

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

DWIGHT DUNCAN
March 16, 2018

neesons

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Toronto, ON M5K 1A2
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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.,

Page 261

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 Continued 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 16th 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 Stabler, RPR, CSR

Page 262

1 I N D E X
 2
 3 WITNESS: DWIGHT DOUGLAS DUNCAN
 4 PAGE
 5 CONTINUED CROSS-EXAMINATION BY..... 265
 6 MR. LISUS
 7 CROSS-EXAMINATION BY MR. ROSENBERG..... 390
 8 CROSS-EXAMINATION BY MS. LA HOREY..... 455
 9 RECROSS-EXAMINATION BY MR. LISUS..... 456
 10
 11
 12 **The following list of undertakings, advisements
 13 and refusals is meant as a guide only for the
 14 assistance of counsel and no other purpose**
 15
 16
 17 INDEX OF UNDERTAKINGS
 18 The questions/requests undertaken are noted by U/T
 19 and appear on the following pages: 292:16
 20
 21
 22 INDEX OF ADVISEMENTS
 23 (NONE MARKED)
 24
 25

Page 263

1 INDEX OF REFUSALS
 2 The questions/requests refused are noted by R/F and
 3 appear on the following pages: 311:16, 322:20,
 4 323:1, 358:16
 5
 6
 7 INDEX OF EXHIBITS
 8
 9
 10 NUMBER/DESCRIPTION PAGE/LINE NO.
 11 A for Identification: CRE0028760 to 304:7
 12 CRE0028763.
 13 B for Identification: CRE0029902 and 316:15
 14 CRE0029903.
 15 22: Document entitled "Ontario 365:19
 16 Finance Minister Dwight Duncan,
 17 Remarks to the Economic Club of
 18 Canada, February 13, 2012"
 19 C for Identification: April 24, 2012, 374:14
 20 Toronto Star article entitled "Ontario
 21 budget: Child care and anti-poverty
 22 advocates cheer Liberal-NDP deal."
 23 23: Document entitled "Official 383:3
 24 Report of Debates (Hansard)" dated
 25 Tuesday, March 20, 2012.

Page 264

1 24: Document entitled "Official 384:13
 2 Report of Debates (Hansard)" dated
 3 Wednesday, March 21, 2012.
 4 25: Document entitled "Official 387:1
 5 Report of Debates (Hansard)" dated
 6 Wednesday, April 18, 2012.
 7 26: Document entitled "Official 387:14
 8 Report of Debates (Hansard)" dated
 9 Thursday, April 26, 2012.
 10 D for Identification: CRE0080521 and 465:13
 11 CRE0080522.
 12 E for Identification: CRE0080704. 465:15
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<p style="text-align: right;">Page 265</p> <p>1 -- Upon Commencing at 9:05 a.m. --</p> <p>2 DWIGHT DOUGLAS DUNCAN: PREVIOUSLY</p> <p>3 AFFIRMED.</p> <p>4 CONTINUED CROSS-EXAMINATION BY</p> <p>5 MR. LISUS:</p> <p>6 1025 Q. Good morning, Mr. Duncan.</p> <p>7 Yesterday I asked you about Exhibit 19, which is a</p> <p>8 deck dated November 4, 2011.</p> <p>9 A. That was the one that said draft</p> <p>10 deck?</p> <p>11 1026 Q. Draft Workshop Document, yes.</p> <p>12 MS. LA HOREY: Do you have a copy for</p> <p>13 the witness, please.</p> <p>14 BY MR. LISUS:</p> <p>15 1027 Q. I want to show you a document</p> <p>16 which was Exhibit Number 3 on Mr. Shortill's</p> <p>17 examination and Exhibit 21 on Blair Stransky's</p> <p>18 examination. Now, I take it, sir, that you were</p> <p>19 aware --</p> <p>20 MS. LA HOREY: Sorry, where's</p> <p>21 Exhibit 21? You said you were showing the witness.</p> <p>22 Oh, I see. Okay. It's the same document. It's</p> <p>23 not two different documents.</p> <p>24 BY MR. LISUS:</p> <p>25 1028 Q. In mid-November 2011, I take it</p>	<p style="text-align: right;">Page 267</p> <p>1 A. I don't ever recall seeing or</p> <p>2 hearing that name.</p> <p>3 1034 Q. My understanding is that as part</p> <p>4 of the OLG modernization project, they had</p> <p>5 different work streams, and the gaming innovation</p> <p>6 project was one of the work streams.</p> <p>7 And change 1A, which you may recall</p> <p>8 from yesterday's deck, was revised horse racing</p> <p>9 funding for greater accountability. Do you</p> <p>10 remember that?</p> <p>11 A. Yes, I do, yeah.</p> <p>12 1035 Q. There's a recommendation on this</p> <p>13 page 2 which says:</p> <p>14 "At government's direction,</p> <p>15 horse racing will continue to</p> <p>16 benefit from gaming proceeds, but</p> <p>17 that funding should no longer be</p> <p>18 limited to the specific location of</p> <p>19 slot machines."</p> <p>20 MS. LA HOREY: Sorry, where is this</p> <p>21 again?</p> <p>22 MR. LISUS: Under the heading "GIP</p> <p>23 Recommendation."</p> <p>24 THE WITNESS: Okay.</p> <p>25 BY MR. LISUS:</p>
<p style="text-align: right;">Page 266</p> <p>1 that you were aware that Mr. Shortill had been</p> <p>2 working with OLG on the modernization project?</p> <p>3 A. Yes.</p> <p>4 1029 Q. And I presume you understood that</p> <p>5 he was up to date with the recommendations as they</p> <p>6 were evolving coming out of OLG?</p> <p>7 A. I wouldn't have understood that.</p> <p>8 1030 Q. This is a document sent by OLG to</p> <p>9 Mr. Stransky and Mr. Shortill. And on the second</p> <p>10 page of it, it says:</p> <p>11 "GIP recommendation."</p> <p>12 Do you know what the acronym GIP is?</p> <p>13 A. I'm sorry. I don't.</p> <p>14 1031 Q. I understand it to be gaming</p> <p>15 innovation project.</p> <p>16 A. Never heard of it.</p> <p>17 1032 Q. Okay. If we look at the first</p> <p>18 page, this is -- it says:</p> <p>19 "Gaming innovation project</p> <p>20 stakeholder analysis and</p> <p>21 engagement."</p> <p>22 A. It was the gaming innovation</p> <p>23 project and OLG.</p> <p>24 1033 Q. I think it's another term for</p> <p>25 modernization.</p>	<p style="text-align: right;">Page 268</p> <p>1 1036 Q. "Rather, separate pools of funds</p> <p>2 should be created for track</p> <p>3 operators and horse people likely</p> <p>4 taken as a percentage of overall</p> <p>5 OLG revenue."</p> <p>6 So do you recall discussion of this recommendation?</p> <p>7 A. No.</p> <p>8 1037 Q. Okay. And it goes on to identify</p> <p>9 specific actions -- do you see that? -- including</p> <p>10 triggering the exit clauses in each of the 17</p> <p>11 siteholder agreements with racetrack operators.</p> <p>12 A. I'm sorry. I don't see that.</p> <p>13 1038 Q. Specific actions contemplated.</p> <p>14 A. Oh, I see.</p> <p>15 MS. LA HOREY: While the witness looks</p> <p>16 at it, Mr. Rosenberg has walked in the room. Let's</p> <p>17 get him caught up. Exhibit 21 to Stransky,</p> <p>18 OLGSB000970.</p> <p>19 BY MR. LISUS:</p> <p>20 1039 Q. And if you go over the page,</p> <p>21 Number 5 of specific actions contemplated is:</p> <p>22 "To design a new method that</p> <p>23 flows funding from provincial gaming</p> <p>24 to the entire horse racing sector</p> <p>25 perhaps involving the appointment of</p>

<p style="text-align: right;">Page 269</p> <p>1 an individual or a new body to 2 maintain the health of the sport and 3 industry." 4 Do you remember discussing that specific action 5 with -- 6 A. We discussed a range of options. 7 This is one document. I don't know. This is draft 8 document 1A. For all I know, there could have -- 9 but that -- there was always the premise that there 10 would be some support to the industry, certainly in 11 transition. And that is what we wound up doing. 12 1040 Q. And that is what is being 13 discussed here? 14 A. Among other things. I do recall 15 that there were documents. There were discussions 16 around a whole range of issues about how to 17 transition the industry away from the subsidy and 18 into a viable program that would allow the industry 19 to continue on a commercially viable basis. 20 1041 Q. You're saying that the provision 21 of that kind of funding was being contemplated for 22 the period after the termination of revenue share 23 from Slots at Racetrack Program? 24 A. I don't recall specifically, but 25 there was the intent to transition.</p>	<p style="text-align: right;">Page 271</p> <p>1 "no." 2 THE WITNESS: Yes. 3 BY MR. LISUS: 4 1045 Q. It's stated "Draft Discussion 5 Document for Minister Duncan"? 6 A. Yes. I do want to note that a 7 draft document would not have made it to me. 8 That's why it's a draft. So this would not have 9 been the final document that came to me. 10 1046 Q. Okay. It would have gone to your 11 staff -- 12 A. Chief. Yeah, absolutely. They 13 would have likely been involved in preparation of 14 the document. 15 1047 Q. Right. And we're talking there 16 about Mr. Shortill? 17 A. Yes. And I believe Blair would 18 have -- Blair Stransky would have been involved as 19 well and perhaps other staff members. 20 1048 Q. Okay. I want to just have you 21 look, please, at page 18 of the deck. 22 A. Okay. 23 1049 Q. So page 18 of the deck identifies 24 considerations for transitioning existing 25 operators?</p>
<p style="text-align: right;">Page 270</p> <p>1 1042 Q. If you look at "key stakeholders 2 considerations," it also appears what is being 3 contemplated is the notion that with an expected 4 improvement in OLG's overall performance, it's 5 possible the horse racing sector could benefit 6 proportionately. Do you see that? 7 A. Along with the comment about the 8 stakeholder pain (ph) points, yes, I do. And that 9 was the essence of the discussion, cross-arrange of 10 options. 11 1043 Q. Thank you. I want to show you 12 another document now which is dated November 28, 13 2011, and it's Exhibit K on the examination of 14 Mr. Shortill. 15 MS. LA HOREY: Just for the record, it 16 is -- do you have a doc ID number on it? 17 MR. LISUS: Doesn't seem to have one. 18 MS. LA HOREY: Okay. 19 MR. ROSENBERG: I believe it's 20 Exhibit DD to Mr. Flynn's Affidavit. 21 MS. LA HOREY: Okay. 22 BY MR. LISUS: 23 1044 Q. Now, this is November 28th, 2011? 24 A. Mm-hm. 25 MS. LA HOREY: You need to say "yes" or</p>	<p style="text-align: right;">Page 272</p> <p>1 A. Yes. 2 1050 Q. Just to pick up on a point you 3 gave me a minute ago, Mr. Duncan, these drafts go 4 back and forth between your senior staffers and 5 senior folks -- 6 A. Mm-hm. 7 1051 Q. -- at OLG; correct? 8 A. Yes. 9 1052 Q. And obviously they're doing that 10 for the purposes of understanding and evaluating 11 the recommendations being considered by OLG -- 12 A. Yes. 13 1053 Q. -- for the purposes of briefing 14 you and giving -- 15 A. Yes. 16 1054 Q. -- and giving you their reactions? 17 A. And for the purpose of briefing 18 the OLG. 19 MS. LA HOREY: Sorry, Mr. Duncan, you 20 need to let Mr. Lisus finish his question or else 21 Carissa will be very unhappy with both of you. 22 BY MR. LISUS: 23 1055 Q. You were explaining for the 24 purposes of giving OLG recommendations or their 25 views on OLG's recommendations and giving you their</p>

Page 273		Page 275	
1	views on OLG's recommendations and proposed	1	just to be clear, is the money generated from the
2	recommendations?	2	slot machines; right?
3	A. As well as they're giving OLG	3	A. It was money that was out of the
4	their sense of kind of how the government would	4	government's consolidated revenue fund that could
5	respond to a document of this nature.	5	be used for other purposes.
6	1056 Q. And I understand your point, that	6	1063 Q. It was money out of the
7	you would not be receiving and reviewing drafts;	7	government's consolidated revenue fund?
8	right?	8	A. In the sense that -- from the
9	A. That's correct. Now, I couldn't	9	policy perspective that this was being looked at.
10	tell you how often these things would turn around.	10	1064 Q. I know that's your position,
11	You know, for instance, on a budget document,	11	Mr. Duncan. I'm not arguing with you. I just want
12	typically there'd be between 20 and 30 turnarounds.	12	to make sure we're talking about the same revenue
13	1057 Q. When you say "a budget	13	stream.
14	document" --	14	A. Yes, we are. We look at it
15	A. The budget and the parts that go	15	differently.
16	into it. And they -- they're both to make sure	16	1065 Q. Yes.
17	that, you know, there's clarity, that everything	17	A. Thank you.
18	has been fact checked.	18	1066 Q. And it says under the first
19	And, you know, in the period leading up	19	bullet:
20	to a budget, there could be new information that	20	"Need to develop transition
21	goes in. The point is there would have been a	21	plan for horse racing and municipal
22	number of documents exchanged between -- I don't	22	funding prior to triggering
23	know how many. And typically I would not see a	23	termination clauses."
24	draft document.	24	Do you see that?
25	1058 Q. Makes sense. The considerations	25	A. Yeah.
Page 274		Page 276	
1	or the consideration identified by OLG as of	1	1067 Q. And we discussed yesterday that we
2	November 28 for Slots at Racetrack was that the	2	saw Finance shortly after November 28 develop a
3	termination clauses in the siteholder contracts	3	five-year transition plan?
4	would be exercised?	4	A. Yes.
5	A. Yes.	5	1068 Q. And if we go over to page 21, the
6	1059 Q. Do you understand what that meant	6	first bullet under "Next Steps" says:
7	in late November 2011?	7	"Confirm timing for government
8	A. I understood at the high level	8	decision points regarding horse
9	that it would mean -- it was essentially a one-year	9	racing and municipal transition
10	notice period, that they would continue to be	10	funding and policy objectives."
11	funded for a year.	11	Right?
12	My recollection is that a number of	12	A. Mm-hm.
13	them reacted differently. I think a couple of	13	1069 Q. Yes?
14	tracks just stopped. But so at a high level, yes,	14	A. Yes.
15	I understood that that triggered the end of the	15	1070 Q. What I'm understanding from the
16	contract and that there was a one -- they would be	16	sequence is that it was as a result of these
17	funded for one year.	17	identified next steps and considerations that
18	1060 Q. When you say "funded," they would	18	Finance appears to, shortly after November 28,
19	participate in the revenue-sharing formula from the	19	generate a proposed five-year transition plan that
20	prescribed lottery scheme?	20	we talked about yesterday. Do you remember that?
21	A. It was a subsidy, yes.	21	A. Yes.
22	1061 Q. Pardon?	22	1071 Q. Okay. Do you recall discussing
23	A. It was a subsidy, and they would	23	with Mr. Shortill the development of a five-year
24	continue to receive the money.	24	transition plan?
25	1062 Q. But the money we're talking about,	25	A. Not specifically, but it was very

Page 277

1 clearly part of an ongoing discussion.
 2 1072 Q. Okay. And --
 3 A. It wasn't just a five-year plan.
 4 There were options, as I recall, but the clear
 5 point was that there was -- at that -- by November
 6 of -- that was a draft document. By November of
 7 '11, we probably had not landed on what we thought
 8 a transition plan would look like.
 9 By then, we would have been also
 10 thinking about when we would announce it. Would it
 11 be part of the budget or not. Would we wait until
 12 after the budget before the triggering of the
 13 clauses.
 14 Again, it was -- the principle was
 15 there that there would be transition funding, and
 16 some of the strategic or tactical considerations
 17 aren't reflected in that.
 18 1073 Q. Right. And so just tracking the
 19 chronology, we looked at the document dated
 20 November 28, and then I believe we looked yesterday
 21 at the five-year plan developed by Finance, perhaps
 22 in a different document. But here's the document
 23 which appears --
 24 A. And this is another draft
 25 document. I have no idea how many draft documents

Page 278

1 were out there. And the reason they're draft
 2 documents is because there may not have been
 3 acceptance of any or all of the stuff in a document
 4 like this.
 5 1074 Q. Right. So here we see on
 6 Thursday, December 8 Ms. Yeigh circulating to folks
 7 at OLG and in Finance, in particular, Barry Goodwin
 8 and Tanya Watkins, a draft five-year approach that
 9 we have developed?
 10 A. Yeah, it's a draft.
 11 1075 Q. Well, she says:
 12 "This is preliminary thinking,
 13 and we are looking to the OLG group
 14 to provide us with feedback on
 15 durability."
 16 Right?
 17 A. Yeah.
 18 1076 Q. If we go over to the second page,
 19 it's proposed five-year approach horse racing
 20 industry, and it says:
 21 "Funding - Slots at Racetrack
 22 Program funding will be phased out
 23 over a five-year period."
 24 And it gives the metrics; right?
 25 A. Yes.

Page 279

1 1077 Q. I take it you wouldn't have known
 2 about this proposed approach because --
 3 A. I wouldn't have known about this
 4 document. By this point in time, I likely would
 5 have known that these were the sorts of things that
 6 were under consideration.
 7 1078 Q. Okay. Thank you.
 8 A. Typically what would happen, just
 9 for your understanding, is while these discussions
 10 were going on between senior officials in OLG and
 11 my staff, senior officials in OLG, typically I
 12 would be verbally kept in the loop.
 13 1079 Q. By Mr. Shortill?
 14 A. Mr. Shortill or Mr. Stransky.
 15 Even sometimes it might be the deputy as well.
 16 1080 Q. The deputy was Orsini at the time?
 17 A. Orsini or his delegate.
 18 1081 Q. Mr. Shortill testified that he was
 19 speaking with you, and he made recommendations to
 20 you. Does that assist your --
 21 MS. LA HOREY: Why don't you finish
 22 your question, and then I'm going to interject.
 23 BY MR. LISUS:
 24 1082 Q. Does that assist your recollection
 25 as to being briefed by Mr. Shortill about these

Page 280

1 issues?
 2 MS. LA HOREY: Just to be clear, just
 3 because this was marked as an examination [sic] to
 4 Mr. Shortill's examination doesn't mean that he
 5 testified he recollected it. And, in fact, it
 6 was --
 7 MR. LISUS: I'm not saying he
 8 recollected it.
 9 MS. LA HOREY: I want to just be clear
 10 and fair to the witness. Just because it was
 11 marked as Mr. Shortill's examination, doesn't mean
 12 he said he saw it. In fact, it was marked as
 13 Exhibit A, which means he didn't see it.
 14 MR. LISUS: I'm asking a different
 15 question.
 16 THE WITNESS: So, no, I don't need it
 17 to jog my recollection because it was a standard --
 18 you know, typically senior staff on my staff,
 19 senior officials, we would -- you know, it might
 20 even be a conversation walking between two
 21 buildings.
 22 Frankly, I don't remember the specifics
 23 of this largely because there were so many other --
 24 it was budget preparation time, so there was --
 25 this was a very small piece of one part of a rather

Page 281

1 large budget.
 2 MR. LISUS: Right.
 3 MR. MATTHEWS: Just so the record is
 4 clear, we've been looking at Exhibit A to
 5 Mr. Shortill's examination.
 6 BY MR. LISUS:
 7 1083 Q. And going forward to December 28,
 8 2011, this is Exhibit L on Mr. Shortill's
 9 examination. I just want to take a look at the
 10 email with you because we got this document from
 11 OLG, and the email indicates that --
 12 A. Sorry, who's it from?
 13 1084 Q. It doesn't say who it's from, but
 14 it -- in terms of a field on the email; however,
 15 the text of it says:
 16 "Hi, Larissa. Please find
 17 attached the draft slide for
 18 inclusion in your deck. Note this
 19 slide has been approved by the ADMO.
 20 Thanks. Brad."
 21 And we understand Brad to be Brad Partington. Have
 22 you heard the name Brad Partington?
 23 A. I think his name has been on some
 24 of the lists, but other than that, no.
 25 1085 Q. Okay. And ADMO would be an

Page 282

1 acronym for --
 2 A. Assistant deputy minister's
 3 office.
 4 1086 Q. And that would be Mr. Goodwin?
 5 A. Barry Goodwin, yes.
 6 1087 Q. If we look at the document, we see
 7 that this is another proposed approach identifying
 8 current status proposed approach and
 9 considerations. And this approach appears to be a
 10 three-year plan to assist the industry in becoming
 11 viable with reduced government support.
 12 So there's been a change from a
 13 five-year plan to a three-year plan?
 14 A. No, there hasn't been a change of
 15 anything. There's been discussions around options.
 16 1088 Q. There's a new option?
 17 A. One option.
 18 1089 Q. Pardon?
 19 A. One possible option.
 20 1090 Q. A new possible option; right?
 21 A. I'm not sure if it was new or not.
 22 1091 Q. This is the first time I've seen
 23 it. Do you know?
 24 A. I don't recall. But, I mean,
 25 these decks are being -- are going around

Page 283

1 relatively junior officials. I have no idea whose
 2 hands they -- this one went to Barry, and he was
 3 CCed on it, which typically meant just to keep him
 4 apprised of these discussions I would assume were
 5 going on.
 6 And so none of this would -- and it's
 7 very clearly marked "proposed." It's draft. And
 8 there were -- like I say, my recollection is that
 9 there were, over several weeks, pros and cons of
 10 any approach. But the bottom line was that there
 11 had to be a transition. There had to be support
 12 through that transition.
 13 And, again, it's hard for me to look at
 14 one document among fairly junior officials. It's
 15 written over the holiday, Christmas week. And by
 16 this time, we're down to the -- you know, we're
 17 obviously down to the -- to the -- to the narrow
 18 issues around -- we've decided there's going to be
 19 transition funding. We're now discussing what that
 20 transition funding would look like.
 21 1092 Q. So you are telling me that you
 22 recollect that as of December 28th, that the
 23 government had decided there was going to be
 24 transition funding after the --
 25 A. I'm not saying --

Page 284

1 1093 Q. You've got to let me finish --
 2 after the end of the one-year notice period?
 3 A. No. You put words in my mouth.
 4 What I said was the government had -- and I don't
 5 believe it would have been formally decided, but
 6 what I read in reviewing these documents reminds me
 7 that there was continuing, and every one of these
 8 documents talks about transition funding, a new way
 9 to fund the industry at reduced levels and that
 10 there was a considerable back-and-forth.
 11 1094 Q. Transition funding commencing
 12 when?
 13 A. There was no decision on that. We
 14 debated that at some length. I think as I
 15 indicated in earlier testimony, my view was that we
 16 would -- we would end the budget announce and
 17 then --
 18 1095 Q. Announce what?
 19 A. Announce the end of the Slots at
 20 Racetrack Program. And that subsequent to that, we
 21 would begin to discuss. We were having a very
 22 robust discussion internally. And the reason for
 23 that was we were very committed to transition
 24 funding, and that began to take place in 2012.
 25 1096 Q. And when you say that began to

Page 285

1 take place in 2012, are you referring to the
2 \$50 million over three years that was announced in
3 2012?
4 A. No. I'm talking about a range of
5 things that began to happen. Discussions with
6 potential board members, discussions with the
7 industry, implementation time frames, discussion
8 with tracks. So there was --
9 1097 Q. I'm just talking about the funding
10 that you say was implemented in 2012.
11 A. We -- I didn't say -- I didn't use
12 the word "implement." I said we began discussions
13 in 2012.
14 1098 Q. All right.
15 A. So it was not implemented. In
16 fact, I don't believe it was implemented until
17 after I left office. May have been some cash -- I
18 know -- I think one or two tracks just shut down.
19 1099 Q. Why were you, sir, committed to
20 the idea of transition funding?
21 A. To assist the industry get off its
22 subsidy. The industry was -- the people just
23 weren't going to see horse racing, according to the
24 advice I had from all the experts.
25 1100 Q. So as of certainly December 28 --

Page 286

1 I just want to look at the details of it with you.
2 There's a proposed approach which says that:
3 "Government announces end of
4 SARP April 2012 to be determined."
5 And that, I suppose, would --
6 A. Probably hadn't landed the date
7 for the budget.
8 1101 Q. Right. And you also were thinking
9 whether you announce it before or after?
10 A. No, I think it was decided --
11 I think it's fair to say that it would be -- part
12 of the OLG modernization would be contained in the
13 budget.
14 1102 Q. And so payments under SARP
15 continue for 2012-2013. That's the one-year notice
16 period?
17 A. That's the one-year termination
18 period, yes.
19 1103 Q. And then beginning 2014, OLG
20 returns funds to the consolidated revenue fund for
21 distribution by government to the industry via
22 transfer payments; right?
23 A. That was one option. I don't ever
24 recall having that discussion. I certainly recall
25 the decision not to deal with transition funding in

Page 287

1 the budget document because we knew we had a
2 one-year transition.
3 1104 Q. So then what this contemplates is
4 that by 2015-16, industry receives 100 million in
5 annual transfer payments from government for
6 expenses such as operating costs?
7 A. I just -- again, that -- there
8 were different numbers that were discussed at the
9 time. And I suspect what happened when these
10 documents went among people, they looked at those
11 kinds of things.
12 We -- I don't believe we ever arrived
13 at a specific number for what the longer term would
14 look like. I do recall that -- I do recall there
15 were discussions as to how many tracks were
16 actually viable in Ontario, because at that time,
17 something like 25 percent of horse tracks in
18 North America were in this province.
19 Many of them were running without full
20 cards. Many of the horses on the cards were
21 American. Purses -- a lot of the purses were going
22 to the United States. The breeding industry was --
23 the more successful horses were coming out of the
24 United States.
25 So for a whole bunch of reasons, we

Page 288

1 decided that it would be better to deal with
2 compensation in the one-year period subsequent
3 to -- dealing with those kinds of issues in
4 consultation with the industry subsequent to the
5 termination of the agreements.
6 1105 Q. I haven't seen any document where
7 that kind of thinking is reflected. Have you seen
8 any document where that kind of --
9 A. Well, this happened. I mean,
10 documents don't reflect the full -- I mean, you're
11 using a document, for instance, that would have
12 never seen the light of day.
13 1106 Q. You're talking about --
14 A. I never saw this document, this
15 exhibit, whichever one you put in front of me. So
16 this would have been gone -- this would have
17 circulated among mid- or lower-level officials.
18 They were -- they were kicking around
19 options to brief their bosses who, in turn,
20 ultimately would come to the government for a
21 decision and ultimately the Cabinet minute, which
22 is silent on the issue of compensation would
23 govern.
24 And then subsequent, of course, to the
25 budget, I did speeches. There were consultations

<p style="text-align: right;">Page 289</p> <p>1 begun with the industry and others and ultimately, 2 as I recall, resulted in a commitment by our 3 successor government in 2014 of a substantial 4 amount of money.</p> <p>5 1107 Q. So just to pick up on a comment 6 you made referring to that document, which I think 7 is Exhibit L on Mr. Shortill's examination.</p> <p>8 A. Yes.</p> <p>9 1108 Q. You say this proposed approach was 10 never seen by you and never saw the light of day?</p> <p>11 A. I said this document was never 12 seen by me.</p> <p>13 1109 Q. Right. What about the proposed 14 approach?</p> <p>15 A. I don't recall because there 16 were -- you know, like, there were ongoing formal 17 discussions and informal discussions. All I recall 18 is that there was a very specific commitment to 19 transition funding. How do we get it right? 20 We felt it best to leave it until after 21 the budget for a variety of reasons, including to 22 have more in-depth discussions with the industry 23 itself, the tracks, the horse people --</p> <p>24 1110 Q. The breeders?</p> <p>25 A. -- the breeders and also the</p>	<p style="text-align: right;">Page 291</p> <p>1 1113 Q. Fair enough. Let me show you the 2 final government deck put forward by OLG. It's 3 Exhibit B to the examination of Mr. Shortill. This 4 is now --</p> <p>5 A. This does say "draft discussion 6 document" again. It's dated January 20th.</p> <p>7 1114 Q. Right. The cover email in Finance 8 says "government deck final PowerPoint."</p> <p>9 A. Yeah, but that's not what the deck 10 says.</p> <p>11 1115 Q. I understand.</p> <p>12 A. I don't know if this was the deck 13 that was actually attached to that email. The 14 document is marked "draft."</p> <p>15 1116 Q. Mr. Duncan, I'm just going with 16 what the government gave me.</p> <p>17 A. Well, this is what you gave me, 18 and this is -- this document, I doubt, was attached 19 to this. This says "final." This says "draft."</p> <p>20 1117 Q. All right.</p> <p>21 A. So there's been a -- in my view, 22 looking at this, this is not a final document.</p> <p>23 MS. LA HOREY: Sorry, Mr. Duncan, it 24 may not be a final document, but it was attached 25 because that's our document production.</p>
<p style="text-align: right;">Page 290</p> <p>1 opposition. We were in a minority parliament. 2 So all of those factors, we made the 3 decision that we would have to get much more input 4 to make sure we get it right.</p> <p>5 What I see in these documents -- I 6 think what -- as I recall, just sort of the way the 7 thinking evolved was that the compensation and 8 transition to a new model was complex for a variety 9 of reasons.</p> <p>10 And we were interested to get it right 11 because we were interested in having a commercially 12 viable, sustainable industry in Ontario.</p> <p>13 1111 Q. And you were interested in taking 14 all the steps necessary to get it right so you 15 would have a commercially viable, sustainable 16 industry in Ontario; right?</p> <p>17 A. Yes.</p> <p>18 1112 Q. Would you have seen the final 19 government deck containing the proposed 20 recommendations of OLG with respect to 21 modernization and funding to the horse racing 22 industry?</p> <p>23 A. I would have seen their final 24 proposed deck. It's not a final deck if the 25 government doesn't agree to it.</p>	<p style="text-align: right;">Page 292</p> <p>1 THE WITNESS: Well, my experience with 2 these things now is that there's a clear 3 inconsistency. This says "final." This says 4 "draft."</p> <p>5 BY MR. LISUS: 6 1118 Q. All right. Well, would you 7 confirm for me, Ms. La Horey, that this is the 8 final version?</p> <p>9 MS. LA HOREY: Well, it's called 10 "final." That may be the distinguishing factor. 11 What's called "final" may still be a draft.</p> <p>12 THE WITNESS: With respect, in budget 13 proceedings, there's a distinct difference between 14 final and draft. I'm sorry, but I don't accept 15 this as a final version.</p> <p>16 U/T MS. LA HOREY: We will check our 17 records and let you know if that email was 18 attached.</p> <p>19 THE WITNESS: I have no idea how people 20 manage emails, but anything that says "draft"...</p> <p>21 BY MR. LISUS: 22 1119 Q. Mr. Duncan, we know that on 23 January 28, 2012, Finance personnel are circulating 24 this deck.</p> <p>25 A. To who?</p>

<p style="text-align: right;">Page 293</p> <p>1 1120 Q. To each other. Okay?</p> <p>2 A. Anyone else? Just curious.</p> <p>3 1121 Q. I don't know how I can answer more</p> <p>4 than --</p> <p>5 A. Well, you know -- if you know</p> <p>6 who -- so it was only to Finance officials? Not to</p> <p>7 me?</p> <p>8 1122 Q. I don't know that it went to you.</p> <p>9 A. Am I -- I assume there's an email</p> <p>10 or some kind of distribution list.</p> <p>11 1123 Q. Sir, I'm taking from your answers</p> <p>12 that you don't believe that you were included in</p> <p>13 this deck, and that's fine.</p> <p>14 A. I didn't -- no, I said that. What</p> <p>15 I simply -- I didn't say that. What I said was</p> <p>16 this draft -- this says "draft."</p> <p>17 1124 Q. Sir, all I'm doing is establishing</p> <p>18 a time line. I'm not attributing anything to you.</p> <p>19 I'm just establishing a time line.</p> <p>20 A. And that's not my concern. I just</p> <p>21 want to make sure in establishing that time line</p> <p>22 this is not viewed to be government policy.</p> <p>23 I don't know if we were briefed on the</p> <p>24 entirety of this. I don't see anybody in my office</p> <p>25 or in the Premier's office. I don't know who</p>	<p style="text-align: right;">Page 295</p> <p>1 this now, I suspect this was done for presentation</p> <p>2 by a senior official to me. Because there are</p> <p>3 talking points on the bottom of this.</p> <p>4 BY MR. LISUS:</p> <p>5 1129 Q. What you're referring to is</p> <p>6 page --</p> <p>7 A. 24.</p> <p>8 1130 Q. -- of Exhibit B on the examination</p> <p>9 of Mr. Shortill?</p> <p>10 MS. LA HOREY: Which is, for the</p> <p>11 record, CRE0087520.</p> <p>12 THE WITNESS: And, again, this -- so it</p> <p>13 looks to me what this document is is the draft</p> <p>14 presentation that officials might give to me or to</p> <p>15 somebody higher.</p> <p>16 This may -- I don't know again. It's</p> <p>17 hard to know who this is going to. I don't know</p> <p>18 who Tanya Watkins is. This may be going to the</p> <p>19 ADM. It may be going eventually to the -- this --</p> <p>20 the point here is that it looks to me like somebody</p> <p>21 is drafting up a proposed final presentation to</p> <p>22 somebody, and it's not clear who that goes to.</p> <p>23 BY MR. LISUS:</p> <p>24 1131 Q. Right. Take a look at Slide 27.</p> <p>25 A. So, yeah, clearly my colleagues</p>
<p style="text-align: right;">Page 294</p> <p>1 Terry O. is.</p> <p>2 1125 Q. Okay. Well, let's just agree that</p> <p>3 in this deck on page 24, it had the proposed</p> <p>4 approach which we looked at a minute ago.</p> <p>5 A. Can I see the previous document,</p> <p>6 please?</p> <p>7 1126 Q. Exhibit L to the examination of</p> <p>8 Mr. Shortill.</p> <p>9 A. So this is dated --</p> <p>10 1127 Q. The exhibit on Mr. Shortill's</p> <p>11 examination is December 28, the deck you have is</p> <p>12 dated January 20, and the cover email is</p> <p>13 January 26.</p> <p>14 A. And there were no documents in</p> <p>15 between? That's a month, almost a month.</p> <p>16 1128 Q. There's a draft in between on the</p> <p>17 19th. Do you want me to do the prior draft? Maybe</p> <p>18 I should do that.</p> <p>19 A. No, no, I'm just trying to</p> <p>20 understand what the totality of documents are</p> <p>21 because there are some -- it's hard to see</p> <p>22 because --</p> <p>23 MS. LA HOREY: Can you go to the bottom</p> <p>24 of the page on the screen? It might be clearer.</p> <p>25 THE WITNESS: I suspect -- looking at</p>	<p style="text-align: right;">Page 296</p> <p>1 haven't seen this yet.</p> <p>2 1132 Q. Right. When you say your</p> <p>3 colleagues, you're referring to your Cabinet --</p> <p>4 A. Cabinet colleagues.</p> <p>5 1133 Q. The Slide 27 says that:</p> <p>6 "There's a placeholder for a</p> <p>7 custom slide based on ministry."</p> <p>8 What do you understand that to mean?</p> <p>9 A. Probably the Ministry of Finance,</p> <p>10 Treasury Board, and perhaps the ministries that</p> <p>11 these ministers have responsibility for would be --</p> <p>12 what this is -- what this says is clearly this is</p> <p>13 not a final document even though the email calls it</p> <p>14 a final document.</p> <p>15 That's what I mean by -- I'm having</p> <p>16 difficulty with the way records are being put in</p> <p>17 front of me. This is clearly not a final document.</p> <p>18 It's clear that these -- what this tells me is that</p> <p>19 there have been considerable discussions between</p> <p>20 Finance and OLG that likely these departments,</p> <p>21 ministries probably have not -- are not privy to</p> <p>22 the most recent discussions.</p> <p>23 And likely as well, there would have</p> <p>24 been involvement by the Premier staff, you know, in</p> <p>25 that period between -- as I think I indicated to</p>

Page 297

1 you, typically on budget cycle, the government
 2 settles on sort of the main themes of the budget in
 3 late October, early November.
 4 Senior officials in central agencies
 5 are then tasked to begin to put together the
 6 documentation we need.
 7 1134 Q. Okay. Thank you, Mr. Duncan.
 8 That's helpful to me.
 9 You did ask whether or not there was a
 10 prior version of this, and there is a prior
 11 version, which was Exhibit 23 on the examination of
 12 Mr. Stransky and Exhibit 4 on the examination of
 13 Mr. Shortill. That's the week before.
 14 MS. LA HOREY: This is CRE0028760.
 15 BY MR. LISUS:
 16 1135 Q. As of --
 17 A. Can I just finish reading this?
 18 Were you going to ask questions about this
 19 document?
 20 1136 Q. I'm going to ask you some general
 21 questions.
 22 A. I would like to -- there is a
 23 letter here. It's a generic letter called --
 24 1137 Q. What is that?
 25 A. It's in your document.

Page 298

1 1138 Q. No, what is a generic letter?
 2 A. I don't know. That's what it's
 3 called here. Draft confidential advice to
 4 minister, generic letter.
 5 1139 Q. Okay.
 6 A. It doesn't say who was going to
 7 sign this or who it's intended for.
 8 1140 Q. To the extent it matters, it
 9 appears the draft generic letter is from minister
 10 Godfrey.
 11 A. He wasn't a minister.
 12 1141 Q. Excuse me Paul Godfrey, Chairman
 13 Godfrey.
 14 A. I just highlight it to point out
 15 what I believe to be kind of the incompleteness of
 16 what I'm being asked to comment on.
 17 1142 Q. I haven't asked you to comment on
 18 anything.
 19 A. You handed me a document. Ask me
 20 what you like. I just -- I want to make that
 21 point.
 22 1143 Q. My only point, sir, is that at
 23 Slide 24, there is the proposed approach as we've
 24 seen it, the three-year --
 25 A. But there's an inconsistency if

Page 299

1 you read the letter up front.
 2 1144 Q. What's the inconsistency?
 3 A. It says -- it talks about the
 4 final element in the plan. I'll let you read that.
 5 That's my point.
 6 1145 Q. What's the inconsistency?
 7 A. You can read it.
 8 1146 Q. Show me where it is.
 9 A. No, you -- I just read it. I
 10 pointed out where it's at. You can have a look at
 11 that.
 12 1147 Q. I'm not seeing where you pointed
 13 out, Mr. Duncan.
 14 A. Okay.
 15 1148 Q. What is the inconsistency you see
 16 in the letter with Slide 24?
 17 A. I'll leave that to you. Perhaps
 18 you won't see it.
 19 1149 Q. Mr. Duncan, that's not the way
 20 this exercise works. You say there's an
 21 inconsistency between the letter and Slide 24.
 22 What's the inconsistency that you see?
 23 A. I'm going to have to review
 24 Slide 24 again just to make sure it's consistent
 25 with the other ones.

