 THE WITNESS: You're now referring to 14 this document, document -- 15 BY MR. LISUS: 16 250 Q. Exhibit 31 on -- 17 A. Exhibit 31. Okay. 18 251 Q. Do you see that? 19 A. Yeah. 20 252 Q. So Mr. Goodwin sends an email to 21 Mr. Orsini saying here is a copy from the two radio 22 ads. Do you see that? 23 A. Yes. 24 253 Q. And did you ever hear from 25 Mr. Orsini anything about these ads?</p>	<p>1 A. Okay. Yeah, so I don't recall. 2 260 Q. I'm not suggesting he didn't raise 3 it with you, because I'm suggesting to you that 4 these ads were put out -- 5 A. All I can do is answer -- 6 261 Q. Let me finish the question. 7 A. -- the specific question. 8 MS. LA HOREY: Sorry -- 9 THE WITNESS: I'd like to -- I'd like 10 to respond. All I can do is answer the specific 11 question. 12 BY MR. LISUS: 13 262 Q. I haven't asked it yet. 14 A. You did. And I just want to be 15 clear. I don't recall ever having a conversation 16 with any of these people, none of whom were on my 17 staff, none of whom would talk to me about these 18 things. 19 263 Q. Was Mr. Orsini not on your staff? 20 A. He was on my -- not on my 21 political staff. He was on my public service 22 staff. I never had a -- I have no recollection of 23 a conversation about these ads with them. 24 264 Q. Who's Blair Stransky? 25 A. Blair was on my staff.</p>

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1	265	Q. Who is Tim Shortill?	1	280	Q. No, you have to let me finish my
2		A. He was on my staff.	2		question, whether you like it or not, unless your
3	266	Q. He was your chief of staff?	3		lawyer --
4		A. Yes.	4		A. You don't need to raise your voice
5	267	Q. All right. So we've got the	5		with me.
6		sequence of these radio ads.	6	281	Q. I'm not raising my voice.
7		A. Mm-hm.	7		A. You were.
8	268	Q. A Cabinet colleague; correct?	8	282	Q. Unless your lawyer -- we have a
9		Laurel Broten?	9		tape. The tape will tell whether I'm raising my
10		A. Yes.	10		voice. Unless your lawyer interjects about my
11	269	Q. A significant ministry Ms. Broten	11		question, please just let me ask it, and then you
12		was heading up, education; correct?	12		answer it. Okay?
13		A. Yes.	13		A. Yes.
14	270	Q. Is that the second largest	14		MS. LA HOREY: Mr. Lisus, you're doing
15		ministry in the government?	15		the same thing. I know it's easy to fall into, but
16		A. At the time, it would have been,	16		you're both interrupting each other. So let's get
17		yes.	17		a good transcript.
18	271	Q. Largest being health?	18		BY MR. LISUS:
19		A. Yes.	19	283	Q. I'm just trying to understand,
20	272	Q. All right. So you've got the	20		sir, what's going on here because when I look at
21		second -- the Cabinet minister of the second	21		these radio ads disseminated by a Cabinet colleague
22		largest ministry in government disseminating these	22		of yours -- and you're telling me she's not doing
23		radio ads?	23		that in her capacity as a Cabinet minister;
24		A. Not in her capacity as a minister	24		correct?
25		of the Crown.	25		A. Yes.
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1	273	Q. This week, our government --	1	284	Q. And I see that your deputy
2		A. There are -- there are -- this is	2		minister is in receipt of these ads?
3		not disseminated by the government.	3		A. He's in receipt of a transcript of
4	274	Q. Well, that's part of my concern	4		the ads.
5		here, sir. You've got a Cabinet minister --	5	285	Q. Yes. And I see that your chief of
6		A. I can't comment on your concerns,	6		staff, Mr. Shortill, is in receipt of these ads.
7		with respect.	7		Do you see that?
8	275	Q. Sir --	8		A. Where?
9		A. You asked me questions, and I'm	9	286	Q. On the email sequence, he --
10		trying to answer them.	10		A. Which one? I'm sorry. You've
11	276	Q. Mr. Duncan, I know you may --	11		given me -- you got two documents.
12		A. Yes.	12	287	Q. Exhibit 13.
13	277	Q. -- not be accustomed to this form	13		MS. LA HOREY: Exhibit 13.
14		of dialogue, but you're going to have to bear with	14		THE WITNESS: Okay. Where? There it
15		me because we have to do this for the Court, and it	15		is, yeah.
16		has to have a transcript.	16		BY MR. LISUS:
17		A. I'm bearing with you.	17	288	Q. You see that your chief of staff
18	278	Q. No, no, you see, you're doing it	18		and his second in command, Mr. Stransky, have the
19		again. Even though you may not like my	19		ads?
20		questions or agree with them --	20		A. No, I don't see that. What I see
21		A. I don't have an opinion on your	21		is they have a copy of Ms. Broten's email dated
22		questions.	22		Sunday, February 26th. It's not -- it doesn't show
23	279	Q. Sir, just stop, please.	23		that he actually has the ads.
24		MS. LA HOREY: Hang on.	24	289	Q. The email says:
25		BY MR. LISUS:	25		"That's why starting today,

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<p>1 we're spreading the word. Listen to 2 our new radio ads here." 3 A. Yes, you're correct. I'm sorry. 4 I apologize. 5 290 Q. No problem. I accept your 6 apology. 7 When Ms. Broten says "starting today, 8 we're spreading the word," who's the "we"? 9 A. I don't know who she's referring 10 to. 11 291 Q. When it says "our new radio ads," 12 who's the "our"? 13 A. I don't know. 14 292 Q. When she says "our government," 15 can you help me with who that might mean? 16 A. Well, I know she's referring to 17 the government. But, again, this is not a 18 government document. 19 293 Q. Why not? 20 A. There's a rule -- there's -- you 21 can't use government resources for a whole variety 22 of things. Government documents are what are put 23 out by the government. 24 294 Q. What can't you use government 25 resources --</p>	<p>1 Liberal party at the time. 2 301 Q. Referring to herself as a member 3 of our government? 4 A. Is that a question? 5 302 Q. She's writing as a private citizen 6 there, is she? 7 A. She's not writing in her capacity 8 as a member of the government. 9 303 Q. Do you think a private citizen 10 composed and sent these ads? You're not telling me 11 that, are you, sir? 12 A. I don't know who did them. 13 304 Q. Okay. What we do know, sir, as we 14 look at this sequence together, is that Minister 15 Broten sends out this email. The ads are 16 circulated amongst Mr. Goodwin, Mr. Orsini, your 17 chief of staff; right? 18 A. Yes, that's correct. 19 MS. LA HOREY: You've asked him all 20 these before. 21 BY MR. LISUS: 22 305 Q. The fellow below the chief of 23 staff, Mr. Stransky? 24 MS. LA HOREY: You've asked him this 25 question.</p>
<p>1 A. I don't recall all the rules. 2 That was a long time ago. 3 THE COURT REPORTER: Can you wait for 4 the question? 5 THE WITNESS: Sorry. 6 BY MR. LISUS: 7 295 Q. You can only use government 8 resources for proper government purposes; right? 9 A. That's correct. 10 296 Q. So why is a Liberal Cabinet 11 minister sending -- 12 A. She didn't send this in her 13 capacity -- 14 297 Q. What capacity -- 15 A. -- as a minister. 16 298 Q. -- did she send it as? 17 MS. LA HOREY: Sorry, you're both doing 18 it now. One at a time, folks. 19 BY MR. LISUS: 20 299 Q. What capacity did she send it as, 21 Mr. Duncan? 22 A. I assume as a citizen of Ontario. 23 300 Q. A citizen of Ontario writing from 24 an ontarioliberal.ca address? 25 A. Yes, and she was a member of the</p>	<p>1 BY MR. LISUS: 2 306 Q. Who is Mr. McNeil? 3 A. Darcy McNeil was my communications 4 director. 5 307 Q. Okay. So what were the 6 responsibilities of your communications director? 7 A. So he had a variety of 8 responsibilities, including publication of the 9 government's documents on the -- broadly speaking, 10 all of the communication functions involved in my 11 office as well as monitoring all communications 12 that impacted on the government and responding 13 where appropriate. 14 308 Q. Did Darcy McNeil ever come to you 15 and say, "Minister, have you seen these -- 16 A. I don't recall. 17 309 Q. -- attack ads?" 18 MS. LA HOREY: Guys, you need to -- 19 MR. LISUS: I was asking my question, 20 Ms. La Horey. Mr. Duncan jumped in. 21 MS. LA HOREY: Okay. I'm mindful of 22 the transcript, and the court reporter is looking 23 very frustrated. 24 THE WITNESS: I'm sorry. Do you want 25 us to do it again so she gets it properly?</p>

<p style="text-align: right;">Page 66</p> <p>1 BY MR. LISUS: 2 310 Q. Did Mr. McNeil come to you and 3 say, "Minister Duncan, have you seen the radio ads 4 that are running or heard about them?" 5 A. I don't recall that. 6 311 Q. Okay. Did Mr. Shortill? 7 A. I don't recall that ever 8 happening. 9 312 Q. Did Mr. Stransky? 10 A. I don't recall. 11 313 Q. Mr. Orsini didn't either; right? 12 MS. LA HOREY: You've asked that. 13 THE WITNESS: You asked that. Just to 14 repeat, I don't recall that. 15 BY MR. LISUS: 16 314 Q. Did you know in 2012 when the 17 breeding cycle started, what time of year? 18 A. No. 19 315 Q. Do you know today? 20 A. No. 21 316 Q. Do you know that it's February? 22 A. No. 23 317 Q. Let me see if we can agree on this 24 proposition, sir, that breeders of horses hearing 25 this ad would find it very unsettling. Can we</p>	<p style="text-align: right;">Page 68</p> <p>1 MS. LA HOREY: No. 2 MR. ROSENBERG: You have my objection. 3 MS. LA HOREY: And as I said before, 4 the witness is not in a position to know what other 5 people had meant. It's not a government ad. He's 6 testified to that. It wasn't put out by his 7 ministry. 8 BY MR. LISUS: 9 320 Q. What's the message in this ad, 10 sir? 11 MS. LA HOREY: Hang on. Let me just 12 state one thing. You obviously have a right to 13 cross-examine, and you have a right to select your 14 subjects, but we have two days booked for this 15 examination, including time for the province and 16 OLG's lawyers. 17 So you can choose how you want to 18 allocate the time, but we've got two days. So I 19 ask you to keep -- 20 MR. LISUS: That's very kind of you to 21 remind me, Ms. La Horey, and thank you for also 22 reminding me that I can allocate my time as I wish. 23 BY MR. LISUS: 24 321 Q. Now, what is the message in these 25 ads?</p>
<p style="text-align: right;">Page 67</p> <p>1 agree with that? 2 A. I can't comment on that. 3 MS. LA HOREY: You're asking him to 4 comment on what somebody else -- 5 THE WITNESS: Else might say. I 6 don't -- I can't comment on it. 7 BY MR. LISUS: 8 318 Q. Do you think that breeders of 9 horses hearing this ad would understand that the 10 government was going to cancel or try and cancel 11 revenue sharing? 12 A. Well, if -- I can't comment on 13 what they would think. I can't -- or say. 14 319 Q. Do you think that people hearing 15 this ad would think that the so-called "secret 16 subsidy for a few very wealthy racetrack owners" 17 was a bad thing? 18 R/F MR. ROSENBERG: I object to these 19 questions. You're asking him to speculate on what 20 others would think. 21 MR. LISUS: No, I'm not. This is a 22 radio ad, Mr. Rosenberg, put out certainly with the 23 knowledge of the government. Radio ads are put out 24 to convey a message. I'm trying to understand what 25 this witness thinks the message was.</p>	<p style="text-align: right;">Page 69</p> <p>1 MS. LA HOREY: Sorry, hang on. Hang 2 on. I'm not finished. So we're not going past 3 Friday, and, you know, you've got until, I think, 4 you know, sometime tomorrow to ask your questions, 5 and then it will be time to move on. So I don't -- 6 I'm just giving you fair warning that if this 7 continues and you -- 8 MR. LISUS: I understand this is 9 sensitive for you and your client, Ms. La Horey. 10 MS. LA HOREY: No, on the contrary, 11 Mr. Lisus. 12 MR. LISUS: Instead of burning time 13 with speeches, why don't we get on with the 14 questions. 15 MS. LA HOREY: Mr. Lisus, why don't you 16 let me finish, and then I'll let you get on with 17 your questions. 18 MR. LISUS: Because I don't need to be 19 told that I've got two days. I know that. I don't 20 need to be told -- 21 MS. LA HOREY: Okay. 22 MR. LISUS: -- that I can ask questions 23 while -- 24 MS. LA HOREY: Good. Then you're not 25 going to ask for more time if you don't finish.</p>

<p style="text-align: right;">Page 70</p> <p>1 MR. LISUS: I have not asked for more 2 time on any examination. 3 MS. LA HOREY: That's not true, but 4 anyway, we can -- that's a matter that we don't 5 need to deal with today. I just wanted to give you 6 fair warning that we're not going past two days on 7 this examination. 8 MR. LISUS: Thank you very much for 9 your help. 10 MS. LA HOREY: You're welcome. 11 BY MR. LISUS: 12 322 Q. What would you say the message in 13 these ads is, Mr. Duncan? 14 A. I don't have an opinion on that. 15 323 Q. You can't, eh? 16 A. I said I don't have an opinion on 17 it. 18 324 Q. Okay. 19 A. Thanks. 20 325 Q. Did you ever discuss those ads 21 with Mr. McGuinty? 22 A. I have no recollection of having 23 heard the ads or discussing them with any of the 24 people you have raised to date. 25 326 Q. What was your position in December</p>	<p style="text-align: right;">Page 72</p> <p>1 BY MR. LISUS: 2 331 Q. That's an email which shows 3 Premier's Cabinet speaking notes. The document is 4 "priorities and planning board." So it comes from 5 Frank Denton with an email address of "cab," which 6 I understand to be Cabinet office, the email. Do 7 you see that? 8 A. Yes, I do. 9 332 Q. Okay. From your position as 10 Cabinet minister and Chair of Cabinet, can you just 11 explain to me what this document -- what are 12 Premier's Cabinet speaking notes? 13 A. Let me just read -- can I just -- 14 oh, I assume having not been Premier, the Cabinet 15 office would prepare speaking notes for the Premier 16 on any given issue. 17 333 Q. And you had similar speaking notes 18 prepared for you on any given issue? 19 A. Yes. 20 334 Q. So the only question I wanted to 21 ask you was on the second page, first paragraph. 22 A. This is of the Premier's speaking 23 notes? 24 335 Q. Yes. Second page, first 25 paragraph, there's a reference:</p>
<p style="text-align: right;">Page 71</p> <p>1 2004? 2 A. My position in -- December 2004, 3 you're referring to my Cabinet position? 4 327 Q. Yes. 5 A. I would have been Minister of 6 Energy and Chair of Cabinet. 7 328 Q. Okay. What is Chair of Cabinet? 8 A. Literally the Chair of Cabinet. 9 You chair -- physically chair the meeting, and you 10 typically sign all the documents that arise at a 11 Cabinet meeting. 12 329 Q. Okay. And do you recall whether 13 or not OLG was under Energy's portfolio in 2004? 14 A. It was not. 15 330 Q. It was not. Okay. 16 I want to show you a document, which is 17 Exhibit 18 on Mr. Snobelen's examination dated 18 December 12 -- excuse me. It's an email dated 19 December 8, 2004, with a document dated December 7, 20 2004. 21 MR. ROSENBERG: What's the document 22 number, Counsel? 23 MR. LISUS: The email and attachment 24 are CRE358197 and 98. 25 MR. ROSENBERG: Thank you.</p>	<p style="text-align: right;">Page 73</p> <p>1 "Expand slots at racetracks in 2 the context of a renegotiation of 3 the 20 percent commission which is 4 giving the horse industry massive 5 windfall profits, 300 million." 6 Do you recall there being discussion of expanding 7 slots at racetracks? You -- 8 MS. LA HOREY: I'm raising my hand 9 because if you're going to ask what happened at the 10 Cabinet meeting since this is apparently a meeting 11 document for -- speaking notes for Cabinet, it is 12 the position of the Crown, as I've indicated and as 13 my colleagues have indicated on previous times, 14 that Cabinet discussions are privileged. 15 MR. LISUS: Well, I don't know that I'm 16 asking about Cabinet discussions. This is -- 17 MS. LA HOREY: Okay. But I want to 18 make it, then, clear to the witness if he knows of 19 a Cabinet discussion, Mr. Duncan, please don't 20 provide evidence of what happened at Cabinet. 21 BY MR. LISUS: 22 336 Q. What is the priorities and 23 planning board, Mr. Duncan? 24 A. Typically, it's -- and we had them 25 some periods during our administration, other</p>

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<p>1 periods we didn't. I've forgotten that there was a 2 P and P at that time, and I don't even remember if 3 I was on it at the time. 4 But typically they're the inner circle 5 of the Cabinet, the four or five ministers that the 6 most sensitive political issues would go to before 7 they go to full Cabinet. 8 337 Q. Who was -- 9 MS. LA HOREY: And just for clarity, we 10 take the position that the discussions at the 11 subcommittee of Cabinet are also subject to 12 privilege. 13 BY MR. LISUS: 14 338 Q. Who was the inner circle of 15 Cabinet in Q1 2012? 16 A. I don't know. You'd have to ask 17 the Premier that. I mean, ultimately, he 18 chooses -- he chooses -- he chooses or she chooses 19 those ministers to whom she listens to. 20 Are there formal Cabinet committees? 21 Yes, but I wouldn't presume to comment on who the 22 Premier of the day or the current Premier listens 23 to the most. 24 339 Q. Well, you were one of the members 25 of the inner circle of Cabinet, as you used the</p>	<p>1 aware that there was a Slots at Racetrack 2 Program -- 3 A. Oh, yes, I was aware of that. 4 345 Q. Okay. And do you recall there 5 being a view that it was giving the horse industry 6 massive windfall profits in 2004? 7 A. I don't recall that. 8 346 Q. Okay. 9 A. And I don't -- I don't recall ever 10 having seen this document. 11 347 Q. And you don't recall there being 12 discussion about, one, expanding slots at 13 racetracks; two, renegotiating the 20 percent 14 commission or a view that it was generating massive 15 windfall profits for the horse racing industry. 16 Fair? 17 A. I certainly wasn't part of any of 18 those discussions that I recall. 19 348 Q. Thank you. For reference, that 20 was Exhibit 18 on Mr. Snobelen's examination. 21 I want to ask you about Exhibit 19 on 22 Mr. Snobelen's examination. 23 MS. LA HOREY: You'll have to provide 24 it to us. 25 MR. LISUS: Pardon?</p>
<p>1 term, in Q1 2012; right? 2 A. I was, I believe, a member of the 3 priorities and -- I don't know if we called -- 4 yeah, we called it P and P at the time. Yes, I was 5 a member of that. 6 340 Q. Who else was a member of P and P? 7 A. I don't recall. Typically it's 8 the -- typically it's the Minister of Finance. The 9 ministers typically who have the largest budgets or 10 the most contentious political issues. 11 341 Q. So finance, education, health? 12 A. Typically. And I just -- to 13 answer your specific question, I remember that I 14 was part of it. I don't recall who the other 15 colleagues were, but typically that's who it is. 16 342 Q. All right. But Mr. McQuinty would 17 know? 18 A. Yeah, I suppose he would, yeah. 19 343 Q. So my question to you, sir, is do 20 you recall in 2004 there being a view that 21 government should be renegotiating the 20 percent 22 commission which was the revenue share from Slots 23 at Racetrack Program? 24 A. I don't recall that. 25 344 Q. Okay. Do you even recall being</p>	<p>1 MS. LA HOREY: You will have to provide 2 it to us. 3 BY MR. LISUS: 4 349 Q. CR27079. Who was the Minister of 5 Finance in December 2004? You were Minister of 6 Energy. 7 A. Greg Sorbara. 8 350 Q. Okay. And it appears that -- 9 A. Can I just read this? 10 351 Q. Sure. 11 A. Okay. 12 352 Q. Do you recall these issues being 13 discussed? 14 A. Yes, in a broad sense. 15 MS. LA HOREY: Be careful. We're not 16 talking about what happens at Cabinet. 17 THE WITNESS: At Cabinet. But most of 18 these issues were also publicly discussed at the 19 time and throughout that period, so I do have a 20 recollection in a very kind of 30,000-foot-level 21 way. 22 BY MR. LISUS: 23 353 Q. Do you have a recollection of 24 there being a discussion about renegotiating 25 commissions to the horse racing industry?</p>

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<p>1 A. I don't recall that specifically. 2 354 Q. Okay. Do you have a recollection 3 of a discussion about expanding slot machines at 4 racetracks? 5 A. I don't recall that specifically, 6 but there's a Cabinet minute to that effect, so I 7 must have been privy to those discussions. 8 355 Q. Okay. Do you have a recollection 9 about developing a business case to support a 10 renegotiation of commissions shared with the horse 11 racing industry? 12 A. I don't recall the specifics of 13 it. And what I -- what I do recall is the ongoing 14 discussions about the broader issue of all the 15 various gaming components of the OLG, if they're 16 properly managed, if they -- if the mandate of the 17 OLG was being fulfilled appropriately according to 18 the wishes of the legislature. But I don't -- I do 19 not recall the specifics of those issues. 20 356 Q. OLG was an important business line 21 for the province; right? 22 A. It was an important contributor to 23 our revenues, yes. And the issue from the 24 government's perspective, there were a number of 25 contentious public issues that were well reported,</p>	<p>1 361 Q. Right. And when you say 2 under-serviced in terms of gaming opportunities, 3 you're talking about the opportunity to generate 4 revenue from gaming? 5 A. Well, for instance, at that time 6 in communities like Windsor, you had slot parlours 7 within 5 kilometres of one another, and then you 8 had a community like Chatham that was unserved; 9 whereas you had slots way out in Dresden which were 10 inaccessible to people at Chatham. In fact, 11 they're just opening the new slot opportunities in 12 Chatham. 13 Sudbury is another example. You had a 14 large municipality where the slots were 20 15 kilometres outside of the city on a two-lane road, 16 so it was not well run. 17 362 Q. Right, not well run in terms of 18 not maximizing the opportunities to -- 19 A. It would have been better to have 20 the slots in the city in those cases. And you've 21 seen all the documents. 22 363 Q. And why would it have been better 23 to have the slots in cities? 24 A. I don't know. The recommendation 25 of the OLG basically.</p>
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<p>1 well documented, and the government -- and there 2 were different manifestations of this. I mean, 3 2004 was a very different time than 2009 or 2010. 4 And what I can say is that throughout 5 my time in Cabinet, there were -- and government, 6 there were ongoing public discussions about the 7 role and size of management of the OLG. But to 8 your specific questions, I don't recall those two 9 issues. 10 357 Q. And the two issues being the 11 renegotiation of the commissions and expanding -- 12 A. That's correct. I don't recall 13 the specifics of that. 14 358 Q. You are aware, sir, that in the 15 time period 1998 through to 2010 at least, the 16 number of slot machine sites at racetracks 17 increased? 18 A. Yes. 19 359 Q. And that was a deliberate decision 20 made by OLG to increase revenue? 21 A. That would have been the principal 22 reason, but there were also areas of the province 23 that were viewed to be under-serviced. 24 360 Q. In terms of what? 25 A. Gaming opportunities.</p>	<p>1 364 Q. That's where there was more 2 demand; right? 3 A. There were people. And in cases 4 like Windsor, you know, you have two slot 5 facilities cannibalizing one another to the 6 detriment of both. 7 365 Q. Right. Do you remember having a 8 meeting with Jim Bullock? 9 A. I don't. I know that was in 10 your -- in your -- what do you call that? A 11 summons? I saw that. I don't recall it. Doesn't 12 mean it didn't happen, by the way. I just 13 didn't -- don't recall it. 14 366 Q. Mr. Bullock has sworn an Affidavit 15 saying that on Monday, July 20th, 2009, at 2:30 16 p.m., James Deacey, Robert Locke -- 17 A. Jamie Deacey. 18 367 Q. Right. Jamie Deacey, Robert 19 Locke, and I, being Jim Bullock, met with Finance 20 minister, Dwight Duncan, and some of his staff in 21 Minister Duncan's Queen's Park office. And you 22 have no recollection of that? 23 A. I don't, but I certainly knew 24 Jamie Deacey. Jamie Deacey was in my office on -- 25 registered lobbyist on different -- he was mostly</p>

