

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

DALTON MCGUINTY
March 21, 2018

neesons

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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.,

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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 DALTON MCGUINTY, a non-party witness herein, taken
 11 at the Chateau Laurier Hotel, 1 Rideau Street,
 12 L'Orangerie Room, Ottawa, Ontario, on the 21st day
 13 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 Robert Ratcliffe, Esq.,
 20 & Eunice Machado, Esq.
 21 & Meagan Williams, Esq., for the Defendant
 22 Crown.
 23
 24 Michael Rosenberg, Esq.,
 25 & Riane Tse, Esq., for the OLG.

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1 Also present: Sonia DeVos
 2 Terry DeVos
 3 Patrick Meyers
 4
 5 Reported by: Kimberley Neeson
 6 FAPR, RPR, CRR, CSR (ON & AB), CCP
 7 Realtime Systems Administrator
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I N D E X

3 WITNESS: DALTON MCGUINTY

4 PAGE

5 Continued Cross-Examination by Mr. Lisus.. 232

6 Cross-Examination by Mr. Rosenberg..... 433

7 Re-Examination by Mr. Ratcliffe..... 524

8 Further Cross-Examination by Mr. Lisus.... 531

9

11 **The following list of undertakings, advisements
 12 and refusals is meant as a guide only for the
 13 assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

15 The questions/requests undertaken are noted by U/T
 16 and appear on the following pages: None

17

INDEX OF ADVISEMENTS

19 The questions/requests taken under advisement are
 20 noted by U/A and appear on the following pages:
 21 None

22

INDEX OF REFUSALS

24 The questions/requests refused are noted by R/F
 25 and appear on the following pages: 342, 548, 549

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INDEX OF EXHIBITS

3 NUMBER/DESCRIPTION PAGE NO.

4

5 33: "Fiscal prep" document. 232

6 34: Email, Bates numbered CRE213169. 236

7 35: Document, Bates numbered 254

8 CRE80704.

9 36: Email, Bates numbered CRE28697. 260

10 37: Note, Bates numbered CRE29902. 272

11 38: Email, Bates numbered CRE360917. 274

12 39: Email, Bates numbered CRE563378. 292

13 40: Email, Bates numbered CRE361000. 298

14 41: Email, Bates numbered CRE12973. 305

15 42: Email, Bates numbered CRE360994. 306

16 43: Email, Bates numbered CRE361002. 306

17 44: Proposed Cabinet minute, Bates 311

18 numbered CRE32039.

19 45: Special report of the Auditor 329

20 General, Bates numbered SB5062.

21 46: Package of Cabinet materials. 335

22 A (for identification): Email, Bates 337

23 numbered CRE27921.

24 47: Email, Bates numbered CRE29291. 350

25 B (for identification): Collection 356

<p style="text-align: right;">Page 231</p> <p>1 of news articles.</p> <p>2 48: Document. 359</p> <p>3 49: Excerpt from Hansard, February 365</p> <p>4 23, 2012.</p> <p>5 50: Collection of newspaper 394</p> <p>6 articles.</p> <p>7 51: Email chain, Sunday, February 394</p> <p>8 26, 2012, Bates numbered CR38429.</p> <p>9 52: Transcript of the radio ads, 394</p> <p>10 Bates numbered CRE81193.</p> <p>11 53: News release, Bates numbered 399</p> <p>12 CRE208768.</p> <p>13 54: Slide deck, Bates numbered 416</p> <p>14 CRE29294.</p> <p>15 55: Email, Bates numbered 420</p> <p>16 CRE0560801.</p> <p>17 56: Email, Bates numbered CRE106086. 429</p> <p>18 C (for identification): Ontario 523</p> <p>19 Harness Horse Association draft</p> <p>20 minutes of February 25, 2011.</p> <p>21 57: Document, "Strong Action for 531</p> <p>22 Ontario."</p> <p>23 58: Letter dated March 29th. 552</p> <p>24 59: Email, Bates numbered CRE94799. 553</p> <p>25</p>	<p style="text-align: right;">Page 233</p> <p>1 BY MR. LISUS:</p> <p>2 852 Q. If you just take a look at Exhibit</p> <p>3 33, sir, you'll see that there's an email from</p> <p>4 Ms. Centofanti to a number of recipients, the</p> <p>5 subject is "Material Fiscal Prep," the email is</p> <p>6 sent at 4:53 p.m. on the 30th of January and it</p> <p>7 identifies a meeting to occur on Tuesday, the 31st</p> <p>8 of January from 5:00 to 6:30 p.m. Do you see that?</p> <p>9 A. I see that.</p> <p>10 853 Q. And simply for the purposes of</p> <p>11 giving you a reference point and perhaps refreshing</p> <p>12 your recollection, sir, I'm going to show you next</p> <p>13 an email which is an email that was Exhibit 13 on</p> <p>14 Mr. Bardeesy's examination. He was your Chief of</p> <p>15 Staff, correct?</p> <p>16 A. No, no, Mr. Bardeesy was not. He</p> <p>17 was one of my -- I think he was head of policy.</p> <p>18 854 Q. Right, senior policy advisor,</p> <p>19 economic and resource policy. Your Chief of Staff</p> <p>20 at this time, being January 31, 2012, was who?</p> <p>21 A. I believe it was Chris Morley.</p> <p>22 855 Q. Chris Morley?</p> <p>23 A. Yes.</p> <p>24 856 Q. And Laura Miller was the Deputy</p> <p>25 Chief?</p>
<p style="text-align: right;">Page 232</p> <p>1 -- Upon commencing at 9:43 a.m.</p> <p>2 DALTON MCGUINTY: AFFIRMED PREVIOUSLY.</p> <p>3 CROSS-EXAMINATION BY MR. LISUS</p> <p>4 (CONTINUED):</p> <p>5 848 Q. Good morning, sir.</p> <p>6 A. Good morning.</p> <p>7 849 Q. When we broke yesterday afternoon,</p> <p>8 we were discussing a document that the record</p> <p>9 indicates was prepared for the purposes of</p> <p>10 something referred to as "fiscal prep." Do you</p> <p>11 recall that?</p> <p>12 A. Yes.</p> <p>13 850 Q. And I think I recall you telling</p> <p>14 me yesterday that you don't remember being at a</p> <p>15 meeting on the 31st of January described in the</p> <p>16 documents as "fiscal prep"; is that correct?</p> <p>17 A. That's correct.</p> <p>18 851 Q. And just to orient you, sir, in</p> <p>19 terms of the timing, if you take a look at the</p> <p>20 email with its attachment, and I'm going to mark it</p> <p>21 at this point so I can refer to it as an exhibit on</p> <p>22 the record, as the next exhibit in sequence.</p> <p>23 MR. MATTHEWS: It will be Exhibit 33.</p> <p>24 EXHIBIT NO. 33: "Fiscal prep"</p> <p>25 document.</p>	<p style="text-align: right;">Page 234</p> <p>1 A. I'm not sure she was Deputy but</p> <p>2 she was certainly working for me, yes.</p> <p>3 857 Q. And the reason I'm showing you</p> <p>4 this email at this point in time, sir, if you just</p> <p>5 read the first paragraph after "Hi all." It's</p> <p>6 CR1885.</p> <p>7 A. Um-hmm. (Witness reads document).</p> <p>8 858 Q. So again, to give you a reference</p> <p>9 point with respect to this meeting on the 31st, we</p> <p>10 see that Ms. Ampleford, who was in the Cabinet</p> <p>11 Office; did you know her?</p> <p>12 A. I don't believe so.</p> <p>13 859 Q. She's in the Cabinet Office and</p> <p>14 she's writing to a number of folks. She says:</p> <p>15 "I just reviewed the package</p> <p>16 with PO..."</p> <p>17 That's Premier's Office, right?</p> <p>18 A. Yes.</p> <p>19 860 Q. "...and Karim," and I take that</p> <p>20 reference to mean that she just reviewed the</p> <p>21 package with Karim?</p> <p>22 A. I think so. The PO's office in</p> <p>23 the person of Karim.</p> <p>24 861 Q. Right. And she summarizes what</p> <p>25 Karim has asked, and with respect to the deck</p>

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1 communication highlights and comms -- that's
 2 communications, comms plan, do you see that?
 3 A. I see that.
 4 862 Q. And he says:
 5 "He called and spoke directly
 6 to Tim Shortill. Karim advises that
 7 the Premier strongly prefers the
 8 messaging and positioning that
 9 Deputy Orsini presented at fiscal
 10 prep."
 11 Okay? So that's three days after
 12 January 31 which, as I read this email, sir,
 13 indicates to me that you were at fiscal prep, as
 14 was Deputy Orsini, and Deputy Orsini made some kind
 15 of a presentation and you preferred the messaging
 16 and positioning that he made at that meeting.
 17 Okay?
 18 A. Yes.
 19 863 Q. So, I take it we can agree that it
 20 appears from the sequence that you were at fiscal
 21 prep and Deputy Orsini made a presentation there?
 22 A. Yes.
 23 864 Q. But you don't have a recollection
 24 of that today?
 25 A. That's correct.

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1 MR. LISUS: Okay. So that email is the
 2 next exhibit on your examination, sir. And let's
 3 just catch up with marking, please. The January
 4 31, CRE213169, is Exhibit?
 5 MR. MATTHEWS: 33.
 6 EXHIBIT NO. 34: Email, Bates numbered
 7 CRE213169.
 8 BY MR. LISUS:
 9 865 Q. I'm going to give you back 33,
 10 sir. Now, if we take a look together at Exhibit
 11 33, this is described as a briefing flash report,
 12 and what it has in it is what appears to be a draft
 13 of material to go to the Jobs and Economic Policy
 14 Committee on February 7, 2012, which is the day
 15 before the scheduled Cabinet meeting of February 8.
 16 If you go over the page you'll see the draft with
 17 the signature from Minister and Deputy Minister.
 18 Do you see that?
 19 A. Yes.
 20 866 Q. And what was the Jobs and Economic
 21 Policy Committee, sir?
 22 A. It was one of several Cabinet
 23 committees established by me, populated by caucus
 24 members, so that there was another review step
 25 introduced into the process. The minister develops

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1 an initiative that has to go -- before it comes to
 2 Cabinet it comes to a Cabinet committee, is vetted
 3 at Cabinet committee, back to the minister, then to
 4 Cabinet.
 5 867 Q. That's helpful, thank you. And I
 6 recollect you explaining to me yesterday that in
 7 addition to that step, there would have been a
 8 consultation of interested or affected Cabinet
 9 ministers running at the same time?
 10 A. That was very usual.
 11 868 Q. And the record, in fact, indicates
 12 that happened in this case.
 13 Do you recall who the chair of the Jobs
 14 and Economic Policy Committee was in 2012?
 15 A. I do not.
 16 869 Q. Okay. And then I take it that --
 17 A. It likely would have been a member
 18 of caucus though.
 19 870 Q. And again, I'm going to display my
 20 ignorance of civics, what is the difference between
 21 caucus and Cabinet?
 22 A. Well, caucus consists of all
 23 elected Liberals; Cabinet is a subset of that.
 24 871 Q. Cabinet is the ministers who have
 25 a portfolio?

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1 A. Yes.
 2 872 Q. Got it. Did I understand you to
 3 say that the Jobs and Economic Policy Committee was
 4 a committee of caucus?
 5 A. Yes.
 6 873 Q. And caucus would be all elected
 7 Liberal Cabinet ministers, obviously?
 8 A. Not Cabinet ministers.
 9 874 Q. Excuse me, Liberal ministers?
 10 A. Liberal members.
 11 875 Q. Liberal members. Yes, caucus
 12 would be all elected Liberal members?
 13 A. Yes.
 14 876 Q. And the Jobs and Economic Policy
 15 Committee was a committee of the Liberal caucus?
 16 A. Yes.
 17 877 Q. Got it.
 18 A. Now, just one proviso. I believe
 19 as well that a Cabinet minister would sit on that
 20 committee.
 21 878 Q. Okay. And would the Cabinet
 22 minister that was the minister for the ministry
 23 responsible for bringing forward the particular
 24 initiative that the Jobs and Economic Policy
 25 Committee was meeting about typically be the

<p style="text-align: right;">Page 239</p> <p>1 Cabinet minister who would sit at that committee on 2 that day? 3 A. They would have to present. 4 879 Q. Okay. 5 A. So if we're talking about Minister 6 Duncan, for example, he would have to make a 7 presentation to this committee. 8 880 Q. So if it's a Ministry of Finance 9 initiative that the Jobs and Economic Policy 10 Committee is meeting about, then there likely would 11 have been Minister Duncan attending that Jobs and 12 Economic Policy Committee meeting? 13 A. Likely. 14 881 Q. But not necessarily or even likely 15 you? 16 A. No, I did not attend Cabinet 17 committees. 18 882 Q. Got it. And did you attend 19 Cabinet meetings? 20 A. Yes. 21 883 Q. Were you required to as a matter 22 of convention or rule? 23 A. I'm not sure there's a legislative 24 necessity, but I rarely missed a Cabinet meeting, 25 if ever. If I was travelling, for example, abroad,</p>	<p style="text-align: right;">Page 241</p> <p>1 A. That is correct. 2 887 Q. Okay. Now, this document is 3 called a briefing flash report. Is that a term 4 that you had seen before? 5 A. No, that doesn't ring a bell. 6 888 Q. And it contains what is identified 7 as a high level summary, key comments; do you see 8 that? 9 A. Yes. 10 889 Q. And the high level summary, key 11 comments are directed to a summary and commentary 12 of the Ministry of Finance's intention to seek 13 approval to modernize the OLG, correct? 14 A. Yes. 15 890 Q. "Over the next five years in a 16 socially responsible manner by 17 growing its business revenues and 18 implementing operational 19 efficiencies." 20 Correct? 21 A. Yes, that's what it says. 22 891 Q. And that is what you understood 23 the OLG and Ministry of Finance to be seeking 24 approval for? 25 A. Yes, broadly speaking, yes.</p>
<p style="text-align: right;">Page 240</p> <p>1 the Cabinet may have met in my absence, but I'm not 2 sure of that. 3 884 Q. Do you have a recollection of the 4 February 8, 2012 Cabinet meeting? 5 A. No. 6 885 Q. And I presume, sir, having 7 listened to your helpful-for-me explanations over 8 the last day and a bit, that if the process has 9 worked properly with the briefings of interested 10 and affected Cabinet ministers in advance, and the 11 Jobs and Economic Policy Committee meeting, and the 12 prior meetings with the staff of the Cabinet 13 minister that was bringing an initiative forward, 14 it was expected that the matter brought forward at 15 Cabinet would go through as expected by staff and 16 the sponsoring minister? 17 A. That was the expectation, but I 18 can tell you, on the basis of my 10 years' 19 experience, that it was not that unusual for 20 something to be derailed when we turned our 21 collective minds -- our collective mind to the 22 subject at hand. 23 886 Q. And we know that in this instance, 24 February 8th, the initiative brought forward by the 25 Ministry of Finance was not derailed?</p>	<p style="text-align: right;">Page 242</p> <p>1 892 Q. And as described in this document, 2 the operational efficiencies that the OLG wanted -- 3 the OLG and the Ministry of Finance were asking the 4 government to approve in this document was 5 reconfiguring the number of gaming sites, point 1? 6 A. Yes. 7 893 Q. Tailoring the type of gaming 8 activity at those sites, right? I'm just following 9 along the briefing report. 10 A. Yeah. Where is tailoring coming 11 from? 12 894 Q. Number 1: 13 "Reconfigure the number of 14 gaming sites and tailor the type of 15 gaming." 16 A. Yes. 17 895 Q. Then the other operational 18 efficiencies it wanted to get approval for was: 19 "Close three existing gaming 20 sites and relocate seven gaming 21 sites to more populated local 22 communities." 23 Right? 24 A. Yes. 25 896 Q. And create up to seven new gaming</p>

<p style="text-align: right;">Page 243</p> <p>1 sites. Right?</p> <p>2 A. Yes.</p> <p>3 897 Q. And then there's a discussion at</p> <p>4 the committee about ending the Slots at Racetrack</p> <p>5 Program and establishing a transfer payment program</p> <p>6 to provide a reduced level of ongoing funding to</p> <p>7 the horseracing industry. Do you see that?</p> <p>8 A. Yes.</p> <p>9 898 Q. And I take it, sir, as of January</p> <p>10 31, 2012 you didn't know one way or the other</p> <p>11 whether or not there was an existing transfer</p> <p>12 payment program in effect that provided funding to</p> <p>13 the horseracing industry?</p> <p>14 A. I can't recall.</p> <p>15 899 Q. And then the description of the</p> <p>16 proposals that were on the table are identified</p> <p>17 below. These proposals will generate an additional</p> <p>18 4 billion in revenue, et cetera, right?</p> <p>19 A. Yes.</p> <p>20 900 Q. And a discussion point identified</p> <p>21 under "Outstanding items requiring further</p> <p>22 direction," do you see that?</p> <p>23 A. Yes.</p> <p>24 901 Q. There's four discussion points</p> <p>25 there.</p>	<p style="text-align: right;">Page 245</p> <p>1 2012 what was being proposed --</p> <p>2 MR. RATCLIFFE: Excuse me, is that on</p> <p>3 page 15?</p> <p>4 MR. LISUS: I'm not quite sure yet but</p> <p>5 I'll tell you.</p> <p>6 BY MR. LISUS:</p> <p>7 907 Q. What was being proposed by Finance</p> <p>8 as of January 30th, 2012, 4:53 p.m., is on page 17</p> <p>9 of the deck at item 4 of the proposed Cabinet</p> <p>10 minute. So you see item 4 is the proposed Cabinet</p> <p>11 minute?</p> <p>12 A. Yes, I see it. Yes.</p> <p>13 908 Q. And the Cabinet minute proposed</p> <p>14 for Cabinet was with respect to funding a -- OLG</p> <p>15 providing notice to terminate by March 31, 2013,</p> <p>16 the 18 current siteholder agreements with racetrack</p> <p>17 operators effectively ending the Slots at Racetrack</p> <p>18 Program. Do you see that?</p> <p>19 A. Yes.</p> <p>20 909 Q. "Appointing a provincial lead</p> <p>21 to work with the industry in</p> <p>22 2012-2013 to produce a three-year</p> <p>23 plan that achieves industry</p> <p>24 sustainability by 2015-16."</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 244</p> <p>1 A. Um-hmm.</p> <p>2 902 Q. And the first is whether any items</p> <p>3 in the minute should be removed, and the minute is</p> <p>4 a reference to the draft Cabinet minute to be put</p> <p>5 before Cabinet, right?</p> <p>6 A. That's an assumption.</p> <p>7 903 Q. Okay. Well, let me see if I can</p> <p>8 turn it from an assumption to a fact for you. If</p> <p>9 you go to page 15 of the document, you'll see the</p> <p>10 proposed Cabinet minute. See that?</p> <p>11 A. Yes.</p> <p>12 904 Q. All right. So, what's being put</p> <p>13 before this group of people, including you and</p> <p>14 Mr. Orsini and likely the Minister of Finance and</p> <p>15 various senior staffers, is a proposed Cabinet</p> <p>16 minute for which direction was being sought, right?</p> <p>17 A. Yes.</p> <p>18 905 Q. And one of the items in the</p> <p>19 Cabinet minute and requiring direction was number</p> <p>20 3, whether to eliminate all funding for horseracing</p> <p>21 industry and use the 100 million as transitional</p> <p>22 relief. Do you see that?</p> <p>23 A. Yes.</p> <p>24 906 Q. And if we go to the proposed</p> <p>25 Cabinet minute, sir, we see that as of January 31,</p>	<p style="text-align: right;">Page 246</p> <p>1 910 Q. And:</p> <p>2 "Ministry of Finance and any</p> <p>3 relevant ministries to make</p> <p>4 recommendations on ORC's regulatory</p> <p>5 and adjudicative responsibilities,</p> <p>6 and to develop a proposed transfer</p> <p>7 payment program to fund the</p> <p>8 horseracing industry by up to 250</p> <p>9 million in 2013-14."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 911 Q. So that's 250 million after the</p> <p>13 end of the one-year notice period which would end</p> <p>14 March 31, 2013, correct?</p> <p>15 A. Yes.</p> <p>16 912 Q. "\$150 million in 2014-15 and</p> <p>17 \$100 million in 2015-16 by obtaining</p> <p>18 Treasury Board/Management Board</p> <p>19 approval for the proposed transfer</p> <p>20 payment programs."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 913 Q. So that was the proposed approach</p> <p>24 to funding to the horseracing industry as a</p> <p>25 transition support after the end of the one-year</p>

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<p>1 period ending March 31, 2013, correct?</p> <p>2 A. Yes.</p> <p>3 914 Q. And obviously, sir, just in terms</p> <p>4 of the process which you have explained to me, we</p> <p>5 are now about a week before Cabinet, because this</p> <p>6 meeting, we know, ends at or about 6:30 on the</p> <p>7 31st, Cabinet is scheduled for February 8, there is</p> <p>8 a meeting of the Jobs and Economic Policy Committee</p> <p>9 dated February 7, 2012, right? So it was six days</p> <p>10 from the Jobs and Economic Policy, seven days from</p> <p>11 Cabinet, right?</p> <p>12 A. Yes.</p> <p>13 915 Q. And your understanding, sir, as</p> <p>14 Premier, is that all of the proposals in this draft</p> <p>15 document -- it's not a draft document, it's a draft</p> <p>16 Cabinet minute but it's a report, had been the</p> <p>17 subject of appropriate study, consultation and</p> <p>18 review by staff in the ministry that was bringing</p> <p>19 it forward, in this case Finance; fair?</p> <p>20 A. That would have been my</p> <p>21 assumption.</p> <p>22 916 Q. And that as of that date, staff in</p> <p>23 the ministry who were recommending an approach to</p> <p>24 their minister and to you understood the</p> <p>25 consequences of the approach they were</p>	<p>1 at the bottom, as of January 31 at 3:51 p.m.</p> <p>2 Mr. Goodwin circulating the language on racing.</p> <p>3 And if you just take a second and read his summary</p> <p>4 of what appears to be number 4, it appears to be</p> <p>5 the proposed Cabinet minute that we just looked at,</p> <p>6 number 4 in the deck the day before fiscal prep.</p> <p>7 A. There is a reference to red font</p> <p>8 here.</p> <p>9 924 Q. Yes.</p> <p>10 A. But we don't have that?</p> <p>11 925 Q. No, I didn't get that. When I say</p> <p>12 "I didn't get that," these are productions to me</p> <p>13 from the government.</p> <p>14 But I think that what you'll see, sir,</p> <p>15 and we can look at them, that the proposed Cabinet</p> <p>16 certainly with respect to the -- the proposed</p> <p>17 Cabinet minute, certainly with respect to the</p> <p>18 horseracing funding in Mr. Goodwin's email of</p> <p>19 January 31 at 3:51, is the same as the proposed</p> <p>20 Cabinet minute in the draft Cabinet materials from</p> <p>21 the fiscal prep meeting the day before.</p> <p>22 A. I'll have to take your word for</p> <p>23 that.</p> <p>24 926 Q. Okay. And we'll just look at it</p> <p>25 together. If you take a look at (c) on -- 4(c) in</p>
<p>1 recommending. That would have been your assumption</p> <p>2 and expectation, correct?</p> <p>3 A. Yes, they would have considered</p> <p>4 the --</p> <p>5 917 Q. Consequences?</p> <p>6 A. The consequences.</p> <p>7 918 Q. And understood them?</p> <p>8 A. And understood them.</p> <p>9 919 Q. Right.</p> <p>10 A. And weighed those against all</p> <p>11 other considerations.</p> <p>12 920 Q. Thank you. And, sir, I want to</p> <p>13 just continue on this sequence. If you go to</p> <p>14 January 31, which is the next day, at --</p> <p>15 MR. RATCLIFFE: Counsel, which document</p> <p>16 are you referring to?</p> <p>17 BY MR. LISUS:</p> <p>18 921 Q. CRE80704. We see the Deputy</p> <p>19 Minister of Finance, Mr. Goodwin. Did you know</p> <p>20 Mr. Goodwin, Barry Goodwin?</p> <p>21 A. I probably met him somewhere along</p> <p>22 the way.</p> <p>23 922 Q. The name doesn't ring a bell?</p> <p>24 A. No.</p> <p>25 923 Q. Got it. We see, sir, if you look</p>	<p>1 Mr. Goodwin's email, which is on the back, and you</p> <p>2 take a look at 4(c) in the Cabinet minute proposed</p> <p>3 the day before --</p> <p>4 MR. RATCLIFFE: I think we handed that</p> <p>5 exhibit back.</p> <p>6 BY MR. LISUS:</p> <p>7 927 Q. We see there are actually a few</p> <p>8 changes. 4(c) in the minute proposed by Finance</p> <p>9 staff on January 31 says:</p> <p>10 "MOF and any relevant</p> <p>11 ministries..."</p> <p>12 4(c) in the proposed Cabinet minute the</p> <p>13 day before says:</p> <p>14 "MOF in consultation with OLG,</p> <p>15 the Ontario Racing Commission and</p> <p>16 relevant ministries."</p> <p>17 So the consultation with ORC and OLG</p> <p>18 has come out, right?</p> <p>19 A. Sorry, you're at the front of</p> <p>20 this?</p> <p>21 928 Q. Go over to the back page of the</p> <p>22 email.</p> <p>23 MR. RATCLIFFE: We are looking for the</p> <p>24 word "consultation," if you can just point it out.</p> <p>25 BY MR. LISUS:</p>

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1 929 Q. Here's 4(c) of Finance's revised
2 minute on January 31. It appears that the
3 reference to "in consultation with OLG and the
4 Ontario Racing Commission" from the proposed
5 Cabinet minute on January 30th has come out of the
6 language that Finance is composing on January 31.
7 A. Maybe I'm missing something here,
8 Mr. Lisus, but 4(c) on the Cabinet minute that went
9 before the Cabinet committee, and 4(c), the one you
10 just provided me with, appear to be the same.
11 930 Q. Well, there's a small difference,
12 sir. If you look at 4(c) on the email from
13 Mr. Goodwin, do you see it says:
14 "MOF and any relevant
15 ministries to make recommendations."
16 Do you see that?
17 A. Yes.
18 931 Q. And then if you go back to the
19 proposed Cabinet minute, it says:
20 "MOF in consultation with OLG,
21 the Ontario Racing Commission."
22 A. That's not 4(c). That's the head
23 of the paragraph.
24 932 Q. You're right. You're right, thank
25 you. They seem to be the same.

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1 MR. ROSENBERG: I just object to this
2 entire exercise. It does not appear that the
3 witness had anything to do with these documents and
4 he can read them as well as you can. I don't
5 understand why we are taking time.
6 BY MR. LISUS:
7 933 Q. Now, if we continue on, we see
8 that on January 31 Finance is still proposing that
9 the transfer payment program to fund the
10 horseracing industry by up to 250 million in
11 2013-14, 150 in 2014-15 and 100 million in 2015-16,
12 so it's the same, right?
13 A. They appear to have the same plan
14 for sustainability.
15 934 Q. Okay, thank you. May I have that
16 back? So, the proposed Cabinet minute hasn't
17 changed, right?
18 MR. ROSENBERG: Again, objection. How
19 is this witness supposed to say what has and hasn't
20 changed? He wasn't involved.
21 MR. LISUS: By looking at the document.
22 MR. ROSENBERG: You showed him a
23 selection of documents that you've chosen.
24 MR. LISUS: Do you have other
25 documents, Mr. Rosenberg, to show that on January

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1 31, 2012 there was any other proposed Cabinet
2 minute?
3 MR. ROSENBERG: Mr. Lisus, I'm not here
4 to give evidence.
5 MR. LISUS: Well, then don't interrupt
6 the examination, or if you want to give evidence, I
7 can swear you in and examine you, if you'd prefer.
8 MR. ROSENBERG: Mr. Lisus, that's not
9 what I'm suggesting. I am suggesting that you
10 simply be fair to this witness and review documents
11 he actually had something to do with.
12 BY MR. LISUS:
13 935 Q. Do you think I'm being unfair to
14 you, Mr. McGuinty?
15 MR. RATCLIFFE: I think that's an
16 unfair question.
17 BY MR. LISUS:
18 936 Q. You don't feel that I've been
19 unfair to you, do you, sir?
20 MR. RATCLIFFE: Well, if I can just
21 jump in here, Mr. Lisus. It's not clear what the
22 point of this exercise is. We do need to finish
23 today.
24 MR. LISUS: We'll finish today.
25 MR. RATCLIFFE: The document is clear

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1 in terms of what it says. You're free to put that
2 forward to the court. You don't have to read it to
3 Mr. Lisus -- or Mr. McGuinty, and then confirm that
4 that's what it says.
5 MR. LISUS: I want Mr. McGuinty to
6 understand the process he was involved in and I
7 think it's important as a matter of fairness to him
8 that he does.
9 MR. MATTHEWS: We've marked CRE80704 as
10 the next exhibit, 35.
11 EXHIBIT NO. 35: Document, Bates
12 numbered CRE80704.
13 BY MR. LISUS:
14 937 Q. And, sir, you're not aware of any
15 other proposals with respect to funding to the
16 horseracing industry that were going to be put to
17 Cabinet as of this time, other than the ones that
18 I've shown you and the records that have been
19 produced to me, are you?
20 A. I'm not.
21 938 Q. All right. Now, we discussed as
22 well the process of speaking to interested and
23 affected Cabinet ministers in advance, and I want
24 to show you an email dated February 1, Wednesday,
25 February 1 at 10 past 8 in the evening.