Page 300

1 MS. LA HOREY: Why don't you give
 2 Mr. Duncan a minute to read the document.
 3 THE WITNESS: It will take more than a
 4 minute. This is how many dozens of pages.
 5 MS. LA HOREY: It was a figurative
 6 minute, not an actual minute.
 7 BY MR. LISUS:
 8 1150 Q. I just want to understand the
 9 inconsistency you pointed out to me, sir. That's
 10 all.
 11 A. The inconsistency --
 12 MS. LA HOREY: Sorry, why don't you
 13 both stop talking for a minute, and Mr. Duncan can
 14 read the letter and read the slide, and then we can
 15 have a question.
 16 MR. LISUS: Well, he's already given
 17 the evidence that he sees an inconsistency.
 18 BY MR. LISUS:
 19 1151 Q. The only question is just show me
 20 where I can see the inconsistency. That's my only
 21 question, sir.
 22 MS. LA HOREY: Give him some time to
 23 look and answer your question. You're not being
 24 fair to him.
 25 THE WITNESS: This document says that

<p style="text-align: right;">Page 301</p> <p>1 the government hasn't arrived at what it's going to 2 do, and then this document has a very clear plan. 3 And it's all in the same document. 4 MR. LISUS: I just need you to show me 5 the word so I can follow along with you. 6 MS. LA HOREY: We'll give you the 7 pages. 8 THE WITNESS: Here, it's under -- it's 9 in this letter, this draft confidential advice 10 generic letter. It's on page 4, review of horse 11 race funding. 12 BY MR. LISUS: 13 1152 Q. Slow down. Yes. 14 A. And it says: 15 "I understand the Ministry of 16 Finance" -- 17 1153 Q. Slowly. If you're going to read 18 it out loud -- 19 A. I apologize. The second 20 paragraph, you can look at that, and then you can 21 compare it in your mind to what's outlined in 22 this -- in the -- on page 24. 23 1154 Q. Okay. What is the inconsistency, 24 sir? 25 A. Well, this which is a Finance</p>	<p style="text-align: right;">Page 303</p> <p>1 letter, doesn't indicate -- doesn't concur that 2 there's been a proposed agreement, which, in my 3 view, has been talked about on a number of 4 occasions. 5 1161 Q. And that proposed agreement that's 6 been talked about on a number of occasions is in 7 Slide 24? 8 A. Yes. 9 1162 Q. All right. 10 A. Under proposed approach. It's the 11 one that you raised with me. 12 1163 Q. All right. Thank you. 13 MR. LISUS: That's the next exhibit on 14 Mr. Duncan's examination. 15 MS. LA HOREY: We'll mark it as a 16 lettered exhibit. He can't identify it. 17 MR. LISUS: I'm not going to quibble 18 with you, but I -- 19 THE WITNESS: Well, it's important 20 because you're asking me to comment -- 21 MR. LISUS: Sir, it doesn't matter. 22 MS. LA HOREY: Mr. Duncan, I've already 23 indicated that we're going to mark it as a lettered 24 exhibit. 25 MR. ROSENBERG: Just to be clear, what</p>
<p style="text-align: right;">Page 302</p> <p>1 document. 2 1155 Q. The letter? 3 A. OLG with the proposed approach -- 4 has a proposed approach. This letter, in my view, 5 there isn't an approach. 6 1156 Q. There is or isn't? 7 A. There isn't an approach. 8 1157 Q. It says there is not an approach? 9 A. That's what I see. It's clear 10 from that letter that they don't -- it's saying 11 basically that a decision hasn't been taken. I see 12 that as inconsistent because this has been subject 13 now of three discussions. It stayed in here. 14 1158 Q. You're indicating Slide 24? 15 A. Yes. 16 1159 Q. Okay. And so it's been the 17 subject of three discussions in the proposed -- 18 A. No, it's been the subject of three 19 notes at least that you've shown me on separate 20 dates over a period of a month, and it has stayed 21 in there. 22 1160 Q. And what's the significance of 23 that? 24 A. Well, the significance, in my 25 mind, is that in the letter, the supposed generic</p>	<p style="text-align: right;">Page 304</p> <p>1 we're marking is Exhibit 4 on Mr. Shortill's 2 examination? 3 MR. LISUS: Exhibit 4 on Shortill, 23 4 on Stransky. 5 MR. MATTHEWS: Now A for 6 Identification. 7 EXHIBIT NO. A for Identification: 8 CRE0028760 to CRE0028763. 9 THE WITNESS: I'd like a break, please. 10 MS. LA HOREY: Sure. 11 -- Recess at 9:57 a.m. -- 12 -- Upon resuming at 10:08 a.m. -- 13 BY MR. LISUS: 14 1164 Q. In the January 2012 time period 15 where these various decks were circulating and 16 proposed approaches being discussed, did you 17 discuss any of them with Mr. Seiling? 18 A. I don't remember. 19 1165 Q. And I want to show you Exhibit C 20 on the examination of Mr. Shortill. Are you aware, 21 sir, whether anyone on your staff discussed the 22 proposed approach with OMAFRA prior to the Cabinet 23 meeting? 24 A. No, I'm not aware. 25 1166 Q. Okay. So this is a note from</p>

<p style="text-align: right;">Page 305</p> <p>1 Mr. Linley in OMAFRA to Mr. Stransky and 2 Mr. Keegan. It's an email from Mr. Linley to 3 Mr. Stransky and Mr. Keegan which Mr. Stransky then 4 forwards on. And it's an information note from 5 OMAFRA dated January 27, 2012. 6 MS. LA HOREY: While the witness is 7 reading it, let me put in a CRE number for the 8 record. CRE0029902 and following. 9 BY MR. LISUS: 10 1167 Q. Now, you -- 11 A. I haven't finished reading it. So 12 I'm -- so this is actually the note that Blair 13 would have sent to Linley. This is not an OMAFRA 14 note. 15 1168 Q. It is an OMAFRA note. It's from 16 Thom Hagerty with input from Ramona Cameletti, 17 David -- 18 A. And these are all -- because 19 then -- yeah, Guelph. So they've obviously been 20 provided with a lot of -- the ministry with -- I 21 mean, this is more detail than those minor-level 22 documents you had me look at earlier, a lot more 23 detail. So it tells me that those earlier 24 documents were really just way behind what was 25 actually happening.</p>	<p style="text-align: right;">Page 307</p> <p>1 relevant to OMAFRA were eliminating Slots at 2 Racetrack Program that currently transfers 3 approximately 345 million to the horse racing 4 industry in -- 5 MS. LA HOREY: Sorry, Mr. Lisus, where 6 are you reading from? I'm not following. 7 MR. LISUS: The first page. 8 MS. LA HOREY: Let us pick it up. 9 Okay. We got it. 10 BY MR. LISUS: 11 1173 Q. "In favour of a new transfer 12 payment program kept at 100 million 13 to support the industry in 14 Ontario." 15 And that's the proposed approach we've seen in the 16 previous decks; correct? 17 A. No. My recollection -- wasn't it 18 500 million? There was different numbers than 19 this. Am I right or wrong? I don't have them in 20 front of me, and I've had three decks of about 30 21 pages each. 22 1174 Q. All of which have the same thing. 23 A. No, I don't believe so. 24 1175 Q. In any event, what OMAFRA -- 25 A. No, not in any event.</p>
<p style="text-align: right;">Page 306</p> <p>1 See the date on this? It's four 2 days -- well, actually it's dated the day before 3 that last draft document, and so they must have 4 been provided and kept this information. 5 1169 Q. Right. And the information that 6 they were provided, as reflected in the notes, was: 7 "The elimination of SARP in 8 favour of a new transfer payment 9 program to support the horse racing 10 industry will shift the sector to a 11 more market-based approach and is 12 expected to require this industry to 13 transition to a financially 14 sustainable size." 15 Right? 16 A. Yes. 17 1170 Q. What OMAFRA was briefed on was: 18 "Transition to the lower 19 funding level will be phased in over 20 a three-year period." 21 Right? 22 A. Mm-hm. 23 1171 Q. Yes? 24 A. Yes. 25 1172 Q. And that the specific aspects</p>	<p style="text-align: right;">Page 308</p> <p>1 MS. LA HOREY: Hang on. If you want 2 him to agree that it's the same thing, then give 3 them to the witness. If you want the documents and 4 you'll make your arguments with the documents, then 5 you can do that, but don't put a proposition to the 6 witness, say it's the same thing, and then in any 7 event. Okay? 8 BY MR. LISUS: 9 1176 Q. What OMAFRA -- 10 A. I just want to be clear. It's not 11 the same thing, from my perspective. Very 12 different. 13 1177 Q. What OMAFRA was briefed on was 14 eliminating the Slots at Racetrack Program in 15 favour of a new transfer payment program capped at 16 100 million to support the industry in Ontario; 17 right? 18 MS. LA HOREY: You're reading from 19 paragraph 1 again. 20 THE WITNESS: You're reading what a 21 briefing note says. 22 MS. LA HOREY: It's an information 23 note. 24 THE WITNESS: It's an information note. 25 MR. ROSENBERG: Didn't you say this was</p>

Page 309		Page 311	
1	an OMAFRA document?	1	1181 Q. It says:
2	MS. LA HOREY: Sorry?	2	"Ministry of Finance is
3	MR. ROSENBERG: You say OMFRA was	3	scheduled" --
4	briefed. This is, as I understand it, an OMAFRA	4	MS. LA HOREY: Where are you now?
5	briefing.	5	BY MR. LISUS:
6	THE WITNESS: Yeah, this -- this -- I	6	1182 Q. "Ministry of Finance is
7	don't get this. I mean --	7	scheduled" --
8	MS. LA HOREY: The witness hasn't seen	8	A. I'm sorry. Which page?
9	the document. It's some slots from OMAFRA. It's	9	1183 Q. First page. I'll walk through the
10	prepared from somebody who's got a 519 area code,	10	document with you.
11	which is -- well, it's an OMAFRA number.	11	"-- is scheduled at the jobs
12	BY MR. LISUS:	12	and economic policy committee on
13	1178 Q. Let's see if I can help you.	13	February 7."
14	"Purpose of note: To outline	14	Did you go to the jobs and economic policy
15	the Ontario Ministry of Agriculture,	15	committee on February 7?
16	Food and Rural Affairs proposed	16	R/F MS. LA HOREY: A refusal. That's a
17	response to a proposal that would	17	Cabinet committee, and I've said that we're not
18	redistribute the location of slot	18	answering questions about who attended at Cabinet
19	machines among municipalities and	19	committees or Cabinet meetings and what was said.
20	reduce financial support for the	20	MR. LISUS: Okay.
21	horse racing industry."	21	BY MR. LISUS:
22	Right?	22	1184 Q. And do you see where it -- the
23	A. And this is dated January 27th,	23	next bullet is:
24	2012, from OMAFRA. The last one you showed me, I	24	"The proposal includes a number
25	think, was dated January 28th, which was way behind	25	of changes that will allow the OLG
Page 310		Page 312	
1	what's in here.	1	to maximize revenue by better
2	I'm just saying there's different sets	2	servicing untapped demand in urban
3	of data going around, and I'm not having the	3	areas."
4	opportunity to look at all of them.	4	Do you see that, Mr. Duncan?
5	1179 Q. Well, Mr. Duncan --	5	A. Yes.
6	A. I'd like to see the note from	6	1185 Q. That is what was under discussion
7	Finance that went here.	7	and consideration by your government at the time;
8	1180 Q. All I'm suggesting to you, sir, is	8	correct?
9	that with this document, we are seeing OMAFRA's	9	A. Well, it says very clearly,
10	response to a proposal from the Ministry of	10	includes a number of changes. So this is -- I
11	Finance. It's Ministry of Finance Cabinet	11	don't want to comment on what was in the Cabinet
12	submission that would redistribute the location of	12	document.
13	slot machines among municipalities and reduce	13	MS. LA HOREY: Just for your
14	financial support for the horse racing industry.	14	information, Mr. Duncan, we have produced the
15	MS. LA HOREY: Are you reading from it?	15	Cabinet document subject to redactions.
16	MR. LISUS: Yes.	16	THE WITNESS: There were -- this is
17	MS. LA HOREY: Can you tell us what	17	part of it.
18	you're reading from, what paragraph or what page?	18	BY MR. LISUS:
19	MR. LISUS: Purpose of note, first	19	1186 Q. Okay. And OMAFRA here is giving
20	page.	20	its feedback on specific aspects that may be
21	MS. LA HOREY: Okay. You read that.	21	relevant to OMAFRA; right?
22	You're flipping back and forth between pages. I	22	A. Appears to be, yes.
23	just want to keep up.	23	1187 Q. Okay.
24	THE WITNESS: Okay. Your question?	24	"One of the specific aspects
25	BY MR. LISUS:	25	that may be relevant to OMAFRA is

Page 313		Page 315	
1	eliminating the Slots at Racetrack	1	agricultural sector."
2	Program that currently transfers	2	Right?
3	approximately 345 million to the	3	A. That is in this document.
4	horse racing industry in favour of a	4 1194	Q. Did you understand that to be a
5	new transfer payment program capped	5	consequence of the decision that was being
6	at 100 million to support the	6	considered?
7	industry in Ontario."	7	A. That's an incomplete, as is the
8	Right?	8	previous point.
9	A. That's what this document says,	9 1195	Q. Okay. And you're telling me it's
10	yes.	10	incomplete because as you've explained, it was
11 1188	Q. If we look at page 3 of the	11	always the intention of government to have some --
12	document at the top, it says:	12	let me just finish the question -- some form of
13	"The transition to the lower	13	transition funding. The question was when. Is
14	funding level will be phased in over	14	that why it's incomplete?
15	a three-year period."	15	A. In part. It overall provided, as
16	Do you see that?	16	you saw -- I think it's in this note. Certainly
17	A. I also see -- yes.	17	there's earlier notes -- that the estimates from
18	"As no design currently exists	18	OLG, that net revenue to OLG would increase by over
19	for the proposed transfer payment	19	a billion dollars, and that would free up more
20	program, it's difficult to predict	20	funding for everything from horse racing. That's
21	what the impact may be on the	21	clearly mentioned in earlier notes that you put on
22	sector."	22	the record. So those are, at best, incomplete.
23 1189	Q. Do you agree with that?	23 1196	Q. Did Mr. --
24	A. I don't know. I don't remember.	24	A. And the other point I should make,
25 1190	Q. Okay. And the fourth point is:	25	the government did -- again, it's noted later in
Page 314		Page 316	
1	"It is likely that the	1	the note -- continue the benefit of the Pari-Mutuel
2	standardbred racing facilities will	2	Tax Reduction.
3	be the most significantly downsized	3 1197	Q. And it did?
4	as a number of small tracks are	4	A. Yes.
5	highly dependent on the SARP funding	5 1198	Q. Did Mr. Shortill tell you that --
6	from slots."	6	or Mr. Stransky tell you that they had received
7	A. I'm sorry. Your question?	7	OMAFRA's views on the proposed approach of
8 1191	Q. You understood that too?	8	\$100 million annual transfer payment phased in over
9	A. Yes.	9	a three-year period?
10 1192	Q. Okay. And you also understood the	10	A. I don't recall.
11	point that OMAFRA was making, the next two bullets	11	MR. LISUS: That's the next exhibit.
12	down -- well, the next bullet:	12	MS. LA HOREY: It's a lettered exhibit.
13	"Wagering on horse racing has	13	Is that D?
14	been in decline, and it is likely	14	MR. MATTHEWS: B.
15	that the loss in revenue will reduce	15	EXHIBIT NO. B for Identification:
16	purse sizes to the point where	16	CRE0029902 and CRE0029903.
17	continued operation of some tracks	17	BY MR. LISUS:
18	will become unsustainable."	18 1199	Q. So this is now February the 2nd,
19	You knew that that was a consequence of any change	19	2012, as you've seen from the email sequence. And
20	that would --	20	do you recall being at a meeting with Mr. McGuinty
21	A. Yes.	21	on February 2nd and discussing the question of
22 1193	Q. And it says:	22	termination of revenue share from Slots at
23	"As a result, it can be	23	Racetrack Program and transition funding?
24	anticipated there will be a downward	24	A. No.
25	adjustment in the related	25 1200	Q. I presume, sir, for the purposes

Page 317	<p>1 of preparing yourself to give evidence today, 2 you've seen the email sequence in February 2 and 3 3 in which go to zero for horse racing is discussed? 4 A. I have. 5 1201 Q. You don't recall those meetings? 6 A. I don't recall those meetings. 7 1202 Q. Were you in them, or do you not 8 recall? 9 A. I don't recall. 10 1203 Q. Okay. So you obviously can't tell 11 me anything about how that decision was made 12 because, as you say, you don't have a recollection? 13 A. Well, I know the notes I read 14 were, you know, snippets out of long discussions. 15 1204 Q. All right. And you wouldn't have 16 kept notes of any of -- 17 A. No. 18 1205 Q. Now, February 2nd was a Thursday 19 in 2012. February the 3rd was, therefore, a 20 Friday. 21 A. Friday usually comes after 22 Thursday. 23 1206 Q. In my experience. 24 Do you recall, sir, working over the 25 weekend of February 4, 5 in advance of appearing</p>	Page 319	<p>1 number? 2 MR. LISUS: CRE12973. 3 BY MR. LISUS: 4 1211 Q. You are not, Mr. Duncan, anywhere 5 on this email? 6 A. I read backwards; right? 7 1212 Q. Yeah, you read backwards. 8 A. Okay. 9 1213 Q. Starts on a Saturday. 10 MS. LA HOREY: Right here. 11 THE WITNESS: Okay. 12 BY MR. LISUS: 13 1214 Q. Now, you weren't included in any 14 of these emails? 15 A. No. 16 1215 Q. And what it -- 17 A. Well, let me -- I'm not on the 18 email. Whether or not I was called or involved, I 19 don't recall. 20 1216 Q. What appears to be happening, sir, 21 if I'm understanding this correctly, is that the 22 senior officials in your office and the Premier's 23 office and Cabinet office are preparing the 24 materials that are to go before Cabinet. Does 25 that --</p>
Page 318	<p>1 before a subcommittee of Cabinet on February 7? 2 A. I don't recall that, but typically 3 at that time of year, that is -- you're down to -- 4 you can see decisions are being finalized on the 5 budget. So typically over the seven budgets that I 6 did, typically you're working weekends. 7 1207 Q. Okay. With your staff? 8 A. With my staff and most -- and 9 oftentimes with senior officials. 10 1208 Q. Right. And so if I look at the 11 emails around that, period Saturday, February 4, 12 you are not on them, but Mr. Shortill is, Dave Gene 13 is, among others. Are those the kinds of senior 14 officials -- 15 A. Yes. 16 1209 Q. And we've seen that Mr. Shortill 17 now appears to have been quite extensively involved 18 in the horse racing issue for the purposes of the 19 budget. Is that your recollection? 20 A. Absolutely. 21 1210 Q. And I want to just ask you to look 22 with me, sir, to see if you can help me out, at an 23 email sequence, which is Exhibit K on the 24 examination of Mr. Orsini and 14 on Mr. Bardeesy. 25 MS. LA HOREY: What's the document ID</p>	Page 320	<p>1 A. It appears to me that they're 2 cleaning them up, finalizing them. 3 1217 Q. Fair enough. There is a working 4 draft already? 5 A. Yes. 6 1218 Q. And they're cleaning them up to 7 reflect decisions having been made about them? 8 A. Mm-hm. 9 1219 Q. You have to say "yes." 10 A. Yes. 11 1220 Q. And so, for instance, on Saturday, 12 February 4, Mr. Bardeesy is giving his recommended 13 changes and says: 14 "The Cabinet deck on page 1 15 should speak to subsidies to the 16 horse racing industries being 17 eliminated, not reduced." 18 Right? 19 A. He's speaking to the terminology 20 used. I'm not sure what the policy he's referring 21 to is. So this is like -- it's language that 22 they're -- I don't -- I haven't got the document 23 that he's proposing to amend in front of me, so 24 it's hard for me to know if he's dealing 25 substantively or just inform our language.</p>

<p style="text-align: right;">Page 321</p> <p>1 1221 Q. Well, the document, as I 2 understand the email and the record that was in 3 existence at the time, had the three-year phase-out 4 and \$100 million a year transfer payment. And 5 Mr. Bardeesy is saying correct it so that it -- 6 A. I don't know. I don't have that 7 document. 8 1222 Q. Let's look at the email. 9 A. I don't think the email contains 10 the substance, information that I would need to see 11 in order to answer your question. 12 1223 Q. Mr. Bardeesy says: 13 "After stakeholder 14 considerations should go a slide 15 that includes additional elements 16 that were considered and rejected, 17 specifically lottery-style products 18 in the hospitality sector, 19 self-serve lottery machines, extra 20 casinos in the GTA area, maintaining 21 a Slots at Racetrack Program subsidy 22 at 100 million." 23 A. I'm sorry. Where? You lost me. 24 Yes, I see that. 25 1224 Q. So the Cabinet document that</p>	<p style="text-align: right;">Page 323</p> <p>1 R/F MS. LA HOREY: Same answer. It's a 2 refusal. 3 BY MR. LISUS: 4 1228 Q. Leaving aside what you said or 5 others said at the Cabinet meetings, sir, I presume 6 from the documents that I've seen that it's 7 standard practice to prepare for the minister 8 speaking notes to present to Cabinet? 9 A. Typically, yes. 10 1229 Q. And would those have been prepared 11 by Mr. Shortill and Mr. Stransky? 12 A. They would -- my recollection is 13 typically they'd be prepared by senior officials. 14 Then in my office's case, Tim and Blair would 15 review them, make changes to them as they felt 16 necessary. 17 1230 Q. Okay. You said Tim. That's 18 Tim Shortill? 19 A. Tim Shortill. 20 1231 Q. And I'm going to ask you to look 21 at another exhibit which is J on the examination of 22 Mr. Orsini, which is another email sequence that 23 you are not on. 24 MS. LA HOREY: Doc ID number? 25 MR. LISUS: CRE361002.</p>
<p style="text-align: right;">Page 322</p> <p>1 existed had the program subsidy at \$100 million as 2 an annual transfer payment that we've seen in our 3 discussion of the prior documents? 4 A. I don't know. I can only see what 5 Mr. Bardeesy said in his email. 6 1225 Q. Okay. And he also says in his 7 email: 8 "I think Minister Duncan is 9 still working on how best to 10 position this, but my understanding 11 is he wants to say that these were 12 considered, then rejected, rather 13 than giving Cabinet the chance to do 14 the stripping out itself." 15 Do you recall you having any thoughts like that or 16 discussions like that with anyone? 17 A. I don't recall. 18 1226 Q. Okay. Were you -- before I ask 19 you that, you were at Cabinet February 8; right? 20 R/F MS. LA HOREY: I've taken the position 21 that we're not going to answer who's at the Cabinet 22 meeting or what was said. 23 BY MR. LISUS: 24 1227 Q. Were you at the jobs and economic 25 policy committee on February 7?</p>	<p style="text-align: right;">Page 324</p> <p>1 THE WITNESS: Yes, I've read the 2 document. 3 BY MR. LISUS: 4 1232 Q. This, again, refers to a meeting 5 that Mr. Bardeesy appears to have been in with 6 Mr. McGuinty. I take it you don't recall being in 7 that meeting on February 3rd? 8 A. I do not. 9 1233 Q. And Mr. Goodwin, at the top of the 10 sequence, reports: 11 "And horse racing positioning 12 changing to a complete exit from 13 program support in April 2013, just 14 the notice period and out." 15 Do you see that? 16 A. I do. 17 1234 Q. And do you recall there being a 18 discussion and a decision having been taken that 19 there would be a complete exit from program support 20 effective April 2013? 21 A. Well, there were policy and 22 communication streams, so this simply says that 23 from a communication's perspective, that we 24 wouldn't be signalling anything in the budget. 25 1235 Q. You wouldn't be --</p>

<p style="text-align: right;">Page 325</p> <p>1 A. Other than the termination of the 2 Slots at Racetrack Program. 3 1236 Q. Right. So all that would be 4 signalled in the budget would be the termination 5 and nothing about what would be done after? 6 A. That's correct. 7 1237 Q. Okay. And you recall that 8 decision having been made? 9 A. Yes. 10 1238 Q. Okay. But you don't recall 11 exactly when or by who? 12 A. No, you can see by this email -- 13 what's instructive about this email is that it was 14 a very dynamic process going into initially the 15 Cabinet committee. 16 Typically on issues of this nature and 17 the reason ministries are formally briefed in 18 advance is to give them an opportunity to respond. 19 You take that response back. You -- and there's 20 two streams that always go on. 21 One is what I would call the policy 22 stream. The other is the communication stream. 23 And this is a dynamic process that is literally 24 phone calls they're making. And oftentimes, 25 they're not followed up with, even emails.</p>	<p style="text-align: right;">Page 327</p> <p>1 1244 Q. Yes. 2 A. Okay. 3 1245 Q. What I am seeing here, sir, is the 4 close involvement of senior staff, in particular 5 your chief, Mr. Shortill. 6 A. Yes. 7 1246 Q. And they seem to be circulating 8 revised minister's speaking points. That would 9 be -- you would be the minister; right? 10 A. Yes. 11 1247 Q. And additional Qs and As? 12 A. Yes. 13 1248 Q. And a background chart on how we 14 determine the horse racing full-time equivalent 15 racetrack impacts. That's the employment impact, 16 correct, on full-time jobs? 17 A. Yes. 18 1249 Q. If we look up at the top in the 19 next email, it says: 20 "My understanding from Tim is 21 that we would expect minimal Q and A 22 type activity tomorrow based on 23 extensive discussions today." 24 I take it that means that this has been talked 25 through with Cabinet colleagues and --</p>
<p style="text-align: right;">Page 326</p> <p>1 1239 Q. I'm just trying to understand that 2 process. 3 A. Yeah. 4 1240 Q. So if we -- because it did seem to 5 be quite dynamic and rapid. 6 A. It's always dynamic. I'm not sure 7 I would call it rapid. 8 1241 Q. If you look at the next email, 9 CRE32045, Exhibit 11 on the examination of 10 Mr. Shortill. 11 A. Sorry, which one is this? 12 1242 Q. I haven't given it to you yet, but 13 I'm going to. This is the email with the whole 14 Cabinet package attached to it. 15 A. Okay. 16 MR. LISUS: And so that I don't waste 17 time, Ms. La Horey, you're taking the same position 18 that you have about what was discussed or said at 19 Cabinet; right? 20 MS. LA HOREY: That is correct. 21 BY MR. LISUS: 22 1243 Q. I just want to talk to you about 23 the process, Mr. Duncan. 24 A. I'll just quickly read these two 25 emails, please.</p>	<p style="text-align: right;">Page 328</p> <p>1 A. Typically a document that goes to 2 Cabinet committee gets a thorough discussion by the 3 key members of the -- the key ministers who are 4 affected. 5 Those discussions then form amendments 6 to -- sometimes amendments to the actual minute. 7 Sometimes it's amendments to speaking points to 8 address certain questions. 9 And the only other thing I would note 10 in here is that obviously before the Cabinet 11 committee meeting, I have spoken to our caucus 12 about the issues in OLG modernization. 13 1250 Q. Right. And Mr. Shortill did 14 explain to us the consultation process or the 15 discussion process that he and Mr. Stransky had 16 with some Cabinet ministers in advance of the 17 Cabinet -- 18 A. That was quite typical for our 19 ministry, especially when a Cabinet issue impacted 20 directly their ministry or their stakeholder 21 groups. Staff would do what -- I think you've 22 shown some document. There's exchanges of emails, 23 of briefing notes. 24 1251 Q. The information note from Hagerty 25 at OMAFRA?</p>

<p style="text-align: right;">Page 329</p> <p>1 A. That's an example. And then that 2 gives the minister and the ministry the opportunity 3 to respond in a -- having been fully briefed, gives 4 them a chance to respond at Cabinet committee and 5 ultimately at Cabinet. 6 1252 Q. Okay. And then Mr. Shortill and 7 Mr. Stransky, I think I heard you say, were 8 responsible for preparing the Qs and As that you 9 might anticipate and -- 10 A. I think I said that they -- the 11 ministry would do a first cut. They would 12 ultimately make adjustments to reflect. 13 1253 Q. And same with your speaking 14 points? 15 A. Yes. They would see them -- I 16 guess that's -- they would see any of those before 17 they got to me. 18 1254 Q. Okay. And you obviously relied on 19 your chief and senior staff members to provide you 20 with accurate information? 21 A. I relied on them to the best of 22 their ability to provide me -- you know, it wasn't 23 a matter -- the public service generally produced 24 extremely thorough information where -- the public 25 service typically wouldn't be involved in</p>	<p style="text-align: right;">Page 331</p> <p>1 by political staff. It then gets fact checked 2 through the public -- public service would've had 3 to have signed off on all of the factual 4 information that's contained in that speech. 5 1260 Q. Okay. And in that speech, you 6 talk about what you characterize as subsidizing 7 horse racing in Ontario? 8 MS. LA HOREY: Can you give him a copy 9 of the speech so he's got it in front of him? 10 BY MR. LISUS: 11 1261 Q. Sure. Page 4 of 5 under the 12 heading third, bottom of page 4. 13 A. The circled part? 14 1262 Q. Yes. 15 A. Yes, I see it. 16 1263 Q. Can I just ask you, sir, as of 17 February 13th, was a date set for the tabling or 18 presentation of the budget? 19 A. I don't recall. 20 1264 Q. Okay. But it would -- 21 A. It would be in that time frame. 22 By this point in a budget process, the -- it's now 23 a matter of fact checking, writing, translating. 24 Typically the -- typically -- and then 25 typically the numbers don't get locked down until</p>
<p style="text-align: right;">Page 330</p> <p>1 discussions among ministers, within caucus, within 2 the political circle. 3 So typically I would say that they 4 would -- they would either concur or not agree with 5 the public service on whether it's an actual 6 recommendation or talking points, and then they 7 would put a political -- in terms of talking 8 points, speaking notes, they would simply give 9 input from the political side. 10 1255 Q. Okay. Now, after Cabinet on 11 February 7, you gave a speech we discussed briefly 12 yesterday at the Economic Club of Canada? 13 A. Yes. 14 1256 Q. Do you remember that? 15 A. Vaguely. I remember being there, 16 yes. 17 1257 Q. All right. 18 A. And I have reviewed the -- 19 1258 Q. Speech? 20 A. The speeches, yes. 21 1259 Q. I presume that speech was written 22 for you? 23 A. Yes. Whenever the Finance 24 minister gives a speech of that nature -- typically 25 if it's a political speech like that, it is drafted</p>	<p style="text-align: right;">Page 332</p> <p>1 about this point in time. And so it may or may not 2 have been that we determined the date. 3 1265 Q. But it would be -- 4 A. It would -- it would -- it's now a 5 matter of when can it be translated, how -- what -- 6 when will we lock down the numbers. It's not about 7 the substance of what's in the document anymore. 8 It's now about the logistics of getting it out, 9 choosing a date that works. 10 1266 Q. Fair enough. Were you 11 anticipating this to be a contentious budget 12 approval process? 13 A. Certain issues in it were, yes. I 14 mean, if you look at that budget in its totality, 15 there were a number of cost cutting and a number of 16 difficult choices that had to be made and had to be 17 made in the context of a minority parliament, which 18 had a very direct bearing on what we said and 19 didn't say in the document in order to give 20 ourselves the opportunity, to give the legislature 21 the opportunity to make substantive changes that 22 might allow them or enable them to support the 23 budget. Or as I think -- and I don't recall, but 24 my recollection is the NDP abstained on voting; 25 therefore, the budget passed.</p>

Page 333

1 1267 Q. Right. And I think that the
 2 Progressive Conservatives voted on block against?
 3 A. Yes. Yeah. It was always up to
 4 the NDP.
 5 1268 Q. Still is, isn't it?
 6 A. No. It's a majority government.
 7 1269 Q. No, I mean for the next election.
 8 A. Yeah.
 9 1270 Q. You had just gone through an
 10 election a few months before?
 11 A. That's correct.
 12 1271 Q. Did you expect or anticipate that
 13 the Conservatives would vote on block to try and
 14 trigger another election?
 15 A. Oh, yes.
 16 1272 Q. But you didn't know which way the
 17 NDP would go?
 18 A. They were the -- they held the
 19 balance of power. That was well reported, well
 20 discussed, and that's who the discussions always
 21 were.
 22 We actually, at one point, thought the
 23 budget was going to be defeated because the NDP
 24 leader stopped returning our calls, and it got to
 25 the point where we -- then they agreed to the

Page 334

1 budget. Then they started stripping out key
 2 portions of the budget and committee.
 3 1273 Q. Contentious process?
 4 A. Oh, yes.
 5 1274 Q. I suppose the downside of it is
 6 that the province gets put into another election?
 7 A. Well, it depends on your point of
 8 view. If you think the budget is that bad, then
 9 you think it's a good thing the province has
 10 another election.
 11 But from our perspective, we wanted to
 12 get the budget passed. And that's why, on a whole
 13 variety of things, we left a lot of leeway in terms
 14 of the third party and getting enough votes to pass
 15 the budget.
 16 1275 Q. Okay. Now, in your speech, which
 17 is, I believe, sir, your first public comment about
 18 the fiscal direction of the government for 2012,
 19 you make some very specific references to horse
 20 racing?
 21 A. Yes.
 22 1276 Q. Why did you do that?
 23 A. Typically these speeches signal
 24 what may or may not be in the budget. Sometimes --
 25 depends. And every budget is different. This

Page 335

1 particular budget, there were much bigger items in
 2 the budget, so we wanted to get some of these other
 3 less contentious or very kind of focused items out
 4 in advance of the budget to signal our intention.
 5 Sometimes you put out good news before
 6 a budget. You don't want to -- sometimes -- like,
 7 for instance, the year -- the 2009 budget, we did
 8 all kinds of good news announcements in advance of
 9 the budget because the big item in the budget was
 10 the HST. So we didn't want everything to get lost.
 11 Historically, governments put
 12 everything out on one day. And what has evolved,
 13 starting with Mr. Martin Fetterly in the 1990s, is
 14 there's a steady stream of things that are put out.
 15 And it varies budget to budget and what the
 16 government's goals and objectives are.
 17 1277 Q. Okay. Just in order of magnitude,
 18 sir, what would the 2012 budget have been in terms
 19 of billions?
 20 A. In terms of -- approximately,
 21 including interest, would have been in the 115 to
 22 125 billion range.
 23 1278 Q. So obviously this \$345 million a
 24 year item is a very small part of it?
 25 A. No, I wouldn't view it that way at

Page 336

1 all.
 2 1279 Q. Okay. So explain to me why
 3 there's this kind of reference.
 4 A. You have interest payments. So
 5 take at that time probably 11 or 12 off of
 6 125 million. You have education which we saw as
 7 our top priority, so take 13 off of that.
 8 You'd take health care which we saw as
 9 a much higher priority. So at the time, was
 10 probably 42 to 46 billion. So it's really more
 11 like 345 million.
 12 And then that -- if I may, you said
 13 it's not big. It was almost as much as the entire
 14 budget of the Ministry of Agriculture. And so it
 15 is a big number.
 16 1280 Q. Okay.
 17 A. Any number is a big number.
 18 1281 Q. You explained that you signal
 19 things with these speeches. What were you
 20 signalling here?
 21 A. We were signalling that that kind
 22 of spending was going to be ending, and there would
 23 be -- it wasn't just horse racing. There was a
 24 range of other things that turned out in that
 25 budget.

Page 337	Page 339
<p>1 1282 Q. Okay.</p> <p>2 A. By the way, 345 million is</p> <p>3 actually -- the budget has a three-year time</p> <p>4 horizon on it, that particular budget. So it's</p> <p>5 really a billion two.</p> <p>6 1283 Q. Right. Did you speak with</p> <p>7 Mr. Seiling before you gave this speech?</p> <p>8 A. Don't recall.</p> <p>9 1284 Q. Okay.</p> <p>10 A. Typically I wouldn't have, but I</p> <p>11 don't recall.</p> <p>12 1285 Q. Okay. Did you --</p> <p>13 A. Remember, as you pointed out the</p> <p>14 other day, the regulators are at arm's length</p> <p>15 relationship.</p> <p>16 1286 Q. Right.</p> <p>17 A. So if -- so that would have</p> <p>18 influenced it.</p> <p>19 1287 Q. Did you anticipate, sir, a</p> <p>20 reaction from commentators to your speech? I have</p> <p>21 to presume you did.</p> <p>22 A. To this speech?</p> <p>23 1288 Q. Yes.</p> <p>24 A. Yes.</p> <p>25 1289 Q. What generally did you anticipate?</p>	<p>1 specific government program that we were changing.</p> <p>2 In fact, we didn't say we were changing</p> <p>3 it, but it was very clear that the funding -- the</p> <p>4 direct funding was going to --</p> <p>5 1290 Q. You say a specific government</p> <p>6 program. Which ministry administered that specific</p> <p>7 government program?</p> <p>8 MS. LA HOREY: Sorry, which one are you</p> <p>9 talking about? Service Ontario?</p> <p>10 MR. LISUS: No.</p> <p>11 THE WITNESS: I was talking about the</p> <p>12 OLG. It was administered by OLG who had a direct</p> <p>13 line on the budget in terms of revenue. I think it</p> <p>14 was around 2 billion at the time.</p> <p>15 BY MR. LISUS:</p> <p>16 1291 Q. Does OLG administer government</p> <p>17 programs?</p> <p>18 A. Yes. This was a program. It came</p> <p>19 right off the bottom line. You saw it in the</p> <p>20 earlier deck the discussion. So it was -- and,</p> <p>21 again, the terminology in here was approved by the</p> <p>22 public service, the term "subsidy," all those sorts</p> <p>23 of things.</p> <p>24 1292 Q. The only reason I asked the</p> <p>25 question is I didn't know that the OLG was in the</p>
Page 338	Page 340
<p>1 A. Typically they will report what</p> <p>2 they see as the biggest news in the speech. I</p> <p>3 don't recall what they did, but we set out the</p> <p>4 kind -- we set out examples in this speech. I just</p> <p>5 quickly glanced at it.</p> <p>6 So, for instance, the LCBO</p> <p>7 headquarters, the reason I chuckle at that, it was</p> <p>8 in my 2012 budget, and then it was -- when the new</p> <p>9 government took over, they put that along with</p> <p>10 horse racing -- they had another look at things.</p> <p>11 And in the case of the LCBO headquarter</p> <p>12 sale, they decided not to proceed with it, but then</p> <p>13 they did last year. It was a big piece of land.</p> <p>14 So we -- what we did with this speech,</p> <p>15 I recall very well, are signalling the types -- we</p> <p>16 took examples of where our thinking was. In this</p> <p>17 case, it was a government asset.</p> <p>18 In this case -- in the second one, the</p> <p>19 Service Ontario improvements, that was an example</p> <p>20 of where we were trying to modernize delivery of</p> <p>21 organizations.</p> <p>22 In the case of Service Ontario, at that</p> <p>23 time, it had been partially privatized. We were</p> <p>24 looking at more privatization. And in the case of</p> <p>25 the horse racing industry, it was an example of a</p>	<p>1 business of administering government programs.</p> <p>2 A. They all are. For instance,</p> <p>3 Hydro One subsidizes rural rates. It's off the</p> <p>4 rate base, but that's a political directive.</p> <p>5 1293 Q. And LCBO also administers</p> <p>6 government programs?</p> <p>7 A. LCBO -- perhaps I used the wrong</p> <p>8 term. It's government money, and it goes directly</p> <p>9 to the -- in fact, it's a very direct line to the</p> <p>10 revenue line, not on the expenditure line. So</p> <p>11 there were foregone revenues based on these</p> <p>12 decisions.</p> <p>13 1294 Q. Did you get the reaction that you</p> <p>14 anticipated?</p> <p>15 A. We were actually -- as I recall,</p> <p>16 it didn't get -- it didn't get as much reaction as</p> <p>17 we thought.</p> <p>18 1295 Q. You got reaction from</p> <p>19 Mr. Snobelen?</p> <p>20 A. I would expect that. He was a</p> <p>21 political component in the horse racing industry.</p> <p>22 1296 Q. All right. And did you --</p> <p>23 A. I certainly had threats, and I've</p> <p>24 got a complete record of them. You know, threats</p> <p>25 on my life, threats on my family. Absolutely.</p>

<p style="text-align: right;">Page 341</p> <p>1 1297 Q. But not from Mr. Snobelen? 2 A. No. And I -- in fact, I was glad 3 when he agreed when I asked him to serve on the 4 panel to help us implement the transition plans 5 that we had. 6 1298 Q. So Mr. -- 7 A. And I always liked John, by the 8 way, and I knew he was very familiar with the horse 9 racing industry, had been a horse person himself. 10 I think -- I don't know if he was in standardbred, 11 but I know he was very -- a real horseman himself. 12 When I say "horseman," I don't know if he bred them 13 or not. 14 1299 Q. But you knew he was someone who 15 had been around the industry for a long time and 16 knew a lot about it? 17 A. And that he had a direct interest 18 in it, as did many of the few people that spoke 19 out. 20 1300 Q. When did you first speak to him 21 about the idea of sitting on a panel? 22 A. It was the day Ernie Eves got his 23 Order of Ontario, which I believe was May of 2012. 24 1301 Q. When did it first occur to you to 25 ask John to sit on a panel?</p>	<p style="text-align: right;">Page 343</p> <p>1 your speech, Mr. Snobelen made a statement on 2 Ontario News Watch February 16, 2012? 3 A. I don't recall. 4 1305 Q. Have you reviewed that? 5 A. No. 6 1306 Q. Let me show it to you. This is 7 Exhibit 4 in the examination of John Snobelen. Do 8 you recall becoming aware of Mr. Snobelen making 9 this statement? 10 A. Where was this given? I'm sorry. 11 Ontario News Watch. Does anyone ever read that? 12 1307 Q. I presume Mr. Snobelen thinks they 13 do. It's a video service. 14 A. This is a political statement, you 15 know, and it's a political commentary given as a 16 Conservative partisan. 17 1308 Q. What do you mean by that? 18 A. I read it. I'm one of the few 19 people that does. They have political 20 commentators, pundits, people who have points of 21 view that are, in his case, obviously different 22 from the government. 23 1309 Q. So you weren't obviously surprised 24 that -- 25 A. Not at all.</p>
<p style="text-align: right;">Page 342</p> <p>1 A. It had been percolate -- we were 2 talking about it internally even before the budget, 3 what would the next steps be after the budget. 4 It's largely political discussions. 5 And we wanted -- and we made a point of 6 having him and Mr. Buchanan who had been an NDP -- 7 and NDP ag minister who -- because the work I do 8 with a number of ag groups right now, I know was a 9 very well respected and popular ag minister. 10 1302 Q. My understanding is that it was 11 Minister McMeekin who came up with the idea and 12 pressed for the creation of a panel, a transition 13 panel? 14 A. I don't recall that. I mean, he 15 certainly would have supported it, and he might 16 have thought he was coming up with it, but there 17 were -- even before the budget, there were 18 considerable discussions internally at the 19 political level about that. 20 1303 Q. Okay. 21 A. And I did -- like, I remember the 22 day. It was the day Ernie Eves got his -- I don't 23 know the day, but I'm pretty -- it was nice 24 weather. It was spring of 2012. 25 1304 Q. You're aware that a few days after</p>	<p style="text-align: right;">Page 344</p> <p>1 1310 Q. -- someone from the Conservative 2 camp would express these views? 3 A. Not at all. And there were people 4 within our party. 5 1311 Q. And you anticipate -- 6 A. Mr. McMeekin was -- had a lot of 7 problems with this policy. Absolutely. And he was 8 very heartfelt. We all were. We all knew this was 9 a difficult choice. 10 1312 Q. Now, you were aware that 11 Mr. Snobelen also wrote a column in the 12 Toronto Sun? 13 A. Yes. He had a regular column. 14 1313 Q. I'm showing you a column that he 15 wrote the next day on February the 17th. 16 A. Mm-hm. Yeah. 17 1314 Q. Do you remember seeing this? 18 A. No. I typically didn't read them. 19 1315 Q. Okay. And you didn't speak to him 20 about these statements he was making in February? 21 A. No, I don't recall. I don't 22 recall speaking to him. The first conversation I 23 recall is that day directly with him because we had 24 been discussing it, and I -- and because -- and 25 irrespective of his partisan diatribes, which</p>

Page 345

1 that's all these are, I felt that he would be a
2 good person to put on the panel if he would agree
3 to do it, and he did agree to do it. And we
4 were -- I was actually happy to have his
5 involvement, along with Mr. Buchanan and John
6 Wilkinson.
7 1316 Q. Was there an outcry from the horse
8 racing industry in response to your speech?
9 A. Oh, yes. Yeah. Yeah.
10 1317 Q. What do you remember about that?
11 A. Well, I had to have extra -- had
12 to -- you know, I had to block all kinds of people
13 on Twitter and -- or not Twitter. Facebook.
14 Threats. My son was punched at a -- my son with a
15 disability was punched at a party. Thank goodness
16 he had friends of his.
17 It was probably the ugliest kind of --
18 there's some YouTube video up there you can see of
19 one place where I was harassed in an announcement.
20 So it was quite violent, ugly. I've never -- I
21 never experienced anything quite like that.
22 Threats of horses being destroyed.
23 1318 Q. Were you made aware from anyone in
24 Finance or your staff that Minister McMeekin was
25 concerned with the depth of the analysis of the

Page 346

1 economic impact of --
2 A. Ted made me aware of that himself
3 directly. He was wrong.
4 1319 Q. So Ted made you aware of that --
5 A. Ted was very passionate about this
6 issue.
7 1320 Q. Approximately when did Ted make
8 you aware of that?
9 A. Oh, it would have likely been --
10 it would have -- my recollection is it started when
11 Cabinet first became aware of what we were doing,
12 but as time wore on, he became more impassioned.
13 1321 Q. I want to show you an email
14 sequence which is in Mr. Orsini's examination, 32.
15 MS. LA HOREY: For the record, it's
16 CRE0106086.
17 THE WITNESS: Okay.
18 BY MR. LISUS:
19 1322 Q. I want to just refer to something
20 you said to me yesterday. Was it your
21 understanding, sir, that the decision to terminate
22 the Slots at Racetrack Program revenue sharing with
23 no announced transition funding was based on a
24 recommendation to that effect by OLG in its final
25 report?