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<p>1 associated with the Rideau Carleton file. 2 368 Q. Okay. 3 A. Just for the record, I did dozens, 4 if not hundreds of meetings over the years, and I 5 certainly did many with horse racing people. But 6 to your specific question and the point of the -- I 7 do not recall that meeting, but it's quite -- it 8 obviously happened. I just don't recall it. 9 369 Q. I understand. Have you seen 10 Mr. Bullock's Affidavit in which he describes the 11 discussions he had with you at that -- 12 A. I did, but I haven't looked at it 13 in a while. 14 370 Q. Okay. I -- 15 MS. LA HOREY: So if you're going to 16 ask him questions, why don't we get a copy? 17 BY MR. LISUS: 18 371 Q. I'm going to show you the 19 references, and I presume you're going to tell me, 20 as you have, that you have no recollection of that, 21 but I just wanted to... 22 MR. LISUS: So it starts at paragraph 23 33 of his Affidavit. 24 MS. LA HOREY: Just give us a minute. 25 THE WITNESS: Yeah, let me have a quick</p>	<p>1 want to mark the meeting note -- 2 MS. LA HOREY: Do we need to do that? 3 MR. LISUS: Not if we're content to 4 have it identified. 5 MS. LA HOREY: We know it's been 6 identified on the record. 7 BY MR. LISUS: 8 376 Q. Now, you know Mr. Seiling; right? 9 A. Yes. 10 377 Q. How long have you known him for? 11 A. He's my -- well, of course, as a 12 kid, I admired him as a hockey player. I guess my 13 recollections of him go back to my early years as a 14 member of provincial parliament because they were 15 fairly active in lobbying on behalf of -- not 16 lobbying -- that's not correct -- on representing 17 their interest to the government and the 18 opposition. 19 378 Q. "They" being the ORC? 20 A. Yes. 21 379 Q. Okay. So I didn't quite 22 appreciate that Mr. Seiling was involved with the 23 ORC back to the '90s. 24 A. I -- my recollection, my first 25 meetings would be in the late '90s, yes. I mean,</p>
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<p>1 look at this. I have to read this document as 2 well. It's referenced in here. 3 BY MR. LISUS: 4 372 Q. So he describes your -- 5 A. Can I -- I've just -- I've read 6 the back -- I've read the document that's 7 referenced in the Affidavit, so now I want to read 8 the Affidavit. 9 373 Q. The only part of the Affidavit 10 that talks about your meeting is 33 to 44. 11 A. That's fine. That's all I'm 12 reading. Okay. 13 374 Q. Does that assist you in refreshing 14 your recollection? 15 A. It does, yeah. Again, I don't 16 remember the specific meeting, but I certainly 17 remember the issues. 18 375 Q. All right. And has 19 Mr. Bullock fairly described -- do you recall -- 20 A. I don't recall, but certainly 21 based on the information provided in there, there's 22 nothing that strikes me as being inaccurate. 23 MR. LISUS: So that was Mr. Bullock's 24 Affidavit on the summary judgment motion and the 25 briefing -- the meeting note which is Exhibit D. I</p>	<p>1 again, he was a hockey star when I was a kid, and 2 just the thought of meeting him was quite exciting. 3 380 Q. Didn't play hockey where I was 4 when I was a kid, so I didn't know all of this. 5 When you assumed the role of minister 6 with responsibility for OLG, I take it you had more 7 to do with Mr. Seiling than you did before; is that 8 fair? 9 A. Don't know. Don't know if that's 10 fair because I always had an open door. Again, in 11 Windsor, we had both the Slots at Racetrack Program 12 as well as a casino. So I always had an interest 13 in OLG -- OLG files that might have been a little 14 more focused than other members who didn't have 15 that. 16 So obviously, yes, as minister 17 responsible for the file, but by the time I became 18 minister, I knew people like Rod and other -- in 19 other industries as well just over many years of 20 being an MPP both in opposition and in government. 21 381 Q. I want to show you a letter which 22 is Exhibit -- from you, Exhibit 7 on the 23 examination of Mr. Seiling. It's a letter from you 24 which attaches or is approving the Ontario Racing 25 Commission's business plan for 2009 to 2012.</p>

<p style="text-align: right;">Page 86</p> <p>1 A. Mm-hm. 2 MS. LA HOREY: Just for the record, 3 it's CRE0085399, is the letter. 4 BY MR. LISUS: 5 382 Q. Okay. So let me just do this in 6 sequence. 7 A. I am just -- want to review this 8 document. I haven't seen it. 9 383 Q. The business plan? 10 A. Yes. 11 384 Q. While you do that, why don't we 12 take a break. 13 -- Recess at 11:52 a.m. -- 14 -- Upon resuming at 12:04 p.m. -- 15 BY MR. LISUS: 16 385 Q. So you've now reviewed the 17 business plan that you approved? 18 A. Yes. 19 386 Q. What was the process that these 20 documents reflect, Mr. Duncan? 21 A. So there is a -- government 22 requires business plans from all its agencies and 23 boards and so on. They are submitted to the 24 minister responsible. The minister responsible 25 typically signs off on them.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. It sets out their wish list 2 essentially, and it helps the government be aware 3 of what their concerns for the industry are. 4 390 Q. You won't agree this is their 5 business plan, sir? 6 A. I agree it's their business plan. 7 391 Q. And you agree that it's a business 8 plan that your ministry and you had to approve? 9 A. I think I receive and approve it, 10 yes. 11 392 Q. You say you think. You wrote a 12 letter -- 13 A. Yeah, where I say I receive it. 14 393 Q. The way I read your letter, sir, 15 it says: 16 "This letter will confirm that 17 I approve the 2009 to 2012 business 18 plan for the ORC." 19 A. Yeah, but we also receive it. 20 394 Q. I presume you receive it in order 21 to confirm it? 22 A. We -- among other documents. For 23 instance, I had OLG doing a complete review of all 24 gaming operations at the same time. 25 395 Q. All right.</p>
<p style="text-align: right;">Page 87</p> <p>1 They're -- they don't represent 2 government policy. They represent simply a -- kind 3 of the view of the board and allows the board and 4 its members to give input to the government with 5 respect to the issues they see and the sorts of 6 things they'd like the government to be aware of or 7 be part of moving forward. 8 Typically -- this one is three years. 9 I think typically they were three years at the 10 time. 11 387 Q. The business plan sets out what 12 the plan of the agency is; correct? 13 A. In part. It also sets out in -- 14 like, in this case, it points out to the difficulty 15 that horse racing had been in and was in in 16 Ontario. 17 388 Q. Okay. And was that a point of 18 concern to you? 19 A. Not specifically at that point in 20 time. It was at that time the OLG was still 21 reviewing all the operations. 22 389 Q. And the question I asked you a 23 minute ago was that the business plan sets out what 24 the plan is for the fiscal period at issue in this 25 case 2009 to 2012; correct?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. And by -- and, again, by agreeing 2 to it, you don't necessarily agree with all the 3 elements in it. 4 396 Q. Can we agree that your letter 5 accurately reflects your view at the time you wrote 6 it? 7 A. It doesn't state what my view was. 8 It states that I accept their business plan and 9 what's in the letter. 10 397 Q. Okay. And your letter also 11 states: 12 "The plan successfully 13 highlights the goals of the ORC to 14 increase the long-term 15 sustainability of the horse racing 16 industry." 17 Do you see that? 18 A. Yes. At that point, it was 19 considered to be experiencing -- it had been for 20 many years -- tremendous difficulty. 21 398 Q. As had the OLG been experiencing 22 difficulty? 23 A. Yes, yes, absolutely. 24 399 Q. But what we can agree on, sir, if 25 I'm to take your letter at face value is that it</p>

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<p>1 was your view in January 2010 that the business 2 plan you approved successfully highlights the goals 3 of the ORC to increase the long-term sustainability 4 of the horse racing industry and enhance the 5 regulatory and oversight functions of the 6 commission; right? 7 A. In part, yes. 8 400 Q. And in January 2010, you were, as 9 Minister of Finance, supportive of increasing the 10 long-term sustainability of the horse racing 11 industry; right? 12 A. Subject to the fact that all 13 aspects of OLG were under active review as part of 14 a policy the government of Ontario at that time 15 that was being studied by the OLG. 16 And I don't remember when we got their 17 first recommendations. But we put in a new board, 18 in part, because of the problems that had been 19 ongoing, you know, certainly over the course of our 20 time in office. 21 401 Q. Did you read the review -- the 22 business -- excuse me -- 23 A. Which review? 24 402 Q. Did you read the business plan? 25 A. Yes, at the time, I would have.</p>	<p>1 long as you wanted. 2 A. Yeah, thank you very -- thank you 3 very much. 4 MS. LA HOREY: It's not a quiz here 5 today, and that's what I told the witness. 6 MR. LISUS: I'm not sure what that 7 means. 8 MS. LA HOREY: It means that you're 9 not -- he's not being tested on whether or not he 10 can recite back or tell you that some quote that 11 you report is verbatim. 12 MR. LISUS: The witness asked for time 13 to review the documents. I gave him as much time 14 as he wants. I'm asking him a question that's in 15 the first paragraph -- 16 THE WITNESS: Well, no, with respect, I 17 needed more time. 18 BY MR. LISUS: 19 409 Q. Don't interrupt, please. 20 A. Oh, stop. Don't raise your voice 21 with me, please. 22 410 Q. I'm not raising my voice -- 23 A. You're raising your voice. 24 411 Q. We have a tape, and so it will -- 25 A. Good. And it will show you</p>
<p>1 403 Q. Okay. And -- 2 A. I would have also received 3 briefing notes. 4 404 Q. All right. And so at the time you 5 reviewed and approved this business plan, you 6 obviously understood that the ORC was the Crown 7 agency responsible for regulating the horse racing 8 industry? 9 A. That's correct, yes. 10 405 Q. You obviously understood that the 11 links of the horse racing industry to the rural 12 economy were complex, and the industry supports a 13 large agricultural infrastructure and way of life 14 in the rural economy? 15 A. Is that in the report? 16 406 Q. Yes. 17 A. Where? 18 407 Q. Overview of the Ontario horse 19 racing industry. Did you not see that when you 20 reviewed it a few minutes ago? 21 A. I reviewed this -- yeah, you know, 22 it's 20 pages, and I did it in five minutes. So 23 with respect -- 24 408 Q. I am being respectful, Mr. Duncan, 25 and it was longer than five minutes, and it was as</p>	<p>1 raising your voice. 2 412 Q. May I continue, Mr. Duncan? 3 A. You can do whatever you like. 4 MS. LA HOREY: Mr. Lisus, I suggest 5 that if you're going to quote from something, you 6 let the witness look at it, and this will shorten 7 this process immeasurably. 8 BY MR. LISUS: 9 413 Q. Do you see the first paragraph of 10 the first page, Mr. Duncan? 11 A. Yeah. 12 414 Q. Do you see where it says: 13 "According to industry studies, 14 the horse racing industry is the 15 third largest agricultural industry 16 in Ontario next to dairy and beef." 17 Do you see that? 18 A. Yeah. 19 415 Q. You knew that in 2010? 20 A. Among other things. And there was 21 great disagreement on that within the rural sector. 22 We also met with other parts of the AgriFood 23 business and so on. 24 416 Q. Who's "we"? 25 A. The government of Ontario, the</p>

<p style="text-align: right;">Page 94</p> <p>1 Minister of Finance. 2 417 Q. When was that? 3 A. You can go and check them, but I 4 routinely met with all sectors of the agricultural 5 community. 6 418 Q. Where would you have me go and 7 check them, sir? 8 A. Through whatever is available on 9 public record. 10 419 Q. Thank you. Do you see where the 11 document says: 12 "The links to the rural economy 13 are complex, and the industry 14 supports a large agricultural 15 infrastructure and way of life in 16 the rural economy." 17 A. Yes. 18 420 Q. You understood that in January of 19 2010? 20 A. Depends on what you mean by 21 understand. 22 421 Q. You understood that to be the 23 case? 24 A. Depends on what you mean by it. 25 This is a very subjective document.</p>	<p style="text-align: right;">Page 96</p> <p>1 427 Q. All right. And we agree that the 2 mandate of the Ontario Racing Commission was to act 3 in the public interest to govern direct control and 4 regulate the horse racing industry in Ontario and 5 to ensure public confidence in the honesty and 6 integrity of the industry? 7 A. Yes. 8 428 Q. And do you see on page 9 of the 9 business plan where it says: 10 "In 2008, under industry 11 statistics, the Ministry of 12 Government Services, MGS, initiated 13 strategic plan of the industry and 14 HLT advisory was commissioned to 15 collect, analyze, and interpret 16 economic data on the Ontario horse 17 racing and breeding industries of 18 Ontario." 19 Do you see that? 20 A. Yes. 21 429 Q. Do you see the reference in the 22 business plan to 40,000 full-time, part-time, and 23 casual jobs come from racing? 24 A. Yes. 25 430 Q. And over 40,040 Ontarians owed</p>
<p style="text-align: right;">Page 95</p> <p>1 422 Q. Did you -- 2 A. I was getting conflicting advice 3 from other people, other sources. 4 423 Q. What conflicting advice were you 5 getting -- 6 A. There was a -- as you know, there 7 was -- 8 424 Q. Mr. Duncan, let me finish the 9 question. Okay? What conflicting advice were you 10 getting from other people in January 2010? 11 A. We were -- the ongoing OLG study 12 was going on about the effectiveness of all of 13 OLG's programs. And they hadn't had -- hadn't 14 drawn conclusions, but we accepted this as we do 15 with many reports. And by signing off on it, we 16 don't agree with every word in the document. 17 425 Q. Is that your answer to my question 18 as to what conflicting advice you were getting? 19 A. Yes. 20 426 Q. Okay. Do you see where the 21 report -- 22 "The business plan identifies 23 the mandate of the Racing 24 Commission." 25 A. Yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 their permanent jobs to the horse racing and 2 breeding industry in the province in 2004? 3 A. Yes. 4 431 Q. And do you see where it references 5 30,940 Ontarians owing their jobs to the industry 6 in the year 2000? 7 A. Yes. 8 432 Q. And when part-time and casual 9 labour is included, over 65,000 Ontarians rely on 10 the industry and its related activities for some or 11 all of their employment? 12 A. Yes. 13 433 Q. What was your understanding of the 14 review that the ORC was undertaking in 2010? 15 A. I don't recall. 16 434 Q. Do you recall it being engaged in 17 a racing program? 18 A. I'm sorry? 19 435 Q. Do you recall it being engaged in 20 the design of an Ontario racing program? 21 A. I do vaguely, yes. 22 436 Q. Just vaguely? 23 A. Yeah. 24 437 Q. Okay. If you take a look at page 25 16 of the report.</p>

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1	A. Okay.	1	THE WITNESS: Okay.
2	438 Q. There's reference to key	2	BY MR. LISUS:
3	accomplishments in 2008 and 2009, one of them being	3	447 Q. Does this ring a bell, sir?
4	implementation of the horse improvement program	4	A. Broadly, yes.
5	changes. Do you see that?	5	448 Q. All right. If we look at the
6	A. Yes.	6	first box, it says:
7	439 Q. And did you know in January 2010	7	"Tactical - Requiring Immediate
8	what the Ontario horse improvement program was?	8	Action."
9	A. No.	9	A. Mm-hm.
10	440 Q. Did you know in 2012?	10	449 Q. Yes?
11	A. No.	11	A. Yes.
12	441 Q. Okay. Did you know that the -- if	12	450 Q. It says:
13	you go to page 24 of the report, that the ORC had	13	"Execute five-year extension
14	been engaged in a significant effort to communicate	14	option under current terms and
15	and present the industry with avenues and	15	exercise existing clauses 're'
16	opportunities for input over the last few years?	16	benchmarking to introduce
17	A. Yes.	17	strengthened financial reporting
18	442 Q. And so you knew the ORC was	18	requirements, developed in
19	consulting extensively with industry stakeholders;	19	cooperating with the ORC, to improve
20	right?	20	value derived from the \$350 million
21	A. I knew they were consulting. I	21	funding provided by OLG and ensure
22	wasn't aware of how extensive it was.	22	long-term stability for the horse
23	443 Q. Okay. What is the significance of	23	racing industry."
24	the minister approving the business plan?	24	Do you see that?
25	A. It's a signal that by approving	25	A. Yes.
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1	the business plan, carry on with what you're doing,	1	451 Q. And do you recall there being
2	that your board has considered these matters, and	2	discussion about the extension for five years?
3	it's one of any number of pieces that would go into	3	A. Yes.
4	the government's view of the industry.	4	452 Q. And that for these reasons?
5	444 Q. Okay. Thank you. That's the next	5	A. I believe we agreed to that.
6	exhibit, and that's an exhibit on your examination,	6	453 Q. Okay.
7	Mr. Duncan.	7	A. Subject to the terms that were in
8	MR. MATTHEWS: So Exhibit 7 from	8	the siteholder agreements.
9	Mr. Seiling will be Exhibit 1 to Mr. Duncan's.	9	454 Q. And you were saying subject to the
10	EXHIBIT NO. 1: CRE0085399 and	10	terms that were in the siteholder agreements. What
11	CR0025331.	11	do you mean?
12	BY MR. LISUS:	12	A. Well, I think that's right in here
13	445 Q. I want to show you a document,	13	too actually. Whatever terms -- you know, they had
14	CR30882. In 2010, I understood you to say that you	14	to meet their obligations, and as long as they were
15	did have meetings or discussions with the chair of	15	meeting their obligations, we would do that
16	OLG, Mr. Godfrey?	16	recognizing that we were looking at land-based
17	A. I believe so, yes.	17	gaming, that they were in the middle of a study to
18	446 Q. And I want to show you a document	18	determine how best to support the industry.
19	which is entitled "OLG Strategic and Tactical	19	455 Q. Okay. And so what you're telling
20	Decisions, Minister-Chair Discussion."	20	me, sir, is that you agreed with the decision to
21	MS. LA HOREY: Just before we go on, if	21	extend the siteholder agreements, but you also
22	you want to read it --	22	wanted to see what the outcome of the land-based
23	THE WITNESS: Yeah, I'd like to.	23	gaming review was and --
24	MS. LA HOREY: -- the document number	24	A. Yes.
25	is CR0030882.	25	456 Q. Okay. And if you look at the box

<p style="text-align: right;">Page 102</p> <p>1 at the beginning where it says "Visionary - Begin 2 engagement and planning; execution in 18-plus 3 months," I take it that what was under discussion 4 there was the anticipated receipt of the concluded 5 review that the OLG was currently engaged in and if 6 the ministry agreed with its implementation? 7 A. That's correct, yes. 8 457 Q. So the direction that was 9 anticipated as of May 4, 2010, if I read this 10 document, is that: 11 "Within the boundaries of the 12 2005 Cabinet statement, no new 13 gaming facilities, no new locations 14 with slot machines, OLG will create 15 a comprehensive strategy to add 16 gaming supply to meet demand in the 17 province, address market distortions 18 created by current revenue sharing 19 formulae, increase profit and 20 economic development in Ontario, and 21 maintain support for charities and 22 the horse industry." 23 A. Yes. 24 MR. LISUS: That's the next exhibit, 25 please.</p>	<p style="text-align: right;">Page 104</p> <p>1 Do you see that? 2 A. Mm-hm. 3 MS. LA HOREY: You need to say "yes" or 4 "no." 5 THE WITNESS: I'm sorry. Yes. 6 BY MR. LISUS: 7 461 Q. That's Exhibit 23 to 8 Mr. Parkinson's Affidavit. If you look at the 2001 9 budget, which is Exhibit 24 to Mr. Parkinson's 10 Affidavit -- 11 A. I'm sorry, where? 12 462 Q. I haven't given it to you yet. We 13 see that it has a similar statement with respect to 14 the gross racetrack slot machine revenue. And it 15 talks about that: 16 "Slot machine initiative 17 preserving and enhancing 45,000 jobs 18 in Ontario's horse racing industry, 19 a key part of the province's 20 agricultural sector." 21 Right? 22 A. Yes. 23 463 Q. And if we look at the 2002 -- that 24 is Exhibit 24 to Mr. Parkinson's Affidavit. If we 25 look at the 2002 budget, which is Exhibit 25 to</p>
<p style="text-align: right;">Page 103</p> <p>1 EXHIBIT NO. 2: CR0030882. 2 BY MR. LISUS: 3 458 Q. I want to just ask you about the 4 various Ontario budgets which you know something 5 about as Minister of Finance; correct? I'm looking 6 at a 2000 Ontario budget. 7 A. 2000? 8 459 Q. Yes. I know you were not -- 9 A. I wasn't part of the government, 10 but I was a member of the legislature. 11 460 Q. Right. And the 2000 budget has a 12 statement in it, SB1024, which is Exhibit 23 to 13 Mr. Parkinson's Affidavit, which says: 14 "20 percent of gross racetrack 15 slot machine revenue is provided to 16 the horse racing sector. For 17 2000-2001, the support is estimated 18 at 138 million. The slot machine 19 initiative is preserving and 20 enhancing the 45,000 jobs in 21 Ontario's horse racing sector with 22 as many as 7,000 new jobs created. 23 The horse racing sector constitutes 24 the province's third largest 25 agricultural industry.</p>	<p style="text-align: right;">Page 105</p> <p>1 Mr. Parkinson's Affidavit, we see a similar 2 statement I've side-barred for you. Do you see 3 that? 4 A. Yes. 5 464 Q. Okay. And if we look at the 2003 6 Ontario budget, which is Exhibit 26 to 7 Mr. Parkinson's Affidavit, we see essentially the 8 same -- 9 A. Yeah. 10 465 Q. -- description of the revenue 11 share and the role it plays; right? 12 A. Yes. 13 466 Q. Okay. That is Exhibit 26 to 14 Mr. Parkinson's Affidavit. If we look at 15 Exhibit 27, there's an extract from the Ontario 16 budget, and we now have Mr. Sorbara as Minister of 17 Finance. This is a Liberal government. And we 18 see -- 19 A. Yeah. 20 467 Q. -- essentially the same statement; 21 correct? 22 A. Mm-hm. Yes. 23 468 Q. Except in the 2004 Ontario budget, 24 it states that the initiative has preserved over 25 60,000 jobs in Ontario's horse racing industry</p>

<p style="text-align: right;">Page 106</p> <p>1 since inception in 1998?</p> <p>2 A. Mm-hm.</p> <p>3 469 Q. Right?</p> <p>4 A. Yes.</p> <p>5 470 Q. And it's provided over 1.1 billion</p> <p>6 to a key component of the province's agricultural</p> <p>7 sector; right?</p> <p>8 A. Yes.</p> <p>9 471 Q. What was your role, sir, when the</p> <p>10 2004 budget was passed?</p> <p>11 A. Well, as a member of the</p> <p>12 government, I supported it.</p> <p>13 472 Q. Okay. If we look at the 2005</p> <p>14 Ontario budget, which is Exhibit 28 to</p> <p>15 Mr. Parkinson's Affidavit, we see as well the same</p> <p>16 statement?</p> <p>17 A. Yes.</p> <p>18 473 Q. And the 2006 Ontario budget, which</p> <p>19 is Exhibit 29 to Mr. Parkinson's Affidavit, we see,</p> <p>20 again, that the revenue sharing from slot machines</p> <p>21 promotes the economic growth of the horse racing</p> <p>22 industry and is a key component of the agricultural</p> <p>23 sector. And this is the first budget that you</p> <p>24 had --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 478 Q. -- for the -- you've got to let me</p> <p>2 finish the question.</p> <p>3 A. Okay.</p> <p>4 479 Q. They have to do so with due</p> <p>5 consideration for the consequences of any changes</p> <p>6 to policy?</p> <p>7 A. Yes.</p> <p>8 480 Q. And they have to make and</p> <p>9 implement changes to policy understanding the</p> <p>10 consequences of the implementation of their</p> <p>11 decisions?</p> <p>12 A. Yes, as well as the implication of</p> <p>13 not taking a decision.</p> <p>14 481 Q. Right. And that they can only --</p> <p>15 governments, in changing and implementing policy,</p> <p>16 can only change and implement policy when it is for</p> <p>17 the good of the people of the province; correct?</p> <p>18 A. When it's the view of the</p> <p>19 government that it is in the interest of the</p> <p>20 broader population.</p> <p>21 482 Q. They can't make changes or</p> <p>22 implement policy for the sole purposes of</p> <p>23 preserving their position in government; correct?</p> <p>24 MS. LA HOREY: Just so we're clear,</p> <p>25 Mr. Lisus, this witness is not a legal expert and</p>
<p style="text-align: right;">Page 107</p> <p>1 474 Q. -- responsibility for. So that</p> <p>2 reflected your views; correct?</p> <p>3 A. Yes. Reflected the government's</p> <p>4 view as well. Government policy, not just</p> <p>5 minister's policy.</p> <p>6 475 Q. Is everything in the budget a</p> <p>7 reflection of government policy?</p> <p>8 A. Yes. At the time it's delivered.</p> <p>9 476 Q. And to contrast that, sir, you, I</p> <p>10 take it, if I'm understanding your evidence, do not</p> <p>11 consider the Ministry of Finance's review and</p> <p>12 approval of the ORC's business plan to be a</p> <p>13 reflection of government policy?</p> <p>14 A. It is a reflection of the</p> <p>15 government's policy at the time a decision is made.</p> <p>16 Governments reserve the right to change policies.</p> <p>17 And in that case, when you have</p> <p>18 different processes going on at the same time, you</p> <p>19 typically will operate under the existing policy</p> <p>20 given that you are actively consulting with all of</p> <p>21 the key stakeholders.</p> <p>22 477 Q. Can we agree, sir, that when</p> <p>23 governments change policy, they have to do so with</p> <p>24 due consideration --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 109</p> <p>1 not a lawyer. So if you're asking him his views of</p> <p>2 good governance, that's fine, but this is not --</p> <p>3 MR. LISUS: That's what I am. I'm not</p> <p>4 asking his legal opinion.</p> <p>5 MS. LA HOREY: Okay. And he's not</p> <p>6 giving a legal opinion on behalf of the Crown.</p> <p>7 THE WITNESS: So could you repeat the</p> <p>8 question?</p> <p>9 BY MR. LISUS:</p> <p>10 483 Q. Yes. When government makes and</p> <p>11 changes policy, as you explained to me, it has to</p> <p>12 make and implement those changes for the broader</p> <p>13 good of the public; correct?</p> <p>14 A. What the government's view of the</p> <p>15 broader good of the public is.</p> <p>16 484 Q. And the government doesn't make or</p> <p>17 change policy purely for the purpose of holding on</p> <p>18 to power, for instance. That wouldn't be an</p> <p>19 appropriate way to make or change policy; correct?</p> <p>20 A. Government makes and changes</p> <p>21 policies in the best interest of the people of</p> <p>22 Ontario in its view. And there will always be</p> <p>23 difference of opinion.</p> <p>24 485 Q. And the reason why you, as</p> <p>25 Minister of Finance, were awaiting the outcome of</p>