<p style="text-align: right;">Page 255</p> <p>1 This was an exhibit on Mr. Bardeesy's 2 examination and others as well, I think. 3 I just want you to take a look at the 4 email quickly and read the sequence beginning with 5 the email from Mr. Stransky to Mr. Shortill. 6 A. (Witness reads document). 7 939 Q. So, just understanding the process 8 that is being gone through here, if you go to the 9 back of the email you see there is a date of 10 January 31, right? 11 A. Yes. 12 940 Q. And on February the 1st, 13 Mr. Stransky is reporting to Mr. Shortill a summary 14 of the meetings so far. He focuses on their level 15 of support, tone and noteworthy items. 16 Mr. Rosenberg, CRE28697. I won't be 17 offended if you prompt me when I forget. 18 MR. ROSENBERG: But you're giving 19 evidence so effectively, counsel, I wouldn't want 20 to interrupt. 21 BY MR. LISUS: 22 941 Q. Here we see Mr. Stransky giving 23 Mr. Shortill a summary, and having read it, can you 24 just help me, explain what this process is? 25 A. This would be an informal process.</p>	<p style="text-align: right;">Page 257</p> <p>1 he's a member of caucus. He may have been a 2 Cabinet committee chair. 3 949 Q. And Minister Wynne then was 4 minister of what, do you recall? 5 A. It may have been -- 6 950 Q. Municipal Affairs? 7 A. It may have been Municipal 8 Affairs. Moved around a number of times. 9 951 Q. And we see that the process is 10 going to continue the next day, Friday, February 2, 11 with someone called Craitor, C-R-A-I-T-O-R. He is 12 a Niagara Falls MPP? 13 A. Yes. 14 952 Q. Okay. And then someone called 15 Orazietti? 16 A. David Orazietti, also an MPP, 17 representing Sault Ste. Marie. 18 953 Q. Orazietti, O-R-A-Z-I-E-T-T-I. And 19 why were they being -- 20 A. They would be directly impacted by 21 any gaming initiative. 22 954 Q. Now, Mr. Shortill forwards on to 23 your Chief of Staff, Chris Morley, Dave Gene and 24 Karim Bardeesy the summaries of the meetings, 25 correct?</p>
<p style="text-align: right;">Page 256</p> <p>1 It arises from a particular minister moving an 2 initiative to be considered by Cabinet. One of his 3 -- a member of his staff is doing his due diligence 4 to better understand how the proposal is initially 5 being received. 6 942 Q. By various Cabinet ministers? 7 A. By various Cabinet ministers. 8 943 Q. Okay. Was Shafiq, S-H-A-F-I-Q, 9 Q-A-A-D-R-I a Cabinet minister? 10 A. No. 11 944 Q. He's just a minister? 12 A. No, he was not a minister. 13 945 Q. What was he? 14 A. He was an MPP. 15 946 Q. Okay. 16 A. And it's not unusual for an 17 effective staff member to reach out beyond the 18 Cabinet. 19 947 Q. Okay. And -- 20 A. I see he expresses an interest in 21 Woodbine. I don't know if that's in his riding or 22 there's something there. 23 948 Q. And is David Zimmer -- what was 24 David Zimmer? A minister or is he a staffer? 25 A. David I believe was -- no, no,</p>	<p style="text-align: right;">Page 258</p> <p>1 A. Yes. 2 955 Q. And we see, following the sequence 3 up, at 9:38 p.m. on the 1st, Mr. Bardeesy responds 4 with a copy to your Chief of Staff and Dave Gene. 5 And why is Dave Gene being included in this 6 exercise? 7 A. Dave Gene had a very important 8 responsibility helping me manage the politics of 9 issues. 10 956 Q. And when you say "the politics of 11 issues," you mean the partisan politics of issues? 12 A. How issues -- am I getting 13 somebody's nose out of joint here. 14 957 Q. Okay. 15 A. I need to know that. 16 958 Q. And who is 17 RMacDonald@liberal.ola.org? 18 A. That would be Ron MacDonald. He 19 is also responsible -- he was kind of caucus 20 liaison to my office. 21 959 Q. Again, help me out, what is caucus 22 liaison? 23 A. His job is to make sure that I am 24 aware of caucus concerns, everything from his 25 mother is having a hard time, you should be aware</p>

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1 of that.
 2 960 Q. "His" being a member of caucus?
 3 A. Yes, to he's very much off-side
 4 with a refusal not to fund Jewish schools. So it's
 5 just to keep me informed as to what their thinking
 6 is. They could have a particular challenge in the
 7 riding. And also to speak to them on my behalf.
 8 961 Q. And his address, liberal.ola.org,
 9 that's not a government address, that's a Liberal
 10 Party address, correct?
 11 A. That's right.
 12 962 Q. So is Mr. MacDonald a member of
 13 government?
 14 A. Yes, he is. Well, I don't know
 15 what you mean by a member of government. Is he
 16 employed by the Premier's Office? Yes.
 17 963 Q. Now, at this point in time, did
 18 Mr. Gene and Mr. Morley -- let me rephrase.
 19 I presume that at this point in time,
 20 because they're being briefed, Mr. Gene and
 21 Mr. Morley were aware of the proposal being put
 22 forward to Cabinet, including the horseracing
 23 funding piece of it?
 24 A. I would assume. I think that's a
 25 fair assumption.

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1 964 Q. Right. And I want to -- that's
 2 the next exhibit, please.
 3 EXHIBIT NO. 36: Email, Bates numbered
 4 CRE28697.
 5 BY MR. LISUS:
 6 965 Q. And obviously Mr. Morley and
 7 Mr. Gene were aware of the challenge that the
 8 government was facing with the upcoming budget,
 9 having regard to the fact that it's a minority
 10 government, it was known that the PCs were going to
 11 vote en bloc against the government which would be
 12 a non-confidence vote, correct?
 13 A. Yes.
 14 966 Q. And that issue was very much on
 15 everyone's radar in the Liberal -- well, it was on
 16 everyone's radar, Liberal, Conservative and NDP,
 17 correct?
 18 A. Yes.
 19 967 Q. Now, it's been helpful to me to
 20 understand the process leading up to the Cabinet
 21 meeting and I want to just review with you a note
 22 that was produced to me, sir. It's CRE29902 and
 23 29903.
 24 We're now on Thursday, February 2
 25 mid-day, 12:51 p.m. The Cabinet meeting is the

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1 following week. And we see here, sir, that there
 2 is a chap from OMAFRA sending a note to
 3 Mr. Stransky, who is in Minister Duncan's office,
 4 with a carbon copy to Michael Keegan.
 5 Did you know who Michael Keegan was in
 6 February 2012?
 7 A. Yes, because originally Michael
 8 worked for me in opposition.
 9 968 Q. Yes, you told me that, now that
 10 you mention it, but I had forgotten. And in 2012
 11 you knew that he was Minister McMeekin's Chief of
 12 Staff?
 13 A. I likely would have known that
 14 then, yes.
 15 969 Q. How long did he work for you?
 16 A. In opposition?
 17 970 Q. Yeah.
 18 A. Well, I was in opposition for 13
 19 years. So, years.
 20 971 Q. So, you knew him well and he knew
 21 you well?
 22 A. Yeah. Yes, I wouldn't say we
 23 were --
 24 972 Q. Friends?
 25 A. -- friends, but we certainly were

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1 friendly.
 2 973 Q. Do you recall what his job was for
 3 you?
 4 MR. RATCLIFFE: Counsel, I'm wondering
 5 how this is relevant.
 6 THE WITNESS: I can't.
 7 BY MR. LISUS:
 8 974 Q. Okay. So, we see that what
 9 happens here is that OMAFRA has composed some
 10 thoughts and sent them on and they're getting sent
 11 to the Deputy Minister of Finance and the senior
 12 staff, Ms. Yeigh in Finance, and Mr. Stransky, who
 13 is in Minister Duncan's communications or policy,
 14 and Goodwin is Assistant Deputy Minister, not
 15 Deputy Minister, if I said that.
 16 Now, if you look at the notes, sir, I
 17 just want you to take a look at this note that
 18 OMAFRA composes. Do you want to take a minute?
 19 MR. RATCLIFFE: Let him read it
 20 through.
 21 BY MR. LISUS:
 22 975 Q. Sure.
 23 A. (Witness reads document). Okay.
 24 976 Q. Can we agree, sir, that what
 25 OMAFRA is doing is providing the Ministry of

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<p>1 Finance with its reaction and input into the 2 proposal that they have been consulted about in the 3 days leading up to the Cabinet meeting? 4 A. Yes, it appears to be a response 5 to a proposal, you know, to quote from this: 6 "To redistribute the location 7 of slot machines in municipalities 8 and reduce financial support for the 9 horseracing industry." 10 977 Q. And the response identifies 11 specific aspects that may be relevant to OMAFRA? 12 A. Correct. 13 978 Q. Which includes: 14 "Expanding gaming sites through 15 the creation of 14 to 18 new 16 locations more conveniently located 17 to serve urban markets, which would 18 mean the closure of 10 19 underperforming or inconveniently 20 located gaming sites mostly 21 associated with racetracks located 22 in rural areas." 23 Right? 24 A. Yes. 25 979 Q. And then another specific aspect</p>	<p>1 transition to lower funding level will be phased in 2 over a three-year period, right? 3 A. I see that. 4 982 Q. And that was consistent, I take 5 it, sir, based on a review of the record we've gone 6 through, that you too understood as of February the 7 2nd that what Finance was bringing forward was a 8 phase-in over a three-year period of support for 9 the horseracing industry at 100 million a year by 10 2015-2016, correct? 11 MR. RATCLIFFE: Mr. Lisus, to clarify 12 your question, if you could, are you talking about 13 -- you said his understanding, Mr. McGuinty's 14 understanding. Are you talking about what he 15 remembers or was aware of at the time, or are you 16 referring to the documents that you have just shown 17 him? 18 BY MR. LISUS: 19 983 Q. Well, we've gone through the 20 process, sir, and it's quite evident that in 21 meetings that you were at, in particular the fiscal 22 prep meeting, the proposed approach was a phased 23 reduction in funding with \$100 million annual 24 transfer payments, correct? 25 A. Based on the documents that we've</p>
<p>1 identified as mainly relevant to the OMAFRA is: 2 "Eliminating the Slots at 3 Racetrack Program that currently 4 transfers approximately \$345 million 5 to the horseracing industry in 6 favour of a new transfer program 7 capped at \$100 million to support 8 the industry in Ontario." 9 Right? 10 A. Yes. 11 980 Q. And if we look over the page under 12 the heading "Horseracing Industry Impact," we see 13 OMAFRA telling Finance that: 14 "The elimination of SARP in 15 favour of a new transfer payment 16 program to support the horseracing 17 industry will shift the sector to a 18 more market-based approach and is 19 expected to require this industry to 20 transition to a financially 21 sustainable size." 22 Right? 23 A. I see that. 24 981 Q. And just continuing on, OMAFRA 25 also tells Finance, or it first identifies the</p>	<p>1 seen this morning, that's been consistent. 2 984 Q. And you don't recollect any other 3 kind of approach being put to you, right? 4 A. No. 5 985 Q. And we see as of February 2nd, 6 9:38 p.m., the approach still appears to be 7 understood as being, at least by Agriculture, 8 phased in over a three-year period? 9 A. Yes. 10 986 Q. All right. 11 A. Just to be clear on something, we 12 looked at a fiscal prep document. 13 987 Q. Yes. 14 A. I'm not sure that we can make the 15 assumption that that fiscal prep document was, in 16 fact, the one that was at the meeting that I appear 17 to have attended. If we've learned something from 18 all these documents, that they're works in 19 progress, they're always changing, there are 20 various iterations. I just want to be clear about 21 that. 22 988 Q. I haven't seen any other 23 documents, sir, and I can only go on the documents 24 that are given to me. 25 A. I understand that.</p>

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1 989 Q. As I presume you are.
 2 A. I understand that.
 3 990 Q. And you, in preparation for giving
 4 evidence here today, haven't been shown any other
 5 document that suggests some other proposal was
 6 before you at fiscal prep, correct?
 7 A. No.
 8 MR. RATCLIFFE: Mr. Lisus, did you ask
 9 Mr. McGuinty whether he had seen this document
 10 before?
 11 MR. LISUS: Not yet.
 12 MR. RATCLIFFE: Were you planning on
 13 it?
 14 MR. LISUS: If you want me to.
 15 MR. RATCLIFFE: I think it would be
 16 helpful just in terms of the record.
 17 BY MR. LISUS:
 18 991 Q. Have you seen this document
 19 before, sir?
 20 A. No.
 21 992 Q. Okay. Finance certainly had,
 22 right?
 23 A. It appears so, yes.
 24 993 Q. Okay. And they didn't bring it to
 25 your attention, correct?

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1 A. Not that I can recall.
 2 994 Q. As you say, you've never seen it
 3 before?
 4 A. That's correct.
 5 995 Q. All right. And what OMAFRA does
 6 is go on to tell Finance in the next bullet point:
 7 "As no design currently exists
 8 for the proposed transfer payment
 9 program, it is difficult to predict
 10 what the impact may be on the
 11 sector."
 12 Do you see that?
 13 A. Yes.
 14 996 Q. All right. So what we can see
 15 from this, sir, is that neither OMAFRA nor Finance
 16 had modelled what the impact of the proposed
 17 reduction in funding would be on the horseracing
 18 sector?
 19 MR. ROSENBERG: Object. How is this
 20 witness able to speak to what OMAFRA or Finance had
 21 done at this point?
 22 BY MR. LISUS:
 23 997 Q. Do you see OMAFRA saying that to
 24 Finance?
 25 A. I see what they say here, yes.

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1 998 Q. Were you, sir, given any modelling
 2 or briefed on what the impact of the proposed
 3 phased-out reduction of Finance would be?
 4 A. Not that I can recall.
 5 999 Q. Right. And again, sir, that
 6 wasn't -- that was not your job; that was the job
 7 of the ministries that were bringing these
 8 proposals forward and the ministries affected by
 9 them, correct?
 10 A. Yes.
 11 1000 Q. And here we hear OMAFRA telling
 12 Finance, as no design currently exists for the
 13 proposed transfer payment program, it's difficult
 14 to predict what the impact may be on the sector,
 15 right?
 16 A. Yes.
 17 MR. RATCLIFFE: Mr. Lisus, again that's
 18 what the document says and Mr. McGuinty said that
 19 he hadn't seen the document before, and I'm sure
 20 that you presented all these questions to Mr.
 21 Duncan when you had a chance to examine him. So...
 22 MR. LISUS: I don't know that I did or
 23 I didn't, Mr. Ratcliffe. I don't know that it
 24 particularly matters.
 25 MR. RATCLIFFE: Well, he was the

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1 Minister of Finance at the time. Mr. McGuinty
 2 hasn't seen this document, so again this whole line
 3 of questioning, I'm not sure that it takes us
 4 anyplace.
 5 MR. LISUS: Oh, I think it does.
 6 BY MR. LISUS:
 7 1001 Q. And then we do see that OMAFRA
 8 tells Finance that:
 9 "It is likely that the
 10 standardbred racing facilities will
 11 be the most significantly downsized,
 12 as a number of small tracks are
 13 highly dependent on the SARP funding
 14 from slots."
 15 Right?
 16 A. I see that.
 17 1002 Q. And if we go to the bottom of the
 18 page, we see suggested comments on the submission.
 19 The second last bullet we see:
 20 "The policy change can be
 21 expected to be controversial.
 22 OMAFRA is contemplating targeted
 23 approaches for outreach with rural
 24 stakeholders to discuss government's
 25 role in rural Ontario. Such an

<p style="text-align: right;">Page 271</p> <p>1 outreach could include participation 2 from other ministries. Coordinated 3 communications planning would be 4 warranted." 5 Do you see that? 6 A. Yes. 7 1003 Q. And that indeed is what you would 8 expect for a change of this nature, that there 9 would be coordination with stakeholders led by the 10 ministry responsible for the areas in which those 11 stakeholders are affected, right? 12 A. There would be a heavier 13 responsibility on this ministry. 14 1004 Q. This ministry being OMAFRA? 15 A. OMAFRA, given the controversial 16 nature of the decision we were contemplating. 17 1005 Q. And again, sir, I'm not suggesting 18 that it was your responsibility to ensure that 19 there was or had been such consultation, but it was 20 your expectation that there would have been such 21 consultation and such an approach? 22 A. Yeah, but here we're talking about 23 consultation to come. 24 1006 Q. Correct. With respect to the 25 proposed transfer payment program?</p>	<p style="text-align: right;">Page 273</p> <p>1 1011 Q. And you also assumed that Finance 2 was doing its job which would include consultation 3 with stakeholders and experts about any important 4 recommendations it was bringing forward? 5 A. Yes. In both cases as they saw 6 fit. 7 1012 Q. Right. Now, I want to ask you, 8 sir -- we're now on February the 2nd, okay? And 9 I'm going to give you an email, CRE360917, and just 10 take a look at that email. 11 You are not on the email but it's an 12 email from Mr. Bardeesy to senior staffers in your 13 office and Mr. Duncan's office. 14 A. (Witness reads document). Yes. 15 1013 Q. Okay? Now, I want to give you 16 back Exhibit 37, just to have it in front of you 17 because I want to orient you to the timing here. 18 We see from Exhibit 37 that on Thursday, February 19 2nd at 10 to 1:00 in the afternoon, OMAFRA sends to 20 Finance the information note that we've just 21 discussed. Do you see that? 22 A. This information note here? 23 1014 Q. Yes. 24 A. Um-hmm. 25 1015 Q. That is sent from OMAFRA to</p>
<p style="text-align: right;">Page 272</p> <p>1 A. Yes. 2 1007 Q. Right. Now, sir, I want to ask 3 you -- and that's the next exhibit if I didn't mark 4 it. 5 EXHIBIT NO. 37: Note, Bates numbered 6 CRE29902. 7 BY MR. LISUS: 8 1008 Q. And, sir, as of February the 2nd 9 you did understand that there had been underway a 10 land-based gaming review by the OLG for over a year 11 or for any event an extended period of time, 12 correct? 13 A. I knew that there was a review 14 underway. I'm not sure about the extent of my 15 knowledge regarding recommendations flowing from 16 that. 17 1009 Q. Fair enough, but you had also 18 assumed that that review involved extensive 19 consultations with stakeholders and experts, 20 correct? 21 A. I assumed that OLG was doing its 22 job. 23 1010 Q. Right. And that job would include 24 consultation with stakeholders and experts, right? 25 A. I assume so.</p>	<p style="text-align: right;">Page 274</p> <p>1 Finance on Thursday, February 2nd at 10 to 1:00 in 2 the afternoon? 3 A. Um-hmm. 4 1016 Q. Yes? 5 A. Yeah. 6 1017 Q. And the note from OMAFRA is sent 7 to Assistant Deputy Minister Goodwin at 1:15 on the 8 afternoon of February 2nd. Do you see that? 9 A. Yes. 10 1018 Q. Now, go to the email I've just put 11 in front of you, which I'm going to mark as the 12 next exhibit in sequence so I can refer to it. 13 MR. MATTHEWS: 38. 14 EXHIBIT NO. 38: Email, Bates numbered 15 CRE360917. 16 BY MR. LISUS: 17 1019 Q. That same day, sir, at 4:26 in the 18 afternoon, the same day as Finance has a note from 19 OMAFRA, there is a meeting, it appears, with you 20 and Mr. Bardeesy. Do you see that? 21 A. Yes. 22 1020 Q. It finishes at 4:26 or around 4:26 23 in the afternoon, because Mr. Bardeesy says: 24 "Hi all, meeting with Premier 25 just ended."</p>

<p style="text-align: right;">Page 275</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 1021 Q. So, about three hours after the</p> <p>4 OMAFRA note goes to or is circulated within</p> <p>5 Finance, a meeting that you were at concludes, and</p> <p>6 at that meeting the proposal that was to go to</p> <p>7 Cabinet was discussed with you, correct?</p> <p>8 A. I don't know what written</p> <p>9 materials were presented to me at that time. I</p> <p>10 don't recall the meeting.</p> <p>11 1022 Q. That's what I was going to ask.</p> <p>12 You have no recollection of the meeting?</p> <p>13 A. That's correct.</p> <p>14 1023 Q. Okay. And Mr. Bardeesy told me,</p> <p>15 when I asked him about this meeting, that the</p> <p>16 people who were present at the meeting was him,</p> <p>17 you, and Mr. Gene. Does that assist your</p> <p>18 recollection?</p> <p>19 A. No.</p> <p>20 1024 Q. And again, sir, just as I gain an</p> <p>21 understanding of how this process and government</p> <p>22 works, at this meeting you would rely heavily on</p> <p>23 recommendations given to you by staff, right?</p> <p>24 Correct?</p> <p>25 A. Yes, they may have -- it would not</p>	<p style="text-align: right;">Page 277</p> <p>1 of important Cabinet initiatives that my staff</p> <p>2 would meet with me ahead of time, and just as they</p> <p>3 got an opinion from other Cabinet ministers and</p> <p>4 interested caucus members, they would also want to</p> <p>5 get my opinion.</p> <p>6 1029 Q. Okay.</p> <p>7 A. So that when we went into this</p> <p>8 Cabinet meeting we had some sense of how things</p> <p>9 were about to unfold.</p> <p>10 1030 Q. But your opinion would have been</p> <p>11 based on the information provided to you by staff</p> <p>12 in briefings and their recommendations, correct?</p> <p>13 A. Yes. But --</p> <p>14 1031 Q. If it wasn't an issue that you</p> <p>15 yourself were --</p> <p>16 A. Immersed in.</p> <p>17 1032 Q. -- immersed in or had knowledge</p> <p>18 of, correct?</p> <p>19 A. Yes.</p> <p>20 1033 Q. And you were not, certainly, on</p> <p>21 February 2nd immersed in the horseracing funding</p> <p>22 issue, correct?</p> <p>23 A. I was not.</p> <p>24 1034 Q. You in fact didn't know anything</p> <p>25 about it; fair?</p>
<p style="text-align: right;">Page 276</p> <p>1 be unusual for them to provide me with written</p> <p>2 briefing notes to take home. I often left -- every</p> <p>3 day I left the office with much to read.</p> <p>4 1025 Q. But you don't recall taking home</p> <p>5 any written briefing notes about what the</p> <p>6 transition funding model for horseracing was to be</p> <p>7 at February 2nd, 2012?</p> <p>8 A. I can't recall that, no.</p> <p>9 1026 Q. We have seen, however, that it</p> <p>10 would appear that as of February 2nd it was still</p> <p>11 proposed to be a phased-down approach with \$100</p> <p>12 million transfer payments, right?</p> <p>13 A. Yes.</p> <p>14 1027 Q. Okay. And Mr. Bardeesy reports</p> <p>15 that the Premier was inclined to go to zero for</p> <p>16 horseracing. Do you see that?</p> <p>17 A. Yes.</p> <p>18 1028 Q. Now, I interpret that, sir, that</p> <p>19 that was your reaction to a recommendation or</p> <p>20 proposal that was put to you by staff who were</p> <p>21 familiar with and had been working on the question</p> <p>22 of what to do about horseracing funding and you had</p> <p>23 an inclination about it; is that fair?</p> <p>24 A. That makes sense. Let me situate</p> <p>25 this as a practice. So, it was usual in the case</p>	<p style="text-align: right;">Page 278</p> <p>1 A. I knew -- at this point in time I</p> <p>2 would have known something, I'm sure, about the</p> <p>3 proposal put forward by OLG. Just so you're aware</p> <p>4 of what was on my mind at the time of this meeting,</p> <p>5 I would have had the proposal from OLG, I would</p> <p>6 have by this time, I believe, heard something about</p> <p>7 the Drummond report.</p> <p>8 1035 Q. Okay.</p> <p>9 A. I understand he didn't say "and</p> <p>10 SARP," but there was a red flag that he had</p> <p>11 attached to the program. As far as I'm concerned,</p> <p>12 OLG was attaching a red flag to the program in</p> <p>13 terms of its sustainability. I would have -- I</p> <p>14 would have been told that our support for the</p> <p>15 industry was considerably more than it was in other</p> <p>16 parts of the country.</p> <p>17 1036 Q. You would have been told that?</p> <p>18 A. Yes.</p> <p>19 1037 Q. Right.</p> <p>20 A. And the last thing of course that</p> <p>21 I was seized with at this point in time, and what</p> <p>22 we were seized with as a government, was the fiscal</p> <p>23 imperative, we had to reduce our expenditures, we</p> <p>24 had to find savings, we had to balance the budget</p> <p>25 and we had to protect our core services,</p>

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1 particularly health care and education.
2 So that would be -- if you want to know
3 what weighed heavily on my mind at that time --
4 1038 Q. Right.
5 A. -- that would be it.
6 1039 Q. Okay. And you would have been
7 given a recommendation by the Finance people and
8 perhaps by your staff, but more likely Finance
9 because it was a Finance initiative, about which
10 direction to go with respect to horseracing
11 funding?
12 A. They would come to me with a
13 recommendation.
14 1040 Q. And the recommendation would have
15 come from Finance, correct, who were bringing
16 forward the initiative and had been working on it?
17 A. No, not necessarily. The
18 recommendation could have been something at my
19 office.
20 1041 Q. Do you remember?
21 A. I can't.
22 1042 Q. I examined Mr. Bardeesy -- excuse
23 me, Mr. Shortill, who was Chief of Staff of
24 Minister Duncan, who was the minister bringing this
25 proposal forward, correct?

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1 A. Yes.
2 1043 Q. And I asked him what advice he
3 gave to Minister Duncan about the phase-out option
4 developed by Finance that you and I have been
5 looking at for the last few hours, and this is what
6 he said:
7 "Question: Do you have any
8 recollection on giving him advice
9 about a phase-out option developed
10 by Finance?
11 Answer: I recall giving him my
12 final advice which would have
13 negated this potential option.
14 Question: And your final advice
15 was terminate the revenue sharing
16 with the horseracing industry with
17 no phase-out?
18 Answer: That's correct.
19 Question: And was that your
20 advice?
21 Answer: Yes.
22 Question: And what was your
23 advice based on?
24 Answer: It was based on our
25 government's priorities for funding

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1 health care and education, not
2 subsidizing the horseracing
3 industry.
4 Question: Is that it?
5 Answer: That is it.
6 Question: What did you study to
7 formulate that advice?
8 Answer: I just had general
9 knowledge of our government policy
10 priorities.
11 Question: And what study did you
12 make of the effect that that
13 recommendation would have on the
14 horseracing industry?
15 Answer: I made no study. I
16 simply prioritized our government's
17 priorities.
18 Question: What study did you
19 make of the consequences that the
20 recommendation would have on the
21 ability of racetracks to offer live
22 horseracing?
23 Answer: Again, I made no study.
24 It was based upon our government's
25 priorities.

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1 Question: What study did you
2 make of the consequences that the
3 decision would have on the
4 investments that breeders had made
5 in their horses and farms?
6 Answer: Again, I made no study.
7 It was based solely on our
8 government's priorities.
9 Question: What study did you
10 make of the consequences that the
11 decision would make on the 60 --
12 would have on the 60,000
13 standardbred horses then existing in
14 the Province of Ontario?
15 Answer: Again, I made no study
16 based upon that criteria. It was
17 solely based on our government's
18 priorities.
19 Question: What study did you
20 make of the consequences of that
21 decision on employment in rural
22 Ontario in the agricultural sector?
23 Answer: I made no study based on
24 that. It was solely based on our
25 government's priorities.