Page 347

1 A. No, I didn't say that. What
2 I think I said -- and you'll have to check the
3 transcript -- was that it was a process, the OLG,
4 that involved Finance, Cabinet office, Premier's
5 office, OLG.
6 1323 Q. Was it your understanding, sir,
7 that that was OLG's recommendation?
8 A. No. My understanding is what's in
9 the documents, which, by the way, are not -- in my
10 view, don't entirely reflect. You should also look
11 at public statements. I did part of the
12 announcement with Mr. Godfrey myself.
13 1324 Q. Right. Now, you can -- again,
14 you're not on this --
15 A. Again, you have to be careful
16 using "draft" versus "non-draft." Cabinet -- the
17 eventual Cabinet decisions would have been shared
18 and agreed to by OLG as well. All I saw from you
19 were draft documents from OLG.
20 1325 Q. Well, there is a final report from
21 OLG.
22 A. Mm-hm. I'm aware of it.
23 1326 Q. Is it your understanding that in
24 that final report, OLG came to the recommendation
25 independently of Finance that the revenue sharing

Page 348

1 with the horse racing industry from the Slots at
2 Racetrack Program should be terminated without
3 transition support?
4 A. It wasn't terminated without
5 transition support.
6 1327 Q. It was not?
7 A. There was nothing in the Cabinet
8 minute about transition support. There was no
9 decision not to do transition. In fact, quite the
10 opposite. As I've said to you, the documents you
11 shared paint a very narrow, selective picture.
12 1328 Q. You did read the OLG modernization
13 report?
14 A. Oh, yes, in its entirety.
15 1329 Q. You're aware --
16 MS. LA HOREY: If you're going to ask
17 him questions, it's best if he has the document in
18 front of him. So why don't we wait until
19 Mr. Matthews gets it.
20 MR. LISUS: Let's take a ten-minute
21 break.
22 -- Recess at 11:12 a.m. --
23 -- Upon resuming at 11:25 a.m. --
24 BY MR. LISUS:
25 1330 Q. I put up on the screen there the

Page 349	Page 351
<p>1 OLG final report, modernization report. On the 2 right-hand column middle: 3 "The Slots at Racetrack Program 4 limits OLG's flexibility to locate 5 gaming facilities near OLG 6 customers. Furthermore, the formula 7 restricts OLG's ability to maximize 8 revenues for key government 9 priorities. As such, the Slots at 10 Racetrack Program should be drawn to 11 a close." 12 And that was the recommendation upon which the 13 government relied to justify the termination of the 14 revenue sharing with the horse racing industry; is 15 that right? 16 A. Well, no. The balance is a little 17 bit further below. 18 1331 Q. Which words are you referring to, 19 sir? 20 A. The rest. 21 1332 Q. "To improve the ability to offer 22 games at sites, OLG should 23 establish a fair and simple funding 24 model that would supply a portion 25 of slot machine revenue to host</p>	<p>1 understanding that OLG recommended the termination 2 of revenue sharing? 3 A. I need to see the recommendation. 4 1337 Q. There aren't any. This is all it 5 says about Slots at Racetracks. 6 A. When we made our budget 7 announcement, I didn't have a resignation from 8 anybody at OLG or from people like Mr. McMeekin. I 9 presume they supported what we did. 10 1338 Q. Sorry, give me that again. 11 A. When we announced the budget, I 12 did statements with Mr. Godfrey. We did the 13 announcement of the closure of Windsor Raceway. 14 His newspaper supported the government's position 15 on the Slots at Racetrack Program. 16 When we came to vote on the budget, we 17 had the votes to pass the government's proposal, 18 including the support of Mr. McMeekin. 19 So you're saying there's no 20 recommendations in their final document. I just 21 asked you to show them to me. 22 1339 Q. Well, I'm not aware of -- 23 A. You asked me to comment on their 24 recommendations and whether I thought they 25 recommended this. There's no recommendations in</p>
<p>1 municipalities independent of the 2 type of facility." 3 A. And the straightforward. 4 1333 Q. "A straightforward formula would 5 have two key benefits: Make the 6 formula consistent across 7 municipalities, provide flexibility 8 for the decision to add table games 9 or other new games based on 10 customer interest, municipal 11 consent, and OLG's provincial 12 market plan." 13 Those words? 14 A. Can I just see the next page as 15 well? 16 1334 Q. Yes. 17 A. And also I'd like to see the 18 recommendations pages. They're under something 19 called "description." 20 1335 Q. I think you're thinking of the 21 Drummond report when you say "recommendations." 22 A. No, no, I'd like to see their 23 recommendations because you've said they 24 recommended -- I'd like to see the recommendations. 25 1336 Q. I was asking you, sir, was it your</p>	<p>1 their final report. 2 1340 Q. So what was your understanding of 3 what OLG's recommendation was at the conclusion of 4 its year-and-a-half-long land-based gaming review 5 with respect to the Slots at Racetrack Program? 6 A. Based on the continuing support of 7 the chair and board as well as a -- subsequent to 8 the announcement based -- they were in concurrence 9 with the government's plans. 10 1341 Q. Right, but what was your 11 understanding of what the report's position was 12 with respect -- 13 A. They had no recommendations. You 14 just said that. 15 1342 Q. Do you agree with that? 16 A. Pardon me? 17 1343 Q. Do you agree with that? 18 A. I agree -- I'm not going to 19 question you. You've -- I don't have all the 20 documents. You've given me one paragraph out of 21 something called "description." 22 What I can tell you is I did dozens of 23 meetings both before and after. We saw no member 24 of the Liberal caucus vote against the budget. 25 Mr. Godfrey and his board continued on until the</p>

Page 353

1 government changed. So I assume that they
 2 supported what we did and that there was agreement.
 3 1344 Q. All right. Thank you.
 4 A. But I'm just curious where
 5 these -- you asked me about their recommendations.
 6 Was there a recommendation? It's your word, not
 7 mine.
 8 1345 Q. I actually think it was your word
 9 from yesterday, but it doesn't matter.
 10 A. But, no, I just -- I'm curious.
 11 You used it, and then you took a select paragraph
 12 on page 13 under something called "description
 13 customer focus."
 14 1346 Q. That is the only -- well --
 15 A. That's right. It is. Go ahead.
 16 Say it. It's the only reference, and it says very
 17 clearly.
 18 1347 Q. That's my point, sir.
 19 A. "Slots at Racetrack Program should
 20 be drawn to a close."
 21 1348 Q. Right.
 22 A. That's their recommendation. You
 23 just said it's the only one.
 24 1349 Q. Do you agree with it?
 25 A. It doesn't say "recommendation"

Page 354

1 there.
 2 1350 Q. But do you agree that that is the
 3 content of the OLG report which the government
 4 relied on to support its decision to terminate --
 5 A. I relied on the advice of the OLG,
 6 its board, its CEO, its board chair, and their
 7 continued support once the budget had been made
 8 public.
 9 1351 Q. Are you aware that Mr. Stransky
 10 and Mr. Shortill communicated with Mr. Phillips
 11 about the language of the paragraph that we looked
 12 at?
 13 A. Oh, yes. There was all kinds of
 14 dialogue. I don't know what was said. But, yeah,
 15 they were intimately involved in every sentence.
 16 1352 Q. Okay. Before the break, you were
 17 telling me that you weren't -- you anticipated
 18 there being a reaction from Conservatives to the
 19 announcement regarding the termination of SARP,
 20 including from Mr. Snobelen; correct?
 21 A. Well, frankly, I hadn't thought of
 22 John, but I was thinking more about the people who
 23 would be directly affected. We knew, of course,
 24 they would respond, and we knew that it would be
 25 very difficult.

Page 355

1 1353 Q. When you say you knew it would be
 2 very difficult, you knew that in February 2012;
 3 right?
 4 A. I probably knew it a long time
 5 before then.
 6 1354 Q. When you say you knew it would be
 7 very difficult for the people who would be
 8 affected, I take it, sir, that included
 9 standardbred breeders?
 10 A. I didn't know who they were at the
 11 time. It would involve anybody who would derive a
 12 livelihood out of essentially an industry that was
 13 subsidized. Take the subsidy away, there's nothing
 14 left.
 15 1355 Q. Right. And so you knew it would
 16 have a very serious impact on it?
 17 A. We knew that the industry would
 18 become smaller. I was advised by OLG and others
 19 that they weren't certain how many tracks would
 20 remain. There was a view that Woodbine would
 21 survive as a thoroughbred track. There was a view
 22 that the market might be able to support several --
 23 no one ever landed on a precise number up until
 24 that point.
 25 1356 Q. So you had made your speech giving

Page 356

1 the signal that the subsidy, as you style it, would
 2 be terminated --
 3 A. That was the -- that speech was
 4 fact checked by ministry officials. It was not my
 5 term.
 6 1357 Q. Why are you --
 7 A. Minister of Finance doesn't go out
 8 and just say anything. Because you imply that it's
 9 just me saying that.
 10 1358 Q. No, I'm not.
 11 A. When the Minister of Finance gives
 12 a speech on the record, it's fact checked 20 times.
 13 There was certainly concurrence among our advisors
 14 and officials that that was proper language. That
 15 speech would not have been given had they not
 16 approved the use of that term.
 17 1359 Q. And who do you say approved the
 18 use of that term?
 19 A. Any speech the minister gives is
 20 fact checked by a variety of people.
 21 1360 Q. I see. How do they fact check?
 22 A. I don't know. You'd have to ask
 23 them. You've got them on your witness list. All I
 24 know is I can't simply go out on behalf of the
 25 government of Ontario and say something, especially

Page 357	Page 359
<p>1 in a formal speech.</p> <p>2 1361 Q. You were satisfied that the use of</p> <p>3 the term "subsidy" was appropriately fact checked;</p> <p>4 correct?</p> <p>5 A. I'm satisfied that it was a</p> <p>6 terminology that our advisors and people who had</p> <p>7 been very intimately involved in this approved.</p> <p>8 1362 Q. Who was that?</p> <p>9 A. Well, ultimately the deputy</p> <p>10 minister is responsible, so he delegates that.</p> <p>11 You'd have to ask them. I don't know.</p> <p>12 1363 Q. How would he fact check whether or</p> <p>13 not --</p> <p>14 A. I would suggest you ask him.</p> <p>15 1364 Q. You've got to let me finish the</p> <p>16 question.</p> <p>17 MS. LA HOREY: One at a time.</p> <p>18 BY MR. LISUS:</p> <p>19 1365 Q. As the guy making the speech using</p> <p>20 the term, how did you understand the term "subsidy"</p> <p>21 had been fact checked? What facts would be looked</p> <p>22 at to check that?</p> <p>23 A. Well, you've got the documents.</p> <p>24 You'd have to ask them. All I know is that I was</p> <p>25 approved to use that language. It was used in</p>	<p>1 1369 Q. After five years as the Minister</p> <p>2 of Finance, you understood what a subsidy was?</p> <p>3 Yes?</p> <p>4 A. Depends on what you mean by that.</p> <p>5 1370 Q. What do you mean by it?</p> <p>6 A. As it's used in that speech, it</p> <p>7 was -- it was language that was approved and agreed</p> <p>8 to by our department.</p> <p>9 1371 Q. And that's --</p> <p>10 A. That's all I'm going to say about</p> <p>11 it. You can ask them.</p> <p>12 1372 Q. After Mr. Snobelen's broadcast and</p> <p>13 his Toronto Sun column, we see that certain radio</p> <p>14 ads are put out. We discussed those yesterday;</p> <p>15 correct?</p> <p>16 A. We discussed them yesterday, yes.</p> <p>17 1373 Q. And you still haven't been able to</p> <p>18 recover any memory of how these ads came to be put</p> <p>19 out?</p> <p>20 A. No. Do you know how long they</p> <p>21 ran?</p> <p>22 1374 Q. They certainly --</p> <p>23 A. I never heard them. I never heard</p> <p>24 them. Never saw them.</p> <p>25 MS. LA HOREY: We went over this</p>
<p>1 government documents. It was used in briefing</p> <p>2 papers.</p> <p>3 And I know you dispute that it's a</p> <p>4 subsidy and that people paying your bill dispute</p> <p>5 that, but that was not the view of the government</p> <p>6 of the day.</p> <p>7 1366 Q. Why are you commenting on people</p> <p>8 paying my bill?</p> <p>9 A. Just felt like it.</p> <p>10 MS. LA HOREY: We know there's a</p> <p>11 lawsuit, and we know you're here on behalf of the</p> <p>12 plaintiffs, so it's obvious.</p> <p>13 BY MR. LISUS:</p> <p>14 1367 Q. Are you paying Ontario to</p> <p>15 represent you, Mr. Duncan?</p> <p>16 R/F MS. LA HOREY: Mr. Lisus, that's a</p> <p>17 refusal. Let's just -- can we stick to the subject</p> <p>18 matter of the summons, please.</p> <p>19 BY MR. LISUS:</p> <p>20 1368 Q. I'm just trying to understand. So</p> <p>21 how long had you been the Minister of Finance in</p> <p>22 2012?</p> <p>23 A. I had ten months between October</p> <p>24 '05 and May '06, and then from '08 until -- so</p> <p>25 approximately five years.</p>	<p>1 yesterday, so let's move on.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 BY MR. LISUS:</p> <p>4 1375 Q. I want to ask you about the</p> <p>5 accuracy of their content, Mr. Duncan.</p> <p>6 MS. LA HOREY: Sorry, we spent quite a</p> <p>7 bit of time on this, so I --</p> <p>8 MR. LISUS: Ms. La Horey, this is a</p> <p>9 cross-examination.</p> <p>10 MS. LA HOREY: I know, but you don't</p> <p>11 get to ask the same question twice.</p> <p>12 MR. LISUS: I'm not going to ask the</p> <p>13 same question twice.</p> <p>14 MS. LA HOREY: If you're going to ask</p> <p>15 him questions about the content, may we please have</p> <p>16 the document?</p> <p>17 MR. LISUS: Of course. It's CRE81193,</p> <p>18 Exhibit 31 on Mr. Orsini's examination.</p> <p>19 THE WITNESS: Is this an accurate</p> <p>20 transcription of them?</p> <p>21 BY MR. LISUS:</p> <p>22 1376 Q. Yes.</p> <p>23 A. How do I know?</p> <p>24 1377 Q. Well, it was given to me by your</p> <p>25 folks in Finance, so I'm --</p>

Page 361

1 A. Well, without actually hearing the
 2 ad, it's difficult for me to know what was said.
 3 1378 Q. Let's assume for the purposes of
 4 my question this is an accurate transcription.
 5 Okay?
 6 A. I won't assume that. I've seen
 7 transcriptions that are inaccurate many times,
 8 specifically broadcast transactions. Do you know
 9 where they were broadcast?
 10 1379 Q. Mr. Duncan, please just answer my
 11 questions. If Ms. La Horey thinks I'm asking you
 12 improper questions, she'll pipe in. You don't need
 13 to argue with me about my questions. Okay?
 14 A. Well, you said they were
 15 broadcast. The broadcast -- what do you mean by
 16 "broadcast"?
 17 1380 Q. I mean broadcast on the radio.
 18 What do you mean by "broadcast"?
 19 A. Well, it could be -- could be
 20 60 Minutes, could be Netflix, or it could be, you
 21 know, a single radio station that had an
 22 antigovernment vent.
 23 1381 Q. An antigovernment vent?
 24 A. Yeah. There's a few of those.
 25 MS. LA HOREY: Why don't you just wait

Page 362

1 for the question.
 2 BY MR. LISUS:
 3 1382 Q. Let me refresh your memory, sir.
 4 One of your Cabinet colleagues, Ms. Broten,
 5 distributes the content of these radio ads in an
 6 email. You think that she --
 7 A. She did not -- she did not --
 8 1383 Q. You have to let me finish the
 9 question. You think she was distributing radio ads
 10 from an antigovernment station?
 11 A. I just never heard these ads.
 12 1384 Q. That's fine, sir. I accept that.
 13 A. I'm not -- I just -- I don't know
 14 what was in them precisely. Now, they're --
 15 clearly they're available based on that.
 16 1385 Q. I'm showing you what's in them.
 17 A. I'm not sure that's an accurate --
 18 1386 Q. On what basis are you not sure
 19 it's accurate, sir?
 20 A. Well, you're asking me to comment
 21 on their accuracy, and I don't know if the
 22 transcript is accurate.
 23 MS. LA HOREY: So I won't let Mr. Lisus
 24 ask you to comment on their accuracy --
 25 THE WITNESS: Okay. All right.

Page 363

1 MS. LA HOREY: -- because you've
 2 answered that you don't know if they're accurate.
 3 THE WITNESS: Yeah.
 4 MS. LA HOREY: But listen to his
 5 question. Okay? And if he asks you a question
 6 that you're able to answer, you can answer it.
 7 THE WITNESS: Okay.
 8 MS. LA HOREY: But you don't need to
 9 assume that they're accurate if you're not
 10 convinced of it.
 11 BY MR. LISUS:
 12 1387 Q. Was SARP revenue share secret?
 13 A. I'm sorry?
 14 1388 Q. Was the SARP revenue sharing
 15 program secret?
 16 A. I don't know.
 17 1389 Q. Well, you see it disclosed and
 18 reported on every budget since 2000; right?
 19 A. Well, I don't know what they mean
 20 by that. They could mean are the precise amounts.
 21 That -- my understanding is the precise amounts
 22 were secret or at least they were confidential.
 23 1390 Q. The 345 million was secret?
 24 A. No. I'm talking about how much
 25 did the Toldo family at Windsor Raceway get; how

Page 364

1 much did Mr. Carter and others who had lawsuits
 2 that they wanted to continue to get that money.
 3 Those amounts. Are those public?
 4 1391 Q. Mr. Duncan, you're not here to
 5 argue with me, sir. Your lawyer will argue with me
 6 if she thinks she needs to.
 7 A. Thank you very much. Well, I
 8 just -- you asked me a question, so I said no, I
 9 don't know. Sure, were the top-line numbers
 10 public? Yes. 345 million over -- I forget the
 11 total billions over the life of the program, yes.
 12 1392 Q. "Yes" what?
 13 A. Those numbers were.
 14 1393 Q. Were secret?
 15 A. No, those were public. But were
 16 the amounts of money paid to individual horse
 17 people, individual tracks, I don't believe those
 18 were disclosed publicly.
 19 1394 Q. When you use in your speech the
 20 term --
 21 MS. LA HOREY: Can we give him a copy
 22 of his speech?
 23 THE WITNESS: Yeah, can I see the
 24 speech?
 25 BY MR. LISUS:

<p style="text-align: right;">Page 365</p> <p>1 1395 Q. Sure.</p> <p>2 A. I think I used the gross numbers</p> <p>3 that were reported in estimates, and we talked</p> <p>4 about estimates yesterday. Just like if you want</p> <p>5 to know how much physician compensation was in</p> <p>6 Ontario today, you could find out.</p> <p>7 Could you find out how much Dr. Smith</p> <p>8 in Petawawa bills? Not yet, although that's -- the</p> <p>9 courts are now saying the government may have to</p> <p>10 reveal that. Just saying.</p> <p>11 MS. LA HOREY: Just wait for the</p> <p>12 question.</p> <p>13 BY MR. LISUS:</p> <p>14 1396 Q. Here's your speech. This should</p> <p>15 have been marked as an exhibit on your examination,</p> <p>16 so we'll do that now.</p> <p>17 MS. LA HOREY: What number are we at?</p> <p>18 MR. MATTHEWS: Exhibit Number 22.</p> <p>19 EXHIBIT NO. 22: Document entitled</p> <p>20 "Ontario Finance Minister Dwight</p> <p>21 Duncan, Remarks to the Economic Club of</p> <p>22 Canada, February 13, 2012"</p> <p>23 BY MR. LISUS:</p> <p>24 1397 Q. Okay. So in your speech, sir, on</p> <p>25 the fourth page, third, you say:</p>	<p style="text-align: right;">Page 367</p> <p>1 Same word.</p> <p>2 A. But these weren't done by the</p> <p>3 government, and I didn't say them.</p> <p>4 1402 Q. I'm not suggesting you said them,</p> <p>5 sir.</p> <p>6 A. So why are you asking me about it?</p> <p>7 MS. LA HOREY: Hold on a sec. Just for</p> <p>8 the record, when he says these weren't done by the</p> <p>9 government, the witness was pointing at Exhibit 31</p> <p>10 to Mr. Orsini's examination, CRE0081193.</p> <p>11 BY MR. LISUS:</p> <p>12 1403 Q. And, again, you can't tell me who</p> <p>13 did this or why Ms. Broten is sending them around?</p> <p>14 MS. LA HOREY: We went over this</p> <p>15 last --</p> <p>16 THE WITNESS: We went over that</p> <p>17 yesterday.</p> <p>18 MS. LA HOREY: I get to object. We</p> <p>19 went over that, so we're not going to cover old</p> <p>20 ground.</p> <p>21 BY MR. LISUS:</p> <p>22 1404 Q. You were anticipating, as you</p> <p>23 explained to me, the Progressive Conservative party</p> <p>24 opposing your budget?</p> <p>25 A. Actually, no, I think what I said</p>
<p style="text-align: right;">Page 366</p> <p>1 "Ontario taxpayers have been</p> <p>2 subsidizing horse racing in Ontario</p> <p>3 to the tune of 345 million a year."</p> <p>4 Right?</p> <p>5 A. Yes, that's correct.</p> <p>6 1398 Q. You say:</p> <p>7 "To put that annual subsidy in</p> <p>8 perspective, it's more support."</p> <p>9 Et cetera. See that?</p> <p>10 A. More support than we provide for</p> <p>11 water protection, road safety, and families.</p> <p>12 1399 Q. Right. And --</p> <p>13 A. I think it was, like, half the</p> <p>14 entire budget in the Ministry of Agriculture and</p> <p>15 Food. It wasn't part of that budget.</p> <p>16 1400 Q. This is the fact-checked word that</p> <p>17 you explained to me a few minutes ago, subsidy;</p> <p>18 right?</p> <p>19 A. That was a word that was agreed to</p> <p>20 by senior officials that should be used in</p> <p>21 describing this.</p> <p>22 1401 Q. When we look at the radio ads, it</p> <p>23 says:</p> <p>24 "Tim Hudak's PCs started a</p> <p>25 secret subsidy."</p>	<p style="text-align: right;">Page 368</p> <p>1 to you was that the individuals would oppose it,</p> <p>2 but I assume the Conservatives would oppose the</p> <p>3 entire budget. They always do. I don't think a --</p> <p>4 I don't think an official opposition have ever</p> <p>5 voted in favour of a government budget. Perhaps in</p> <p>6 wartime.</p> <p>7 1405 Q. This radio ad says that:</p> <p>8 "Tim Hudak says these rich</p> <p>9 payouts should be protected."</p> <p>10 You're shrugging.</p> <p>11 MS. LA HOREY: No, there's no question</p> <p>12 yet.</p> <p>13 THE WITNESS: What's the question?</p> <p>14 BY MR. LISUS:</p> <p>15 1406 Q. Was it your view that Mr. Hudak</p> <p>16 thought that these rich payouts from Slots at</p> <p>17 Racetrack Program to the horse racing industry</p> <p>18 should be protected?</p> <p>19 A. That wasn't my ad. I don't know</p> <p>20 whose ad that was.</p> <p>21 1407 Q. "He had cancelled full-day</p> <p>22 kindergarten."</p> <p>23 Do you see that?</p> <p>24 A. You took the document away from</p> <p>25 me. I -- these aren't mine. I didn't -- I</p>

Page 369

1 don't ever -- I never said that. So, no, I -- what
 2 I see here is an advertisement. I don't even know
 3 who did them. I gave --
 4 MS. LA HOREY: Just wait for the
 5 question.
 6 THE WITNESS: Sorry.
 7 BY MR. LISUS:
 8 1408 Q. Are you aware that Minister
 9 McMeekin in October 2012 said that the decision to
 10 end the SAR program was made by the Ministry of
 11 Finance, not the Ministry of Agriculture --
 12 A. Yes, I was.
 13 1409 Q. -- Food and Rural Affairs?
 14 A. Yes, I was.
 15 1410 Q. And that he said it was his
 16 decision to fight to establish a review process?
 17 A. He certainly did, and he -- in
 18 both cases. He wasn't aware of all the aspects,
 19 but he was very passionate and did vote for the
 20 budget, I might add.
 21 Ultimately, when a minister disagrees
 22 with his government, if he disagrees, he has the
 23 ability to resign, which he did not do in my
 24 recollection. And I believe the Hansard record
 25 shows that he voted for the budget.

Page 370

1 1411 Q. Did he discuss with you resigning?
 2 A. Never. We had many discussions
 3 both in Cabinet and --
 4 MS. LA HOREY: You're not going to
 5 discuss --
 6 THE WITNESS: Sorry. We had many
 7 discussions outside of Cabinet.
 8 BY MR. LISUS:
 9 1412 Q. Now, counsel for OLG on the
 10 examination of Mr. Bardeesy put an exhibit forward
 11 and -- put a document forward, a newspaper article,
 12 and marked it as an exhibit.
 13 A. Okay.
 14 1413 Q. And this talks about the minority
 15 Liberal government surviving its first budget vote
 16 with the cooperation of NDP leader Andrea
 17 Horvath --
 18 A. Yes.
 19 1414 Q. -- avoiding a spring election?
 20 A. That's absolutely correct.
 21 1415 Q. Okay. What happened there?
 22 A. So your -- I don't -- the reason I
 23 imagine you have to use newspaper clippings is
 24 because, you know, there aren't Cabinet minutes
 25 reflecting -- these were negotiations. Frankly, I

Page 371

1 wasn't even privy to all the negotiations. I was
 2 used as resource person.
 3 At that point, I think the NDP had
 4 refused to talk to me. They only wanted to deal
 5 with the Premier's office, leader to leader as you
 6 will.
 7 And ultimately, I believe they were
 8 able to abstain from voting. So they were able
 9 to -- and as I said, a number of items were
 10 deliberately silent in the budget knowing that
 11 there would be post-budget negotiations.
 12 And so ultimately, I think what they
 13 did was they got what they felt was enough to allow
 14 them to allow us to pass the budget.
 15 1416 Q. And part of what they got was
 16 242 million for child care?
 17 A. I don't recall the specifics.
 18 There were a variety of things. And then this --
 19 by the way, this wasn't the end of the -- I think
 20 I'd indicated in earlier questions that subsequent
 21 to the deal, then when the budget went to
 22 committee, they started removing, with the support
 23 of the Conservatives, key clauses to the budget
 24 which effectively...
 25 So that particular day, there was a

Page 372

1 chance that the government could be -- could fall
 2 because the budget had -- would have effectively
 3 been defeated.
 4 1417 Q. Understood. A deal was, however,
 5 struck with the NDP to abstain from a vote against?
 6 A. No. We -- that was not -- we
 7 didn't have anything to do with their decision on
 8 the vote. We assume that they would simply vote
 9 with it, but they used -- they used a part of --
 10 that's their decision. We weren't privy to that.
 11 1418 Q. I want to just show you a report
 12 of the deal that appears to have been struck. It
 13 says --
 14 MS. LA HOREY: Can he just read it
 15 first, please.
 16 MR. LISUS: Yeah.
 17 THE WITNESS: Okay.
 18 BY MR. LISUS:
 19 1419 Q. The Liberals added 242 million
 20 over three years to help stabilize the province's
 21 struggling child care sector as 4- and 5-year-olds
 22 move into all-day kindergarten; right?
 23 A. Yes.
 24 1420 Q. I notice that in the February
 25 radio ads, there's a reference to Mr. Hudak. He

<p style="text-align: right;">Page 373</p> <p>1 had cancelled full-day kindergarten? 2 A. I don't know what those ads -- I 3 never heard those ads. 4 1421 Q. Are you aware, sir, that 5 Minister McMeekin's chief of staff expressed the 6 opinion to a colleague in the Cabinet office in 7 2013 that the decision to terminate the revenue 8 share at Slots at Racetrack Program without 9 transition support was, in part, designed to wedge 10 the opposition in the short-term? 11 A. No. 12 1422 Q. Have you heard that before? 13 A. No. 14 1423 Q. The decision did wedge the 15 opposition, didn't it? 16 A. I don't know. I have no idea what 17 the opp -- why the opposition do what they do. I 18 do know that that as -- you know, he confirmed that 19 we very much were going to do a transition. 20 Absolutely. 21 And I think I did indicate to you in 22 earlier answers that part of the budget is the 23 policy decisions as well as what I would call the 24 communications decisions. 25 And as I said to you, we had to be</p>	<p style="text-align: right;">Page 375</p> <p>1 1426 Q. Let me finish the question -- 2 August 2012? 3 A. I never heard the term "wedge" 4 used on anything. 5 1427 Q. Okay. 6 A. Were there discussions about 7 strategy of getting the budget passed? Absolutely. 8 1428 Q. Was the positioning of the 9 decision regarding SARP part of that strategy? 10 A. I don't -- I don't recall because 11 it wasn't a huge issue. 12 1429 Q. Okay. Now -- 13 A. And I note that the NDP abstained 14 from voting. I do recall that publicly in the 15 House and other places, both the NDP and the 16 Conservatives voiced their opposition to the plan 17 to end the subsidy. Again, I can't answer beyond 18 that because I wasn't involved in all of the 19 specific negotiations. 20 1430 Q. Did you ever read the horse racing 21 transition panel interim report in August? 22 A. I have not, no. I think that was 23 published after I left. 24 1431 Q. August 17, 2012. 25 A. No, I'm sorry. I didn't read</p>
<p style="text-align: right;">Page 374</p> <p>1 constantly aware of the fact that we would -- we 2 would need either the vote of one of the opposition 3 parties or their abstention in order to pass the 4 budget. 5 1424 Q. Did you speak with -- 6 MR. LISUS: I'll mark that newspaper 7 article as the next exhibit, please. 8 MS. LA HOREY: Lettered exhibit. What 9 are we at? 10 MR. MATTHEWS: So the April 24, 2012, 11 Toronto Star article, "Ontario budget: Child care 12 and anti-poverty advocates cheer Liberal-NDP deal," 13 will be Exhibit C. 14 EXHIBIT NO. C for Identification: 15 April 24, 2012, Toronto Star article 16 entitled "Ontario budget: Child care 17 and anti-poverty advocates cheer 18 Liberal-NDP deal." 19 BY MR. LISUS: 20 1425 Q. Are you aware of there being -- in 21 addition to Mr. Keegan's views about the decision 22 regarding SARP to have been wedge strategy, there 23 to have been other discussions of wedging around 24 the transition support for SARP -- 25 A. I never heard --</p>	<p style="text-align: right;">Page 376</p> <p>1 that. 2 1432 Q. I want to show you Exhibit 15 on 3 Mr. Shortill's examination. In the summer of 2012, 4 did you speak with Mr. Sorbara at all about the 5 decision to terminate SARP? 6 A. The summer of 2012? 7 1433 Q. Yes. 8 A. No, because there -- I may have 9 spoken to him about SARP, but there wouldn't have 10 been a decision. Oh, in the summer of 2012. I'm 11 sorry. I don't recall. I may have spoken to him, 12 but I don't recall. I spoke to Greg on a number of 13 issues. 14 1434 Q. Are you aware that on August 2, 15 2012, Mr. Sorbara gave a radio interview in which 16 he commented on SARP and said that he had been 17 speaking with Mr. Wilkinson on the panel and that 18 relief or support or help was going to be -- 19 A. Yes. 20 1435 Q. You are aware of that? 21 A. I am aware of that, yes. 22 1436 Q. Are you aware that as a result of 23 that radio interview, Mr. Wilkinson communicated 24 with Mr. Gene and Mr. Keegan? 25 A. Oh, yes.</p>

<p style="text-align: right;">Page 377</p> <p>1 1437 Q. How are you aware of that, sir? 2 A. I don't recall. We were engaged 3 in setting up the transition, negotiating how it 4 would happen, but I don't -- I don't recall 5 specifically. I don't recall a conversation with 6 Greg about that. I do recall when he did the radio 7 interview. I was made aware of it. I don't recall 8 specific conversations. 9 1438 Q. Do you recall who made you aware? 10 A. No. I also recall Greg in his 11 autobiography spoke about how he opposed initially 12 the HST back in 2009 when he was still in our 13 caucus. 14 And Greg is -- Greg -- again, I do not 15 recall speaking to him about this specifically, but 16 I do recall hearing about his comments. And it was 17 consistent with what they were going to do, so we 18 weren't too concerned about it. That's probably 19 why I didn't speak to him. 20 1439 Q. Are you aware that Mr. Wilkinson 21 wrote Mr. Gene and emailed the day after that radio 22 interview? 23 A. I knew they were in communication. 24 I'm not aware of a specific email. 25 1440 Q. Are you aware that Mr. Wilkinson</p>	<p style="text-align: right;">Page 379</p> <p>1 the industry and rural Ontario to help us figure 2 out the best way to implement transition funding. 3 1443 Q. And do you see where Mr. Wilkinson 4 says to Mr. Gene: 5 "I will lay out the plan B and 6 time lines we need to avoid the 7 consequences of plan A, fiscal, 8 legal, and political, and give us an 9 advantage in the by-elections by 10 wedging both Tim and Andrea." 11 A. I saw that, yes. 12 1444 Q. Did the implementation of 13 transition support give an advantage in the 14 by-elections? 15 A. I don't know. I wasn't involved 16 in by-elections. I don't even recall which 17 by-elections. I think we lost all the by-elections 18 around then, I think. 19 1445 Q. And so did you have any 20 discussions with Mr. Wilkinson about wedging the 21 Conservatives? 22 A. I would have had conversations 23 about -- I certainly don't recall using the word 24 "wedges," and I don't recall any conversations on 25 that with him.</p>
<p style="text-align: right;">Page 378</p> <p>1 spoke to Mr. Gene about any transition strategy -- 2 MS. LA HOREY: Well, you're reading 3 from a document, Mr. Lisus, and you put a document 4 in front of the witness. Why don't you give him a 5 chance to look at it. 6 THE WITNESS: Is it the same document? 7 I'm sorry. Where is this that you were talking 8 about a letter? 9 BY MR. LISUS: 10 1441 Q. Second paragraph. 11 MS. LA HOREY: Let's just take a 12 minute. We'll all read it. And for the record, 13 CRE0029291. 14 THE WITNESS: Okay. 15 BY MR. LISUS: 16 1442 Q. Did this email sequence come to 17 your attention in the summer -- 18 A. I don't believe I ever read the 19 email, but I do remember that there were -- I 20 talked to John directly on a number of occasions 21 because we were actively looking for him to be a 22 key part of the panel. 23 We had an all-party panel, including 24 Mr. Snobelen, Mr. Buchanan, Mr. Wilkinson all of 25 whom, in our view, had good connectivity with both</p>	<p style="text-align: right;">Page 380</p> <p>1 But I certainly -- you know, I was 2 surprised that the NDP didn't make a bigger issue 3 out of -- I wasn't surprised with the 4 Conservatives. After all, it was their program 5 initially. They're the ones who expanded -- you 6 know, brought it in along with a number of other 7 tax cuts for the industry. 8 I was surprised that the NDP didn't 9 make a bigger issue out of it. You'll notice in 10 the previous documents that you asked me to look 11 at, there's no reference to it by the -- either of 12 those articles. 13 You asked if it was part of the 14 discussions. I wasn't privy to all those 15 discussions. But the NDP ultimately abstained and 16 allowed the budget to pass. 17 1446 Q. And I want to ask you about some 18 comments that you made in March of 2012 -- 19 A. Okay. 20 1447 Q. -- which we know is prior to the 21 budget being tabled; correct? 22 A. Yes. 23 1448 Q. But we've also seen from the 24 documents there's now a fair amount of discussion 25 about the cancellation of the Slots at Racetrack</p>

Page 381		Page 383	
1	Program?	1	MR. MATTHEWS: 23.
2	A. I'm sorry. What's the date of	2	MS. LA HOREY: Thank you.
3	these comments from --	3	EXHIBIT NO. 23: Document entitled
4 1449	Q. March 20, 2012.	4	"Official Report of Debates (Hansard)"
5	A. So approximately a week before the	5	dated Tuesday, March 20, 2012.
6	budget.	6	BY MR. LISUS:
7 1450	Q. Yes.	7 1453	Q. I want to show you --
8	A. Okay.	8	MR. ROSENBERG: What I've been handed
9	MS. LA HOREY: Can you provide the	9	is the March 21st transcript. What's on the screen
10	witness with a copy if you're going to ask about	10	is the March 20th.
11	them, please. Can you give us the document	11	MR. LISUS: We just marked March 20.
12	reference, if there is one?	12	We're going to look at March 21 now.
13	THE WITNESS: There doesn't appear to	13	MR. ROSENBERG: Exhibit 23 is March
14	be one.	14	21st.
15	MS. LA HOREY: Okay.	15	MR. MATTHEWS: No, that's not correct.
16	MR. ROSENBERG: Counsel, is this	16	Exhibit 23 is March 20th, which I have in front of
17	produced? Do you have a copy for me?	17	me.
18	MR. MATTHEWS: We've provided a copy	18	MS. LA HOREY: Can we go off the record
19	for the witness.	19	for a sec.
20	MR. ROSENBERG: You haven't provided a	20	-- OFF THE RECORD DISCUSSION --
21	copy for counsel so I can follow along.	21	BY MR. LISUS:
22	MS. LA HOREY: Sorry, I didn't -- where	22 1454	Q. Looking now at Hansard March 21.
23	did this come from?	23	A. Yes.
24	MR. LISUS: From Hansard.	24 1455	Q. You see there's a number of
25	MS. LA HOREY: Okay. It hasn't been	25	statements made by you on that day about --
Page 382		Page 384	
1	produced as an exhibit or attachment to date?	1	A. I'm sorry. Are you referring to
2	MR. LISUS: Correct. Well, I don't	2	page 1160 of Hansard?
3	know if it's an attachment on the Affidavit or not.	3 1456	Q. Begins on 1159.
4	MR. MATTHEWS: I'm not sure.	4	A. I'm sorry. Okay. May I read
5	MR. LISUS: Do you want a copy,	5	this, please?
6	Mr. Rosenberg?	6 1457	Q. Yes, of course.
7	MR. ROSENBERG: I don't want to delay	7	A. Okay. I've had a chance to read
8	the examination. Why don't I just stand behind the	8	it.
9	witness.	9 1458	Q. You made those comments?
10	MR. MATTHEWS: I can put it up on the	10	A. Yes.
11	screen if you just bear with me for a second.	11	MR. LISUS: That's the next exhibit.
12	MR. ROSENBERG: Sure. Thank you.	12	MS. LA HOREY: Is this 24?
13	MR. LISUS: So we're now in March 20th.	13	EXHIBIT NO. 24: Document entitled
14	MS. LA HOREY: Let everyone catch up,	14	"Official Report of Debates (Hansard)"
15	please, sir.	15	dated Wednesday, March 21, 2012.
16	MR. LISUS: I'm on page 1113.	16	BY MR. LISUS:
17	THE WITNESS: Okay.	17 1459	Q. Now, the budget hadn't been tabled
18	BY MR. LISUS:	18	at this point?
19 1451	Q. You made those comments in the	19	A. That's correct.
20	House?	20 1460	Q. So why were you having debates
21	A. I did.	21	about the --
22 1452	Q. If we go to March 21.	22	A. Because of my speech to the
23	A. I don't have that.	23	Economic Club.
24	MR. LISUS: That's the next exhibit.	24 1461	Q. And I obviously -- you anticipated
25	MS. LA HOREY: This is 23?	25	that the comments in your speech to the Economic

<p style="text-align: right;">Page 385</p> <p>1 Club would become the subject of questions in the 2 House? 3 A. Yes. 4 1462 Q. And I want to show you a Hansard 5 extract from April 26. 6 A. 2012? 7 1463 Q. Yes, sir. And before that, 8 April 18, 2012. 9 A. Okay. 10 1464 Q. Now, in this session -- and you 11 said these things in the House? 12 A. If it's in Hansard, I would have, 13 yes. 14 1465 Q. In this session, you make 15 reference to Mr. Drummond, quote: 16 "Said not to subsidize horse 17 racing. They said no to that." 18 Do you see that? 19 MS. LA HOREY: Sorry, which page are 20 you on? 21 THE WITNESS: Where is that? I'm 22 sorry. I missed that. 23 BY MR. LISUS: 24 1466 Q. April 18, page 1661, left-hand 25 column.</p>	<p style="text-align: right;">Page 387</p> <p>1 EXHIBIT NO. 25: Document entitled 2 "Official Report of Debates (Hansard)" 3 dated Wednesday, April 18, 2012. 4 MR. MATTHEWS: Just for the record, 5 because I don't think we said so, we've given the 6 witness an excerpt from Hansard of April 26, 2012. 7 BY MR. LISUS: 8 1471 Q. That's what you said in the House? 9 A. Yes. 10 MS. LA HOREY: And it's page 1886 of 11 Hansard. And that's exhibit -- 12 MR. MATTHEWS: 26, I believe. 13 Mr. Rosenberg, that's the last exhibit. 14 EXHIBIT NO. 26: Document entitled 15 "Official Report of Debates (Hansard)" 16 dated Thursday, April 26, 2012. 17 BY MR. LISUS: 18 1472 Q. Was part of the deal that the 19 government did with the NDP with respect to the 20 budget was a payment of \$50 million over three 21 years to assist in transition? 22 A. I don't recall. 23 1473 Q. Okay. 24 A. One of the concerns I had -- 25 sorry.</p>
<p style="text-align: right;">Page 386</p> <p>1 A. Sorry, I missed that page. I 2 apologize. Can I read it? I want to read the 3 whole page. Okay. 4 1467 Q. And on the prior page, 1660, you 5 see your reference to: 6 "The leader of their party says 7 we should have adopted every one of 8 Don Drummond's recommendations." 9 No, I think the words were "no cherry-picking." 10 A. Yeah. 11 1468 Q. And then you go over to say: 12 "Mr. Drummond said not to 13 subsidize horse racing." 14 They said no to that; right? 15 A. Yes, the opposition said no to 16 that. 17 1469 Q. You understood that Mr. Drummond 18 had recommended the elimination of the Slots at 19 Racetrack Program? 20 A. No, I didn't understand that. 21 I think I misspoke in the House. 22 1470 Q. Okay. 23 MR. LISUS: That's the next exhibit. 24 MS. LA HOREY: Is this 25? 25 MR. MATTHEWS: Yes.</p>	<p style="text-align: right;">Page 388</p> <p>1 MS. LA HOREY: Mr. Lisus has enough 2 questions of his own without you answering ones 3 that he hasn't asked. 4 BY MR. LISUS: 5 1474 Q. Were you involved in the work of 6 the panel in the summer of 2012? 7 A. No. 8 1475 Q. Were you updated on the progress 9 of the panel? 10 A. I don't recall. I would assume I 11 would have been. And I'm not sure how much work 12 they were doing at the time. 13 1476 Q. Okay. 14 A. Typically the panels like that 15 slow down in the summertime. 16 1477 Q. Okay. Were you aware as to 17 whether or not there was urgency to the provision 18 of transition support to the horse racing industry 19 after the announcement of the termination of Slots 20 at Racetrack Program? 21 A. There certainly was on my part 22 because we knew that the -- as soon as those 23 termination clauses were operative, we knew we were 24 working on a one-year. And I was anxious to get it 25 done sooner rather than later.</p>

<p style="text-align: right;">Page 389</p> <p>1 1478 Q. And the panel was going to get it 2 done? 3 A. That was my hope and expectation. 4 1479 Q. What did you understand to be the 5 nature of the urgency? 6 A. Well, first of all, that as of 365 7 days later, the subsidy stopped. 8 1480 Q. Is that when you expected the 9 situation would -- 10 A. Well, it would become acute then. 11 I mean, there were business decisions being made 12 already as reflected, for instance, in the Hansards 13 that you showed me. 14 That work I do in other parts of the 15 agricultural sector, I know that, you know, they 16 make decisions last fall with respect to crops 17 they're going to put in their field next spring. 18 So there certainly was an urgency and 19 that the longer that was left open, the more 20 difficult it would be. 21 MR. LISUS: Let's take a break. 22 -- Recess at 12:20 p.m. -- 23 -- Upon resuming at 1:10 p.m. -- 24 MR. LISUS: Those are my questions for 25 now.</p>	<p style="text-align: right;">Page 391</p> <p>1 that you were asked by counsel for the plaintiffs, 2 and so I'll have to jump around a bit, and for that 3 I apologize. 4 But the usual rules apply. If you 5 don't understand my question, please ask me to 6 repeat or rephrase. I'll be happy to do so. 7 Mr. Lisus took you to a document that 8 was marked as Exhibit B to your examination, and 9 this is a briefing note from the Ministry of 10 Agriculture and Rural Affairs January 27, 2012. 11 It's also marked as Exhibit C to Mr. Shortill's 12 examination if that assists my friends. 13 MR. LISUS: What's the page number in 14 the upper right corner? 15 MR. ROSENBERG: I have two sets of page 16 numbers. So I see 785 in the smaller one. Does 17 that assist? 18 BY MR. ROSENBERG: 19 1482 Q. If I could direct your attention 20 to page 5 of that document, please. 21 A. Okay. 22 1483 Q. You'll see under the heading 23 "Cons" -- 24 A. Mm-hm. 25 MS. LA HOREY: Sorry, you need to say</p>
<p style="text-align: right;">Page 390</p> <p>1 MS. LA HOREY: When you say "for now," 2 you mean subject to your reexamination? 3 MR. LISUS: My recross-examination and 4 any other information that comes up by way of 5 refusal or otherwise. 6 MS. LA HOREY: Well, I think you're 7 limited to anything that comes out of questions 8 refused that are directed to be answered. That's 9 my position, that this is your chance to examine 10 Mr. Duncan. 11 You have my position on the record. So 12 subject to your reexamination and anything arising 13 out of a refusal that is ruled by the Court to be 14 answered, our position is that you're done. So one 15 last chance to ask one more question, Mr. Lisus. 16 No? Okay. 17 MR. ROSENBERG: Let's go off the record 18 for a second. 19 -- OFF THE RECORD DISCUSSION -- 20 CROSS-EXAMINATION BY MR. ROSENBERG: 21 1481 Q. Good afternoon, Mr. Duncan. My 22 name is Michael Rosenberg. I'm counsel for the 23 Ontario Lottery and Gaming Corporation. 24 I have a few questions for you this 25 afternoon. Many of them arise from the questions</p>	<p style="text-align: right;">Page 392</p> <p>1 "yes" for the record. 2 THE WITNESS: I apologize. Yes. 3 BY MR. ROSENBERG: 4 1484 Q. "Potential for raising 5 expectations of OMAFRA's ability to 6 deliver on stakeholder management 7 when the ministry does not have 8 designated expertise in the equine 9 industry - expertise is more 10 focused on process." 11 Do you see that? 12 A. Yes. 13 1485 Q. Was that consistent with your 14 understanding of OMAFRA's expertise in January 15 2012? 16 A. Yes. 17 1486 Q. If you go back to page 4 of the 18 document, under the heading "Cons," you see: 19 "Even though OMAFRA does not 20 have a significant policy or program 21 focus on the industry." 22 And, again, I'd ask, was that consistent with your 23 understanding of OMAFRA's policy or program focus 24 with respect to the horse racing industry in 25 January of 2012?</p>