<p style="text-align: right;">Page 110</p> <p>1 the OLG strategic business review, was because you 2 understood it to be undertaking a broad study and 3 consultation process which would inform what you 4 considered to be government policy decisions 5 regarding gaming; correct? 6 A. In part. 7 486 Q. Okay. And you did in Q1 2012 8 consider your decision regarding the cancellation 9 of revenue sharing from Slots at Racetrack Program 10 to be part of the decision you were making about 11 gaming policy; is that correct? 12 A. It was part of a much larger 13 piece, yes. 14 487 Q. Okay. And I appreciate that. 15 When you say it was part of a much larger piece, I 16 understand what you're saying is it was the part 17 that dealt with relocating slot machines away from 18 racetracks and into larger urban centres? 19 A. In part. 20 488 Q. Okay. And it was, in part, the 21 manner in which the goal of modernizing OLG, 22 including through locating slot machines in 23 racetrack was to be implemented -- excuse me, 24 including locating slot machines in urban centres 25 was to be implemented?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. From OLG, yes. 2 492 Q. I am going to take it for granted, 3 sir, but I'll ask the question anyway. You weren't 4 undertaking the analysis of the consequences or 5 impacts of the various decisions that were being 6 presented for decision yourself. Staff was doing 7 that; right? 8 A. That's correct. 9 493 Q. You weren't conducting studies of 10 the gaming industry or the consequences, if any, to 11 the horse racing industry of implementing certain 12 recommendations. You were relying on Ministry of 13 Finance staff and OLG staff? 14 A. We were relying on them for the 15 precise measurement, but I think we all knew, as we 16 do on any government decisions, that there are 17 always consequences to those decisions, and we were 18 acutely aware of them. 19 494 Q. And you were relying on the staff 20 to measure and identify for you what the 21 consequences of those decisions were? 22 A. To measure it, but it just -- it 23 was just to -- but I think anyone that is involved 24 in these decisions has -- particularly somebody 25 such as myself who had had, again, probably more</p>
<p style="text-align: right;">Page 111</p> <p>1 A. In part. One of the other 2 objectives was to ensure that the horse racing 3 industry was put on a better financial foot and 4 that we weren't cannibalizing one another. 5 489 Q. When you say "we weren't 6 cannibalizing one another," what you mean is that 7 slot machines weren't cannibalizing racetrack 8 wagering on horses, and racetrack wagering on 9 horses wasn't cannibalizing slot machines; is that 10 right? 11 A. I'm sorry. I -- 12 490 Q. What do you mean by 13 "cannibalizing"? 14 A. Well, markets -- according to the 15 research, that OLG could only support so many slot 16 machines. And if you had in one -- in some 17 instances I spoke about earlier, you had too many 18 slot machines, then you had to address it or you 19 were just harming all the facilities in that 20 region. 21 More importantly is that the OLG had to 22 be maximizing its dividend or transfer to the 23 government. And the recommendations that we had, 24 there was a whole range of them, all of which we -- 25 491 Q. From OLG?</p>	<p style="text-align: right;">Page 113</p> <p>1 exposure to all the issues that we dealt with in 2 the 2012 budget, you're -- you're more sensitized 3 than officials would be. You're probably more 4 sensitized than a lot of people in general public 5 would be, that there are going to be consequences, 6 both good and bad, to any decision a government 7 takes. 8 495 Q. I just want to continue on with a 9 review of some of these budgets. I'm looking now 10 at the 2007 budget which appears to be -- 11 A. That was Greg Sorbara again. 12 496 Q. Right. How did that happen? You 13 were in -- 14 A. I had pinch hit for him. He 15 had -- he had to step out of Cabinet for about ten 16 months. 17 497 Q. Okay. And we see there on page 18 172 -- 19 A. Now, what I'm showing is 20 contingent liabilities. Wait. I'm sorry. I 21 apologize. I do apologize. Yes. Yeah. 22 498 Q. We have the same kind of a 23 statement. 24 "It's been since 1998 this 25 initiative has provided over</p>

<p style="text-align: right;">Page 114</p> <p>1 2 billion to Ontario's horse racing 2 industry, a key component of the 3 province's agricultural sector." 4 Right? 5 A. Yes. 6 499 Q. And there's also a little bit more 7 of a detailed description of the sectors that 8 benefit from the slot machines at racetrack with 9 identification of the agricultural sector and 10 municipalities? 11 A. Yeah, I did that. Yes, that was 12 in previous ones as well, though, not all of them. 13 500 Q. And there's a note here which 14 says: 15 "The agricultural sector's 16 share of racetrack slot machine 17 revenue and municipalities' share of 18 slot machine revenue from charity, 19 casinos, or racetrack slot 20 facilities is received directly from 21 the Ontario Lottery and Gaming 22 Corporation." 23 Right? 24 A. Yes. 25 501 Q. And that's how you understood the</p>	<p style="text-align: right;">Page 116</p> <p>1 508 Q. Right. And you and your 2 government's -- 3 A. I think that budget also created 4 the first -- it was the first budget subsequent to 5 the downturn, and we created a whole range of 6 program reviews in anticipation of having to get 7 back to a balanced budget. 8 509 Q. Okay. And if we look at the 2010 9 budget, which is Exhibit 23 to Mr. Parkinson's 10 Affidavit, also your budget, we see the same -- 11 A. Yes. 12 510 Q. -- commentary with respect to -- 13 A. Yes. 14 511 Q. -- SARP revenue? 15 A. Yes. 16 512 Q. Okay. 17 MR. MATTHEWS: I believe Mr. Lisus said 18 it was Exhibit 23 to Mr. Parkinson's Affidavit. 19 It's Exhibit 33. 20 MR. LISUS: My apologies. 21 BY MR. LISUS: 22 513 Q. And as you've explained to me, 23 these budgets reflect government policy? 24 A. At the time they were crafted. 25 514 Q. And in 2011, which is your budget</p>
<p style="text-align: right;">Page 115</p> <p>1 money to flow -- 2 A. Yes. 3 502 Q. -- and that's how it did flow? 4 A. Yeah. 5 503 Q. That is Exhibit 30 to 6 Mr. Parkinson's Affidavit. And if I show you the 7 2008 budget -- which was your budget, is it? 8 A. Yes. 9 504 Q. The same, I think, formulation 10 repeats. 11 MR. ROSENBERG: What's the document 12 number? 13 MR. LISUS: SB1000. 14 MR. ROSENBERG: Thank you. 15 THE WITNESS: Yes. 16 BY MR. LISUS: 17 505 Q. Also in the 2009 budget, which was 18 your budget, Exhibit 32, we have essentially the 19 same formulation with respect to -- 20 A. Yes. 21 506 Q. -- slot machines -- 22 A. Yes. 23 507 Q. -- at racetracks. And that 24 reflected you and your government's views; correct? 25 A. At that time.</p>	<p style="text-align: right;">Page 117</p> <p>1 as well, which is Exhibit 34 to Mr. Parkinson's 2 Affidavit, we see the same account -- 3 A. Yes. 4 515 Q. -- of SARP revenue; right? 5 A. Yes, that's correct. 6 516 Q. Okay. And so certainly as we've 7 seen from 2000 and up to the 2011 budget, it was 8 government's view and policy that SARP revenue 9 promoted the economic growth of the horse racing 10 industry which was a key component of the 11 province's agriculture sector; right? 12 A. Yes. 13 517 Q. And is the Ministry of Finance 14 required to review and approve its agency's annual 15 reports? I heard from some witnesses that that was 16 the case. 17 A. They certainly would make a 18 recommendation to the minister. So when I signed 19 that document, I'm sure that there was a review of 20 it by my officials and that the recommendation 21 would have been to sign it. 22 518 Q. Right. So when you signed that 23 document, you're referring to the budget? 24 A. I'm referring to the business plan 25 that you showed me.</p>

		Page 118			Page 120
1	519	Q. Okay. I'm asking a different	1	Mr. Parkinson's Affidavit and --	
2		question.	2	A. Could I take a break to use the	
3		A. Okay. I'm sorry.	3	washroom?	
4	520	Q. OLG's annual report --	4	MR. LISUS: Let's break for lunch.	
5		A. Yes.	5	-- Recess at 12:49 p.m. --	
6	521	Q. -- has to be approved annually by	6	-- Upon resuming at 1:16 p.m. --	
7		the Ministry of Finance?	7	BY MR. LISUS:	
8		A. Yes. And it has to be tabled	8	528 Q. Mr. Duncan, I don't think that I	
9		according to certain rules. And that report --	9	have to go through every OLG annual report that	
10		inevitably, they come to the minister with a full	10	refers to slots if we can agree that each annual	
11		review by staff.	11	report of OLG when you were Minister of Finance was	
12		They will point -- you know, and there	12	reviewed and approved by your ministry.	
13		will often -- I mean, on an annual report of a	13	A. We can agree on that.	
14		large Crown corporation, dozens of pages, if not	14	529 Q. And these are all identified in	
15		hundreds, there may not be agreement on every	15	Mr. Parkinson's Affidavit.	
16		statement or every sentence in it, but that means	16	And so I take it that based on the	
17		the government is comfortable in accepting the	17	little exercise we just went through, sir, with	
18		report and approving it.	18	respect to budgets and OLG annual reports is that	
19	522	Q. So if I look, for instance, at the	19	up until February 2012, it was the policy position	
20		annual report of the OLG approved by Finance for	20	of the government that Slots at Racetrack Program	
21		2002, which is Exhibit 79 to Mr. Parkinson's	21	revenue sharing with the horse racing industry was	
22		Affidavit, the reference to Slots at Racetrack is	22	a positive thing, and it was a key contributor to	
23		on a page, the number of which I cannot read. On	23	the agricultural economy?	
24		the upper right-hand corner, it's 1816. It's a	24	A. I think it would be more accurate	
25		page of Mr. Parkinson's Affidavit, OLG300350038.	25	to say that that was the policy of the government	
		Page 119			Page 121
1		MS. LA HOREY: It looks likes it's page	1	subject to a number of reports. You've brought	
2	36.		2	forward some of them here, the 2004, the Sadinsky	
3		MR. LISUS: Where do you see that?	3	report where there were -- I recall throughout that	
4		MS. LA HOREY: Bottom.	4	period being aware that there were -- there were	
5		BY MR. LISUS:	5	views around a range of issues, but because the	
6	523	Q. Right. Okay. Page 36 of the	6	policy continued to support the Slots at Racetrack	
7		annual report.	7	Program, we continued to study them.	
8		A. This is, I'm sorry, 2002?	8	530 Q. Right. And when your government	
9	524	Q. Yes, sir.	9	put out these budgets and signed off on the annual	
10		MS. LA HOREY: Do you have a question	10	reports, you obviously, as you have just explained	
11		about this document or --	11	to me, were aware of the work that Mr. Sadinsky had	
12		THE WITNESS: Yeah, I apologize. Did I	12	done and --	
13		miss it?	13	A. Yes.	
14		BY MR. LISUS:	14	531 Q. I want to show you a letter that	
15	525	Q. No, have you read it?	15	you wrote in June 2010, which is CRE3610117. It's	
16		A. Yes.	16	to a person called Robert Leatham. I don't know if	
17	526	Q. Okay. And so you were -- well,	17	you know him or not.	
18		you were not the Minister of Finance in 2002, so it	18	A. I don't recall.	
19		wouldn't have been you that had to sign off on	19	532 Q. That is your signature?	
20		this. It would be your predecessor; correct?	20	A. Yes.	
21		A. Yes, but I would have signed off	21	533 Q. You wrote that letter?	
22		on similar documents until the government changed	22	A. That would have been autopen,	
23		its policy based on the work that had been done by	23	I think.	
24		the OLG.	24	534 Q. You signed that letter?	
25	527	Q. Okay. So that is Exhibit 79 to	25	A. That's my signature. There were a	

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1 number of letters, particularly ones where they
 2 were large volumes where they would be done by
 3 autopen, but I would have approved the letter.
 4 535 Q. Thank you. And is there any
 5 reason Mr. McGuinty would be copied on this letter?
 6 A. Yes. Typically -- like, I see
 7 Bill Murdoch got the letter.
 8 536 Q. Who is Bill -- oh.
 9 A. He's an MPP. So I would imagine
 10 probably either this letter was sent directly to
 11 the Premier, or the Premier was one of those copied
 12 on the letter.
 13 537 Q. I see.
 14 A. And without seeing the actual
 15 email -- I guess it was an email. Typically seeing
 16 the signature, my guess is it was a form email
 17 because typically these types of letters were
 18 drafted with that. And typically with these types
 19 of letters, the individual sending it would address
 20 it to the minister responsible, the Premier, and
 21 their local MPP.
 22 538 Q. Was Bill Murdoch -- he wasn't in
 23 caucus; right?
 24 A. No, he was a conservative MPP at
 25 the time from Grey County.

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1 539 Q. Okay.
 2 A. Could also be that he was the
 3 critic for gaming or for -- I don't know, but I
 4 assume based on this reason, we copied Premier
 5 McGuinty or that he wrote to us. The letter may
 6 have been -- or the email may have gone directly to
 7 him.
 8 540 Q. And this letter obviously would
 9 have accurately reflected your views and that of
 10 the government at the time you sent it?
 11 A. It would accurately reflect the
 12 policy of the government, but by this time, we were
 13 already -- this is 2010. You know, we had had the
 14 benefit of several years of concerns that had been
 15 expressed about the viability of horse racing by
 16 the industry itself, the fact that fewer and fewer
 17 people were attending, that revenues had been
 18 stagnant.
 19 So this would have been -- as I
 20 indicated earlier, you continue to operate under a
 21 policy -- in this case, by that time, a very old
 22 policy -- while we were internally discussing the
 23 future of OLG.
 24 541 Q. Thank you.
 25 MR. MATTHEWS: Exhibit 3.

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1 EXHIBIT NO. 3: CRE0003610.117.
 2 BY MR. LISUS:
 3 542 Q. Now, I want to show you another
 4 letter of yours dated June 28, 2010, to a fellow
 5 called Alan Meek@uoguelph. Do you know who that
 6 is?
 7 A. Could I possibly see these emails?
 8 Because these are the responses to the email, and
 9 it would help me understand them better if I could
 10 see the actual email.
 11 543 Q. 361264. We only have what we got
 12 from the government, sir.
 13 A. Well, then it's -- it's hard for
 14 me to answer questions without knowing what he
 15 asked.
 16 544 Q. The only question I have for
 17 you --
 18 A. Okay.
 19 545 Q. -- is whether that is your
 20 signature and you sent that letter.
 21 A. This, again, looks to me like it
 22 was -- there was probably a campaign seeking more
 23 money for the horse racing industry, and this looks
 24 to me like my autopen signature.
 25 546 Q. And your letter actually says that

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1 it attaches the first, second, third, and fourth
 2 quarter data tables for the 2009-2010 fiscal year.
 3 Do you see that? I've just handed them over to
 4 you.
 5 A. Yeah.
 6 547 Q. There's quarterly performance
 7 reports for OLG casino slots and racetracks.
 8 A. Mm-hm.
 9 548 Q. Were you familiar with those at
 10 the time, or was this composed --
 11 A. I would have been familiar with
 12 the broad -- like, the aggregation of these. I
 13 wouldn't have seen -- I don't recall seeing these
 14 specific documents.
 15 549 Q. Okay. Thank you.
 16 A. But they would have been publicly
 17 available.
 18 MR. LISUS: That's the next exhibit.
 19 EXHIBIT NO. 4: CRE0361264.
 20 BY MR. LISUS:
 21 550 Q. I want to have you look at a
 22 letter dated September 10, 2010, from you to
 23 Mr. Seiling confirming that you approve ORC's
 24 business plan for 2010 to 2013.
 25 A. This is a different one than you

<p style="text-align: right;">Page 126</p> <p>1 showed me earlier?</p> <p>2 551 Q. Yes.</p> <p>3 A. So this is the next year's plan?</p> <p>4 552 Q. Yes.</p> <p>5 A. Yeah.</p> <p>6 553 Q. Okay.</p> <p>7 MS. LA HOREY: Is there a question, or</p> <p>8 is this just for an identification?</p> <p>9 BY MR. LISUS:</p> <p>10 554 Q. You read the letter?</p> <p>11 A. No, I didn't. I'm sorry. I see</p> <p>12 the deficit grew.</p> <p>13 MS. LA HOREY: Just for the record,</p> <p>14 it's CRE0085414.</p> <p>15 BY MR. LISUS:</p> <p>16 555 Q. I presume, sir, as with the prior</p> <p>17 business plan, you would have read it before you</p> <p>18 sent that letter?</p> <p>19 A. Yes. I certainly would have been</p> <p>20 briefed on its contents.</p> <p>21 556 Q. And if you take a look at the</p> <p>22 second page of the report, under the heading</p> <p>23 "Overview," we see there's industry statistics</p> <p>24 provided --</p> <p>25 A. Mm-hm.</p>	<p style="text-align: right;">Page 128</p> <p>1 565 Q. So the regulator stepped in and</p> <p>2 imposed a moratorium on the reduction of race dates</p> <p>3 by racetracks?</p> <p>4 A. I don't recall that, but it sounds</p> <p>5 familiar.</p> <p>6 566 Q. Okay. And it came out in 2010</p> <p>7 with the racing plan that mandated the number of</p> <p>8 live race dates; right?</p> <p>9 A. Yes.</p> <p>10 MR. LISUS: And I'm going to mark your</p> <p>11 letter and the plan as the next exhibit.</p> <p>12 EXHIBIT NO. 5: CRE0085414 and</p> <p>13 CR0002260.</p> <p>14 BY MR. LISUS:</p> <p>15 567 Q. I want to show you -- it's on the</p> <p>16 screen. I'll give it to you, and I'll look at the</p> <p>17 screen. This is Exhibit B on the examination of</p> <p>18 Mr. Orsini and 9 on Stransky. It's an email</p> <p>19 sequence attaching a news release.</p> <p>20 A. Okay. Do you have a question?</p> <p>21 568 Q. Yes. Why is it that Finance had</p> <p>22 to approve the ORC's news release?</p> <p>23 A. Because the program had been so</p> <p>24 dysfunctional. There had been no agreement. It</p> <p>25 was one of the most dysfunctional situations</p>
<p style="text-align: right;">Page 127</p> <p>1 557 Q. -- including jobs?</p> <p>2 A. Mm-hm.</p> <p>3 558 Q. Yes?</p> <p>4 A. Yeah. I can't read them here, but</p> <p>5 I can see industry statistics.</p> <p>6 559 Q. Okay. And if you go over to</p> <p>7 page 17 of the report, under the heading "Key</p> <p>8 Initiatives" for 2010-2011 --</p> <p>9 A. I'm sorry. What page is that</p> <p>10 again?</p> <p>11 560 Q. 17. Excuse me. I misread. It's</p> <p>12 12.</p> <p>13 A. Okay. Oh, yes, the race date</p> <p>14 file.</p> <p>15 561 Q. What do you remember about that?</p> <p>16 A. They couldn't get along with each</p> <p>17 other for years.</p> <p>18 562 Q. The racetracks wanted to reduce</p> <p>19 the number of --</p> <p>20 A. Yeah.</p> <p>21 563 Q. -- race days?</p> <p>22 A. Yes.</p> <p>23 564 Q. And the breeders were unhappy</p> <p>24 about that?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 129</p> <p>1 that -- and it went on -- persisted for years.</p> <p>2 If you read carefully the news release,</p> <p>3 you can see, in my view, Mr. Seiling is</p> <p>4 acknowledging what's present, is that the program</p> <p>5 wasn't particularly effective and that --</p> <p>6 569 Q. You mean before the new racing</p> <p>7 program? This is announcing a racing program</p> <p>8 that's --</p> <p>9 A. But it's indicative of what was</p> <p>10 going on beyond sort of the top-of-line policy that</p> <p>11 it -- that there were significant problems with it.</p> <p>12 People weren't --</p> <p>13 570 Q. With what?</p> <p>14 A. Pardon me?</p> <p>15 571 Q. With what?</p> <p>16 A. With the horse racing in Ontario.</p> <p>17 And that the benefits of the program while -- you</p> <p>18 know, the numbers that are used in budgets are very</p> <p>19 selective, that they're -- you know, you'd saw the</p> <p>20 Sadinsky report, you've seen all kinds of things,</p> <p>21 and things just didn't get better over a long</p> <p>22 period of time.</p> <p>23 Horse people couldn't agree with horse</p> <p>24 people. They had to get unanimous approval.</p> <p>25 I think I saw one document there were, like, 10 or</p>

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<p>1 11 different groups within didn't get along with 2 one another. 3 So it was part of a -- what -- I think 4 was evident to anybody who looked at it, there was 5 serious problems with the Slots at Racetrack 6 Program. They weren't helping the economy. They 7 may have, in fact, been hindering the industry, and 8 that the steps we took to correct that were 9 actually in the best interests of the horse racing 10 industry. 11 572 Q. The question I asked you, sir, was 12 why Finance had to approve a news release by ORC, 13 and I had assumed that simply because ORC is an 14 agency of Finance reports to it, and so that any 15 releases to the public had to be signed off on; is 16 that fair? 17 A. Not -- no. On this particular 18 one, yes, because it was believed -- you know, 19 we -- you know, over the course of the previous 20 seven or eight years, the problems in the industry 21 were so well known. 22 The effectiveness of the program was 23 questioned by so many people that -- and by this 24 time -- I mean, you see that -- you know, in their 25 previous business plan, they were going to</p>	<p>1 do a complete review because we had -- by the way, 2 if you look at your reports carefully, there's 3 contradictory advice. 4 573 Q. And when you say "a full 5 commercially-oriented board," what are you 6 referring to? 7 A. People -- people who would look at 8 what was working and what wasn't. 9 574 Q. From a business perspective? 10 A. Not just a business perspective 11 because, you know, for instance -- but from a -- 12 what I would call fulfillment of the government's 13 obligations. Being a business probably be one 14 aspect of it, but people who actually had 15 experience with it. 16 575 Q. So because this 2010 racing 17 program was an effort by the regulator to correct 18 or address some of these issues, Finance wanted to 19 sign off or had to sign off on its release about 20 it; is that fair? 21 A. No, because of the concern of 22 everybody who was involved in OLG and the oversight 23 of the horse racing industry and the perception at 24 the time that the industry itself was not being 25 helped --</p>
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<p>1 eliminate the 200,000 deficit. In fact, it doubled 2 over the next year. There were continuing fights 3 within the industry. 4 There were -- there were racetracks 5 that were not living up to their undertakes. We 6 had to have slot machines removed from Windsor 7 Raceway because water had leaked onto the slot 8 machines. 9 So there were -- what you see in all 10 the documents that you shared with me is, I think, 11 the advice I had from any number of sources, 12 including -- you see it even in that gentleman who 13 I met with on July the 9th, the view that the 14 program wasn't working for a variety of reasons. 15 You couldn't get agreement, not only 16 among the -- not only between the tracks and the 17 horse people, but among the horse people 18 themselves, certainly between the regulator of the 19 tracks and the horse people. And report after 20 report continued to point out the problems with the 21 program. 22 And, again, one of the reasons -- and, 23 again, it was part of the bigger picture with OLG. 24 When we appointed Mr. Godfrey and Mr. Phillips, a 25 full commercially-oriented board, we asked them to</p>	<p>1 576 Q. That's why -- 2 A. -- by the existing policy -- 3 577 Q. That's why -- 4 A. -- and because it was under active 5 consideration by the -- by the OLG. 6 578 Q. Okay. So all of those factors 7 that you have identified were the reasons why the 8 folks at Finance had to sign off on this news 9 release if I've understood you correctly? 10 A. Yes. 11 579 Q. Thank you. 12 MR. LISUS: Next exhibit. 13 MR. MATTHEWS: 6. 14 EXHIBIT NO. 6: CRE0075818 and 15 CRE0075819. 16 BY MR. LISUS: 17 580 Q. I want to have you look at 18 CRE8618. This is a document which is dated October 19 2010, and it's a Finance document. Appears to be 20 prepared for the purposes of a meeting between the 21 Minister of Finance -- that's you -- and the chair 22 of OLG. Okay? 23 A. Can I just read it, please? 24 581 Q. Yes. 25 A. Okay.</p>

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1 582 Q. Now, if we look at this together,
 2 we see there's an agenda proposed by OLG on Slide 2
 3 of the deck?
 4 A. Yeah.
 5 583 Q. And the last point is OLG's Slots
 6 at Racetrack Program siteholder agreement
 7 extensions; right? Do you see that, the last
 8 bullet on the deck on the slide on page 2?
 9 A. Yes. Okay. Yeah.
 10 584 Q. Do you recall, sir, discussion
 11 about the extension of siteholder agreements in --
 12 A. Vaguely, but I don't have a
 13 specific recollection of it.
 14 585 Q. Okay. If we look at the third
 15 slide, just about a third of the way up from the
 16 bottom, it says:
 17 "As part of the July 2010
 18 Cabinet submission, MOF/OLG was
 19 directed to report back on two
 20 reviews in late 2011, one being the
 21 land-based gaming facilities
 22 review."
 23 Right?
 24 A. Mm-hm.
 25 586 Q. Yes?