<p style="text-align: right;">Page 283</p> <p>1 Question: Did you ask anyone to 2 make any study of the various 3 consequences that I have just asked 4 you about when you made that 5 recommendation? 6 Answer: I recall that there were 7 requests for studies made at some 8 point. I don't know if I made those 9 requests or not. 10 Question: But they were not made 11 before that recommendation was made 12 and for the purposes of making that 13 recommendation? 14 Answer: I can't recall when they 15 were made, but for the purposes of 16 making the recommendation I made, it 17 was based solely upon our 18 government's priorities for health 19 care and education. 20 Question: Did you know, sir, 21 what the consequences of your 22 recommendation would be on the 23 investment that standardbred 24 breeders had in their horses, farms 25 and operations?</p>	<p style="text-align: right;">Page 285</p> <p>1 advice. 2 Question: And your advice was 3 among those points? 4 Answer: Yes. 5 Question: I take it from your 6 prior answers that you didn't see 7 any analysis of the consequences 8 that we have discussed when you made 9 your decision? 10 Answer: I can't recall if I saw 11 any of the analysis you speak of. 12 Question: And I take it you 13 didn't undertake any study or 14 analysis of the consequences on 15 racetracks of the decision to 16 terminate revenue sharing effective 17 March 2013? 18 Answer: I undertook no analysis. 19 Question: And you didn't confer 20 in any manner with the Ontario 21 Racing Commission about the 22 consequences of the decision to 23 terminate revenue sharing effective 24 March 2013 with no transition 25 assistance?</p>
<p style="text-align: right;">Page 284</p> <p>1 Answer: I understood the 2 consequences and my recommendation 3 to be informing the minister and 4 Cabinet was a deliberative process. 5 Question: I'll give you the 6 question again. Did you know what 7 the consequences of your 8 recommendation would be on the 9 investment of breeders and their 10 horses, farms and operations? 11 Ms. La Horey: He answered your 12 question. 13 By Mr. Lisus: 14 Question: So that's a no? 15 Answer: I would answer my 16 question exactly as I previously 17 answered it. 18 Question: Okay. Was it on the 19 basis of your recommendation that 20 Minister Duncan decided to terminate 21 the revenue sharing effective March 22 2013 with no transition assistance? 23 Answer: I don't know what he 24 based his decision on. Most likely 25 it encompassed a few viewpoints and</p>	<p style="text-align: right;">Page 286</p> <p>1 Answer: I don't recall speaking 2 with them at that time." 3 So that's what Mr. Shortill testified, 4 that he made the recommendation to the Minister of 5 Finance, and you don't have a recollection of this 6 February 2nd meeting, correct, sir? 7 A. No. 8 1044 Q. And is this the first time that 9 you have heard that there was no study undertaken 10 by the Ministry of Finance with respect to the 11 consequences of the decision as discussed in that 12 exchange? 13 MR. ROSENBERG: Objection. That's not 14 Mr. Shortill's evidence. 15 BY MR. LISUS: 16 1045 Q. Mr. McGuinty? 17 MR. RATCLIFFE: Well, he indicated that 18 he doesn't -- Mr. McGuinty indicated he doesn't 19 recall the meeting. You're reading a transcript to 20 him. You've gone through it quickly. Again, I'm 21 not sure that you're putting forward a question 22 that suggests a conclusion that there was nothing, 23 and he wasn't there, he wasn't -- he didn't have 24 access to the information, he didn't have access to 25 the transcript, so I think the question you're</p>

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1 asking is really unfair.
 2 BY MR. LISUS:
 3 1046 Q. Let me ask you this question,
 4 Mr. McGuinty. You don't have any recollection of
 5 the February 2 meeting, correct?
 6 A. That's correct.
 7 1047 Q. And you don't have any
 8 recollection about what led you to be inclined to
 9 go to zero for horseracing, correct?
 10 A. That's correct. I know generally
 11 what would have been on my mind. I've listed those
 12 four items --
 13 1048 Q. Right.
 14 A. -- a moment ago.
 15 1049 Q. And you have also explained to me
 16 that you would have relied on the people who were
 17 immersed in the decision and the process intended
 18 to measure the impacts of the decision for advice,
 19 right?
 20 A. Yes.
 21 1050 Q. I asked Mr. Shortill whether he
 22 made a recommendation to you, sir, and I asked him:
 23 "Question: Did you make a
 24 recommendation to Dalton McGuinty?
 25 Answer: I made a recommendation

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1 to his office.
 2 Question: Who?
 3 Answer: I can't recall
 4 specifically, but it would have been
 5 any number of his staff.
 6 Question: Karim Bardeesy?
 7 Answer: Most likely, but I don't
 8 recall specifically.
 9 Question: Do you believe that
 10 the recommendation that you made to
 11 his staff was then communicated to
 12 Mr. McGuinty for final decision?
 13 Answer: I don't know.
 14 Question: Was that your
 15 expectation?
 16 Answer: It would have been,
 17 yes."
 18 And so, as a matter of process, sir, is
 19 it fair to have assumed that the Chief of Staff of
 20 the minister who was sponsoring this issue would
 21 have made a recommendation to your Chief of Staff?
 22 MR. RATCLIFFE: Are you trying to
 23 understand the process in terms of those that
 24 advised Mr. McGuinty or spoke to him on that day?
 25 BY MR. LISUS:

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1 1051 Q. Yes, as a matter of how the
 2 process worked. I presume a Chief of Staff would
 3 make a recommendation to a Chief of Staff who would
 4 have made a recommendation to you?
 5 A. Chief and/or head of the policy
 6 shop.
 7 1052 Q. Okay. So that based on the way
 8 the process worked and Mr. Shortill's testimony, it
 9 would appear that the process behind this decision
 10 was that Mr. Shortill, Chief of Staff to Mr.
 11 Duncan, made a recommendation to your --
 12 A. A senior person in my office.
 13 1053 Q. Right. And the senior person in
 14 your office would have carried that recommendation
 15 to you saying this is the recommendation of senior
 16 policy and political staff in both offices, the
 17 call is up to you, but this is our recommendation;
 18 fair?
 19 A. Correct.
 20 1054 Q. All right.
 21 A. Just to be clear, we received --
 22 we receive recommendations, we then decide whether
 23 to accept those or not.
 24 1055 Q. Fair enough. And "we" is you in
 25 this case, being ultimately the head of the

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1 government?
 2 A. Yes.
 3 MR. LISUS: All right. I want to mark
 4 that, if I didn't already, an exhibit. I think I
 5 identified it but didn't put a stamp on it, the
 6 February 2 email.
 7 MR. MATTHEWS: I believe we did mark it
 8 as 38.
 9 MR. RATCLIFFE: Exhibit number 38?
 10 MR. MATTHEWS: Yes.
 11 BY MR. LISUS:
 12 1056 Q. Now, sir, we recently received an
 13 email, CRE563378, and I don't expect you'll have
 14 recollection of the discussions that are referred
 15 to in it, but I just want to continue through with
 16 the timeline now.
 17 This is an email from -- it begins with
 18 an email from Tim Shortill, and he's the Chief of
 19 Staff whose evidence I just read you who made
 20 recommendations about any studies, to Mr. Duncan.
 21 The subject is "Premier." Do you see
 22 that?
 23 A. Yes.
 24 1057 Q. And it's an email the evening of
 25 February the 2nd, and it says:

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1 "He will probably call you on
 2 Sunday to connect on gaming."
 3 It looks like Mr. Shortill, Minister
 4 Duncan's Chief of Staff, is telling Minister Duncan
 5 that you will probably call Mr. Duncan on Sunday to
 6 connect on gaming, okay?
 7 A. I see that.
 8 1058 Q. And at the bottom it says:
 9 "To remind you, zero for
 10 horseracing, we'll phase down over
 11 three years."
 12 Do you see that?
 13 A. Yes.
 14 1059 Q. So it would appear, sir, that as
 15 of the evening, there's going to be zero support
 16 for horseracing, there will be cancellation of the
 17 siteholder agreements, and a phase-down over three
 18 years with the transfer payments. Do you see that?
 19 A. Yes.
 20 1060 Q. And there's some discussion about
 21 jobs and I referred you to this sequence. I take
 22 it you don't have a recollection of a Sunday phone
 23 discussion with Minister Duncan?
 24 A. I don't.
 25 MR. LISUS: Right. Okay, thank you.

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1 That's the next exhibit.
 2 EXHIBIT NO. 39: Email, Bates numbered
 3 CRE563378.
 4 BY MR. LISUS:
 5 1061 Q. But am I correct, sir, having
 6 listened to you carefully, at this point in time,
 7 being the weekend of February 3/4, you understand
 8 that there's been an OLG land-based review,
 9 correct?
 10 A. Yes.
 11 1062 Q. You now have had some briefings by
 12 your staff about it and recommendations have been
 13 given?
 14 A. Yes.
 15 1063 Q. You are concerned about the budget
 16 that has to be passed with a declaration by the
 17 Conservatives in advance that they're going to vote
 18 against it, which would mean another election,
 19 correct?
 20 A. Yes.
 21 1064 Q. You are working with your
 22 political staff with respect to the anticipated
 23 battle you're going to have with the Conservatives
 24 and the NDP, for that matter, with respect to
 25 getting the budget passed and avoiding a

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1 non-confidence vote, right? That's what's on your
 2 mind?
 3 A. That would have been a big
 4 consideration.
 5 1065 Q. Right. And you, of course, with
 6 respect to particular budget items or issues, like
 7 land-based gaming review, reasonably relied on
 8 Ministry of Finance staff to have properly
 9 evaluated the consequences of the decisions they
 10 were recommending. That wasn't something you were
 11 concerned about digging down into?
 12 A. No. At the highest level, again,
 13 and in fairness to my staff, I knew that the
 14 support program for horseracing had been
 15 red-flagged by OLG, by Drummond, it had been
 16 brought to my attention that we were providing much
 17 more support to our industry than others in other
 18 provinces.
 19 1066 Q. You were told --
 20 A. And just to conclude, and of
 21 course there was the pressing fiscal imperative of
 22 finding savings, balancing our budget --
 23 1067 Q. Sir, I'm not criticizing --
 24 A. -- and protecting our core
 25 services.

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1 MR. RATCLIFFE: Mr. Lisus, just let him
 2 finish.
 3 THE WITNESS: Just so you know. And
 4 the prime thing I should say, just so you get a
 5 sense of the context at the time, the fiscal
 6 context, every single -- it had been impressed upon
 7 every single minister, maybe Minister Duncan spoke
 8 to this, to come up with savings and even in health
 9 care and education we were able to find close to
 10 \$900 million in savings.
 11 BY MR. LISUS:
 12 1068 Q. I'm not criticizing you, sir. I'm
 13 making sure I understand what was on your mind.
 14 You had been told that the province was subsidizing
 15 horseracing, correct?
 16 A. Yes.
 17 1069 Q. You had been told that the
 18 province was using public funds to subsidize
 19 horseracing, correct?
 20 A. That's correct, that was my
 21 understanding.
 22 1070 Q. You didn't know that -- among the
 23 things you didn't know was that the SARP revenue
 24 share had been identified in every budget since its
 25 inception, correct?

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1	A. That is correct.	1	1079 Q. And then up above, sir, on the
2	1071 Q. You didn't know that there had	2	very top, Susan Ampleford writes to Karim and says:
3	been an extensive process by the Ontario Racing	3	"Karim, never mind below. I
4	Commission in 2010-2011, correct?	4	have just heard from MOF. They've
5	A. I did not.	5	been directed by their minister to
6	1072 Q. You didn't know the extent to	6	remove the transition support so the
7	which the rural economy depended upon revenue from	7	one-year notice period is the
8	Slots at Racetrack Program?	8	transition. We will run with it."
9	A. I would have suspected that this	9	Do you see that?
10	was, as I said, I think, before, not insignificant.	10	A. Yes.
11	1073 Q. Okay. And --	11	1080 Q. And you, sir, don't recall giving
12	A. I knew there was a sustainability	12	a direction to remove transition support on
13	issue. I knew there was a sustainability issue for	13	February 3 so that the one-year notice period was
14	the industry.	14	the transition?
15	1074 Q. Right. As there was for OLG; its	15	A. I do not.
16	performance had not been good?	16	1081 Q. That was done by Finance, it would
17	A. That's correct. I wouldn't call	17	appear?
18	it a sustainability issue for OLG so much as --	18	A. It would appear.
19	1075 Q. Performance?	19	1082 Q. Okay. And if we look just back in
20	A. Yes.	20	the sequence, we see it says:
21	1076 Q. And I want to again take you, sir,	21	"I have DM signed versions of
22	to the sequence of February 3. One thing you	22	deck and detailed submission but I'm
23	weren't doing in this process is second-guessing	23	hearing from MOF staff that the MO
24	Finance about their analysis of the consequence of	24	has asked them to hold off
25	the decision they were recommending, right?	25	production pending ongoing
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1	A. I had and have a great deal of	1	discussion."
2	faith in Minister Duncan and the way he manages the	2	So it would appear that Deputy Orsini
3	ministry, and I have a great deal of faith in the	3	had signed the Cabinet submission in advance. Is
4	civil servants working there.	4	that unusual?
5	1077 Q. I want to show you an email	5	A. I don't know. It doesn't strike
6	sequence continuing February 3. If you go to the	6	me as unusual.
7	bottom, we're now on February the 3rd at 10:18 a.m.	7	MR. LISUS: Okay. That's the next
8	MR. MATTHEWS: CRE361000.	8	exhibit.
9	THE WITNESS: I see that.	9	EXHIBIT NO. 40: Email, Bates numbered
10	BY MR. LISUS:	10	CRE361000.
11	1078 Q. And at the bottom there is	11	MR. RATCLIFFE: I'm wondering if it
12	Mr. Bardeesy in your office writing to people in	12	would be good, it's coming up to about 10 after
13	the Cabinet Office at 10:18 on February 3, and	13	11:00, to take a short break now.
14	Mr. Bardeesy says:	14	BY MR. LISUS:
15	"That might be best, thanks.	15	1083 Q. Sure. Just before you do --
16	Can I see a draft before it goes	16	MR. MATTHEWS: This is Exhibit 40.
17	out?"	17	BY MR. LISUS:
18	They're talking, sir, about the binders	18	1084 Q. I'll ask you this one question
19	for the Cabinet meeting.	19	before we take a break, if that's okay?
20	"Also, there's one more thing	20	A. Yes.
21	to land, transition time to zero for	21	1085 Q. Did you read the Auditor General's
22	horseracing. Maybe one year or	22	special report on the Ontario Lottery and Gaming
23	three. Not sure yet. More soon."	23	Corporation modernization plan?
24	Do you see that?	24	A. I did in preparation for this.
25	A. Yes.	25	1086 Q. Did you read in that report that

<p style="text-align: right;">Page 299</p> <p>1 the Auditor General reported that, I'm quoting: 2 "However, the Ministry of 3 Finance staff advised us that the 4 Chief of Staff," that's 5 Mr. Shortill, "of the Minister of 6 Finance's office advised them of the 7 decision to remove the transition 8 plans and any of the transition 9 funding that had been considered in 10 the draft Cabinet." 11 Did you know the Auditor General 12 reported that? 13 A. I do now. 14 1087 Q. All right. 15 A. Yeah. 16 1088 Q. So it seems quite clear that at 17 some time on the 3rd, the Ministry of Finance 18 directed the removal of the transition, the 19 three-year transition funding that we see was in 20 the material, and that ministers were briefed on in 21 advance and OMAFRA was briefed on in advance, 22 correct? 23 A. Yes. 24 MR. ROSENBERG: I object. How on earth 25 would this witness be able to know just reading</p>	<p style="text-align: right;">Page 301</p> <p>1 Answer: OLG didn't conduct any. 2 Question: All right. And 3 certainly go to zero was a very, 4 very substantial change from what 5 OLG recommended? 6 Answer: It was a change, yes, 7 substantial change. 8 Question: And what OLG 9 recommended was a recommendation 10 made after a very thorough and 11 transparent consultation of 12 stakeholders, correct? 13 Answer: Yes. 14 Question: And between the time 15 of OLG's recommendation and the 16 government decision to go to zero, 17 there was no more consultation or 18 transparency, right? 19 Answer: Not by OLG. 20 Question: And you're not aware 21 of any by the government, correct? 22 Answer: I'm not aware of any by 23 the government. 24 Question: And I understand it 25 wasn't your decision, Mr. Phillips,</p>
<p style="text-align: right;">Page 300</p> <p>1 along with the documents, as you are, counsel? 2 BY MR. LISUS: 3 1089 Q. And you recall Mr. Phillips' 4 testimony yesterday, that I read to you yesterday 5 about -- 6 MR. RATCLIFFE: Can you refresh his 7 memory as to what you're referring to? 8 BY MR. LISUS: 9 1090 Q. To refresh your memory, sir, 10 Mr. Phillips testified as follows: 11 "Question: Between the time 12 that OLG made its 84-page report and 13 its recommendation to the government 14 and it decided to go to zero in 15 February 2012, there were no new 16 studies, right? 17 Answer: No. 18 Question: No new information? 19 Answer: Not that I am aware of. 20 Question: No more consultations? 21 Answer: Again, not that I am 22 aware of that the government does on 23 its own. 24 Question: Because I haven't seen 25 any.</p>	<p style="text-align: right;">Page 302</p> <p>1 but you were aware and OLG was aware 2 that there would be an immediate 3 negative impact." 4 Do you recall me reading you that 5 evidence from Mr. Phillips, the CEO of OLG? 6 A. Yes. 7 1091 Q. Sir, can you and I agree that 8 between the recommendation of transition funding, 9 stepping down to \$100 million annual transfer 10 payments, which appears to have been -- which 11 appears to have been the recommendation and the 12 approach up to February 3, and the decision by the 13 Minister of Finance which we have just seen on 14 February 3, there were no new consultations, 15 studies or analyses that you were aware of or you 16 were briefed on, correct? 17 A. Yes. 18 MR. LISUS: We'll take our break. 19 -- RECESS AT 11:13 -- 20 -- UPON RESUMING AT 11:24 -- 21 BY MR. LISUS: 22 1092 Q. So, Mr. McGuinty, I want to just 23 follow through this sequence with you and I want to 24 show you an email sequence, CRE12973. 25 And what this sequence demonstrates</p>

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1	when you look at it is the staff being involved in	1	1096 Q. Okay. At this point, sir, the
2	the preparation of the Cabinet material and in	2	deck is under preparation and I presume you are now
3	particular changes to the Cabinet slide. The	3	preparing to go to the Cabinet the following week,
4	process is being led by Mr. Bardeesy in terms of	4	but you're not immersed in details of proposals
5	the recommended changes. Mr. Bardeesy from your	5	being brought forward by ministries; fair?
6	office on Saturday, February 4 at 12:35 where he	6	A. That's fair.
7	says:	7	1097 Q. And I want to show you one more --
8	"The Cabinet deck on page 1	8	MR. RATCLIFFE: Are you done with this?
9	should speak to subsidy to the	9	MR. LISUS: Yes, that's the next
10	horseracing industry being	10	exhibit.
11	eliminated, not reduced."	11	EXHIBIT NO. 41: Email, Bates numbered
12	Do you see that?	12	CRE12973.
13	A. Yes.	13	BY MR. LISUS:
14	1093 Q. And then he goes on to say:	14	1098 Q. And, sir, I did this out of
15	"After stakeholder	15	sequence, this is an email saying on February 3 --
16	considerations should go a slide	16	I want to show you...
17	that includes additional elements	17	So I'm going to ask you, sir, before
18	that were considered, then	18	you look at CRE361002, I want to ask you to look at
19	rejected..."	19	CRE360994 which is February the 3rd, and it's an
20	D) is:	20	email sequence from the morning beginning at 10:31
21	"Maintaining a Slots at	21	a.m. between the Assistant Deputy Minister of
22	Racetrack Program subsidy at 100	22	Finance and others at the Finance and Cabinet
23	million."	23	Office.
24	MR. RATCLIFFE: Sorry, where is D) that	24	MR. RATCLIFFE: Just give Mr. McGuinty
25	you're making reference to?	25	a moment to review.
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1	BY MR. LISUS:	1	BY MR. LISUS:
2	1094 Q. "After stakeholder	2	1099 Q. Yes.
3	considerations should go a slide	3	A. (Witness reads document). Okay.
4	that includes additional elements	4	1100 Q. And what we see here, sir, is a
5	that were considered, then rejected,	5	discussion about the Cabinet documents getting
6	specifically lottery style products	6	signed by the Deputy Minister and the Minister,
7	in the hospitality sector, B)	7	correct?
8	self-serve lottery machines, C)	8	"DM signed off, Liz actively
9	extra casino in the GTA area D)	9	harassing MO for remaining
10	maintaining a Slots at Racetrack	10	signature."
11	Program subsidy at 100 million."	11	A. Right. I'm not sure what the
12	And it goes on to say:	12	remaining signature reference is.
13	"I think Minister Duncan is	13	1101 Q. I think it's a signature for
14	still working on how best to	14	Minister Duncan, okay?
15	position this, but my understand is	15	A. Okay.
16	he wants to say that these were	16	1102 Q. And now I do want to show you
17	considered, then rejected, rather	17	CRE361002. I'm going to mark the exhibit I just
18	than giving Cabinet the chance to do	18	showed you as the next exhibit.
19	this stripping out itself."	19	MR. MATTHEWS: CRE360994 is Exhibit 42.
20	Do you see that, sir?	20	EXHIBIT NO. 42: Email, Bates numbered
21	A. Yes.	21	CRE360994.
22	1095 Q. And I take it you don't recall	22	MR. LISUS: And I'm going to mark
23	being involved in any discussion or deliberation	23	CRE361002 as the next exhibit, 43.
24	like that with Minister Duncan?	24	EXHIBIT NO. 43: Email, Bates numbered
25	A. I do not.	25	CRE361002.

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1 BY MR. LISUS:
 2 1103 Q. So, you have Exhibit 42 and 43.
 3 A. (Witness reads document).
 4 1104 Q. And if we look at Exhibit 42, sir,
 5 we see that at 11:29 a.m. on February 3, Assistant
 6 Deputy Minister of Finance Barry Goodwin says:
 7 "Just got new final PO and MO
 8 policy instruction on horseracing
 9 and need to make some edits. But
 10 signatures still fine."
 11 And then three minutes later there is
 12 an email from Adrian Scott. Do you know that
 13 person?
 14 A. No.
 15 1105 Q. Okay. In Cabinet Office, that's
 16 CAB, see that? Does CAB mean Cabinet Office?
 17 A. Yes, it does.
 18 1106 Q. It says:
 19 "Horseracing down to one year."
 20 Right? Up at the top of Exhibit 42?
 21 A. Oh, yes, right at the very top,
 22 yes, yes.
 23 1107 Q. That's at 11:29 on February the
 24 3rd, correct?
 25 A. Yes.

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1 1108 Q. Then if you take a look, please,
 2 at Exhibit 43.
 3 A. Yes.
 4 1109 Q. At 11:30 a.m. on February 3rd, the
 5 bottom email, Mr. Bardeesy says: Communications
 6 page, or:
 7 "Comms page will have to change
 8 to represent emerging key messages."
 9 And in it he says:
 10 "Initiatives, modernize gaming,
 11 make it more efficient in a
 12 responsible fashion. Meeting
 13 demand, in meeting with P now. More
 14 when done."
 15 Now, "P" is a reference to you,
 16 correct?
 17 A. Yes.
 18 1110 Q. So that's at 11:30. And Ms.
 19 Ampleford in the Cabinet Office says:
 20 "FYI below from PO. Stay
 21 tuned."
 22 And at 11:33, Barry Goodwin in Finance
 23 says to folks in the Finance department and Cabinet
 24 Office:
 25 "And horseracing positioning

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1 changing to a complete exit from
 2 program support in April 2013. Just
 3 the notice period and out."
 4 That comes from Finance. Do you see
 5 that?
 6 A. Yes.
 7 1111 Q. So seeing that email, it would
 8 appear, as we discussed just before the break, that
 9 this decision is made by Finance and you based on
 10 the information provided to you at the time,
 11 supported it, correct?
 12 MR. RATCLIFFE: Do you remember?
 13 THE WITNESS: I can't recall. I can't
 14 recall the conversation I had, what my inclination
 15 might have been, apart from the way it's been
 16 recorded by Karim.
 17 BY MR. LISUS:
 18 1112 Q. All right. And if you can give
 19 that back to me, I want to show you CRE32039, which
 20 is the proposed Cabinet minute. We're now at
 21 February 7, the day before the Cabinet meeting.
 22 A. (Witness reads document).
 23 1113 Q. It's a proposed Cabinet minute and
 24 it says:
 25 "We have obtained Cabinet

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1 Office and Premier's Office (Karim)
 2 and OLG agreement on revised minute
 3 attached."
 4 And that is an email from Barry Goodwin
 5 to Tim Shortill, Blair Stransky and Steve Orsini.
 6 So this is the Cabinet minute as of February 7 at
 7 4:08 p.m.
 8 And if you go, sir, to number 4 in the
 9 Cabinet minute, you'll see that it's changed to
 10 remove all reference to transition support funding
 11 over three years, and it simply says:
 12 "MOF to direct OLG to provide
 13 notice to terminate the 18 current
 14 siteholder agreements with racetrack
 15 operators, siteholders, effectively
 16 ending the Slots at Racetrack
 17 Program by March 31, 2013."
 18 Right?
 19 A. I see that.
 20 1114 Q. And it would appear that this
 21 approval from your office has come from Karim
 22 Bardeesy?
 23 A. It would appear.
 24 MR. LISUS: Okay. Now, may I have that
 25 back, sir. That's the next exhibit.

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1	MR. MATTHEWS: 44.	1	1124 Q. Your understanding, sir, was that
2	EXHIBIT NO. 44: Proposed Cabinet	2	the revenue shared with the horseracing industry
3	minute, Bates numbered CRE32039.	3	was either a business support or economic
4	BY MR. LISUS:	4	development program which was much richer than
5	1115 Q. Now, you don't have a recollection	5	others?
6	of the Cabinet meeting on February 8, correct?	6	A. Other provinces.
7	A. Only the foggiest.	7	1125 Q. Right?
8	1116 Q. But obviously a deck was prepared	8	A. Yes.
9	for the Cabinet meeting?	9	1126 Q. And that it was in the nature of a
10	A. Yes.	10	subsidy using public money?
11	1117 Q. And would you have received a copy	11	A. I prefer to call it support.
12	of the deck?	12	1127 Q. Using public funds?
13	A. I would have received some	13	A. Yes.
14	materials ahead of time.	14	1128 Q. And if you go to page 713 --
15	1118 Q. Mr. Bardeesy explained that	15	MR. ROSENBERG: What's the page number
16	typically the actual Cabinet members would only	16	at the bottom?
17	receive the Cabinet agenda and the Cabinet briefing	17	MR. LISUS: Four.
18	note. Does that accord with your recollection of	18	MR. ROSENBERG: Thank you.
19	the practice?	19	BY MR. LISUS:
20	A. I'm not aware of what they would	20	1129 Q. The minister's speaking points
21	have received.	21	say:
22	1119 Q. Okay. And it was typical for	22	"It is worth noting that the
23	there to be speaking points prepared for the	23	Drummond report will make several
24	sponsoring minister of a proposal?	24	recommendations for OLG that the
25	A. Yes.	25	government will need to review.
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1	1120 Q. And I want to give you the Cabinet	1	These include..."
2	materials that were before Cabinet on February the	2	And he identifies as the third:
3	8th.	3	"Several other recommendations
4	And I want to first refer you to the	4	that are consistent with OLG's
5	minister's speaking points.	5	proposal, including eliminating the
6	A. What page would those be on?	6	Slots at Racetrack funding support
7	1121 Q. Page, looking at the bold numbers,	7	to the horseracing industry."
8	710.	8	Correct?
9	MR. RATCLIFFE: Here it is.	9	A. I see that.
10	BY MR. LISUS:	10	1130 Q. And it was your understanding,
11	1122 Q. Okay?	11	sir, as of February 8 that Mr. Drummond had
12	A. Got it.	12	recommended the elimination of the Slots at
13	1123 Q. Do you see on page 711, just above	13	Racetrack funding support to the horseracing
14	"Proposal," the third, the bubble just above	14	industry as indicated in the minister's speaking
15	"Proposal," the speaking notes say:	15	points, right?
16	"Finally, based on the previous	16	A. No, my sense of the Drummond
17	government's direction, OLG	17	report, as I think the way I saw it, was he
18	continues to provide \$345 million	18	red-flagged it. I don't recall a specific
19	annually from slot revenues to the	19	recommendation that we eliminate the program.
20	horseracing sector which is	20	1131 Q. Do you see where it is identified
21	significantly richer than other	21	as an elimination of Slots at Racetrack funding?
22	jurisdictions or other government	22	A. In this document here?
23	economic development programs."	23	1132 Q. Yes.
24	Right?	24	A. Yes.
25	A. Yes.	25	1133 Q. And that's not accurate, correct?