<p style="text-align: right;">Page 393</p> <p>1 A. Yes.</p> <p>2 1487 Q. Now, the paragraph continues:</p> <p>3 "The ministry is regarded as</p> <p>4 being an important voice for the</p> <p>5 sector - the absence of OMAFRA from</p> <p>6 the implementation may raise some</p> <p>7 criticism."</p> <p>8 My question is whether it was intended that OMAFRA</p> <p>9 would play a role in implementing transition</p> <p>10 funding for the horse racing industry following the</p> <p>11 termination of SARP.</p> <p>12 A. Yes.</p> <p>13 1488 Q. Mr. Lisus asked you a number of</p> <p>14 questions about who was told what and when. In</p> <p>15 fairness to you, sir, I think that you answered</p> <p>16 that you did not recall a number of times.</p> <p>17 I was wondering if just generally you</p> <p>18 could tell me how budget secrecy works.</p> <p>19 A. Okay. Budget secrecy is rooted in</p> <p>20 the past when oftentimes there would be information</p> <p>21 contained in the budget that was seen to be able to</p> <p>22 move markets. That's why the Finance minister</p> <p>23 doesn't rise until 4 o'clock traditional time when</p> <p>24 markets close. Of course, that's all in the past.</p> <p>25 Budgets are -- as I indicated</p>	<p style="text-align: right;">Page 395</p> <p>1 a budget, to kind of get everything pulled together</p> <p>2 and get a consistent plan. Because that's what a</p> <p>3 budget is ultimately, a plan.</p> <p>4 In the development of the budget</p> <p>5 itself, there are two principal -- three principal</p> <p>6 components to the budget: Revenue plan,</p> <p>7 expenditure plan, and a policy plan.</p> <p>8 Typically, as I indicated in earlier</p> <p>9 testimony, the first minister and the Finance</p> <p>10 minister will kind of get together early on and</p> <p>11 say, "Okay, where -- what do we want this to be</p> <p>12 about?"</p> <p>13 You know, this is the government's</p> <p>14 plan. Documents such as a party's platform will</p> <p>15 inform that, the state of the economy.</p> <p>16 You know, when we did the 2008 budget,</p> <p>17 Bear Stearns had just happened. Asset-backed</p> <p>18 commercial paper was just starting to emerge, but</p> <p>19 we had a surplus, and nobody really had yet</p> <p>20 fathomed what was going to happen in the next</p> <p>21 several months.</p> <p>22 So it gives the government time to do</p> <p>23 that. Then you typically do an expenditure plan.</p> <p>24 So the government then directs every ministry,</p> <p>25 every Crown corporation to project its own spending</p>
<p style="text-align: right;">Page 394</p> <p>1 yesterday, are not even a required document.</p> <p>2 Estimates are required. Budgets first started, I</p> <p>3 believe, in the U.K. parliament the beginning of</p> <p>4 the 20th Century.</p> <p>5 And even within Ontario standing orders</p> <p>6 and in the standing orders of the House of Commons,</p> <p>7 there's no requirement for a budget. The only</p> <p>8 thing there's a requirement for is estimates.</p> <p>9 For instance, Mr. Eves' government</p> <p>10 actually did a budget at magna outside of the</p> <p>11 legislature. Now, it turned out there is now</p> <p>12 considered to be a convention around that.</p> <p>13 So the secrecy goes back to a time long</p> <p>14 ago. It also gives the government time to go</p> <p>15 through an exercise similar to the one we went</p> <p>16 through with respect to the horse racing industry</p> <p>17 and with the SARP program.</p> <p>18 It allows governments -- because</p> <p>19 remember, governments are full of people with</p> <p>20 different points of view. There's not always</p> <p>21 agreement within a government on any issue.</p> <p>22 And it gives the government time to</p> <p>23 evolve a position, have an internal debate and</p> <p>24 discussion through very formal processes and allows</p> <p>25 the government time, particularly on something like</p>	<p style="text-align: right;">Page 396</p> <p>1 plans.</p> <p>2 And you can conduct that process in</p> <p>3 different ways. The process we use was we would</p> <p>4 send an envelope with a dollar figure of what we</p> <p>5 would plan to give each department or ministry.</p> <p>6 They would, in turn, respond, and they would have a</p> <p>7 chance to pitch that to Treasury Board. The</p> <p>8 Treasury Board would ultimately approve the</p> <p>9 expenditure plan that goes into the budget.</p> <p>10 In those expenditure plans, ministries</p> <p>11 can pitch new programs, get rid of programs,</p> <p>12 continue funding programs, decrease funding to</p> <p>13 programs. There's a certain amount of latitude.</p> <p>14 Typically what the central agencies do</p> <p>15 is provide a large -- a number, a top-of-line</p> <p>16 number, and typically it's never enough.</p> <p>17 1489 Q. What's never enough?</p> <p>18 A. The amount of money that the</p> <p>19 central agencies will assign. If you're the</p> <p>20 minister -- let's use agriculture. You'd get your</p> <p>21 envelope. It might say \$600 million.</p> <p>22 By your own reckoning, you can't</p> <p>23 deliver your existing programs with that. And</p> <p>24 typically you can't. It's designed to force every</p> <p>25 department, every ministry to review every aspect</p>

Page 397

1 of its operation.
2 So within the government, only on the
3 highest-priority items -- and typically in a
4 budget, you will identify what your -- there will
5 be a theme and then your priority items.
6 Typically, depending on the ministry,
7 on the minister, they will be brought into the
8 discussions once the central agencies have sort of
9 decided on a direction.
10 So on the case of SARP, ag and food
11 would have only been indirectly involved because
12 this was originally an agreement. Really didn't
13 involve the Ministry of Agriculture.
14 In fact, the Ministry of Agriculture,
15 you know, was rather envious of the amount of money
16 that was given to the horse racing industry through
17 the OLG because it was -- you know, like I
18 indicated earlier, it's indicated in the Hansard,
19 it's also indicated in some of the documents that
20 counsel presented, you know, it's huge relative to
21 the entire Ministry of Agriculture budget.
22 The program was started because when
23 the province introduced casino gaming to Ontario,
24 it was felt that that was an additional threat to
25 an industry that had been in financial difficulty

Page 398

1 for many, many years.
2 It was done outside of the department.
3 It was political, done by the previous government
4 and frankly supported by, I think, the entire
5 legislature up until we had a chance to look at it
6 carefully and see if it was continuing to fulfill
7 the mandate that was originally intended.
8 So you develop -- you get your -- kind
9 of your directional piece from the leader of the
10 government. Then you do an expenditure plan, a
11 revenue plan. You have to reconcile those and
12 identify your key projects.
13 This was not a key project in the 2012
14 budget. I think the biggest one, the one that most
15 worried us was -- in terms of its impact was -- and
16 I see you've got a copy of the document there --
17 was the pension piece.
18 Oftentimes, the stuff that gets
19 immediate media attention isn't really the most
20 particularly difficult issue in a budget. In this
21 budget, that was the -- both in terms of dollars
22 and in terms of potential political challenge,
23 those are -- that was the big piece.
24 As it turned out, we thought we would
25 have to legislate on that. And, again, this was

Page 399

1 another piece where we basically -- if you -- I
2 won't take you through the substance of it, but we
3 felt that at some point, the government would
4 actually have to legislate the solution to that.
5 It turned out we didn't. We were able to negotiate
6 a solution over a number of years.
7 1490 Q. This is the pension issue?
8 A. The pension issue. And basically
9 cut it down to what I would call its most basic
10 element. Sort of if the pension -- if a pension
11 has an unfunded liability, what is the first way to
12 correct it historically, and by law until then,
13 higher contributions. The change was -- the first
14 thing you do now is reduce benefits.
15 Interestingly, the reason we were able
16 to reach an agreement on that with both the
17 employers, which in our case these are the
18 jointly-sponsored pension plans and the unions, was
19 because many rank and file union members found
20 that -- for instance, teachers, I think they were
21 contributing, I think, 13 percent of their gross
22 pay.
23 But that was, again, a policy that we
24 felt would be the most problematic politically and
25 could actually lead to the defeat of the

Page 400

1 government.
2 1491 Q. Now, this budgeting process that
3 you've just been describing, does the need for
4 confidentiality or secrecy limit what you can tell
5 industry participants about measures that are
6 contemplated for the budget?
7 A. Absolutely. And you also know
8 that once you release a budget, that there will be
9 ample opportunity to go back at it. In fact,
10 budgets have been -- I think of Mr. McKechin's
11 (ph) 1981 budget where the entire budget was walked
12 back. I think of Mr. Morneau's situation last
13 year. It wasn't a budget matter, but it was a tax
14 matter that Mr. Morneau had to walk back. And
15 typically that's exactly what happens. And even
16 within governments.
17 I mean, you know, one of my colleagues
18 who used to sit next to me would often say to me as
19 we were sitting in the House, "The opposition
20 doesn't even know a fraction of what's going on
21 behind the scenes." And within a government,
22 there's always considerable concern, debate.
23 Counsel for the plaintiff spoke of
24 Mr. McMeekin. He had real opposition to what we
25 did, real concern. He spoke from the heart about

<p style="text-align: right;">Page 401</p> <p>1 the people that would be affected by this once he 2 became fully aware of its -- and that's why you 3 have a Cabinet. But a Cabinet has to speak as one 4 voice when it comes out. 5 MR. LISUS: You shouldn't get into what 6 people said at Cabinet. 7 MS. LA HOREY: No, I don't think he 8 has. 9 THE WITNESS: I haven't said what 10 happened in Cabinet. What I will -- 11 MS. LA HOREY: Thank you for the 12 warning. 13 THE WITNESS: What I will say -- yes, I 14 have to be careful of my own oath. 15 What I will say is that one of the 16 reasons for Cabinet solidarity is to allow members 17 of Cabinet and secrecy at this point -- I mean, 18 there have been times in history where ministers 19 resign over disagreement with a government policy, 20 particularly a budgetary policy. And so I don't 21 think that ever -- that didn't occur when I was in 22 government, but it's happened on a number of 23 occasions. 24 So it gives those within the 25 government -- I forget how many were at the Cabinet</p>	<p style="text-align: right;">Page 403</p> <p>1 understood Mr. Rosenberg and Mr. Duncan to both be 2 speaking about general government theories of good 3 government and general policies within a 4 parliamentary system that has a Cabinet. I agree 5 that Mr. Duncan should not be speaking about what 6 happened at that Cabinet meeting. 7 THE WITNESS: So then let me reference 8 what you raised with me, Mr. McMeekin's radio 9 interview and Mr. Sorbara's radio interview. 10 Mr. McMeekin was, at the time, a member 11 of Cabinet. Those discussions happened not only in 12 Cabinet. They happened outside of Cabinet. And 13 members of Cabinet oftentimes will -- outside of 14 the restrictions of Cabinet, will talk about 15 things. 16 Ultimately, they have to vote in the 17 legislature, yay or nay. In our legislature, you 18 can abstain. I don't know if it's ever been tested 19 if a Cabinet minister were to abstain on a 20 government vote. I don't think that's ever been 21 tested. 22 But in the Ontario legislature at the 23 time, you can now -- that's a relatively recent 24 innovation. That happened in the time I served in 25 the legislature. And I think -- my recollection is</p>
<p style="text-align: right;">Page 402</p> <p>1 table at the time, but there are -- there are a 2 number of individuals who are part of a Cabinet, 3 and they have very wholesome debates, as well as 4 there are -- each ministry is represented at the 5 Cabinet table. 6 So you have ministers, ministries, and 7 then, of course, central agencies such as Finance, 8 Treasury Board, Cabinet office who have to bring it 9 all together. 10 1492 Q. I think you said that's healthy. 11 You want a frank discussion around the Cabinet 12 table? 13 A. Yes, and between and among 14 ministries and also at the Treasury Board table. 15 MR. LISUS: Look, you're assuming there 16 was a frank discussion around the Cabinet table, 17 and we have a complete black-out on what happened 18 at the Cabinet table, so we shouldn't get into this 19 given the position that the Crown has taken. 20 We don't know whether there was a frank 21 suggestion, no discussion, a disputatious 22 discussion. There shouldn't be characterizations 23 about anything at Cabinet. 24 MS. LA HOREY: I agree that we're not 25 going to speak about this Cabinet decision. I had</p>	<p style="text-align: right;">Page 404</p> <p>1 the NDP abstained on that rather than vote against 2 it. 3 BY MR. ROSENBERG: 4 1493 Q. Let me just pick up on that. So 5 the decision to terminate SARP was part of your 6 2012 budget? 7 A. Yes. 8 1494 Q. And that budget, I think you told 9 Mr. Lisus, was put to a motion before the 10 legislature? 11 A. It was put -- there's actually -- 12 so there's a motion to adopt the budgetary policy 13 of the government. There is first reading, which 14 is done the same day as the budget. 15 Now, that typically is allowed to pass 16 unanimously because if you can't pass it at first 17 reading, you've got a real problem. 18 So the way the -- the custom of the 19 place, typically gets first reading approval. 20 Second reading is approval in principle. And 21 typically after approval in principle, a budget 22 document will go to committee. 23 Now, there is now, again, a relatively 24 new procedure where a government can refer a bill 25 to committee before approval in principle.</p>

Page 405

1 And the reason for that is for issues
2 that are -- and I don't know how many times it's
3 been used in our parliament, but typically if a
4 government refers a bill to committee after first
5 reading, it's signalling that it would prefer to
6 have the voice of the entire legislature before
7 approval and principle.
8 Euthanasia, issues of that nature and
9 other less contentious issues will find their way.
10 Typically budgets don't.
11 So then the budget goes into committee
12 where the government, the opposition -- the
13 opposition in a minority parliament control the
14 committee.
15 There will be committee hearings. The
16 minister will likely be called to give a statement,
17 answer questions, and then the committee will have
18 to vote on the budget clause by clause and send the
19 bill back to the House for -- with a vote on -- so
20 there will be a second reading vote.
21 That would be the first vote, and that
22 would be the most important vote. That would be
23 the approval and principle as amended.
24 I would -- I don't recall. I do recall
25 the one day when the third party started to remove

Page 406

1 the key clauses from the budget, which effectively
2 would have gutted it. But it was a bit of a panic
3 moment. We didn't know what they were doing, and
4 they were -- even though they'd agreed to support
5 the budget -- that's not right. They agreed to
6 allow the budget to be passed. We didn't know what
7 they were doing.
8 Eventually they backed off. Those
9 clauses were left in the budget. I do believe we
10 took -- I do believe we had to do some amendments
11 to the budget bill, if I'm not mistaken, but,
12 again, I'd want to check on that.
13 So there are all of these opportunities
14 both for the government and the opposition to vote,
15 as I say, in favour, opposed, or in the case of the
16 Ontario legislature, to abstain.
17 1495 Q. And ultimately, your 2012 budget,
18 which included the decision to terminate SARP, was
19 passed by the legislature?
20 A. Yes, it was.
21 1496 Q. My friend, Mr. Lisus, put to you
22 some Hansard from the legislature in which the
23 decision to terminate SARP was being debated by
24 members of the legislature. Do you remember that?
25 A. Those were actually not parts of

Page 407

1 the debate. Those were from question period.
2 1497 Q. I see.
3 A. I remember generally, yes. And
4 those were actually -- I think the ones you
5 presented were actually questions before the budget
6 itself was tabled.
7 1498 Q. He did ask you -- and I just
8 remind you, the earliest one was March 20. As I
9 understand it, the decision -- the OLG
10 modernization report was released on March 12,
11 2012. So it's after the release of that report.
12 A. Yeah.
13 1499 Q. All I wanted from you, sir, is
14 that you recall discussions and it looked like at
15 times some fairly heated discussions about the
16 wisdom of terminating SARP?
17 A. They were heated discussions, but
18 I would note just for your purposes, as I did in
19 the Hansard, that the questions didn't come until
20 late in question period, which typically meant it
21 wasn't high priority for the opposition.
22 There is -- and I don't know if the
23 rules are still the same. I've been gone for five
24 years. There's leaders' questions, and at that
25 point, nothing had come up in leaders' questions, I

Page 408

1 think. You'll need to double-check that.
2 Then there's first members' questions,
3 second members' questions, third members'
4 questions. Those questions were all coming up
5 at third and fourth members' questions, which
6 typically signals that the opposition are trying
7 just to -- it's not -- it's not the highest
8 priority for them.
9 It is more like they want to make a
10 point. They want to get something in. And by
11 doing it before the budget, probably also
12 signalling that they were really waiting to see,
13 from their perspective, kind of what the largest
14 issues were going to be.
15 Because as counsel for the plaintiff
16 indicated, budget speeches are designed to get
17 certain things out, and they're also designed to
18 keep certain things quiet until the budget.
19 So typically, you'll put out things of
20 that nature to signal, and that's -- the opposition
21 parties will seize on those typically.
22 Like, for instance, this year,
23 Mr. Sousa announced in his pre-budget speech that
24 the deficit would be \$8 billion. And so the
25 next -- until the House was prorogued yesterday,

Page 409

1 the questions were all around that. It's a very
2 normal part of the process.
3 1500 Q. Now, what about the decision
4 ultimately to provide transition funding to the
5 horse racing industry? Was that in the budget?
6 A. No.
7 1501 Q. So where does that come from?
8 A. That was ongoing. And part of the
9 reason it wasn't in the budget was we still
10 hadn't -- we hadn't had what we felt were enough
11 discussions with those in the industry that were
12 affected.
13 As you pointed out, because this
14 program was largely cooked up between the then
15 Premier's office and the horse racing industry,
16 there was no expertise within ag and food.
17 We did have outside experts, and we
18 felt that, number 1, it would -- it would be
19 premature to determine what compensation should be,
20 how much.
21 As I indicated, there was also a desire
22 on our part to leave flexibility, not just on that
23 announcement but a number of other announcements
24 anticipating that there would be negotiations with
25 the opposition.

Page 410

1 My recollection is that even before
2 they saw the budget, the official opposition said
3 they would vote against it.
4 I had a chance to review the
5 Hansard that the plaintiffs' attorney showed me and
6 reminded me that that was, in fact, the case.
7 And then the government's -- you know,
8 as is typically the case in a hung parliament --
9 they call it hung parliament in the U.K. In a
10 minority legislature, typically it's the third
11 party.
12 And so we were cognizant of the fact
13 that we would have to negotiate with one -- likely
14 the NDP, one or the other of the opposition
15 parties.
16 But as I said, I think Mr. Hudak had
17 made it very clear that the Conservatives would
18 vote against the budget before it had been tabled.
19 1502 Q. Mr. Lisus put to you that the
20 \$50 million in transition funding that was
21 initially announced was the result of a budget deal
22 with the NDP. And I think you told him that you
23 didn't remember whether that was the case.
24 Do you remember how transition funding
25 came to be approved by the legislature or some

Page 411

1 other body?
2 A. It didn't get approved until after
3 I left.
4 1503 Q. I see.
5 A. It was very clear -- I was happy
6 to see, you know, the presentation of the
7 conversations that were going on with Mr. Snobelen,
8 with Mr. Wilkinson. We had also asked Mr. Buchanan
9 to be part of that.
10 There had been meetings, as I recall,
11 once the budget was announced with the racing
12 commission, with horse people, both track owners as
13 well as breeders and others associated with the
14 industry.
15 And the government -- again, we had
16 bandied about different numbers based on work that
17 was done by OLG, by Finance, by advice we had from
18 experts on the outside. You know, you learn that,
19 for instance, even Churchill Downs doesn't make
20 money.
21 So we really felt, given that we had a
22 one-year period from the time that the termination
23 notice was given until the time the money stopped,
24 that that would give us enough time to settle on an
25 appropriate compensation package.

Page 412

1 1504 Q. Just to come back to my question,
2 you said it happened after you left the
3 legislature. Do you remember how the transition
4 funding was implemented? Was it through a vote of
5 the legislature?
6 A. I don't believe so. I don't know.
7 I'd been gone by then. And as you know, our
8 successors broadened their approach, took a
9 different approach to horse racing. Not entirely
10 different, but it reflected some of the things that
11 we hadn't decided upon.
12 And so but once I left, I typically
13 didn't say -- didn't follow it very closely.
14 Although I did -- I guess -- I think the number is
15 closer to 500 million over five years. I stand to
16 be corrected.
17 1505 Q. I don't want you to speculate if
18 you didn't --
19 A. Okay, I didn't.
20 1506 Q. For our purposes, it will suffice
21 to say that the decision to terminate SARP at least
22 was the result of a vote in the legislature that
23 took place while you were Minister of Finance;
24 fair?
25 A. That is correct on a budget vote,

Page 413

1 which is a confidence vote.
2 1507 Q. As you said, it was certainly no
3 secret that the decision to terminate SARP was part
4 of that budget because it was discussed in question
5 period by the opposition?
6 A. Yes. And it was clearly a
7 confidence matter. In a minority parliament -- and
8 I don't -- again, it's all convention, but in a
9 minority parliament, a government can introduce
10 legislation and say that it won't consider this to
11 be a matter of confidence.
12 That wouldn't be the case with a
13 budget, but it's clearly -- which means it's a
14 confidence matter. If it's defeated, there's an
15 election.
16 1508 Q. If we go back to Exhibit B to your
17 examination, sir. This is Exhibit C to
18 Mr. Shortill's examination.
19 MS. LA HOREY: CRE0029902. And,
20 Mr. Lisus, I believe it's your page 783.
21 MR. LISUS: Thank you.
22 MR. ROSENBERG: Or 676 is what I have.
23 MS. LA HOREY: 674, 675.
24 MR. ROSENBERG: I think we're on the
25 same page. As I said, these exhibits have been

Page 414

1 used in a number of different examinations, and my
2 friend's ingenious numbering scheme changes from
3 one examination to another, so I think we've
4 established a concordance.
5 MS. LA HOREY: What page of the
6 document are we on?
7 MR. ROSENBERG: I'm looking at the
8 second page of the document.
9 MS. LA HOREY: Thank you.
10 1509 Q. I'm just looking under the heading
11 "Horse Racing Industry Impact."
12 A. Mm-hm.
13 1510 Q. The second bullet:
14 "The proposal includes the
15 intent to appoint an industry leader
16 to assist the horse racing industry
17 to develop a sustainability plan for
18 transitioning to the lower funding
19 level.
20 Relationships in the industry are
21 fractious, and it is unlikely that a
22 consensus on direction will be
23 achieved without assistance."
24 Was that consistent with your view of the horse
25 racing industry in January of 2012?

Page 415

1 A. Yes, absolutely.
2 1511 Q. I think you told us that one of
3 the steps that you took following the announcement
4 of the decision to terminate SARP was the
5 appointment of the horse racing transition panel?
6 A. Yes.
7 1512 Q. Was that the leadership that is
8 contemplated in this OMAFRA memo?
9 A. Yes. And we appointed three --
10 the other consideration, all this was a minority
11 parliament. So just as we had had in the -- in the
12 case of Mr. Godfrey and Mr. Phillips, prominent
13 Conservatives in leadership roles at OLG, on this
14 panel we reached out to both the other parties to
15 ensure that the panel's work would be seen as
16 nonpartisan, because the kinds of exchanges that
17 you -- that you saw in the legislature are
18 inherently partisan, and it forces everybody to
19 kind of put a little water in their wine and be
20 more focused on the important work at hand which
21 was to help transition an industry we knew was
22 going to be deeply affected by this.
23 1513 Q. Why couldn't you have gone through
24 this kind of exercise before announcing the
25 decision to terminate SARP?

Page 416

1 A. Well, we did go through the
2 exercise. What we determined was that in terms of
3 transition and what eventually it would look like,
4 it would be important to have outside advice
5 because we -- as the notes indicated, we didn't
6 have in-house expertise really.
7 The program -- you know, you had
8 talking points, but because of the downturn in
9 08-09, because of the size of the deficit, we had
10 to step up, review. And part of the role of
11 government is to provide leadership and make those
12 decisions, and they were our decisions.
13 When we stepped out with the budget, we
14 had taken it to -- we knew where we felt was the
15 right place to take Ontario in terms of this
16 particular program, but we also knew that --
17 because as you had pointed out and as was in the
18 documents, we would certainly have to do a much
19 broader consultation to understand -- you know,
20 inevitably when you do something like this, there
21 are consequences -- inevitably there are
22 unanticipated consequences.
23 And before finalizing anything, we
24 wanted to make sure that at a minimum, we had
25 anticipated the sorts of things that people who

<p style="text-align: right;">Page 417</p> <p>1 were in the industry would be familiar with, 2 whether it's the one that plaintiffs' counsel 3 raised about, you know, the birth cycle and so on 4 of horses, which is -- you know, even by that time, 5 even I understood that, but we still also wanted to 6 make sure -- Mr. McMeekin often referred to the 7 young people who worked in the stables, what impact 8 this would have on them.</p> <p>9 So we wanted to make sure that, number 10 one, that there was an adequate transition and 11 that, two, there was an industry left, a 12 sustainable industry that -- the experts told us 13 that the market could support somewhere between -- 14 I forget the -- I think it was in the area of five 15 tracks, including one thoroughbred track, but that 16 needed further work as well. And so we -- and I'm 17 not sure we ever actually concluded what that 18 number was, certainly not on my watch.</p> <p>19 That was all part of the reason. By 20 the way, there were a multiplicity of 21 announcements. The one I raise with you on the 22 pension one was in there. We were afraid we would 23 have to legislate that. It turns out, after a 24 number of months of negotiation, we were able to 25 get it done without legislation.</p>	<p style="text-align: right;">Page 419</p> <p>1 A. Yes. Virtually everyone was 2 curbed, even the large ministries that were the 3 government's priorities. Like, for instance, the 4 Ministry of Health.</p> <p>5 So at the time -- I think in Drummond's 6 report, he indicated that on a straight-numbers 7 basis year-over-year growth, that health would be 8 around 6 percent. Those are expenses that you 9 can't control.</p> <p>10 What we did in the case of health was 11 we restricted the rate of growth. So historically 12 in the previous 10 or 12 years, average annual 13 growth in the Ministry of Health budget would have 14 been around 6 percent, and we had to get it down to 15 about 4 percent, which actually was a real cut 16 because aging population, improving technologies.</p> <p>17 So the approach we took was rather 18 than -- and it was based on the recommendations of 19 Drummond, was to set our priorities, set those 20 programs which we felt worked well. The SARP 21 program did not work well in our view.</p> <p>22 And as opposed to cutting a broad-based 23 cut across programs that work well or don't work 24 well, we would eliminate programs that don't work 25 well and try to restrain growth and do actual cuts</p>
<p style="text-align: right;">Page 418</p> <p>1 1514 Q. You mentioned the deficit in the 2 Hansard, and I suppose I should ask. I mean, 3 you've certainly alluded to this in your earlier 4 testimony. This was a painful austerity budget; 5 is that fair?</p> <p>6 A. It was a very painful budget. 7 This -- it was -- when I say "painful," I mean it 8 was -- it definitely impacted on many people. It 9 impacted on the government's relationship with any 10 number of groups, unions, public sector unions, 11 teachers federations, a whole range of others, but 12 it was the result of the downturn in 2008-2009.</p> <p>13 We laid out a plan to get back to 14 balance in 2016-17, and this budget began -- built 15 on -- there had been -- the previous two budgets 16 had some of those initiatives, but this was really 17 the -- this was -- we now had Drummond's report for 18 some time. This was the one that kind of built out 19 sort of the more difficult decisions.</p> <p>20 1515 Q. The difficult decisions like -- I 21 see that you're obliged to curb the projected 22 increases in the Ontario Child Benefit?</p> <p>23 A. Yes.</p> <p>24 1516 Q. And that's money that goes to poor 25 kids?</p>	<p style="text-align: right;">Page 420</p> <p>1 as well.</p> <p>2 And what the Ministry of Agriculture 3 was concerned about is typically in those 4 scenarios, the smaller ministries get hit harder.</p> <p>5 Now, this wasn't part of the Ministry 6 of Agriculture. It was part of a Crown 7 corporation, so it got our attention in our -- in 8 our discussions around revenue and how much 9 revenue.</p> <p>10 And that started back in 2009-2010. 11 Didn't have this program in its -- we weren't 12 thinking of this program at the time other than it 13 was part of the larger OLG piece.</p> <p>14 And what eventually percolated up from 15 OLG was the view that this was not an effective 16 program. The industry was in very deep difficulty, 17 had been prior to this program, and that it was, in 18 fact, a subsidy.</p> <p>19 1517 Q. You said you were curbing the 20 growth of health spending. In this 2012 budget, 21 you actually cut items that I would call health 22 spending. I see you've cut funding to long-term 23 care homes --</p> <p>24 A. Yes.</p> <p>25 1518 Q. -- for people who require 24-hour</p>

<p style="text-align: right;">Page 421</p> <p>1 personal care, support, and supervision? 2 A. Yes. 3 1519 Q. And I know that education was -- 4 A. I was referring to the overall -- 5 I think if you look at the overall total health 6 spending budget, it probably would come in 7 somewhere between 2 and 4 percent growth, which is, 8 in fact, very significant constraint. 9 1520 Q. There were cuts to other 10 government priorities as well. You mentioned 11 education as a priority for your government? 12 A. Yeah. 13 1521 Q. I see that your government cut 14 funding for school buses? 15 A. Yes, we did. 16 1522 Q. That's a hard cut; right? 17 A. It's certainly not a popular cut, 18 but, again, they're all hard. I mean, but as a 19 government, you have to -- you have to make 20 decisions, and you wrestle with these decisions. 21 Some of them take up a larger amount of the 22 government's time prior to introduction. 23 And back to your previous question, 24 that helps -- when you look at individual documents 25 like we've seen over the last time that I've been</p>	<p style="text-align: right;">Page 423</p> <p>1 would be the items they would be responsible for. 2 And within government, those 20 to 30 3 ministries -- and I say 20 to 30. They -- it 4 varies. Sometimes ministries are put together; 5 sometimes they're split up. They would have 6 responsibility for one aspect. 7 The first minister, the Finance 8 minister, the Treasury Board chair -- and I was 9 combination Finance, Treasury Board. They're 10 within government. Attorney General is a 11 central -- they're called central agencies. 12 For instance, the lawyers that worked 13 in Finance were actually employees of the Attorney 14 General, not of the Minister of Finance. 15 And they -- they're the ones who are 16 charged, along with Cabinet office, of putting 17 everything together, setting the priorities, giving 18 direction and to solve disputes where there are 19 disputes among and between ministries or ministers. 20 1525 Q. So is it fair to say that OMAFRA 21 just has a narrower set of interests than, say, 22 the -- 23 A. It's a smaller ministry. It's 24 a -- I think at the time, the annual budget was 25 around 600 million. You know, health was, at the</p>
<p style="text-align: right;">Page 422</p> <p>1 sitting in this chair, that tells a fraction of one 2 part of the picture, a small fraction, one part of 3 the picture. 4 The same time that was going on, we 5 were wrestling with school bus cuts. We were 6 wrestling with cuts to long-term care. I had 7 minister -- I had colleagues who expressed concern 8 and so on. 9 But the Premier and the Minister of 10 Finance have to take the lead in these things and 11 ultimately determine what the government's 12 priorities are. 13 1523 Q. And as Minister of Finance, is it 14 fair to say that you're responsible for the 15 integrity of that budget and ultimately the 16 consequences to all Ontarians? 17 A. Yes. 18 1524 Q. Can you contrast that to the 19 responsibilities of, say, a line ministry like 20 OMAFRA? 21 A. Well, OMAFRA has responsibility 22 for certain -- so there would be -- there would be 23 the legislation regulations that, by law, fall 24 under the responsibility of ag. There would be the 25 minister's mandate letter from the Premier. Those</p>	<p style="text-align: right;">Page 424</p> <p>1 time, somewhere between 44 and 47 billion, I think. 2 1526 Q. And the horse racing -- 3 A. But if I could just add one. 4 1527 Q. Of course. 5 A. Just because it's smaller, doesn't 6 mean that it's not important. It doesn't mean -- 7 oftentimes smaller ministries have very important 8 stakeholder groups. They have a great deal of 9 impact and influence on any range of stakeholders. 10 So you can't -- you can't -- you can't take that 11 for granted. You have to take that into account. 12 1528 Q. I certainly don't disagree, sir. 13 I guess I'm just focused on the scope of the 14 stakeholder group, which I take it was narrower for 15 OMAFRA than it was for the Ministry of Finance? 16 A. Yes. 17 1529 Q. Can we draw a similar parallel to 18 the horse racing transition panel? As I understand 19 it, it was focused on finding the right level of 20 funding for horse racing in Ontario? 21 A. That's my understanding, yes. 22 1530 Q. It was not concerned with thinking 23 about the budget as a whole -- 24 A. No. 25 1531 Q. -- and was considering what</p>

Page 425

1 Ontario could or couldn't afford?
2 A. That is correct.
3 1532 Q. You told Mr. Lisus that there was
4 a personal dimension to the decision to terminate
5 SARP. And you knew people who were hurt?
6 A. Yes.
7 1533 Q. Can you tell us a bit more about
8 that?
9 A. Yes. One of my aunts was retired
10 from a horse racing facility. Her pension was
11 dependent on its ongoing functioning. I had
12 neighbours who had interests in horses. The owners
13 of Windsor Raceway had been long-time friends.
14 I'm trying to think who else. Those
15 are the key ones. The mayor at the time of
16 Lakeshore, Tom Bain, a long-time friend of mine,
17 he's a leader in the horse industry in Essex
18 County. Put a pretty severe strain on our
19 friendship, although I must say it did survive.
20 1534 Q. And surely it must have been tough
21 for your hometown --
22 A. Very tough.
23 1535 Q. -- where Windsor Raceway --
24 A. Absolutely. And I'd been involved
25 in assisting that raceway under three of its

Page 426

1 previous owners because it had been in some degree
2 of financial distress for many, many years.
3 And there's a very interesting civil
4 action that was launched by the Toldos against a
5 group that had been part of a group that the Toldos
6 lost. Had to do with where the funding from the
7 SARP program was actually going and who was getting
8 the money.
9 1536 Q. Am I right in thinking that you
10 made an announcement in Windsor about the decision
11 to terminate SARP?
12 A. Absolutely. I felt it was
13 important to do it in Windsor. Mr. Godfrey joined
14 me for that announcement. We did it not -- I can't
15 recall the precise time frames. In and around the
16 budget. It wasn't long after the budget, or it
17 might have even been before. I don't recall. But,
18 yes, it was done in Windsor.
19 1537 Q. Did you ever come to the view that
20 terminating SARP was the wrong policy decision?
21 A. Never. I felt that it was --
22 while it was -- while it was extraordinarily
23 difficult and while I was fully cognizant, as I was
24 in so many of those things if there were people
25 that were going to be directly impacted, I felt it

Page 427

1 was absolutely certainly in the province's interest
2 that in the long-run, it would be in the interest
3 of the horse racing industry in Ontario, and that
4 in order to get from what was in -- the advice I
5 had from everybody who was familiar with the
6 program, including the horse people, it was my view
7 that it was time for -- had been almost I guess --
8 almost -- less -- almost 17 years since the program
9 started with no, what I would call, close review in
10 all that time.
11 I mean, it's interesting. The same
12 language is repeated in budget after budget after
13 budget buried usually deep within those documents.
14 And you'll see that in a number of those programs
15 that go on.
16 But because of the great recession and
17 what had happened, we had to take a very deep dive
18 across a range of programs. It was very difficult,
19 but I never -- never -- I always felt, continued to
20 feel it was the right decision.
21 It was in the best interests of the
22 province. It was in the best interest, of the
23 industry in my view in the long-run recognizing
24 that there would be difficulty for any number of
25 people who were directly impacted.

Page 428

1 1538 Q. The plaintiffs rely on a statement
2 in Mr. Snobelen's evidence that the decision to
3 terminate SARP was not Cabinet-ready, properly
4 prepared, or understood. Do you agree with that
5 view?
6 A. No. And I've served in Cabinet
7 longer --
8 MR. LISUS: You shouldn't be doing
9 this. You're inferentially and indirectly trying
10 to prop up or justify a Cabinet decision that you
11 have not permitted any inquiry into.
12 THE WITNESS: I'd like to be able to
13 respond to a newspaper article that you put on the
14 table.
15 MS. LA HOREY: Mr. Duncan, we're not
16 debating Mr. Lisus's qualifications. I think what
17 Mr. Rosenberg said was that the decision was not
18 Cabinet-ready. And we've certainly produced for
19 you, and you've been entitled to ask upon, the
20 work-up before the decision was put to Cabinet. So
21 I think it's a fair question.
22 MR. LISUS: That's not the question.
23 The question is was the decision Cabinet-ready, and
24 was it properly made.
25 MS. LA HOREY: Mr. Rosenberg, if you're

<p style="text-align: right;">Page 429</p> <p>1 going to ask the question, then I think that your 2 question would be not whether the decision was 3 properly made, but whether -- we're not going to -- 4 I'd ask you not to go to what was said in Cabinet. 5 MR. ROSENBERG: I'm not asking -- 6 MR. LISUS: Or the propriety of what 7 Cabinet did. 8 MR. ROSENBERG: I think this is 9 something of a false controversy here. I'm asking 10 about the decision that came before Cabinet and -- 11 MS. LA HOREY: Are you talking about 12 the recommendations to -- 13 MR. ROSENBERG: As Ms. La Horey says, 14 the Crown has produced the Cabinet package. It was 15 Exhibit 11 -- 16 MR. LISUS: I'm not allowing any 17 examination on what happened at Cabinet. So you 18 can ask about recommendations that were made by OLG 19 or by Finance officials, but Ms. La Horey has drawn 20 a very bright line at the Cabinet door. 21 BY MR. ROSENBERG: 22 1539 Q. Let me try to work with my 23 friend's objection here. Mr. Lisus showed you 24 Exhibit 11 to Mr. Shortill's examination, which was 25 the Cabinet package. Do we have a paper copy of</p>	<p style="text-align: right;">Page 431</p> <p>1 A. Yeah, let me just confirm it's the 2 same document. Okay. Yes. Mm-hm. 3 1542 Q. Is that the package that would 4 have gone to Cabinet in connection -- 5 A. It appears to be. This was a 6 large package. I don't know if there's anything 7 else that went as part of -- this appears to be 8 that to me. 9 1543 Q. And as I understand it, this 10 package would have gone to Cabinet with your 11 recommendation as Minister of Finance? 12 MS. LA HOREY: Can I just see it for a 13 sec? 14 THE WITNESS: Most of the time, yes. 15 Sometimes the ministry would not put a 16 recommendation. I don't recall what was the case 17 in this one. 18 Typically that's what would happen, but 19 there were exceptions. Particularly if an issue 20 was -- you knew an issue was going to be 21 contentious, it would have gone with some kind of 22 recommendation from the committee it went to first, 23 but I don't recall specifically where that 24 recommendation first went. 25 MS. LA HOREY: I mean, if you were</p>
<p style="text-align: right;">Page 430</p> <p>1 that that was put to the witness? 2 MS. LA HOREY: Yes. 3 MR. ROSENBERG: Was it marked as an 4 exhibit on this examination? 5 MR. MATTHEWS: I believe so. 6 MR. ROSENBERG: Why don't we just go 7 off the record for a second. 8 -- OFF THE RECORD DISCUSSION -- 9 BY MR. ROSENBERG: 10 1540 Q. So I have what was marked as 11 Exhibit 11 to Mr. Shortill's examination identified 12 to you by Mr. Lisus as "the Cabinet package." I 13 don't think that it was marked as an exhibit on 14 your examination, but I stand to be corrected. 15 MS. LA HOREY: Why don't we read the 16 document number into the record. It's CRE0032045. 17 MR. ROSENBERG: It's actually a 18 compilation of documents in which that is the first 19 one. 20 MR. LISUS: Just go by Exhibit 11. 21 MR. ROSENBERG: Exactly. I think 22 that's what we should do. 23 BY MR. ROSENBERG: 24 1541 Q. You looked at this document 25 earlier, sir.</p>	<p style="text-align: right;">Page 432</p> <p>1 looking for a signature, Mr. Rosenberg, it's on the 2 modernizing Ontario Lottery and Gaming Corporation 3 Ministry of Finance jobs and economic committee 4 dated February 7, 2012. There's Minister Duncan's 5 signature, I believe. 6 THE WITNESS: Yeah, and that would have 7 gone to the full Cabinet subsequent to that. 8 Unless there were -- unless there were major 9 changes to a document, it would have gone as is. 10 There wouldn't have been a second one signed off 11 on. But that signature is also my signature and 12 the deputy minister's signature. 13 BY MR. ROSENBERG: 14 1544 Q. Could I direct your attention to 15 page -- I believe it's 845 in the top, and it's 16 page 17 of the Cabinet submission decision 17 document. 18 A. There we go. 845, that's the 19 Cabinet submission decision document. 20 1545 Q. Sorry, 846. My mistake. 21 A. I'm sorry. Okay. 22 MR. MATTHEWS: Can you tell me which 23 page of the Cabinet submission document? 24 THE WITNESS: Page 17. 25 MR. MATTHEWS: Thank you.</p>