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1 A. Yes.
 2 587 Q. And that is the review that we've
 3 been talking about that OLG was conducting
 4 stakeholder consultations about and engaging
 5 experts as to how to optimize its business?
 6 A. I've been -- yes, but I've been
 7 referring to the eventual recommendations on
 8 modernization, I think they termed it.
 9 588 Q. I understand. But the
 10 recommendations --
 11 A. These were the two things that
 12 went into that.
 13 589 Q. Yeah, the recommendations on
 14 modernization came out of the land-based --
 15 A. Out of these two studies.
 16 590 Q. Yeah. Do you recall meeting with
 17 Mr. Godfrey about this or you --
 18 A. I don't recall this specific
 19 meeting, but, yes, I recall meeting with him.
 20 I think we met quarterly. I stand to be corrected
 21 on that, but I typically met with the COs of Crown
 22 corporations on a quarterly basis.
 23 It might have been with Mr. Godfrey. I
 24 even did it more often than that just because of
 25 the volume of issues that they were dealing with

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1 at -- you know, at OLG and the mandate that we had
 2 given them when we appointed the new board.
 3 591 Q. Right. You alluded to some of
 4 those issues earlier -- and I remember them in the
 5 public record at the time -- concerns about the
 6 security or fraud at video lotteries --
 7 A. There was a range of issues.
 8 592 Q. Excuse me -- lottery terminals
 9 and -- yeah, and then board compensation?
 10 A. Horse racing because we had places
 11 in the province that were under-serviced, places
 12 that were not performing well, disagreements within
 13 the industry, constant bickering, constant fighting
 14 among tracks and horse owners, tracks and
 15 regulators, regulators and horse owners, the three
 16 of them, a regulator who didn't meet its business
 17 plan obligations or undertakings.
 18 You showed me two. One, they had a
 19 \$200,000 debt that they were going to eliminate.
 20 Not only did they not eliminate it, it doubled in
 21 the next year. And a regulator at the time
 22 repeatedly expressed frustrations about the
 23 difficulty of making what they viewed to be a
 24 flawed program, make it more successful.
 25 593 Q. I mean, I'm just inferring from

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1 your comments that you had a degree of frustration
 2 as well?
 3 A. No. No, not at all. I was
 4 satisfied that we had appointed the people to give
 5 us in-depth research to consult with the industry
 6 to help us. And, again, we went into it with no
 7 preconceived notions.
 8 594 Q. And the people you're talking
 9 about are OLG and its land-based gaming review
 10 process and the experts that they engaged?
 11 A. The experts, the board members,
 12 the stakeholders. And I continued to meet with
 13 those people as you had pointed out repeatedly
 14 here.
 15 595 Q. Did you meet with Mr. Phillips as
 16 well?
 17 A. Rod Phillips? Yes. He generally
 18 attended with Paul Godfrey. I don't recall -- I
 19 recall one or two times that I met with Paul and he
 20 wasn't there, but typically he was in those
 21 meetings.
 22 596 Q. Okay. And I heard your comments
 23 about the regulator not living up to its commitment
 24 or at least your desire to reduce its deficit, et
 25 cetera.

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<p>1 Did you or anyone on your behalf ever 2 communicate in writing the concerns you had about 3 the ORC's performance? 4 A. I don't recall, but I can tell you 5 that we continued in spite of the fact that -- I 6 just use that one example, you know, around, you 7 know, in the one business plan, they were going to 8 get rid of that \$200,000 deficit, and then the next 9 one. And not only did it not get rid of it, it 10 doubled. 11 597 Q. Right. No, I hear what you're 12 saying, sir. My only question is as I've said, 13 I've -- 14 A. I probably did, and I certainly 15 would have in our meetings as I met with 16 Mr. Seiling. I don't recall how often I met with 17 him, but I would have met periodically with him. 18 598 Q. And so I haven't seen any 19 expression of concern or frustration or 20 dissatisfaction or nonperformance in any written 21 communication to ORC. Do you understand that there 22 was? 23 A. I don't recall, but I -- you know, 24 as -- with all organizations that reported to me, 25 we had verbal communications as well.</p>	<p>1 helpful. 2 A. Hope so. 3 604 Q. Which leads me to my question. I 4 haven't seen any reflection of that in the written 5 record. 6 A. The written record doesn't reflect 7 everything on any range of government policies. 8 605 Q. Fair enough. And so you are 9 telling me, however, that these concerns were 10 communicated by your office to Mr. Seiling? 11 A. I didn't say that. I would say 12 that there were always ongoing -- I mean, there 13 were always ongoing discussions, not necessarily 14 involving me directly, but it was a file that was 15 seen to be a very difficult file for the regulator. 16 And -- 17 606 Q. Sir, I'm just asking a simple 18 question. 19 A. Well, I'm giving you a very simple 20 and clear and transparent answer. 21 607 Q. I don't think you are. 22 A. Well, I don't agree. 23 608 Q. There's no reflection of these 24 concerns in writing that I have seen. And so I 25 understood you to say that that doesn't mean they</p>
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<p>1 599 Q. Fair enough, and so you -- 2 A. Just to respond to your question, 3 so this was all part of a body of experiences that 4 had, you know, really evolved over many years and 5 were not -- were not only not getting better, they 6 were getting worse. 7 And ultimately, the view was that the 8 programs that -- first of all, OLG was -- had grown 9 well beyond what the legislation anticipated. 10 600 Q. I just want to ask you about 11 Mr. Seiling. Okay? 12 A. Okay. Mr. Seiling had the 13 confidence of the government. He was appointed. 14 It doesn't mean we felt that everything was being 15 done the way it should be. 16 601 Q. Fair enough. 17 A. We were still able to sign off on 18 plans, but the point I'm making here is that by 19 signing off and agreeing to those plans doesn't 20 mean that we thought everything was hunky-dory and 21 that I wasn't getting conflicting advice. Sorry. 22 602 Q. You're anticipating my question. 23 A. No, I just wanted to get that on 24 the record. 25 603 Q. Okay. It's on. Thank you. And</p>	<p>1 weren't communicated orally. And so -- 2 A. I think they're communicated very 3 well in this information. 4 609 Q. Okay. In the information that you 5 and I have looked at today? 6 A. Yes. And if you look at some of 7 the other documents that you're not highlighting, 8 you'll see that. 9 610 Q. Okay. Well, I'll look at them. 10 Thank you. 11 A. Please do. 12 611 Q. But I still want to put my 13 question to you. 14 A. Yeah, of course. That's why I'm 15 here. 16 612 Q. It is. Did you, yourself, ever 17 communicate your concerns to Mr. Seiling about the 18 performance of the ORC or his performance as the 19 chair of it? 20 A. I conveyed my concerns not 21 about -- we were satisfied with his performance. 22 Don't put words in my mouth. I didn't say that. 23 We were satisfied with his performance. We 24 recognized they had a difficult file. 25 On repeated occasions, he expressed his</p>

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1 frustration to me at dealing with the organization.
 2 We felt fortunate that he put so much time and
 3 energy into it.
 4 613 Q. Well, thank you for clarifying
 5 that you were satisfied with --
 6 A. Well, I --
 7 614 Q. Let me finish my question.
 8 A. You put those words in my mouth
 9 with respect.
 10 615 Q. Well, we have a record, so I --
 11 A. Yes, you do, and I think careful
 12 study of the record will show that.
 13 616 Q. Let me finish my --
 14 A. I have great confidence in the
 15 court system.
 16 617 Q. Let me finish my question to you
 17 because I want to be fair to you on this. As I
 18 understand your comments, you were, in fact,
 19 confident in Mr. Seiling?
 20 A. We were confident in him
 21 personally. We felt that he was in a very bad
 22 environment with a program that didn't work well.
 23 618 Q. And did you tell him that?
 24 A. Yes.
 25 619 Q. All right.

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1 A. We -- I believe I reappointed him.
 2 I stand to be corrected on when his OICs were
 3 reaffirmed.
 4 620 Q. When was that?
 5 A. I said I can't remember. He
 6 served -- he was in that position for many years.
 7 I don't remember if I actually reappointed him. I
 8 just don't remember.
 9 But the point is our government had
 10 confidence in his ability. To some extent, I
 11 always felt that he -- as we did with other
 12 regulators who we may not have agreed with. We may
 13 have felt there were issues that they were dealing
 14 with, but in his case, we felt it was a
 15 particularly difficult problem because he was
 16 hamstrung by policies that needed updating.
 17 621 Q. Okay. Am I understanding you
 18 correctly, sir, all of these problems in the
 19 industry that you are describing to me were known
 20 to you in the fall of 2010 and the beginning of
 21 2011?
 22 A. It depends on when I got the final
 23 report on modernization because that's when the
 24 whole series of recommendations came forward.
 25 622 Q. Well, I showed you a press release

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1 in September 2010 --
 2 A. Press release is not a government
 3 policy.
 4 623 Q. You've got to let me finish my
 5 questions.
 6 A. Okay.
 7 624 Q. I showed you a press release in
 8 September 2010. Remember that?
 9 A. I don't remember what was in it.
 10 I glanced at it. Maybe you can refresh my mind.
 11 625 Q. We have the record, and you gave
 12 me --
 13 A. Well, I just -- I just -- I'm not
 14 sure you're interpreting what I said properly.
 15 626 Q. I'm not going to interpret it.
 16 A. Okay.
 17 627 Q. You gave me answers in response to
 18 me showing you that press release.
 19 A. Yeah.
 20 628 Q. And your answers refer to the
 21 problems or dysfunction in the horse racing
 22 industry. Do you remember that?
 23 A. Vaguely, yes.
 24 629 Q. Okay. That was in the fall of --
 25 A. I'm not sure you're interpreting

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1 that accurately.
 2 630 Q. Well, we have a record and --
 3 A. Yes.
 4 631 Q. And so I want to show you a letter
 5 that you wrote in January 2011. Okay? CRE76198.
 6 A. What were the dates on the -- the
 7 previous two --
 8 MR. LISUS: We'll mark the October
 9 2010, CRE8618, as the next exhibit.
 10 EXHIBIT NO. 7: CRE0008618.
 11 THE WITNESS: Again, this is -- what
 12 were the dates of those other two emails, the other
 13 two --
 14 BY MR. LISUS:
 15 632 Q. Other two letters?
 16 A. Yes.
 17 633 Q. The dates of your other two
 18 letters were --
 19 A. And is there a chance that I might
 20 be able to see this email? I think --
 21 634 Q. Sir, I only have what your
 22 counsel --
 23 A. I'm getting increasingly concerned
 24 that I'm being asked to comment on a response to
 25 which I don't know the question.

<p style="text-align: right;">Page 146</p> <p>1 635 Q. The only question I'm asking you 2 to comment on is whether that's your signature and 3 this is your letter. 4 A. That would be an autopen 5 signature. What were the dates on those other two? 6 636 Q. June 4, 2010, June 28, 2010. This 7 is January 4, 2011. 8 A. Yes. Yeah. Let me just quickly 9 read that again. This is a year before that -- 10 year and a half. 11 637 Q. Is there some significance to this 12 letter from you being a year before -- 13 A. No. It's just -- it's a response 14 to -- 15 638 Q. Mr. Duncan, you have to let me 16 finish the question. 17 MS. LA HOREY: It's for the benefit of 18 the transcript, Mr. Duncan, please. 19 THE WITNESS: Yes. 20 BY MR. LISUS: 21 639 Q. Is there some significance to this 22 letter of January 2011 being a year and a bit 23 before the March 2012 budget? 24 A. We were still operating under the 25 policy that had been established in 1998, even</p>	<p style="text-align: right;">Page 148</p> <p>1 it? That email doesn't indicate that. It just -- 2 it was forwarded from Elizabeth Yeigh. It just 3 says -- it just says FYI. 4 644 Q. Well, I think I examined some 5 folks on it, but -- 6 A. I don't -- it doesn't say that 7 here. It just says it's an FYI. It may be that we 8 were, but I can't determine that from this exhibit. 9 It's clear it went to my staff. 10 645 Q. All right. And why would it go to 11 your staff? 12 A. I don't know. It's just -- what 13 it says here is for your information. It may well 14 have been that -- and, again, I -- yeah, it may 15 just well have been because there was active 16 discussion around the OLG and all aspects of the 17 OLG going on in the government. 18 And there's typically -- typically in 19 my -- to my recollection -- like, this is not -- to 20 my knowledge, this is not seeking approval. It 21 just says FYI. It doesn't ask for an approval. 22 It's just an FYI. 23 646 Q. This is a notice to the industry 24 from the regulator; right? 25 A. It is. And if I'm correct, we</p>
<p style="text-align: right;">Page 147</p> <p>1 though we were actively, actively looking at 2 changes which we felt would benefit the horse 3 racing industry. 4 640 Q. And in January 2011, what changes 5 was your government actively, actively looking at? 6 A. Whatever at that point in time had 7 been provided to us as final recommendations from 8 the OLG. 9 641 Q. Thank you. 10 MR. LISUS: Next exhibit. 11 MR. MATTHEWS: Exhibit 8. 12 EXHIBIT NO. 8: CRE0076198. 13 BY MR. LISUS: 14 642 Q. I'm going to show you an email 15 sequence with some Ministry of Finance folks 16 reviewing a copy of the Notice to the Industry that 17 updates stakeholders in the ORC, Ontario Racing 18 Program, dated January 2011. 19 MS. LA HOREY: CRE0105084. 20 BY MR. LISUS: 21 643 Q. Just as a matter of mechanics, if 22 you could clarify for me, Mr. Duncan, why were 23 ministry personnel signing off on the Notice to the 24 Industry to stakeholders put out by ORC? 25 A. Were they actually signing off on</p>	<p style="text-align: right;">Page 149</p> <p>1 were most -- this stuff would have been done just 2 on an FYI basis unless it involved some kind of 3 change in regulation. 4 MS. LA HOREY: You just need to answer 5 the question that Mr. Lisus asks. We're going to 6 be here too long otherwise. 7 THE WITNESS: So, yeah, this is -- this 8 is not seeking approval. It's simply a for your 9 information. I think information sharing among 10 government people is a good idea. 11 BY MR. LISUS: 12 647 Q. Do you think information sharing 13 with industry stakeholders is a good idea? 14 A. We did a lot of that, as you can 15 see by all those emails and responses presented and 16 meetings. 17 648 Q. Thank you. 18 MR. LISUS: That's the next exhibit. 19 EXHIBIT NO. 9: CRE0105084 and 20 CRE0105085. 21 BY MR. LISUS: 22 649 Q. When was the 2011 Ontario budget 23 put out? I've never -- 24 A. Typically I did them before the 25 end of March. I think it would have been</p>

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1 maybe either -- if we got them in the first week,
 2 we would wait until after March break. So it could
 3 have been -- it would have been March, I think. I
 4 just don't remember the date.
 5 650 Q. I don't think --
 6 A. So what was the date? Isn't that
 7 the cover there?
 8 651 Q. Yeah, but I don't -- you'll
 9 probably be able to find better than me what the
 10 date of it was. 169. I don't have the entire
 11 budget document. I just extracted the part about
 12 SARP. I'll put it up on the screen there for you.
 13 And then, again, in March 2011, your
 14 budget has the same kinds of comments about SARP
 15 that we reviewed with respect to earlier budgets;
 16 right?
 17 A. Yeah, I can see that, yeah.
 18 652 Q. And if I just look at the comments
 19 in your budget where it says:
 20 "Approximately 20 percent of
 21 gross revenue from slot machines at
 22 racetracks is used to promote the
 23 economic growth of the horse racing
 24 industry."
 25 Do you see that?

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1 A. Yes.
 2 653 Q. And we see that:
 3 "Since 1998, the initiative has
 4 provided over \$3.4 billion to the
 5 horse racing industry in Ontario, a
 6 key component of the province's
 7 agricultural sector."
 8 A. Mm-hm.
 9 654 Q. Yes?
 10 A. Yes.
 11 655 Q. And we know that the revenue share
 12 was that 20 percent of the revenues generated was
 13 shared with the industry, being tracks and horse
 14 people; right?
 15 A. Yes.
 16 656 Q. So as of 2011, the date of this
 17 budget, Ontario had made 12.75 billion from Slots
 18 at Racetrack Program; right?
 19 MR. ROSENBERG: I object.
 20 THE WITNESS: That's not in this
 21 document.
 22 BY MR. LISUS:
 23 657 Q. 3.4 billion is 20 percent from
 24 initiation in 1998 --
 25 A. Yeah. In my experience, sir, with

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1 budget documents, these numbers are usually
 2 three-dimensional jigsaw puzzles, so that may not
 3 be an accurate statement. I don't think you can --
 4 I assume it might be, but, again, there are
 5 oftentimes catches and glitches.
 6 658 Q. Okay. That's good to know.
 7 MR. ROSENBERG: -- municipal payments.
 8 It's just not a fair question, Mr. Lisus.
 9 MR. LISUS: I don't think so. I
 10 accounted for 5 percent municipalities which is
 11 850 million for a net of 12.75 --
 12 THE WITNESS: You know, one of the
 13 things I learned --
 14 MR. LISUS: Just hold on a second.
 15 THE WITNESS: Okay.
 16 MR. LISUS: It's 12.75 billion being
 17 75 percent.
 18 THE WITNESS: Back-of-envelope
 19 calculations are not -- one thing I learned in
 20 seven years as Finance minister.
 21 BY MR. LISUS:
 22 659 Q. What was that?
 23 A. Just read what's on the paper.
 24 Don't infer something without background.
 25 660 Q. Because back-of-the-envelope

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1 calculations are --
 2 A. Yeah.
 3 661 Q. -- common and not accurate?
 4 A. They're common, and -- yeah,
 5 they're certainly common, but they don't
 6 necessarily reflect everything that goes into those
 7 numbers.
 8 662 Q. So I should read these documents
 9 with some caution?
 10 A. I'm not going to comment on that.
 11 MS. LA HOREY: I think what the witness
 12 was saying is that your attempted mathematical
 13 extrapolations may not be correct.
 14 MR. LISUS: I think mathematical is
 15 putting it a bit high. It's probably more
 16 arithmetic. That's the next exhibit.
 17 EXHIBIT NO. 10: SB0000989.
 18 BY MR. LISUS:
 19 663 Q. Let me ask you, sir, about a
 20 document you sent out right after the time of this
 21 budget, March 31, 2011, to Mr. Seiling.
 22 A. It was March 2011.
 23 664 Q. Yeah.
 24 A. Okay.
 25 665 Q. I think so.

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<p>1 A. Okay. Must be if that's dated 2 that date. 3 666 Q. No, this is something else. 4 A. Oh. You said you sent it out 5 after the budget. 6 667 Q. Yeah, I think it is. If you need 7 to know, I can tell you when the budget was. 8 A. No, no, no, I'm pretty certain. 9 MS. LA HOREY: So this is CRE0085415. 10 BY MR. LISUS: 11 668 Q. This is a letter to you from 12 Mr. Seiling in which he submits the business plan. 13 A. Mm-hm. 14 MS. LA HOREY: Your question was just 15 to confirm that he was submitting the business plan 16 and that it's a letter from Mr. Seiling? 17 BY MR. LISUS: 18 669 Q. Do you remember receiving 19 communication from Mr. Seiling in March 2011 with 20 respect to the Ontario Racing Commission? 21 A. No, I don't remember. 22 670 Q. All right. Were you aware, sir, 23 in March 2011 that the Ontario Racing Program had 24 been launched? 25 A. I don't recall.</p>	<p>1 don't -- see, again, without seeing when her letter 2 was, she may have sent this a year earlier. I tend 3 to doubt it would be that long, but it -- the 4 reason I -- I asked the very same question. Why do 5 we never put dates on? 6 What I was told at the time was 7 because there could be -- because this letter -- 8 and this is a form letter or at least there would 9 have been what I would call a template, because 10 it -- the approval of this would have had to have 11 gone through multiple layers before it got to me or 12 whoever the minister was for signature. 13 MS. LA HOREY: Just before we go on, 14 it's CRE0361295. 15 BY MR. LISUS: 16 676 Q. And so when you say "multiple 17 layers," you mean the folks in Finance whose names 18 we have seen on the communications and documents 19 regarding gaming and horse racing industry? 20 A. So a letter would have been sent 21 to the minister's office. Minister's 22 administrative assistant would have opened the 23 letter and then sent it to the appropriate branch 24 of the ministry for response. 25 The branch of the ministry would give</p>
<p>1 671 Q. Okay. 2 MR. LISUS: That's the next exhibit. 3 EXHIBIT NO. 11: CRE0085415. 4 BY MR. LISUS: 5 672 Q. Do you recall the Ontario Sire 6 Stakes Program? 7 A. Yes, vaguely. I remember hearing 8 about it. 9 673 Q. All right. This is a letter that 10 you wrote in April 2011. Just before we go to the 11 content of it, there's a question which has puzzled 12 me. None of the letters from senior government 13 officials seem to have a date on them. They just 14 all seem to have a date stamp. 15 A. That's because -- 16 674 Q. Why is that? 17 A. Well, I can tell you why, because 18 it can sometimes be weeks from the time the letter 19 is drafted until the time a signature is affixed to 20 it. 21 675 Q. Got it. 22 A. And so typically they stamp it on 23 once. It's either autopenned or the minister has 24 signed it directly. 25 So this could have, you know -- I</p>	<p>1 it the appropriate official. The appropriate 2 official would draft a proposed response. That 3 response would then go to his or her supervisor -- 4 to his or her supervisor. 5 And, again, depending on the nature of 6 the inquiry, that could take a few days. It could 7 take several months, which is why, as I understand 8 it, these stamps are typically put on the day that 9 the letter was actually being mailed. 10 677 Q. Got it. All right. So this is 11 your letter; right? 12 A. Yeah. 13 678 Q. Okay. Mr. Duncan, you'll be 14 pleased to know that the 2011 budget was March 29. 15 A. Figured. Had to be either the 16 first week or the last week. 17 679 Q. And so we see in the last 18 paragraph on the first page of that letter, you are 19 referencing both the Ontario Sire Stakes Program 20 which you mentioned to me a minute ago and the new 21 Ontario Racing Program; right? 22 A. I'm sorry. The last paragraph? 23 680 Q. On the first page. 24 A. Oh, there. I'm sorry. Yes. 25 Okay. I see now. This is the one where it talks</p>