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1	A. That's a different interpretation.	1	A. Yes.
2	1134 Q. Okay.	2	1143 Q. And you also understood, sir, and
3	A. Again, I think I mentioned this	3	Cabinet was told that ending the Slots at Racetrack
4	yesterday, Mr. Lisus, but speaking notes serve as a	4	Program was one of the steps that had to be taken
5	guide for many ministers. Some ministers stick to	5	to implement the recommendations of OLG's --
6	them, others don't. So I don't know exactly what	6	A. That was part of it, yes.
7	he said.	7	1144 Q. Right. And you also understood
8	1135 Q. Okay. And I want to take you to	8	that, and Cabinet was told, that termination of the
9	page 7 of the note, the briefing note.	9	Slots at Racetrack Program was an essential step
10	A. Is that page 716?	10	for OLG to relocate existing slot facilities to
11	MR. RATCLIFFE: Are you talking about	11	more appropriate allocations, right?
12	the bold?	12	A. I don't recall that. What I do
13	BY MR. LISUS:	13	recall is consideration was terminating the
14	1136 Q. It's page -- best to switch to the	14	program.
15	bottom right-hand corner, Mr. McGuinty, page 7 of	15	1145 Q. I'm just looking at page 25 under
16	20. Gave it to me and I'll turn it up for you.	16	"Horseracing":
17	Page 7 of 20 at the bottom, reasons for?	17	"The termination of the SARP
18	A. Yes.	18	program is an essential step for OLG
19	1137 Q. These were the reasons for, given	19	to relocate existing slot facilities
20	to Cabinet, and over the page are the reasons	20	to more appropriate locations and to
21	against, correct?	21	address disincentives in the
22	A. Yes, just give me a second here.	22	municipal arrangements."
23	1138 Q. Sure.	23	A. I see that.
24	A. I want to see what this is. I'm	24	MR. RATCLIFFE: Give Mr. McGuinty an
25	just trying to understand the package. We have	25	opportunity to look at page 25 and the paragraph
Page 316		Page 318	
1	speaking notes, followed by a Cabinet submission	1	you're referring to.
2	decision document. It is a lot of material	2	BY MR. LISUS:
3	relative to Cabinet meetings. And then followed by	3	1146 Q. Yes.
4	a Cabinet briefing note.	4	A. (Witness reads document).
5	1139 Q. Right.	5	1147 Q. Right? Okay?
6	A. All right.	6	A. I see that, yes.
7	MR. RATCLIFFE: Sorry, what was your	7	1148 Q. And you understood, sir, and
8	question, Mr. Lisus?	8	Cabinet understood that the recommendations coming
9	BY MR. LISUS:	9	forward were brought forward after an extended --
10	1140 Q. Those were the reasons for and	10	excuse me, an extensive stakeholder consultation
11	against given to Cabinet?	11	process. That's what you understood?
12	A. Yes.	12	A. A usual consultation process.
13	1141 Q. Okay.	13	1149 Q. Well, look at page 56 under the
14	A. They obviously don't represent the	14	heading "Stakeholder Management." And before we
15	discussion that followed and other concerns that	15	get there, it's not in controversy, sir, I believe,
16	were raised and addressed.	16	that the termination of SARP revenue share without
17	1142 Q. We don't want you to tell us about	17	transition support was presented as part of the OLG
18	that. Or your counsel doesn't want you to tell us	18	modernization process, right?
19	about that.	19	A. Yes.
20	Now, in the Cabinet material, sir, if	20	1150 Q. And we see here:
21	you look at page 13, bottom right-hand corner, what	21	"OLG undertook an extensive
22	you understood was being recommended to Cabinet was	22	stakeholder consultation process as
23	a modernization of the OLG that had been the	23	part of its review of land-based
24	subject of extensive study and consultation by OLG,	24	gaming and lottery distribution
25	correct?	25	networks."

<p style="text-align: right;">Page 319</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 1151 Q. And it identifies the various</p> <p>4 stakeholders that were consulted, right?</p> <p>5 A. Um-hmm. I see that.</p> <p>6 1152 Q. Yes? For instance, Rural Ontario</p> <p>7 Municipal Association on page 62, the horseracing</p> <p>8 industry on page 63, the horseracing industry.</p> <p>9 MR. RATCLIFFE: Just give him a moment</p> <p>10 to flip to those pages, 62 and 63, please.</p> <p>11 BY MR. LISUS:</p> <p>12 1153 Q. Sure.</p> <p>13 A. Yes.</p> <p>14 1154 Q. But you and I can agree, sir,</p> <p>15 based on the information and documents that we have</p> <p>16 talked about today and yesterday, that none of</p> <p>17 these stakeholders were consulted about the</p> <p>18 decision to terminate SARP revenue share with zero</p> <p>19 transition support, correct?</p> <p>20 MR. ROSENBERG: Objection.</p> <p>21 MR. RATCLIFFE: Mr. McGuinty is not in</p> <p>22 a position to answer that.</p> <p>23 MR. LISUS: Please.</p> <p>24 BY MR. LISUS:</p> <p>25 1155 Q. It's quite clear that up until</p>	<p style="text-align: right;">Page 321</p> <p>1 MR. LISUS: Sir, that is a fact and I</p> <p>2 want this witness' answer on it.</p> <p>3 BY MR. LISUS:</p> <p>4 1158 Q. Can we agree, sir, that you saw no</p> <p>5 evidence of any consultation with the horseracing</p> <p>6 industry of the decision to terminate SARP revenue</p> <p>7 share with zero transition support?</p> <p>8 MR. RATCLIFFE: Perhaps you can</p> <p>9 rephrase your question and base it upon what you've</p> <p>10 read to him.</p> <p>11 BY MR. LISUS:</p> <p>12 1159 Q. Based on the documents that you</p> <p>13 have seen, sir, which are documents given by the</p> <p>14 government to me, there was no consultation with</p> <p>15 the horseracing industry about the decision made on</p> <p>16 February 3rd or 4th to terminate SARP revenue share</p> <p>17 with zero transition support, correct?</p> <p>18 A. Correct.</p> <p>19 1160 Q. All right.</p> <p>20 A. But, again, this is something I</p> <p>21 mentioned earlier, you need to reconcile that with</p> <p>22 the responsibility owed to protect budgetary</p> <p>23 secrecy.</p> <p>24 1161 Q. We'll talk about budget secrecy in</p> <p>25 a minute. Certainly this statement that there was</p>
<p style="text-align: right;">Page 320</p> <p>1 February the 3rd, the only decision that was under</p> <p>2 consideration was termination effective March 31,</p> <p>3 2013 and three years of transition funding. You've</p> <p>4 seen that, right, sir?</p> <p>5 A. I've seen that.</p> <p>6 1156 Q. Right. And you've heard</p> <p>7 Mr. Phillips' explanation of what consultation</p> <p>8 there was, correct?</p> <p>9 A. Yes.</p> <p>10 1157 Q. And you and I can agree, sir,</p> <p>11 based on what you have seen in these documents,</p> <p>12 there was no consultation with the horseracing</p> <p>13 industry about the decision made on February 3rd</p> <p>14 and 4th to terminate SARP revenue share with zero</p> <p>15 transition support; that is correct, right?</p> <p>16 MR. RATCLIFFE: Why do you need</p> <p>17 Mr. McGuinty's comment --</p> <p>18 MR. LISUS: Because he's the head of</p> <p>19 government, Mr. Ratcliffe, and he endorsed this</p> <p>20 position. And what was put to Cabinet was not an</p> <p>21 accurate presentation of the process that</p> <p>22 underwent. Mr. McGuinty didn't know that.</p> <p>23 MR. RATCLIFFE: You have read excerpts</p> <p>24 and that is your argument and you're free to put</p> <p>25 that argument forward.</p>	<p style="text-align: right;">Page 322</p> <p>1 consultation with the horseracing industry in this</p> <p>2 Cabinet deck does not appear to be accurate,</p> <p>3 correct?</p> <p>4 MR. ROSENBERG: Objection.</p> <p>5 MR. LISUS: What is the basis of the</p> <p>6 objection, Mr. Rosenberg?</p> <p>7 MR. ROSENBERG: The objection is that</p> <p>8 this witness has not reviewed the consultation</p> <p>9 minutes that were provided by OLG which clearly</p> <p>10 outlined the importance of the program to</p> <p>11 stakeholders. You'll see this at pages 64 and 65</p> <p>12 of the Cabinet submission, that the Cabinet was</p> <p>13 advised of the importance of this program and the</p> <p>14 extremely negative reaction of horse people groups,</p> <p>15 and it would be fair for you to review that with</p> <p>16 the witness before asking him if it was understood,</p> <p>17 on the basis of those consultations, clearly there</p> <p>18 would be an extremely negative reaction by horse</p> <p>19 people.</p> <p>20 MR. LISUS: Are you telling me,</p> <p>21 Mr. Rosenberg, on behalf of your client that the</p> <p>22 horseracing industry was consulted by OLG in its</p> <p>23 consultation process about the cancellation of SARP</p> <p>24 revenue share effective April 1, 2013 with zero</p> <p>25 transition support? Is that the position of OLG?</p>

Page 323	<p>1 MR. ROSENBERG: I'm not here to give 2 evidence for OLG. 3 MR. LISUS: Because the position of 4 Mr. Phillips, his testimony under oath, is that 5 there was no such consultation. 6 MR. ROSENBERG: That's not a fair 7 summary of Mr. Phillips' evidence. What I'm saying 8 to you is putting these categorical questions to 9 the witness about consultations in which he was not 10 involved, you're not even showing him the relevant 11 portions of the Cabinet submission, it's not fair. 12 BY MR. LISUS: 13 1162 Q. Mr. McGuinty, let's take a look at 14 the Cabinet submission. The Cabinet submission 15 talks about stakeholder reactions, and 16 Mr. Rosenberg wants me to direct you to page 64. 17 Do you see page 64? 18 A. Yes. 19 1163 Q. Stakeholders, Standardbred 20 Association? 21 A. Yes. 22 1164 Q. Now, you and I discussed a few 23 minutes ago when the decision to go to zero 24 transition funding was made. It appears from the 25 emails that you and I looked at, sir, and the</p>	<p>1 industry stakeholders between February 1st and 2 February 8th, 2012, correct? 3 A. If there was consultation that 4 took place during that period of time, I'm not 5 aware of it. 6 1169 Q. Right. And so, based on what you 7 are aware of, sir, the statement to Cabinet that 8 OLG undertook an extensive stakeholder consultation 9 process which included consultation about the 10 decision to terminate SARP revenue share with no 11 transition funding is not accurate; fair? 12 MR. ROSENBERG: Isn't that in the 13 Cabinet submission? 14 MR. LISUS: I understand this is 15 sensitive, folks, but you have to let the witness 16 answer. He was at Cabinet. He's head of the 17 government. Cabinet material is put to Cabinet 18 that is clearly wrong. 19 MR. ROSENBERG: Mr. Lisus, my only 20 objection is you misleading the witness here. Show 21 us where there's that last statement in the 22 Cabinet. 23 BY MR. LISUS: 24 1170 Q. Let's look at it together, 25 Mr. McGuinty, page 56:</p>
Page 324	<p>1 meeting they described, it was made by Ministry of 2 Finance on February 4th, correct? 3 A. Yes, it appears that way. 4 1165 Q. All right. And -- 5 MR. ROSENBERG: I should say, counsel, 6 page 63/64. I misspoke earlier about the page 7 numbers. 8 BY MR. LISUS: 9 1166 Q. Take a look at page 63, sir. It 10 talks about the other stakeholders. You and I can 11 agree, sir, that there is no evidence in the record 12 that we have reviewed, maybe my friends have other 13 evidence they haven't produced, that either OHRIA 14 or the standardbred association or any other 15 stakeholder was consulted between February 3 and 16 February 4, 2012 when the decision to go to zero 17 with no transition support was made. Right? 18 A. I have no reason to believe that. 19 1167 Q. You have no reason to believe that 20 there was such consultation? 21 A. That's correct. 22 1168 Q. All right. Because in the 23 material that you have seen in preparing to give 24 evidence today, you haven't been directed to or 25 seen any material that reflects consultation with</p>	<p style="text-align: right;">Page 326</p> <p>1 "OLG undertook an extensive 2 stakeholder consultation process as 3 part of its review of land-based 4 gaming and lottery distribution 5 networks. Specific stakeholder 6 reactions are explored below." 7 Do you see that? 8 A. Yes. 9 1171 Q. And we can agree, sir, that what 10 is being put to Cabinet for its consideration is a 11 decision made by Finance to terminate SARP revenue 12 share with zero transition support, correct? 13 A. Yes. 14 1172 Q. And can we also agree, sir, that 15 as we reviewed the record, there is no evidence 16 that stakeholders were consulted about the decision 17 to terminate Slots at Racetrack Program with no 18 transition support? Right? 19 A. Correct. But I'm not sure -- I'm 20 not sure it says -- I'm not sure it says in the 21 Cabinet submission that OLG undertook a stakeholder 22 consultation specific to the end of SARP. 23 What it does say is it undertook an 24 extensive stakeholder consultation process as part 25 of its review.</p>

<p style="text-align: right;">Page 327</p> <p>1 1173 Q. Correct. And OLG, sir, as we have 2 seen, never recommended the termination of funding 3 to the horseracing industry. That came from 4 Finance. Right? 5 A. I'm just saying that they're not 6 saying in here that their consultations included 7 that. 8 1174 Q. No. What they're saying is that 9 there was an extensive consultation process. Can 10 we agree on that? 11 A. Yes. 12 1175 Q. All right. 13 A. And I think they have fairly 14 assessed the reaction for Cabinet to consider in 15 terms of how this would be received by industry. 16 1176 Q. But, Mr. McGuinty, the horse trade 17 was never told? 18 MR. RATCLIFFE: Mr. Lisus, you took 19 Mr. McGuinty to page 63 and 64 and you asked him 20 about the comments there in terms of the reaction 21 there. Perhaps he can answer that question. 22 That's what he's trying to do now. 23 MR. LISUS: That's fine, but, sir, he 24 has already answered the question. 25 BY MR. LISUS:</p>	<p style="text-align: right;">Page 329</p> <p>1 MR. LISUS: The Auditor General's 2 report is not an exhibit but I'll do that now. The 3 Auditor General's report, special report, is the 4 next exhibit. What is that? 5 MR. MATTHEWS: 45. 6 EXHIBIT NO. 45: Special report of the 7 Auditor General, Bates numbered SB5062. 8 BY MR. LISUS: 9 1181 Q. Do you see at the bottom of page 10 46 -- 11 A. Yes. 12 1182 Q. "Did the province or OLG 13 properly consult or consult various 14 industries, businesses and 15 municipalities impacted by the 16 cancellation of the Slots at 17 Racetrack Program? 18 No. As part of the strategic 19 business review it conducted between 20 July 2010 and June 2011, OLG met 21 with key stakeholders from the 22 horseracing industry and discussed 23 the expansion and sustainability of 24 the industry with the help of gaming 25 at racetracks. At these meetings,</p>
<p style="text-align: right;">Page 328</p> <p>1 1177 Q. You and I can agree that the 2 horseracing industry, as of February 8, was not 3 told that the Ministry of Finance had decided to 4 terminate SARP revenue share with zero transition 5 support? That is crystal clear, correct? 6 MR. RATCLIFFE: And he answered that 7 question. 8 BY MR. LISUS: 9 1178 Q. That's a yes, right? 10 MR. RATCLIFFE: He answered your 11 question. He said -- 12 MR. LISUS: Well, you keep jumping in 13 when I am trying to complete the sequence. 14 BY MR. LISUS: 15 1179 Q. The answer to that question is 16 yes, correct? 17 A. Yes. And I threw in the caveat of 18 budget secrecy. 19 1180 Q. I appreciate it, thank you. And 20 can we also take a look at page 48, please. And 21 before we go to 48, I want to give you a finding of 22 the Auditor General which you read in preparation 23 for this examination. 24 MR. RATCLIFFE: What exhibit number is 25 that?</p>	<p style="text-align: right;">Page 330</p> <p>1 the stakeholders emphasized the 2 importance of the Slots at Racetrack 3 Program for the continued success of 4 the industry, and they raised 5 concerns about the negative impact 6 that expanding the slots only 7 facilities to locations other than 8 racetracks would have on racetrack 9 slot revenues and betting. Industry 10 stakeholders conveyed to us that at 11 no time was cancelling the program 12 discussed. OLG employees confirmed 13 that." 14 See that? 15 A. Yes. 16 1183 Q. All right. So, in addition to the 17 documents, sir, you and I reviewed over the last 18 day and a half, the Auditor General conducted an 19 investigation and confirmed, with the confirmation 20 of OLG, that stakeholders were never told about the 21 cancellation of the Slots at Racetrack Program, 22 right? 23 A. It would appear so. 24 1184 Q. Okay. And so, when the Cabinet 25 material says to Cabinet that there was extensive</p>

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1	stakeholder consultation, there was not extensive	1	with you. And you understood that there had been
2	stakeholder consultation about cancelling Slots at	2	an extensive consultation. That's the only point
3	Racetrack Program, correct?	3	I'm making. Right?
4	A. Correct.	4	A. Yeah.
5	1185 Q. All right.	5	MR. RATCLIFFE: Well, I think you've
6	A. But I'm not sure the Cabinet	6	asked that question and he's answered it.
7	document specifically states that OLG is --	7	BY MR. LISUS:
8	conducted such consultation.	8	1193 Q. And I think the witness just said
9	1186 Q. Geez, when I look at the document	9	"yeah." Is that correct, sir?
10	that's what it seems to say to me, sir.	10	A. Yeah. The difference -- the
11	MR. ROSENBERG: You're not giving	11	difference that we might have is that I'm not sure
12	evidence here, Mr. Lisus.	12	at the time I would have assumed that any changes
13	BY MR. LISUS:	13	made inside government were the subject of
14	1187 Q. When I read the document --	14	consultation.
15	MR. RATCLIFFE: Mr. Lisus --	15	1194 Q. Fair enough. In fact, we know
16	BY MR. LISUS:	16	that they were not, right?
17	1188 Q. OLG undertook -- I want to	17	A. Yes.
18	understand how you understand this, sir. I read	18	1195 Q. Okay. Now, sir, you had an
19	the sentence:	19	understanding, as you explained to me, about the
20	"OLG," at the bottom of page	20	nature and extent of analysis and study and
21	56, "undertook an extensive	21	consultation, correct?
22	stakeholder consultation process as	22	A. Yes.
23	part of its review of land-based	23	1196 Q. And --
24	gaming and lottery distribution	24	A. I do now.
25	networks."	25	1197 Q. You do now?
Page 332		Page 334	
1	Does that not suggest that OLG	1	A. Yes.
2	undertook an extensive consultation process?	2	1198 Q. And it's different from what you
3	A. It did.	3	had then?
4	1189 Q. Okay.	4	A. Yes.
5	A. But that does not mean to me, and	5	1199 Q. What you had then was you believed
6	it would not necessarily at the time have meant to	6	there was a much more extensive study and
7	me, that the various iterations that bubbled up	7	consultation process than you now understand there
8	inside Finance, after receiving advice from OLG,	8	was, fair?
9	were taken out by OLG and consulted upon over and	9	A. It was less than I assumed.
10	over again.	10	1200 Q. Okay. I think that's fair to say.
11	1190 Q. So you think that when the Auditor	11	And I understand that, sir. It wasn't your
12	General reports that OLG never consulted with	12	responsibility to do the stakeholder consultation
13	stakeholders about cancelling the program, and that	13	analysis and study; you had other things to do.
14	the OLG employees confirmed this, that the Auditor	14	Fair?
15	General might have it wrong and OLG might have gone	15	A. Yes.
16	out and done that before the decision was made, do	16	1201 Q. And you are aware, sir, that in
17	you?	17	the aftermath of the decision that was made, a
18	A. No, no, that's not what I'm	18	panel was appointed consisting of Mr. Snobelen,
19	saying. That's not what I'm saying.	19	Mr. Wilkinson and Mr. Buchanan, correct?
20	1191 Q. I didn't think so.	20	A. Yes.
21	A. But, in fairness, what I would	21	1202 Q. And Mr. Wilkinson was a Cabinet
22	have counted on, speaking as a member of Cabinet,	22	colleague of yours; am I correct.
23	is what's the reaction going to be? I need to know	23	A. Yes, he sat in my Cabinet.
24	that.	24	1203 Q. He was a fellow that your
25	1192 Q. I understand that, sir. I agree	25	government respected and trusted?

Page 335	<p>1 A. Yes.</p> <p>2 1204 Q. And were you involved in the</p> <p>3 appointment of the panel?</p> <p>4 A. I don't believe so. I think that</p> <p>5 came from Finance and possibly Finance working in</p> <p>6 concert with OMAFRA.</p> <p>7 1205 Q. But were you generally aware that</p> <p>8 a panel was appointed?</p> <p>9 A. Yes.</p> <p>10 MR. MATTHEWS: The Auditor General</p> <p>11 report, SB5062, is Exhibit 45. The package of</p> <p>12 Cabinet materials which is marked as 11 to</p> <p>13 Mr. Shortill's examination is Exhibit 46.</p> <p>14 EXHIBIT NO. 46: Package of Cabinet</p> <p>15 materials.</p> <p>16 BY MR. LISUS:</p> <p>17 1206 Q. Before I ask you a couple of</p> <p>18 questions about this panel, sir, I want to show you</p> <p>19 one more document, CRE27921. This is an email from</p> <p>20 Tanya Watkins to some folks in Finance dated April</p> <p>21 12, 2012. This is after the decision has been made</p> <p>22 and announced.</p> <p>23 And just a little note I want to show</p> <p>24 you. She's been asked to summarize what the</p> <p>25 transition plan initially was before it was</p>	Page 337	<p>1 underneath the table, and the second handwritten</p> <p>2 entry next to the arrow says:</p> <p>3 "Three-year program, 15 to 16</p> <p>4 breeding cycle."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 1210 Q. And we see in the margin as well:</p> <p>8 "Emphasized the time horizon re</p> <p>9 breeding cycle."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 1211 Q. So we see it appears that Finance</p> <p>13 was aware that there was at least a three-year</p> <p>14 breeding cycle for horses, right?</p> <p>15 MR. RATCLIFFE: Do you know if that's</p> <p>16 what the handwritten note means?</p> <p>17 THE WITNESS: I'm not sure.</p> <p>18 MR. LISUS: We'll mark this as an</p> <p>19 exhibit for identification.</p> <p>20 MR. MATTHEWS: Exhibit A.</p> <p>21 EXHIBIT A (for identification): Email,</p> <p>22 Bates numbered CRE27921.</p> <p>23 BY MR. LISUS:</p> <p>24 1212 Q. We were talking about the panel</p> <p>25 and Mr. Wilkinson. You are aware that the panel</p>
Page 336	<p>1 scrapped in favour of zero transition support and</p> <p>2 she outlines the language in this email, sir. And</p> <p>3 you recollect it appears to track the Cabinet</p> <p>4 minute before the transition funding was taken out;</p> <p>5 do you see that?</p> <p>6 MR. RATCLIFFE: Just give him a moment</p> <p>7 to read through it, please.</p> <p>8 THE WITNESS: (Witness reads document).</p> <p>9 Sorry, the question again?</p> <p>10 BY MR. LISUS:</p> <p>11 1207 Q. The question is that the content</p> <p>12 appears to track the Cabinet minute giving</p> <p>13 three-year funding with a hundred million dollar</p> <p>14 transfer payments before it was changed by Finance</p> <p>15 on February 3rd or 4th to remove all transition</p> <p>16 support?</p> <p>17 A. Yes.</p> <p>18 1208 Q. And if you go over the page - this</p> <p>19 is CR27921 and 27922, Mr. Rosenberg - if you go</p> <p>20 over the page to the table, "Ministry of Finance</p> <p>21 Horseracing Transition Approach," do you see that?</p> <p>22 A. Yes.</p> <p>23 1209 Q. And to the second page of the</p> <p>24 "Ministry of Finance Horseracing Transition</p> <p>25 Approach," we see some handwritten entries</p>	Page 338	<p>1 was appointed in June, the first week of June 2012?</p> <p>2 A. I knew there was a panel that was</p> <p>3 appointed. I can't recall the date.</p> <p>4 1213 Q. The record indicates, sir, that</p> <p>5 the panel was appointed June 7, Mr. Wilkinson,</p> <p>6 Mr. Snobelen, Mr. Duncan.</p> <p>7 A. Buchanan.</p> <p>8 1214 Q. Excuse me, not Mr. Duncan. Are</p> <p>9 you aware that Mr. Wilkinson testified in this</p> <p>10 case?</p> <p>11 A. I suspect he would have.</p> <p>12 1215 Q. You're aware that Mr. Wilkinson</p> <p>13 wrote an email to Mr. Gene on August 3?</p> <p>14 A. I remember seeing it as part of</p> <p>15 the package.</p> <p>16 1216 Q. And when you say "part of the</p> <p>17 package," you mean the package you read to prepare</p> <p>18 for giving evidence, right?</p> <p>19 A. Yes, yes. I mean, I recall seeing</p> <p>20 something. Whether I saw this one exactly, I don't</p> <p>21 know, but it rings a bell.</p> <p>22 1217 Q. And you were aware that the</p> <p>23 panel --</p> <p>24 MR. RATCLIFFE: If he could just have a</p> <p>25 moment to refresh his memory by looking at it.</p>

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1 BY MR. LISUS:
2 1218 Q. Sure.
3 A. (Witness reads document). I'm not
4 sure if I saw this one before, but, in any event, I
5 see this one now.
6 1219 Q. Okay. And Mr. Wilkinson is
7 telling Mr. Gene and Mr. Keegan that the panel is
8 satisfied as of August 3 that, as a result of the
9 decision, there will be a total collapse of the
10 industry which will have 23,000 job losses and
11 27,000 dead horses, right?
12 A. I see he said that.
13 1220 Q. Okay. And certainly,
14 Mr. McGuinty, 23,000 job losses and 27,000 dead
15 horses is not something that you expected when you
16 supported Finance's recommendation, correct?
17 A. Again, I knew there would be
18 consequences, I knew they would be significant, and
19 these numbers, like all numbers, I would treat with
20 some healthy skepticism.
21 1221 Q. The panel's numbers were accepted;
22 you appreciate that?
23 A. Delivered?
24 1222 Q. Yes.
25 A. They were delivered to the

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1 government you mean?
2 1223 Q. Yes.
3 A. Yes, yeah.
4 1224 Q. But the question I asked you, sir,
5 is in February 2012 you certainly didn't understand
6 that the consequences of Finance's decision would
7 be 23,000 job losses and 27,000 dead horses. You
8 yourself didn't understand that?
9 A. I don't recall those numbers, no.
10 1225 Q. And if you were told at the time
11 that the consequence of this recommendation is
12 going to be 23,000 job losses, 27,000 dead horses
13 and significant emotional distress for owners and
14 veterinarians, which may cause suicides, you
15 certainly would have said, hold on a minute folks,
16 we need to take a look at this, right?
17 MR. RATCLIFFE: Mr. Lisus, that isn't
18 really a fair question. He indicated that he
19 didn't recall those numbers, and if you go back to
20 the Cabinet submission --
21 MR. LISUS: I have no doubt he didn't
22 recall those numbers, Mr. Ratcliffe, because they
23 weren't given to him. That's my point.
24 BY MR. LISUS:
25 1226 Q. And my question, sir, is had those

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1 numbers been given to you, you would have said,
2 slow down, we need to take another look at this if
3 that's going to be the consequences; fair?
4 MR. RATCLIFFE: Well, it's all
5 speculative.
6 MR. LISUS: No, no, it's not.
7 Mr. Ratcliffe, this is the heart of the case.
8 BY MR. LISUS:
9 1227 Q. If you were told, sir, on February
10 3 Finance has this recommendation but it's going to
11 cost 23,000 full-time jobs, it's going to result in
12 the euthanization or loss of 27,000 horses, there's
13 going to be significant emotional distress and
14 suicides, you would have said, let's just take
15 another look at this, folks; fair?
16 A. I think it's fair to say that had
17 there been information of that nature, we would
18 have considered it. I'm not saying it would have
19 been determinative, but we would have considered
20 it.
21 1228 Q. Right. And what you likely would
22 have done, sir, is said, we need to take a look at
23 this transition funding which Finance appears to
24 have been talking about, either five-year or
25 three-year, and build that into our modelling,

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1 right? Fair?
2 A. I...
3 MR. RATCLIFFE: Well, I think he
4 said --
5 BY MR. LISUS:
6 1229 Q. You don't want to answer that?
7 MR. RATCLIFFE: No, I think it's an
8 unfair question because again you're asking him to
9 speculate about something that we don't know.
10 MR. LISUS: Fair enough. If you don't
11 want to answer the question, sir, and you're
12 refusing it, I'll take that.
13 R/F MR. RATCLIFFE: That's fine.
14 BY MR. LISUS:
15 1230 Q. In any event, sir, in the first
16 week of February 2012 you were not told that there
17 was a multi-year breeding cycle, correct?
18 A. I cannot recall being told that.
19 1231 Q. You cannot recall being told that
20 a five-year and three-year phase-out to reflect the
21 breeding cycle had been modelled by Finance,
22 correct?
23 A. I don't believe I learned of that
24 until I reviewed documents.
25 1232 Q. For the purposes of this

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1 testimony?
 2 A. Yes.
 3 1233 Q. You were not told that in 2010
 4 there were approximately 26,338 horses active in
 5 racing, correct?
 6 A. I don't believe so.
 7 1234 Q. You were not told that 18,184 of
 8 those were standardbred, including breeding stock?
 9 A. I don't believe so.
 10 1235 Q. You were not told that there was a
 11 foal crop of many thousands of horses in the horse
 12 breeding cycle as of February 2012, correct?
 13 A. I don't recollect that.
 14 1236 Q. You were not told that the
 15 immediate termination of SARP revenue share without
 16 transition support would destroy the value of those
 17 horses? You were not told that?
 18 A. I don't recollect that.
 19 1237 Q. You were not told that the
 20 immediate termination of SARP revenue sharing
 21 without transition support would destroy the value
 22 that breeders had made in their farms and
 23 operations following the public announcements of
 24 the Ontario Racing Commission about the Ontario
 25 racing program?