<p style="text-align: right;">Page 433</p> <p>1 BY MR. ROSENBERG: 2 1546 Q. Could I ask you to read that page, 3 please? 4 A. Read the page? Is that 5 acceptable? Read the entire page? 6 1547 Q. Just to yourself. Thank you. 7 A. I've read it now. 8 1548 Q. If you look under the heading 9 "Rationale," is that a fair summary of your 10 government's policy on the termination of SARP? 11 A. Just reread it again. 12 MR. LISUS: Are you talking about at 13 the Cabinet meeting? 14 MR. ROSENBERG: No. 15 MR. LISUS: Your question is divorced 16 from this Cabinet meeting? 17 MR. ROSENBERG: I'm asking about his 18 government's policy. 19 MR. LISUS: Why are you anchoring it to 20 a Cabinet document which we have not been allowed 21 to examine on? 22 MR. ROSENBERG: I thought it was a good 23 statement of the policy. I'm asking him to confirm 24 that it is, in fact -- 25 MR. LISUS: That's the problem. I</p>	<p style="text-align: right;">Page 435</p> <p>1 accurately reflects the government's policy. 2 A. Yes. 3 1553 Q. It does? 4 A. Yes, it does. 5 1554 Q. So if we look specifically in that 6 paragraph -- 7 MR. LISUS: This is so unfair given the 8 position that's been taken. You're now examining 9 the witness on a document that I was not allowed to 10 examine him on or any other witness. 11 MR. ROSENBERG: Mr. Lisus, the 12 transcript will show that you examined Mr. Bardeesy 13 at length on this document. 14 MR. LISUS: Mr. Bardeesy is not a 15 decision maker, Mr. Rosenberg. This man is. 16 MR. ROSENBERG: The transcript will 17 also show that I have not asked what happened in 18 the Cabinet meeting. I'm simply asking -- 19 MR. LISUS: You're doing so indirectly. 20 MR. ROSENBERG: I am simply asking 21 about the policy of the government. 22 BY MR. ROSENBERG: 23 1555 Q. Sir, you understand that I'm not 24 asking about what happened in a Cabinet meeting? 25 A. Absolutely.</p>
<p style="text-align: right;">Page 434</p> <p>1 don't know whether this was discussed or agreed 2 with or disputed or debated at Cabinet. 3 So you're creating the inference that 4 this was the position of government at Cabinet, and 5 Cabinet accepted it. That's the inevitable 6 inference that you're trying to raise, and it's 7 completely designed to get around the Crown's 8 prohibition from any inquiry and discussions at 9 Cabinet. 10 MR. ROSENBERG: That's not fair, 11 Mr. Lisus. Let me make this easy for the witness. 12 BY MR. ROSENBERG: 13 1549 Q. Sir, your government had a policy 14 on terminating SARP? 15 A. Yes. 16 1550 Q. That policy was publicly 17 communicated after the decision was taken? 18 A. Yes. 19 1551 Q. What I'm trying to understand is 20 the rationale for that policy decision. 21 MR. LISUS: And you're tying it to a 22 Cabinet document. 23 BY MR. ROSENBERG: 24 1552 Q. I'm asking if the Cabinet 25 submission which has been produced to you</p>	<p style="text-align: right;">Page 436</p> <p>1 MR. LISUS: You're saying it's a policy 2 decision made at Cabinet. That is your pleaded 3 position. That is your position on the Notice of 4 Motion for summary judgment. 5 I obviously don't have the power for 6 you not to ask questions or direct Mr. Duncan not 7 to answer them, but this is a very unfair process. 8 MS. LA HOREY: Perhaps you can move on, 9 Mr. Rosenberg. 10 MR. ROSENBERG: I have the parties' 11 position on this. I will move on. 12 MS. LA HOREY: We're just going to step 13 out of the room for a second. 14 -- Recess at 2:17 p.m. -- 15 -- Upon resuming at 2:24 p.m. -- 16 MR. ROSENBERG: Ms. La Horey, I have 17 your refusal, and I have Mr. Lisus's objection. 18 BY MR. ROSENBERG: 19 1556 Q. Mr. Duncan, as Minister of 20 Finance, did you have authority to cancel SARP? 21 A. No. 22 1557 Q. Did the Premier have authority to 23 cancel SARP? 24 A. No. 25 1558 Q. Who had authority to cancel SARP?</p>

Page 437

1 A. The government did, Cabinet and
2 the legislature.
3 1559 Q. And Mr. Lisus showed you the
4 Cabinet minute that --
5 MR. LISUS: I don't think I did.
6 MR. ROSENBERG: I believe you did.
7 BY MR. ROSENBERG:
8 1560 Q. But I take it there's no dispute,
9 then, that the Cabinet minute directs the OLG to
10 terminate the siteholder agreements?
11 A. That's correct.
12 1561 Q. And those siteholder agreements --
13 A. Were between the OLG and the
14 siteholders, and we were the shareholder.
15 1562 Q. Right. And the siteholder
16 agreements form the basis for SARP?
17 A. Yes.
18 1563 Q. So that's the Cabinet piece. And
19 then the legislature, is that passing a budget that
20 contains the decision to terminate SARP?
21 A. Yes. But as you indicate, it's a
22 bit circuitous. You're taking me on a trip down
23 memory lane.
24 1564 Q. Yes, I know you've been out of the
25 game, so to speak, for a number of years, but we're

Page 438

1 getting you right back into it, parliamentary
2 procedure.
3 Do you have any evidence to suggest
4 that cancelling SARP was an irrational decision
5 when it was made?
6 A. Do I have any evidence? No.
7 1565 Q. What about any evidence that the
8 decision to cancel SARP was taken in bad faith?
9 A. There's no evidence to that.
10 1566 Q. The plaintiffs have suggested that
11 the decision to cancel SARP was taken to inflict
12 pain on Tory ridings. What do you say to that?
13 A. Windsor.
14 1567 Q. What do you mean by that, sir?
15 A. Windsor Raceway is in a held
16 Liberal riding in my community. Not my riding, by
17 the way, but it's a small city.
18 And, in fact, if you look at the entire
19 program, the areas that would benefit the most were
20 many areas that we didn't hold, for instance
21 Chatham at the time; North Bay, home of
22 Vic Fedeli at the time; Kawartha, Ajax. So, yeah,
23 that's a bit of a stretch.
24 1568 Q. The program you're referring to is
25 the modernization --

Page 439

1 A. The modernization program. You
2 can't look at -- you can't look at the SARP. I
3 mean, the SARP decision was one component of a much
4 broader -- and I'm delighted that plaintiff counsel
5 had gave me the opportunity to review my answers in
6 Hansard because it refreshed my memory about the
7 jobs that would be created, the net creation of
8 jobs, and how the...
9 When this program was established, it
10 was just done randomly. Put the slot machines
11 where there's racetracks. On that rationale, you
12 might put slot machines in every closed factory in
13 Ontario.
14 So it was done randomly with no -- they
15 never looked at the market. They never looked at
16 what was in the best interest of proper allocation
17 of a resource.
18 One of the concerns that had been
19 expressed to me by the board -- and I think I said
20 this in response to questions that plaintiffs'
21 counsel raised yesterday. You had a situation in
22 Windsor. We had -- you had two slot machine
23 operations within 6 or 7 kilometres of one another
24 in the most competitive market in Ontario given
25 that there were now three casinos in Detroit, and

Page 440

1 both of them were not doing well financially. So
2 you have to look at it in the -- in the overall
3 scope.
4 And Conservative-held ride, that was
5 never discussed. In fact, I felt -- I remember
6 when Mr. Godfrey first revealed to me that they
7 felt Windsor Raceway had to be closed. It was kind
8 of like, oh, God, you know, because, again, it's
9 very personal.
10 Never stopped it. It was the
11 recommendation of the board. It was done in good
12 faith, based on hard evidence. Like I say, I'd
13 gone to that track when I was a kid.
14 So, yeah, I actually went right into my
15 own city. And at that time, we held both the city
16 ridings. By then, we had -- Mr. Crosher (ph) had
17 passed away the year before, so Essex was no
18 longer -- were arguably -- at the time was held by
19 the NDP.
20 The NDP, I'll remind you, did not vote
21 against this budget or this cancellation. So, no,
22 that's -- that was completely not accurate.
23 1569 Q. What's not accurate?
24 A. That there was any kind of
25 calculation along party lines around that. Like,

Page 441

1 for instance, plaintiffs' counsel pointed out
 2 Mr. McMeekin whose riding did have a lot -- I think
 3 Mohawk -- I'm not sure if Mohawk was right in his
 4 riding.
 5 1570 Q. Is that Flamboro Downs?
 6 A. Flamboro Downs. Yeah, I think it
 7 was called Mohawk at the time. Flamboro Downs is
 8 in his riding. I know that -- again, I do a lot of
 9 work with other agriculture groups, particularly in
 10 the Dundas region. I know there's a large rural
 11 component to his riding.
 12 I know that he had expressed in some of
 13 the documents that plaintiffs' counsel was kind
 14 enough to remind me about, Mr. McMeekin -- and
 15 these aren't Cabinet documents. These are public
 16 statements -- that there were people in his
 17 community that were hurt by this.
 18 So to suggest it was political is to
 19 ignore your own comments.
 20 1571 Q. He was, as you've said, the
 21 Minister of Agriculture at the time?
 22 A. Yes, he was, and a very good
 23 Minister of Agriculture.
 24 1572 Q. And his riding was expected to get
 25 hurt by the decision to terminate SARP?

Page 442

1 A. I'll say this about Ted because
 2 he -- he was genuinely, I would say, emotional in
 3 his concern for what would happen, and it forced
 4 some very difficult conversations between he and I.
 5 It strained our personal friendship.
 6 I spent -- the day he was elected in
 7 the by-election, I was his candidate's aide that
 8 day and spent the whole -- and we became quite good
 9 friends.
 10 He felt very strongly and very
 11 passionately about this issue and played, you know,
 12 an instrumental role in making sure that the
 13 government did not lose sight that there would be
 14 families and individuals hurt by this decision.
 15 Anyone who knows Ted knows that he's a
 16 remarkably compassionate human being. I would
 17 describe him as a person with a very deep heart.
 18 And so he made sure both in his
 19 capacity as Minister of Agriculture, in his
 20 capacity as a member of the legislature, and in his
 21 capacity as a human being that there was always
 22 sensitivity among the decision makers to these
 23 kinds of issues.
 24 1573 Q. As you said earlier, that kind of
 25 healthy debate is important?

Page 443

1 A. Absolutely, both within government
 2 and outside of government. Again, people tend to
 3 think of governments as monolithic and kind of one,
 4 but behind the scenes and within the strictures of
 5 Cabinet confidentiality, within the conventions
 6 around how our parliaments function, those debates
 7 aren't seen.
 8 Cabinet always speaks as one voice, but
 9 that doesn't mean that there isn't considerable
 10 discussion within -- by the way, not just Cabinet
 11 but within a government caucus because any number
 12 of our members were deeply concerned about their
 13 own ridings.
 14 1574 Q. Now, plaintiffs suggest that
 15 Ontario should have asked industry stakeholders
 16 what they thought of the decision to terminate SARP
 17 before it was taken. What do you say to that?
 18 A. I don't think we should have.
 19 I think we needed to form our opinion, and then in
 20 good faith, as we did, go out and do further
 21 consultation.
 22 And if you look at the public record,
 23 since the announcement, you'll see that not only
 24 has the government's position evolved, it's
 25 changed -- governments have changed, even though

Page 444

1 it's the same party.
 2 Premier Wynne was very concerned about
 3 the impact on the horse folks prior to her becoming
 4 Premier. As you saw in one of the documents that
 5 plaintiff counsel presented, she was -- she was, in
 6 fact, given a complete briefing by my officials and
 7 my staff.
 8 MR. ROSENBERG: Can we go off the
 9 record.
 10 -- OFF THE RECORD DISCUSSION --
 11 BY MR. ROSENBERG:
 12 1575 Q. Sir, I'm looking at Exhibit 26,
 13 which is the Hansard from April 26, 2012. You're
 14 quoted here as saying:
 15 "I said the day of the
 16 announcement that we would discuss
 17 opportunities for mitigation with
 18 the industry at an appropriate
 19 time."
 20 A. Yes.
 21 1576 Q. What does that refer to?
 22 A. So there would have been a scrum
 23 after the speech at the Economic Club. There's
 24 always a huge scrum at a budget in -- it's always
 25 before the budget is tabled.

<p style="text-align: right;">Page 445</p> <p>1 So nothing has been presented that I've 2 seen. Maybe in the actual court proceedings, but 3 they're -- you know, the record that's been 4 presented so far has been kind of selective and 5 typically from people who weren't even close to the 6 decision making. 7 But I did say that on any number of 8 occasions. We decided not to -- not to announce a 9 position because we generally wanted to have more 10 input from the stakeholders and to ensure ourselves 11 that the appropriate transition package would be 12 put in place, one that would allow the industry to 13 continue on in a viable way. 14 1577 Q. If you continue on down the 15 Hansard, you state: 16 "There will continue to be a 17 horse racing industry in Ontario. 18 I'm advised that five, possibly six 19 tracks will survive and that indeed 20 the industry will be there. 21 We have a year. We're continuing 22 the program for another year. 23 I believe probably the Ministry of 24 Agriculture will work with them in 25 some fashion to deal with this."</p>	<p style="text-align: right;">Page 447</p> <p>1 communicate to stakeholders that, as I think you 2 said yesterday, the tap was not simply being turned 3 off? 4 A. Absolutely. And it had been -- 5 because this says -- I had -- my recollection is -- 6 and, again, I can only respond to the questions 7 that are put to me. 8 I'd want to see -- and I don't know if 9 they exist anymore -- the transcripts from my 10 scrums. I'd like to see the media coverage from 11 that point in time. 12 But we were very clear. This Hansard 13 proves it. It's the only thing in writing up until 14 now. But that's April of 2012, late April. 15 That -- in fact, that was the plan. 16 MR. ROSENBERG: Why don't we go off the 17 record for a minute. 18 -- OFF THE RECORD DISCUSSION -- 19 BY MR. ROSENBERG: 20 1579 Q. I think I'm nearly finished, sir. 21 A. Okay. 22 1580 Q. Just from my client's perspective, 23 the OLG, until it had direction from Cabinet on its 24 modernization initiative, is it fair to say that it 25 couldn't know what, if any, of its recommendations</p>
<p style="text-align: right;">Page 446</p> <p>1 What was that a reference to, sir? 2 A. Well, I think it was a response to 3 a specific question. But I think what's evident by 4 there is just confirms what I had said earlier, 5 that we were probably still deciding how to work 6 out what that would look like. 7 Other than the fact that we'd 8 committed -- I'm glad that it is in Hansard because 9 my recollection was that the -- all the advice I 10 had was the market could support five to -- nobody 11 gave me a precise number. It was always in that 12 range, including Woodbine, because it was -- it was 13 thoroughbred. 14 The view was that there was nothing 15 that could save Fort Erie. The view was that 16 quarter racing would be difficult. But we were 17 open to hear all the discussions and all the input 18 we could on those issues. 19 But, yeah, so what has been presented 20 to me up until now has been kind of limited and 21 typically from lower-level officials who weren't 22 privy to all of the information that I was privy to 23 or the discussions that went on in briefings and so 24 on. 25 1578 Q. Was it your intention to</p>	<p style="text-align: right;">Page 448</p> <p>1 would be implemented? 2 A. Yes. 3 1581 Q. And OLG couldn't very well tell 4 anyone what it was going to do because it wouldn't 5 yet know; right? 6 A. Wouldn't know formally, but there 7 were ongoing discussions between, you know, my 8 staff, senior officials. 9 I mean, the OLG had been very involved 10 in modernization since it started, and as we got 11 closer to decision-making time, there would have 12 been -- there would have been discussions that 13 would keep them in the loop as to what the 14 government's thinking -- how the government's 15 thinking was evolving. 16 1582 Q. In fairness, it could get a sense 17 of -- 18 A. But it couldn't take any action 19 until such time as they had a very clear direction 20 from the government that would typically be 21 expressed in a Cabinet minute or some kind of 22 directive from me as the minister responsible for 23 the OLG. 24 1583 Q. And it didn't have any such 25 directive until it had the Cabinet directive from</p>

Page 449	Page 451
<p>1 the February 8th, 2012, Cabinet meeting; is that 2 correct?</p> <p>3 A. Yes. And I can also say that 4 there were many times when that -- you know, the 5 OLG was frustrated because they wanted to move 6 forward. And I would say I still didn't -- you 7 know, we were still within the government 8 discussing those sorts of things.</p> <p>9 1584 Q. Was the decision to cancel SARP 10 taken to hurt horse people?</p> <p>11 A. No, definitely not. In fact, our 12 view -- the advice we had from the experts was that 13 the subsidy was unsustainable. The industry was 14 unsustainable. The -- you know, we had 17 tracks 15 operating in a jurisdiction where the predominant 16 advice I had was 5, maybe 6 as indicated in this 17 Hansard, including Woodbine.</p> <p>18 Plaintiffs' counsel was kind enough to 19 remind me that the horse industry -- the tracks, 20 the regulator were not getting along with each 21 other. Hadn't been for many years. They couldn't 22 agree on simple things like number of dates, race 23 dates.</p> <p>24 Track owners would say to me the only 25 reason people came to the races was for the</p>	<p>1 We knew that there would inevitably be 2 real hurt as a result, but the goal was to actually 3 improve the overall performance of OLG to ensure 4 that there is a sustainable, viable horse racing 5 industry, that the purses stayed in Ontario, that 6 rural communities that were not serviced by other 7 gaming opportunities and other small urban areas as 8 well as large urban areas, for instance, Toronto, 9 would have access and that there'd be a net 10 increase of some -- according to the last numbers, 11 I think, again, plaintiff counsel was kind enough 12 to provide me with information respecting the total 13 number of jobs that were projected to be created by 14 the overall modernization.</p> <p>15 1587 Q. What about the decision not to 16 introduce transition funding when the termination 17 of SARP was announced in March 2012? Was that 18 decision taken to hurt horse people?</p> <p>19 A. No, not at all. As I indicated in 20 Hansard and I indicated, I know, in other venues -- 21 it wouldn't be as dutifully recorded as Hansard has 22 here -- that we were very clear that there would be 23 transition funding.</p> <p>24 We wanted much more extensive 25 discussions between OLG and the horse industry and</p>
Page 450	Page 452
<p>1 off-track betting, that attendance was down. The 2 wagering was down.</p> <p>3 And so there was constant, constant 4 fighting within the sector. I'll say sector 5 broadly because that includes the regulator.</p> <p>6 And we felt that once OLG had done its 7 work with respect to modernization of gaming, that 8 it was time to, after 17 years, do a thorough 9 evaluation of the program, its effectiveness and to 10 see what we could do in the long-term to ensure 11 that an industry continues to exist in this 12 province.</p> <p>13 1585 Q. You spoke about fighting within 14 the horse racing industry.</p> <p>15 A. Yes.</p> <p>16 1586 Q. Is it fair to say that the 17 decision to terminate SARP broke through that usual 18 bickering and allowed the industry to focus on a 19 more sustainable future?</p> <p>20 A. I don't know. I wasn't close to 21 those people, but as I said here in these other 22 documents that I've looked at, the very good work 23 that had been done over two years by OLG with 24 respect to modernization was never aimed at hurting 25 anyone.</p>	<p>1 the ministry. We did not -- we had bandied about 2 any number of numbers over a period of time. 3 Decided not to land those.</p> <p>4 The minute -- the Cabinet minute, which 5 is publicly available, I believe, does not 6 direct -- it does not direct any kind of 7 compensation. It's silent on the question, and it 8 was silent for a reason because we were addressing 9 it in a fashion that you've outlined here. My 10 recollection --</p> <p>11 MR. LISUS: You can't -- no, this is 12 the problem. You are eliciting evidence from him 13 about the intention behind Cabinet materials and 14 what it meant and what was the intention. You 15 shouldn't be doing it.</p> <p>16 MR. ROSENBERG: I'm not eliciting any 17 such evidence.</p> <p>18 THE WITNESS: Well, this is in Hansard.</p> <p>19 MR. LISUS: The Cabinet minute is 20 referenced in Hansard?</p> <p>21 THE WITNESS: No, no, no, what I just 22 said is in Hansard. You're the one who reminded me 23 of this stuff.</p> <p>24 MR. LISUS: I'm referring to the 25 comments about the Cabinet minute, Mr. Duncan.</p>

Page 453

1 MR. ROSENBERG: Well, I have your
 2 objection, but my question was about the decision
 3 not to announce transition funding in tandem with
 4 the announcement --
 5 THE WITNESS: It's not even dealt with
 6 in the Cabinet minute.
 7 MR. LISUS: That's my point, sir.
 8 You're trying to fill in what isn't in the Cabinet
 9 material.
 10 MR. ROSENBERG: I don't think that's
 11 right.
 12 THE WITNESS: I think you're wrong.
 13 MR. ROSENBERG: All I'm asking -- let
 14 me be very clear --
 15 MS. LA HOREY: We're having a
 16 free-for-all argument. So you've asked the
 17 question. I think he's answered the question,
 18 Mr. Rosenberg.
 19 THE WITNESS: Thank you.
 20 MS. LA HOREY: Can we move on?
 21 BY MR. ROSENBERG:
 22 1588 Q. As you saw it, sir, it was one
 23 decision to terminate SARP. And that's the one
 24 that was taken on February 8, 2012; right?
 25 A. Yes.

Page 454

1 1589 Q. And a subsequent decision as to
 2 what the appropriate level of funding for the horse
 3 racing industry should be?
 4 A. Not only appropriate level of
 5 funding, how it should be administered. There was
 6 considerable debate, should it be with OLG, should
 7 it be with the Minister of Agriculture and Food.
 8 Ultimately, Premier Wynne's government, I believe,
 9 tied it back into the gaming strategy.
 10 So there were a lot of unanswered
 11 questions, other than the decision had been taken
 12 that the SARP program would be terminated as per
 13 the contracts with the individual tracks and that
 14 there was a year to work through these issues.
 15 1590 Q. You told Mr. Lisus that you had
 16 not met with counsel for OLG in preparation for
 17 today's examination. Do you remember that?
 18 A. Yes.
 19 1591 Q. The questions that I've been
 20 asking you today, you're hearing these for the
 21 first time now?
 22 A. Yes, that's correct.
 23 1592 Q. These weren't rehearsed with you?
 24 A. No.
 25 1593 Q. Were these answers spoon fed to

Page 455

1 you?
 2 A. No.
 3 1594 Q. Certainly this wasn't a scripted
 4 exchange?
 5 A. No.
 6 1595 Q. And you've come here today in your
 7 capacity as a summonsed witness to tell the truth
 8 to the best of your ability?
 9 A. Absolutely.
 10 MS. LA HOREY: Okay.
 11 MR. ROSENBERG: Thank you. Those are
 12 my questions. You may have some questions from
 13 Ontario and then some further questions from the
 14 plaintiffs.
 15 MS. LA HOREY: I just have one
 16 question, and it's mostly just to make sure that
 17 the transcript is readable when and if we get to
 18 court.
 19 CROSS-EXAMINATION BY MS. LA HOREY:
 20 1596 Q. A number of times, Mr. Duncan,
 21 you've used the acronym or common name ag as in
 22 A-G. Can you tell me what that stands for?
 23 A. I'm referring to the ministry of
 24 what was at the time called the Ministry of
 25 Agriculture, Food and Rural Affairs.

Page 456

1 1597 Q. Thank you.
 2 A. I'm not sure what its formal title
 3 is today.
 4 MS. LA HOREY: Thank you.
 5 RECROSS-EXAMINATION BY MR. LISUS:
 6 1598 Q. Just to be clear, sir, you left
 7 government in February 2013?
 8 A. That's correct.
 9 1599 Q. And did you read the April 2014
 10 Auditor General's report?
 11 MS. LA HOREY: Sorry, one moment,
 12 please. I don't think that this was a matter that
 13 was raised by Mr. Rosenberg in his examination.
 14 And the rule is quite clear that you
 15 may reexamine on matters raised by other parties.
 16 So the Auditor's report wasn't raised by
 17 Mr. Rosenberg.
 18 MR. LISUS: No, but the question of
 19 employment and jobs created by the termination of
 20 Slots at Racetrack Program was, and that is
 21 addressed in the Auditor General's report, isn't
 22 it?
 23 BY MR. LISUS:
 24 1600 Q. So did you ever read the April
 25 2014 Auditor General's report, Mr. Duncan?

Page 457

1 Mr. Duncan?
2 A. I'm looking to counsel. Has this
3 issue been resolved?
4 MS. LA HOREY: You can answer the
5 question.
6 THE WITNESS: I don't recall reading
7 it, no.
8 BY MR. LISUS:
9 1601 Q. Did you ever read the final report
10 of the panel, the horse racing transition panel?
11 A. Yes.
12 1602 Q. The final report to the --
13 A. I think that's the one I read.
14 1603 Q. Okay. And you spoke to
15 Mr. Rosenberg about the Cabinet minute from the
16 February 8 Cabinet meeting. Do you remember that?
17 A. No.
18 MR. LISUS: We're off the record for a
19 moment.
20 -- OFF THE RECORD DISCUSSION --
21 MR. LISUS: We're going to get these
22 exhibits organized. They've been passed around a
23 bit.
24 -- Recess at 2:59 p.m. --
25 -- Upon resuming at 3:13 p.m. --

Page 458

1 BY MR. LISUS:
2 1604 Q. You were asked a number of
3 questions or you talked about a Cabinet minute.
4 What is a Cabinet minute? It's not a public
5 document; right?
6 A. Am I allowed to answer that?
7 MS. LA HOREY: You can answer as a
8 matter of your understanding of government and
9 government processes, yes.
10 THE WITNESS: So there are not --
11 I guess the best way to explain it to you is when I
12 first learned it. When I think of minutes of a
13 meeting, I tend to think of sometimes like here,
14 we're dutifully recording every word that is said.
15 The only thing that's recorded and maintained in
16 the record is an actual, precise minute.
17 There are no -- there are no -- for
18 instance, you don't, in a Cabinet meeting, take
19 complete transcripts of everything that's
20 discussed. My understanding of parliamentary
21 history is rarely are there actual votes taken in a
22 Cabinet meeting.
23 BY MR. LISUS:
24 1605 Q. Yes. Mr. Bardeesy actually
25 explained that.

Page 459

1 A. Yeah. I recall only one occasion
2 in my tenure in Cabinet where -- and it wasn't even
3 a vote. It was done in something called "ministers
4 only" where the Premier asked a question, and he
5 literally asked each member, polled each member on
6 their views.
7 So the minute is a very precise
8 reflection of what a Cabinet decided.
9 1606 Q. Thank you. With respect to the
10 Cabinet minute that came out of February 8, you
11 would have seen that minute when you signed the
12 deck or the submission?
13 A. I would have seen the proposed
14 minute. There are -- not often, but from time to
15 time, there are changes made to the minute at --
16 literally at the Cabinet table.
17 1607 Q. And there are obviously, then,
18 changes made to the minute as the Cabinet material
19 evolves leading up to the Cabinet meeting?
20 A. Typically. Again, in my
21 experience, a minute is not drafted until Cabinet
22 office's submission is prepared. My recollection
23 is that -- and you're going to have to go to
24 someone else.
25 Cabinet office drafts the minute. It

Page 460

1 then gets put onto the -- both the Cabinet
2 office -- you'll notice that there's a Cabinet
3 office submission as well as a ministry submission.
4 You'll notice in that package you put on the table.
5 That is, to my recollection, virtually every item
6 that comes before Cabinet, save and except Order in
7 Council appointments.
8 And typically the Cabinet office will
9 take into account in greater detail the views of
10 other ministries, other -- it will try to bring
11 together threads of advice that the central
12 agencies would have had from a range of ministries.
13 1608 Q. So in this case, the Cabinet
14 office would have likely taken into account the
15 views of the Ministry of Finance on the Cabinet
16 minute?
17 A. Oh, certainly. Certainly on
18 the -- but they would have also taken into account
19 the views of other ministries, making sure that the
20 Cabinet understood all of the views, because
21 oftentimes there were -- there might be
22 disagreements.
23 1609 Q. Are you aware as to whether or not
24 the Cabinet minute that was approved in the
25 February 8 Cabinet meeting was changed shortly

Page 461

1 before that meeting?
2 A. I'm not. I don't recall.
3 1610 Q. Okay.
4 A. Just don't recall.
5 1611 Q. Would you, in the ordinary course,
6 review prior versions of a Cabinet minute?
7 A. No. No.
8 1612 Q. Are you aware that on January 31,
9 the proposed Cabinet minute was quite different
10 from the Cabinet minute that was ultimately
11 approved at Cabinet?
12 MS. LA HOREY: You're referring to
13 something.
14 MR. LISUS: I'm referring to the
15 language of the proposed minute on January 31
16 marked in the examination of Tim Shortill.
17 MS. LA HOREY: Well, then why don't you
18 put it to him? I mean, because you're saying
19 something is quite different, and we don't know --
20 MR. LISUS: Exhibit 5 from the
21 examination of Shortill. I put it up on the screen
22 there for you.
23 MS. LA HOREY: Thank you.
24 THE WITNESS: I can't really determine
25 what --

Page 462

1 BY MR. LISUS:
2 1613 Q. You can't say one way or the
3 other?
4 A. Yeah, I just -- this doesn't refer
5 to -- this is dated, as you say, January 31.
6 Subject is racing. And it says here in the -- in
7 the first email from Barry Goodwin to Blair
8 Stransky, and I don't see a response here from
9 Blair.
10 1614 Q. Let me show you the Cabinet
11 material that is in process.
12 A. Let me just finish answering
13 your -- because you asked if I was aware, I think,
14 that the Cabinet minute changed substantively
15 between January 31st and February the 8th.
16 I'm not sure that -- this doesn't --
17 this says the language on racing. It doesn't say
18 anything about the Cabinet document.
19 1615 Q. Okay. Well, I'm showing you a
20 Cabinet submission from January, and we'll track
21 the various drafts if necessary, sir, but I'm
22 showing you a Cabinet submission from January,
23 draft which has the proposed Cabinet minute in it,
24 Number 4, which is in the same language as the
25 email that I've shown you on January 31.

Page 463

1 A. Okay.
2 1616 Q. Do you see that?
3 A. Mm-hm.
4 1617 Q. All right. And obviously the
5 Cabinet minute on February 8 is quite different
6 than the language in the Cabinet minute in January
7 or the one that is summarized in the January 31
8 email; right?
9 A. And what is the date of this one
10 again? I'm sorry.
11 1618 Q. The date of this one, as far as we
12 can determine, is January 11, 2012.
13 A. Okay.
14 1619 Q. And then that email is January 31,
15 2012, with the same language. So all I'm saying is
16 that --
17 A. In those instances.
18 1620 Q. Yes.
19 MS. LA HOREY: What's your question?
20 BY MR. LISUS:
21 1621 Q. I asked the question. The minute
22 clearly changed between what was under discussion
23 on the January 11 and January 31. That's all.
24 A. That would be quite common in a
25 three-week period, especially on an item as big as

Page 464

1 modernization of OLG.
2 1622 Q. My point, sir, is that it changed
3 again between January 31 and February --
4 A. Yeah. The closer you get to the
5 goal, the slipperier the ice is. So I can tell you
6 that that doesn't surprise me in the least. You
7 want to make -- as I said, Cabinet minutes tend to
8 be precise.
9 MR. LISUS: We're going to mark as the
10 next exhibit that email and the Cabinet document.
11 MS. LA HOREY: Sorry, what are you
12 marking? Let me see exactly what you're marking,
13 and I'll tell you if it's a lettered exhibit or a
14 numbered exhibit. Mark it as a lettered exhibit
15 because he said he didn't see the -- he's only seen
16 final docs, as I think his evidence was.
17 BY MR. LISUS:
18 1623 Q. Do you agree with that? You only
19 saw final docs?
20 A. I don't remember, to be honest. I
21 can't answer that honestly. I don't remember.
22 MS. LA HOREY: Well, if he doesn't
23 remember seeing that document, then we'll mark it
24 as a lettered exhibit.
25 MR. MATTHEWS: All right. So what is

Page 465

1 Exhibit 4 to Mr. Cogan's examination will be the
2 next lettered exhibit.
3 And what is Exhibit 5 to Mr. Shortill's
4 examination will be the next lettered exhibit
5 subsequent to that.
6 MR. ROSENBERG: What is that?
7 MR. MATTHEWS: Exhibit 5 to
8 Mr. Shortill's examination? It's an email --
9 MR. ROSENBERG: No, what letter exhibit
10 did we just mark it?
11 MR. MATTHEWS: It's going to be D and E
12 respectively.
13 EXHIBIT NO. D for Identification:
14 CRE0080521 and CRE0080522.
15 EXHIBIT NO. E for Identification:
16 CRE0080704.
17 BY MR. LISUS:
18 1624 Q. What is a minister's pre-caucus
19 scrum?
20 A. So caucus meets once a week.
21 Cabinet meets once a week. When you are walking
22 into a caucus meeting, there's typically a pile of
23 reporters out there waiting to ask you with bated
24 breath pointed questions that will bring down the
25 government. And unlike this, the rules are

Page 466

1 nonexistent.
2 1625 Q. Right.
3 MS. LA HOREY: How does this arise out
4 of Mr. Rosenberg's examination?
5 BY MR. LISUS:
6 1626 Q. You mentioned to Mr. Rosenberg how
7 concerned you were about the consequences of this
8 decision?
9 A. Yes.
10 1627 Q. Pardon?
11 A. Yes.
12 1628 Q. I presume your concern extended as
13 well to the consequences of the decision on
14 standardbred breeders?
15 A. Yes. Broadly speaking.
16 1629 Q. I want to show you CRE64558. I'm
17 just looking at an email sequence called
18 "pre-caucus scrums." And up near the top of the
19 first page, it says:
20 "Asked for the scrum
21 transcript."
22 A. I'm sorry. I apologize.
23 1630 Q. The email. Yes, that's right, in
24 your hands. You see second from the top, it says:
25 "Asked for the scrum

Page 467

1 transcript."
2 And it says "yeah."
3 A. Okay.
4 1631 Q. If you turn over, that is what I
5 understand to be a scrum transcript from May 15,
6 2012, outside the legislature. Is that --
7 A. It appears to be. Not having read
8 it, but, yes, it appears to be that.
9 1632 Q. Who prepares this transcript?
10 A. I believe there's an outside
11 service that does. I stand to be corrected on
12 that.
13 1633 Q. If I can just understand how it
14 works -- I presume you've seen this kind of
15 transcript before?
16 A. Once in a while. I didn't always
17 look at them, no, but I have seen them.
18 1634 Q. It identifies who was present in
19 the scrum. I presume you, Minister Matthews,
20 Minister Broten?
21 A. No, I think it would have -- we
22 wouldn't have all been in the same -- this would
23 probably identify the people that were scrummed.
24 Wouldn't -- we weren't all necessarily there at the
25 same time.

Page 468

1 Like, ministers would come in, you
2 know, and there would always be an opposition
3 critic from each of the parties lurking around the
4 scrum in order to respond to whatever -- I used to
5 lurk myself in opposition.
6 Typically what would happen, the media
7 would be out there. I might come in first. They'd
8 scrum me first. They didn't -- and it would -- it
9 just was random who came in what order.
10 1635 Q. Got it. And then a transcript is
11 captured?
12 A. Yes.
13 1636 Q. So here, for instance, it appears
14 there's a question that says:
15 "They say thousands of horses
16 will be slaughtered because of the
17 cuts to funding for horse racing.
18 What's your reaction to that?"
19 And you appear to say:
20 "I hope the horse industry
21 wouldn't do that, and as I say,
22 we're going to have an announcement
23 (inaudible). Don't forget, we're
24 giving the industry another
25 345 million this year to go through

Page 469		Page 471	
1	the end of next March. I certainly	1	1644 Q. Okay.
2	would hope that would be the case."	2	A. I was gone by then.
3	A. Yes.	3	1645 Q. When do you understand mitigation
4	1637 Q. All right. And then next	4	came?
5	question:	5	A. I don't recall.
6	"Would there be a better way to	6	1646 Q. When did the \$50 million that you
7	dispose of those animals? Could	7	were talking about -- when did that actually flow?
8	they sell them to the United	8	Do you know?
9	States?"	9	MS. LA HOREY: This is not matters that
10	Your answer is:	10	were first arising out of Mr. --
11	"First of all, I think they	11	MR. LISUS: Mr. Duncan was
12	should probably stop breeding them	12	cross-examined extensively by Mr. Rosenberg about
13	if that's the problem."	13	the thoughtful mitigation package that Mr. Duncan
14	Did you say that?	14	had in his mind, so I would like to know when money
15	A. If it's in here, I must have, yes.	15	actually flowed under that mitigation package.
16	1638 Q. If I understand this, that's then	16	THE WITNESS: By the time I had left
17	picked up on the news and broadcast?	17	office, the final decisions hadn't been made.
18	A. I don't know who -- it doesn't --	18	BY MR. LISUS:
19	it just says one news outlet, 610 CKTB. I have no	19	1647 Q. And no funds had been flowed?
20	idea who that is.	20	A. But funding had continued through
21	1639 Q. Does it matter to you?	21	that whole period. The total funding -- and as I
22	A. Yeah, because you use the term	22	said earlier, the documents you produced earlier,
23	"broadcast" like it's -- and reading this, it's	23	could be used for capital. Could be used for all
24	typical. It looks like radio. I think that's	24	the purposes that were normally undertaken.
25	Thunder Bay. And it doesn't even quote me.	25	So the money could -- 345 million was
Page 470		Page 472	
1	1640 Q. It says:	1	flowing that day and continued to flow until after
2	"Ontario Finance Minister, stop	2	I left office.
3	breeding horses."	3	1648 Q. And the breeding sector did not
4	A. Yeah, but it doesn't quote me. I	4	know until at some point in two-thousand and --
5	didn't say "stop breeding." I said I hope -- let	5	A. That wasn't your question.
6	me -- let me just go back to what I said. "I think	6	1649 Q. Excuse me.
7	they should probably." But I didn't know.	7	MS. LA HOREY: He's gone on to another
8	1641 Q. Probably what?	8	question. He got your answer.
9	A. Probably stop breeding. I said "I	9	THE WITNESS: No, he didn't get my
10	think." That doesn't say this, that I told them	10	whole answer because the money continued to flow
11	to. So there's no quotes here, so this is not me.	11	throughout until the day I left office, which was
12	This is a reporter's misinterpretation, not unlike	12	February 13th.
13	some of the ones you've done.	13	BY MR. LISUS:
14	1642 Q. What is it that you didn't know,	14	1650 Q. And it stopped when?
15	sir?	15	A. I'm not sure. I left office by
16	A. I wasn't aware of -- we had been	16	then. And by the way, there was nothing preventing
17	threatened that horses would be slaughtered. We	17	the government of the day to continue that if they
18	were concerned about that. And we certainly didn't	18	decided that things hadn't been completed.
19	want horses to be slaughtered.	19	1651 Q. Right. You were asked by
20	And, again, this is May. Reemphasizing	20	Mr. Rosenberg about the discussions that you had
21	that the funding was in place for 345 million for	21	with Minister McMeekin. Do you remember that?
22	that year and that further mitigation was coming.	22	A. Yes.
23	1643 Q. Well, sir, further mitigation	23	1652 Q. And you said that you had some
24	didn't come until 2014; right?	24	very -- I forget the word you used. Heartfelt
25	A. I'm not sure.	25	discussions?