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1 about all the purses that were leaving the country.
2 681 Q. And you also tell the person that
3 you're forwarding a copy of her letter and the
4 response to Mr. Blakney, the executive director of
5 the ORC; right?
6 A. Yes.
7 MR. LISUS: Next exhibit.
8 MR. MATTHEWS: 12.
9 EXHIBIT NO. 12: CRE0361295.
10 BY MR. LISUS:
11 682 Q. Speaking of the budget,
12 Mr. Duncan, what is the estimates committee
13 process?
14 A. Oh, gosh. So the estimates
15 committee process -- there's actually two stages to
16 it -- three stages to it. There's estimates and
17 supplementary estimates later in the year.
18 So basically estimates give life to the
19 budget. In fact, if you look at parliamentary
20 history, budgets are relatively recent phenomenon,
21 and they are not -- they are not actually required.
22 The only thing that is required is estimates.
23 So once the budget is done -- and on
24 budget day, there are a number of resolutions
25 passed by the Treasury Board. Then those

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1 documents, in turn, become part of a broader set of
2 estimates, which is what the -- what the
3 legislature actually approves.
4 And then you do supplementary estimates
5 *with in year because you get things wrong.
6 There'd be an under-spend here, an overspend there.
7 There's a committee in the legislature
8 that sees the estimates. Typically they're
9 supposed to take the estimates document and kind of
10 go through it with a fine-tooth comb, but in
11 practice, what happens, it becomes sort of an
12 extended question period where ministers can be
13 asked -- typically, you're asking anything but
14 what's in the estimates. And the opposition can
15 choose which ministries or ministers they want to
16 call.
17 So the proces -- the parliamentary
18 process gives life to the budget. It gives the
19 actual spending approvals by Parliament. And then
20 the committee process which examines those is --
21 you know, in theory, it's supposed to go line by
22 line and ask questions about it, but in reality, it
23 becomes more of an extended question period.
24 Ministers are typically -- I think they
25 get -- back in the day, I think they had up to 30

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1 hours, and the opposition could effectively decide,
2 you know, if they want the Minister of Finance for
3 eight hours, this minister for however many.
4 And then the estimates have to be
5 approved by the legislature as does supplementary
6 estimates and then supply. And that's the actual
7 allocation of money by the legislature to implement
8 the estimates.
9 683 Q. Okay. And if the legislature
10 doesn't approve the estimates, what happens?
11 A. Government is defeated.
12 684 Q. I see. So what is the process
13 pursuant to which you -- you're responsible for the
14 budget as a Minister of Finance?
15 A. The budget -- the budget is
16 actually a motion. The first thing you do when
17 you're the minister, I get up and I move the
18 budgetary policy to the government of Ontario. So
19 you present the budget.
20 The budget sets the government's
21 priorities, and then it outlines what the
22 government's plans for the coming year are.
23 Estimates are tabled separately, and
24 they are -- that's where the money is allocated in
25 a sense. And as you know, I'm sure, there's three

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1 thick books. Crown corporations are treated in a
2 separate book and so is Minister of Finance.
3 You're responsible for tabling the estimates.
4 In a minority parliament as we were
5 in -- I think it -- when was the election? 2011.
6 685 Q. October '11. The fall of '11
7 anyway.
8 A. So from October '11 when -- in the
9 2012 budget, that budget was approved, and the
10 decisions around OLG were approved by the
11 legislature in a minority parliament.
12 686 Q. Right. And so you're actually
13 assuming I know more than I do. You're saying the
14 Crown corporations are in a separate book. Aspects
15 of the budget about OLG would have been in a
16 separate book for the estimates process?
17 A. Yes. And they would have been
18 incorporated only as -- in terms of the
19 government's estimates, it's part of the whole
20 estimates package, but there are -- there are
21 reporting obligations that Crowns have and the
22 government has.
23 So the Crowns -- there's a separate, as
24 I recall -- I don't know if they still do it this
25 way. There's a separate binder typically for the

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<p>1 major Crown corporations, and then essentially 2 their dividend to the government is incorporated in 3 the government's lease. 4 687 Q. And then for the estimates 5 process, do you, as the minister responsible for 6 the budget, have to attend before this committee 7 and answer questions about the various items in the 8 budget? 9 A. Only if my ministry is called. 10 And typically the Minister of Finance is called. 11 But the Minister of Health is often called. Just 12 depends on what the opposition sees as being -- 13 688 Q. And if you're called, you get 14 advance notice of it, I presume? 15 A. Yes. Yeah. Yeah. 16 689 Q. All right. So you can prepare to 17 respond to the questions of the committee? 18 A. Yes. 19 690 Q. And, again, forgive my ignorance 20 of civics. The committee is a bi- or tri-partisan 21 committee, or it's a -- 22 A. It's -- it is -- it is composed of 23 members of all the official parties in the 24 legislature in a ratio equal to their -- or as 25 close to equal as you can get.</p>	<p>1 then the legislature has to approve them. 2 695 Q. Okay. Presumably, for the most 3 part, the legislature approves of the committee's 4 vote? 5 A. Well, in a majority parliament, 6 yes. In a minority parliament, it's anything but. 7 696 Q. Okay. So it's an important 8 process for the budget. It's really part of the 9 budget process? 10 A. It is actually an important -- 11 it's not -- the budget is not really part of it, 12 no. 13 697 Q. Okay. The -- 14 A. You could -- you could present -- 15 governments can -- well, in fact, the Ontario 16 legislature, there was a period of 18 months where 17 there was no budget under our predecessors. If you 18 look at the rules of procedure, there's no 19 requirement for a budget. 20 698 Q. So the estimates committee is 21 important? 22 A. It is important, yes. 23 699 Q. Okay. And you have obviously 24 appeared before the estimate's committee? 25 A. Many times, yes.</p>
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<p>1 So in a majority parliament, you know, 2 typically the Liberals would have -- dependent on 3 how many seats. It depends. 4 So typically you'd have, in those days, 5 five members from the government and a total of 6 four from the opposition. And in the case of the 7 estimates committee, the chair would be chosen from 8 the opposition. 9 691 Q. And so put in common parlance, if 10 the minister is summonsed, the minister prepares to 11 defend or justify the items in the budget to the 12 estimates committee? 13 A. Yes. 14 692 Q. And then what is the committee -- 15 it's a question and answer? 16 A. Yes. 17 693 Q. And then the committee votes? 18 A. They -- no. They -- well, they 19 eventually vote, but they typically do all of the 20 33 hours and then -- as my recollection, they do 21 all the 33, and then they vote basically on certain 22 lines. 23 694 Q. That's what I was going to ask 24 you. So the -- 25 A. And then they do have to be --</p>	<p>1 700 Q. And you did in 2011? 2 A. Probably, yeah. I don't remember, 3 but yes. 4 701 Q. So if I just -- if I want to show 5 you a document, which is CRE6095 -- this was marked 6 on the examination of Mr. Orsini. Would the deputy 7 minister accompany the minister to -- 8 A. Yes. Typically a large number of 9 public servants are in the room with you. 10 702 Q. Okay. And so this is an email 11 from someone whose name I can't read in Finance to 12 a large contingent, as you say. And it appears to 13 be a package -- 14 A. The government -- you will -- 15 typically when you're called for estimates, there 16 will be an estimates binder prepared where the 17 department or the ministry try to anticipate the 18 kinds of questions. 19 And then there's a follow-up. Once the 20 minister has given a statement or answered 21 questions, there will oftentimes be -- the answer 22 will oftentimes be, "We'll have to get back to you 23 on that." 24 And so there's a follow-up where staff 25 then document everything that has been undertaken</p>

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<p>1 to give to the opposition, or it may even be a 2 question from a government member. 3 703 Q. And so the job of staff is to 4 anticipate the questions that might arise at 5 estimates committee and prepare the minister in 6 advance for the answers? 7 A. Yeah, anticipate the kinds of 8 information the -- I wouldn't say necessarily 9 because typically the questions veer off of the 10 true estimates. 11 But, like, you know, I'm looking at 12 this. How much HST has the government collected 13 off of gasoline? So they typically try to get you 14 information that will be of assistance to 15 responding to the opposition. 16 704 Q. All right. Item one here says: 17 "Enclosed is a revised Q and A 18 document." 19 A. Yes. 20 705 Q. So that is preparing you for what 21 might be the -- 22 A. Typically these Q and As, they -- 23 you know, they -- typically they're not that 24 important because the questions -- you know, like, 25 that day had somebody been run over by a bus in</p>	<p>1 A. Page 189? 2 708 Q. Yeah, in the top right-hand 3 corner. 4 A. Yeah. Okay. 5 709 Q. So these are all of the questions 6 that your staff -- there's two pages of them -- 7 anticipate you might -- 8 A. Yeah. And typically you won't get 9 asked about 99 percent of them. 10 710 Q. Do you recall being provided 11 questions about the Slots at -- 12 A. I don't recall -- 13 711 Q. -- Racetrack? 14 A. -- that, but doesn't mean it 15 didn't happen. May have been under support for 16 municipalities. 17 712 Q. Well, take a look at -- 18 A. Ontario Lottery. Oh, there it is. 19 ORC and OLG. 20 713 Q. Take a look at what's in the upper 21 right-hand corner page 361. I'm going to switch 22 numbering now. In the bottom right-hand corner is 23 the actual number of the document, page 171. 24 A. Okay. I'm sorry. 25 714 Q. So these are the anticipated</p>
<p>1 downtown Toronto, the question might have been, 2 "Did your government change the rules on how buses 3 should drive down streets in Toronto?" 4 So it can go off in any number of 5 directions. They try -- the officials try to bring 6 forward information, statistical information, that 7 could be useful to responding to opposition 8 questions. 9 706 Q. Okay. And so -- 10 A. And typically they're only 11 information that are already in the public domain. 12 So, for instance, if we were in 2011, which we 13 would have been, working with the OLG on 14 modernization, nothing in these Qs and As would 15 have been reflected at that point because the 16 government would not have dealt with -- wouldn't at 17 that time -- not even sure would have had the 18 recommendations of the OLG. So they deal typically 19 with any information that's in the public domain. 20 707 Q. Okay. And if you go to page -- 21 what is page -- go to 189 on the top of it. It 22 says: 23 "General Qs & As, standing 24 committee on estimates, Minister 25 Duncan, May 31, 2011."</p>	<p>1 questions and proposed responses composed for your 2 benefit at the estimates committee; right? 3 A. Mm-hm. Mm-hm. 4 MS. LA HOREY: You need to say "yes." 5 THE WITNESS: Yes. I'm sorry. 6 BY MR. LISUS: 7 715 Q. Here we see the questions and 8 answers about the Slots at Racetrack Program 9 revenue and revenue sharing; right? 10 A. I see them, yeah. 11 716 Q. Okay. Do you recall whether or 12 not you were asked about -- 13 A. I don't recall. 14 717 Q. Okay. 15 A. I doubt that I was. 16 718 Q. Right. At this point in time, the 17 OLG strategic land-based gaming review was 18 underway? 19 A. Yes. 20 719 Q. And you were in communication with 21 Mr. Phillips and Mr. Godfrey? 22 A. And Mr. Godfrey, as well as senior 23 officials within the Treasury Board and Finance. 24 720 Q. And if we go to page 178, we see 25 the fact that -- there's specific question about</p>

<p style="text-align: right;">Page 170</p> <p>1 the OLG strategic land-based review and its status?</p> <p>2 A. Mm-hm.</p> <p>3 721 Q. Yes?</p> <p>4 A. Just one moment. I'm just looking</p> <p>5 at that part.</p> <p>6 722 Q. 178, middle of the page.</p> <p>7 A. Yeah, I see that.</p> <p>8 723 Q. And if you go to page 180, there</p> <p>9 are questions and answers about the Ontario Racing</p> <p>10 Commission?</p> <p>11 A. Yes.</p> <p>12 724 Q. And there's a question at the</p> <p>13 bottom:</p> <p>14 "What programs does the ORC</p> <p>15 run?"</p> <p>16 And it talks about:</p> <p>17 "The Ontario Racing Program, a</p> <p>18 new framework for standardbred race</p> <p>19 date allocations."</p> <p>20 A. Yeah.</p> <p>21 725 Q. And then over the page, at 181,</p> <p>22 reference to:</p> <p>23 "What is the Ontario Racing</p> <p>24 Program?"</p> <p>25 A. Mm-hm. Yes.</p>	<p style="text-align: right;">Page 172</p> <p>1 the fact that the implementation of the racing</p> <p>2 program was not working?</p> <p>3 A. At this point in time, it would</p> <p>4 have been the complaints brought forward as are</p> <p>5 cited here, as you have -- the letters you have</p> <p>6 brought forward from the form letters.</p> <p>7 There was quite a -- quite a campaign</p> <p>8 brought forward by the horse racing industry around</p> <p>9 the perception that there wasn't enough race days,</p> <p>10 the purses weren't adequate, that essentially there</p> <p>11 wasn't enough money going into the program.</p> <p>12 730 Q. Okay. So that is what you're</p> <p>13 referring to when you are saying that the program</p> <p>14 wasn't working?</p> <p>15 A. That's in part.</p> <p>16 731 Q. Okay.</p> <p>17 A. By this point in time, I would</p> <p>18 have had -- you showed some documents, I think,</p> <p>19 from earlier than this time when Mr. Godfrey wanted</p> <p>20 to discuss certain issues, but by this time --</p> <p>21 732 Q. "This time" being?</p> <p>22 A. The date of this.</p> <p>23 733 Q. May of 2011?</p> <p>24 A. Well, this is actually.</p> <p>25 734 Q. It's may 2011.</p>
<p style="text-align: right;">Page 171</p> <p>1 726 Q. And then on page 182, we see what</p> <p>2 are the key --</p> <p>3 "What are some of the ORC's key</p> <p>4 initiatives for 2011 to 2012?"</p> <p>5 And the first one identified is:</p> <p>6 "The Ontario Race Program</p> <p>7 implementation, continued</p> <p>8 implementation of the Ontario Racing</p> <p>9 Program for 2011-2012."</p> <p>10 Right?</p> <p>11 A. Yeah.</p> <p>12 727 Q. Okay. And then --</p> <p>13 A. I would just note that on the</p> <p>14 previous page, over the objections or with concerns</p> <p>15 brought forward by the Ontario Harness Horse</p> <p>16 Association, was that -- that program was met with,</p> <p>17 I would say, as I recall, fairly strenuous</p> <p>18 objection in different quarters of the horse racing</p> <p>19 industry.</p> <p>20 728 Q. But the regulator with the support</p> <p>21 of Finance nevertheless --</p> <p>22 A. We tried, but ultimately it wasn't</p> <p>23 working as so many previous efforts hadn't worked.</p> <p>24 729 Q. When you say "it wasn't working,"</p> <p>25 what documents or records will I see that reflect</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Is this May? Sorry, I</p> <p>2 misunderstood. Well, it's related to the budget.</p> <p>3 And as I said, anything that's in these is public</p> <p>4 information. And so this would actually -- even</p> <p>5 though my appearance was in May, this information</p> <p>6 would have all been public.</p> <p>7 So at that time, we were operating</p> <p>8 under the same -- the same program that had been in</p> <p>9 place since 1998. There had been a number of</p> <p>10 changes recommended both in terms of the</p> <p>11 policy aspect of it --</p> <p>12 735 Q. Can I just stop you? You say "the</p> <p>13 same program." You're talking about --</p> <p>14 A. Slots at Racetrack Program.</p> <p>15 736 Q. -- the same revenue-sharing</p> <p>16 formula and the Slots at Racetrack --</p> <p>17 A. The basic -- the basic element of</p> <p>18 the program under the OLG structure. And by then,</p> <p>19 there had been the Sadinsky report. We charged the</p> <p>20 board with the modernization mandate. I don't</p> <p>21 believe at that date we had their final</p> <p>22 recommendations.</p> <p>23 But, as I say, when you -- just</p> <p>24 flipping over quickly, you'll see that there was</p> <p>25 not support from the industry for efforts that were</p>

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<p>1 taken on behalf of the Racing Commission. Or 2 frankly, even -- 3 737 Q. Just tell me what you're referring 4 to when you say that. 5 A. Well, right here. What were the 6 Ontario Harness -- 7 MS. LA HOREY: Page 181. 8 THE WITNESS: Page 181. 9 "What were the Ontario Harness 10 Horse Association concerns and 11 issues about the Ontario Racing 12 Program when it appealed the 13 decision?" 14 I'd forgotten. They actually appealed it. They 15 didn't like it. 16 "The Ontario Harness Horse 17 Association brought forward an 18 appeal in regard to both Ontario 19 Racing Program race dates allocation 20 and more significantly, the 21 introduction on purse pooling 22 through the ORP before the ORC 23 adjudicated panel." 24 The appeal was denied. There was considerable 25 amount of fighting going on. In my recollection,</p>	<p>1 741 Q. Will I see anywhere the data that 2 shows me that -- 3 A. The OLG -- 4 742 Q. Stop, please -- most of the 40,000 5 jobs were out of the country? 6 A. You'll see the analysis that was 7 done by the OLG in terms of its review of all the 8 tracks. For instance, I remember one briefing 9 note. I don't know if you've seen it. You know, 10 there's -- you've only got a fraction of the stuff 11 that's relevant, in my view. 12 I remember Windsor Raceway. This was 13 reported publicly. Nine race cards were down to 14 five. Horses were from outside of the country. 15 Purses were going outside. 16 In fact, one of the letters that you 17 asked me to look at referenced the amount of purses 18 that were leaving the country. You put that on -- 19 I forget which document, but that was a significant 20 problem. And most of the breeding was going on in 21 the U.S. 22 743 Q. Sorry, most of the breeding was 23 going on in the U.S.? 24 A. The breeding was going -- yeah, 25 the successful horses.</p>
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<p>1 it was, again, just another symptom of a problem 2 where the regulator, the track owners, and the 3 horse people themselves couldn't agree on 4 fundamental issues which was, in my view at the 5 time, while we awaited the recommendations of 6 modernization, an indication that the program was 7 not serving the harness racing -- the Slots at 8 Racetrack Program was not effective at promoting 9 their economic interests. Those 40,000 jobs, many 10 of them were in the United States. 11 BY MR. LISUS: 12 738 Q. Sorry, what's the date of that? 13 A. Well, you should -- it's in your 14 evidence. It's in every budget and every -- they 15 talked about the jobs created. What we came -- 16 were coming to understand, purses were going out of 17 the country. Attendance was going down. Revenues 18 were flat. 19 739 Q. I'll see that in the budgets? 20 A. We had -- no, you won't. It 21 wasn't in this budget. 22 740 Q. That's what I'm asking you. Where 23 will I see this data that much of the 40,000 job -- 24 A. You won't see that in this budget. 25 You're a year before the decision was taken.</p>	<p>1 744 Q. And where will I see that? 2 A. You'll have to look through the 3 OLG documents. You've got access to all the 4 publicly-available documents. 5 745 Q. All right. So I'll see all of 6 this in OLG -- 7 A. I assume you will. If you're 8 doing your work, it's there. I know -- like I say, 9 I appreciate you've got lots of documents, but 10 that's a fraction of it. It that doesn't reflect 11 the nine years of challenges that I think everybody 12 recognized the horse racing industry had. 13 746 Q. Okay. I appreciate the direction, 14 and I will see -- 15 A. I'm not trying to give you 16 direction. I'm just trying to state for the record 17 my view that the programs, even though the 18 government continued to support the policy, were 19 operating in no one's interest, including the horse 20 people's interest. 21 747 Q. Okay. And I will get all of 22 the basis for -- 23 A. Okay. Yeah. You have access -- 24 you have access to that. 25 748 Q. -- in the OLG modernization final</p>

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1 report?

2 A. I'm not sure you'll get it all

3 there, but I -- you know, there are -- you've been

4 able to dig out documents, obscure documents, from

5 minor-level officials in Finance that would never

6 make their way to me. So you probably have access

7 to a lot -- as much information as I ever had when

8 I was minister.

9 MS. LA HOREY: Is now a good time for

10 the afternoon break?

11 THE WITNESS: I wouldn't mind.

12 BY MR. LISUS:

13 749 Q. Let me just ask you one more

14 question.

15 MS. LA HOREY: No, we're going to take

16 a break now.

17 THE WITNESS: I have to use the

18 washroom.

19 MR. LISUS: Excuse me, this is a

20 cross-examination.

21 MS. LA HOREY: It's a

22 cross-examination.

23 MR. LISUS: I want to complete my

24 question on this sequence.

25 MS. LA HOREY: You can do so after the

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1 break. It's not --

2 MR. LISUS: Ms. La Horey, please.

3 MS. LA HOREY: Mr. Duncan needs a

4 washroom break and as do I, and this is not an

5 endurance contest. We're taking a break,

6 Mr. Lisus.

7 -- Recess at 2:33 p.m. --

8 -- Upon resuming at 2:43 p.m. --

9 BY MR. LISUS:

10 750 Q. When we broke, Mr. Duncan, we were

11 discussing the May 2011 estimates committee

12 information. If we look at page 182, we were

13 discussing ORC's key initiatives that you were

14 prepared and perhaps did talk to the estimates

15 committee about. Do you see that?

16 A. I do.

17 751 Q. And first among them was the

18 continued implementation of the Ontario Racing

19 Program; right?

20 A. Over the objection of the harness

21 people, yes.

22 752 Q. Okay. I have your point. You

23 don't have to keep telling me that. I'm just

24 observing that it was the position of your

25 government at the time that a key initiative of the

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1 ORC was the continued implementation of the racing

2 program. Can we agree on that?

3 A. Only under the condition that we

4 had not yet come to conclusion on decisions with

5 respect to OLG and modernization, though they were

6 an active consideration at the time.

7 753 Q. Okay. You were awaiting the final

8 recommendation and advice from OLG following the

9 completion of its land-based gaming review; fair?

10 A. Fair. Although I'm not sure when

11 precisely I got that, so just to be --

12 754 Q. You certainly didn't have it in

13 May 2011?

14 A. I don't remember that

15 specifically.

16 755 Q. Well, you didn't. I can tell you.

17 A. Okay.

18 756 Q. All right.

19 A. I just don't recall the exact time

20 frames.

21 757 Q. Did you appear before the

22 estimates committee in May 2011?

23 A. I believe I did.

24 758 Q. Did you deliver these --

25 A. Typically I do deliver the remarks

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1 that are there, yes. Although I'm sure some of my

2 former staff would have told you I was famous for

3 not reading them precisely.

4 759 Q. Now, I want to show you a

5 document, please, 85410, which is Exhibit 13 to

6 Mr. Orsini's examination.

7 MR. MATTHEWS: We'll mark the estimates

8 package which was Exhibit 11 to Mr. Orsini's as the

9 next exhibit in Mr. Duncan's.

10 EXHIBIT NO. 13: CRE0006095 and

11 CRE0006097.

12 BY MR. LISUS:

13 760 Q. While Mr. Matthews is getting you

14 the next exhibit, you made reference, sir, to there

15 being information that many of the 40,000 jobs were

16 out of the province and that you've seen reference

17 to this.

18 Did you see reference to documents

19 reflecting that fact in the documents that you

20 reviewed for the purposes of giving your evidence

21 here today?

22 A. I don't recall seeing that, no.

23 761 Q. Okay.

24 A. I wrote to him a lot.

25 762 Q. Now, this is you approving the

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1	business plan for 2011 to 2014; correct?	1	regulatory changes with respect to tax?
2	A. Yes.	2	A. I don't recall.
3	763 Q. I see that you are expressing your	3	772 Q. Okay. Over the page under the
4	appreciation for the commission's work to	4	heading "Overview of the Ontario Racing
5	demonstrate organizational restraint in fiscal 2012	5	Commission," in the fourth paragraph, it says:
6	and into the future through the implementation of a	6	"Members of the commission are
7	service delivery plan to manage a reduction to the	7	appointed by the Lieutenant Governor
8	ORC's overall regulatory budget?	8	in council, but the commission
9	A. That's correct, yes.	9	itself operates at arm's length from
10	764 Q. Okay. And you also are approving	10	government."
11	a number of the key ORC activities to enhance live	11	A. That's correct, yes.
12	horse racing for industry participants and	12	773 Q. Can you just explain to me what
13	customers, including the new Ontario racing	13	that means?
14	program; right?	14	A. Typically regulators are supposed
15	A. Yes.	15	to operate independent of the government. Some --
16	765 Q. This is some two and a half months	16	yeah, that's -- yeah, they're typically -- they are
17	after your appearance before the estimates	17	given, through legislation, the ability to make
18	committee; right?	18	certain decisions that are at arm's length from the
19	A. That's correct.	19	government.
20	766 Q. If we take a look at the business	20	774 Q. Okay. If you look at page 5 of
21	plan you approved for the following three years --	21	the business plan, it contains the same jobs data
22	MS. LA HOREY: What page?	22	as the prior one?
23	MR. LISUS: 3 of the plan.	23	A. Yeah, I can see that, yeah. They
24	BY MR. LISUS:	24	just seem to keep reprinting the same thing year in
25	767 Q. And you, of course, like the prior	25	year out with updated numbers.
Page 183		Page 185	
1	one, would have --	1	775 Q. If you go to page 8 where it says
2	MS. LA HOREY: Sorry, just give me a	2	"Changes to Industry Structure." You see that
3	minute.	3	heading?
4	BY MR. LISUS:	4	A. Yes.
5	768 Q. -- would have read this plan	5	776 Q. The last bullet:
6	before you approved it; correct?	6	"2010 extensive consultation
7	A. Yes.	7	leads to establishment of the
8	769 Q. Under "Executive Summary," third	8	Ontario Racing Program, a provincial
9	paragraph, it says:	9	principles-based approach to horse
10	"The Ontario Racing Program	10	racing."
11	developed in collaboration with the	11	A. I'm sorry. Now you lost me there.
12	industry during the 2010-2011 fiscal	12	777 Q. The last bullet.
13	year will continue to be implemented	13	A. Okay. Yeah.
14	in the coming year."	14	778 Q. If you go to the next heading
15	Right?	15	"Industry Issues," the last bullet, it says:
16	A. Just subject to the conditions	16	"The program is expected to
17	that are in the next sentence.	17	have the most significant positive
18	770 Q. "Similarly, the ORC will focus on	18	impact on the future of the industry
19	ensuring that changes are made at	19	since the Slots at Racetrack Program
20	the province level to accommodate	20	was implemented."
21	several federal regulatory changes	21	A. I apologize. You know, I didn't
22	which are expected in 2011-2012."	22	see that. Where's that at?
23	Yes?	23	779 Q. Under the heading "External Scan"
24	A. Yes.	24	at the bottom of the page, under the last bullet.
25	771 Q. Okay. What were the federal	25	A. Oh, there it is. Yes. Okay.