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1 A. Again, I do not recollect that. I
 2 do -- I did understand that there would be economic
 3 consequences that would flow from this.
 4 1238 Q. Of some kind?
 5 A. Yes.
 6 1239 Q. You did not know, as you told me,
 7 that there would be 20 to 30 thousand full-time job
 8 losses?
 9 A. I'm sure we were presented with
 10 numbers. I can't recall which numbers.
 11 1240 Q. The only numbers in the Cabinet
 12 materials, sir, are in the nature of five to six
 13 thousand.
 14 A. I accept that.
 15 1241 Q. Okay. You were not told that
 16 termination of SARP revenue share would lead to
 17 mass euthanization of horses?
 18 A. I can't recall being told that.
 19 1242 Q. You now know that Finance knew,
 20 because of the letters we reviewed yesterday, that
 21 there were 25,000 full-time jobs in the horseracing
 22 industry, correct?
 23 A. Yes, I recall seeing a different
 24 number, I think, put forward by the panel.
 25 1243 Q. The panel said 20 to 30 thousand

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1 job losses.
 2 MR. RATCLIFFE: Well, again, are you
 3 talking about job losses or full-time people
 4 employed? Your question was whether or not there
 5 were 25,000 people employed full-time in the
 6 industry and there were another 15, as I recall,
 7 part-time, so it's not clear what your question --
 8 what you're asking.
 9 BY MR. LISUS:
 10 1244 Q. The Cabinet material estimates
 11 that approximately 1,900 to 2,200 full and
 12 part-time jobs would be lost. That's what the
 13 Cabinet material indicates, okay?
 14 MR. RATCLIFFE: Well, are you reading
 15 from that?
 16 MR. LISUS: I am.
 17 MR. RATCLIFFE: Okay.
 18 BY MR. LISUS:
 19 1245 Q. All right? Certainly, sir, you
 20 didn't understand that the actual consequence would
 21 be 20 to 30 thousand full-time job losses?
 22 MR. ROSENBERG: Can you put the
 23 document in front of the witness and give us a page
 24 number, please.
 25 MR. LISUS: The page number is page 708

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1 of the Cabinet, it's CRE32046. I'm not going to
 2 ask questions about it because the document says
 3 what it says.
 4 BY MR. LISUS:
 5 1246 Q. In any event, sir, no one told you
 6 that the actual job losses were going to be 20 to
 7 30 thousand? That's all.
 8 A. I can't recall specific numbers.
 9 1247 Q. No one told you that OMAFRA had
 10 told Finance that we don't know what the impact
 11 will be even with a \$100 million annual transfer
 12 payment, correct?
 13 A. I don't recall that.
 14 1248 Q. And certainly no one told you that
 15 no one had spoken to OMAFRA or other ministries
 16 about what the impact of zero transition payments
 17 would be, right?
 18 A. I can't recall that.
 19 1249 Q. Okay. You can't recall being told
 20 that?
 21 A. Yes.
 22 1250 Q. You were not told that no
 23 ministers had been briefed on the decision to go to
 24 zero with no transition support?
 25 MR. RATCLIFFE: Well, do we know that

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<p>1 no ministers were briefed? 2 BY MR. LISUS: 3 1251 Q. Sir, the only evidence we've seen 4 of ministers being briefed is when the proposal was 5 a three-year phase-out to \$100 million a year, 6 we've seen that January 31 to February 1, correct? 7 We discussed that this morning, do you recall? 8 A. Yes. I think the first time -- it 9 would appear that the first time that they were 10 presented with the iteration was at the Cabinet 11 meeting itself. 12 1252 Q. Right. And no one told you that 13 there hadn't been any expert analysis of the 14 consequences of the go to zero with no transition 15 support, right? 16 A. I can't recall. I can't recall 17 being told that. 18 1253 Q. In fact, as I think we have 19 discussed a number of times, it just was your 20 working assumption that there had been such 21 analysis or study? 22 A. I think, again, the consultation 23 that I would have been aware of would have been the 24 consultation conducted by OLG. 25 1254 Q. Fair enough. So, we know that</p>	<p>1 the consequences of the decision would be a 2 complete collapse of the industry with 20 to 30 3 thousand job losses and thousands of euthanized 4 horses. They knew that within a month from the 5 cold start. Are you aware of that? 6 A. I am now. 7 1259 Q. Okay. Now, going back to February 8 8, if you look at the Cabinet material and the 9 minute that was approved, number 4, the minute that 10 was approved was Ministry of Finance "to direct OLG 11 to provide notice to terminate the 18 current 12 siteholder agreements with racetrack operators 13 (siteholders) effectively ending the Slots at 14 Racetrack Program by March 31, 2013." 15 See that? 16 A. Yes. 17 1260 Q. So at the conclusion of the 18 Cabinet meeting, sir, it was understood by you and 19 others that there would not be any transition 20 funding or funding from Slots at Racetrack Program 21 after March 31, 2013, right? 22 A. It was effectively a one-year 23 notice. 24 1261 Q. Right. Now, after that Cabinet 25 meeting on February 13 -- excuse me, February 8, on</p>
<p>Page 348 1 Cabinet accepts the decision that was made by 2 Finance to go to zero with no transition support, 3 right? On February 8? 4 A. Yes, that was a proposal put 5 forward by Finance. 6 1255 Q. And now, you mentioned -- and why 7 don't we just take a five-minute break before we go 8 until one o'clock, if that's okay? 9 MR. RATCLIFFE: That's okay. 10 -- RECESS AT 12:30 -- 11 -- UPON RESUMING AT 12:36 -- 12 BY MR. LISUS: 13 1256 Q. Sir, Mr. Wilkinson testified that 14 by July 14, about five weeks after the panel was 15 appointed, they came to the conclusion that as a 16 consequence of the decision, the industry would 17 collapse with the consequences that had been 18 identified. Are you aware of that? 19 A. I can't recall the specifics of 20 their report. 21 1257 Q. Okay. 22 A. I mean -- 23 1258 Q. The point I'm making, sir, is that 24 Mr. Wilkinson testified that from a cold start in 25 June of 2012, by July 14 the panel understood that</p>	<p>Page 350 1 February 13 Mr. Duncan made a speech to the 2 Economic Club of Canada. 3 I'm done with that, thank you. 4 A. Something else. 5 MR. LISUS: The Wilkinson email of 6 August 3 is the next exhibit. 7 MR. MATTHEWS: CRE29291 is 46 -- 47, 8 excuse me. 9 EXHIBIT NO. 47: Email, Bates numbered 10 CRE29291. 11 BY MR. LISUS: 12 1262 Q. Do you recall, Mr. McGuinty, Mr. 13 Duncan making a speech at the Economic Club of 14 Canada on February 13th? 15 A. No. 16 1263 Q. Are you aware that he did make a 17 speech on February 13th? 18 A. On the basis of the materials I 19 read in preparation for today. 20 1264 Q. And you spoke to me a minute ago, 21 or you mentioned a minute ago, budget secrecy? 22 A. Yes. 23 1265 Q. Explain to me what budget secrecy 24 is. 25 A. Governments and Ministries of</p>

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1	Finance in particular have to be mindful of the	1	1275 Q. And that was deliberate, right?
2	economic consequences of disclosing fiscal policy.	2	A. I'm sure it was.
3	1266 Q. And if we look at the speech, if	3	1276 Q. And one of the things that the
4	you go to the fourth page of it, there is a section	4	government is also doing at this point, as it heads
5	circled?	5	into the budget process and the ultimate vote, is
6	MR. RATCLIFFE: What page are you	6	positioning itself with respect to the fight that
7	referring to? Oh, there it is.	7	it knows it's going to have with the opposition and
8	BY MR. LISUS:	8	the NDP with respect to the vote on the budget,
9	1267 Q. Do you see the circled bit?	9	right?
10	A. I do.	10	A. In part.
11	1268 Q. Do you see where he says:	11	1277 Q. Okay.
12	"Since 1998, Ontario taxpayers	12	A. Beyond that, we are positioning
13	have been subsidizing horseracing in	13	ourselves with the teachers.
14	Ontario to the tune of \$345 million	14	1278 Q. Got it.
15	a year through the OLG Slots at	15	A. With others, and we were about to
16	Racetrack Program."	16	freeze their pay and we know what they would say:
17	And he goes on to say things about it.	17	We're going to go through your budget and find out
18	A. Yes.	18	where you're wasting money. I'm not categorizing
19	1269 Q. What's he doing there?	19	this as a waste, just to be clear on that score.
20	MR. RATCLIFFE: I'm not sure the	20	And so all the various stakeholder
21	question is clear.	21	groups, since we were taking \$900 million out of
22	BY MR. LISUS:	22	education and \$900 million out of health care,
23	1270 Q. What's the purpose of making those	23	cancelling ONTC in Northern Ontario, putting the
24	comments about the horseracing industry and what he	24	brakes on expanding the Ontario child benefit
25	characterizes as a subsidy?	25	program, we were going to have to ready ourselves
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1	A. I can't attribute to him what his	1	for a pretty heavy onslaught of disappointment and
2	purpose was.	2	negative reaction.
3	1271 Q. What's the government's purpose in	3	1279 Q. As well as positioning yourself
4	having the Minister of Finance speak about budget	4	for the upcoming fight around the vote and whether
5	matters publicly after Cabinet and before budget is	5	your government would survive it, right?
6	presented?	6	A. Yes. I'm not sure, although I
7	A. I'm not an expert on the hard and	7	read something about it in the documents, at the
8	fast rules as to what may be disclosed and what is	8	time I was -- had no idea that the NDP had any view
9	not. I'm not sure, for example, of in the	9	on this particular matter.
10	legislative bill there is a specific reference to	10	1280 Q. At the time you didn't?
11	the termination of the SARP program.	11	A. Yes.
12	1272 Q. There is not.	12	1281 Q. But the NDP certainly did have a
13	A. That may mean - again, I'm not an	13	view on full-day daycare and kindergarten?
14	expert - that it's not technically part of the	14	A. Yes.
15	budget.	15	1282 Q. And that was important to the NDP?
16	1273 Q. Okay. And that's your --	16	A. Yes.
17	A. We ascribe kind of a broader	17	1283 Q. And you knew that the NDP was, so
18	definition to the budget politically.	18	to speak --
19	1274 Q. Okay. In any event, sir, what you	19	A. Our dance partner, the only one
20	and I can agree is that what Mr. Duncan is doing	20	available.
21	here, he agreed as well, is signalling the	21	1284 Q. Right. And so, you were mindful
22	government's views about what it considers to be a	22	of what was important to the NDP?
23	subsidy to horseracing, right?	23	A. Yes.
24	A. Certainly he's giving his -- his	24	1285 Q. And, sir, are you aware that after
25	characterization.	25	Mr. Duncan's comments at the Economic Club, there

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<p>1 was an immediate reaction to his remarks around the 2 horseracing industry in the media and in the 3 public? 4 A. On the basis of the materials that 5 I saw. 6 1286 Q. Okay. You don't recall being 7 aware at the time? 8 A. No. 9 1287 Q. But it would not have surprised 10 you at the time having regard to what -- 11 A. No. 12 1288 Q. -- he said, right? 13 A. No. 14 1289 Q. In fact, it's fair to anticipate 15 that Mr. Duncan and others, such as Mr. Gene and 16 Mr. Morley and Mr. Shortill, in fact expected there 17 to be a reaction from the industry to Mr. Duncan's 18 comments at the Economic Club? 19 A. I think it would be fair to expect 20 negative reaction. It was, in fact, foretold to us 21 in our Cabinet submission by OLG. 22 1290 Q. Okay. And I just took a look at 23 the internet and selected a collection of 24 statements, media, letters from mainstream and 25 industry media, as well as individuals and MPPs to</p>	<p>1 BY MR. LISUS: 2 1293 Q. And one of the people who reacted 3 to Mr. Duncan's comments was Mr. Snobelen, right? 4 Do you remember that, or no? 5 A. Only, again, through reading 6 materials. 7 1294 Q. Mr. Snobelen made a broadcast on 8 Ontario News Watch. Do you remember that? 9 A. I remember reading something like 10 that, yes. 11 1295 Q. At the time? 12 A. No. 13 1296 Q. Again, sir, am I correct that you 14 weren't particularly focused on this one issue? 15 This was a Finance issue and an OLG issue and this 16 was theirs to manage? 17 A. So we made a decision in Cabinet. 18 It is now the responsibility for execution and 19 delivery, it fell to the appropriate ministries. 20 1297 Q. Correct. And responsibility as 21 well for addressing any consequences that flowed 22 from the decision that were the responsibility of 23 the affected ministries, Finance and OMAFRA? 24 A. Yes. We had effectively in 25 Cabinet decided the what, and the minister's job or</p>
<p>1 Mr. Duncan's remarks. 2 I'm just going to have you flip through 3 them, you don't need to read them, you'll see the 4 dates and where they are. 5 MR. RATCLIFFE: Counsel, what are you 6 suggesting these emails and articles -- 7 BY MR. LISUS: 8 1291 Q. They're media articles, they are 9 letters, emails, they're reactions to Mr. Duncan's 10 February 13 speech and his comments. And from 11 various sources. And that doesn't surprise you at 12 all, sir? 13 A. No. It's -- you know, in fairness 14 to everyone, there had been a government program in 15 place that lent support to a particular industry 16 that was going to be brought to an end and the 17 obvious reaction was going to be negative. 18 1292 Q. From some? 19 A. From some, yes. 20 MR. LISUS: So this collection, sir, is 21 the next exhibit. 22 MR. ROSENBERG: Marked for 23 identification only, Exhibit B. 24 EXHIBIT B (for identification): 25 Collection of news articles.</p>	<p>1 ministries working together was the how. 2 1298 Q. Now, with respect to 3 Mr. Snobelen's comments, you would agree that he is 4 pretty direct in which he says at the end of it: 5 "Good thinking, Dwight. Just 6 kill another industry in Ontario. 7 And pretty soon we can all work for 8 the government." 9 Right? 10 A. That is typical John. I've known 11 him for a long time. It's a lovely political 12 flourish. 13 1299 Q. Is this the same John that was put 14 on the panel? 15 A. Yes. 16 1300 Q. To sort this out? 17 A. Yes. 18 1301 Q. Whose recommendations were 19 accepted? 20 A. Yes. 21 1302 Q. Because he understood the 22 industry? 23 A. Yes. 24 1303 Q. And not a crackpot? 25 A. I'm not saying he is. I'm just</p>

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1 saying he's a great politician.
 2 1304 Q. Sure.
 3 A. And he knows how to get a
 4 headline.
 5 1305 Q. And he knows about the horseracing
 6 industry as well, doesn't he?
 7 A. Yes, he does.
 8 1306 Q. More than Mr. Duncan does, right?
 9 A. I think that's why he was on the
 10 panel.
 11 1307 Q. Right.
 12 MR. MATTHEWS: That's the next exhibit.
 13 EXHIBIT NO. 48: Document.
 14 BY MR. LISUS:
 15 1308 Q. And Mr. Snobelen was a pretty
 16 controversial Cabinet minister himself when he held
 17 the Education portfolio, wasn't he?
 18 A. Yes, he was.
 19 1309 Q. No friend of the NDP?
 20 A. I think it would be hard to get
 21 those two ideologies into the same room.
 22 Personable, nonetheless.
 23 1310 Q. Quite. You weren't concerned,
 24 therefore, about Mr. Snobelen criticizing the
 25 Liberal government in February 2012?

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1 A. No, no. It wouldn't keep me awake
 2 at nights, if that's what you mean.
 3 1311 Q. And you weren't concerned it would
 4 have any impact on the way your hoped-for dance
 5 partner, the NDP, thought about the upcoming
 6 budget, that Mr. Snobelen wasn't happy with it?
 7 A. No.
 8 1312 Q. In fact, the fact that
 9 Mr. Snobelen wasn't happy with what the Liberals
 10 were doing might be helpful to the dance you wanted
 11 to have with the NDP; fair?
 12 A. No, I think you're reaching there.
 13 1313 Q. Okay.
 14 A. Yeah.
 15 1314 Q. And Mr. Snobelen not only made his
 16 broadcast on the 13th but he then wrote a column in
 17 the Sun on the 17th and talked about the McGuinty
 18 government addicted to sin taxes and it stinks. Do
 19 you remember that?
 20 A. No.
 21 MR. RATCLIFFE: Mr. Lisus, were you
 22 going to show all of Mr. Snobelen's newspaper
 23 editorials?
 24 MR. LISUS: No, just those two.
 25 MR. RATCLIFFE: Just those two and not

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1 the other one?
 2 MR. LISUS: Oh, the one where he says
 3 that the decision he made was right?
 4 MR. RATCLIFFE: The decision to
 5 terminate SARP was the correct decision, yes.
 6 MR. LISUS: After he had been a
 7 panelist, right?
 8 MR. RATCLIFFE: That's right.
 9 MR. LISUS: I'm happy to do that, if
 10 you want, Mr. Ratcliffe.
 11 MR. RATCLIFFE: Just in terms of
 12 fairness.
 13 BY MR. LISUS:
 14 1315 Q. Do you know that Mr. Snobelen did
 15 another column after he had completed his panel
 16 work saying what a good decision the panel made?
 17 A. I was not aware of that. But I do
 18 know one thing about Mr. Snobelen - I'll call him
 19 Mr. Snobelen - he's very personable but he can't --
 20 he cannot be pushed around.
 21 1316 Q. Right. That was my experience
 22 with him. He calls it as he sees it?
 23 A. Yes.
 24 1317 Q. And he's often right?
 25 A. There's often some wisdom inside

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1 that bombast, yeah.
 2 1318 Q. On February 23, sir, you spoke in
 3 the House of Commons. Have you reviewed what you
 4 said on that day?
 5 A. No.
 6 1319 Q. I want to show you a Hansard
 7 report. This is obviously --
 8 MR. ROSENBERG: Do you have a copy for
 9 us, counsel?
 10 MR. LISUS: Pardon?
 11 MR. ROSENBERG: Do you have a copy for
 12 us, counsel?
 13 MR. LISUS: I hope so.
 14 MR. MATTHEWS: This has been marked
 15 already as an exhibit. We'll give it to you as
 16 soon as we're done with the witness.
 17 MR. LISUS: What exhibit was it? Off
 18 the record.
 19 -- OFF THE RECORD DISCUSSION --
 20 BY MR. LISUS:
 21 1320 Q. In the House on the 23rd of
 22 February you said that --
 23 MR. RATCLIFFE: Could he just have a
 24 moment to quickly read through it?
 25 BY MR. LISUS:

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1	mysterious person, how does the party find out	1	A. Yes.
2	about the Cabinet's plans about horseracing and the	2 1351	Q. Okay. Let's look at it together.
3	so-called subsidy?	3	Have you read it, ad 1 and ad 2?
4	A. Is this before or after Minister	4	A. Yes.
5	Duncan's speech?	5 1352	Q. Let's look at ad 1:
6 1340	Q. After. They found out from	6	"Did you know that Tim Hudak's
7	Minister Duncan's speech, is what you're telling	7	PCs started a secret subsidy?"
8	me?	8	Let's pause there. That's not
9	A. Yes.	9	truthful, correct?
10 1341	Q. So, by February 13th, Cabinet	10	MR. RATCLIFFE: Are you focusing on the
11	secrecy around the \$345 million so-called subsidy	11	words "secret subsidy"?
12	has gone, right?	12	BY MR. LISUS:
13	A. Well, Minister Duncan made it	13 1353	Q. I'm focusing on that statement.
14	public.	14	That's not a true statement, right?
15 1342	Q. Correct. So whoever this person	15	A. It's a, umm...
16	is in the party now knows about the \$345 million	16 1354	Q. You're hesitating, sir. It's not
17	subsidy and the government's position about it. Is	17	true? There was nothing secret about it?
18	that what we are to extrapolate from this?	18	MR. RATCLIFFE: Let him answer the
19	A. Yeah, I am assuming that -- you	19	question.
20	can remind me, did he deliver the speech before --	20	THE WITNESS: It's a colourful
21 1343	Q. February 13.	21	representation that takes a lot of liberty. I
22	A. February 13. So he made it	22	think I talked before, yesterday, about --
23	public, there was all that newspaper reaction, so	23	BY MR. LISUS:
24	it was in the public domain.	24 1355	Q. It's stretchy with the truth, that
25 1344	Q. So someone in the Liberal Party	25	statement; fair?
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1	arranges these ads, right? And can you give me any	1	A. Yeah.
2	idea who that might be?	2 1356	Q. Okay.
3	A. No.	3	A. Truthy.
4 1345	Q. Well, who's responsible for	4 1357	Q. It's stretchy with the truthy?
5	putting out radio ads on behalf of the party? I	5	A. "Truthy" is a term in American
6	couldn't phone up a radio company and say, I want	6	politics.
7	to put an ad out about a Liberal government policy,	7 1358	Q. Oh, like fake news?
8	right?	8	A. A little less than that, yeah.
9	A. You would have to be a	9	MR. RATCLIFFE: There is an element of
10	representative of the party.	10	truth?
11 1346	Q. Okay.	11	THE WITNESS: There's an element of
12	A. Yeah.	12	truth to it.
13 1347	Q. And who had authority in February	13	BY MR. LISUS:
14	2012, sir, to put out this kind of radio ad on	14 1359	Q. I see. So this is a stretchy,
15	behalf of the Liberal Party of Ontario?	15	truthy, element-of-truth statement? Because it
16	A. There was a party office.	16	wasn't secret, we've seen that. It was in every
17 1348	Q. Yes.	17	budget, right?
18	A. With people working inside that	18	A. The truth is very few people knew
19	office who would have the various positions and	19	about it, but that doesn't make it secret.
20	responsibilities.	20 1360	Q. Sir, every racetrack operator knew
21 1349	Q. And what's the person -- and	21	about it?
22	what's the position who would have procured this	22	A. I mean, if I was to poll 13
23	ad?	23	million Ontarians, and even though this had been in
24	A. I don't know.	24	the budget over and over again --
25 1350	Q. Do you see the ad?	25 1361	Q. If you polled the horseracing

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1	industry everyone would know about it, right?	1	ad was not being fair to the folks who depended
2	A. I think --	2	upon the flow of funds from SARP revenue sharing.
3	MR. RATCLIFFE: In fairness, Mr. Lisus,	3	Can you and I agree on that, Mr. McGuinty?
4	Mr. McGuinty said it wasn't secret. He agreed with	4	A. Yes, it's not a fair
5	you it wasn't secret.	5	representation of the support and the beneficiaries
6	BY MR. LISUS:	6	of that support.
7	1362 Q. And the characterization of secret	7	1373 Q. Thank you. And whoever composed
8	is not true?	8	this ad draws an unfair picture of the
9	A. You know, I don't want to defend	9	beneficiaries of that support, as you call it,
10	the wording in this.	10	correct?
11	1363 Q. Why not?	11	MR. RATCLIFFE: I think he's answered
12	A. Because that's not how I would	12	that, Mr. Lisus. We're just going over the same
13	govern myself. It's not how I would represent	13	territory again.
14	these circumstances or these facts.	14	BY MR. LISUS:
15	1364 Q. Fine. And the reason you	15	1374 Q. And what the person who designed
16	wouldn't, sir - and I appreciate you saying that -	16	this ad does, sir, is contrast, you and I can
17	is because, as you told us earlier, these were	17	agree, the beneficiaries of that support with the
18	tough economic times, right?	18	beneficiaries of full-day kindergarten, four- and
19	A. Yes.	19	five-year old children, right? That's how the ad
20	1365 Q. And the horse breeders and the	20	is designed? See that?
21	farmers in rural Ontario depended on the revenue	21	A. The ad is designed to be
22	from SARP, right?	22	provocative.
23	A. Yes.	23	1375 Q. But the way in which it is
24	1366 Q. And this decision was going to	24	provocative, sir, is it contrasts a few very
25	have a very negative impact on them, right?	25	wealthy racetrack owners with 50,000 four- and
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1	A. Yes.	1	five-year old stranded children, right?
2	1367 Q. And these were not monied people	2	A. Yes, it's making that contrast,
3	and didn't have a lot of alternatives, correct?	3	yes.
4	A. We knew that --	4	1376 Q. And 50,000 four- and five-year old
5	1368 Q. Sir, just answer that question.	5	stranded children in need of full-day kindergarten
6	You knew these were not monied people and they	6	is the responsibility of the Minister of Education,
7	didn't have a lot of alternatives?	7	correct?
8	A. You know what? I have no idea of	8	A. Yes.
9	the level of wealth of these folks.	9	1377 Q. And it's the Minister of Education
10	1369 Q. Fair enough. Anyway --	10	who disseminates this ad, isn't it?
11	A. And no preconceptions.	11	A. The Minister of Education
12	1370 Q. All right. So you wouldn't have	12	disseminates this ad?
13	governed yourself this way, but your party did, and	13	1378 Q. Take a look at -- is that
14	certainly, sir, the next truthy aspect, to use your	14	surprising to you?
15	term of this, is that this subsidy, as you	15	A. Yes, I don't know what you mean by
16	characterize it, was not for a few very wealthy	16	"disseminate."
17	racetrack owners. Thousands of people depended on	17	1379 Q. Who was the Minister of Education
18	this flow of funds, right?	18	in February 2012; do you recall, sir?
19	A. I think that's fair.	19	A. Laurel Broten.
20	1371 Q. Okay. And therefore, the	20	1380 Q. She was a Cabinet minister?
21	statement that it was a "secret subsidy for a few	21	A. Yes.
22	very wealthy racetrack owners" is manifestly	22	1381 Q. She was at the Cabinet meeting on
23	unfair; right?	23	February 8th?
24	A. I'm not comfortable with it.	24	A. I believe so.
25	1372 Q. Okay. And whoever composed this	25	1382 Q. Part of the deal that you did with

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<p>1 the NDP or your government did with the NDP to get 2 them to abstain from voting against the budget was 3 to take \$242 million from the education budget and 4 give it to kindergarten and daycare, right? That 5 was part of the deal? 6 A. I can't recall the specificity of 7 it but... 8 1383 Q. Sounds right? 9 A. Yes. Yeah. 10 1384 Q. And you see here Laurel Broten 11 sending an email on Sunday, February 26th from 12 Laurel Broten, dailywire@ontarioliberal.ca. What 13 is that email address? 14 A. I don't know what that is. 15 1385 Q. Do you know who John Woodwich (ph) 16 is? 17 A. No. 18 1386 Q. Legislative assistant to Minister 19 of Finance. Did you know that? 20 A. No. 21 1387 Q. And Minister Broten says: 22 "Friends: 23 This week our government made 24 more of the thoughtful choices that 25 we will see eliminate the deficit.</p>	<p>1 she's sending this from. 2 1391 Q. She's the Minister of Education, 3 sir. 4 A. Yeah. 5 1392 Q. And she's sending it, signing the 6 email Laurel Broten, Minister of Education. That's 7 what she signs off as. See that? 8 A. Yes. 9 1393 Q. Okay. So, can you and I agree, 10 sir, that she's sending this in her capacity as a 11 Cabinet Minister when she sends an email like that? 12 MR. RATCLIFFE: Are you talking about 13 sending the email or are you talking about the ads? 14 MR. LISUS: The ads are in the email, 15 Mr. Ratcliffe. 16 MR. ROSENBERG: I object. How is he 17 supposed to be able to speak to what Ms. Broten is 18 doing and in what capacity? 19 MR. LISUS: Because I'm showing him his 20 email signed by the Minister of Education, 21 Mr. Rosenberg. 22 MR. ROSENBERG: And he said it came 23 from a Liberal.ca address. 24 MR. LISUS: You're putting words in his 25 mouth. He agreed --</p>
<p>1 We simply can't afford to support 2 the \$345 million a year horseracing 3 subsidy started by the Hudak PCs..." 4 MR. RATCLIFFE: Sorry, what part of the 5 email are you reading from? 6 BY MR. LISUS: 7 1388 Q. The third paragraph -- or the 8 second paragraph. 9 "...not when the same amount of 10 money could get better health care 11 for seniors and a full-day 12 kindergarten for our four- and 13 five-year olds." 14 Do you see that? 15 A. Yes. 16 1389 Q. Then she says: 17 "That's why starting today 18 we're spreading the word. Listen to 19 our new radio ads here." 20 Do you see that? 21 A. Yes. 22 1390 Q. And what she's saying is "we're 23 spreading the word," that's the government, right, 24 Mr. McGuinty? 25 A. Well, it's a Liberal Party address</p>	<p>1 MR. RATCLIFFE: Where are the words of 2 the ad in that email? 3 BY MR. LISUS: 4 1394 Q. We'll get there in a minute. Do 5 you see where she signs the email Laurel Broten, 6 Minister of Education? 7 A. Yes. 8 1395 Q. So can you agree with me, sir, 9 that when one of your Cabinet ministers sends out a 10 document signed with their name and their title, 11 Ministry of Education, they are representing their 12 communication to be in their capacity as a minister 13 of the government? 14 A. I don't know if, and I speak from 15 experience in this regard, Ms. Broten, who this 16 email was sent out. 17 1396 Q. Ah, this might have been done for 18 her by one of her political staffers? 19 You're nodding? 20 A. Yes, I am. 21 1397 Q. Okay. So this whole sequence may 22 actually have been done by political staffers that 23 Cabinet ministers didn't know about, are you 24 saying? 25 A. It's a possibility.</p>