Page 473

1 A. Mr. Meekin [sic], along with many
2 of my colleagues on a variety of issues, raised
3 concerns. On this -- in this case, Ted was very
4 concerned about this program.
5 1653 Q. Are you aware, sir, that
6 Mr. McMeekin sent an email -- composed an email to
7 his chief of staff and others in October 2012 in
8 which he says:
9 "To be clear, the decision to
10 end the SAR program was made by the
11 Ministry of Finance, not the
12 Ministry of Agriculture, Food and
13 Rural Affairs."
14 MS. LA HOREY: If you're going to quote
15 part of an email, put the email in front of the
16 witness. It's only fair.
17 BY MR. LISUS:
18 1654 Q. Are you aware that he wrote that
19 email to his chief of staff?
20 MS. LA HOREY: Let him read it first,
21 Mr. Lisus.
22 THE WITNESS: All I'm aware of is that
23 he voted for the budget.
24 MS. LA HOREY: All right.
25 BY MR. LISUS:

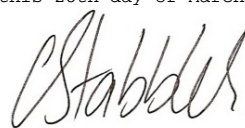
Page 474

1 1655 Q. Thank you. And if he didn't want
2 it, he could have resigned, as you pointed out?
3 A. Yes.
4 1656 Q. You told Mr. Rosenberg about this
5 mitigation package that you had in mind when you --
6 A. I don't think I used that I had in
7 mind.
8 1657 Q. Okay. That you were thinking
9 about, that there should be a mitigation package?
10 A. I think what I've said is that
11 there was no doubt that there should be a
12 mitigation package. What that looked like, I
13 didn't know. I don't -- I don't -- no, I don't
14 think I used the term "I had in mind."
15 1658 Q. Well, that's helpful to me. Thank
16 you, sir, that you didn't know what it looked like.
17 A. I'm trying to be helpful.
18 1659 Q. Appreciate it.
19 A. We wanted more input from other
20 people.
21 1660 Q. Is there any document, Mr. Duncan,
22 that I can look at in March of 2012 and see what
23 this mitigation package looked like?
24 A. I don't know. All I can refer to
25 is the clear references in Hansard, the clear

Page 475

1 references in transcripts. It was actively under
2 consideration.
3 1661 Q. That's it?
4 A. I don't know if there's other.
5 MR. LISUS: Thank you, sir. Those are
6 my questions.
7 MS. LA HOREY: Thank you.
8 -- Whereupon the cross-examination concluded at
9 3:37 a.m. --
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Page 476

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
11 That the testimony of the witness
12 and all objections made at the time of the
13 examination were recorded stenographically by me
14 and were thereafter transcribed;
15
16 That the foregoing is a true and
17 correct transcript of my shorthand notes so taken.
18
19 Dated this 28th day of March 2018.
20
21 
22
23 NEESON COURT REPORTING INC.
24 PER: CARISSA STABBLER, RPR, CSR
25 COURT REPORTER

	1040 269:12	1076 278:18	1109 289:13	1145 299:6
\$	1041 269:20	1077 279:1	1110 289:24	1146 299:8
\$100 316:8 321:4 322:1	1042 270:1	1078 279:7	1111 290:13	1147 299:12
\$345 335:23	1043 270:11	1079 279:13	1112 290:18	1148 299:15
\$50 285:2 387:20 410:20 471:6	1044 270:23	1080 279:16	1113 291:1 382:16	1149 299:19
\$600 396:21	1045 271:4	1081 279:18	1114 291:7	115 335:21
\$8 408:24	1046 271:10	1082 279:24	1115 291:11	1150 300:8
	1047 271:15	1083 281:7	1116 291:15	1151 300:19
0	1048 271:20	1084 281:13	1117 291:20	1152 301:13
	1049 271:23	1085 281:25	1118 292:6	1153 301:17
05 358:24	1050 272:2	1086 282:4	1119 292:22	1154 301:23
06 358:24	1051 272:7	1087 282:6	1120 293:1	1155 302:2
08 358:24	1052 272:9	1088 282:16	1121 293:3	1156 302:6
08-09 416:9	1053 272:13	1089 282:18	1122 293:8	1157 302:8
	1054 272:16	1090 282:20	1123 293:11	1158 302:14
1	1055 272:23	1091 282:22	1124 293:17	1159 302:16 384:3
	1056 273:6	1092 283:21	1125 294:2	1160 302:22 384:2
1 308:19 320:14 409:18	1057 273:13	1093 284:1	1126 294:7	1161 303:5
10 419:12	1058 273:25	1094 284:11	1127 294:10	1162 303:9
100 287:4 307:12 308:16 313:6 321:22	1059 274:6	1095 284:18	1128 294:16	1163 303:12
1025 265:6	1060 274:18	1096 284:25	1129 295:5	1164 304:14
1026 265:11	1061 274:22	1097 285:9	1130 295:8	1165 304:19
1027 265:15	1062 274:25	1098 285:14	1131 295:24	1166 304:25
1028 265:25	1063 275:6	1099 285:19	1132 296:2	1167 305:10
1029 266:4	1064 275:10	10:08 304:12	1133 296:5	1168 305:15
1030 266:8	1065 275:16	11 277:7 326:9 336:5 429:15,24 430:11,20 463:12,23	1134 297:7	1169 306:5
1031 266:14	1066 275:18	1100 285:25	1135 297:16	1170 306:17
1032 266:17	1067 276:1	1101 286:8	1136 297:20	1171 306:23
1033 266:24	1068 276:5	1102 286:14	1137 297:24	1172 306:25
1034 267:3	1069 276:13	1103 286:19	1138 298:1	1173 307:11
1035 267:12	1070 276:15	1104 287:3	1139 298:5	1174 307:22
1036 268:1	1071 276:22	1105 288:6	1140 298:8	1175 307:24
1037 268:8	1072 277:2	1106 288:13	1141 298:12	1176 308:9
1038 268:13	1073 277:18	1107 289:5	1142 298:17	1177 308:13
1039 268:20	1074 278:5	1108 289:9	1143 298:22	1178 309:13
	1075 278:11		1144 299:2	1179 310:5

1180 310:8	1213 319:9	1249 327:18	1284 337:9	1318 345:23
1181 311:1	1214 319:13	125 335:22 336:6	1285 337:12	1319 346:4
1182 311:6	1215 319:16	1250 328:13	1286 337:16	1320 346:7
1183 311:9	1216 319:20	1251 328:24	1287 337:19	1321 346:13
1184 311:22	1217 320:3	1252 329:6	1288 337:23	1322 346:19
1185 312:6	1218 320:6	1253 329:13	1289 337:25	1323 347:6
1186 312:19	1219 320:9	1254 329:18	1290 339:5	1324 347:13
1187 312:23	1220 320:11	1255 330:10	1291 339:16	1325 347:20
1188 313:11	1221 321:1	1256 330:14	1292 339:24	1326 347:23
1189 313:23	1222 321:8	1257 330:17	1293 340:5	1327 348:6
1190 313:25	1223 321:12	1258 330:19	1294 340:13	1328 348:12
1191 314:8	1224 321:25	1259 330:21	1295 340:18	1329 348:15
1192 314:10	1225 322:6	1260 331:5	1296 340:22	1330 348:25
1193 314:22	1226 322:18	1261 331:11	1297 341:1	1331 349:18
1194 315:4	1227 322:24	1262 331:14	1298 341:6	1332 349:21
1195 315:9	1228 323:4	1263 331:16	1299 341:14	1333 350:4
1196 315:23	1229 323:10	1264 331:20	12:20 389:22	1334 350:16
1197 316:3	1230 323:17	1265 332:3	13 336:7 353:12 365:22 399:21	1335 350:20
1198 316:5	1231 323:20	1266 332:10	1300 341:20	1336 350:25
1199 316:18	1232 324:4	1267 333:1	1301 341:24	1337 351:4
11:12 348:22	1233 324:9	1268 333:5	1302 342:10	1338 351:10
11:25 348:23	1234 324:17	1269 333:7	1303 342:20	1339 351:22
12 336:5 407:10 419:12	1235 324:25	1270 333:9	1304 342:25	1340 352:2
1200 316:25	1236 325:3	1271 333:12	1305 343:4	1341 352:10
1201 317:5	1237 325:7	1272 333:16	1306 343:6	1342 352:15
1202 317:7	1238 325:10	1273 334:3	1307 343:12	1343 352:17
1203 317:10	1239 326:1	1274 334:5	1308 343:17	1344 353:3
1204 317:15	1240 326:4	1275 334:16	1309 343:23	1345 353:8
1205 317:18	1241 326:8	1276 334:22	1310 344:1	1346 353:14
1206 317:23	1242 326:12	1277 335:17	1311 344:5	1347 353:18
1207 318:7	1243 326:22	1278 335:23	1312 344:10	1348 353:21
1208 318:10	1244 327:1	1279 336:2	1313 344:14	1349 353:24
1209 318:16	1245 327:3	1280 336:16	1314 344:17	1350 354:2
1210 318:21	1246 327:7	1281 336:18	1315 344:19	1351 354:9
1211 319:4	1247 327:11	1282 337:1	1316 345:7	1352 354:16
1212 319:7	1248 327:13	1283 337:6	1317 345:10	1353 355:1

1354 355:6	1390 363:23	1424 374:5	1460 384:20	1496 406:21
1355 355:15	1391 364:4	1425 374:20	1461 384:24	1497 407:2
1356 355:25	1392 364:12	1426 375:1	1462 385:4	1498 407:7
1357 356:6	1393 364:14	1427 375:5	1463 385:7	1499 407:13
1358 356:10	1394 364:19	1428 375:8	1464 385:10	15 376:2 467:5
1359 356:17	1395 365:1	1429 375:12	1465 385:14	1500 409:3
1360 356:21	1396 365:14	1430 375:20	1466 385:24	1501 409:7
1361 357:2	1397 365:24	1431 375:24	1467 386:4	1502 410:19
1362 357:8	1398 366:6	1432 376:2	1468 386:11	1503 411:4
1363 357:12	1399 366:12	1433 376:7	1469 386:17	1504 412:1
1364 357:15	13th 331:17 472:12	1434 376:14	1470 386:22	1505 412:17
1365 357:19	14 318:24	1435 376:20	1471 387:8	1506 412:20
1366 358:7	1400 366:16	1436 376:22	1472 387:18	1507 413:2
1367 358:14	1401 366:22	1437 377:1	1473 387:23	1508 413:16
1368 358:20	1402 367:4	1438 377:9	1474 388:5	1509 414:10
1369 359:1	1403 367:12	1439 377:20	1475 388:8	1510 414:13
1370 359:5	1404 367:22	1440 377:25	1476 388:13	1511 415:2
1371 359:9	1405 368:7	1441 378:10	1477 388:16	1512 415:7
1372 359:12	1406 368:15	1442 378:16	1478 389:1	1513 415:23
1373 359:17	1407 368:21	1443 379:3	1479 389:4	1514 418:1
1374 359:22	1408 369:8	1444 379:12	1480 389:8	1515 418:20
1375 360:4	1409 369:13	1445 379:19	1481 390:21	1516 418:24
1376 360:22	1410 369:15	1446 380:17	1482 391:19	1517 420:19
1377 360:24	1411 370:1	1447 380:20	1483 391:22	1518 420:25
1378 361:3	1412 370:9	1448 380:23	1484 392:4	1519 421:3
1379 361:10	1413 370:14	1449 381:4	1485 392:13	1520 421:9
1380 361:17	1414 370:19	1450 381:7	1486 392:17	1521 421:13
1381 361:23	1415 370:21	1451 382:19	1487 393:2	1522 421:16
1382 362:3	1416 371:15	1452 382:22	1488 393:13	1523 422:13
1383 362:8	1417 372:4	1453 383:7	1489 396:17	1524 422:18
1384 362:12	1418 372:11	1454 383:22	1490 399:7	1525 423:20
1385 362:16	1419 372:19	1455 383:24	1491 400:2	1526 424:2
1386 362:18	1420 372:24	1456 384:3	1492 402:10	1527 424:4
1387 363:12	1421 373:4	1457 384:6	1493 404:4	1528 424:12
1388 363:14	1422 373:12	1458 384:9	1494 404:8	1529 424:17
1389 363:17	1423 373:14	1459 384:17	1495 406:17	1530 424:22

1531 424:25	1567 438:14	1602 457:12	1638 469:16	2008 395:16
1532 425:3	1568 438:24	1603 457:14	1639 469:21	2008-2009 418:12
1533 425:7	1569 440:23	1604 458:2	1640 470:1	2009 335:7 377:12
1534 425:20	1570 441:5	1605 458:24	1641 470:8	2009-2010 420:10
1535 425:23	1571 441:20	1606 459:9	1642 470:14	2011 265:8,25 270:13,23 274:7 281:8
1536 426:9	1572 441:24	1607 459:17	1643 470:23	2012 284:24 285:1, 3,10,13 286:4 292:23 304:14 305:5 309:24 316:19 317:19 334:18 335:18 338:8 341:23 342:24 343:2 355:2 358:22 365:22 369:9 374:10,15 375:2,24 376:3,6,10,15 380:18 381:4 383:5 384:15 385:6,8 387:3,6,16 388:6 391:10 392:15,25 398:13 404:6 406:17 407:11 414:25 420:20 432:4 444:13 447:14 449:1 451:17 453:24 463:12,15 467:6
1537 426:19	1573 442:24	1608 460:13	1644 471:1	2012-2013 286:15
1538 428:1	1574 443:14	1609 460:23	1645 471:3	2013 324:13,20 373:7 456:7
1539 429:22	1575 444:12	1610 461:3	1646 471:6	2014 286:19 289:3 456:9,25 470:24
1540 430:10	1576 444:21	1611 461:5	1647 471:19	2015-16 287:4
1541 430:24	1577 445:14	1612 461:8	1648 472:3	2016-17 418:14
1542 431:3	1578 446:25	1613 462:2	1649 472:6	20th 291:6 382:13 383:10,16 394:4
1543 431:9	1579 447:20	1614 462:10	1650 472:14	21 265:17,21 268:17 276:5 382:22 383:12,22 384:15
1544 432:14	1580 447:22	1615 462:19	1651 472:19	21st 383:9,14
1545 432:20	1581 448:3	1616 463:2	1652 472:23	22 365:18,19
1546 433:2	1582 448:16	1617 463:4	1660 386:4	23 297:11 304:3 382:25 383:1,3,13, 16
1547 433:6	1583 448:24	1618 463:11	1661 385:24	24 294:3 295:7 298:23 299:16,21,24 301:22 302:14 303:7 374:10,15 384:12,13
1548 433:8	1584 449:9	1619 463:14	17 268:10 375:24 427:8 432:16,24 449:14 450:8	
1549 434:13	1585 450:13	1620 463:18	17th 344:15	
1550 434:16	1586 450:16	1621 463:21	18 271:21,23 385:8, 24 387:3	
1551 434:19	1587 451:15	1622 464:2	1886 387:10	
1552 434:24	1588 453:22	1623 464:18	19 265:7	
1553 435:3	1589 454:1	1624 465:18	1981 400:11	
1554 435:5	1590 454:15	1625 466:2	1990s 335:13	
1555 435:23	1591 454:19	1626 466:6	19th 294:17	
1556 436:19	1592 454:23	1627 466:10	1:10 389:23	
1557 436:22	1593 454:25	1628 466:12	1A 267:7 269:8	
1558 436:25	1594 455:3	1629 466:16	<hr/> 2 <hr/>	
1559 437:3	1595 455:6	1630 466:23	2 267:13 317:2 339:14 376:14 421:7	
1560 437:8	1596 455:20	1631 467:4	20 273:12 294:12 356:12 381:4 383:5, 11 407:8 423:2,3	
1561 437:12	1597 456:1	1632 467:9	2000 363:18	
1562 437:15	1598 456:6	1633 467:13		
1563 437:18	1599 456:9	1634 467:18		
1564 437:24	16 343:2	1635 468:10		
1565 438:7	1600 456:24	1636 468:13		
1566 438:10	1601 457:9	1637 469:4		

<p>24-hour 420:25</p> <p>242 371:16 372:19</p> <p>25 287:17 386:24 387:1</p> <p>26 294:13 385:5 387:6,12,14,16 444:12,13</p> <p>27 295:24 296:5 305:5 391:10</p> <p>27th 309:23</p> <p>28 270:12 274:2 276:2,18 277:20 281:7 285:25 292:23 294:11</p> <p>28th 270:23 283:22 309:25</p> <p>2:17 436:14</p> <p>2:24 436:15</p> <p>2:59 457:24</p> <p>2nd 316:18,21 317:18</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 265:16 313:11 317:2</p> <p>30 273:12 307:20 423:2,3</p> <p>31 360:18 367:9 461:8,15 462:5,25 463:7,14,23 464:3</p> <p>31st 462:15</p> <p>32 346:14</p> <p>345 307:3 313:3 336:11 337:2 363:23 364:10 366:3 468:25 470:21 471:25</p> <p>365 389:6</p> <p>3:13 457:25</p> <p>3rd 317:19 324:7</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 265:8 297:12</p>	<p>301:10 304:1,3 317:25 318:11 320:12 331:11,12 343:7 392:17 393:23 419:15 421:7 462:24 465:1</p> <p>4- 372:21</p> <p>42 336:10</p> <p>44 424:1</p> <p>46 336:10</p> <p>47 424:1</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 268:21 317:25 331:11 391:20 449:16 461:20 465:3,7</p> <p>5-year-olds 372:21</p> <p>500 307:18 412:15</p> <p>519 309:10</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 419:8,14 439:23 449:16</p> <p>60 361:20</p> <p>600 423:25</p> <p>610 469:19</p> <p>674 413:23</p> <p>675 413:23</p> <p>676 413:22</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 311:13,15 318:1 322:25 330:11 432:4 439:23</p> <p>783 413:20</p> <p>785 391:16</p>	<p style="text-align: center;">8</p> <hr/> <p>8 278:6 322:19 453:24 457:16 459:10 460:25 463:5</p> <p>845 432:15,18</p> <p>846 432:20</p> <p>8th 449:1 462:15</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9:05 265:1</p> <p>9:57 304:11</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>A-G 455:22</p> <p>a.m. 265:1 304:11, 12 348:22,23</p> <p>ability 329:22 349:7,21 369:23 392:5 455:8</p> <p>absence 393:5</p> <p>absolutely 271:12 318:20 340:25 344:7 370:20 373:20 375:7 400:7 415:1 425:24 426:12 427:1 435:25 443:1 447:4 455:9</p> <p>abstain 371:8 372:5 403:18,19 406:16</p> <p>abstained 332:24 375:13 380:15 404:1</p> <p>abstention 374:3</p> <p>accept 292:14 362:12</p> <p>acceptable 433:5</p> <p>acceptance 278:3</p> <p>accepted 434:5</p> <p>access 451:9</p> <p>account 424:11 460:9,14,18</p>	<p>accountability 267:9</p> <p>accuracy 360:5 362:21,24</p> <p>accurate 329:20 360:19 361:4 362:17,19,22 363:2, 9 440:22,23</p> <p>accurately 435:1</p> <p>achieved 414:23</p> <p>acronym 266:12 282:1 455:21</p> <p>action 269:4 426:4 448:18</p> <p>actions 268:9,13, 21</p> <p>actively 378:21</p> <p>activity 327:22</p> <p>actual 300:6 328:6 330:5 419:25 445:2 458:16,21</p> <p>acute 389:10</p> <p>ad 361:2 368:7,19, 20</p> <p>add 350:8 369:20 424:3</p> <p>added 372:19</p> <p>addition 374:21</p> <p>additional 321:15 327:11 397:24</p> <p>address 328:8</p> <p>addressed 456:21</p> <p>addressing 452:8</p> <p>adequate 417:10</p> <p>adjustment 314:25</p> <p>adjustments 329:12</p> <p>ADM 295:19</p> <p>administer 339:16</p> <p>administered 339:6,12 454:5</p>	<p>administering 340:1</p> <p>administers 340:5</p> <p>ADMO 281:19,25</p> <p>adopt 404:12</p> <p>adopted 386:7</p> <p>ads 359:14,18 362:5,9,11 366:22 372:25 373:2,3</p> <p>advance 317:25 325:18 328:16 335:4,8</p> <p>advantage 379:9, 13</p> <p>advertisement 369:2</p> <p>advice 285:24 298:3 301:9 354:5 411:17 416:4 427:9 446:9 449:12,16 460:11</p> <p>advised 355:18 445:18</p> <p>advisors 356:13 357:6</p> <p>advocates 374:12, 17</p> <p>Affairs 309:16 369:13 391:10 455:25</p> <p>affected 328:4 354:23 355:8 401:1 409:12 415:22</p> <p>Affidavit 270:20 382:3</p> <p>AFFIRMED 265:3</p> <p>afford 425:1</p> <p>afraid 417:22</p> <p>afternoon 390:21, 25</p> <p>ag 342:7,8,9 397:10 409:16 422:24 455:21</p> <p>agencies 297:4 396:14,19 397:8</p>
--	---	---	---	--

402:7 423:11 460:12 aging 419:16 agree 290:25 294:2 308:2 313:23 330:4 345:2,3 352:15,17, 18 353:24 354:2 402:24 403:4 428:4 449:22 464:18 agreed 333:25 341:3 347:18 359:7 366:19 406:4,5 434:1 agreement 303:2, 5 353:2 394:21 397:12 399:16 agreements 268:11 288:5 437:10,12,16 agricultural 315:1 389:15 agriculture 309:15 336:14 366:14 369:11 391:10 396:20 397:13,14,21 420:2,6 441:9,21,23 442:19 445:24 454:7 455:25 ahead 353:15 aide 442:7 aimed 450:24 Ajax 438:22 all-day 372:22 all-party 378:23 allocation 439:16 allowed 380:16 404:15 433:20 435:9 450:18 458:6 allowing 429:16 alluded 418:3 amend 320:23 amended 405:23 amendments 328:5,6,7 406:10 America 287:18	American 287:21 amount 289:4 380:24 396:13,18 397:15 421:21 amounts 363:20, 21 364:3,16 ample 400:9 analysis 266:20 345:25 anchoring 433:19 Andrea 370:16 379:10 animals 469:7 announce 277:10 284:16,18,19 286:9 445:8 453:3 announced 285:2 346:23 351:11 408:23 410:21 411:11 451:17 announcement 345:19 347:12 351:7,13 352:8 354:19 388:19 409:23 415:3 426:10,14 443:23 444:16 453:4 468:22 announcements 335:8 409:23 417:21 announces 286:3 announcing 415:24 annual 287:5 316:8 322:2 366:7 419:12 423:24 answering 311:18 388:2 462:12 answers 293:11 373:22 439:5 454:25 anti-poverty 374:12,17 anticipate 329:9 333:12 337:19,25 344:5 anticipated 314:24 340:14	354:17 384:24 416:25 anticipating 332:11 367:22 409:24 antigovernment 361:22,23 362:10 anxious 388:24 anymore 332:7 447:9 apologize 301:19 386:2 391:3 392:2 466:22 appearing 317:25 appears 270:2 276:18 277:23 282:9 298:9 312:22 318:17 319:20 320:1 324:5 372:12 431:5,7 467:7,8 468:13 apply 391:4 appoint 414:15 appointed 415:9 appointment 268:25 415:5 appointments 460:7 apprised 283:4 approach 278:8, 19 279:2 282:7,8,9 283:10 286:2 289:9, 14 294:4 298:23 302:3,4,5,7,8 303:10 304:22 306:11 307:15 316:7 412:8, 9 419:17 approaches 304:16 appropriately 357:3 approval 332:12 404:19,20,21,25 405:7,23 approve 396:8 approved 281:19 339:21 356:16,17	357:7,25 359:7 410:25 411:2 460:24 461:11 approximately 307:3 313:3 335:20 346:7 358:25 381:5 April 286:4 324:13, 20 374:10,15 385:5, 8,24 387:3,6,16 444:13 447:14 456:9,24 area 309:10 321:20 417:14 areas 312:3 438:19, 20 451:7,8 arguably 440:18 argue 361:13 364:5 arguing 275:11 argument 453:16 arguments 308:4 arise 390:25 466:3 arising 390:12 471:10 arm's 337:14 arrived 287:12 301:1 article 370:11 374:7,11,15 428:13 articles 380:12 asks 363:5 aspect 396:25 423:6 aspects 306:25 312:20,24 369:18 asset 338:17 Asset-backed 395:17 assign 396:19 assist 279:20,24 282:10 285:21 387:21 391:17 414:16 assistance 414:23	Assistant 282:2 assisting 425:25 assists 391:12 assume 283:4 293:9 353:1 361:3,6 363:9 368:2 372:8 388:10 assuming 402:15 attached 281:17 291:13,18,24 292:18 326:14 attachment 382:1, 3 attendance 450:1 attended 311:18 attention 378:17 391:19 398:19 420:7 432:14 attorney 410:5 423:10,13 attributing 293:18 Auditor 456:10,21, 25 Auditor's 456:16 August 375:2,21, 24 376:14 aunts 425:9 austerity 418:4 authority 436:20, 22,25 autobiography 377:11 average 419:12 avoid 379:6 avoiding 370:19 aware 265:19 266:1 304:20,24 342:25 343:8 344:10 345:23 346:2,4,8,11 347:22 348:15 351:22 354:9 369:8,18 373:4 374:1,20 376:14,20, 21,22 377:1,7,9,20, 24,25 388:16 401:2
---	---	--	---	---

460:23 461:8 462:13 470:16	bearing 332:18	board 285:6 296:10 352:7,25 354:6 396:7,8 402:8,14 423:8,9 439:19 440:11	Broten 362:4 367:13 467:20	buildings 280:21
<hr/> B <hr/>	began 284:24,25 285:5,12 418:14	body 269:1 411:1	brought 380:6 397:7	built 418:14,18
back 272:4 310:22 325:19 377:12 392:17 394:13 400:9,12,14 405:19 412:1 413:16 418:13 420:10 421:23 438:1 454:9 470:6	begin 284:21 297:5	bosses 288:19	Buchanan 342:6 345:5 378:24 411:8	bullet 275:19 276:6 311:23 314:12 414:13
back-and-forth 284:10	beginning 286:19 394:3	bottom 283:10 294:23 295:3 331:12 339:19	budget 273:11,13, 15,20 277:11,12 280:24 281:1 284:16 286:7,13 287:1 288:25 289:21 292:12 297:1,2 318:5,19 324:24 325:4 331:18,22 332:11,14,23,25 333:23 334:1,2,8,12, 15,24,25 335:1,2,4, 6,7,9,15,18 336:14, 25 337:3,4 338:8 339:13 342:2,3,17 351:6,11,16 352:24 354:7 363:18 366:14,15 367:24 368:3,5 369:20,25 370:15 371:10,14, 21,23 372:2 373:22 374:4,11,16 375:7 380:16,21 381:6 384:17 387:20 393:18,19,21 394:7, 10 395:1,3,4,6,16 396:9 397:4,21 398:14,20,21 400:6, 8,11,13 404:6,8,14, 21 405:11,18 406:1, 5,6,9,11,17 407:5 408:11,16,18 409:5, 9 410:2,18,21 411:11 412:25 413:4,13 416:13 418:4,6,14 419:13 420:20 421:6 422:15 423:24 424:23 426:16 427:12,13 437:19 440:21 444:24,25	buried 427:13
backed 406:8	benefit 267:16 270:5 316:1 418:22 438:19	Brad 281:20,21,22	by-election 442:7	bus 422:5
background 327:13	benefits 350:5 399:14	break 304:9 348:21 354:16 389:21	buses 421:14	business 340:1 389:11
backwards 319:6, 7	betting 450:1	breath 465:24	by-elections 379:9,14,16,17	<hr/> C <hr/>
bad 334:8 438:8	bickering 450:18	bred 341:12	Cabinet 288:21 296:3,4 304:22 310:11 311:17,18,19 312:11,15 318:1 319:23,24 320:14 321:25 322:13,19,21 323:5,8 325:15 326:14,19 327:25 328:2,10,16,17,19 329:4,5 330:10 346:11 347:4,16,17 348:7 362:4 370:3,7, 24 373:6 401:3,6,10, 16,17,25 402:2,5,8, 11,16,18,23,25 403:4,6,11,12,13,14, 19 423:16 428:6,10, 20 429:4,7,10,14,17, 20,25 430:12 431:4, 10 432:7,16,19,23 433:13,16,20 434:2, 4,5,9,22,24 435:18, 24 436:2 437:1,4,9, 18 441:15 443:5,10 447:23 448:21,25 449:1 452:4,13,19, 25 453:6,8 457:15, 16 458:3,4,18,22 459:2,8,10,16,18,19, 21,25 460:1,2,6,8, 13,15,20,24,25 461:6,9,10,11	
Bain 425:16	big 335:9 336:13,15, 17 338:13 398:23 463:25	breeders 289:24, 25 355:9 411:13 466:14		
balance 333:19 349:16 418:14	bigger 335:1 380:2, 9	breeding 287:22 469:12 470:3,5,9 472:3		
bandied 411:16 452:1	biggest 338:2 398:14	briefed 279:25 293:23 306:17 308:13 309:4 325:17 329:3		
Bardeesy 318:24 320:12 321:5,12 322:5 324:5 370:10 435:12,14 458:24	bill 358:4,8 404:24 405:4,19 406:11	briefing 272:13,17 308:21 309:5 328:23 358:1 391:9 444:6		
Barry 278:7 282:5 283:2 462:7	billion 315:19 335:22 336:10 337:5 339:14 408:24 424:1	briefings 446:23		
base 340:4	billions 335:19 364:11	briefly 330:11		
based 296:7 327:22 340:11 346:23 350:9 352:6,8 362:15 411:16 419:18 440:12	bills 365:8	bright 429:20		
basic 399:9	birth 417:3	bring 402:8 460:10 465:24		
basically 302:11 399:1,8	bit 349:17 360:7 391:2 406:2 425:7 437:22 438:23 457:23	broad-based 419:22		
basis 269:19 362:18 419:7 437:16	black-out 402:17	broadcast 359:12 361:8,9,15,16,17,18 469:17,23	budgetary 401:20 404:12	
bated 465:23	Blair 265:17 271:17,18 305:12 323:14 462:7,9	broadened 412:8	budgeting 400:2	
Bay 438:21 469:25	block 333:2,13 345:12	broader 416:19 439:4	budgets 318:5 393:25 394:2 400:10 405:10 418:15	
bear 382:11 395:17		broadly 450:5 466:15		
		broke 450:17		

462:10,14,18,20,22, 23 463:5,6 464:7,10 465:21 Cabinet always 443:8 Cabinet-ready 428:3,18,23 calculation 440:25 call 325:21 326:7 373:23 399:9 410:9 420:21 427:9 called 292:9,11 297:23 298:3 319:18 350:19 352:21 353:12 405:16 423:11 441:7 455:24 459:3 466:17 calls 296:13 325:24 333:24 Cameletti 305:16 camp 344:2 Canada 330:12 365:22 cancel 436:20,23, 25 438:8,11 449:9 cancellation 380:25 440:21 cancelled 368:21 373:1 cancelling 438:4 candidate's 442:7 capacity 442:19, 20,21 455:7 capital 471:23 capped 308:15 313:5 captured 468:11 cards 287:20 care 336:8 371:16 372:21 374:11,16 420:23 421:1 422:6 careful 347:15 401:14	carefully 398:6 Carissa 272:21 Carter 364:1 case 323:14 338:11,17,18,22,24 343:21 397:10 399:17 406:15 410:6,8,23 413:12 415:12 419:10 431:16 460:13 469:2 cases 369:18 cash 285:17 casino 397:23 casinos 321:20 439:25 catch 382:14 caucus 328:11 330:1 352:24 377:13 443:11 465:20,22 caught 268:17 CCED 283:3 central 297:4 396:14,19 397:8 402:7 423:11 460:11 Century 394:4 CEO 354:6 cetera 366:9 chair 352:7 354:6 422:1 423:8 Chairman 298:12 challenge 398:22 chance 322:13 329:4 372:1 378:5 384:7 390:9,15 396:7 398:5 410:4 change 267:7 282:12,14 314:19 399:13 changed 353:1 443:25 460:25 462:14 463:22 464:2 changing 324:12 339:1,2	characterization s 402:22 characterize 331:6 charged 423:16 chart 327:13 Chatham 438:21 check 292:16 347:2 356:21 357:12,22 406:12 checked 273:18 331:1 356:4,12,20 357:3,21 checking 331:23 cheer 374:12,17 cherry-picking 386:9 chief 271:12 327:5 329:19 373:5 child 371:16 372:21 374:11,16 418:22 choice 344:9 choices 332:16 choosing 332:9 Christmas 283:15 chronology 277:19 chuckle 338:7 Churchill 411:19 circle 330:2 circled 331:13 circuitous 437:22 circulated 288:17 circulating 278:6 292:23 304:15 327:7 city 438:17 440:15 civil 426:3 CKTB 469:19 clarity 273:17 clause 405:18	clauses 268:10 274:3 275:23 277:13 371:23 388:23 406:1,9 cleaning 320:2,6 clear 275:1 277:4 280:2,9 281:4 292:2 295:22 296:18 301:2 302:9 303:25 308:10 339:3 410:17 411:5 447:12 448:19 451:22 453:14 456:6,14 clearer 294:24 client's 447:22 clippings 370:23 close 327:4 349:11 353:20 393:24 427:9 445:5 450:20 closed 439:12 440:7 closely 412:13 closer 412:15 448:11 464:4 closure 351:13 Club 330:12 365:21 384:23 385:1 444:23 code 309:10 Cogan's 465:1 cognizant 410:12 426:23 colleague 373:6 colleagues 295:25 296:3,4 327:25 362:4 400:17 422:7 column 344:11,13, 14 349:2 359:13 385:25 combination 423:9 commencing 265:1 284:11 comment 270:7 289:5 298:16,17 303:20 312:11 334:17 351:23	362:20,24 commentary 343:15 commentators 337:20 343:20 commented 376:16 commenting 358:7 comments 377:16 380:18 381:3 382:19 384:9,25 441:19 452:25 commercial 395:18 commercially 269:19 290:11,15 commission 411:12 commitment 289:2,18 committed 284:23 285:19 446:8 committee 311:12,15,17 322:25 325:15 328:2,11 329:4 334:2 371:22 404:22,25 405:4,11, 14,15,17 431:22 432:3 committees 311:19 common 455:21 463:24 Commons 394:6 communicate 447:1 communicated 354:10 376:23 434:17 communication 324:22 325:22 377:23 communication' s 324:23
---	---	--	--	---

communications 373:24	conduct 396:2	272:11 315:6 321:16 322:12 394:12	contrast 422:18	Council 460:7
communities 451:6	confidence 413:1, 7,11,14	consistent 299:24 350:6 377:17 392:13,22 395:2 414:24	contributing 399:21	counsel 370:9 381:16,21 390:22 391:1 397:20 400:23 408:15 417:2 439:4, 21 441:1,13 444:5 449:18 451:11 454:16 457:2
community 438:16 441:17	confidential 298:3 301:9 363:22	consolidated 275:4,7 286:20	contributions 399:13	County 425:18
compare 301:21	confidentiality 400:4 443:5	constant 450:3	control 405:13 419:9	couple 274:13
compassionate 442:16	confirm 276:7 292:7 431:1 433:23	constantly 374:1	controversy 429:9	court 390:13 445:2 455:18
compensation 288:2,22 290:7 365:5 409:19 411:25 452:7	confirmed 373:18	constraint 421:8	convention 394:12 413:8	courts 365:9
competitive 439:24	confirms 446:4	consultation 288:4 328:14 416:19 443:21	conventions 443:5	cover 291:7 294:12 367:19
compilation 430:18	connection 431:4	consultations 288:25	conversation 280:20 344:22 377:5	coverage 447:10
complete 324:12, 19 340:24 402:17 444:6 458:19	connectivity 378:25	contained 286:12 331:4 393:21	conversations 377:8 379:22,24 411:7 442:4	CRE 305:7
completed 472:18	cons 283:9 391:23 392:18	contemplated 268:13,21 269:21 270:3 400:6 415:8	convinced 363:10	CRE0028760 297:14 304:8
completely 434:7 440:22	consensus 414:22	contemplates 287:3	cooked 409:14	CRE0028763 304:8
complex 290:8	consent 350:11	content 354:3 360:5,15 362:5	cooperation 370:16	CRE0029291 378:13
component 340:21 439:3 441:11	consequence 314:19 315:5	contentious 332:11 334:3 335:3 405:9 431:21	copy 265:12 331:8 364:21 381:10,17, 18,21 382:5 398:16 429:25	CRE0029902 305:8 316:16 413:19
components 395:6	consequences 379:7 416:21,22 422:16 466:7,13	context 332:17	corner 391:14	CRE0029903 316:16
concern 293:20 400:22,25 422:7 442:3 466:12	Conservative 343:16 344:1 367:23	continue 267:15 269:19 274:10,24 286:15 316:1 364:2 396:12 445:13,14,16 472:17	corporation 390:23 395:25 420:7 432:2	CRE0032045 430:16
concerned 345:25 377:18 420:3 424:22 443:12 444:2 466:7 470:18	Conservative- held 440:4	continued 265:4 314:17 352:25 354:7 427:19 471:20 472:1,10	correct 272:7 273:9 307:16 312:8 321:5 325:6 326:20 327:16 333:11 354:20 357:4 359:15 366:5 370:20 380:21 382:2 383:15 384:19 399:12 412:25 425:2 437:11 449:2 454:22 456:8	CRE0032045 430:16
concerns 387:24 439:18	Conservatives 333:2,13 354:18 368:2 371:23 375:16 379:21 380:4 410:17 415:13	continues 393:2 450:11	corrected 412:16 430:14 467:11	CRE0080521 465:14
concluded 417:17	considerable 284:10 296:19 342:18 400:22 443:9 454:6	continuing 284:7 352:6 398:6 445:21	correctly 319:21	CRE0080522 465:14
conclusion 352:3	consideration 274:1 279:6 312:7 415:10	contract 274:16	cost 332:15	CRE0080704 465:16
concordance 414:4	considerations 270:2 271:24 273:25 276:17 277:16 282:9 321:14	contracts 274:3 454:13	costs 287:6	CRE0081193 367:10
concur 303:1 330:4	considered			CRE0087520 295:11
concurrence 352:8 356:13				CRE0106086 346:16
				CRE12973 319:2
				CRE32045 326:9

CRE361002 323:25	cycle 297:1 417:3	December 278:6 281:7 283:22 285:25 294:11	deep 420:16 427:13,17 442:17	designed 373:9 396:24 408:16,17 434:7
CRE64558 466:16	D		deeply 415:22 443:12	desire 409:21
CRE81193 360:17		decided 283:18,23 284:5 286:10 288:1 338:12 397:9 412:11 445:8 452:3 459:8 472:18	defeat 399:25	destroyed 345:22
created 268:2 439:7 451:13 456:19	data 310:3		defeated 333:23 372:3 413:14	detail 305:21,23 460:9
creating 434:3	date 266:5 286:6 306:1 331:17 332:2, 9 381:2 382:1 463:9, 11	deciding 446:5	deficit 408:24 416:9 418:1	details 286:1
creation 342:12 439:7	dated 265:8 270:12 277:19 291:6 294:9, 12 305:5 306:2 309:23,25 383:5 384:15 387:3,16 432:4 462:5	decision 276:8 284:13 286:25 288:21 290:3 302:11 315:5 317:11 324:18 325:8 346:21 348:9 350:8 354:4 369:9, 16 372:7,10 373:7, 14 374:21 375:9 376:5,10 402:25 404:5 406:18,23 407:9 409:3 412:21 413:3 415:4,25 425:4 426:10,20 427:20 428:2,10,17, 20,23 429:2,10 432:16,19 434:17,20 435:15 436:2 437:20 438:4,8,11 439:3 441:25 442:14,22 443:16 445:6 449:9 450:17 451:15,18 453:2,23 454:1,11 466:8,13	degree 426:1	determine 327:14 409:19 422:11 461:24 463:12
critic 468:3	dates 302:20 449:22,23	decisions 318:4 320:7 340:12 347:17 373:23,24 389:11,16 416:12 418:19,20 421:20 471:17	delay 382:7	determined 286:4 332:2 416:2
criticism 393:7	Dave 318:12	deck 265:8,10 267:8 271:21,23 281:18 290:19,24 291:2,8,9,12 292:24 293:13 294:3,11 320:14 339:20 459:12	delegate 279:17	Detroit 439:25
crops 389:16	David 305:17	decks 282:25 304:15 307:16,20	delegates 357:10	develop 275:20 276:2 398:8 414:17
Crosher 440:16	day 288:12 289:10 306:2 335:12 337:14 341:22 342:22,23 344:15,23 358:6 371:25 377:21 383:25 404:14 405:25 442:6,8 444:15 472:1,11,17	decline 314:14	deliberately 371:10	developed 277:21 278:9
cross-arrange 270:9	days 306:2 342:25 389:7	decrease 396:12	delighted 439:4	development 276:23 395:4
cross-	DD 270:20		deliver 392:6 396:23	dialogue 354:14
examination 265:4 360:9 390:20 455:19	deal 286:25 288:1 371:4,21 372:4,12 374:12,18 387:18 410:21 424:8 445:25		delivery 338:20	diatribes 344:25
cross-examined 471:12	dealing 288:3 320:24		demand 312:2	difference 292:13
Crown 395:25 402:19 420:6 429:14	dealt 453:5		department 359:8 396:5,25 398:2	differently 274:13 275:15
Crown's 434:7	debate 394:23 400:22 407:1 442:25 454:6		departments 296:20	difficult 313:20 332:16 344:9 354:25 355:2,7 361:2 389:20 398:20 418:19,20 426:23 427:18 442:4 446:16
curb 418:21	debated 284:14 406:23 434:2		dependent 314:5 425:11	difficulty 296:16 397:25 420:16 427:24
curbed 419:2	debates 383:4 384:14,20 387:2,15 402:3 443:6		depending 397:6	dimension 425:4
curbing 420:19	debating 428:16		depends 334:7,25 359:4	direct 332:18 339:4,12 340:9 341:17 391:19 432:14 436:6 452:6
curious 293:2 353:4,10			depth 345:25	directed 390:8
current 282:8			deputy 279:15,16 282:2 357:9 432:12	direction 267:14 334:18 397:9 414:22 423:18 447:23 448:19
custom 296:7 404:18			derive 355:11	
customer 350:10 353:13			describe 442:17	
customers 349:6			describing 366:21 400:3	
cut 329:11 399:9 419:15,23 420:21,22 421:13,16,17			description 350:19 352:21 353:12	
cuts 380:7 419:25 421:9 422:5,6 468:17			design 268:22 313:18	
cutting 332:15 419:22			designated 392:8	

<p>directional 398:9</p> <p>directive 340:4 448:22,25</p> <p>directly 328:20 340:8 344:23 346:3 354:23 378:20 426:25 427:25</p> <p>directs 395:24 437:9</p> <p>disability 345:15</p> <p>disagree 424:12</p> <p>disagreement 401:19</p> <p>disagreements 460:22</p> <p>disagrees 369:21, 22</p> <p>disclosed 363:17 364:18</p> <p>discuss 284:21 304:17 370:1,5 444:16</p> <p>discussed 269:6, 13 276:1 287:8 304:16,21 317:3 326:18 330:11 333:20 359:14,16 413:4 434:1 440:5 458:20</p> <p>discussing 269:4 276:22 283:19 316:21 344:24 449:8</p> <p>discussion 268:6 270:9 271:4 277:1 284:22 285:7 286:24 291:5 312:6 322:3 324:18 328:2,15 339:20 380:24 383:20 390:19 394:24 402:11,16, 21,22 430:8 443:10 444:10 447:18 457:20 463:22</p> <p>discussions 269:15 279:9 282:15 283:4 285:5,6,12 287:15 289:17,22 296:19,22 302:13,17 317:14 322:16</p>	<p>327:23 328:5 330:1 333:20 342:4,18 370:2,7 374:23 375:6 379:20 380:14,15 397:8 403:11 407:14,15,17 409:11 420:8 434:8 446:17,23 448:7,12 451:25 472:20,25</p> <p>dispose 469:7</p> <p>disputatious 402:21</p> <p>dispute 358:3,4 437:8</p> <p>disputed 434:2</p> <p>disputes 423:18, 19</p> <p>distinct 292:13</p> <p>distinguishing 292:10</p> <p>distress 426:2</p> <p>distributes 362:5</p> <p>distributing 362:9</p> <p>distribution 286:21 293:10</p> <p>dive 427:17</p> <p>divorced 433:15</p> <p>doc 270:16 323:24</p> <p>docs 464:16,19</p> <p>document 265:11, 15,22 266:8 269:7,8 270:12 271:5,7,9,14 273:5,11,14,24 277:6,19,22,25 278:3 279:4 281:10 282:6 283:14 287:1 288:6,8,11,14 289:6, 11 291:6,14,18,22, 24,25 294:5 295:13 296:13,14,17 297:19,25 298:19 300:2,25 301:2,3 302:1 306:3 309:1,9 310:9 311:10 312:12,15 313:9,12 315:3 318:25 320:22 321:1,7,25 324:2 328:1,22 332:7,19</p>	<p>348:17 351:20 360:16 365:19 368:24 370:11 378:3,6 381:11 383:3 384:13 387:1, 14 391:7,20 392:18 394:1 398:16 404:22 414:6,8 430:16,24 431:2 432:9,17,19, 23 433:20 434:22 435:9,13 458:5 462:18 464:10,23</p> <p>documentation 297:6</p> <p>documents 265:23 269:15 273:22 277:25 278:2 284:6,8 287:10 288:10 290:5 294:14,20 305:22,24 308:3,4 322:3 323:6 347:9,19 348:10 352:20 357:23 358:1 380:10,24 395:14 397:19 416:18 421:24 427:13 430:18 441:13,15 444:4 450:22 471:22</p> <p>dollar 396:4</p> <p>dollars 315:19 398:21</p> <p>Don 386:8</p> <p>door 429:20</p> <p>double-check 408:1</p> <p>doubt 291:18</p> <p>DOUGLAS 265:2</p> <p>Downs 411:19 441:5,6,7</p> <p>downside 334:5</p> <p>downsized 314:3</p> <p>downturn 416:8 418:12</p> <p>downward 314:24</p> <p>dozens 300:4 352:22</p> <p>draft 265:9,11 269:7 271:4,7,8</p>	<p>273:24 277:6,24,25 278:1,8,10 281:17 283:7 291:5,14,19 292:4,11,14,20 293:16 294:16,17 295:13 298:3,9 301:9 306:3 320:4 347:16,19 462:23</p> <p>drafted 330:25 459:21</p> <p>drafting 295:21</p> <p>drafts 272:3 273:7 459:25 462:21</p> <p>draw 424:17</p> <p>drawn 349:10 353:20 429:19</p> <p>Drummond 350:21 385:15 386:12,17 419:19</p> <p>Drummond's 386:8 418:17 419:5</p> <p>Duncan 265:2,6 271:5 272:3,19 275:11 291:15,23 292:22 297:7 299:13,19 300:2,13 303:22 310:5 312:4, 14 319:4 322:8 326:23 358:15 360:5 361:10 364:4 365:21 390:10,21 403:1,5 428:15 436:6,19 452:25 455:20 456:25 457:1 471:11,13</p> <p>Duncan's 303:14 432:4</p> <p>Dundas 441:10</p> <p>durability 278:15</p> <p>dutifully 451:21 458:14</p> <p>Dwight 265:2 365:20</p> <p>dynamic 325:14, 23 326:5,6</p>	<p style="text-align: center;">E</p> <p>earlier 284:15 305:22,23 315:17,21 339:20 371:20 373:22 395:8 397:18 418:3 430:25 442:24 446:4 471:22</p> <p>earliest 407:8</p> <p>early 297:3 395:10</p> <p>easy 434:11</p> <p>economic 311:12, 14 322:24 330:12 346:1 365:21 384:23,25 432:3 444:23</p> <p>economy 395:15</p> <p>education 336:6 421:3,11</p> <p>effect 346:24</p> <p>effective 324:20 420:15</p> <p>effectively 371:24 372:2 406:1</p> <p>effectiveness 450:9</p> <p>elected 442:6</p> <p>election 333:7,10, 14 334:6,10 370:19 413:15</p> <p>element 299:4 399:10</p> <p>elements 321:15</p> <p>eliciting 452:12,16</p> <p>eliminate 419:24</p> <p>eliminated 320:17</p> <p>eliminating 307:1 308:14 313:1</p> <p>elimination 306:7 386:18</p> <p>email 281:10,11,14 291:7,13 292:17 293:9 294:12 296:13 305:2 316:19 317:2</p>
---	---	--	---	---