<p style="text-align: right;">Page 186</p> <p>1 780 Q. And if we look at page 9, the 2 heading 2010, we see in the second last bullet: 3 "Draft Memorandum of 4 Understanding with the Ministry of 5 Finance begins to identify areas of 6 increase to the mandate of the ORC, 7 including a broader scope of the 8 oversight role." 9 Do you see that? 10 A. Yeah. 11 781 Q. Do you recall there being 12 discussion about the Memorandum of Understanding 13 between ORC and Ministry of Finance? 14 A. I don't recall that. I'm sorry. 15 782 Q. Okay. If you go to page 21, under 16 the heading "Implementation Plan," you were aware 17 from reading this review that there had been an 18 extensive communication process between the ORC and 19 stakeholders in the development of the Ontario 20 Racing Program? 21 A. I don't recall that, but take you 22 at your word. 23 783 Q. All right. Well, if we just look 24 at what the regulator describes at what it did 25 under "communications plan," we see the last bullet</p>	<p style="text-align: right;">Page 188</p> <p>1 implemented. That's all. Can we agree on that 2 much? 3 A. I don't know if we approved it or 4 not. 5 788 Q. Okay. Can we agree that the 6 Ontario Racing Commission, in the course of coming 7 up with the program and implementing it, conducted 8 extensive consultation as it described in this 9 document, or can you not agree with that either? 10 A. I can't because I don't know what 11 they mean by "extensive consultation." 12 789 Q. 30 separate meetings -- 13 A. I've been involved in 14 consultations many times where subsequent to the 15 consultation, people felt they weren't consulted. 16 790 Q. Okay. Can we agree there were 17 industry notices and news releases and industry 18 newsletters? 19 A. I can -- that's what they indicate 20 here. 21 791 Q. You don't have any reason to doubt 22 that they undertook the regular communications -- 23 A. Based on the disagreement -- 24 792 Q. Let me just finish. 25 A. Sorry.</p>
<p style="text-align: right;">Page 187</p> <p>1 under that heading: 2 "2010 Ontario Racing Program 3 initiative, approximately 30 4 separate meetings with the 5 industry." 6 A. Mm-hm. 7 784 Q. Yes? 8 A. Yes, I see that. 9 785 Q. Okay. And that there were regular 10 communications, including industry notices, news 11 releases, industry newsletters, ORC website, and 12 industry meetings? 13 A. I would just point out that the 14 letters you asked me to comment on express 15 disagreement with that program from people that 16 were consulted. 17 786 Q. I'm not suggesting to you, sir, 18 that every person who was involved in the horse 19 racing industry agreed or disagreed with the 20 program. 21 A. They certainly didn't. 22 787 Q. Okay. What I'm suggesting to 23 you -- and I think you'll agree with me -- is that 24 the ORC engaged in a process, came up with a 25 program, Finance approved it, and it was</p>	<p style="text-align: right;">Page 189</p> <p>1 793 Q. -- that they undertook the regular 2 communications as described in this document. Are 3 you doubting that occurred? 4 A. I'm doubting the -- because of the 5 evidence you showed me earlier -- because I don't 6 really recall this. I do recall that there was no 7 happiness at all with this by particularly 8 people -- I mean, you put the evidence in front of 9 me, the letters that were complaining about -- you 10 didn't -- you didn't cite it, but having given me 11 the opportunity to read particularly from one of 12 the three that you put in front of me, there was 13 certainly no satisfaction in the industry with that 14 program. And I presume they felt that consultation 15 may have been held, but maybe they weren't listened 16 to. 17 794 Q. The only letters I've put to you, 18 sir, were a number of letters that -- 19 A. I read those letters. 20 795 Q. Let me finish, please. 21 A. You're putting words in my mouth 22 again. 23 MS. LA HOREY: Gentlemen, you need to 24 make sure that you each talk in sequence. 25 THE WITNESS: Yes. I'm sorry.</p>

<p style="text-align: right;">Page 190</p> <p>1 MS. LA HOREY: Thank you. 2 BY MR. LISUS: 3 796 Q. The only letters I've put you, 4 sir, were letters you wrote, and they say what they 5 say. Okay? 6 A. Yes, and what they say quite 7 clearly is they're responding to complaints about 8 this process from people in the industry. 9 You've selected parts of them, which I 10 say is fine, that's your right, but I just want the 11 record to reflect that I don't agree with your 12 interpretation of what those letters are about. 13 And you didn't even show me the original letters. 14 797 Q. I don't think I selected any parts 15 of your letters, but I don't think -- 16 A. You did. 17 798 Q. -- we need to take up time with 18 this. Are you aware -- 19 A. I think it's an important issue 20 because you asked me to comment essentially on the 21 veracity of this process. 22 799 Q. No, I didn't. 23 A. You did. 24 800 Q. I asked you to tell me whether you 25 agree that the communications plan which was</p>	<p style="text-align: right;">Page 192</p> <p>1 MR. LISUS: That's the next exhibit. 2 MR. MATTHEWS: 14. 3 EXHIBIT NO. 14: CRE0085410 and 4 CR0002238. 5 BY MR. LISUS: 6 803 Q. Let me show you a letter you sent 7 September -- excuse me. You didn't send the 8 letter. Steen Hume did. Who is Steen Hume? 9 A. I remember him. I can't -- he had 10 different roles on my time at Finance, but he -- at 11 the -- I can't remember if it was OLG or at -- in 12 Finance. He may have been in both over the course 13 of my time at Finance. 14 804 Q. It's a letter from Steen Hume at 15 Finance to Steve Lehman at the ORC enclosing a 16 signed MOU? 17 A. Yes. 18 805 Q. And did you know Steve Lehman? 19 A. I don't recall. I certainly 20 remember Steen Hume. I don't recall Steve Lehman. 21 806 Q. And this, of course, is on Ontario 22 government -- 23 MS. LA HOREY: There's not an issue 24 about authenticity. 25 MR. LISUS: No, I appreciate that. I'm</p>
<p style="text-align: right;">Page 191</p> <p>1 described in the business plan that you confirmed 2 and approved occurred. 3 If you're telling me you don't think it 4 did, then just tell me you don't think it did, sir, 5 and we can move on. 6 A. As I said, I don't recall. 7 801 Q. All right. I can take you through 8 a number of the news releases and newsletters and 9 industry releases. Would that be helpful to you or 10 no? 11 A. It's up to you. It's your 12 questions. 13 802 Q. What you do say to Mr. Seiling 14 after reviewing and approving his business plan is: 15 "Please extend my sincere 16 thanks to the board of directors and 17 your staff for producing this most 18 important accountability document 19 which highlights a number of key ORC 20 activities to enhance live horse 21 racing for industry participants and 22 customers, including the new Ontario 23 Racing Program." 24 Were you being sincere when you wrote that? 25 A. We're always polite.</p>	<p style="text-align: right;">Page 193</p> <p>1 just trying to figure out who's where, but I think 2 I've done that. 3 BY MR. LISUS: 4 807 Q. It's stamped. This one is dated, 5 and the date stamp is when it's received by the 6 ORC -- 7 A. Yes. 8 808 Q. -- apropos our earlier discussion? 9 A. Yeah. 10 809 Q. Now, this is an MOU between the 11 Minister of Finance and the Ontario Racing 12 Commission? 13 A. Yes. 14 810 Q. On the back page is what appears 15 to be your signature on August 10, 2011? 16 A. That's correct, yeah. 17 811 Q. And Mr. Seiling's signature on 18 July 7, 2011? 19 A. Yes. 20 812 Q. Do you recall the execution of 21 this document or signing it on behalf of the 22 Ministry of Finance? 23 A. Well, that's definitely my 24 signature. That's not an autopen signature. So I 25 would have done it, but I don't recall it.</p>

<p style="text-align: right;">Page 194</p> <p>1 813 Q. This MOU is actually between you 2 and the ORC? 3 A. Yes, that's correct. 4 814 Q. What was the purpose of this MOU? 5 A. I'd have to ask a couple of 6 questions. Was this a new MOU? Was it a 7 renegotiated MOU? Is it an annual thing? I don't 8 recall. 9 815 Q. You don't recall anything about 10 it? 11 A. Well, I recall it. I just -- you 12 know, I'm just trying to refresh my mind about how 13 often these MOUs were done and if it's a relatively 14 standard practice or not. I just don't remember. 15 816 Q. Well, this MOU at Article 4.3 says 16 it will remain in effect for a period of five 17 years. 18 A. Okay. So that -- probably then 19 they did MOUs every four or five years. I don't 20 know. And this would have been the result probably 21 of a full review that took some period of time 22 involving ministry officials and the ORC. 23 817 Q. And you would obviously have read 24 and understood it before you signed it? 25 A. I would have, yes, certainly. And</p>	<p style="text-align: right;">Page 196</p> <p>1 issues around windmills that I recall that were 2 particularly -- 3 822 Q. Wind turbines? 4 A. Wind turbines, yes. Along with 5 others, yes. 6 823 Q. Okay. Was the horse racing 7 industry as an important sector of the agricultural 8 economy at all an election issue? 9 A. It certainly was with the horse 10 people themselves, but it didn't -- there wasn't -- 11 I wouldn't -- like, for instance, I don't recall 12 communication from the OFA or anyone else around 13 that. 14 824 Q. What's the OFA? 15 A. Ontario Federation of Agriculture, 16 Rural Ontario Municipal Association. I don't 17 recall any -- certainly the industry itself made 18 its views known to candidates in the 2000 election. 19 825 Q. 2000? 20 A. 2011. Excuse me. Issues that are 21 largely outlined in those letters you showed me. 22 826 Q. Okay. And so I've got a letter 23 that you wrote to someone on September the 2nd, 24 2011. 25 A. Okay.</p>
<p style="text-align: right;">Page 195</p> <p>1 not only that, I would have been briefed on it. 2 MR. LISUS: That's the next exhibit. 3 MS. LA HOREY: What number are we at? 4 MR. MATTHEWS: We're at 15, 5 Ms. La Horey. 6 MS. LA HOREY: Thank you. 7 EXHIBIT NO. 15: CRE0274150. 8 BY MR. LISUS: 9 818 Q. When was the 2011 election? Do 10 you recall? 11 A. I knew you'd ask me a question 12 like that. That would have been -- was that -- 13 819 Q. My recollection is October, but -- 14 MS. LA HOREY: I think that's right. 15 THE WITNESS: I think that's right, 16 yeah. Yeah. It was still the nice weather, but it 17 wasn't -- yeah, it definitely was. 18 BY MR. LISUS: 19 820 Q. Okay. Was your government's 20 commitment to the horse racing industry an election 21 issue? 22 A. I don't recall it being. 23 821 Q. Was your government's commitment 24 to rural Ontario an election issue? 25 A. Some areas it was. There were</p>	<p style="text-align: right;">Page 197</p> <p>1 827 Q. Were you being sincere in your 2 response? 3 A. Yes. 4 828 Q. Okay. Thank you. 5 MS. LA HOREY: And for the record, this 6 is CRE0079579. 7 MR. LISUS: Thank you. 8 MR. MATTHEWS: Exhibit 16. 9 EXHIBIT NO. 16: CRE0079579. 10 BY MR. LISUS: 11 829 Q. I'll show you a similar letter 12 from you. I take it -- 13 MS. LA HOREY: While the witness looks 14 at it, I'll just read the number into the record. 15 CRE0079578. 16 THE WITNESS: That's to Michael Prue, 17 the NDP MPP. 18 BY MR. LISUS: 19 830 Q. Okay. And were you being sincere 20 in your response? 21 A. Yes, absolutely. 22 MR. MATTHEWS: 17. 23 EXHIBIT NO. 17: CRE0079578. 24 BY MR. LISUS: 25 831 Q. The election was held in October</p>

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1 2011, and the outcome was a minority government?
2 A. Yes.
3 832 Q. Did that have any significance
4 from a budget point of view?
5 A. Sure. You needed the support of
6 one of the other parties to pass a budget because
7 failure to pass a budget means nonconfidence, means
8 another election.
9 833 Q. And was that a concern of yours as
10 the Minister of Finance?
11 A. I mean, it -- what do you mean by
12 "a concern"?
13 834 Q. Well, you needed the support of
14 another party to pass the budget.
15 A. I wouldn't call it a concern, but
16 it was a factor, you know, that you would take into
17 account when making decisions.
18 So, you know, you would rule out doing
19 things that you knew automatically could lead to
20 the defeat of the budget. You would try to work
21 with the opposition, both opposition parties, to at
22 least unsure that you had enough votes to pass a
23 budget or, for that matter, a throne speech.
24 835 Q. Perhaps I should know the answer
25 to this question, but does -- or maybe you gave it

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1 to me already. You don't actually have to pass a
2 budget as a matter of law; is that correct?
3 A. Not as a matter of law, but as a
4 matter of what's --
5 836 Q. Custom?
6 A. Custom. What's the other word?
7 837 Q. Confidence?
8 A. Not confidence.
9 838 Q. Convention?
10 A. Convention. It's a matter of
11 convention, yes.
12 839 Q. All right. If you don't present a
13 budget for --
14 A. It's the budget motion. Still
15 needs -- defeat of a budget motion, and the motion
16 simply reads -- that's the first thing a Finance --
17 "Mr. Speaker, I rise to move the budgetary policy
18 of the government of Ontario."
19 If that's defeated, the legislature
20 doesn't have confidence, and the government falls.
21 840 Q. Okay. I want to ask you about
22 events in November of 2011 which is subsequent to
23 the election, and you're the minority government.
24 A. Mm-hm.
25 841 Q. Right?

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1 A. Yeah.
2 842 Q. At that point in time, the
3 land-based gaming review has been underway since
4 2010?
5 A. Be roughly those time lines, yes.
6 843 Q. Okay. I want to show you a
7 document which was marked on Mr. Orsini's
8 examination.
9 A. Mm-hm.
10 844 Q. While I get the document, I want
11 you to think back to the fourth quarter of 2011,
12 which was just before --
13 A. Fiscal '11 or calendar?
14 845 Q. Calendar.
15 A. Okay.
16 846 Q. What was your understanding of the
17 status of the OLG land-based gaming review?
18 A. I believe it had been completed by
19 then.
20 847 Q. Okay.
21 A. I believe at -- by that time, it
22 was typically by the fall of -- like, typically
23 you're making kind of the broad strokes of your
24 budget. Usually that process starts, you know, in
25 November.

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1 Typically it starts with a meeting
2 between the Premier and the Finance minister.
3 Typically it involves the broad strokes of kind of
4 what the themes of the budget will be.
5 And then through the -- through the
6 Premier's office, Cabinet office, Finance, Treasury
7 Board, different components of the budget are put
8 together with probably -- so I would assume by then
9 we would have had the results of that.
10 And I would imagine that we were
11 probably -- if we hadn't already by November, we
12 would probably be getting ready to go to Cabinet
13 with the results of that study.
14 848 Q. Okay. I presume because of the
15 amount of revenue OLG generated and was capable of
16 generating, having this report in hand was an
17 important part of your budgeting process?
18 A. I would put emphasis on what you
19 said, "capable of generating." The view -- the
20 findings, the view of the board of OLG, of my
21 senior officials was that the company had not
22 historically been performing well, and then it went
23 through all the various aspects of the gaming file.
24 849 Q. Okay. So you wanted the final
25 recommendations of OLG for the purposes of your

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<p>1 budget process?</p> <p>2 A. Just bear with me. I'm just</p> <p>3 trying to recall. They were very much a part of</p> <p>4 getting Ontario's -- subsequent to the -- we ran --</p> <p>5 as you know, we ran a large deficit starting in</p> <p>6 2009, and we looked -- we appointed Mr. Drummond to</p> <p>7 look at all aspects.</p> <p>8 850 Q. Can I pause you there? There was</p> <p>9 a deficit in 2009, and I know that.</p> <p>10 A. Yeah.</p> <p>11 851 Q. There was also a large deficit in</p> <p>12 2010?</p> <p>13 A. Each year. And we had laid out a</p> <p>14 plan to get back to budget. I believe in the</p> <p>15 original -- no, it might have been the second</p> <p>16 budget.</p> <p>17 But we laid out a plan to get back,</p> <p>18 which was subsequently implemented both in the</p> <p>19 first three years by our government and then by our</p> <p>20 successors.</p> <p>21 852 Q. And there was a large deficit in</p> <p>22 2011 as well?</p> <p>23 A. Yes, there was. It had come down.</p> <p>24 I can't remember precisely. It went from roughly</p> <p>25 19 to 16 to 12. I don't remember the precise</p>	<p>1 the record, if we look at this, we see that there's</p> <p>2 a deficit of 6.4 billion in 2008-2009, 19.2 billion</p> <p>3 in 2009-2010, 14.01 billion in 2010-11, and</p> <p>4 12.9 billion in 2011-12 --</p> <p>5 A. That's correct.</p> <p>6 855 Q. -- and 9.2 billion, 2012-13.</p> <p>7 A. So that -- that, at that time,</p> <p>8 would have been perspective. I wouldn't have --</p> <p>9 856 Q. No, I understand.</p> <p>10 A. Yeah, but I -- and so what I would</p> <p>11 need to see would be the plan in terms of where</p> <p>12 we -- these are actuals, so I don't know what the</p> <p>13 plan said. That's -- frankly, that's splitting</p> <p>14 hairs. It's roughly -- that was the direction.</p> <p>15 MR. LISUS: I just want to mark this as</p> <p>16 an exhibit before we forget.</p> <p>17 MS. LA HOREY: Yeah, why don't we just</p> <p>18 identify it a bit more particularly? It's Table 23</p> <p>19 from the Public Accounts of Ontario, page 31.</p> <p>20 MR. MATTHEWS: That will be Exhibit 18.</p> <p>21 EXHIBIT NO. 18: Table 23 from the</p> <p>22 Public Accounts of Ontario, page 31.</p> <p>23 BY MR. LISUS:</p> <p>24 857 Q. What I have here is Exhibit 15 in</p> <p>25 Mr. Orsini's examination, which appears to be the</p>
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<p>1 numbers at this point.</p> <p>2 853 Q. In anticipation of this little</p> <p>3 chat, I've pulled a summary from --</p> <p>4 MS. LA HOREY: Sorry, the summary is</p> <p>5 from where?</p> <p>6 MR. LISUS: The source is Public</p> <p>7 Accounts of Ontario.</p> <p>8 THE WITNESS: Yeah, that's the</p> <p>9 province's annual report.</p> <p>10 MR. ROSENBERG: Do you have a copy for</p> <p>11 me, Counsel?</p> <p>12 MR. LISUS: There's two copies there.</p> <p>13 MS. LA HOREY: Oh, sorry, this is two</p> <p>14 documents?</p> <p>15 MR. LISUS: Yes.</p> <p>16 THE WITNESS: Two copies. It's the</p> <p>17 same document.</p> <p>18 MR. ROSENBERG: Thank you.</p> <p>19 THE WITNESS: Yeah. I was actually</p> <p>20 pretty close. So it went from 19 to 14 to 12 by</p> <p>21 the 2011-12 fiscal year. So that would be the year</p> <p>22 we were working on in the third calendar quarter of</p> <p>23 2011.</p> <p>24 BY MR. LISUS:</p> <p>25 854 Q. Right. Just for the purposes of</p>	<p>1 first overview of the recommendation and work</p> <p>2 product of the OLG strategic review process.</p> <p>3 This is distributed from Mr. Heath --</p> <p>4 if you look at the email. Just take a look at the</p> <p>5 email first. From Mr. Heath at OLG to Ms. Yeigh.</p> <p>6 And Ms. Yeigh is known to you or was known to you?</p> <p>7 A. No, I don't remember her.</p> <p>8 858 Q. Okay. Did she have any role in</p> <p>9 the decision of February 2012?</p> <p>10 A. She may well have. I don't -- but</p> <p>11 she certainly -- I don't recall her briefing me.</p> <p>12 She may well have been in meetings with me, but I</p> <p>13 don't recall her specifically.</p> <p>14 859 Q. Okay.</p> <p>15 MS. LA HOREY: OLGSB0000905.</p> <p>16 BY MR. LISUS:</p> <p>17 860 Q. Just before we get into the</p> <p>18 content of it, Mr. Duncan, it's coming from OLG to</p> <p>19 Finance?</p> <p>20 A. Mm-hm.</p> <p>21 861 Q. And if you look at the document,</p> <p>22 it says -- it's an OLG deck, and it says:</p> <p>23 "Draft confidential advice to</p> <p>24 minister."</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 206</p> <p>1 A. Mm-hm. 2 862 Q. And so what I take from this is 3 this is November 2011. OLG, working with Finance 4 officials, is preparing a deck for the purposes of 5 briefing you on the direction of the modernization 6 plan and any recommendations; is that -- 7 A. Yes. 8 863 Q. All right. Do you recall, sir, 9 actually getting a deck like this at or about this 10 time? 11 A. I certainly got a deck like this. 12 It may not have been this particular deck. 13 Typically they use the confidential advice to 14 minister to shield it from Freedom of Information 15 while a document is being discussed. 16 So if it says "confidential advice to 17 minister," that doesn't mean this document made it 18 to my hands. 19 864 Q. Right. 20 A. And typically, from my experience, 21 you know, senior officials at Finance, particularly 22 when it involves a large Crown corporation, would 23 essentially work with them to go through it, to 24 give direction, to understand the document. 25 Because ultimately the hope is that</p>	<p style="text-align: right;">Page 208</p> <p>1 it certainly -- that -- while it made a lot of 2 money for Ontario, it was -- I recall being briefed 3 that it was the largest gaming corporation in 4 North America, that the returns had not kept pace, 5 that there was a view -- strong view among 6 certainly the OLG board, my senior officials 7 through a reorganization, the government's -- the 8 income to the government from the operation could 9 be enhanced, customers could be better served, and 10 that it would be a more modern organization. 11 I mean, again, we talked about -- the 12 one part I remember was, like, for instance, 13 lottery tickets. The only place we sold lottery 14 tickets at the time pretty much were convenience 15 stores. Most Ontarians no longer use convenience 16 stores. 17 So the original model, which was 18 developed in the 1970s, had fallen out of date. 19 And so -- and our machines where the technology 20 was -- as I recall, it was very out of date. It 21 allowed some very high-profile thefts from winners. 22 There were issues around the Slots at 23 Racetrack Program. The casinos which had been a 24 source of huge profit were -- because of 25 competition on the other side of the border were no</p>
<p style="text-align: right;">Page 207</p> <p>1 when something as major as this is done over a 2 period of two years with the extensive 3 consultations that occurred as part of this 4 process, that at the end of the day, you want to 5 have a document that the government will ultimately 6 agree to. 7 865 Q. Otherwise, it's a wasted effort 8 and time? 9 A. I wouldn't characterize it as that 10 because sometimes something will get done and sit 11 on a shelf for a couple years or whatever. But the 12 idea when you appoint these -- particularly given 13 the state of affairs at OLG and the various 14 components of it and our desire to maximize the 15 government's dividend from the OLG, there would 16 have been a strong desire to move forward. 17 866 Q. Quickly? 18 A. Not quickly but to move forward. 19 Because, as you know, they're still implementing 20 parts of it. 21 867 Q. Right. When you say the state of 22 affairs at OLG in the fall of 2011, what do you 23 mean? 24 A. Well, it's in here. I 25 haven't read -- it will be in here somewhere, and</p>	<p style="text-align: right;">Page 209</p> <p>1 longer as profitable as they had been. And these 2 issues had been percolating for a very, very long 3 time. 4 868 Q. Okay. One of the things that -- 5 because you've referred to it a number of times 6 that you understood to have occurred in this 7 year-plus process was extensive stakeholder 8 consultation and analysis; right? 9 A. Yes. 10 869 Q. And I presume you understood that 11 that included stakeholders in the horse racing 12 industry? 13 A. Well, certainly they were 14 consulted widely by government agencies. You 15 pointed out ORC. They did an extensive 16 consultation. I met with them. You showed the 17 meetings I've had with people. 18 But this was very much a part of the 19 government first getting its mind around the 20 issues. And so knowing full well that if the 21 government were to adopt this policy -- and that 22 was not -- I mean, by the time this was received, 23 you know, there was no telling that the government 24 would. I mean, this was very much -- this was a 25 piece of work that ultimately my Cabinet colleagues</p>