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<p>1 1398 Q. Okay. And because that's what 2 political staffers do sometimes; is that what 3 you're saying? 4 A. Sometimes they do things without 5 their bosses knowing and sometimes they can 6 overstep themselves and sometimes the -- you know, 7 this isn't -- what I'm talking about is not a 8 matter of ill-will or surreptitious. It's just 9 these are busy undertakings and it may have been - 10 it may have been, I'm just speculating here, to be 11 very clear - if you have something to the contrary 12 then please show it to me - but it's possible, 13 certainly in the political offices, for somebody to 14 say well, I'm going to get this out there, it's 15 related to education, we're education, we'll just 16 get it out there. 17 1399 Q. And, sir, that's why you are 18 saying that when you look at the content of this ad 19 and this email, this is not the way you would 20 govern yourself and not the way you would want your 21 Cabinet to govern itself, fair? 22 A. Well, I would certainly want it to 23 be clear that there is a separation between the 24 party and the government. 25 1400 Q. And this is a political strategy</p>	<p>1 Do you see that? 2 A. Yes. 3 1402 Q. Email: 4 "We simply can't afford to 5 support the \$345 million a year 6 horseracing subsidy started by the 7 Hudak PCs." 8 See that? 9 A. Yes. 10 1403 Q. Ad: 11 "Tim Hudak says these rich 12 payouts should be protected. He'd 13 cancel full-day kindergarten leaving 14 50,000 four- and five-year olds 15 stranded." 16 Email: 17 "Not when the same amount of 18 money could get better health care 19 for our seniors and full-day 20 kindergarten for our four- and five- 21 year olds." 22 Do you see that? 23 A. Yes. 24 1404 Q. Ad: 25 "Did you know that Tim Hudak's</p>
<p>1 designed by the political side of government, is 2 what you seem to be telling me, sir? 3 MR. RATCLIFFE: Well, Mr. Lisus, in 4 reference to the actual words of the ad, you said 5 you were going to connect this email to those 6 words. 7 MR. LISUS: It's embedded in the ad. 8 It's embedded in the email, okay? 9 "That's why starting today 10 we're spreading the word. Listen to 11 our new radio ads here." 12 MR. RATCLIFFE: And you're assuming 13 then these are the words that they are spreading or 14 planning to spread? 15 MR. LISUS: Yes, Mr. Ratcliffe, I am. 16 Unless someone in Ontario wants to tell me there is 17 some other ad in Minister Broten's email. 18 BY MR. LISUS: 19 1401 Q. Is there? Because let's look at 20 them together, sir. 21 Mr. McGuinty, when I look at the text 22 of the ad -- let's have a look. We'll compare the 23 ad with the email, okay? Radio ad 1: 24 "Did you know that Tim Hudak's 25 PCs started a secret subsidy?"</p>	<p>1 PCs started a secret subsidy for a 2 few very wealthy racetrack owners?" 3 Email: 4 "But in these times of 5 restraint, Tim Hudak would choose to 6 protect a few wealthy racetrack 7 owners while seniors and 8 kindergarten students are left in 9 the dust." 10 Do you see that? 11 A. Yes. 12 1405 Q. Pretty clear the email and the ad 13 have the same content, right? 14 A. The lead-up to the ad and the ad 15 have the same content. 16 1406 Q. Okay. In fact, the lead-up to the 17 ad, as you say, pretty fairly characterizes the 18 content of the ad, right? Pretty fairly captures 19 the content of the ad, right? 20 MR. RATCLIFFE: Well, again, 21 Mr. Lisus -- 22 MR. LISUS: Please don't interrupt. 23 MR. RATCLIFFE: I am if it's -- 24 MR. LISUS: No, you put the proposition 25 that the email isn't the same as the ad. I've</p>

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1 demonstrated to him that it is and he agreed that
 2 the lead-up to the ad appears to be the same as the
 3 content of the ad.
 4 MR. RATCLIFFE: And that's fine, and
 5 you're free to put that theory forward in terms of
 6 your argument. He indicated earlier on in his
 7 answer to your question that he didn't know who
 8 sent this out. He gave you a hypothetical
 9 possibility. But again, he doesn't know the answer
 10 to your question. He doesn't know who sent that
 11 email.
 12 BY MR. LISUS:
 13 1407 Q. The Ontario Liberal Party sent
 14 this email, right? Mr. McGuinty?
 15 A. No, it's not the party. It's
 16 dailywire@ontarioliberal.ca.
 17 1408 Q. This was an ad put out by the
 18 Ontario Liberal Party?
 19 A. Oh, this ad, the original ad, yes.
 20 1409 Q. The Ontario Liberal Party put this
 21 ad out, sir?
 22 A. Yes.
 23 1410 Q. And it put the ad out to assist --
 24 A. In fairness, I am only assuming
 25 this was put out by the Ontario Liberal Party.

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1 1411 Q. We'll address that. We are
 2 assuming it was put out by the Ontario Liberal
 3 Party. It's clearly a political ad, correct?
 4 A. Yes.
 5 1412 Q. And it was part of a strategy to
 6 drive a wedge between the NDP and the PCs with
 7 respect to racetracks and daycare; fair?
 8 MR. RATCLIFFE: Do you know that?
 9 MR. LISUS: Please don't do that,
 10 Mr. Ratcliffe. It's a cross-examination. Conduct
 11 yourself as if you were in court.
 12 BY MR. LISUS:
 13 1413 Q. That's a fair statement as to what
 14 this is all about, right?
 15 A. I don't know about the wedging.
 16 1414 Q. That's a reasonable interpretation
 17 of what's going on here with this, right?
 18 A. But, um..., I don't know about the
 19 wedging. But I do know that its's again not the
 20 language or a representation that I am personally
 21 comfortable with.
 22 1415 Q. And what this ad is doing is
 23 trying to set the Liberals and their values apart
 24 from the Progressive Conservatives and their
 25 values. It's clear from that point, correct?

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1 A. Yes.
 2 1416 Q. And --
 3 A. I think where you're stretching, I
 4 think, is -- I think it's a bit of a stretch,
 5 having been in the business for a while myself, to
 6 think that this would somehow incent the NDP one
 7 way or the other.
 8 1417 Q. We know that there is a specific
 9 reference to daycare and kindergarten, correct?
 10 A. Yes.
 11 1418 Q. We know that the deal you did with
 12 the NDP was to provide an additional \$242 million
 13 for daycare and kindergarten, correct?
 14 A. I don't know when that came about.
 15 1419 Q. Well, I can tell you, if you want
 16 me to refresh your memory.
 17 A. Did that come about before this
 18 ad?
 19 1420 Q. No, it came about after this ad.
 20 So can we agree that there is some connection
 21 between the strategy --
 22 A. No.
 23 1421 Q. You know that Mr. Keegan, the
 24 Chief of Staff, wrote to a senior colleague in
 25 Premier Wynne's office in February 2013 saying that

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1 the decision to eliminate funding was, in part,
 2 motivated by a desire to wedge the opposition in
 3 the short-term?
 4 A. I think I recall seeing something
 5 like that in the documents.
 6 1422 Q. And that was his --
 7 A. I thought that was John
 8 Wilkinson's language.
 9 1423 Q. John Wilkinson had similar
 10 language in August, sir, 2012, but Mr. Keegan wrote
 11 that in February 2013. Is that a reasonable
 12 inference that one could take from this sequence?
 13 A. February 2013? I think I was gone
 14 then.
 15 1424 Q. No, no. Is that a reasonable
 16 inference one could take from the sequence in
 17 February 2012 and in particular this ad?
 18 A. I think it's an interpretation.
 19 1425 Q. Okay. I want to play the ad for
 20 you to lay to rest that it was from the Ontario
 21 Liberal Party and I'm going to ask the court
 22 reporter to transcribe the ad as it is played.
 23 "A message from the Ontario
 24 Liberal Party.
 25 Did you know that Tim Hudak's PCs

Page 387	<p>1 started a secret subsidy for a few 2 very wealthy racetrack owners, and 3 now in these times of restraint, Tim 4 Hudak says these rich payouts should 5 be protected. He'd cancel full-day 6 kindergarten, leaving 50,000 7 four-and five-year olds stranded. 8 Are we really going to spend more on 9 horseracing this year than full-day 10 kindergarten. 11 The PCs should do what's right. 12 Tell Tim Hudak his priorities aren't 13 your priorities." 14 That's radio ad 1. Here's radio ad 2. 15 "A message from the Ontario 16 Liberal Party. 17 Did you know that Tim Hudak's PCs 18 started a secret subsidy for a few 19 very wealthy racetrack owners, and 20 now in these times of restraint Tim 21 Hudak says these rich payouts should 22 be protected, but when it comes to 23 our seniors he voted against new 24 supports to help them stay in their 25 homes longer. Are we really going</p>	Page 389	<p>1 A. I don't know they were unfairly -- 2 they were unfairly characterized in this. 3 1431 Q. They were unfairly characterized? 4 A. They were unfairly characterized, 5 yeah. I don't know how many people -- I don't know 6 how many times the ads were run, how many people 7 heard them, if we ran a poll how many people were 8 influenced by them -- 9 1432 Q. Well, sir -- 10 A. -- how many people changed their 11 opinions of the horse industry as a result of that. 12 So I can't really speak to the consequences of the 13 ads. 14 1433 Q. I can tell you that the ads were 15 reported in the Toronto Star, the National Post, 16 the Guelph Mercury, industry publications. I'll 17 show those to you. Do you have a copy for 18 Mr. Rosenberg? Take a look at those. 19 You and I can agree, sir, that those 20 ads were extensively picked up? Toronto Star, 21 National Post, Guelph Mercury, Standardbred Canada. 22 A. (Witness reviews documents). 23 MR. ROSENBERG: Mr. Lisus, I just have 24 a pile of ads from -- this one looks like it's the 25 -- I'm not even sure what these blogs are.</p>
Page 388	<p>1 to protect horseracing over our 2 parents and grandparents? 3 The PCs should do what's right. 4 Tell Tim Hudak his priorities aren't 5 your priorities." 6 Okay, so we know the ads are put out by 7 the Ontario Liberal Party, correct? 8 A. Yes. 9 1426 Q. And, sir, one of the reasons 10 that -- and what you're telling me today is you 11 don't think those ads were appropriate, right? 12 A. I'm -- they are all too common in 13 terms of tone, characterizing politics in North 14 America today, and that's unfortunate. 15 1427 Q. And what's unfortunate about it? 16 A. They are -- they are -- 17 1428 Q. Mean? 18 A. They are -- they're negative. 19 It's negative advertising. 20 1429 Q. It's an attack ad, right? 21 A. Yes, it's negative. Having borne 22 the brunt of that, I understand that. 23 1430 Q. And the people who bore the brunt 24 of this attack ad, sir, were standardbred breeders 25 in communities across the province, right?</p>	Page 390	<p>1 MR. LISUS: I'll go through the 2 mainstream media with you, if that's helpful. I 3 just gave you everything, Mr. Rosenberg, so you 4 would have the benefit of the entire universe that 5 I could find five years after the event. 6 BY MR. LISUS: 7 1434 Q. In terms of what you have there, 8 Mr. McGuinty, and have looked at, you see that the 9 ads are reported in the Toronto Star on February 10 29th, correct? Yes? 11 A. Yes. 12 1435 Q. In the National Post on February 13 29th, right? 14 A. You're reading the dates to me so 15 I'll take your word for it. 16 1436 Q. Guelph Mercury, that's horse 17 country, February 29, right? Right? 18 MR. RATCLIFFE: In Guelph. 19 THE WITNESS: Yes. 20 BY MR. LISUS: 21 1437 Q. Do you know Guelph to be horse 22 breeding country? 23 A. I know that it's very important in 24 the agricultural sector from the university on out. 25 1438 Q. And Standardbred Canada and</p>

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1 Standardbred Breeders of Ontario Association both
2 report on the ads, and Standardbred Canada reports
3 on "The Liberals attack racing in radio ads,"
4 right?
5 A. Yes.
6 1439 Q. So it was pretty clear that
7 these -- and we'll mark these articles that are
8 referred to, that the comments by the Ontario
9 Liberal Party, which by then is the party in power,
10 right, had an impact?
11 A. I don't know about the -- were
12 they picked up? Yes.
13 1440 Q. Think about it from the
14 perspective of a standardbred breeder, sir.
15 A. Yes.
16 1441 Q. Hearing a radio ad from their
17 government saying that the revenue that supports
18 breeding is a secret subsidy for a few very wealthy
19 racetrack owners.
20 MR. ROSENBERG: I object. These are
21 not ads from the government. This has been clear.
22 They're from the Liberal Party.
23 BY MR. LISUS:
24 1442 Q. Was the Liberal Party in power in
25 February 2012?

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1 A. Yes.
2 1443 Q. Do you think that the average
3 rural Ontarian drew a distinction between the
4 Ontario Liberal Party and the Liberal government,
5 sir?
6 MR. ROSENBERG: Objection. How is he
7 supposed to answer that question?
8 BY MR. LISUS:
9 1444 Q. I'm asking you what you think?
10 A. I'd like to think so.
11 1445 Q. Why?
12 A. Because parties do things that are
13 different from governments.
14 1446 Q. And one of the reasons you'd like
15 to think so is because in this case the party did
16 something that you, as the head of government,
17 didn't approve of, right?
18 A. I think so. I think so. I think
19 the other thing is -- they got picked up, I think
20 the issue -- at least an issue for me would be,
21 were they credible.
22 1447 Q. Well, if they weren't credible,
23 what's the Ontario Liberal Party putting them on
24 the radio for, sir?
25 A. I can't -- I can't --

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1 1448 Q. You're shaking your head and
2 shrugging your shoulders. If they weren't
3 credible --
4 A. I can't --
5 1449 Q. Excuse me. If they weren't
6 credible, why is the Ontario Liberal Party putting
7 them on the radio?
8 A. I can't speak to that. What I can
9 say is fortunately, having been attacked over and
10 over again by the Progressive Conservative Party,
11 who happened to form the government at the time,
12 people of Ontario did not believe those ads that
13 ran against me.
14 1450 Q. Well, sir, the government or the
15 governing party says that a program that you depend
16 on is a secret subsidy to protect a few very
17 wealthy racetrack owners to the detriment of 50,000
18 children. It's pretty serious, isn't it?
19 MR. RATCLIFFE: Mr. Lisus, you're just
20 repeating your questions.
21 BY MR. LISUS:
22 1451 Q. All right. The day after that ad
23 you give a speech at ROMA, that's the Rural Ontario
24 Municipality Association; is that right?
25 A. I don't recall.

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1 MR. RATCLIFFE: Is this a good time to
2 break or do you want to finish this line? It's
3 1:30.
4 MR. LISUS: No, it's a good time to
5 break.
6 -- OFF THE RECORD DISCUSSION --
7 EXHIBIT NO. 50: Collection of
8 newspaper articles.
9 EXHIBIT NO. 51: Email chain, Sunday,
10 February 26, 2012, Bates numbered
11 CR38429.
12 EXHIBIT NO. 52: Transcript of the
13 radio ads, Bates numbered CRE81193.
14 -- LUNCHEON RECESS AT 1:35 --
15 -- UPON RESUMING AT 2:16 --
16 BY MR. LISUS:
17 1452 Q. Now, Mr. McGuinty, just before the
18 lunch break we were talking about these ads, which
19 I believe now have been marked as an exhibit, and
20 the fact that you expect that these were procured
21 and designed by political staff; is that correct?
22 A. Yes.
23 1453 Q. And tell me who is political staff
24 and who isn't. Is Mr. Gene political staff?
25 A. He would be -- I think everybody

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1 outside the civil service is deemed to be political
 2 staff. I think that's one way to divide it up.
 3 1454 Q. Okay.
 4 A. But there are some people within
 5 the political staff who have more specific
 6 political responsibilities, so Karim Bardeesy's
 7 responsibility would be more policy, Tim Shortill
 8 obviously served as Chief of Staff of the Finance
 9 Minister, but Dave Gene would be more associated
 10 with the political ramifications of everything that
 11 we were doing.
 12 1455 Q. Were you aware, sir, in 2012 that
 13 the breeding of standardbred horses starts in
 14 January/February of the year?
 15 A. No.
 16 1456 Q. So, you weren't aware that these
 17 attack ads were going out right at the beginning of
 18 the breeding of standardbred horses?
 19 A. No.
 20 1457 Q. And were you aware, sir, that the
 21 standardbred horses go to auction in the fall,
 22 September and October?
 23 A. No.
 24 1458 Q. Okay. And the budget was to be
 25 presented March 27, 2012, right?

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1 A. Yes, as I recall.
 2 1459 Q. And when did you conclude a deal
 3 with the NDP to not oppose the budget?
 4 A. Well, there was some, as I recall,
 5 some movement in that. I had originally had a
 6 meeting with the leader of the NDP.
 7 1460 Q. And when do you believe that was,
 8 approximately?
 9 A. It would have been in the
 10 January/February. I'm guessing here.
 11 1461 Q. Okay.
 12 A. In order to get a better sense of
 13 her interests.
 14 1462 Q. And what did she indicate to you
 15 her interests were?
 16 A. At the time what I recall is her
 17 single biggest concern was a tax on higher income
 18 earners.
 19 1463 Q. She wanted a tax on higher --
 20 A. She wanted a tax on higher income
 21 earners as a condition for her support for the
 22 budget. There may have been a few other things as
 23 well. We thought we had this nailed down. Later
 24 on we learned that, in fact, there were more
 25 demands.

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1 1464 Q. Okay. And I'm referring to an
 2 exhibit that OLG put to Mr. Bardeesy on his
 3 examination, which is a Toronto Star report that
 4 says the Liberals also added \$242 million in
 5 funding for childcare. Do you recall that being a
 6 topic of discussion with Ms. Horvath?
 7 A. I don't. It may have been or may
 8 have arisen subsequently.
 9 1465 Q. Subsequent to your first
 10 discussion?
 11 A. Yes.
 12 1466 Q. Okay, thank you.
 13 A. There was not a second discussion,
 14 but there were conversations between her office and
 15 my office.
 16 1467 Q. I mean, if 242 million was added,
 17 then that was, I would expect, the subject of an
 18 ask and an agreement?
 19 A. Yes.
 20 1468 Q. Sir, are you aware that Minister
 21 Duncan in the course of several House sessions said
 22 that the industry, the horseracing industry was
 23 consulted extensively as part of the land-based
 24 gaming review? Are you aware of that?
 25 A. No.

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1 1469 Q. I take it you were instructed by
 2 your staff that the industry was consulted
 3 extensively as part of the land-based gaming
 4 review?
 5 A. Yeah, my understanding was and
 6 still is that they were consulted extensively about
 7 the OLG modernization process.
 8 1470 Q. Now, I want to show you an email
 9 dated March 12 enclosing a news release from
 10 Ministry of Finance. And I take it, sir, after the
 11 - I'll get that for you in a minute - after the
 12 Cabinet process that we talked about, as you
 13 explained to me, I think you explained this to me
 14 before, that the implementation and consequences
 15 and reaction to the decisions regarding the SARP
 16 revenue sharing was, as far as you were concerned,
 17 the responsibility of ministries affected, in
 18 particular Finance and Agriculture?
 19 A. Yes.
 20 1471 Q. Do you recall that a news release
 21 went out on March 12, 2012 announcing that the
 22 Ontario Government had received a report from the
 23 Ontario Lottery and Gaming Corporation that
 24 proposes modernization of the system and increasing
 25 its revenues by more than \$1 billion a year and the

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1 creation of 2,300 net new jobs in the gaming
 2 industry and nearly 4,000 additional jobs in the
 3 hospitality and retail sector?
 4 MR. RATCLIFFE: Show him a copy of it.
 5 It may help him to remember it.
 6 BY MR. LISUS:
 7 1472 Q. I'm going to show you one that's
 8 got markings on it while I find a clean one for
 9 you, just to keep this moving along.
 10 A. No, I don't recall Finance putting
 11 this out.
 12 MR. LISUS: So the news release of
 13 March 12, 2012 of the Ministry of Finance, OLG to
 14 modernize gaming, CRE208768, will be the next
 15 exhibit in sequence.
 16 EXHIBIT NO. 53: News release, Bates
 17 numbered CRE208768.
 18 BY MR. LISUS:
 19 1473 Q. You testified, as I heard you just
 20 before the lunch break, sir, about the radio attack
 21 ads and they not being the way that you would
 22 govern, or not being reflective of the way you
 23 would govern, correct?
 24 A. I would characterize the issue and
 25 the parties.

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1 1474 Q. Not the way you would characterize
 2 the issues and the parties, right?
 3 A. Yes.
 4 1475 Q. And obviously we see that there
 5 were such ads and there was such an email from a
 6 sitting Cabinet minister, correct?
 7 A. Yes.
 8 1476 Q. And what I take from that, sir, is
 9 that there are political parts of the government
 10 that sometimes act by themselves. Fair?
 11 A. So, it's hard -- it's very
 12 difficult to sometimes draw the line between what
 13 is partisan and what is government.
 14 1477 Q. And those ads are clearly
 15 partisan, right?
 16 A. Yes.
 17 1478 Q. And I'm not attributing those ads
 18 to you, sir; you have told me that you didn't know
 19 about them and don't approve of them, and I accept
 20 that.
 21 I'm just reflecting on your explanation
 22 as to how these things happened, and what I take
 23 from it is that there are sometimes components of
 24 government that act without the knowledge and
 25 direction of leadership, in this case you, and

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1 that's apparent?
 2 A. Yes.
 3 1479 Q. And notwithstanding the fact that
 4 those actors can act without knowledge and
 5 approval, there nevertheless are often consequences
 6 from their actions, correct?
 7 A. There can be.
 8 1480 Q. And in this case the evidence from
 9 the plaintiffs is that these radio ads had an
 10 immediate impact, including destabilizing the
 11 standardbred breeders. Does that make sense to
 12 you?
 13 MR. RATCLIFFE: Which evidence are you
 14 referring to from the plaintiffs?
 15 MR. LISUS: Affidavits.
 16 MR. RATCLIFFE: Well, can you be a bit
 17 more specific in terms of putting the question to
 18 Mr. McGuinty.
 19 BY MR. LISUS:
 20 1481 Q. Does that surprise you, sir, that
 21 these ads would destabilize the breeding industry?
 22 A. I don't know enough about the --
 23 because I've been in the advertising business, so
 24 to speak, for a long time, and been advertised for
 25 and against, it's hard for me to gauge how it would

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1 react -- how it would affect a particular industry.
 2 1482 Q. Well, if the government is saying
 3 that it is -- is telegraphing that it's going to
 4 ensure that revenue sharing stops, which we can
 5 agree is what those ads are doing, right?
 6 A. Um-hmm.
 7 1483 Q. Yes?
 8 A. Yes.
 9 1484 Q. And if we know that the breeders
 10 are dependent on SARP revenue for their revenue and
 11 cash flow --
 12 A. Yes.
 13 1485 Q. -- it's a natural consequence of
 14 government signalling that it will terminate that
 15 revenue which breeders are dependent upon and will
 16 destabilize their industry. It's pretty
 17 straightforward, right?
 18 A. I think that's a natural outcome.
 19 1486 Q. And as you have learned through
 20 the process but didn't appreciate then, the
 21 industry was such that it had a breeding cycle that
 22 had breeders locked into a five-year commitment to
 23 their horses and operations at least, right?
 24 A. So I've been told.
 25 1487 Q. Are there times, sir, and I'm just

Page 403		Page 405	
1	going to ask you to draw on the benefit of your	1	1498 Q. I want to just ask you about
2	experience in government, where the government	2	Exhibit 47, sir, on your examination, which was an
3	makes a decision which it knows will have economic	3	email that Mr. Wilkinson sent to Mr. Gene on August
4	consequences but it engages in supportive messaging	4	3, with a copy to Mr. Keegan. You read that
5	publicly about the difficult consequences?	5	earlier.
6	A. There must have been.	6	A. Yes.
7	1488 Q. Makes sense to me that there must	7	1499 Q. If you want, you can take a --
8	have been. For instance, in this case, sir, a	8	A. I recall this.
9	message could have gone out from the Liberal Party	9	1500 Q. Now, did Mr. Gene report the
10	that a difficult decision has been made, we	10	contents of this email to you?
11	understand that there are going to be some	11	A. No. Not that I can recall.
12	consequences and we will work with industry, that	12	1501 Q. And do you have any idea why
13	kind of ad could have gone out, right?	13	Mr. Wilkinson was sending a message to Mr. Gene?
14	A. Could have.	14	A. Dave Gene was charged with the
15	1489 Q. The nature of the ad that did go	15	responsibility of understanding the politics of any
16	out, I'm not suggesting was your choice or you	16	measure.
17	approved it, was nevertheless a choice by someone	17	1502 Q. Okay.
18	in the Ontario Liberal Party?	18	A. Good or bad.
19	A. Yes.	19	1503 Q. And the politics of the decision
20	1490 Q. And as of the date of those ads,	20	to terminate revenue share with no transition had
21	the Ontario Liberal Party was a pretty	21	become significant in the summer of 2012; is that
22	sophisticated communicator and advertiser, right?	22	fair?
23	A. I think that political parties	23	A. Well, that's what John is telling
24	are, by their very nature, amateurs, but if you're	24	us here.
25	asking me if they had prepared radio ads in the	25	1504 Q. Right.
Page 404		Page 406	
1	past, then certainly they had, yeah.	1	A. Yes.
2	1491 Q. Political parties may or may not	2	1505 Q. And it's not common to appoint a
3	be amateurs; they certainly engage professionals	3	panel of three former Cabinet ministers from three
4	for the purposes of composing their copy and	4	different parties to examine and understand the
5	communicating the desired message?	5	consequences of a government decision, correct?
6	A. They can.	6	A. Well, it's -- a government has
7	1492 Q. And do?	7	kind of a grab bag of options when it comes to
8	A. And do, yes.	8	addressing issues such as this. A multi-partisan
9	1493 Q. Now, we know that in June a panel	9	approach lends it more credibility.
10	was appointed, and were you involved in the	10	1506 Q. No, I agree with you, sir. I'm
11	decision to appoint that panel?	11	just saying it's not a commonly done -- it's not a
12	A. No.	12	common approach from the grab bag of things that a
13	1494 Q. I understand that Mr. McMeekin	13	government has available to it to address issues
14	pushed for the appointment of the panel?	14	that have suddenly assumed significant political
15	A. Rings a bell for me.	15	dimensions?
16	1495 Q. Okay.	16	A. I don't think we did it very
17	A. And he would be, after a decision	17	often.
18	had been made by Cabinet, that's the what, he would	18	1507 Q. And Mr. Gene was obviously a
19	be heavily involved in the how.	19	senior fellow, and as I reviewed the public record,
20	1496 Q. Would Cabinet have to be involved	20	he was involved in a number of contentious
21	in the appointment of the panel?	21	political issues in 2012, correct?
22	A. No.	22	A. I can't recall what else.
23	1497 Q. Right. And did you speak with	23	1508 Q. Now, we see as well -- we see here
24	Mr. Wilkinson about his participation on the panel?	24	that Mr. Wilkinson is telling Mr. Gene that there
25	A. I can't recall.	25	will be a collapse of the industry if this decision

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1 is maintained?
 2 A. Um-hmm, yes.
 3 1509 Q. Yes. And he is also addressing,
 4 as he explained it to me when I asked him about it,
 5 political dimensions to the situation as it then
 6 existed, and in particular the opportunity that
 7 providing more financing to the industry gave -- to
 8 give, as he says it, "us an advantage in the
 9 by-elections by wedging both Tim and Andrea." Do
 10 you see that?
 11 A. Yes.
 12 1510 Q. Do you understand what that means?
 13 A. No.
 14 1511 Q. It doesn't make sense at all to
 15 you?
 16 A. Well, it sounds like John is
 17 saying that there's some -- some advantage to be
 18 gained.
 19 1512 Q. And what do you understand the
 20 advantage to be from his description?
 21 A. To help us win a by-election.
 22 1513 Q. How?
 23 A. By wedging Tim and Andrea.
 24 1514 Q. I'm not a political person so I
 25 don't understand what that means.