<p>318:23 319:5,18 321:2,8,9 322:5,7 323:22 325:12,13 326:8,13 327:19 346:13 362:6 377:24 378:16,19 462:7,25 463:8,14 464:10 465:8 466:17,23</p> <p>emailed 377:21</p> <p>emails 292:20 318:11 319:14 325:25 326:25 328:22</p> <p>emerge 395:18</p> <p>emotional 442:2</p> <p>employees 423:13</p> <p>employers 399:17</p> <p>employment 327:15 456:19</p> <p>enable 332:22</p> <p>end 274:15 284:2, 16,19 286:3 369:10 371:19 375:17 469:1</p> <p>ending 336:22</p> <p>engaged 377:2</p> <p>engagement 266:21</p> <p>ensure 415:15 445:10 450:10 451:3</p> <p>entire 268:24 336:13 366:14 368:3 397:21 398:4 400:11 405:6 433:5 438:18</p> <p>entirety 293:24 348:14</p> <p>entitled 365:19 374:16 383:3 384:13 387:1,14 428:19</p> <p>envelope 396:4,21</p> <p>envious 397:15</p> <p>equine 392:8</p> <p>equivalent 327:14</p> <p>Erie 446:15</p> <p>Ernie 341:22</p>	<p>342:22</p> <p>essence 270:9</p> <p>essentially 274:9 355:12</p> <p>Essex 425:17 440:17</p> <p>establish 349:23 369:16</p> <p>established 414:4 439:9</p> <p>establishing 293:17,19,21</p> <p>estimates 315:17 365:3,4 394:2,8</p> <p>Euthanasia 405:8</p> <p>evaluating 272:10</p> <p>evaluation 450:9</p> <p>event 307:24,25 308:7</p> <p>eventual 347:17</p> <p>eventually 295:19 406:8 416:3 420:14</p> <p>Eves 341:22 342:22</p> <p>Eves' 394:9</p> <p>evidence 300:17 317:1 428:2 438:3,6, 7,9 440:12 452:12, 17 464:16</p> <p>evident 446:3</p> <p>evolve 394:23</p> <p>evolved 290:7 335:12 443:24</p> <p>evolves 459:19</p> <p>evolving 266:6 448:15</p> <p>examination 265:17,18 270:13 280:3,4,11 281:5,9 289:7 291:3 294:7, 11 295:8 297:11,12 303:14 304:2,20 318:24 323:21 326:9 343:7 346:14 360:18 365:15 367:10</p>	<p>370:10 376:3 382:8 391:8,12 413:17,18 414:3 429:17,24 430:4,11,14 454:17 456:13 461:16,21 465:1,4,8 466:4</p> <p>examinations 414:1</p> <p>examine 390:9 433:21 435:10</p> <p>examined 435:12</p> <p>examining 435:8</p> <p>examples 338:4, 16</p> <p>exceptions 431:19</p> <p>excerpt 387:6</p> <p>exchange 455:4</p> <p>exchanged 273:22</p> <p>exchanges 328:22 415:16</p> <p>Excuse 298:12 472:6</p> <p>exercise 299:20 394:15 415:24 416:2</p> <p>exercised 274:4</p> <p>exhibit 265:7,16, 17,21 268:17 270:13,20 280:13 281:4,8 288:15 289:7 291:3 294:7, 10 295:8 297:11,12 303:13,16,24 304:1, 3,7,19 316:11,12,15 318:23 323:21 326:9 343:7 360:18 365:15,18,19 367:9 370:10,12 374:7,8, 13,14 376:2 382:1, 24 383:3,13,16 384:11,13 386:23 387:1,11,13,14 391:8,11 413:16,17 429:15,24 430:4,11, 13,20 444:12 461:20 464:10,13,14,24 465:1,2,3,4,7,9,13, 15</p>	<p>exhibits 413:25 457:22</p> <p>exist 447:9 450:11</p> <p>existed 322:1</p> <p>existence 321:3</p> <p>existing 271:24 396:23</p> <p>exists 313:18</p> <p>exit 268:10 324:12, 19</p> <p>expanded 380:5</p> <p>expect 327:21 333:12 340:20</p> <p>expectation 389:3</p> <p>expectations 392:5</p> <p>expected 270:3 306:12 389:8 441:24</p> <p>expenditure 340:10 395:7,23 396:9,10 398:10</p> <p>expenses 287:6 419:8</p> <p>experience 292:1 317:23 459:21</p> <p>experienced 345:21</p> <p>expertise 392:8,9, 14 409:16 416:6</p> <p>experts 285:24 409:17 411:18 417:12 449:12</p> <p>explain 328:14 336:2 458:11</p> <p>explained 315:10 336:18 366:17 367:23 458:25</p> <p>explaining 272:23</p> <p>express 344:2</p> <p>expressed 373:5 422:7 439:19 441:12 448:21</p> <p>extended 466:12</p>	<p>extensive 327:23 451:24</p> <p>extensively 318:17 471:12</p> <p>extent 298:8</p> <p>extra 321:19 345:11</p> <p>extract 385:5</p> <p>extraordinarily 426:22</p> <p>extremely 329:24</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>Facebook 345:13</p> <p>facilities 314:2 349:5</p> <p>facility 350:2 425:10</p> <p>fact 273:18 280:5, 12 285:16 331:1,23 339:2 340:9 341:2 348:9 356:4,12,20, 21 357:3,12,21 374:1 397:14 400:9 410:6,12 420:18 421:8 433:24 438:18 440:5 444:6 446:7 447:15 449:11</p> <p>fact-checked 366:16</p> <p>factor 292:10</p> <p>factors 290:2</p> <p>factory 439:12</p> <p>facts 357:21</p> <p>factual 331:3</p> <p>fair 280:10 286:11 291:1 300:24 320:3 332:10 349:23 380:24 412:24 418:5 422:14 423:20 428:21 433:9 434:10 447:24 450:16</p> <p>fairly 283:14 407:15</p> <p>fairness 393:15 448:16</p>
--	---	--	--	--

faith 438:8 440:12 443:20	fighting 450:4,13	19,23 282:13	forwards 305:4	funded 274:11,17, 18
fall 372:1 389:16 422:23	figurative 300:5	Flamboro 441:5,6, 7	found 399:19	funding 267:9,17 268:23 269:21 275:22 276:10 277:15 278:21,22 283:19,20,24 284:8, 11,24 285:9,20 286:25 289:19 290:21 301:11 306:19 313:14 314:5 315:13,20 316:23 339:3,4 346:23 349:23 379:2 393:10 396:12 409:4 410:20,24 412:4 414:18 420:22 421:14 424:20 426:6 451:16,23 453:3 454:2,5 468:17 470:21 471:20,21
false 429:9	figure 379:1 396:4	flexibility 349:4 350:7 409:22	fourth 313:25 365:25 408:5	fund 275:4,7 284:9 286:20
familiar 341:8 417:1 427:5	file 399:19	flipping 310:22	fraction 400:20 422:1,2	future 450:19
families 366:11 442:14	fill 453:8	flow 471:7 472:1,10	fractious 414:21	<hr/>
family 340:25 363:25	final 271:9 290:18, 23,24 291:2,8,19,22, 24 292:3,8,10,11,14, 15 295:21 296:13, 14,17 299:4 346:24 347:20,24 349:1 351:20 352:1 457:9, 12 464:16,19 471:17	flowed 471:15,19	frame 331:21	<hr/>
fashion 445:25 452:9	finalized 318:4	flowing 472:1	frames 285:7 426:15	G
fathomed 395:20	finalizing 320:2 416:23	flows 268:23	frank 402:11,16,20	game 437:25
favour 306:8 307:11 308:15 313:4 368:5 406:15	Finance 276:2,18 277:21 278:7 291:7 292:23 293:6 296:9, 20 301:16,25 310:7, 11 311:2,6 330:23 345:24 347:4,25 356:7,11 358:21 359:2 360:25 365:20 369:11 393:22 395:9 402:7 411:17 412:23 422:10,13 423:7,9, 13,14 424:15 429:19 431:11 432:3 436:20 460:15 470:2	Flynn's 270:20	frankly 280:22 354:21 370:25 398:4	games 349:22 350:8,9
February 311:13, 15 316:18,21 317:2, 18,19,25 318:1,11 320:12 322:19,25 324:7 330:11 331:17 343:2 344:15,20 355:2 365:22 372:24 432:4 449:1 453:24 456:7 457:16 459:10 460:25 462:15 463:5 464:3 472:12	finalized 318:4	focus 353:13 392:21,23 450:18	free 315:19	gaming 266:14,19, 22 267:5,16 268:23 349:5 352:4 390:23 397:23 432:2 450:7 451:7 454:9
Federal 438:22	finalizing 320:2 416:23	focused 335:3 392:10 415:20 424:13,19	free-for-all 453:16	gave 272:3 291:16, 17 330:11 337:7 369:3 376:15 439:5 446:11
federations 418:11	Finance 276:2,18 277:21 278:7 291:7 292:23 293:6 296:9, 20 301:16,25 310:7, 11 311:2,6 330:23 345:24 347:4,25 356:7,11 358:21 359:2 360:25 365:20 369:11 393:22 395:9 402:7 411:17 412:23 422:10,13 423:7,9, 13,14 424:15 429:19 431:11 432:3 436:20 460:15 470:2	folks 272:5 278:6 360:25 444:3	Friday 317:20,21	Gene 318:12 376:24 377:21 378:1 379:4
feedback 278:14 312:20	financial 309:20 310:14 397:25 426:2	follow 301:5 381:21 412:13	friend 406:21 425:16	general 297:20 403:2,3 423:10,14
feel 427:20	financially 306:13 440:1	food 309:16 366:15 369:13 397:10 409:16 454:7 455:25	friend's 414:2 429:23	General's 456:10, 21,25
felt 289:20 323:15 345:1 358:9 371:13 397:24 399:3,24 409:10,18 411:21 416:14 419:20 426:12,21,25 427:19 440:5,7 442:10 450:6	find 281:16 365:6,7 405:9	force 396:24	friendship 425:19 442:5	generally 329:23 337:25 393:17 407:3 445:9
Fetterly 335:13	finding 424:19	forced 442:3	front 288:15 296:17 299:1 307:20 320:23 331:9 348:18 378:4 383:16	
field 281:14 389:17	fine 293:13 362:12	forces 415:18	frustrated 449:5	
fight 369:16	finish 272:20 279:21 284:1 297:17 315:12 357:15 362:8 375:1 462:12	foregone 340:11	fulfill 398:6	
	finished 305:11 447:20	forget 364:10 401:25 417:14 468:23 472:24	full 287:19 288:10 394:19 432:7	
	fiscal 334:18 379:7	form 315:12 328:5 437:16 443:19	full-day 368:21 373:1	
	five-year 276:3,19, 23 277:3,21 278:8,	formal 289:16 357:1 394:24 456:2	full-time 327:14,16	
		formally 284:5 325:17 448:6	fully 329:3 401:2 426:23	
		formula 274:19 349:6 350:4,6	function 443:6	
		Fort 446:15	functioning 425:11	
		forward 281:7 291:2 370:10,11 449:6	fund 275:4,7 284:9 286:20	

<p>generate 276:19</p> <p>generated 275:1</p> <p>generic 297:23 298:1,4,9 301:10 302:25</p> <p>genuinely 442:2</p> <p>GIP 266:11,12 267:22</p> <p>give 295:14 300:1, 22 301:6 308:2 317:1 325:18 330:8 331:8 332:19,20 351:10 364:21 378:4 379:8,13 381:11 396:5 405:16 411:24</p> <p>giving 272:14,16, 24,25 273:3 312:19 320:12 322:13 355:25 423:17 468:24</p> <p>glad 341:2 446:8</p> <p>glanced 338:5</p> <p>goal 451:2 464:5</p> <p>goals 335:16</p> <p>God 440:8</p> <p>Godfrey 298:10, 12,13 347:12 351:12 352:25 415:12 426:13 440:6</p> <p>good 265:6 334:9 335:5,8 345:2 378:25 390:21 403:2 433:22 440:11 441:22 442:8 443:20 450:22</p> <p>goodness 345:15</p> <p>Goodwin 278:7 282:4,5 324:9 462:7</p> <p>govern 288:23</p> <p>government 273:4 276:7 282:11 283:23 284:4 286:3, 21 287:5 288:20 289:3 290:19,25 291:2,8,16 293:22 297:1 301:1 312:7 315:11,25 333:6</p>	<p>334:18 338:9,17 339:1,5,7,16 340:1, 6,8 343:22 349:8,13 353:1 354:3 356:25 358:1,5 365:9 367:3, 9 368:5 369:22</p> <p>370:15 372:1 387:19 394:9,14,21,22,25 395:22,24 397:2 398:3,10 399:3 400:1,21 401:19,22, 25 403:2,3,20 404:13,24 405:4,12 406:14 411:15 413:9 416:11 421:10,11, 13,19 423:2,10 434:4,13 435:21 437:1 442:13 443:1, 2,11 448:20 449:7 454:8 456:7 458:8,9 465:25 472:17</p> <p>government's 267:14 275:4,7 335:16 351:14,17 352:9 395:13 410:7 418:9 419:3 421:22 422:11 433:10,18 435:1 443:24 448:14</p> <p>governments 335:11 394:18,19 400:16 443:3,25</p> <p>granted 424:11</p> <p>great 424:8 427:16</p> <p>greater 267:9 460:9</p> <p>Greg 376:12 377:6, 10,14</p> <p>gross 365:2 399:21</p> <p>ground 367:20</p> <p>group 278:13 424:14 426:5</p> <p>groups 328:21 342:8 418:10 424:8 441:9</p> <p>growth 419:7,11, 13,25 420:20 421:7</p> <p>GTA 321:20</p> <p>Guelph 305:19</p>	<p>guess 329:16 412:14 424:13 427:7 458:11</p> <p>gutted 406:2</p> <p>guy 357:19</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>Hagerty 305:16 328:24</p> <p>half 366:13</p> <p>hand 415:20</p> <p>handed 298:19 383:8</p> <p>hands 283:2 466:24</p> <p>Hang 308:1</p> <p>Hansard 369:24 381:24 383:4,22 384:2,14 385:4,12 387:2,6,11,15 397:18 406:22 407:19 410:5 418:2 439:6 444:13 445:15 446:8 447:12 449:17 451:20,21 452:18, 20,22</p> <p>Hansards 389:12</p> <p>happen 279:8 285:5 377:4 395:20 431:18 442:3 468:6</p> <p>happened 287:9 288:9 370:21 395:17 401:10,22 402:17 403:6,11,12,24 412:2 427:17 429:17 435:17,24</p> <p>happening 305:25 319:20</p> <p>happy 345:4 391:6 411:5</p> <p>harassed 345:19</p> <p>hard 283:13 294:21 295:17 320:24 421:16,18 440:12</p> <p>harder 420:4</p>	<p>heading 267:22 331:12 391:22 392:18 414:10 433:8</p> <p>headquarter 338:11</p> <p>headquarters 338:7</p> <p>health 269:2 336:8 419:4,7,10,13 420:20,21 421:5 423:25</p> <p>healthy 402:10 442:25</p> <p>hear 446:17</p> <p>heard 266:16 281:22 329:7 359:23 362:11 373:3,12 374:25 375:3</p> <p>hearing 267:2 361:1 377:16 454:20</p> <p>hearings 405:15</p> <p>heart 400:25 442:17</p> <p>heartfelt 344:8 472:24</p> <p>heated 407:15,17</p> <p>held 333:18 438:15 440:15,18</p> <p>helpful 297:8</p> <p>helps 421:24</p> <p>high 274:8,14 407:21</p> <p>higher 295:15 336:9 399:13</p> <p>highest 408:7</p> <p>highest-priority 397:3</p> <p>highlight 298:14</p> <p>highly 314:5</p> <p>historically 335:11 399:12 419:11</p> <p>history 401:18 458:21</p>	<p>hit 420:4</p> <p>hold 367:7 438:20</p> <p>holiday 283:15</p> <p>home 438:21</p> <p>homes 420:23</p> <p>hometown 425:21</p> <p>honest 464:20</p> <p>honestly 464:21</p> <p>hope 389:3 468:20 469:2 470:5</p> <p>Horey 265:12,20 267:20 268:15 270:15,18,21,25 272:19 279:21 280:2,9 291:23 292:7,9,16 294:23 295:10 297:14 300:1,5,12,22 301:6 303:15,22 304:10 305:6 307:5,8 308:1, 18,22 309:2,8 310:15,17,21 311:4, 16 312:13 316:12 318:25 319:10 322:20 323:1,24 326:17,20 331:8 339:8 346:15 348:16 357:17 358:10,16 359:25 360:6,8,10, 14 361:11,25 362:23 363:1,4,8 364:21 365:11,17 367:7,14, 18 368:11 369:4 370:4 372:14 374:8 378:2,11 381:9,15, 22,25 382:14,25 383:2,18 384:12 385:19 386:24 387:10 388:1 390:1, 6 391:25 401:7,11 402:24 413:19,23 414:5,9 428:15,25 429:11,13,19 430:2, 15 431:12,25 436:8, 12,16 453:15,20 455:10,15,19 456:4, 11 457:4 458:7 461:12,17,23 463:19 464:11,22 466:3 471:9 472:7</p>
--	--	--	---	--

horizon 337:4	hurt 425:5 441:17, 25 442:14 449:10 451:2,18	implementing 393:9	350:1	informal 289:17
horse 267:8,15 268:3,24 270:5 275:21 276:8 278:19 285:23 287:17 289:23 290:21 301:10 306:9 307:3 309:21 310:14 313:4 314:13 315:20 317:3 318:18 320:16 324:11 327:14 331:7 334:19 336:23 338:10,25 340:21 341:8,9 345:7 348:1 349:14 364:16 366:2 368:17 375:20 385:16 386:13 388:18 392:24 393:10 394:16 397:16 409:5,15 411:12 412:9 414:11,16,24 415:5 424:2,18,20 425:10, 17 427:3,6 444:3 445:17 449:10,19 450:14 451:4,18,25 454:2 457:10 468:17,20	hurting 450:24	imply 356:8	independently 347:25	information 273:20 305:4 306:4, 5 308:22,24 312:14 321:10 328:24 329:20,24 331:4 390:4 393:20 446:22 451:12
horseman 341:11, 12	Hydro 340:3	important 303:19 393:4 405:22 415:20 416:4 424:6,7 426:13 442:25	indicating 302:14	ingenious 414:2
horses 287:20,23 345:22 417:4 425:12 468:15 470:3,17,19	I	improper 361:12	indirectly 397:11 428:9 435:19	inherently 415:18
Horvath 370:17	ice 464:5	improve 349:21 451:3	individual 269:1 364:16,17 421:24 454:13	initially 325:14 377:11 380:5 410:21
hospitality 321:18	ID 270:16 318:25 323:24	improvement 270:4	individuals 368:1 402:2 442:14	initiative 447:24
host 349:25	idea 277:25 283:1 285:20 292:19 341:21 342:11 373:16 469:20	improvements 338:19	industries 320:16	initiatives 418:16
House 375:15 382:20 385:2,11 386:21 387:8 394:6 400:19 405:19 408:25	Identification 304:6,7 316:15 374:14 465:13,15	improving 419:16	industry 269:3,10, 17,18 278:20 282:10 284:9 285:7,21,22 286:21 287:4,22 288:4 289:1,22 290:12,16,22 306:10,12 307:4,13 308:16 309:21 310:14 313:4,7 338:25 340:21 341:9,15 345:8 348:1 349:14 355:12,17 368:17 379:1 380:7 388:18 392:9,21,24 393:10 394:16 397:16,25 400:5 409:5,11,15 411:14 414:11,15, 16,20,25 415:21 417:1,11,12 420:16 425:17 427:3,23 443:15 444:18 445:12,17,20 449:13,19 450:11, 14,18 451:5,25 454:3 468:20,24	innovation 266:15,19,22 267:5 403:24
HST 335:10 377:12	identified 274:1 276:17 430:11	in-depth 289:22	input 290:3 305:16 330:9 445:10 446:17	inquiry 428:11 434:8
Hudak 368:8,15 372:25 410:16	identifies 271:23 467:18	in-house 416:6	instance 290:3 305:16 330:9 445:10 446:17	instances 463:17
Hudak's 366:24	identify 268:8 303:16 397:4 398:12 467:23	inaccurate 361:7	inquiry 428:11 434:8	instructive 325:13
huge 375:11 397:20 444:24	identifying 282:7	inaudible 468:23	instance 273:11 288:11 320:11 335:7 338:6 340:2 389:12 394:9 399:20 408:22 411:19 419:3 423:12 438:20 441:1 451:8 458:18 468:13	instrumental 442:12
human 442:16,21	ignore 441:19	included 293:12 319:13 355:8 406:18	inquiry 428:11 434:8	integrity 422:15
hung 410:8,9	imagine 370:23	includes 311:24 312:10 321:15 414:14 450:5	inquiry 428:11 434:8	intended 298:7 393:8 398:7
	impact 313:21 327:15 346:1 355:16 398:15 414:11 417:7 424:9 444:3	including 268:9 289:21 335:21 351:18 354:20 378:23 417:15 427:6 446:12 449:17	inevitable 434:5	intent 269:25 414:15
	impacted 328:19 418:8,9 426:25 427:25	inclusion 281:18	inevitably 416:20, 21 451:1	intention 315:11 335:4 446:25 452:13,14
	impacts 327:15	incomplete 315:7, 10,14,22	inference 434:3,6	interest 335:21 336:4 341:17 350:10 427:1,2,22 439:16
	impassioned 346:12	incompleteness 298:15	inferentially 428:9	interested 290:10, 11,13
	implement 285:12 341:4 379:2	inconsistency 292:3 298:25 299:2, 6,15,21,22 300:9,11, 17,20 301:23	inflict 438:11	
	implementation 285:7 379:12 393:6	inconsistent 302:12	influence 424:9	
	implemented 285:10,15,16 412:4 448:1	increase 315:18 451:10	influenced 337:18	
		increases 418:22	inform 320:25 395:15	
		independent		

interesting 426:3 427:11	454:14	425:15	357:17 358:10,16 359:25 360:6,8,10, 14 361:11,25 362:23 363:1,4,8 364:21 365:11,17 367:7,14, 18 368:11 369:4 370:4 372:14 374:8 378:2,11 381:9,15, 22,25 382:14,25 383:2,18 384:12 385:19 386:24 387:10 388:1 390:1, 6 391:25 401:7,11 402:24 413:19,23 414:5,9 428:15,25 429:11,13,19 430:2, 15 431:12,25 436:8, 12,16 453:15,20 455:10,15,19 456:4, 11 457:4 458:7 461:12,17,23 463:19 464:11,22 466:3 471:9 472:7	launched 426:4
Interestingly 399:15	item 335:9,24 460:5 463:25	kicking 288:18	law 399:12 422:23	
interests 423:21 425:12 427:21	items 335:1,3 371:9 397:3,5 420:21 423:1	kid 440:13	lawsuit 358:11	
interim 375:21		kids 418:25	lawsuits 364:1	
interject 279:22	J	kilometres 439:23	lawyer 364:5	
internal 394:23		kind 269:21 273:4 288:7,8 293:10 298:15 335:3 336:3, 21 338:4 345:17 395:1,10 398:8 408:13 415:19,24 418:18 431:21 440:7,24 441:13 442:24 443:3 445:4 446:20 448:21 449:18 451:11 452:6 467:14	lawyers 423:12	
internally 284:22 342:2,18	January 291:6 292:23 294:12,13 304:14 305:5 309:23,25 391:10 392:14,25 414:25 461:8,15 462:5,15, 20,22,25 463:6,7,12, 14,23 464:3	kindergarten 368:22 372:22 373:1	lay 379:5	
interview 376:15, 23 377:7,22 403:9	jobs 311:11,14 322:24 327:16 432:3 439:7,8 451:13 456:19	kinds 287:11 288:3 318:13 335:8 345:12 354:13 415:16 442:23	LCBO 338:6,11 340:5,7	
intimately 354:15 357:7	jog 280:17	knew 287:1 314:19 341:8,14,16 344:8 354:23,24 355:1,2,4, 6,15,17 377:23 388:22,23 415:21 416:14,16 425:5 431:20 451:1	lead 399:25 422:10	
introduce 413:9 451:16	John 341:7,25 343:7 345:5 354:22 378:20	knowing 371:10	leader 333:24 370:16 371:5 386:6 398:9 414:15 425:17	
introduced 397:23	joined 426:13		leaders' 407:24,25	
introduction 421:22	jointly- sponsored 399:18	L	leadership 415:7, 13 416:11	
involve 355:11 397:13	judgment 436:4	La 265:12,20 267:20 268:15 270:15,18, 21,25 272:19 279:21 280:2,9 291:23 292:7,9,16 294:23 295:10 297:14 300:1,5,12,22 301:6 303:15,22 304:10 305:6 307:5,8 308:1, 18,22 309:2,8 310:15,17,21 311:4, 16 312:13 316:12 318:25 319:10 322:20 323:1,24 326:17,20 331:8 339:8 346:15 348:16	leading 273:19 459:19	
involved 271:13, 18 318:17 319:18 329:25 347:4 354:15 357:7 375:18 379:15 388:5 397:11 425:24 448:9	jump 391:2		learn 411:18	
involvement 296:24 327:4 345:5	junior 283:1,14		learned 458:12	
involving 268:25	jurisdiction 449:15		leave 289:20 299:17 409:22	
irrational 438:4	justify 349:13 428:10		Leaving 323:4	
irrespective 344:25	K		leeway 334:13	
issue 288:22 318:18 328:19 346:6 375:11 380:2,9 394:21 398:20 399:7,8 431:19,20 442:11 457:3	Kawartha 438:22		left 285:17 334:13 355:14 375:23 389:19 406:9 411:3 412:2,12 417:11 456:6 471:16 472:2, 11,15	
issues 269:16 280:1 283:18 288:3 325:16 328:12 332:13 376:13 405:1,8,9 408:14 442:23 446:18	Keegan 305:2,3 376:24		left-hand 385:24	
	Keegan's 374:21		legal 379:8	
	key 270:1 328:3 334:1 349:8 350:5 371:23 378:22 398:12,13 406:1		legislate 398:25 399:4 417:23	
			legislation 413:10 417:25 422:23	
			legislature 332:20 394:11 398:5 403:17,22,25 404:10 405:6 406:16,19,22, 24 410:10,25 412:3, 5,22 415:17 437:2, 19 442:20 467:6	

length 284:14 337:14 435:13	12 322:23 323:3,25 324:3 326:16,21 331:10 339:10,15 346:18 348:20,24 357:18 358:13,16,19 360:3,8,12,17,21 362:2,23 363:11 364:25 365:13,23 367:11,21 368:14 369:7 370:8 372:16, 18 374:6,19 378:3,9, 15 381:24 382:2,5, 13,16,18,24 383:6, 11,21 384:11,16 385:23 386:23 387:7,17 388:1,4 389:21,24 390:3,15 391:7,13 393:13 401:5 402:15 404:9 406:21 410:19 413:20,21 425:3 428:8,22 429:6,16, 23 430:12,20 433:12,15,19,25 434:11,21 435:7,11, 14,19 436:1 437:3,5 452:11,19,24 453:7 454:15 456:5,18,23 457:8,18,21 458:1, 23 461:14,20 462:1 463:20 464:9,17 465:17 466:5 471:11,18 472:13	long-time 425:13, 16	428:24 429:3,18 436:2 438:5 442:18 459:15,18 471:17	marked 280:3,11, 12 283:7 291:14 365:15 370:12 383:11 391:8,11 430:3,10,13 461:16
letter 297:23 298:1, 4,9 299:1,16,21 300:14 301:9,10 302:2,4,10,25 303:1 378:8 422:25 465:9		longer 267:17 287:13 389:19 428:7 440:18	magna 394:10	market 350:12 355:22 417:13 439:15,24 446:10
lettered 303:16,23 316:12 374:8 464:13,14,24 465:2, 4		looked 275:9 277:19,20 287:10 294:4 354:11 357:21 407:14 430:24 439:15 450:22	magnitude 335:17	market-based 306:11
level 274:8,14 306:19 313:14 342:19 414:19 424:19 454:2,4		loop 279:12 448:13	main 297:2	markets 393:22,24
levels 284:9		lose 442:13	maintain 269:2	marking 304:1 464:12
liability 399:11		loss 314:15	maintained 458:15	Martin 335:13
Liberal 352:24 370:15 438:16		lost 321:23 335:10 379:17 426:6	maintaining 321:20	material 453:9 459:18 462:11
Liberal-ndp 374:12,18		lot 287:21 305:20,22 334:13 341:16 344:6 441:2,8 454:10	major 432:8	materials 319:24 452:13
Liberals 372:19		lottery 274:20 321:19 390:23 432:2	majority 333:6	matter 303:21 329:23 331:23 332:5 353:9 358:18 400:13,14 413:7,11, 14 456:12 458:8 469:21
life 340:25 364:11		lottery-style 321:17	make 273:16 275:12 290:4 293:21 298:20 299:24 308:4 315:24 323:15 329:12 332:21 334:19 346:7 350:5 380:2,9 385:14 389:16 408:9 411:19 416:11,24 417:6,9 421:19 434:11 455:16 464:7	matters 298:8 456:15 471:9
light 288:12 289:10		loud 301:18	maker 435:15	Matthews 281:3 304:5 316:14 348:19 365:18 374:10 381:18 382:4,10 383:1,15 386:25 387:4,12 430:5 432:22,25 464:25 465:7,11 467:19
limit 400:4		lower 306:18 313:13 414:18	makers 442:22	maximize 312:1 349:7
limited 267:18 390:7 446:20		lower-level 288:17 446:21	Makes 273:25	mayor 425:15
limits 349:4	Lisus's 428:16 436:17	lurk 468:5	making 314:11 325:24 343:8 344:20 357:19 442:12 445:6 460:19	Mcguinty 316:20 324:6
lines 379:6 440:25	literally 325:23 459:5,16	lurking 468:3	man 435:15	Mckechin's 400:10
Linley 305:1,2,13	livelihood 355:12		manage 292:20	Mcmeekin 342:11 344:6 345:24 351:8, 18 369:9 400:24 403:10 417:6 441:2, 14 472:21
list 293:10 356:23	locate 349:4	M	management 392:6	Mcmeekin's 373:5 403:8
listen 363:4	location 267:18 309:18 310:12	machine 349:25 439:22	mandate 398:7 422:25	
lists 281:24	lock 332:6	machines 267:19 275:2 309:19 310:13 321:19 439:10,12	March 380:18 381:4 382:13,22 383:5,9,10,11,12,13, 16,22 384:15 407:8, 10 451:17 469:1	
Lisus 265:5,14,24 267:22,25 268:19 270:17,22 271:3 272:20,22 279:23 280:7,14 281:2,6 292:5,21 295:4,23 297:15 300:7,16,18 301:4,12 303:13,17, 21 304:3,13 305:9 307:5,7,10 308:8 309:12 310:16,19,25 311:5,20,21 312:18 316:11,17 319:2,3,	locked 331:25	made 271:7 279:19 289:6 290:2 317:11 320:7 325:8 332:16, 17 342:5 343:1 345:23 346:2,4 351:6 354:7 355:25 369:10 377:7,9 380:18 382:19 383:25 384:9 389:11 410:17 426:10	mark 303:15,23 374:6 464:9,14,23 465:10	

means 280:13 327:24 413:13	363:23 364:10 366:3 371:16 372:19 387:20 396:21 410:20 412:15 423:25 468:25 470:21 471:6,25	13 420:2,5 422:19 423:23 424:15 431:15 432:3 445:23 452:1 455:23,24 460:3,15	450:7,24 451:14 464:1	nature 273:5 325:16 330:24 389:5 405:8 408:20
meant 274:6 283:3 407:20 452:14			modernize 338:20	nay 403:17
measures 400:5		minor-level 305:21	modernizing 432:2	NDP 332:24 333:4, 17,23 342:6,7 370:16 371:3 372:5 375:13,15 380:2,8, 15 387:19 404:1 410:14,22 440:19,20
media 398:19 447:10 468:6	mind 301:21 302:25 471:14	minority 290:1 332:17 370:14 405:13 410:10 413:7,9 415:10	Mohawk 441:3,7	necessarily 467:24
meeting 304:23 316:20 322:22 324:4,7 328:11 403:6 433:13,16 435:18,24 449:1 457:16 458:13,18,22 459:19 460:25 461:1 465:22	mine 353:7 368:25 425:16	minute 272:3 288:21 294:4 300:2, 4,6,13 328:6 348:8 378:12 437:4,9 447:17 448:21 452:4,19,25 453:6 457:15 458:3,4,16 459:7,10,11,14,15, 18,21,25 460:16,24 461:6,9,10,15 462:14,23 463:5,6, 21	moment 406:3 456:11 457:19	needed 417:16 443:19
meetings 311:19 317:5,6 323:5 352:23 411:10	minimal 327:21	minutes 361:20 366:17 370:24 458:12 464:7	money 274:24,25 275:1,3,6 289:4 340:8 364:2,16 396:18 397:15 411:20,23 418:24 426:8 471:14,25 472:10	negotiate 399:5 410:13
meets 465:20,21	minimum 416:24	misinterpretation 470:12	monolithic 443:3	negotiating 377:3
member 352:23 403:10 442:20 459:5	minister 271:5 298:4,9,11 322:8 323:7 327:9 329:2 330:24 342:7,9,11 345:24 356:7,11,19 357:10 358:21 359:1 365:20 369:8,21 373:5 393:22 395:9, 10 396:20 397:7 403:19 405:16 412:23 422:7,9,13 423:7,8,14 431:11 432:4 436:19 441:21,23 442:19 448:22 454:7 467:19,20 470:2 472:21	missed 385:22 386:1	month 294:15 302:20	negotiation 417:24
members 271:19 285:6 328:3 329:19 399:19 401:16 403:13 406:24 443:12	minister's 282:2 327:8 422:25 432:12 465:18	misspoke 386:21	months 333:10 358:23 395:21 417:24	negotiations 370:25 371:1,11 375:19 409:24
members' 408:2, 3,5	ministers 296:11 328:3,16 330:1 401:18 402:6 423:19 459:3 468:1	mistake 432:20	Morneau 400:14	neighbours 425:12
memo 415:8	ministries 296:10, 21 325:17 396:10 402:6,14 419:2 420:4 423:3,4,19 424:7 460:10,12,19	mistaken 406:11	Morneau's 400:12	net 315:18 439:7 451:9
memory 359:18 362:3 437:23 439:6	ministry 296:7,9 301:15 305:20 309:15 310:10,11 311:2,6 328:19,20 329:2,11 336:14 339:6 356:4 366:14 369:10,11 391:9 392:7 393:3 395:24 396:5,25 397:6,13, 14,21 402:4 419:4,	mitigation 444:17 470:22,23 471:3,13, 15	morning 265:6	Netflix 361:20
mentioned 315:21 418:1 421:10 466:6		Mm-hm 270:24 272:6 276:12 306:22 320:8 344:16 347:22 391:24 414:12 431:2 463:3	motion 404:9,12 436:4	news 335:5,8 338:2 343:2,11 469:17,19
met 454:16		model 290:8 349:24	mouth 284:3	newspaper 351:14 370:11,23 374:6 428:13
method 268:22		modernization 266:2,25 267:4 286:12 290:21 328:12 348:12 349:1 407:10 438:25 439:1 447:24 448:10	move 360:1 372:22 393:22 436:8,11 449:5 453:20	nice 342:23
metrics 278:24			morning 265:6	non-draft 347:16
Michael 390:22			motion 404:9,12 436:4	nonexistent 466:1
mid- 288:17			months 333:10 358:23 395:21 417:24	nonpartisan 415:16
mid-november 265:25			Municipalities 309:19 310:13 350:1,7	normal 409:2
middle 349:2			Municipalities 309:19 310:13 350:1,7	North 287:18 438:21
million 285:2 287:4 307:3,12,18 308:16 313:3,6 316:8 321:4, 22 322:1 335:23 336:6,11 337:2			N	note 271:6 281:18 304:25 305:4,12,14, 15 308:21,23,24 309:14 310:6,19 315:16 316:1 328:9, 24 375:13 391:9

<p>407:18 noted 315:25 notes 302:19 306:6 315:17,21 317:13,16 323:8 328:23 330:8 416:5 notice 274:10 284:2 286:15 324:14 372:24 380:9 411:23 436:3 460:2,4 notion 270:3 November 265:8 270:12,23 274:2,7 276:2,18 277:5,6,20 297:3 number 265:16 268:21 270:16 273:22 274:12 287:13 303:3,6 305:7 309:11 311:24 312:10 314:4 319:1 323:24 332:15 336:15,17 342:8 355:23 365:17,18 371:9 376:12 378:20 380:6 383:24 391:13 393:13,16 396:15,16 399:6 401:22 402:2 409:18,23 412:14 414:1 417:9,18,24 418:10 427:14,24 430:16 437:25 443:11 445:7 446:11 449:22 451:13 452:2 455:20 458:2 462:24 numbered 464:14 numbering 414:2 numbers 287:8 307:18 331:25 332:6 364:9,13 365:2 391:16 411:16 451:10 452:2</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 401:14 object 367:18 objection 429:23 436:17 453:2</p>	<p>objectives 276:10 335:16 obliged 418:21 obvious 358:12 occasion 459:1 occasions 303:4,6 378:20 401:23 445:8 occur 341:24 401:21 October 297:3 358:23 369:9 off-track 450:1 offer 349:21 office 282:3 285:17 293:24,25 319:22,23 347:4,5 371:5 373:6 402:8 409:15 423:16 459:25 460:2,3,8,14 471:17 472:2,11,15 office's 323:14 459:22 official 295:2 368:4 383:4 384:14 387:2, 15 410:2 officials 279:10,11 280:19 283:1,14 288:17 293:6 295:14 297:4 318:9,14 319:22 323:13 356:4,14 366:20 429:19 444:6 446:21 448:8 oftentimes 318:9 325:24 393:20 398:18 403:13 424:7 460:21 OLG 266:2,6,8,23 267:4 268:5 272:7, 11,18,24 273:3 274:1 278:7,13 279:10,11 281:11 286:12,19 290:20 291:2 296:20 302:3 311:25 315:18 328:12 339:12,16,25 346:24 347:3,5,18, 19,21,24 348:12 349:1,5,22 351:1,8 354:3,5 355:18</p>	<p>370:9 397:17 407:9 411:17 415:13 420:13,15 429:18 437:9,13 447:23 448:3,9,23 449:5 450:6,23 451:3,25 454:6,16 464:1 OLG's 270:4 272:25 273:1 347:7 349:4,7 350:11 352:3 OLGSB000970 268:18 OMAFRA 304:22 305:1,5,13,15 306:17 307:1,24 308:9,13 309:1,4,9, 11,24 312:19,21,25 314:11 328:25 392:19 393:5,8 415:8 422:20,21 423:20 424:15 OMAFRA's 310:9 316:7 392:5,14,23 OMFRA 309:3 one-year 274:9 284:2 286:15,17 287:2 288:2 388:24 411:22 ongoing 277:1 289:16 409:8 425:11 448:7 Ontarians 422:16 Ontario 287:16 290:12,16 307:14 308:16 309:15 313:7 331:7 338:19,22 339:9 341:23 343:2, 11 356:25 358:14 365:6,20 366:1,2 374:11,16 379:1 390:23 394:5 397:23 403:22 406:16 416:15 418:22 424:20 425:1 427:3 432:2 439:13,24 443:15 445:17 451:5 455:13 470:2 open 389:19 446:17 operating 287:6</p>	<p>449:15 operation 314:17 397:1 operations 439:23 operative 388:23 operators 268:3, 11 271:25 opinion 373:6 443:19 opp 373:17 opportunities 406:13 444:17 451:7 opportunity 310:4 325:18 329:2 332:20,21 400:9 439:5 oppose 368:1,2 opposed 377:11 406:15 419:22 opposing 367:24 opposite 348:10 opposition 290:1 368:4 373:10,15,17 374:2 375:16 386:15 400:19,24 405:12,13 406:14 407:21 408:6,20 409:25 410:2,14 413:5 468:2,5 option 282:16,17, 19,20 286:23 options 269:6 270:10 277:4 282:15 288:19 order 321:11 332:19 335:17 341:23 374:3 427:4 460:6 468:4,9 orders 394:5,6 ordinary 461:5 organizations 338:21 organized 457:22 originally 397:12 398:7</p>	<p>Orsini 279:16,17 318:24 323:22 Orsini's 346:14 360:18 367:10 outcry 345:7 outlet 469:19 outline 309:14 outlined 301:21 452:9 owners 411:12 425:12 426:1 449:24</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m. 389:22,23 436:14,15 457:24,25 package 326:14 411:25 429:14,25 430:12 431:3,6,10 445:11 460:4 471:13,15 pages 300:4 301:7 307:21 310:22 350:18 paid 364:16 pain 270:8 438:12 painful 418:4,6,7 paint 348:11 panel 341:4,21,25 342:12,13 345:2 375:21 376:17 378:22,23 388:6,9 389:1 415:5,14 424:18 457:10 panel's 415:15 panels 388:14 panic 406:2 paper 395:18 429:25 papers 358:2 paragraph 301:20 308:19 310:18 352:20 353:11 354:11 378:10 393:2 435:6</p>
---	--	--	---	---

<p>parallel 424:17</p> <p>Pardon 274:22 282:18 352:16 466:10</p> <p>Pari-mutuel 316:1</p> <p>parliament 290:1 332:17 394:3 405:3, 13 410:8,9 413:7,9 415:11</p> <p>parliamentary 403:4 438:1 458:20</p> <p>parliaments 443:6</p> <p>part 267:3 277:1,11 280:25 286:11 312:17 315:15 331:13 335:24 347:11 366:15 371:15 372:9 373:9, 22 375:9 378:22 380:13 387:18 388:21 402:2 404:5 409:2,8,22 411:9 413:3 416:10 417:19 420:5,6,13 422:2 426:5 431:7</p> <p>partially 338:23</p> <p>participants 400:5</p> <p>participate 274:19</p> <p>parties 374:3 408:21 410:15 415:14 456:15 468:3</p> <p>parties' 436:10</p> <p>Partington 281:21,22</p> <p>partisan 343:16 344:25 415:18</p> <p>parts 273:15 389:14 406:25</p> <p>party 334:14 344:4 345:15 367:23 386:6 405:25 410:11 440:25 444:1</p> <p>party's 395:14</p> <p>pass 334:14 351:17 371:14 374:3 380:16 404:15,16</p>	<p>passed 332:25 334:12 375:7 406:6, 19 440:17 457:22</p> <p>passing 437:19</p> <p>passionate 346:5 369:19</p> <p>passionately 442:11</p> <p>past 393:20,24</p> <p>Paul 298:12</p> <p>pay 399:22</p> <p>paying 358:4,8,14</p> <p>payment 306:8 307:12 308:15 313:5,19 316:8 321:4 322:2 387:20</p> <p>payments 286:14, 22 287:5 336:4</p> <p>payouts 368:9,16</p> <p>PCS 366:24</p> <p>pension 398:17 399:7,8,10,18 417:22 425:10</p> <p>people 268:3 285:22 287:10 289:23 292:19 341:18 343:19,20 344:3 345:12 351:8 354:22 355:7 356:20 357:6 358:4,7 364:17 394:19 401:1,6 411:12 416:25 417:7 418:8 420:25 425:5 426:24 427:6,25 441:16 443:2 445:5 449:10, 25 450:21 451:18 467:23</p> <p>percent 287:17 399:21 419:8,14,15 421:7</p> <p>percentage 268:4</p> <p>percolate 342:1</p> <p>percolated 420:14</p> <p>performance 270:4 451:3</p>	<p>period 269:22 273:19 274:10 278:23 284:2 286:16,18 288:2 296:25 302:20 304:14 306:20 313:15 316:9 318:11 324:14 407:1,20 411:22 413:5 452:2 463:25 471:21</p> <p>permitted 428:11</p> <p>person 341:9 345:2 371:2 442:17</p> <p>personal 421:1 425:4 440:9 442:5</p> <p>personnel 292:23</p> <p>perspective 275:9 308:11 324:23 334:11 366:8 408:13 447:22</p> <p>Petawawa 365:8</p> <p>ph 270:8 400:11 440:16</p> <p>phase-out 321:3</p> <p>phased 278:22 306:19 313:14 316:8</p> <p>Phillips 354:10 415:12</p> <p>phone 325:24</p> <p>physician 365:5</p> <p>pick 272:2 289:5 307:8 404:4</p> <p>picked 469:17</p> <p>picture 348:11 422:2,3</p> <p>piece 280:25 338:13 398:9,17,23 399:1 420:13 437:18</p> <p>pile 465:22</p> <p>pipe 361:12</p> <p>pitch 396:7,11</p> <p>place 284:24 285:1 345:19 404:19 412:23 416:15 445:12 470:21</p>	<p>placeholder 296:6</p> <p>places 375:15</p> <p>plaintiff 400:23 408:15 439:4 444:5 451:11</p> <p>plaintiffs 358:12 391:1 428:1 438:10 443:14 455:14</p> <p>plaintiffs' 410:5 417:2 439:20 441:1, 13 449:18</p> <p>plan 275:21 276:3, 19,24 277:3,8,21 282:10,13 299:4 301:2 350:12 375:16 379:5,7 395:2,3,6,7, 14,23 396:5,9 398:10,11 414:17 418:13 447:15</p> <p>plans 341:4 352:9 396:1,10 399:18</p> <p>platform 395:14</p> <p>play 393:9</p> <p>played 442:11</p> <p>pleaded 436:2</p> <p>point 272:2 273:6, 21 277:5 279:4 295:20 298:14,21,22 299:5 313:25 314:11,16 315:8,24 331:22 332:1 333:22,25 334:7 342:5 353:18 355:24 371:3 384:18 399:3 401:17 407:25 408:10 447:11 453:7 464:2 472:4</p> <p>pointed 299:10,12 300:9 337:13 409:13 416:17 441:1 465:24</p> <p>pointing 367:9</p> <p>points 270:8 276:8 295:3 327:8 328:7 329:14 330:6,8 343:20 394:20 416:8</p> <p>policies 403:3</p> <p>policy 275:9 276:10 293:22 311:12,14</p>	<p>320:20 322:25 324:21 325:21 344:7 373:23 392:20,23 395:7 399:23 401:19,20 404:12 426:20 433:10,18,23 434:13,16,20 435:1, 21 436:1</p> <p>political 330:2,7,9, 25 331:1 340:4,21 342:4,19 343:14,15, 19 379:8 398:3,22 441:18</p> <p>politically 399:24</p> <p>polled 459:5</p> <p>pools 268:1</p> <p>poor 418:24</p> <p>popular 342:9 421:17</p> <p>population 419:16</p> <p>portion 349:24</p> <p>portions 334:2</p> <p>position 275:10 322:10,20 326:17 351:14 352:11 390:9,11,14 394:23 402:19 434:4 435:8 436:3,11 443:24 445:9</p> <p>positioning 324:11 375:8</p> <p>possibly 445:18</p> <p>post-budget 371:11</p> <p>potential 285:6 392:4 398:22</p> <p>power 333:19 436:5</p> <p>Powerpoint 291:8</p> <p>practice 323:7</p> <p>pre-budget 408:23</p> <p>pre-caucus 465:18 466:18</p> <p>precise 355:23 363:20,21 426:15</p>
--	--	---	---	---