<p style="text-align: right;">Page 210</p> <p>1 and the Premier may have said no to.</p> <p>2 870 Q. The reason I ask you the question</p> <p>3 about stakeholder consultation and analysis is</p> <p>4 because you mention it, but also it seemed it's a</p> <p>5 fairly prominent feature in this deck if you look</p> <p>6 at page 10 of the deck.</p> <p>7 A. Page 10 of the deck. Just bear</p> <p>8 with me.</p> <p>9 MS. LA HOREY: Right here.</p> <p>10 THE WITNESS: Oh, there it is. Page</p> <p>11 12. Okay.</p> <p>12 BY MR. LISUS:</p> <p>13 871 Q. Page 10 you want.</p> <p>14 A. Sorry. There's so many numbers on</p> <p>15 the page. Okay.</p> <p>16 872 Q. It says:</p> <p>17 "Six-month process of 50-plus</p> <p>18 stakeholder consultations."</p> <p>19 A. Mm-hm.</p> <p>20 873 Q. Right? And I'm not asking you,</p> <p>21 sir, or expecting you to have familiarity of what</p> <p>22 exactly those consultations were. My only question</p> <p>23 is that you understood there to have been an</p> <p>24 extensive stakeholder consultation process?</p> <p>25 A. I would have understood that</p>	<p style="text-align: right;">Page 212</p> <p>1 significant private sector experience; Mr. Godfrey</p> <p>2 in the entertainment business through his ownership</p> <p>3 with Blue Jays and a number of other initiatives he</p> <p>4 had been involved with. So, yes, I did.</p> <p>5 878 Q. Okay. So you felt this process</p> <p>6 was in good hands with Phillips and Godfrey?</p> <p>7 A. I felt that I would get an</p> <p>8 objective, well-run process. Whether or not they</p> <p>9 eventually recommended something that myself or our</p> <p>10 government would agree with, I certainly wasn't</p> <p>11 sure of that. But we gave them a mandate to go out</p> <p>12 and give us their best advice.</p> <p>13 879 Q. Fair enough. And if we look at</p> <p>14 page 22, as I read the deck, the process had</p> <p>15 identified six growth opportunities, three in each</p> <p>16 of its business lines being gaming and lottery?</p> <p>17 A. Yes.</p> <p>18 880 Q. And with respect to gaming, the</p> <p>19 first opportunity was facility location based on</p> <p>20 market demand which meant private sector building</p> <p>21 casinos in downtown Toronto, Ottawa, North Bay, and</p> <p>22 Kenora based on local demand; right?</p> <p>23 A. If I may, did they use the term --</p> <p>24 I think they were speaking more of smaller -- I</p> <p>25 forget what we wound up calling them. They weren't</p>
<p style="text-align: right;">Page 211</p> <p>1 they -- what they shared with me. I never</p> <p>2 participated in their stakeholder consultations.</p> <p>3 874 Q. I understand.</p> <p>4 A. But I took it that they had done</p> <p>5 their homework.</p> <p>6 875 Q. You took it that homework had</p> <p>7 included expert assistance we see on the right-hand</p> <p>8 side, second box:</p> <p>9 "Four-month project with</p> <p>10 Oliver Wyman to validate findings,</p> <p>11 recommendations, and overall</p> <p>12 approach."</p> <p>13 Do you see that?</p> <p>14 A. Yeah, I had no reason to question</p> <p>15 that. I didn't know who Oliver Wyman was.</p> <p>16 876 Q. At the time, this was occurring</p> <p>17 under the direction of Mr. Rod Phillips who was the</p> <p>18 fairly newly-appointed CEO?</p> <p>19 A. Yes, that's true.</p> <p>20 877 Q. Did you, as the Minister of</p> <p>21 Finance, have confidence in Mr. Phillips?</p> <p>22 A. I did, yeah. I did. I'd known</p> <p>23 Mr. Phillips. He was of another political party,</p> <p>24 as was Mr. Godfrey, both of whom had in addition to</p> <p>25 broad public sector experience, also had</p>	<p style="text-align: right;">Page 213</p> <p>1 major resort casinos like Niagara or Windsor. They</p> <p>2 were designed to be something that would serve a</p> <p>3 local population that was not served.</p> <p>4 881 Q. Okay. Serving the local</p> <p>5 populations in Toronto, Ottawa, North Bay, and</p> <p>6 Kenora, that's how I'm reading the document.</p> <p>7 A. Yes. Yeah. Those were the --</p> <p>8 those were the areas that -- well, Toronto, there's</p> <p>9 no casino in Toronto. It's the largest population</p> <p>10 base, although I think they've now approved or in</p> <p>11 the process of approving.</p> <p>12 And then Woodbine, of course. There</p> <p>13 had been many changes at Woodbine, as you know, and</p> <p>14 a range of issues there.</p> <p>15 Ottawa, again, this was tied in a lot</p> <p>16 with the horse racing industry with Rideau Centre.</p> <p>17 It had been a very contentious issue. There was --</p> <p>18 Rideau Centre, as I recall, is located some</p> <p>19 distance from the city. Many Ottawa residents were</p> <p>20 going to Hull instead of going there. So there was</p> <p>21 a many-year discussion about that.</p> <p>22 North Bay and Kenora, again, they were</p> <p>23 viewed to be under-serviced markets. My</p> <p>24 recollection is that the local folks in Kenora were</p> <p>25 most anxious to have a gaming facility. My</p>

<p style="text-align: right;">Page 214</p> <p>1 recollection is that the OLG folks weren't as keen 2 on Kenora as the -- as the local folks. 3 And North Bay, again, there seemed to 4 be a fairly large market that did not have access 5 to, particularly, slot machines. 6 882 Q. I take it whether or not casinos 7 could actually be built and hosted in these 8 municipalities was something that you had relied on 9 OLG to determine? 10 A. We had -- we had asked their 11 advice on the -- on -- this -- so I'd have to go 12 back to the original mandate that I gave them, but 13 we didn't know what they were going to come back 14 with. 15 And but ultimately, the decision to 16 host a casino would be local. The government 17 through -- I think it was that 2004-2005 document 18 had put a moratorium on new facilities. 19 And my recollection is that ultimately 20 they would have to -- ultimately there'd have to be 21 local municipal approval. I specifically remember 22 in the case of Kenora that the mayor and the local 23 Chamber of Commerce and others were most anxious to 24 have a seasonal casino. 25 883 Q. When I asked Mr. Phillips to</p>	<p style="text-align: right;">Page 216</p> <p>1 government agreed with; is that fair? 2 A. At that stage, yes. But 3 operationalization involved a number of difficult 4 decisions that impacted. The Slots at Racetrack 5 Program is a perfect example of that. 6 Once we became aware of the 7 implications of the recommendations, we had to 8 determine if it was in the best interest -- to use 9 Mr. Phillips' words, if it was in the best 10 interests of all the people of Ontario to proceed. 11 886 Q. Okay. You are aware, sir, that 12 the recommendation of OLG was to relocate slots 13 away from racetracks and build new casinos in the 14 GTA and elsewhere in the province that cannibalize 15 racetrack sites without reducing support for horse 16 racing? 17 A. Can you read that to me again? 18 887 Q. Sure. It's on page 46 of the 19 deck. Under the heading, it says: 20 "Several coordinated changes 21 need to occur to achieve the overall 22 plan." 23 A. Okay. 24 888 Q. One of the changes was to revise 25 the horse racing funding as it --</p>
<p style="text-align: right;">Page 215</p> <p>1 explain this same deck to me: 2 Q. "What this 84-page document is 3 doing essentially is answering the 4 question what should the gaming 5 marketplace look like in five years 6 based on what is in the best 7 interests of Ontarians? 8 A. Correct. 9 Q. And your agency's 10 recommendations were its considered 11 view of what the best interests of 12 Ontarians were? 13 A. Yes." 14 Do you agree with that? 15 A. Yes. 16 884 Q. I presume it's fair to say that 17 you weren't evaluating the manner in which all of 18 these opportunities might be implemented? 19 A. I'm sorry? 20 885 Q. Well, you weren't -- when you were 21 briefed on this deck and it was presented to you, 22 your role wasn't to determine how any of these 23 recommendations or ideas or opportunities actually 24 were going to be operationalized. You were 25 considering whether this was a direction that the</p>	<p style="text-align: right;">Page 217</p> <p>1 A. Where is this? I'm sorry. 2 889 Q. 1A. 3 "Allows OLG to relocate slots 4 away from racetracks." 5 Et cetera. Do you see that? 6 A. Okay. 7 890 Q. That was a -- 8 A. This is a draft document too, so 9 I'd want to see the final document. 10 891 Q. Okay. But in this draft document, 11 we can agree that OLG was not recommending reducing 12 support for horse racing? 13 A. I'm not sure. And I'm not sure 14 this is their final recommendation. This is a 15 draft. Because I was certainly advised by 16 Mr. Phillips and Mr. Godfrey -- and Mr. Godfrey is 17 on public record a number of occasions advocating 18 for the decision that was taken by the government. 19 And I don't know which draft this is either. 20 892 Q. Well, it's a draft of November 4, 21 2011. 22 MS. LA HOREY: November 7th. 23 THE WITNESS: November 7th, yeah. 24 BY MR. LISUS: 25 893 Q. And if you go over to page 48,</p>

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1 OLG's --
2 A. See, if you read the next page,
3 for instance, too, just, you know --
4 894 Q. Where are you?
5 A. I'm now on page 47.
6 "Horse racing funding model
7 must be changed to eliminate
8 distortions both for OLG and horse
9 racing."
10 The reason I think this is a draft document too, by
11 the way, is if you read the Section 1A, there's a
12 sentence there that doesn't make sense.
13 "In GTA and elsewhere in the
14 province that cannibalize racetrack
15 sites without reducing support for
16 horse racing."
17 I don't know what they mean by cannibalizing race
18 track sites.
19 895 Q. My understanding of that, sir, is
20 it would draw members of the gaming public away
21 from racetrack sites where there were slot machines
22 and into new locations in urban centres. That's my
23 understanding.
24 A. But it's talking about
25 cannibalizing racetrack sites.

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1 896 Q. Well, the only place slot machines
2 were located in November 2011 were racetrack sites;
3 right?
4 A. Yeah, which were nowhere near
5 cities, but it says here -- it's talking about
6 cannibalizing racetrack sites.
7 897 Q. But bear with me. If we agree
8 that the only place slot machines were located in
9 were racetrack sites nowhere near cities, and if
10 you put slot machines in cities, you're going to
11 draw customers away from racetrack sites; right?
12 MR. ROSENBERG: Objection. There
13 was --
14 THE WITNESS: No, they weren't -- you
15 know, the advice -- sorry.
16 R/F MR. ROSENBERG: Objection. It's not
17 accurate to the witness that slot machines existed
18 only at racetracks. That's just not true.
19 BY MR. LISUS:
20 898 Q. The majority of slot machines in
21 November 2011 existed in racetracks; correct?
22 A. I don't recall. I'd have to rely
23 on OLG for that information. What I can tell you
24 is that the concern that was expressed to me was
25 the cannibalization of the existing casinos,

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1 particularly in the case of Windsor, where you had
2 a slot machine where you were -- both sites were
3 not profitable essentially. Or I shouldn't say --
4 that's not accurate. Both sites were struggling
5 because the market was over-served.
6 899 Q. So you think this is a mistake,
7 1A, do you?
8 A. I think this is an early draft,
9 and I don't think -- it's certainly not worded very
10 well. And if you look at the next page -- and,
11 again, not having looked at this document
12 completely, I wouldn't agree with your
13 characterization of point 1A.
14 900 Q. All right. So what you're telling
15 me, sir, is that your understanding of OLG's
16 recommendation to the government was that slot
17 machines should be taken out of racetracks and the
18 revenue share with the horse racing industry should
19 be terminated effective March 2013. That's your
20 understanding of OLG's recommendation?
21 A. No, not at all. We had every
22 intention of phasing in support for the industry
23 once -- once the budget had been tabled.
24 901 Q. Where will I see that intention
25 reflected?

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1 A. You'll see it in the fact that
2 it's not ruled out in the Cabinet minute.
3 902 Q. Anywhere else?
4 A. Yeah, you'll see it in the Order
5 in Council I signed in February of -- or January,
6 February of 2013 appointing it.
7 MR. LISUS: I don't believe I have
8 that, Ms. La Horey.
9 MS. LA HOREY: Sorry, let the witness
10 finish his answer. Then you can chime in.
11 THE WITNESS: I spoke to -- I don't
12 know what Mr. Snobelen said. I first spoke to him
13 in May of 2012 about participating in a panel. It
14 occurred the day that Mr. Reeves (ph) was made a
15 member of the Order of Ontario.
16 I saw John and I asked him if he would
17 be -- and we -- I also -- I didn't speak with
18 Elmer Buchanan, but I know our government had.
19 BY MR. LISUS:
20 903 Q. Anywhere else I'll see that?
21 A. If you see a Cabinet minute that
22 does -- if you see a Cabinet minute that's very
23 clear in my view that says -- does -- that says --
24 does not -- does not rule out compensation, and it
25 doesn't lay out a time frame.

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1 So it was very clear. Program was
 2 started. There were a number of meetings. You can
 3 go back into my schedule and others, I'm sure, and
 4 find them.
 5 And then, ultimately, there was an
 6 Order in Council and I think a draft -- I may be
 7 wrong -- a draft regulation, and then the panel was
 8 appointed. Now, that was -- the work started under
 9 our successors, but it certainly happened.
 10 904 Q. That's it?
 11 A. That's all I have.
 12 MR. LISUS: I don't have the Order in
 13 Council that Mr. Duncan referred to in January or
 14 February 2012.
 15 THE WITNESS: It's one of the last
 16 things I did.
 17 BY MR. LISUS:
 18 905 Q. And what was it?
 19 A. We appointed or set the pools for
 20 the panel that was doing that.
 21 906 Q. You're talking about the
 22 appointment of the panel that would --
 23 A. Yes, that would look at it.
 24 MR. LISUS: I don't believe we have
 25 that, so can you get this to me, please,

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1 Ms. La Horey?
 2 MS. LA HOREY: It's not a discovery.
 3 MR. LISUS: What does that mean, it's
 4 not a discovery? The witness has referred to a
 5 document which he says reflects an intention on the
 6 part of government or explains its decision. It
 7 hasn't been produced, and I'm asking for it, and
 8 you're telling me this isn't a discovery?
 9 U/A MS. LA HOREY: It's not a discovery.
 10 It's a document -- Orders in Council are public
 11 documents. I'll take it under advisement whether
 12 we'll dig it out for you.
 13 THE WITNESS: It's easy enough to find.
 14 You just have to do it in opposition.
 15 BY MR. LISUS:
 16 907 Q. Now, do you see the heading on
 17 page 48?
 18 A. I'm sorry. Yes.
 19 908 Q. Where it says:
 20 "Horse racing benefits will
 21 remain intact and could grow."
 22 A. Mm-hm.
 23 909 Q. So it was OLG's recommendation at
 24 that time that the horse racing benefits will
 25 remain intact and could grow under the new model;

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1 correct? That's what it says?
 2 A. Well, again, this is a draft
 3 document. It's not even -- it's not even
 4 spell-checked, I don't think, and you see how it's
 5 printed.
 6 910 Q. All right.
 7 A. What I would suggest is that there
 8 was every intention of the race -- there was -- the
 9 recommendation I had from the OLG was that a much
 10 smaller racing industry would continue on and would
 11 better serve the industry as well as the people of
 12 Ontario.
 13 911 Q. Do I see that anywhere in any
 14 of -- let me finish the question. Do I see that
 15 anywhere in any of the OLG reports or
 16 recommendations?
 17 A. Oh, you'll find it, yes.
 18 912 Q. I will?
 19 A. That was certainly part of
 20 briefings that I was part of, yes.
 21 913 Q. So what I will find in OLG's
 22 recommendations is a recommendation that there will
 23 be a much smaller horse racing industry and that
 24 the modernization --
 25 A. I think what you'll find --

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1 914 Q. Let me finish, please.
 2 A. Don't be short with me. I'm just
 3 trying to be helpful.
 4 915 Q. You've got to let me finish the
 5 question, Mr. Duncan.
 6 A. Okay. Well, you don't need to be
 7 short with me.
 8 916 Q. I'm not being short. I'm trying
 9 to have a legible transcript. I'm going to try it
 10 again.
 11 A. Okay.
 12 917 Q. You're telling me that I will see
 13 in OLG's final report a recommendation that its
 14 plan -- its modernization plan will result in a
 15 much better smaller horse racing industry. Is that
 16 what you're telling me?
 17 A. What I think you'll see in all of
 18 their recommendations, the Cabinet minute, was that
 19 the Slots at Racetrack Program was not a successful
 20 program in spite of what the belief had been and
 21 that there was a need to change the policy.
 22 There was a specific need to close
 23 Fort Erie, Windsor, Sarnia. There was a view that
 24 was expressed to me that they weren't certain how
 25 many tracks would survive. The view was not many.

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1 They're very clear in both their public
2 statements and elsewhere that I think Ontario had
3 25 percent of the tracks in North America. The
4 market was saturated. Attendance and revenues had
5 been stagnant at best.
6 918 Q. So I'll see that in their report.
7 Now, let's mark --
8 A. I didn't say that. I said you'll
9 see it -- I've certainly briefed on that. I
10 can't -- I mean, there were dozens of reports, I
11 mean, and without having the benefit of reviewing
12 every one of them, I'm certain that they're public
13 records as well as anything that you've got in your
14 hands that reflect why the decisions were made.
15 919 Q. Okay.
16 MR. LISUS: That's the next exhibit.
17 MR. MATTHEWS: We're at Exhibit 19.
18 EXHIBIT NO. 19: OLGSB0000905 and
19 OLGSB0000906.
20 MR. LISUS: Take a five-minute break.
21 -- Recess at 3:43 p.m. --
22 -- Upon resuming at 3:55 p.m. --
23 BY MR. LISUS:
24 920 Q. So we're now in November 2011, and
25 you're in discussions with OLG about their

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1 recommendations. And we have seen the draft which
2 you think is an early draft and subsequently
3 changes; correct?
4 A. I believe that.
5 921 Q. Okay. Now, at this point in time,
6 were you having any discussions about the direction
7 that OLG was to go in with Mr. McGuinty?
8 A. Yes. By this time, we would have.
9 922 Q. Now, you say "would have." Do you
10 have a recollection or --
11 A. Yes. Yeah, because -- and part of
12 it is specific recollection, but part of it is just
13 knowing how the process unfolds.
14 923 Q. We're talking here November 11;
15 right?
16 A. We would have likely been.
17 November, maybe December, but certainly at a staff
18 level, his staff would be kept informed about the
19 document we had from OLG.
20 924 Q. When you say "his staff," who do
21 you mean? Bardeesy?
22 A. Bardeesy would have been involved.
23 David Gene at the time would have been involved. I
24 don't remember. Was Chris Morley his chief of
25 staff at the time?

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1 925 Q. Yes.
2 A. So I think Chris probably would
3 have been at least aware that this was percolating.
4 I don't recall specifically when I first sat down
5 with the Premier, but OLG modernization had been a
6 very big piece of our -- of our whole plan to get
7 back to balance and on -- certainly on the revenue
8 side.
9 926 Q. Was, remind me, OLG the most
10 profitable GBE for the government?
11 A. I don't recall, but the view
12 was -- the view was that it was not as profitable
13 as it should have been. Everything is relative.
14 927 Q. Understood.
15 A. And by the way, we went through
16 similar exercises with the other Crowns.
17 928 Q. All the other what?
18 A. All the major Crowns.
19 929 Q. Crowns. When you say "Crown," you
20 mean Crown corporation?
21 A. Yes.
22 930 Q. Right. So my question was do you
23 recall speaking with Mr. McGuinty about OLG
24 modernization in November, December 2011. And you
25 said you believe you did. You certainly believe

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1 his staff would have been involved. But do you
2 recall speaking with him?
3 A. I don't have a specific
4 recollection of speaking to him about it, but I --
5 as I said, given the way budgets happen and
6 particularly given the fact that we're in a
7 minority parliament, there would have been ongoing
8 dialogue between our offices.
9 931 Q. Right. Did you have a close
10 relationship with Mr. McGuinty in the --
11 A. Professionally, yes, we did. We
12 had a very good professional -- we're friends too.
13 In fact, I had to cancel a lunch with him once the
14 hearings -- we haven't seen him in months, but once
15 our testimony was delayed, we had planned to get
16 together once that was all done, so we had to
17 cancel that.
18 But, yes, we had a very good
19 professional relationship. Personally we're both
20 busy and so on, so -- but, yeah, very good personal
21 relationship.
22 932 Q. Okay. So I presume that he
23 wouldn't have been reviewing these decks like you
24 were?
25 A. He would have likely been given a

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1 summary, briefing by his staff.
2 933 Q. That would be Bardeesy, Gene?
3 A. Bardeesy, Gene, and Morley or some
4 combination thereof. And they would -- in turn,
5 they would -- they would have met, I'm sure, with
6 Godfrey and Rod Phillips. They would have been in
7 relatively regular communication with us.
8 And I mean, again, the reason I'm not
9 sure about the meeting was the whole OLG
10 modernization as part of the 2012 budget was not a
11 huge piece of it. It was a fairly sweeping budget
12 particularly in the context of expenditure
13 reduction and getting the government's books in
14 order.
15 934 Q. By this point in time, being late
16 fall 2011, Mr. Drummond and his commission were at
17 work as well; correct?
18 A. Yes. In fact, I think -- I forget
19 when he tabled it. Probably would have been around
20 this time.
21 935 Q. I think he tabled it in the first
22 couple months in February 2012.
23 A. That's -- I remember the weather
24 was cold.
25 936 Q. Well, that's quite a few months.

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1 Were you in communication with
2 Mr. Drummond about the OLG modernization?
3 A. No, not at that point.
4 937 Q. Did you ever --
5 A. He did -- he did -- I think he was
6 aware that it was going on, and he, as you know,
7 had a couple of recommendations around it.
8 938 Q. What did you understand his
9 recommendations to be around OLG modernization?
10 A. I don't recall right now. I
11 haven't looked at them in a while. But most of the
12 work that was done for Mr. Drummond was done by
13 Finance people, so he was, I'm sure, well aware of
14 what was going on.
15 He and I would have periodic meetings,
16 but we never discussed what his recommendations
17 were going to be. Largely, you know, he wanted the
18 latitude, and he was supposed to be independent of
19 government, certainly independent of the political
20 arm of government. And so he would have been aware
21 of this because it had been going on, as you said,
22 for two years.
23 939 Q. Was it your understanding, sir, in
24 February 2012 that Mr. Drummond recommended the
25 elimination of the revenue sharing with the horse

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1 racing industry from Slots at Racetrack Program?
2 A. I don't recall that
3 recommendation.
4 940 Q. Okay. Are you saying you don't
5 recall him making that, or you just don't recall
6 one way or another?
7 A. I don't recall one way or the
8 another. There were a number of recommendations
9 that he made that we outright rejected. There were
10 some -- like, for instance, he wanted to eliminate
11 full-day kindergarten. He suggest we do that. We
12 wouldn't do that.
13 I'm sure you'll find somewhere in
14 briefing books and so on the number of
15 recommendations we acted on versus the ones we
16 didn't act on or were in progress versus the ones
17 we just outright did not act on.
18 941 Q. But no recollection one way or the
19 other of a recommendation regarding the elimination
20 of revenue sharing with the horse racing industry?
21 A. I don't recall.
22 942 Q. Okay. And so we got on to this
23 line of questioning because I asked you whether you
24 recall in the late fall of 2011 discussing with
25 Dalton McGuinty the modernization project.