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1 A. Well, wedging generally means
 2 separating, driving a separator between...
 3 1515 Q. Tim and Andrea being --
 4 A. Tim and Andrea.
 5 1516 Q. -- the PCs and NDP respectively?
 6 A. Yes.
 7 1517 Q. And how would lending additional
 8 financial support to stabilize the industry wedge
 9 Tim and Andrea?
 10 MR. ROSENBERG: I object to this
 11 question. The witness has already said he doesn't
 12 know what the author of this email meant. This is
 13 not relevant, counsel.
 14 BY MR. LISUS:
 15 1518 Q. Do you consider Mr. Rosenberg your
 16 counsel, Mr. McGuinty?
 17 MR. RATCLIFFE: If it's any comfort to
 18 you, Mr. Lisus, I was going to say the same thing
 19 except he spoke first.
 20 MR. LISUS: I didn't hear you pipe in
 21 there.
 22 MR. RATCLIFFE: I'll jump in more
 23 quickly next time.
 24 BY MR. LISUS:
 25 1519 Q. Okay. You did meet and prepare

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1 with Mr. Rosenberg present, correct?
 2 A. He was on the phone, as I recall.
 3 1520 Q. And was there a discussion of the
 4 questions that -- the kinds of questions that would
 5 be asked of you by OLG in the preparation session?
 6 A. No.
 7 1521 Q. And no discussion of the material
 8 that was to be covered in cross-examination of you
 9 by OLG?
 10 A. No.
 11 1522 Q. Now, that is marked as an exhibit.
 12 Mr. Gene didn't raise this to you, right?
 13 A. No, not that I can recall.
 14 1523 Q. I see that Mr. Gene's reaction to
 15 this is "We need to slow them down." Do you see
 16 that? Mr. Gene says to Mr. Shortill:
 17 "We need to slow them down."
 18 Do you see that?
 19 A. Yes.
 20 1524 Q. Why would Mr. Gene want to --
 21 MR. RATCLIFFE: Well, Mr. Lisus, now
 22 you're going on and you're asking him a slightly
 23 different question when he's indicated he wasn't
 24 part of this conversation. You're asking him to
 25 speculate what was in Mr. Gene's mind.

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1 MR. LISUS: No, I'm not. That's not
 2 what I'm doing. I'm not asking him to speculate.
 3 BY MR. LISUS:
 4 1525 Q. Clearly Mr. Wilkinson, who was
 5 appointed by your government to look at the
 6 situation, is telling Mr. Gene there is a dire
 7 situation here, correct?
 8 A. Mr. Wilkinson is painting a
 9 pessimistic picture, I think that's fair to say.
 10 1526 Q. Okay. And telling Mr. Gene that
 11 there needs to be more funding or there will be
 12 total collapse with 23,000 job losses and 27,000
 13 dead horses, right?
 14 A. Yes, I see he says that, yes.
 15 1527 Q. And Mr. Gene's response of this to
 16 Mr. Shortill is:
 17 "We need to slow them down."
 18 Do you see that?
 19 A. Yes.
 20 1528 Q. And can you and I agree, sir, that
 21 that's not an appropriate response to the
 22 information being provided by the panel to the
 23 government about the serious consequences about to
 24 befall the industry?
 25 A. I don't know what "slow down"

<p style="text-align: right;">Page 411</p> <p>1 means.</p> <p>2 MR. ROSENBERG: I object.</p> <p>3 BY MR. LISUS:</p> <p>4 1529 Q. Is there any explanation to "slow</p> <p>5 them down" other than slow them down?</p> <p>6 MR. RATCLIFFE: Well, Mr. Lisus, he</p> <p>7 said he didn't know what was meant by that.</p> <p>8 BY MR. LISUS:</p> <p>9 1530 Q. Anyway, no one told you that this</p> <p>10 was the consequences of the decision, correct?</p> <p>11 A. I don't recall being told.</p> <p>12 1531 Q. And can we agree, sir, that if you</p> <p>13 had been told in August of 2012 that within a very</p> <p>14 short period of time there's going to be 23,000 job</p> <p>15 losses and 27,000 dead horses, your reaction, as</p> <p>16 the leader of the government, wouldn't have been to</p> <p>17 slow them down; it would have been to get to the</p> <p>18 bottom of this and come up with a solution,</p> <p>19 correct?</p> <p>20 MR. RATCLIFFE: Well, except he</p> <p>21 indicated he didn't know what was meant by "slow</p> <p>22 them down."</p> <p>23 BY MR. LISUS:</p> <p>24 1532 Q. If this information was given to</p> <p>25 you, sir, your reaction would have been to say, get</p>	<p style="text-align: right;">Page 413</p> <p>1 CRE29294. This is a slide deck that is presented</p> <p>2 by the panel, the three members, Buchanan,</p> <p>3 Snobelen, Wilkinson, and Ingratia, I-N-G-R-A-T-I-A.</p> <p>4 That's the fellow who helped them write, I</p> <p>5 understand.</p> <p>6 And this is a slide deck that's going</p> <p>7 to be presented to Finance and OMAFRA, all right?</p> <p>8 A. Okay.</p> <p>9 1537 Q. And do you see the slide number 2</p> <p>10 says:</p> <p>11 "Purpose: Further direction</p> <p>12 needs to be given to the Horseracing</p> <p>13 Industry Transition Panel before</p> <p>14 making its final recommendations due</p> <p>15 August 17, 2012. Timing is urgent."</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 1538 Q. And do you see slide 5:</p> <p>19 "Panel Conclusions: Without</p> <p>20 additional transitional funds</p> <p>21 industry faces imminent collapse."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 1539 Q. And do you see on page 15:</p> <p>25 "Timing: Urgent."</p>
<p style="text-align: right;">Page 412</p> <p>1 to the bottom of this, understand it quickly and</p> <p>2 present a solution, correct? That's what you would</p> <p>3 have done, Mr. McGuinty; is that fair?</p> <p>4 A. I can give you an answer but it</p> <p>5 has nothing to do with slowing them down.</p> <p>6 1533 Q. I appreciate that. I am</p> <p>7 suggesting to you, sir, from listening to you over</p> <p>8 the last day and a half that if this information</p> <p>9 was communicated to you, you would have said to the</p> <p>10 person delivering the message, get to the bottom of</p> <p>11 this and get a solution for presentation to me</p> <p>12 and/or Cabinet quickly, right?</p> <p>13 A. It would be -- not being privy to</p> <p>14 all the information that was in Mr. Gene's head --</p> <p>15 1534 Q. Yeah.</p> <p>16 A. -- tell me more, what's your</p> <p>17 solution?</p> <p>18 1535 Q. Right. And let's get it figured</p> <p>19 out as quickly as we can, right?</p> <p>20 A. This was all, again, part of the</p> <p>21 how. We had decided the what in government and</p> <p>22 Cabinet, and now obviously we'd hit some challenges</p> <p>23 and this part of the government was working to</p> <p>24 wrestle the challenges.</p> <p>25 1536 Q. Let me show you another document,</p>	<p style="text-align: right;">Page 414</p> <p>1 A. Yes.</p> <p>2 1540 Q. "The horse breeding industry</p> <p>3 has been severely impacted by the</p> <p>4 announcement of the cancellation of</p> <p>5 SARP.</p> <p>6 Yearling horse sales occur in</p> <p>7 early September. With the</p> <p>8 uncertainty that currently exists in</p> <p>9 the industry, buyers will not have</p> <p>10 confidence, which will negatively</p> <p>11 impact the prices paid for</p> <p>12 yearlings, crystallizing industry</p> <p>13 financial losses.</p> <p>14 Heightened litigation risk</p> <p>15 triggered by losses.</p> <p>16 Industry needs a clear signal</p> <p>17 from government about what the</p> <p>18 future of the industry will look</p> <p>19 like prior to September 1."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 1541 Q. None of that information, sir, I</p> <p>23 presume was communicated to you?</p> <p>24 A. Not that I can recall.</p> <p>25 1542 Q. And again, as we discussed a</p>

<p style="text-align: right;">Page 415</p> <p>1 minute ago, if this information had been 2 communicated to you by three former Cabinet 3 ministers appointed by your government to look into 4 the impact of this decision, you would have 5 responded to the declared urgency to the situation 6 by directing that the situation be addressed 7 urgently; am I correct? 8 A. I think in fairness to myself, I 9 also would have said to the Minister of Finance, 10 what's happening here. I would have asked people 11 in my office, what's happening here. They're 12 saying it's urgent, is it really urgent? If not, 13 then tell me why; if it is, then maybe we should be 14 acting. 15 1543 Q. Fair enough. Do you have any 16 reason to doubt, sir, that these three men didn't 17 understand the consequences of the decision and its 18 impact on the industry? 19 A. No. 20 1544 Q. In fact, you had every reason to 21 believe that they did? 22 A. I think they're pretty capable 23 fellows. 24 1545 Q. In fact, that's why they were 25 hand-picked, right?</p>	<p style="text-align: right;">Page 417</p> <p>1 Horseracing Industry Transition Panel, correct? 2 A. Yes. 3 1552 Q. And you did not review it at the 4 time it was released, August 2012? 5 A. Not that I can recall. 6 1553 Q. It was not brought to your 7 attention? 8 A. I would be surprised if somebody 9 had not briefed me, even modestly about it. 10 1554 Q. But no recollection? 11 A. No. 12 1555 Q. Do you recall in August 2012 13 understanding that there had to be additional 14 funding provided to the industry? 15 A. I likely -- it likely would have 16 been brought to my attention that something was 17 flowing from the decision we had made in Cabinet, 18 that we needed to provide additional funds. 19 1556 Q. And are you aware, sir, that 20 Finance staffers on the political side were 21 resisting the provision of additional funds? 22 A. No. It would not surprise me. 23 There's often a tug-of-war, competing interests 24 inside government. 25 1557 Q. And in particular, are you aware</p>
<p style="text-align: right;">Page 416</p> <p>1 A. Yes. 2 1546 Q. Are you aware when additional 3 funding was actually made available? 4 A. I cannot recall. 5 1547 Q. Are you aware that the -- 6 A. This was an announcement, the 7 funding, or the provision of funding? 8 1548 Q. Provision of funding. Do you 9 know? 10 A. No, I can't recall. 11 1549 Q. Do you know when there was an 12 announcement? 13 A. No. 14 1550 Q. Do you know there was an 15 announcement of funding, just an announcement, in 16 the spring of 2012, of 50 million over three years 17 which the panel said was not sufficient and would 18 not prevent collapse? 19 A. I saw that in the materials. 20 MR. LISUS: That's the next exhibit. 21 EXHIBIT NO. 54: Slide deck, Bates 22 numbered CRE29294. 23 BY MR. LISUS: 24 1551 Q. I want you to review the 25 horseracing industry -- you have reviewed the</p>	<p style="text-align: right;">Page 418</p> <p>1 that -- 2 A. And Finance is often involved in 3 those fights, Education always wants more money, 4 Health Care wants more money, Com Soc wants more 5 money, Intergovernmental Relations wants more 6 money. It's not unusual for Finance to be the bad 7 guy. 8 1558 Q. And is it unusual for the 9 Premier's Office to be the bad guy? 10 A. We try not to be. 11 1559 Q. Are you aware that senior staffers 12 in your office did not want to accept the panel 13 recommendations because it would be seen as an 14 about-face or a capitulation? 15 A. They're entitled to an opinion. 16 MR. RATCLIFFE: Do you want to refer 17 him to the email you're looking at, Mr. Lisus. 18 BY MR. LISUS: 19 1560 Q. And their opinions have weight, 20 right? 21 MR. RATCLIFFE: Perhaps you can show 22 him the email you're quoting from so that he has 23 the benefit of seeing it. 24 BY MR. LISUS: 25 1561 Q. It's an email chain, August 21.</p>

<p style="text-align: right;">Page 419</p> <p>1 A. Right.</p> <p>2 1562 Q. Have you seen this?</p> <p>3 A. Yes, I have.</p> <p>4 1563 Q. Okay.</p> <p>5 A. So you're quoting from Wendy</p> <p>6 McCann. She is a communications person. I can</p> <p>7 understand her frustration, but communications</p> <p>8 frustration does not rule the day. But it's</p> <p>9 important that these people convey their opinion.</p> <p>10 1564 Q. And we see Mr. Bardeesy, who</p> <p>11 we know was involved in the initial decision</p> <p>12 process --</p> <p>13 A. Yes.</p> <p>14 1565 Q. -- chiming in and saying:</p> <p>15 "Yes, we have committed but</p> <p>16 there's considerable pressure to</p> <p>17 reconsider a second time. I don't</p> <p>18 think there's much appetite to</p> <p>19 provide ongoing transitional</p> <p>20 assistance beyond the 50 million or</p> <p>21 sustained assistance beyond the</p> <p>22 transitional period, which is what</p> <p>23 this statement opens the door to."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 421</p> <p>1 wouldn't have been fussed about the optics of an</p> <p>2 about-face or capitulation; you would have said we</p> <p>3 need to get this right?</p> <p>4 A. Yes.</p> <p>5 1569 Q. And in fact, sir, you are aware</p> <p>6 that when Ms. Wynne became the Premier in 2013, she</p> <p>7 went on the record as saying that the manner in</p> <p>8 which the decision was made to cancel SARP was not</p> <p>9 thoughtful. Do you remember that?</p> <p>10 A. Yes, I remember that.</p> <p>11 1570 Q. And that a second look needed to</p> <p>12 be taken?</p> <p>13 A. I remember she said that.</p> <p>14 1571 Q. And Minister McMeekin said he also</p> <p>15 thought that the government dropped the ball in the</p> <p>16 manner in which the decision was made?</p> <p>17 A. I recall.</p> <p>18 1572 Q. And are those comments, sir,</p> <p>19 consistent with what you have learned over the</p> <p>20 course of the last two days reviewing these</p> <p>21 documents from Minister Wynne and Minister</p> <p>22 McMeekin?</p> <p>23 A. They're entitled to their opinions</p> <p>24 about the nature of the process.</p> <p>25 1573 Q. And do you think those opinions</p>
<p style="text-align: right;">Page 420</p> <p>1 1566 Q. And, sir, he's not referring to a</p> <p>2 point of view of yours; he's referring to a point</p> <p>3 of view of Finance and staff?</p> <p>4 A. Yes. Yes.</p> <p>5 MR. LISUS: That's CRE0560801, Exhibit</p> <p>6 21 on the examination of Karim Bardeesy.</p> <p>7 MR. MATTHEWS: Exhibit 55.</p> <p>8 EXHIBIT NO. 55: Email, Bates numbered</p> <p>9 CRE0560801.</p> <p>10 BY MR. LISUS:</p> <p>11 1567 Q. I take it, sir, that you wouldn't</p> <p>12 have been concerned about an about-face or</p> <p>13 capitulation optic if you understood the</p> <p>14 consequences of this decision on the people who</p> <p>15 were affected by it; you would have ensured that</p> <p>16 appropriate steps were taken to mitigate the</p> <p>17 consequences, correct?</p> <p>18 A. Again, all we decided in Cabinet</p> <p>19 was the what, and then the how, and the how has to</p> <p>20 do with ensuring that we get it right.</p> <p>21 1568 Q. You know, I appreciate that, sir,</p> <p>22 I'm not critical of you. This does not appear to</p> <p>23 have been communicated to you, and I'm simply</p> <p>24 saying that if the message that Mr. Wilkinson</p> <p>25 conveyed to Mr. Gene was reported up to you, you</p>	<p style="text-align: right;">Page 422</p> <p>1 are fairly expressed?</p> <p>2 A. Well, I thought we did, based on</p> <p>3 the documentation that I received.</p> <p>4 1574 Q. Based on what you knew?</p> <p>5 A. Based on what I knew and based on</p> <p>6 the documentation that I had received and briefings</p> <p>7 that I had received and the discussion we had at</p> <p>8 Cabinet, that we did the issue -- we treated the</p> <p>9 issue fairly.</p> <p>10 1575 Q. And so, I should clarify my</p> <p>11 question, sir. I appreciate your comment.</p> <p>12 I am premising my question to you about</p> <p>13 the fairness of their opinion on the fact that you</p> <p>14 do not appear to have been given the information</p> <p>15 regarding the OLG recommendations, the phased-out</p> <p>16 transition funding when the decision was made. You</p> <p>17 weren't aware of those information inputs, correct?</p> <p>18 A. That's correct.</p> <p>19 1576 Q. So you are now aware of those</p> <p>20 information inputs, right?</p> <p>21 A. Yes.</p> <p>22 1577 Q. You weren't at the time, and all</p> <p>23 I'm asking you today, sir, I'm not talking about</p> <p>24 you at the time, I'm simply asking you today, with</p> <p>25 the benefit of what you have learned, do you agree</p>

<p style="text-align: right;">Page 423</p> <p>1 that Minister Wynne's observations in '13 and 2 Minister McMeekin's observations in '13 that the 3 decision was not thoughtful and that the ball was 4 dropped, are fair observations? 5 A. I think they were thoughtful on 6 the basis of what information we had. 7 1578 Q. Okay. But you now understand the 8 information was incomplete? Fair? 9 It's a long hesitation, sir. 10 A. Well, on the basis of the 11 information that we had, I thought it was a 12 thoughtful process. I think the struggle we 13 encountered came with developing an appropriate 14 transition funding model. 15 1579 Q. But you've seen, sir, that there 16 wasn't an analysis of the impact on the jobs in the 17 rural economy? 18 MR. RATCLIFFE: Mr. Lisus, didn't he 19 just answer that in terms of the transition? 20 MR. LISUS: I don't think he did. 21 BY MR. LISUS: 22 1580 Q. Were you aware that Minister 23 McMeekin contacted Finance to ask where the 24 detailed impact study was and Finance said there 25 wasn't one? Are you aware of that, sir? Right</p>	<p style="text-align: right;">Page 425</p> <p>1 after Cabinet, the Minister of Agriculture is 2 phoning the Assistant Deputy Minister of Finance 3 and asking for a study that justifies the decision, 4 and there was no study? Do you see that? 5 A. I was not aware of that. 6 1583 Q. And can you and I agree, sir, that 7 Minister McMeekin's expectation that there was a 8 more in-depth economic impact analysis of the 9 strategy of one year withdrawal of subsidy was a 10 reasonable expectation to have? 11 MR. ROSENBERG: I object to this 12 question. You don't even have an indication of the 13 information that Minister McMeekin was given. 14 MR. LISUS: Mr. McMeekin, as far as we 15 know from Mr. Keegan, is that he was given nothing. 16 He found out about it at a fundraiser on February 17 16, Mr. Rosenberg. That's the information we have. 18 MR. ROSENBERG: He obviously didn't 19 find out about it on February 16th since the 20 Cabinet meeting -- 21 MR. LISUS: We don't know what he was 22 told at the Cabinet meeting, if anything, or if he 23 was there at all, sir, because Ontario won't let us 24 get any of that information. 25 BY MR. LISUS:</p>
<p style="text-align: right;">Page 424</p> <p>1 after the Cabinet meeting. 2 Were you aware of that? 3 A. I can't recall that, no. 4 1581 Q. CRE106086, Exhibit 32 on the 5 examination of Orsini. This is February 17, sir, a 6 week and two days after the Cabinet meeting. It's 7 an email, it begins with an email from Barry 8 Goodwin to Mr. Orsini. Second paragraph, Mr. 9 Goodwin says: 10 "Discussed issues on a call 11 with Minister McMeekin this 12 afternoon. As Agriculture Minister 13 he was hoping that there was a more 14 in-depth economic impact analysis 15 that had been done of the strategy 16 of one year withdrawal of subsidy. 17 We clarified some direct employment 18 numbers with him on the phone and 19 said ORC was doing a few scenarios 20 for next week, but frankly we do not 21 have a detailed study of the sort 22 that he was hoping we had." 23 Were you aware of that, sir? 24 A. No. 25 1582 Q. So you weren't aware that a week</p>	<p style="text-align: right;">Page 426</p> <p>1 1584 Q. All we do know, Mr. McGuinty, is 2 that on February 17, or thereabouts, which is the 3 day after the February 16 fundraiser we heard about 4 from Mr. Keegan, Minister McMeekin is asking for a 5 more in-depth economic impact analysis. Do you see 6 that? 7 A. Yes. 8 1585 Q. Were you aware, sir, that Minister 9 McMeekin and Mr. Keegan as Chief of Staff found out 10 about the decision to terminate SARP revenue share 11 with no transition support on February 16 or a few 12 days before? That's what his Chief of Staff 13 testified. Are you aware of that? 14 A. Does that mean they didn't know 15 about it on Cabinet day? 16 1586 Q. That's all the information I have, 17 sir. 18 A. It doesn't make sense to me. 19 1587 Q. That's pretty strange, isn't it? 20 A. Yeah. 21 1588 Q. We do know that just a few days 22 before Cabinet, OMAFRA was briefed on a phased 23 withdrawal of \$100 million annual subsidy and they 24 sent a note about that, correct? 25 A. I can't recall now. You may have</p>

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1 shown me something earlier to that effect today.
 2 1589 Q. And the next date we have is that
 3 Minister McMeekin and his Chief of Staff found out
 4 of the actual decision on February 16 or a few days
 5 before?
 6 MR. ROSENBERG: I don't think that's a
 7 fair characterization.
 8 MR. RATCLIFFE: I don't think that's
 9 exactly how things unfolded. We'll have to go back
 10 and look at Mr. Keegan's transcript. I don't
 11 recall it happening quite that way.
 12 BY MR. LISUS:
 13 1590 Q. In any event, sir, on February
 14 17th, Minister McMeekin is asking for an in-depth
 15 economic impact analysis, correct?
 16 MR. RATCLIFFE: I think there is an
 17 adjective in there that you skipped.
 18 MR. LISUS: A more in-depth economic
 19 impact analysis.
 20 MR. RATCLIFFE: Yes.
 21 BY MR. LISUS:
 22 1591 Q. Okay. And the only in-depth --
 23 the only economic impact analysis that we have is
 24 the one that we see in the Cabinet material that
 25 was put before Cabinet, right?

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1 MR. RATCLIFFE: Mr. Lisus, you've been
 2 over this and over this and you've got your emails
 3 and, you know, we're running out of time here.
 4 BY MR. LISUS:
 5 1592 Q. Let me ask you this. Do you see
 6 where Mr. Goodwin, on Monday, February 20th at 9:19
 7 a.m., says that:
 8 "Meeting with Minister McM not
 9 so good."
 10 See that?
 11 A. Where am I at? This middle
 12 paragraph?
 13 1593 Q. Yes.
 14 A. Yes, I see that.
 15 1594 Q. Do you see the email above says:
 16 "McM feeling left out in the
 17 cold no doubt."
 18 A. Yes.
 19 1595 Q. So, just connect these dots, sir.
 20 He's asking for a more in-depth economic impact,
 21 he's not happy, he's feeling left out in the cold,
 22 he says, according to his Chief of Staff, he
 23 learned about this at or a few days before the
 24 February 16 fundraiser, and he's saying the next
 25 year that the government dropped the ball. He

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1 doesn't seem very confident in the process that was
 2 followed?
 3 MR. ROSENBERG: Objection. You can't
 4 ask the witness to speculate on the evidence of
 5 another witness --
 6 BY MR. LISUS:
 7 1596 Q. Did you ever speak with --
 8 MR. ROSENBERG: -- particularly when
 9 you don't accurately summarize the evidence of
 10 Mr. Keegan, Mr. Lisus. Let me put my objection on
 11 the record, please.
 12 BY MR. LISUS:
 13 1597 Q. Mr. McGuinty, did you ever speak
 14 with Minister McMeekin about this decision?
 15 A. Not that I can recall.
 16 1598 Q. Did you ever speak with Minister
 17 Wynne about this decision?
 18 A. Not that I can recall. I mean,
 19 apart from Cabinet debate.
 20 MR. LISUS: I'll mark that as an
 21 exhibit.
 22 EXHIBIT NO. 56: Email, Bates numbered
 23 CRE106086.
 24 MR. ROSENBERG: Put it in for
 25 identification.

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1 MR. MATTHEWS: I don't know if it
 2 matters. It's already been marked as Exhibit 32 on
 3 Mr. Orsini.
 4 MR. ROSENBERG: Understood. I'm not
 5 sure why it's in evidence on him either, but I have
 6 your point, counsel.
 7 MR. MATTHEWS: We'll make it 56.
 8 BY MR. LISUS:
 9 1599 Q. You testified, sir, that you
 10 didn't read the Auditor General's special report
 11 from April 2014?
 12 A. Yes.
 13 1600 Q. And that was marked as an exhibit,
 14 I believe, this morning.
 15 MR. RATCLIFFE: I believe number 45.
 16 MR. MATTHEWS: You're correct.
 17 BY MR. LISUS:
 18 1601 Q. I'd like you to look at page 53.
 19 And I read to you, sir, the Auditor General's
 20 finding at the bottom about Ministry of Finance
 21 staff advising the Auditor General that the Chief
 22 of Staff of the Minister's Office advised them of
 23 the decision to remove the transition plans and any
 24 of the transition funding that had been considered
 25 in the draft Cabinet submission for the February 7,

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1	2012 Cabinet meeting. Do you see that?	1	issues after you left? Let me ask this. Did you
2	A. Yes.	2	follow the horseracing issue?
3	1602 Q. And I didn't discuss with you the	3	A. No.
4	other findings of the Auditor General, which is in	4	1606 Q. I want to ask you a question. In
5	the paragraph above, that:	5	September of 2012 you were still there, right?
6	"While the Ministry of Finance	6	A. Yes.
7	was preparing its submission to	7	1607 Q. Did anyone report to you, sir,
8	Cabinet for approval of OLG's	8	that auction sales for yearlings in the fall of
9	modernization plan on January 12,	9	2012 were cancelled as a result of the government's
10	the government decided to cancel the	10	decision?
11	Slots at Racetrack Program."	11	A. No, not that I can recall.
12	Do you see that?	12	1608 Q. Did anyone report to you that the
13	A. Yes.	13	value of standardbred horses dropped by about half
14	1603 Q. And the Auditor General also finds	14	at auction as a result of the decision?
15	that:	15	A. No.
16	"The Ministry of Finance	16	MR. LISUS: Those are my questions for
17	developed a draft horseracing	17	now, sir. Thank you.
18	strategy in consultation with the	18	MR. RATCLIFFE: Take a short break.
19	Ministry of Agriculture, Food and	19	-- RECESS AT 3:15 --
20	Rural Affairs, the Office of	20	-- UPON RESUMING AT 3:27 --
21	Economic Policy and the ORC, that	21	CROSS-EXAMINATION BY MR. ROSENBERG:
22	planned for this strategy which	22	1609 Q. Good afternoon, Mr. McGuinty.
23	proposed transition funding in the	23	A. Hello.
24	form of transfer payments to \$250	24	1610 Q. For the record, my name is Michael
25	million in the year ending March 31,	25	Rosenberg and I am counsel for the Ontario Lottery
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1	2014, 150 million in the year ending	1	and Gaming Corporation. I have a few questions to
2	March 31, 2015, \$100 million in the	2	ask you.
3	year ending March 31, 2016, and	3	A. Yes.
4	flat-lining it annually at \$100	4	1611 Q. It's the nature of the process
5	million after April 1, 2016, to be	5	that I'm going to jump around a bit because most of
6	included in the Cabinet submission."	6	my questions arise from the questions that
7	Were you aware of those facts in	7	Mr. Lisus asked you, but I just ask that you bear
8	February 2012, sir? I take it from your earlier	8	with me.
9	answers you were not.	9	And the usual rules apply. If you
10	MR. RATCLIFFE: Mr. Lisus, I think you	10	don't understand what I'm asking, please simply say
11	asked those questions earlier on. And, as I	11	and I will repeat or rephrase as best I am able.
12	recall, you said no, you were not aware of those?	12	Fair?
13	And it's in the report so I'm not sure why you're	13	A. I understand.
14	taking up time going over the same territory you	14	1612 Q. All right. I want to start by
15	went over before.	15	talking about your role in a general sense. You
16	MR. LISUS: I didn't go over that	16	told Mr. Lisus that there are a lot of moving parts
17	little bit, but the more general --	17	to manage when assembling a budget.
18	MR. RATCLIFFE: Well, the facts.	18	A. Yes.
19	MR. LISUS: The underlying facts I did,	19	1613 Q. What's the role of the Premier in
20	yes.	20	that process?
21	BY MR. LISUS:	21	A. The role of the Premier would be
22	1604 Q. Sir, you left government in	22	to, working with the Minister of Finance, provide
23	February 2013, correct?	23	very broad direction and then wait for the Minister
24	A. Yes.	24	of Finance to come up with specific proposals.
25	1605 Q. And did you follow any of the	25	In the case of the budget that we've