446:11 458:16 459:7 464:8	precisely 362:14	previous 294:5 307:16 315:8 380:10 398:3 418:15 419:12 421:23 426:1	produced 312:14 329:23 381:17 382:1 428:18 429:14 434:25 471:22	proportionately 270:6	published 375:23
predict 313:20	PREVIOUSLY 265:2	PRINCIPAL 395:5	production 291:25	proposal 309:17 310:10 311:24 351:17 414:14	pulled 395:1
predominant 449:15	principle 277:14 404:20,21,25 405:7, 23	principal 395:5	products 321:17	proposed 273:1 276:19 278:19 279:2 282:7,8 283:7 286:2 289:9,13 290:19,24 294:3 295:21 298:23 302:3,4,17 303:2,5, 10 304:16,22 307:15 309:16 313:19 316:7 459:13 461:9,15 462:23	punched 345:14, 15
prefer 405:5	prior 275:22 294:17 297:10 304:22 322:3 380:20 386:4 420:17 421:22 444:3 461:6	principle 277:14	program 269:18, 23 278:22 284:20 306:9 307:2,12 308:14,15 313:2,5, 20 316:23 321:21 322:1 324:13,19 325:2 339:1,6,7,18 346:22 348:2 349:3, 10 351:15 352:5 353:19 363:15 364:11 368:17 369:10 373:8 380:4 381:1 386:19 388:20 392:20,23 394:17 397:22 409:14 416:7,16 419:21 420:11,12,16,17 426:7 427:6,8 438:19,24 439:1,9 445:22 450:9 454:12 456:20	proposing 320:23	pundits 343:20
preliminary 278:12	priorities 349:9 419:3,19 421:10 422:12 423:17	priority 336:7,9 397:5 407:21 408:8 421:11	programs 339:17 340:1,6 396:11,12, 13,23 419:20,23,24 427:14,18	proposition 308:5	purpose 272:17 309:14 310:19
premature 409:19	privatization 338:24	privatized 338:23	progress 388:8	propriety 429:6	purposes 272:10, 13,24 275:5 316:25 318:18 361:3 407:18 412:20 471:24
Premier 296:24 422:9,25 436:22 444:2,4 454:8 459:4	privy 296:21 371:1 372:10 380:14 446:22	problem 404:17 433:25 452:12 469:13	Progressive 333:2 367:23	prorogued 408:25	purse 314:16
Premier's 293:25 319:22 347:4 371:5 409:15	problematic 399:24	problems 344:7	prohibition 434:8	pros 283:9	purses 287:21 451:5
premise 269:9	procedure 404:24 438:2	procedure 404:24	project 266:2,15, 19,23 267:4,6 395:25 398:13	protected 368:9, 18	put 284:3 288:15 291:2 296:16 297:5 305:7 308:5 315:21 330:7 334:6 335:5, 11,14 338:9 345:2 348:25 359:14,18 366:7 370:10,11 378:3 382:10 389:17 404:9,11 406:21 408:19 410:19 415:19 423:4 425:18 428:13,20 430:1 431:15 439:10,12 445:12 447:7 460:1, 4 461:18,21
preparation 271:13 280:24 454:16	proceed 338:12	proceedings 292:13 445:2	projected 418:21 451:13	protection 366:11	putting 423:16
prepare 323:7	proceeds 267:16	process 325:14,23 326:2,23 328:14,15 331:22 332:12 334:3 347:3 369:16 392:10 396:2,3 400:2 409:2 436:7 462:11	projects 398:12	protected 368:9, 18	<hr/> Q <hr/>
prepared 309:10 323:10,13 428:4 459:22	process 325:14,23 326:2,23 328:14,15 331:22 332:12 334:3 347:3 369:16 392:10 396:2,3 400:2 409:2 436:7 462:11	processes 394:24 458:9	prominent 415:12	proves 447:13	Qs 327:11 329:8
prepares 467:9	proper 428:10	properly 428:3,24 429:3	prohibit 428:10	provide 278:14 329:19,22 350:7 366:10 381:9 396:15 409:4 416:11 451:12	qualifications 428:16
preparing 317:1 319:23 329:8	properly 428:3,24 429:3		prohibition 434:8	provided 305:20 306:4,6 315:15 381:18,20	quarter 446:16
prescribed 274:20			project 266:2,15, 19,23 267:4,6 395:25 398:13	province 287:18 334:6,9 397:23 427:22 450:12	question 272:20 279:22 280:15 300:15,19,21,23 310:24 314:7 315:12,13 316:21 321:11 339:25 352:19 357:16 360:11,13 361:4 362:1,9 363:5 364:8 365:12 368:11,13 369:5 375:1 390:15 391:5 393:8 407:1,
present 323:8 467:18			projected 418:21 451:13	province's 372:20 427:1	
presentation 295:1,14,21 331:18 411:6			projects 398:12	provision 269:20 388:17	
presented 397:20 407:5 444:5 445:1,4 446:19			prominent 415:12	public 329:23,24 330:5 331:2 334:17 339:22 347:11 354:8 364:3,10,15 418:10 441:15 443:22 458:4	
pressed 342:12			prop 428:10	publicly 364:18 375:14 434:16 452:5	
presume 266:4 316:25 323:5 330:21 337:21 343:12 351:9 466:12 467:14,19			proper 356:14 439:16		
pretty 342:23 425:18			properly 428:3,24 429:3		
preventing 472:16					

<p>20 412:1 413:4 421:23 428:21,22,23 429:1,2 433:15 446:3 452:7 453:2, 17 455:16 456:18 457:5 459:4 463:19, 21 468:14 469:5 472:5,8</p> <p>questions 297:18, 21 311:18 328:8 348:17 360:15 361:11,12,13 371:20 385:1 388:2 389:24 390:7,24,25 393:14 405:17 407:5,19,24, 25 408:2,3,4,5 409:1 436:6 439:20 447:6 454:11,19 455:12,13 458:3 465:24</p> <p>quibble 303:17</p> <p>quickly 326:24 338:5</p> <p>quiet 408:18</p> <p>quote 385:15 469:25 470:4</p> <p>quoted 444:14</p> <p>quotes 470:11</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R/f 311:16 322:20 323:1 358:16</p> <p>race 301:11 449:22</p> <p>races 449:25</p> <p>racetrack 268:11 269:23 274:2 278:21 284:20 307:2 308:14 313:1 316:23 321:21 325:2 327:15 346:22 348:2 349:3,10 351:15 352:5 353:19 368:17 373:8 380:25 386:19 388:20 456:20</p> <p>racetracks 351:5 439:11</p> <p>raceway 351:13 363:25 425:13,23,25 438:15 440:7</p>	<p>racing 267:8,15 268:24 270:5 275:21 276:9 278:19 285:23 290:21 306:9 307:3 309:21 310:14 313:4 314:2,13 315:20 317:3 318:18 320:16 324:11 327:14 331:7 334:20 336:23 338:10,25 340:21 341:9 345:8 348:1 349:14 366:2 368:17 375:20 385:17 386:13 388:18 392:24 393:10 394:16 397:16 409:5,15 411:11 412:9 414:11,16,25 415:5 424:2,18,20 425:10 427:3 445:17 446:16 450:14 451:4 454:3 457:10 462:6, 17 468:17</p> <p>radio 359:13 361:17,21 362:5,9 366:22 368:7 372:25 376:15,23 377:6,21 403:8,9 469:24</p> <p>raise 393:6 417:21 434:6</p> <p>raised 303:11 403:8 417:3 439:21 456:13,15,16</p> <p>raising 392:4</p> <p>Ramona 305:16</p> <p>ran 359:21</p> <p>random 468:9</p> <p>randomly 439:10, 14</p> <p>range 269:6,16 285:4 335:22 336:24 418:11 424:9 427:18 446:12 460:12</p> <p>rank 399:19</p> <p>rapid 326:5,7</p> <p>rarely 458:21</p> <p>rate 340:4 419:11</p> <p>rates 340:3</p>	<p>rational 433:9 434:20 439:11</p> <p>reach 399:16</p> <p>reached 415:14</p> <p>reacted 274:13</p> <p>reaction 337:20 340:13,16,18 354:18 468:18</p> <p>reactions 272:16</p> <p>read 284:6 299:1,4, 7,9 300:2,14 301:17 310:21 317:13 319:6,7 324:1 326:24 343:11,18 344:18 348:12 372:14 375:20,25 378:12,18 384:4,7 386:2 430:15 433:2, 4,5,7 456:9,24 457:9,13 467:7</p> <p>readable 455:17</p> <p>reading 297:17 305:7,11 307:6 308:18,20 310:15,18 378:2 404:13,17,19, 20 405:5,20 457:6 469:23</p> <p>real 341:11 400:24, 25 404:17 419:15 451:2</p> <p>reason 278:1 284:22 325:17 338:7 339:24 370:22 399:15 405:1 409:9 417:19 449:25 452:8</p> <p>reasons 287:25 289:21 290:9 401:16</p> <p>recall 267:1,7 268:6 269:14,24 276:22 277:4 282:24 286:24 287:14 289:2,15,17 290:6 316:10,20 317:5,6,8,9,24 318:2 319:19 322:15,17 324:6,17 325:7,10 331:19 332:23 337:8,11 338:3,15 340:15 342:14 343:3,8 344:21,22, 23 371:17 375:10,14</p>	<p>376:11,12 377:2,4,5, 6,7,9,10,15,16 379:16,23,24 387:22 388:10 393:16 405:24 407:14 411:10 426:15,17 431:16,23 457:6 459:1 461:2,4 471:5</p> <p>receive 274:24</p> <p>received 316:6</p> <p>receives 287:4</p> <p>receiving 273:7</p> <p>recent 296:22 403:23</p> <p>Recess 304:11 348:22 389:22 436:14 457:24</p> <p>recession 427:16</p> <p>reckoning 396:22</p> <p>recognizing 427:23</p> <p>recollect 283:22</p> <p>recollected 280:5, 8</p> <p>recollection 274:12 279:24 280:17 283:8 307:17 317:12 318:19 323:12 332:24 346:10 369:24 403:25 410:1 446:9 447:5 452:10 459:22 460:5</p> <p>recommendation 266:11 267:12,23 268:6 330:6 346:24 347:7,24 349:12 351:3 352:3 353:6, 22,25 431:11,16,22, 24 440:11</p> <p>recommendation s 266:5 272:11,24,25 273:1,2 279:19 290:20 350:18,21, 23,24 351:20,24,25 352:13 353:5 386:8 419:18 429:12,18 447:25</p>	<p>recommended 320:12 350:24 351:1,25 386:18</p> <p>reconcile 398:11</p> <p>record 270:15 281:3 295:11 305:8 315:22 321:2 340:24 346:15 356:12 367:8 369:24 378:12 383:18,20 387:4 390:11,17,19 392:1 430:7,8,16 443:22 444:9,10 445:3 447:17,18 457:18,20 458:16</p> <p>recorded 451:21 458:15</p> <p>recording 458:14</p> <p>records 292:17 296:16</p> <p>recover 359:18</p> <p>recross-examination 390:3 456:5</p> <p>redactions 312:15</p> <p>redistribute 309:18 310:12</p> <p>reduce 309:20 310:13 314:15 399:14</p> <p>reduced 282:11 284:9 320:17</p> <p>Reduction 316:2</p> <p>Reemphasizing 470:20</p> <p>reexamination 390:2,12</p> <p>reexamine 456:15</p> <p>refer 346:19 404:24 444:21 462:4</p> <p>reference 336:3 353:16 372:25 380:11 381:12 385:15 386:5 403:7 446:1</p> <p>referenced 452:20</p>
--	--	---	---	--

<p>references 334:19</p> <p>referred 417:6</p> <p>referring 285:1 289:6 295:5 296:3 320:20 349:18 384:1 421:4 438:24 452:24 455:23 461:12,14</p> <p>refers 324:4 405:4</p> <p>reflect 288:10 320:7 329:12 347:10</p> <p>reflected 277:17 288:7 306:6 389:12 412:10</p> <p>reflecting 370:25</p> <p>reflection 459:8</p> <p>reflects 435:1</p> <p>refresh 362:3</p> <p>refreshed 439:6</p> <p>refusal 311:16 323:2 358:17 390:5, 13 436:17</p> <p>refused 371:4 390:8</p> <p>regarded 393:3</p> <p>region 441:10</p> <p>regular 344:13</p> <p>regulations 422:23</p> <p>regulator 449:20 450:5</p> <p>regulators 337:14</p> <p>rehearsed 454:23</p> <p>rejected 321:16 322:12</p> <p>related 314:25</p> <p>relationship 337:15 418:9</p> <p>Relationships 414:20</p> <p>relative 397:20</p> <p>release 400:8 407:11</p>	<p>released 407:10</p> <p>relevant 307:1 312:21,25</p> <p>relied 329:18,21 349:13 354:4,5</p> <p>relief 376:18</p> <p>rely 428:1</p> <p>remain 355:20</p> <p>remarkably 442:16</p> <p>Remarks 365:21</p> <p>remember 267:10 269:4 276:20 280:22 304:18 313:24 330:14,15 337:13 342:21 344:17 345:10 378:19 394:19 406:24 407:3 410:23,24 412:3 440:5 454:17 457:16 464:20,21,23 472:21</p> <p>remind 407:8 440:20 441:14 449:19</p> <p>reminded 410:6 452:22</p> <p>reminds 284:6</p> <p>remove 405:25</p> <p>removing 371:22</p> <p>repeat 391:6</p> <p>repeated 427:12</p> <p>rephrase 391:6</p> <p>report 338:1 346:25 347:20,24 348:13 349:1 350:21 352:1 354:3 372:11 375:21 383:4 384:14 387:2, 15 407:10,11 418:17 419:6 456:10,16,21, 25 457:9,12</p> <p>report's 352:11</p> <p>reported 333:19 363:18 365:3</p> <p>reporter's 470:12</p>	<p>reporters 465:23</p> <p>reports 324:10</p> <p>represent 358:15</p> <p>represented 402:4</p> <p>require 306:12 420:25</p> <p>required 394:1,2</p> <p>requirement 394:7,8</p> <p>reread 433:11</p> <p>resign 369:23 401:19</p> <p>resignation 351:7</p> <p>resigning 370:1</p> <p>resolved 457:3</p> <p>resource 371:2 439:17</p> <p>respect 290:20 292:12 352:5,12 387:19 389:16 392:24 394:16 450:7,24 459:9</p> <p>respected 342:9</p> <p>respecting 451:12</p> <p>respond 273:5 325:18 329:3,4 354:24 396:6 428:13 447:6 468:4</p> <p>response 309:17 310:10 325:19 345:8 439:20 446:2 462:8</p> <p>responsibilities 422:19</p> <p>responsibility 296:11 422:21,24 423:6</p> <p>responsible 329:8 357:10 422:14 423:1 448:22</p> <p>rest 349:20</p> <p>restrain 419:25</p> <p>restricted 419:11</p>	<p>restrictions 403:14</p> <p>restricts 349:7</p> <p>result 276:16 314:23 376:22 410:21 412:22 418:12 451:2</p> <p>resulted 289:2</p> <p>resuming 304:12 348:23 389:23 436:15 457:25</p> <p>retired 425:9</p> <p>returning 333:24</p> <p>returns 286:20</p> <p>reveal 365:10</p> <p>revealed 440:6</p> <p>revenue 268:5 269:22 275:4,7,12 286:20 312:1 314:15 315:18 316:22 339:13 340:10 346:22 347:25 349:14,25 351:2 363:12,14 373:7 395:6 398:11 420:8, 9</p> <p>revenue-sharing 274:19</p> <p>revenues 340:11 349:8</p> <p>review 299:23 301:10 323:15 352:4 369:16 396:25 410:4 416:10 427:9 439:5 461:6</p> <p>reviewed 330:18 343:4</p> <p>reviewing 273:7 284:6</p> <p>revised 267:8 327:8</p> <p>rich 368:8,16</p> <p>rid 396:11</p> <p>ride 440:4</p> <p>riding 438:16 441:2,4,8,11,24</p>	<p>ridings 438:12 440:16 443:13</p> <p>right-hand 349:2</p> <p>rise 393:23</p> <p>road 366:11</p> <p>robust 284:22</p> <p>role 393:9 416:10 442:12</p> <p>roles 415:13</p> <p>room 268:16 436:13</p> <p>rooted 393:19</p> <p>Rosenberg 268:16 270:19 303:25 308:25 309:3 381:16,20 382:6,7, 12 383:8,13 387:13 390:17,20,22 391:15,18 392:3 403:1 404:3 413:22, 24 414:7 428:17,25 429:5,8,13,21 430:3, 6,9,17,21,23 432:1, 13 433:1,14,17,22 434:10,12,23 435:11,15,16,20,22 436:9,10,16,18 437:6,7 444:8,11 447:16,19 452:16 453:1,10,13,18,21 455:11 456:13,17 457:15 465:6,9 466:6 471:12 472:20</p> <p>Rosenberg's 466:4</p> <p>rule 456:14</p> <p>ruled 390:13</p> <p>rules 391:4 407:23 465:25</p> <p>running 287:19</p> <p>rural 309:16 340:3 369:13 379:1 391:10 441:10 451:6 455:25</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safety 366:11</p>
--	--	--	--	---

<p>sale 338:12</p> <p>SAR 369:10</p> <p>SARP 286:4,14 306:7 314:5 354:19 363:12,14 374:22,24 375:9 376:5,9,16 393:11 394:17 397:10 404:5 406:18,23 407:16 412:21 413:3 415:4, 25 419:20 425:5 426:7,11,20 428:3 433:10 434:14 436:20,23,25 437:16,20 438:4,8, 11 439:2,3 441:25 443:16 449:9 450:17 451:17 453:23 454:12</p> <p>satisfied 357:2,5</p> <p>Saturday 318:11 319:9 320:11</p> <p>save 446:15 460:6</p> <p>scenarios 420:4</p> <p>scenes 400:21 443:4</p> <p>scheduled 311:3, 7,11</p> <p>scheme 274:20 414:2</p> <p>school 421:14 422:5</p> <p>scope 424:13 440:3</p> <p>screen 294:24 348:25 382:11 383:9 461:21</p> <p>scripted 455:3</p> <p>scrum 444:22,24 465:19 466:20,25 467:5,19 468:4,8</p> <p>scrummed 467:23</p> <p>scrums 447:10 466:18</p> <p>sec 367:7 383:19 431:13</p> <p>secrecy 393:18,19 394:13 400:4 401:17</p>	<p>secret 363:12,15, 22,23 364:14 366:25 413:3</p> <p>sector 268:24 270:5 306:10 313:22 315:1 321:18 372:21 389:15 393:5 418:10 450:4 472:3</p> <p>sees 300:17</p> <p>Seiling 304:17 337:7</p> <p>seize 408:21</p> <p>select 353:11</p> <p>selective 348:11 445:4</p> <p>self-serve 321:19</p> <p>sell 469:8</p> <p>send 396:4 405:18</p> <p>sending 367:13</p> <p>senior 272:4,5 279:10,11 280:18,19 295:2 297:4 318:9, 13 319:22 323:13 327:4 329:19 366:20 448:8</p> <p>sense 273:4,25 275:8 448:16</p> <p>sensitivity 442:22</p> <p>sentence 354:15</p> <p>separate 268:1 302:19</p> <p>sequence 276:16 316:19 317:2 318:23 323:22 324:10 346:14 378:16 466:17</p> <p>serve 341:3</p> <p>served 403:24 428:6</p> <p>service 329:23,25 330:5 331:2 338:19, 22 339:9,22 343:13 467:11</p> <p>serviced 451:6</p>	<p>serving 312:2</p> <p>session 385:10,14</p> <p>set 331:17 338:3,4 419:19 423:21</p> <p>sets 310:2 391:15</p> <p>setting 377:3 423:17</p> <p>settle 411:24</p> <p>settles 297:2</p> <p>severe 425:18</p> <p>share 269:22 316:22 363:12 373:8</p> <p>shared 347:17 348:11</p> <p>shareholder 437:14</p> <p>sharing 346:22 347:25 349:14 351:2 363:14</p> <p>she'll 361:12</p> <p>shift 306:10</p> <p>short-term 373:10</p> <p>Shortill 266:1,9 270:14 271:16 276:23 279:13,14, 18,25 291:3 294:8 295:9 297:13 304:3, 20 316:5 318:12,16 323:11,18,19 326:10 327:5 328:13 329:6 354:10 461:16,21</p> <p>Shortill's 265:16 280:4,11 281:5,8 289:7 294:10 304:1 376:3 391:11 413:18 429:24 430:11 465:3,8</p> <p>shortly 276:2,18 460:25</p> <p>show 265:15 270:11 291:1 299:8 300:19 301:4 304:19 343:6 346:13 351:21 372:11 376:2 383:7 385:4 435:12,17 462:10 466:16</p>	<p>showed 309:24 389:13 410:5 429:23 437:3</p> <p>showing 265:21 344:14 362:16 462:19,22</p> <p>shown 302:19 328:22 462:25</p> <p>shows 369:25</p> <p>shrugging 368:10</p> <p>shut 285:18</p> <p>sic 280:3</p> <p>side 330:9</p> <p>sight 442:13</p> <p>sign 298:7</p> <p>signal 334:23 335:4 336:18 356:1 408:20</p> <p>signalled 325:4</p> <p>signalling 324:24 336:20,21 338:15 405:5 408:12</p> <p>signals 408:6</p> <p>signature 432:1,5, 11,12</p> <p>signed 331:3 432:10 459:11</p> <p>significance 302:22,24</p> <p>significant 392:20 421:8</p> <p>significantly 314:3</p> <p>silent 288:22 371:10 452:7,8</p> <p>similar 394:15 424:17</p> <p>simple 349:23 449:22</p> <p>simply 293:15 324:22 330:8 356:24 372:8 435:18,20 447:2</p> <p>single 361:21</p>	<p>sir 265:18 285:19 293:11,17 298:22 300:9,21 301:24 303:21 304:21 310:8 316:25 317:24 318:22 319:20 323:5 327:3 331:16 334:17 335:18 337:19 346:21 347:6 349:19 350:25 353:18 355:8 362:3,12,19 364:5 365:24 367:5 373:4 377:1 382:15 385:7 393:15 407:13 413:17 424:12 430:25 434:13 435:23 438:14 444:12 446:1 447:20 453:7,22 456:6 462:21 464:2 470:15,23</p> <p>sit 341:25 400:18</p> <p>siteholder 268:11 274:3 437:10,12,15</p> <p>siteholders 437:14</p> <p>sites 349:22</p> <p>sitting 341:21 400:19 422:1</p> <p>situation 389:9 400:12 439:21</p> <p>size 306:14 416:9</p> <p>sizes 314:16</p> <p>slaughtered 468:16 470:17,19</p> <p>slide 281:17,19 295:24 296:5,7 298:23 299:16,21,24 300:14 302:14 303:7 321:14</p> <p>slipperier 464:5</p> <p>slot 267:19 275:2 309:18 310:13 349:25 439:10,12,22</p> <p>slots 269:23 274:2 278:21 284:19 307:1 308:14 309:9 313:1 314:6 316:22 321:21 325:2 346:22 348:1</p>
--	---	--	---	--

349:3,9 351:5,15 352:5 353:19 368:16 373:8 380:25 386:18 388:19 456:20 slow 301:13 388:15 Slowly 301:17 small 280:25 314:4 335:24 422:2 438:17 451:7 smaller 355:18 391:16 420:4 423:23 424:5,7 Smith 365:7 snippets 317:14 Snobelen 340:19 341:1 343:1,7,8,12 344:11 354:20 378:24 411:7 Snobelen's 359:12 428:2 solidarity 401:16 solution 399:4,6 solve 423:18 son 345:14 sooner 388:25 Sorbara 376:4,15 Sorbara's 403:9 sort 290:6 297:2 397:8 399:10 418:19 sorts 279:5 339:22 416:25 449:8 Sousa 408:23 speak 320:15 337:6 341:20 344:19 374:5 376:4 377:19 401:3 402:25 437:25 speaking 279:19 320:19 323:8 327:8 328:7 329:13 330:8 344:22 376:17 377:15 403:2,5 466:15 speaks 443:8 specific 267:18	268:9,13,21 269:4 287:13 289:18 306:25 312:20,24 334:19 339:1,5,6 375:19 377:8,24 446:3 specifically 269:24 276:25 321:17 361:8 377:5, 15 431:23 435:5 specifics 280:22 371:17 speculate 412:17 speech 330:11,19, 21,24,25 331:4,5,9 334:16 337:7,20,22 338:2,4,14 343:1 345:8 355:25 356:3, 12,15,19 357:1,19 359:6 364:19,22,24 365:14,24 384:22,25 408:23 444:23 speeches 288:25 330:20 334:23 336:19 408:16 spending 336:22 395:25 420:20,22 421:6 spent 360:6 442:6,8 split 423:5 spoke 341:18 376:12 377:11 378:1 400:23,25 450:13 457:14 spoken 328:11 376:9,11 spoon 454:25 sport 269:2 spring 342:24 370:19 389:17 stabilize 372:20 stables 417:7 staff 271:11,19 279:11 280:18 296:24 304:21 318:7,8 327:4 328:21 329:19 331:1 345:24 373:5 444:7	448:8 staffers 272:4 stakeholder 266:20 270:8 321:13 328:20 392:6 424:8, 14 stakeholders 270:1 424:9 443:15 445:10 447:1 stand 382:8 412:15 430:14 467:11 standard 280:17 323:7 standardbred 314:2 341:10 355:9 466:14 standing 394:5,6 stands 455:22 Star 374:11,15 started 334:1 346:10 366:24 371:22 394:2 397:22 405:25 420:10 427:9 448:10 starting 335:13 395:18 Starts 319:9 state 395:15 445:15 stated 271:4 statement 343:1, 9,14 405:16 428:1 433:23 statements 344:20 347:11 351:12 383:25 441:16 States 287:22,24 469:9 station 361:21 362:10 status 282:8 stayed 302:13,20 451:5 steady 335:14	Stearns 395:17 step 416:10 436:12 stepped 416:13 steps 276:6,17 290:14 342:3 415:3 stick 358:17 stop 300:13 469:12 470:2,5,9 stopped 274:14 333:24 389:7 411:23 440:10 472:14 straight- numbers 419:6 straightforward 350:3,4 strain 425:18 strained 442:5 Stransky 266:9 268:17 271:18 279:14 297:12 304:4 305:1,3 316:6 323:11 328:15 329:7 354:9 462:8 Stransky's 265:17 strategic 277:16 strategy 374:22 375:7,9 378:1 454:9 stream 275:13 325:22 335:14 streams 267:5,6 324:22 325:20 stretch 438:23 strictures 443:4 stripping 322:14 334:1 strongly 442:10 struck 372:5,12 struggling 372:21 stuff 278:3 398:18 452:23 style 356:1 subcommittee 318:1	subject 302:12,17, 18 312:15 358:17 385:1 390:2,12 462:6 submission 310:12 432:16,19,23 434:25 459:12,22 460:3 462:20,22 subsequent 284:20 288:2,4,24 352:7 371:20 432:7 454:1 465:5 subsidies 320:15 subsidize 385:16 386:13 subsidized 355:13 subsidizes 340:3 subsidizing 331:6 366:2 subsidy 269:17 274:21,23 285:22 321:21 322:1 339:22 355:13 356:1 357:3, 20 358:4 359:2 366:7,17,25 375:17 389:7 420:18 449:13 substance 321:10 332:7 399:2 substantial 289:3 substantive 332:21 substantively 320:25 462:14 successful 287:23 successor 289:3 successors 412:8 suffice 412:20 suggest 357:14 438:3 441:18 443:14 suggested 438:10 suggesting 310:8 367:4 suggestion 402:21
---	--	---	---	---

<p>summarized 463:7</p> <p>summary 433:9 436:4</p> <p>summer 376:3,6, 10 378:17 388:6</p> <p>summertime 388:15</p> <p>summons 358:18</p> <p>summonsed 455:7</p> <p>Sun 344:12 359:13</p> <p>supervision 421:1</p> <p>supply 349:24</p> <p>support 269:10 282:11 283:11 306:9 307:13 308:16 309:20 310:14 313:6 324:13,19 332:22 348:3,5,8 351:18 352:6 354:4,7 355:22 366:8,10 371:22 373:9 374:24 376:18 379:13 388:18 406:4 417:13 421:1 446:10</p> <p>supported 342:15 351:9,14 353:2 398:4</p> <p>suppose 286:5 334:5 418:2</p> <p>supposed 302:25</p> <p>surely 425:20</p> <p>surplus 395:19</p> <p>surprise 464:6</p> <p>surprised 343:23 380:2,3,8</p> <p>survive 355:21 425:19 445:19</p> <p>surviving 370:15</p> <p>suspect 287:9 294:25 295:1</p> <p>sustainability 414:17</p>	<p>sustainable 290:12,15 306:14 417:12 450:19 451:4</p> <p>system 403:4</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 350:8 402:1,5, 12,14,16,18 428:14 459:16 460:4</p> <p>tabled 380:21 384:17 407:6 410:18 444:25</p> <p>tabling 331:17</p> <p>tactical 277:16</p> <p>taking 290:13 293:11 326:17 437:22</p> <p>talk 326:22 331:6 371:4 403:14</p> <p>talked 276:20 303:3,6 327:24 365:3 378:20 458:3</p> <p>talking 271:15 274:25 275:12 285:4,9 288:13 295:3 300:13 330:6, 7 339:9,11 342:2 363:24 378:7 416:8 429:11 433:12 471:7</p> <p>talks 284:8 299:3 370:14</p> <p>tandem 453:3</p> <p>Tanya 278:8 295:18</p> <p>tap 447:2</p> <p>tasked 297:5</p> <p>tax 316:2 380:7 400:13</p> <p>taxpayers 366:1</p> <p>teachers 399:20 418:11</p> <p>technologies 419:16</p> <p>Ted 346:2,4,5,7 442:1,15</p>	<p>telling 283:21 315:9 354:17</p> <p>tells 296:18 305:23 422:1</p> <p>ten 358:23</p> <p>ten-minute 348:20</p> <p>tend 443:2 458:13 464:7</p> <p>tenure 459:2</p> <p>term 266:24 287:13 339:22 340:8 356:5, 16,18 357:3,20 364:20 375:3 469:22</p> <p>terminate 346:21 354:4 373:7 376:5 404:5 406:18,23 412:21 413:3 415:4, 25 425:4 426:11 428:3 437:10,20 441:25 443:16 450:17 453:23</p> <p>terminated 348:2, 4 356:2 454:12</p> <p>terminating 407:16 426:20 434:14</p> <p>termination 269:22 274:3 275:23 286:17 288:5 316:22 325:1,4 349:13 351:1 354:19 388:19,23 393:11 411:22 433:10 451:16 456:19</p> <p>terminology 320:19 339:21 357:6</p> <p>terms 281:14 330:7 334:13 335:18,20 339:13 398:15,21,22 416:2,15</p> <p>Terry 294:1</p> <p>tested 403:18,21</p> <p>testified 279:18 280:5</p> <p>testimony 284:15 395:9 418:4</p>	<p>text 281:15</p> <p>theme 397:5</p> <p>themes 297:2</p> <p>theories 403:2</p> <p>there'd 273:12 451:9</p> <p>thing 307:22 308:2, 6,11 328:9 334:9 394:8 399:14 447:13 458:15</p> <p>things 269:14 273:10 279:5 285:5 287:11 292:2 334:13 335:14 336:19,24 338:10 339:23 371:18 385:11 403:15 408:17,18,19 412:10 416:25 422:10 426:24 449:8,22 472:18</p> <p>thinking 277:10 278:12 286:8 288:7 290:7 338:16 350:20 354:22 420:12 424:22 426:9 448:14,15</p> <p>thinks 343:12 361:11 364:6</p> <p>Thom 305:16</p> <p>thoroughbred 355:21 417:15 446:13</p> <p>thought 277:7 333:22 340:17 342:16 351:24 354:21 368:16 398:24 433:22 443:16</p> <p>thoughtful 471:13</p> <p>thoughts 322:15</p> <p>thousands 468:15</p> <p>threads 460:11</p> <p>threat 397:24</p> <p>threatened 470:17</p> <p>threats 340:23,24, 25 345:14,22</p>	<p>three-week 463:25</p> <p>three-year 282:10, 13 298:24 306:20 313:15 316:9 321:3 337:3</p> <p>Thunder 469:25</p> <p>Thursday 278:6 317:18,22 387:16</p> <p>tied 454:9</p> <p>Tim 323:14,17,18, 19 327:20 366:24 368:8 379:10 461:16</p> <p>time 279:4,16 280:24 282:22 283:16 285:7 287:9, 16 293:18,19,21 300:22 304:14 312:7 318:3 321:3 326:17 331:21 332:1 336:5, 9 337:3 338:23 339:14 341:15 346:12 355:4,11 357:17 360:7 379:6 388:12 393:23 394:13,14,22,25 395:22 402:1 403:10,23,24 411:22,23,24 417:4 418:18 419:5 420:12 421:22,25 422:4 423:24 424:1 425:15 426:15 427:7,10 431:14 438:21,22 440:15,18 441:7,21 444:19 447:11 448:11,19 450:8 452:2 454:21 455:24 459:14,15 467:25 471:16</p> <p>times 356:12 361:7 393:16 401:18 405:2 407:15 449:4 455:20</p> <p>timing 276:7</p> <p>title 456:2</p> <p>today 317:1 327:23 365:6 454:20 455:6 456:3</p> <p>today's 454:17</p>
---	---	---	--	--

told 393:14 404:8 410:22 415:2 417:12 425:3 454:15 470:10	transcripts 447:9 458:19	turned 336:24 394:11 398:24 399:5 447:2	416:22	usual 391:4 450:17
Toldo 363:25	transfer 286:22 287:5 306:8 307:11 308:15 313:5,19 316:8 321:4 322:2	turns 417:23	understand 266:14 273:6 274:6 281:21 291:11 294:20 296:8 300:8 301:15 309:4 315:4 321:2 326:1 357:20 358:20 386:20 389:4 391:5 407:9 416:19 424:18 431:9 434:19 435:23 467:5,13 469:16 471:3	<hr/> V <hr/>
Toldos 426:4,5	transfers 307:2 313:2	Twitter 345:13	understanding 267:3 272:10 276:15 279:9 319:21 322:10 327:20 342:10 346:21 347:6,8,23 351:1 352:2,11 363:21 392:14,23 424:21 458:8,20	Vaguely 330:15
Tom 425:16	transition 269:11, 17,25 275:20 276:3, 9,19,24 277:8,15 283:11,12,19,20,24 284:8,11,23 285:20 286:25 287:2 289:19 290:8 306:13,18 313:13 315:13 316:23 341:4 342:12 346:23 348:3,5,8,9 373:9,19 374:24 375:21 377:3 378:1 379:2,13 387:21 388:18 393:9 409:4 410:20,24 412:3 415:5,21 416:3 417:10 424:18 445:11 451:16,23 453:3 457:10	two-thousand 472:4	understood 266:4,7 274:8,15 314:8,10 359:2 372:4 386:17 403:1 417:5 428:4 460:20	varies 335:15 423:4
tomorrow 327:22	transitioning 271:24 414:18	tying 434:21	undertaken 471:24	variety 289:21 290:8 334:13 356:20 371:18
top 313:12 324:9 327:18 336:7 432:15 466:18,24	translated 332:5	type 327:22 350:2	unfair 435:7 436:7	version 292:8,15 297:10,11
top-line 364:9	translating 331:23	types 338:15	unfunded 399:11	versions 461:6
top-of-line 396:15	Treasury 296:10 396:7,8 402:8,14 423:8,9	typical 328:18 469:24	unhappy 272:21	versus 347:16
Toronto 344:12 359:13 374:11,15 451:8	trigger 333:14	typically 273:12,23 279:8,11 280:18 283:3 297:1 318:2,5, 6 323:9,13 325:16 328:1 329:25 330:3, 24 331:24,25 334:23 337:10 338:1 344:18 388:14 395:8,23 396:14,16,24 397:3, 6 400:15 404:15,19, 21 405:3,10 407:20 408:6,19,21 410:8, 10 412:12 420:3 431:18 445:5 446:21 448:20 459:20 460:8 465:22 468:6	union 399:19	viable 269:18,19 282:11 287:16 290:12,15 445:13 451:4
Tory 438:12	triggered 274:15	typical 328:18 469:24	unions 399:18 418:10	video 343:13 345:18
total 364:11 421:5 451:12 471:21	triggering 268:10 275:22 277:12	U	United 287:22,24 469:8	view 284:15 291:21 302:4 303:3 334:8 335:25 343:21 347:10 355:20,21 358:5 368:15 378:25 394:20 414:24 419:21 420:15 426:19 427:6,23 428:5 446:14,15 449:12
totality 294:20 332:14	trip 437:22	U.K. 394:3 410:9	unlike 465:25 470:12	viewed 293:22
tough 425:20,22	truth 455:7	U/t 292:16	unsustainable 314:18 449:13,14	views 272:25 273:1 316:7 344:2 374:21 459:6 460:9,15,19, 20
track 268:2 355:21 411:12 417:15 440:13 449:24 462:20	Tuesday 383:5	ugliest 345:17	untapped 312:2	violent 345:20
tracking 277:18	tune 366:3	ugly 345:20	updated 388:8	virtually 419:1 460:5
tracks 274:14 285:8,18 287:15,17 289:23 314:4,17 355:19 364:17 417:15 445:19 449:14,19 454:13	turn 273:10 288:19 396:6 467:4	ultimately 288:20, 21 289:1 329:5,12 357:9 369:21 371:7, 12 380:15 395:3 396:8 403:16 406:17 409:4 422:11,15 454:8 461:10	upper 391:14	voice 393:4 401:4 405:6 443:8
traditional 393:23	turnarounds 273:12	unanimously 404:16	urban 312:2 451:7, 8	voiced 375:16
transactions 361:8		unanswered 454:10	urgency 388:17 389:5,18	
transcript 347:3 362:22 383:9 435:12,16 455:17 466:21 467:1,5,9,15 468:10		unanticipated		
transcription 360:20 361:4				
transcriptions 361:7				

<p>vote 333:13 351:16 352:24 369:19 370:15 372:5,8 374:2 403:16,20 404:1 405:18,19,20, 21,22 406:14 410:3, 18 412:4,22,25 413:1 440:20 459:3</p> <p>voted 333:2 368:5 369:25</p> <p>votes 334:14 351:17 458:21</p> <p>voting 332:24 371:8 375:14</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wagering 314:13 450:2</p> <p>wait 277:11 348:18 361:25 365:11 369:4</p> <p>waiting 408:12 465:23</p> <p>walk 311:9 400:14</p> <p>walked 268:16 400:11</p> <p>walking 280:20 465:21</p> <p>wanted 334:11 335:2 342:5 364:2 371:4 407:13 416:24 417:5,9 445:9 449:5 451:24</p> <p>warning 401:12</p> <p>wartime 368:6</p> <p>waste 326:16</p> <p>watch 343:2,11 417:18</p> <p>water 366:11 415:19</p> <p>Watkins 278:8 295:18</p> <p>ways 396:3</p> <p>weather 342:24</p> <p>wedge 373:9,14 374:22 375:3</p>	<p>wedges 379:24</p> <p>wedging 374:23 379:10,20</p> <p>Wednesday 384:15 387:3</p> <p>week 283:15 297:13 381:5 465:20,21</p> <p>weekend 317:25</p> <p>weekends 318:6</p> <p>weeks 283:9</p> <p>whichever 288:15</p> <p>wholesome 402:3</p> <p>Wilkinson 345:6 376:17,23 377:20,25 378:24 379:3,20 411:8</p> <p>Windsor 351:13 363:25 425:13,23 426:10,13,18 438:13,15 439:22 440:7</p> <p>wine 415:19</p> <p>wisdom 407:16</p> <p>wondering 393:17</p> <p>Woodbine 355:20 446:12 449:17</p> <p>word 285:12 301:5 353:6,8 366:16,19 367:1 379:23 458:14 472:24</p> <p>words 284:3 349:18 350:13 386:9</p> <p>wore 346:12</p> <p>work 267:5,6 342:7 388:5,11 389:14 411:16 415:15,20 417:16 419:21,23,24 429:22 441:9 445:24 446:5 450:7,22 454:14</p> <p>work-up 428:20</p> <p>worked 417:7 419:20 423:12</p>	<p>working 266:2 317:24 318:6 320:3 322:9 388:24</p> <p>works 299:20 332:9 393:18 467:14</p> <p>Workshop 265:11</p> <p>worried 398:15</p> <p>would've 331:2</p> <p>wound 269:11</p> <p>wrestle 421:20</p> <p>wrestling 422:5,6</p> <p>writing 331:23 447:13</p> <p>written 283:15 330:21</p> <p>wrong 307:19 340:7 346:3 426:20 453:12</p> <p>wrote 344:11,15 377:21</p> <p>Wynne 444:2</p> <p>Wynne's 454:8</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yay 403:17</p> <p>year 274:11,17 318:3 321:4 335:7, 24 338:13 366:3 400:13 408:22 440:17 445:21,22 454:14 468:25 470:22</p> <p>year-and-a-half- long 352:4</p> <p>year-over-year 419:7</p> <p>years 285:2 358:25 359:1 372:20 387:21 398:1 399:6 407:24 412:15 419:12 426:2 427:8 437:25 449:21 450:8,23</p> <p>Yeigh 278:6</p>	<p>yesterday 265:7 276:1,20 277:20 330:12 346:20 353:9 359:14,16 360:1 365:4 367:17 394:1 408:25 439:21 447:2</p> <p>yesterday's 267:8</p> <p>young 417:7</p> <p>Youtube 345:18</p>
--	---	---	---