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1 And I think I've understood your
2 evidence to be that there probably was discussion.
3 There certainly was at a staff-to-staff level, but
4 you don't recall particular discussion with him?
5 A. I don't. And he would have been
6 involved in this, and he would have had some say,
7 both in the substantive decision as well as the
8 political and communications efforts that were
9 going --
10 943 Q. Did he have a view about -- in the
11 late fall of 2011 about the amount of money that
12 was shared with the horse racing industry from
13 Slots at Racetrack Program that he expressed to
14 you?
15 A. Not that I recall.
16 944 Q. Okay. Did he have a view about
17 the amount of money that was shared with the horse
18 racing industry pursuant to the Slots at Racetrack
19 Program sharing formula that he expressed to you in
20 January or February 2012?
21 A. Not that I recall. He certainly
22 had views on those matters, and he would have been
23 involved in decision making. You've asked me if I
24 recall those -- I don't recall those conversations.
25 945 Q. Do you recall his views?

<p style="text-align: right;">Page 234</p> <p>1 A. His views were -- his personal 2 views were largely about the need -- he didn't 3 express -- he -- let me just -- let me reflect just 4 for a minute. 5 His views were that our government had 6 certain priorities. Our priorities were healthcare 7 and education. Getting back to balance over what 8 was time criticized in some circles for being too 9 long a period of time, and the instructions that I 10 was given was to find efficiencies that impact less 11 on those priorities, areas for government and 12 others. 13 946 Q. Instructions by Mr. McGuinty? 14 A. Not necessarily directly, but 15 typically those things would occur, you know, 16 between his chief of staff, my chief of staff. He 17 and I would meet periodically. 18 And, again, in the context of the 19 entire budget, the OLG -- the OLG piece was 20 certainly on everyone's radar, but there were so 21 many other things in that budget that it... 22 947 Q. And then the sub-piece of the OLG 23 piece being the 345 million of revenue sharing with 24 the horse racing industry was an even lesser part 25 of --</p>	<p style="text-align: right;">Page 236</p> <p>1 prepared version of tomorrow's deck 2 for you." 3 A. Mm-hm. 4 950 Q. Yes? And also there's a copy -- 5 Number 4 says: 6 "A copy of the Star's article 7 on ORNGE 're' executive salaries." 8 I recall there being an issue about OLG executive 9 salaries in the press in late 2011. Do you recall 10 that? 11 A. That's accurate, yes. 12 951 Q. What was the issue there, and why 13 was it of concern to the government? 14 MS. LA HOREY: How is this relevant? 15 MR. LISUS: It's relevant to the 16 decisions that were made and why they were being 17 made. 18 MS. LA HOREY: I don't understand why. 19 And I'm concerned that we get into anything that 20 might be confidential. 21 MR. LISUS: Well, it's not confidential 22 if it's on the document here. 23 THE WITNESS: Actually, on an earlier 24 document, the Cabinet document, it had been 25 redacted. And I don't -- I don't, frankly,</p>
<p style="text-align: right;">Page 235</p> <p>1 A. No, it was -- it was -- listen, it 2 was very much on our radar. We knew that there 3 were -- that there would be difficult results, and 4 we knew that this would be very difficult. 5 You know, at home, I had to close a 6 local racetrack. I had friends in the industry. 7 It was not -- it was not an easy decision. None of 8 the decisions were. It was a difficult budget 9 period. You know, the 2009, '10, '11, '12, '13 -- 10 well, 2012-13 budgets were all very difficult. 11 948 Q. I'm going to show you a document, 12 sir, OLG1782, which is an email with a deck. Now, 13 this is December 15, and it emanates from Will Hill 14 to Paul Godfrey with a carbon copy to Rod Phillips, 15 the CEO. 16 And it's about tomorrow's meeting, and 17 it is entitled "Minister's Second Meeting With 18 Chair." And it includes chair's remarks and a 19 PowerPoint. You see that from the attachments. 20 A. Mm-hm. 21 949 Q. If we take a look at the email, 22 number 2 says: 23 "Guidelines on topic for your 24 in-camera session formulated solely 25 with Rod's input and a specially</p>	<p style="text-align: right;">Page 237</p> <p>1 remember the specifics of the issue. 2 BY MR. LISUS: 3 952 Q. Well, if we look at the document 4 page 663, there's -- are you with me? 5 A. I am. 6 953 Q. There's reference to WEG. That's 7 Woodbine Entertainment Group executive 8 compensation; right? 9 A. Yes. 10 954 Q. And it says there were concerns 11 about salaries or bonuses at Woodbine? 12 A. Mm-hm. 13 955 Q. Yes? You have to say "yes" or 14 "no." 15 A. Yes. I wasn't sure if you were 16 finished. 17 956 Q. Okay. In any event, attached to 18 this discussion points or talking points for the 19 chair of OLG is a deck. Okay? 20 A. Okay. 21 957 Q. Do you see that, OLG strategic 22 direction? 23 A. Yes. 24 958 Q. Draft discussion document for 25 Minister Duncan?</p>

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1 A. Yes.
2 959 Q. Okay. You were meeting with
3 Mr. Godfrey and Mr. Phillips -- I presume you did
4 meet with Mr. Godfrey and Mr. Phillips?
5 A. Oh, yes. And as I said earlier in
6 the day, my recollection is normally it would be
7 quarterly. I'm sure around this time, there were
8 additional meetings.
9 960 Q. Right. And part of -- well, the
10 purpose of the meeting is to discuss the OLG
11 strategic direction; right?
12 A. Yes.
13 961 Q. But included in those discussions
14 is discussion about issues of executive
15 compensation, ORNGE, stirs in the media. Why was
16 that part of the discussion about OLG
17 modernization?
18 MS. LA HOREY: I'm not sure that this
19 is relevant.
20 MR. LISUS: I think it's very relevant.
21 MS. LA HOREY: Well, why don't you
22 explain the relevance, and we can consider it.
23 MR. LISUS: Well, I'll do that in the
24 absence of the witness. That's an invitation for
25 you to step out briefly, Mr. Duncan.

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1 THE WITNESS: Okay.
2 MR. LISUS: Thank you.
3 If decisions are being made for reasons
4 extraneous to bona fide gaming policy issues, then
5 that is something I'm entitled to explore. It
6 clearly was linked to the decision-making process,
7 and it's pleaded.
8 MS. LA HOREY: That compensation --
9 there's something in the --
10 MR. LISUS: I'm just giving you my
11 position, Ms. La Horey.
12 MR. ROSENBERG: It's news to me. I
13 don't see the relevance either.
14 MS. LA HOREY: There's a very vague
15 pleading, but -- like, this is the first time I'm
16 hearing about this.
17 MR. LISUS: Well, I don't have to give
18 you advance notice of my cross-examination topics.
19 MS. LA HOREY: Well, you do in the
20 sense that they have to be pleaded.
21 MR. LISUS: It is pleaded.
22 MS. LA HOREY: Not that there's some
23 link between OLG compensation and --
24 MR. LISUS: We have pleaded that there
25 was not bona fide policy making, it was irrational,

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1 made in bad faith, and disinform that analysis,
2 but if you don't --
3 MS. LA HOREY: I understand that.
4 MR. LISUS: Just refuse and let's get
5 on with it.
6 R/F MS. LA HOREY: Okay. We'll refuse.
7 Can someone go get Mr. Duncan?
8 MR. ROSENBERG: Why don't we just get
9 the question clearly on the record, and you can
10 refuse it.
11 MS. LA HOREY: Just can we go back for
12 a second? I'm just going to have a conversation
13 with Mr. Rosenberg.
14 -- Recess at 4:14 p.m. --
15 -- Upon resuming at 4:16 p.m. --
16 MS. LA HOREY: Well, just ask your
17 question, and I'll give you my position of whether
18 the witness can answer.
19 MR. LISUS: I'm not going to do this
20 question by question.
21 MS. LA HOREY: Well, ask your question.
22 BY MR. LISUS:
23 962 Q. At this meeting, there was the
24 identification for discussion with you of issues
25 relating to WEG executive compensation. Do you

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1 recall that?
2 A. Yes.
3 963 Q. And I recall there being issues or
4 commentary in the public realm, as the document
5 says, creating stir now in the media. Do you
6 recall there being such issues in the media?
7 A. No. I don't know what you're
8 referring to.
9 964 Q. Do you recall there being --
10 A. Were they issues -- comments
11 attributed to me?
12 965 Q. No. I don't recall. No, I don't
13 believe they were.
14 MS. LA HOREY: Sorry, what page are you
15 looking at, Counsel?
16 BY MR. LISUS:
17 966 Q. Let's take this step by step. Do
18 you recall there being issues of concern to your
19 government about WEG executive compensation in late
20 2011?
21 A. I recall that there were issues of
22 concern with the OLG.
23 967 Q. What were the issues of concern?
24 A. I don't recall.
25 968 Q. Okay. Do you recall there being

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<p>1 issues regarding ORNGE in December --</p> <p>2 A. Well, that was widely reported</p> <p>3 subject to police investigation, so on.</p> <p>4 969 Q. And why were you discussing issues</p> <p>5 with respect to ORNGE at a meeting with OLG</p> <p>6 officials regarding the modernization report?</p> <p>7 A. I -- they prepared this document.</p> <p>8 I don't recall why we would have been.</p> <p>9 970 Q. Do you recall there being any</p> <p>10 discussion about it?</p> <p>11 A. About? There were discussions</p> <p>12 about executive compensation at WEG, yes.</p> <p>13 971 Q. Okay. Were there discussions</p> <p>14 about ORNGE and ORNGE receipt of --</p> <p>15 A. I don't recall that.</p> <p>16 972 Q. Okay. So here is the deck that</p> <p>17 was also discussed at that meeting.</p> <p>18 A. Mm-hm.</p> <p>19 973 Q. It's a draft discussion document</p> <p>20 for Minister Duncan edited December 14, 2011. If</p> <p>21 we look at page 15 of the deck, it's OLG1785-0015.</p> <p>22 We see under the heading "Relocating Sites Closer</p> <p>23 to Population Centres." Do you see that?</p> <p>24 A. Yes.</p> <p>25 974 Q. Do you recall there being a</p>	<p>1 A. I can't remember if the government</p> <p>2 took a position on that. We certainly discussed</p> <p>3 it, and I can't remember the specific discussions,</p> <p>4 but ultimately we all agreed that it was a decision</p> <p>5 for the municipality. I was disappointed, frankly,</p> <p>6 when they opted against a downtown site.</p> <p>7 981 Q. So you, as Minister of Finance,</p> <p>8 were in favour of having a casino in downtown</p> <p>9 Toronto?</p> <p>10 A. I was in favour of having a casino</p> <p>11 in Toronto. I was open -- I thought the best</p> <p>12 choice would be the downtown area, but I was not</p> <p>13 close to there being -- like, Woodbine had a</p> <p>14 proposal on the table for many years and so on.</p> <p>15 I think ultimately that's where they went.</p> <p>16 982 Q. If we go to page 704, under the</p> <p>17 heading "Work Completed," we see the bullet:</p> <p>18 "Ministry staff developed a</p> <p>19 draft horse racing funding</p> <p>20 transition plan."</p> <p>21 Right?</p> <p>22 A. Yes.</p> <p>23 983 Q. Was it your understanding, sir,</p> <p>24 that as of December the 15th, 2011, that ministry</p> <p>25 staff had developed a draft horse racing funding</p>
<p>1 discussion about the plan to relocate --</p> <p>2 A. Yes.</p> <p>3 975 Q. -- sites closer to population</p> <p>4 centres?</p> <p>5 And the next page identifies new growth</p> <p>6 opportunities. Do you understand the acronym PVG?</p> <p>7 A. I don't, no.</p> <p>8 976 Q. I think that's Paul V. Godfrey, a</p> <p>9 speaking point.</p> <p>10 "There is a real need to meet</p> <p>11 demand for casino-style</p> <p>12 entertainment in the GTA with option</p> <p>13 1 being the strong preference."</p> <p>14 A. Yes, I do recall that.</p> <p>15 977 Q. Remind me, sir, when your last day</p> <p>16 in government was. Was it February --</p> <p>17 A. February 13th, 2013.</p> <p>18 978 Q. So you were in government when the</p> <p>19 whole casino debate --</p> <p>20 A. Oh, yes.</p> <p>21 979 Q. Were you in favour of a downtown</p> <p>22 casino?</p> <p>23 A. I was.</p> <p>24 980 Q. Was Mr. McGuinty in favour of a</p> <p>25 downtown casino?</p>	<p>1 transition plan?</p> <p>2 A. We had certainly discussed the</p> <p>3 need for a transition plan.</p> <p>4 984 Q. Okay.</p> <p>5 A. I note, by the way, just on that</p> <p>6 earlier page that you had referenced around the</p> <p>7 relocation of slot machines, there's no reference</p> <p>8 anymore. And that's why I'm concerned about the</p> <p>9 timing of the documents, which draft it is.</p> <p>10 There's no reference around preserving all of the</p> <p>11 existing slots at racetracks.</p> <p>12 985 Q. Preserving the funding you mean?</p> <p>13 A. Well, the original wording that</p> <p>14 they used in that earlier draft document they</p> <p>15 shared with me.</p> <p>16 986 Q. Right. And so the wording that</p> <p>17 they used in the earlier draft document for clarity</p> <p>18 being -- so Exhibit 19, Mr. Duncan, that we</p> <p>19 discussed, which was --</p> <p>20 MS. LA HOREY: Of this examination?</p> <p>21 MR. LISUS: Yes.</p> <p>22 BY MR. LISUS:</p> <p>23 987 Q. -- which was the OLG draft of</p> <p>24 November 4. That draft had the language of</p> <p>25 preserving funding to the horse racing industry.</p>

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1	Remember?	1	998 Q. Bottom of the page. You'll see
2	A. Yes.	2	under the subheading "Funding":
3	988 Q. Okay.	3	"Slots at Racetrack funding
4	A. Although I thought it was very	4	will be phased out over a five-year
5	unclear and very poorly written.	5	period. First-year funding is
6	989 Q. Right. The draft that we see that	6	status quo followed by a 25 percent
7	is the subject of your meeting with Mr. Godfrey --	7	year reduction in the following
8	A. Is there a reference to that in	8	years, i.e., moving from 340 million
9	there?	9	annually in year one, 255 million in
10	990 Q. -- on December 15, 2011, the only	10	year two, 170 million in year three,
11	thing that it says about horse racing funding is	11	85 million in year four. By year
12	that the ministry staff developed draft horse	12	five, the only government support
13	racing funding --	13	available to the industry will be
14	A. Yes.	14	the PMTR."
15	991 Q. -- transition plan?	15	Now, if we track the sequence that we just
16	A. Yes.	16	discussed, sir, November 4 there's a deck in which
17	992 Q. So was it your understanding, sir,	17	OLG says that horse racing funding will be
18	that in between November 4, 2011, and December 15,	18	maintained. December 15th, there's a deck --
19	2011, the ministry had developed a draft horse	19	A. I didn't read it that way, just
20	racing funding transition plan?	20	for the record.
21	A. With the OLG.	21	999 Q. I understand.
22	993 Q. Good.	22	A. I didn't see that in there.
23	MR. LISUS: We'll just mark this deck	23	1000 Q. All right. December 15th, there's
24	that we've just gone through as Exhibit 20. And	24	a deck which says that Finance has developed a
25	that, sir, is consistent with my understanding of	25	draft transition plan?
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1	the documents. Exhibit 20?	1	A. Yes.
2	MR. MATTHEWS: Yes.	2	1001 Q. And on December 12th, being three
3	EXHIBIT NO. 20: OLGSB0001782 to	3	days before December 15th, we see a draft
4	OLBSB0001785.	4	transition plan?
5	BY MR. LISUS:	5	A. Yes.
6	994 Q. I'm showing you an email dated	6	1002 Q. Now, did you direct Finance to
7	December the 12th, which is an email from	7	develop the draft transition plan, or was that done
8	Elizabeth Yeigh to Brad Partington. Do you know	8	by someone else?
9	who that is?	9	A. I was certainly aware of it. I
10	A. No.	10	don't recall if I -- but our government felt that
11	995 Q. What we have here is an email that	11	there had to be a transition. The first part of
12	says:	12	the transition would be the one-year contractual
13	"OLG materials for DM	13	obligation.
14	briefing."	14	And our view was that once the
15	A. Deputy minister.	15	government had formulated its decision and
16	996 Q. Yes. And when we look at the	16	announced it, at that point in time, we should
17	document that's attached to it, sir, the first page	17	begin to have discussions with the industry as to
18	is proposed five-year approach horse racing	18	how -- what form it takes and if there were things
19	industry. Do you see that?	19	that we didn't see or understand.
20	A. Yes.	20	1003 Q. So what you're telling me is that
21	997 Q. And it says under "Funding," the	21	in December of 2011, it was your ministry's view
22	last bullet on the page:	22	that the Slots at Racetrack Program revenue share
23	"Slots at Racetrack Program" --	23	with the industry should end at April 1, 2013,
24	A. I'm sorry. I apologize. Where's	24	which was the one-year notice period, and
25	that?	25	thereafter, there should be a five-year phase-out?

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<p>1 A. We thought that it should be five 2 years. I don't think we ever took a decision on 3 that. The Cabinet didn't take a decision. That 4 was deliberately left so that there could be 5 further discussions once the government's decision 6 had been made public. 7 And the other issue we were faced with 8 was a minority parliament and whether or not the 9 budget would be defeated. 10 1004 Q. Explain the connection of the 11 other issue. 12 A. I'm sorry. Which other issue? 13 1005 Q. You said the other issue being we 14 had a minority government and the fact that the 15 budget -- 16 A. Well, there was a chance the 17 budget would be defeated. In fact, right up until 18 the day before, we thought the budget was going to 19 be defeated. The third party stopped talking to 20 us. 21 Ultimately, they agreed to allow the 22 budget to pass. I think they abstained, if I'm not 23 mistaken, to ensure that there wouldn't be enough 24 votes to defeat the government. 25 1006 Q. So who came up with the five-year</p>	<p>1 A. In December 2011, I was of the 2 view that there had to be transition, that this was 3 simply not a matter of turning off the tap. We had 4 to leave the issue of how much transition funding, 5 what time frame to post-introduction of the budget. 6 We wanted to have a broader consultation. We 7 needed -- we weren't sure the budget would be 8 passed. 9 1012 Q. That's helpful, and I understand 10 that. Your view in December 2011, then January and 11 February 2012 was that there had to be some kind of 12 phase-out over time, but you were going to 13 determine that after the decision to end revenue 14 share was announced in the budget. Have I got that 15 right? 16 A. Not entirely. First of all, based 17 on the advice of the OLG and my officials, the 18 Slots at Racetrack Program was not working, that it 19 did not assist the industry, that much of the money 20 was going out of the country, that we -- in fact, 21 we were cannibalizing ourselves, that changes -- 22 repeated changes, repeated consultations resulted 23 in an industry that was heavily divided where track 24 owners, horse people, regulator didn't get along. 25 You've presented some letters of</p>
Page 251	Page 253
<p>1 phase-out? 2 A. You know, I assume that that -- we 3 were very clear with our officials that there had 4 to be a transition. 5 1007 Q. Who? 6 A. Me. 7 1008 Q. But who came up -- if you don't 8 know, just tell me. 9 A. I don't know. 10 1009 Q. Okay. 11 A. I don't know. What I do know is 12 that we made it very clear that this wasn't going 13 to be a matter of simply turning off the taps all 14 at once. 15 We weren't sure if it should be five 16 years or needed to be longer. We weren't familiar 17 with things like the breeding cycle of -- you know, 18 and so we were -- we left open, very wide open, the 19 question of what compensation would look like. 20 1010 Q. Okay. 21 A. And deliberately so, I might add. 22 1011 Q. All right. And is that as much as 23 you can tell me, sir, about how the five-year 24 phase-out approach which I see in this document 25 came into existence in December 2011?</p>	<p>1 concerns that had been expressed to me at the time 2 by horse people. I also recall having complaints 3 from track owners. 4 1013 Q. Did you have a sense of how much 5 of the money was going out of the country? 6 A. Not at that point. I don't recall 7 having it. 8 1014 Q. Did you subsequently get a sense 9 of how much? 10 A. Yes. 11 1015 Q. Okay. And when was that? 12 A. Would have been just before the 13 budget because I'd asked for greater -- I don't 14 remember what portion, but I was told it was a 15 substantial portion. 16 1016 Q. Like, upwards of 50 percent? 17 A. Well, we wanted to get a sense of 18 that. That's part of the reason why we wanted to 19 get our policy -- first of all, at this point, I 20 don't believe the government had approved the 21 policy. I don't recall the precise time lines. 22 And we knew that it would be contentious within our 23 own group. 24 Then we had to -- then we decided that 25 rather than lay out the transition program in the</p>

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1 budget, it would be better to wait until the budget
2 was public. People could digest everything that
3 was there knowing that we had at least a year.
4 And as a government, we had the -- we
5 had the added option that if, say, six months went
6 by and we weren't getting as far as we wanted, we
7 could extend that. We were interested in helping
8 transition through.
9 1017 Q. One of the reasons you wanted to
10 do it that way, as I understand it, is because you
11 didn't, at this point, understand things like the
12 breeding cycle?
13 A. No, we thought we did, and we
14 had -- it turned out, I think, we did have a good
15 understanding. But we wanted, again, given the
16 sensitivity of it, given the fact that we knew full
17 well that people would be dislocated, there would
18 be -- you know, there would be people who would be
19 affected by this decision, we felt we had an
20 obligation to use that year to determine
21 transition.
22 1018 Q. And the question I was asking you,
23 sir, is you told me that you did, at or around
24 budget time, become aware of how much of the
25 345 million was leaving the country. So how

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1 much --
2 A. I don't recall the number. I
3 do -- that -- by the way, that was one of a number
4 of factors that went into the decision.
5 1019 Q. I understand.
6 A. I knew, for instance, based on the
7 advice of OLG, that the tracks weren't efficiently
8 run. I knew, for instance, that they were in the
9 wrong -- the slot machines were in the wrong places
10 by and large. There were some that were in the
11 right place and that they had -- you've seen the
12 documentation.
13 I knew that in -- certainly in two
14 instances, there was a very real view, and one of
15 the reasons I agreed to the closure of Windsor
16 Raceway was because of the impact it was having on
17 Caesars Windsor. I don't know if it was Caesars
18 Windsor at the time or not, that it was
19 cannibalizing the business.
20 The introduction of three casinos in
21 Detroit had changed the dynamics. They presented
22 information to me at the time that said that most
23 of that business would move to Caesars if the Slots
24 at Racetrack Program wasn't there.
25 Most people, I was also advised,

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1 weren't going for the horse racing. They were
2 going for the off-track betting.
3 1020 Q. Okay. Let me just ask you this:
4 The five-year approach that Finance staff comes up
5 with, do you know what it was based on and how they
6 arrived at it?
7 A. No.
8 1021 Q. Okay. Thank you.
9 A. I gave them direction, however, to
10 look at transition and give the government options.
11 And I'm sure there were a host of other papers that
12 led up to this one looking at different options.
13 1022 Q. Did you discuss this proposed
14 approach with Mr. Seiling?
15 A. No.
16 1023 Q. Did you discuss this proposed
17 approach with Mr. McMeekin?
18 A. I would have. I'm not sure if it
19 occurred before the budget was introduced.
20 1024 Q. Or after?
21 A. I don't recall when.
22 MR. LISUS: It's 4:30. Do you want to
23 adjourn until tomorrow?
24 MS. LA HOREY: Off the record.
25 -- OFF THE RECORD DISCUSSION --


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1 MR. MATTHEWS: We just want to mark the
2 document we were last looking at, being CRE18299
3 and its attachment, as Exhibit 21.
4 EXHIBIT NO. 21: CRE0018299,
5 CRE0018301, and CRE0018303.
6 MS. LA HOREY: Just for the record,
7 Mr. Lisus is saying that we're done for the day at
8 4:39. My concern is that we give everyone enough
9 time to ask their questions, including time for OLG
10 and Ontario to examine.
11 Mr. Lisus has said he'll be done by
12 4:30 tomorrow. That does not allow us time to
13 examine. We've offered to stay here later tonight
14 until 5:30, and we're offering tomorrow to start at
15 9 o'clock if Mr. Duncan is available.
16 THE WITNESS: Yeah, I'll make myself
17 available.
18 MS. LA HOREY: Mr. Duncan is available
19 at 9 o'clock.
20 MR. LISUS: We can start at 9 o'clock
21 if that's helpful to you.
22 Mr. Duncan, you have a hard stop when?
23 THE WITNESS: 5 o'clock tomorrow.
24 MS. LA HOREY: Okay. We'll start at 9
25 tomorrow, if that's okay with the reporter.

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1 THE COURT REPORTER: Yes.
2 MS. LA HOREY: Thank you.
3 -- Whereupon the cross-examination adjourned at
4 4:40 p.m. --
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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 26th day of March 2018.
19
20
21 
22
23 NEESON COURT REPORTING INC.
24 PER: CARISSA STABBLER, RPR, CSR
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