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<p>1 been spending a lot of time talking about, the 2012 2 budget, that was arguably the most demanding budget 3 that we crafted as a government because of the 4 economic circumstances, because for the first time 5 all ministries had been asked by the Minister of 6 Finance to find savings, which is challenging, and 7 every time they were pressed for savings, they 8 would say this would result in the loss of this or 9 the loss of that, so there was, to use Biblical 10 language, there was wailing and gnashing of teeth. 11 But there are many -- by a thousand 12 moving parts, I mean it's all kind of 13 interconnected. If there's money needed over here, 14 at this point in time particularly it means it 15 would have to come from elsewhere. 16 And that's kind of the clamp that the 17 Minister of Finance, and I supported him in this 18 regard, at this point in time it was if we can't 19 find -- if you have a proposal, then tell me where 20 the money is going to come from. We weren't about 21 to raise taxes, so we were looking for savings. 22 1614 Q. And that centralized coordinating 23 role that the Minister of Finance plays, that's 24 different than the role played by a minister in, 25 say, one of the line ministries?</p>	<p>1 budget. 2 1620 Q. In terms of what goes into the 3 budget, I understand that ministers of the 4 government bring matters before Cabinet for 5 consideration? 6 A. In terms of what goes in the 7 budget, there's more of an -- there's often an 8 informal process underway where every minister can 9 knock on the Finance Minister's door and say, hey, 10 can you get me some money for this, here's a new 11 program, I would really like to roll it out, 12 they'll make an argument and they'll claim it's in 13 keeping with the government's general priorities. 14 It's up to the Minister of Finance to 15 see through these things, call them on it when 16 necessary, and introduce discipline into the entire 17 exercise. 18 1621 Q. And I think you said to Mr. Lisus, 19 it doesn't make the Minister of Finance a hugely 20 popular guy? 21 A. No, no, it's a difficult role. He 22 says -- he or she says probably no for a thousand 23 times for every one time they say yes. 24 1622 Q. And as Premier providing guidance 25 on this process, you're not necessarily a subject</p>
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<p>1 A. Yes. 2 1615 Q. The minister in one of the line 3 ministries, say OMAFRA, is principally concerned 4 about a narrower group of stakeholders? 5 A. Yes. 6 1616 Q. Whereas the Minister of Finance 7 has to consider, as you say, where's the money 8 going to come from to pay for all of Ontario's 9 spending? 10 A. Yes, Finance has got to make the 11 numbers work, but the line ministries is where the 12 rubber meets the road. 13 1617 Q. Now, you described waiting for the 14 Minister of Finance to come up with proposals. Is 15 it fair to say that the Minister of Finance carries 16 the ball on a budget? 17 A. Yes. 18 1618 Q. And as Premier, you would provide 19 guidance? 20 A. Yes. 21 1619 Q. But your role really is one of 22 providing guidance? 23 A. Yes. You put a lot of stock -- as 24 Premier you put a lot of stock in your Minister of 25 Finance when it comes to the preparation of the</p>	<p>1 matter expert in all of the decisions that come 2 before you, or the Minister of Finance, for that 3 matter? 4 A. No, not by any means. You could 5 say my job is to make sure we don't lose sight of 6 the forest for the trees. 7 1623 Q. When you say forest, are you 8 referring to the government's core priorities? 9 A. Broad policy directions. 10 1624 Q. And, as I understand it, and you 11 told Mr. Lisus, those broad policy directions were 12 health and education? 13 A. Health and education, and as 14 circumscribed as they were at a very challenging 15 economic time, we had to -- while protecting those 16 core priorities, health care and education, so 17 pretty well everything came secondary to those core 18 priorities. 19 We also had to move towards balancing 20 the budget in a way that was determined and 21 deliberate, we had to look for new revenues where 22 we could and we had to find savings. 23 1625 Q. Health and education in a time of 24 austerity perhaps? 25 A. In a time of austerity which was</p>

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1 very, very difficult. I think I put on the record
 2 earlier that in fact we found -- in fact, Minister
 3 Duncan insisted that the Ministers of Education and
 4 Health Care find close to \$900 million in savings
 5 each. I believe, if I recall, we were going to
 6 grow the provincial budget at one percent a year.
 7 I had been there when we were growing
 8 health, which was some 40 percent of the budget, at
 9 five, six, seven percent annually, so this was a
 10 big reduction in growth.
 11 1626 Q. Big reduction in growth even in
 12 your key priority areas?
 13 A. Even in key priorities.
 14 1627 Q. And I think these were ideas that
 15 you had campaigned on in an election?
 16 A. This was -- this was my bread and
 17 butter, to make sure that everyone's schools and
 18 everyone's health care was as good as we could make
 19 it.
 20 1628 Q. Now, ultimately the budget goes
 21 before the legislature on a motion, as I understand
 22 it?
 23 A. Yes.
 24 1629 Q. Now, that's a confidence motion, I
 25 think you discussed with Mr. Lisus?

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1 A. Yes.
 2 1630 Q. The government falls if it loses
 3 that motion?
 4 A. Yes.
 5 1631 Q. Is it fair to say, though, that if
 6 it looks like the government -- or the budget
 7 contains measures that might prevent it from
 8 passing, the government can make changes to the
 9 budget?
 10 A. Yes.
 11 1632 Q. This is a dynamic process, so to
 12 speak?
 13 A. Yes. It's very -- it's very
 14 iterative. We didn't get into this with Mr. Lisus,
 15 but you saw all the -- we heard about some of the
 16 changes that were made to one specific initiative.
 17 Multiply that a hundred fold.
 18 And then you introduce a first reading
 19 and then there's second reading and then there's
 20 committee work. At committee work you hear
 21 representations, you again are given the
 22 opportunity to make still more changes to the
 23 budget.
 24 1633 Q. An iterative process. That's
 25 particularly true in a minority government; is that

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1 fair?
 2 A. You've got to be all the more open
 3 to that.
 4 1634 Q. More open to compromise?
 5 A. Yes.
 6 1635 Q. And then the budget goes to a vote
 7 of the legislature, and if it passes, does that set
 8 the fiscal direction for the Province of Ontario?
 9 A. Yes.
 10 1636 Q. Is it fair to say it's how the
 11 representatives of the people of Ontario decide how
 12 the government is going to spend its money?
 13 A. Yes. Particularly so, this is
 14 now, this is for the first time in my three
 15 mandates, this transcends partisanship because I
 16 cannot get this budget through relying solely on my
 17 own party, I needed another party.
 18 So in a sense, this budget did more
 19 justice to the notion of representing the will of
 20 the people of Ontario than my first nine budgets.
 21 1637 Q. Am I right in thinking that it
 22 sets the fiscal direction for the Province of
 23 Ontario for the next three years?
 24 A. This budget in particular, with
 25 its focus on the elimination of the deficit, I

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1 think it was -- maybe it was 2017 that was
 2 elimination, but there is a cycle, sometimes, you
 3 know, depending on the budget plan itself, but
 4 three years kind of rings a bell. You know, the
 5 Finance people would be more specific on that.
 6 Obviously we revisit these things on an annual
 7 basis, but as much as you can land longer term
 8 stability and predictability, the better.
 9 1638 Q. When you say "this budget," do you
 10 mean the 2012 budget?
 11 A. Yes.
 12 1639 Q. I want to talk on a general level
 13 about Cabinet meetings as well. As I understand
 14 it, at a Cabinet meeting, ministers of the
 15 government bring matters before Cabinet for
 16 consideration?
 17 A. Yes.
 18 1640 Q. And debate?
 19 A. Yes.
 20 1641 Q. The minister or ministers who
 21 bring the matter before Cabinet are responsible for
 22 preparing the Cabinet submission?
 23 A. Yes.
 24 1642 Q. You reviewed an example of the
 25 Cabinet submission for February 8, 2012 with

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1 Mr. Lisus?
 2 A. Yes.
 3 1643 Q. Where other ministries have
 4 relevant expertise they may be consulted before the
 5 Cabinet meeting?
 6 A. Yes. And they have an opportunity
 7 and indeed the obligation to raise issues,
 8 concerns, support, at the time of the Cabinet
 9 meeting itself.
 10 1644 Q. You mentioned as well a
 11 subcommittee of Cabinet, and I think you told
 12 Mr. Lisus the role of that is to have another
 13 deliberative body before a decision comes before
 14 Cabinet?
 15 A. That's correct.
 16 1645 Q. And did you, as Premier, expect
 17 spirited debate in your Cabinet meetings?
 18 A. Always. I encouraged that. I
 19 believed in a healthy collision of ideas. Tough
 20 for human beings to arrive at a little bit of
 21 wisdom, but collectively if we debated and listened
 22 to each other, we could get a little bit closer.
 23 1646 Q. Respect for collective wisdom, eh?
 24 A. Yes.
 25 1647 Q. And is Cabinet a place where

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1 ministers are expected to speak freely?
 2 A. Yes.
 3 1648 Q. When a Cabinet agenda is arranged,
 4 if an item is placed last on the agenda does that
 5 mean that it's expected to pass without debate?
 6 A. No, last -- if we can be specific
 7 about this budget --
 8 MR. LISUS: Please don't.
 9 THE WITNESS: I'm not talking about --
 10 MR. LISUS: Your counsel, sir, has
 11 drawn a very, very bright line.
 12 THE WITNESS: I'm only talking about
 13 stuff that's in the documents.
 14 MR. ROSENBERG: Let's just see what the
 15 witness is going to say.
 16 MR. RATCLIFFE: I didn't understand
 17 counsel's position to be what are the details.
 18 He's talking about an agenda and the order, what
 19 the significance is of the agenda order.
 20 MR. ROSENBERG: I'm not talking about
 21 any agenda in particular; I'm just asking as a
 22 practice.
 23 MR. LISUS: If you're not talking about
 24 any agenda in particular, what relevance does it
 25 have?

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1 MR. ROSENBERG: We have your objection,
 2 Mr. Lisus. I'm going to continue with my question.
 3 BY MR. ROSENBERG:
 4 1649 Q. Sir --
 5 A. When I read the documents --
 6 MR. LISUS: We're not talking about the
 7 document, Mr. McGuinty, we're just talking about
 8 general documents, according to Mr. Rosenberg.
 9 MR. RATCLIFFE: Just speak in general
 10 terms.
 11 THE WITNESS: All right. There are two
 12 elements to every Cabinet meeting. There are
 13 category two items which are dealt with, which are
 14 dealt with on the assumption that there will be no
 15 debate and no discussion unless raised by a
 16 minister, and that's in order for us to expedite
 17 matters of lesser importance so we can devote time
 18 to that which is most important.
 19 So, this budget was the only matter for
 20 consideration on the day in question, apart from
 21 category two items, which were generally dealt with
 22 in less than a minute.
 23 BY MR. ROSENBERG:
 24 1650 Q. Am I right in understanding you
 25 put the easy stuff first so you can get it out of

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1 the way?
 2 A. Yes.
 3 1651 Q. You leave the hard stuff to the
 4 end so you can spend some time debating it?
 5 A. Yes.
 6 1652 Q. Ultimately when Cabinet comes to a
 7 decision, there's a minute to record what that
 8 decision is?
 9 A. Yes.
 10 1653 Q. And that decision, as I understand
 11 it, is taken by the Cabinet as a whole?
 12 A. Yes.
 13 1654 Q. And you expect all of the members
 14 of Cabinet to support that decision?
 15 A. Yes.
 16 1655 Q. The alternative, as I understand
 17 it, in parliamentary procedure is if you don't
 18 support that decision, you have the opportunity to
 19 resign as a minister?
 20 A. Yes.
 21 1656 Q. I want to put together some of the
 22 general principles that we've been talking about in
 23 the context of the specific decision to terminate
 24 SARP, and you told Mr. Lisus that Mr. Duncan was
 25 the minister responsible for OLG in 2012?

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1	A. Yes.	1	Premier to provide guidance on big themes?
2	1657 Q. He was responsible for the Cabinet	2	A. Yes.
3	submission to approve the OLG modernization	3	1667 Q. But you relied on your ministers
4	initiative?	4	to carry specific policy items?
5	A. Yes.	5	A. Stay out of the trees.
6	1658 Q. One aspect of the modernization	6	1668 Q. You stayed out of the trees?
7	initiative was cancelling SARP, we saw in your	7	A. My job was to stay out of the
8	review of documents with Mr. Lisus?	8	trees. They could get lost in there. My job was
9	A. Yes.	9	to help them find the forest.
10	1659 Q. You told Mr. Lisus that you would	10	1669 Q. "They" being the ministers who go
11	have been briefed on the decision to cancel SARP?	11	get lost in the trees?
12	A. Yes.	12	A. Absolutely, yeah.
13	1660 Q. You also told Mr. Lisus that you	13	1670 Q. And the individual who was to get
14	do not remember the content of the briefings that	14	lost in the trees on OLG modernization was Mr.
15	you received in respect of a decision to cancel	15	Duncan?
16	SARP?	16	A. Yes.
17	A. That's correct.	17	1671 Q. That said, given that you don't
18	1661 Q. You told Mr. Lisus that a lot of	18	remember the content of the briefings you received
19	what you are advised by your staff in the context	19	in the 1st Quarter of 2012, is it fair to say that
20	of briefings is oral?	20	you don't actually remember what you did or didn't
21	A. Yes.	21	know about the horseracing industry at that time?
22	1662 Q. And so, is it fair to say that	22	A. Yes.
23	simply reviewing the documents wouldn't be expected	23	1672 Q. You can't really say today?
24	to give a full picture of what it is you were told	24	A. Well, what I can say is that I
25	in briefings around the decision to terminate SARP?	25	would -- I would, as a matter of practice, I would
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1	A. Yes.	1	never have spent this much time on any one
2	1663 Q. Now, Karim Bardeesy, I think you	2	budgetary initiative.
3	told Mr. Lisus, was one of the people briefing you	3	1673 Q. But as to whether you knew certain
4	on the OLG modernization initiative?	4	facts or not, you're not able to really recall with
5	A. Yes.	5	precision today?
6	1664 Q. Is it fair to say that back in the	6	A. That's correct.
7	1st Quarter of 2012, at a time when you were	7	1674 Q. Now, you told Mr. Lisus that you
8	receiving briefings, you may have been more	8	spoke with Mr. Duncan about the decision to cancel
9	familiar with the horseracing industry than you are	9	SARP at some point before the Cabinet meeting --
10	today?	10	A. I must have.
11	MR. LISUS: Excuse me, in 2012 he was	11	1675 Q. -- on February 8th, 2012?
12	more familiar with it than he is today?	12	A. Yes.
13	MR. ROSENBERG: Correct.	13	1676 Q. You say you must have.
14	THE WITNESS: No.	14	A. I must have.
15	BY MR. ROSENBERG:	15	1677 Q. Do you remember the content of
16	1665 Q. You're saying that today, as a	16	your discussion or discussions?
17	result of the past two days you've spent with	17	A. I do not, but it was usual along
18	Mr. Lisus, you are more familiar with the	18	the way of crafting the budget for Mr. Duncan to
19	horseracing industry?	19	meet with me and say, hey, this is what I'm
20	A. Yes. I've had a long education	20	thinking of, I just want to keep you in the loop,
21	over the last couple of days, and through reading	21	he'd get a reaction. And again, my job would be to
22	documents, I know much more about the industry than	22	say, you know, to make sure we're on track in terms
23	I would have known back then.	23	of meeting my central policy demands.
24	1666 Q. And that goes back to, I think,	24	1678 Q. Were you relying on Mr. Duncan to
25	the role that you described where you were there as	25	be able to explain the consequences it would have

<p style="text-align: right;">Page 451</p> <p>1 had of cancelling SARP?</p> <p>2 A. Yes.</p> <p>3 1679 Q. In fairness to you, I think you</p> <p>4 mentioned the 100,000 Ontario public servants. I</p> <p>5 take it you were relying on the public service of</p> <p>6 Ontario to be able to assist in explaining --</p> <p>7 A. Yes.</p> <p>8 1680 Q. -- the consequences, good or bad,</p> <p>9 of cancelling it.</p> <p>10 A. Yes.</p> <p>11 -- Reporter intervenes.</p> <p>12 BY MR. ROSENBERG:</p> <p>13 1681 Q. Yes, my questions may meander. I</p> <p>14 wouldn't want you to commit to an answer without</p> <p>15 hearing the full question.</p> <p>16 And I think, as Mr. Lisus very fairly</p> <p>17 put to you, you weren't taking a leadership role on</p> <p>18 obtaining the information regarding the</p> <p>19 consequences of cancelling SARP?</p> <p>20 A. I was not.</p> <p>21 1682 Q. And with respect to other</p> <p>22 ministers, Mr. Lisus asked, for example,</p> <p>23 Mr. McMeekin. Do you remember conversations with</p> <p>24 other ministers about the decision to cancel SARP?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 453</p> <p>1 A. More than is usual.</p> <p>2 1688 Q. Were you satisfied that Cabinet</p> <p>3 had enough information to evaluate the harms and</p> <p>4 the benefits that could arise from cancelling SARP?</p> <p>5 A. Yes.</p> <p>6 1689 Q. If you had not been satisfied that</p> <p>7 the decision to terminate SARP was Cabinet-ready,</p> <p>8 what would you have done?</p> <p>9 A. I would have asked for a delay in</p> <p>10 order to remedy that situation, or asked for</p> <p>11 additional missing information in order for Cabinet</p> <p>12 to consider.</p> <p>13 1690 Q. Now, tell me, putting yourself</p> <p>14 back in the 1st Quarter of 2012 and thinking about</p> <p>15 your budget exercise that we talked about in</p> <p>16 generality, was there an urgency to find cost</p> <p>17 savings for the 2012 budget?</p> <p>18 A. Absolutely.</p> <p>19 1691 Q. Why?</p> <p>20 A. In order to protect our core</p> <p>21 priorities.</p> <p>22 1692 Q. What was going to happen if you</p> <p>23 didn't exercise real fiscal restraint?</p> <p>24 A. Well, we were going to -- from a</p> <p>25 fiscal perspective, we were going to -- we were in</p>
<p style="text-align: right;">Page 452</p> <p>1 1683 Q. It's possible you had those</p> <p>2 discussions?</p> <p>3 A. Yes, it is.</p> <p>4 1684 Q. You just can't say today?</p> <p>5 A. I can't.</p> <p>6 1685 Q. Were you satisfied that the</p> <p>7 decision to cancel SARP was Cabinet-ready when it</p> <p>8 came before Cabinet on February 8th, 2012?</p> <p>9 A. Yes. As I recall, and from what I</p> <p>10 saw of the documents in preparation for these</p> <p>11 sessions, I was impressed with the amount of</p> <p>12 material. It struck me as extraordinarily</p> <p>13 comprehensive relative to the normal packages that</p> <p>14 were presented at Cabinet that accompanied</p> <p>15 ministerial initiatives.</p> <p>16 1686 Q. I think we looked at the Cabinet</p> <p>17 submission. It spans many dozens of pages. Are</p> <p>18 you saying that's longer than usual?</p> <p>19 A. Yes. Yes, there was a Cabinet --</p> <p>20 there was a decision document and then there was a</p> <p>21 summary and then speaking notes and then the</p> <p>22 document prepared for Cabinet committee. All</p> <p>23 together there was a lot of material.</p> <p>24 1687 Q. More paper than you can shake a</p> <p>25 stick at?</p>	<p style="text-align: right;">Page 454</p> <p>1 danger of doubling our deficit over a few years.</p> <p>2 We were in danger of devoting more and more money</p> <p>3 to paying interest on an ever-growing debt which</p> <p>4 would compromise our ability to fund growing demand</p> <p>5 in health care and education.</p> <p>6 We worked really hard, for example, to</p> <p>7 reduce our health care wait times, which called for</p> <p>8 more funding. We worked very hard to dramatically</p> <p>9 increase the number of spaces available in our</p> <p>10 colleges and universities to reduce our class</p> <p>11 sizes. We hired tens of thousands more teachers.</p> <p>12 Those were at risk if we could not find ways to</p> <p>13 protect them.</p> <p>14 1693 Q. And I don't think it's</p> <p>15 controversial, I take it that that meant making</p> <p>16 hard choices about how to spend scarce dollars?</p> <p>17 A. Very much so. This was not a --</p> <p>18 this was not -- you know, we knew together as a</p> <p>19 team at the Cabinet this was not going to be an</p> <p>20 easy exercise, we knew it was going to be a</p> <p>21 difficult exercise and that politically it was</p> <p>22 going to become very challenging for us to sell</p> <p>23 this eventually.</p> <p>24 1694 Q. I want to come to that in a</p> <p>25 moment, but the exercise, at least within your own</p>

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1	government, meant that some good programs just	1	A. Very much so.
2	weren't going to get the funding that they needed?	2 1704	Q. Your government --
3	A. That's correct.	3	A. This was just one difficult
4 1695	Q. You gave the example a moment ago	4	meeting among many regarding budgetary initiatives.
5	of cutting \$900 million from each of Health and	5 1705	Q. And your government spending over
6	Education. That's got to be tough?	6	the next couple of years was contingent on Ontario
7	A. Very difficult.	7	having certain revenue, right?
8 1696	Q. And these were across-the-board	8	A. Yes.
9	cuts that, as you said, the Minister of Finance	9 1706	Q. The budget is effectively the
10	asked ministries to make?	10	balance of the spending that you want and the
11	A. Yes.	11	revenue that you're going to have to find to pay
12 1697	Q. Now, what comes out of that	12	for it; fair?
13	February 8th, 2012 Cabinet meeting is a Cabinet	13	A. Yes.
14	minute that directs, as I think we've seen, OLG to	14 1707	Q. It's effectively a plan to raise
15	terminate the siteholder agreements with racetracks	15	and spend money?
16	that make up SARP, right?	16	A. Yes.
17	A. Yes.	17 1708	Q. A minority government can't simply
18	MR. LISUS: As effectively ending SARP.	18	determine how it will raise money on its lonesome,
19	It doesn't say to make up SARP.	19	right?
20	BY MR. ROSENBERG:	20	A. No. I mean, there may be some
21 1698	Q. You would have understood that the	21	measures that aren't coming to mind right now that
22	way that SARP was given effect was through, I think	22	are -- increase the license plate fee renewal.
23	as you discussed and in fact reviewed with	23 1709	Q. Right.
24	Mr. Lisus, contracts between OLG and racetracks?	24	A. That can be done by way of Order
25	A. Yes.	25	in Council as opposed to a budgetary initiative.
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1	MR. LISUS: He said he did not	1 1710	Q. Sure. But the big stuff?
2	understand that, Mr. Rosenberg. That was expressed	2	A. The big stuff absolutely requires
3	about a dozen different ways.	3	the introduction of a bill, generally through the
4	BY MR. ROSENBERG:	4	budget, and support of an opposition party.
5 1699	Q. You understood that the way that	5 1711	Q. And I think you told Mr. Lisus
6	money flowed to racetracks was through contracts	6	specifically the NDP?
7	between racetracks and OLG?	7	A. Yes.
8	A. I remember there was a contractual	8 1712	Q. Without the support of the NDP,
9	-- I was told there was a contractual obligation,	9	your government couldn't follow through on the plan
10	and that was one of the reasons behind the notice	10	to stop the flow of SARP funds on one year's
11	period.	11	notice?
12 1700	Q. Sure. Is it fair to say that to	12	A. Yes.
13	you that was SARP, those contracts?	13 1713	Q. And I don't think it's
14	A. SARP was attached to that.	14	controversial, but the decision to terminate SARP
15 1701	Q. And you say attached to that, but	15	was incorporated into the 2012 Ontario budget? I
16	there is a policy rationale behind SARP, right?	16	can show it to you, if you like.
17	A. Yes.	17	A. I believe it. Yeah. I know
18 1702	Q. And I think you said to Mr. Lisus	18	there's reference in it.
19	the policy rationale behind SARP was to support the	19	MR. LISUS: It's not in the bill,
20	horseracing industry?	20	Mr. Rosenberg.
21	A. Yes.	21	BY MR. ROSENBERG:
22 1703	Q. Now, that Cabinet minute that	22 1714	Q. So if I look at the 2012 Ontario
23	we've just been discussing from the February 8th,	23	budget, I put this to Mr. Orsini as an exhibit to
24	2012 Cabinet meeting, this fit into a broader	24	his examination. I have brought copies for
25	budget discussion, right?	25	counsel.

<p style="text-align: right;">Page 459</p> <p>1 MR. LISUS: Thank you. 2 BY MR. ROSENBERG: 3 1715 Q. This is an excerpt from the 2012 4 Ontario budget. Do you recognize this, sir? 5 A. Yes. 6 1716 Q. And in fairness, an excerpt from 7 the addendum to that budget as well. You remember 8 there was an addendum to the budget that outlined 9 some of the cuts that were being asked of the 10 ministries? 11 A. Yes, right. 12 1717 Q. Now, if we just look at the budget 13 itself, page 98. 14 MR. LISUS: Sorry, the budget itself? 15 MR. ROSENBERG: Yes, this is the 2012 16 Ontario budget, as it says on the front page, as 17 opposed to the addendum. 18 MR. LISUS: As opposed to the bill? 19 But what are we talking about, this document here? 20 MR. ROSENBERG: It's called the Ontario 21 2012 budget, Mr. Lisus, and that's what I'm 22 referring to. 23 BY MR. ROSENBERG: 24 1718 Q. And Mr. Duncan, as you'll recall, 25 testified that this budget was put to the House</p>	<p style="text-align: right;">Page 461</p> <p>1 SARP on one year's notice? 2 A. Yes. 3 1721 Q. This was not a secret? 4 A. I recall that on the basis of some 5 of the Q&A that was presented to me today from 6 Hansard, yes. 7 1722 Q. Sure. And this was not a secret 8 that part of the budget was terminating SARP on one 9 year's notice? 10 A. No, it became -- it became well 11 known. 12 1723 Q. And you saw letters that Mr. Lisus 13 showed you from any number of individuals, media 14 outlets, a hue and cry about the decision to 15 terminate SARP? 16 A. It became a big political 17 challenge. 18 1724 Q. And it was put to you by 19 opposition parties, by others, that you were going 20 to kill the horseracing industry by terminating 21 SARP? 22 A. Yes. 23 1725 Q. And, nevertheless, your budget, 24 which contained, as you've agreed, the decision to 25 terminate SARP on a year's notice, passed the</p>
<p style="text-align: right;">Page 460</p> <p>1 through a series of motions, as I recall. 2 In any event, if you look at the bottom 3 of page 98, you'll see that there is a description 4 that: 5 "As part of OLG's modernization 6 process, the government reviewed the 7 support, this being the SARP funds, 8 for the horseracing industry as 9 outlined in the previous 10 government's 1998 Letter of Intent. 11 In doing so, the government 12 determined that the industry needs 13 to move towards greater 14 self-sufficiency without government 15 support." 16 You see that? 17 A. Yes, I do. 18 1719 Q. And Mr. Lisus showed you some 19 Hansard from some discussion in the legislature 20 around this decision to terminate SARP? 21 A. Yes. 22 1720 Q. And you recall generally that 23 around this 2012 budget there was discussion, 24 questions raised in the legislature about the 25 wisdom of your government's decision to terminate</p>	<p style="text-align: right;">Page 462</p> <p>1 legislature? 2 A. It did. 3 1726 Q. And that was, as you've said, an 4 expression of the will of the elected 5 representatives of the people of Ontario? 6 A. Yes. 7 1727 Q. In fact, it was a budget that I 8 think, as you said, I suppose it wouldn't be 9 tripartisan, it would be bipartisan with the NDP 10 abstaining? 11 A. Yes. 12 1728 Q. It was effectively a budget that 13 was passed with the NDP's tacit support? 14 A. Yes. 15 1729 Q. We heard from you earlier today 16 that you thought you had a deal with the NDP and 17 there were more demands. Do you remember that? 18 A. Yes. 19 1730 Q. We heard from Mr. Duncan that it 20 looked as though at some point that the budget 21 might not pass. Do you remember that? 22 A. I remember that. 23 1731 Q. And your government entered into 24 negotiations with the NDP to allow the budget to 25 pass. Do you remember discussing that with</p>

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1	Mr. Lisus?	1	A. Again, Cabinet decides, especially
2	A. Yes.	2	when it comes to budgetary matters, the what. Line
3	1732 Q. One of the things that you agreed	3	ministries are then saddled with the responsibility
4	to as you reviewed with Mr. Lisus, and you remember	4	of how do we make this happen, and it's not unusual
5	this in fairness as the big demand the NDP	5	for them to have to develop new information and new
6	initially made, was a new tax on the highest	6	proposals to help deliver on the budgetary
7	earning Ontarians?	7	initiative.
8	A. Yes.	8	1744 Q. This is another, to use your word,
9	1733 Q. The effect of implementing that	9	iterative process?
10	tax was to significantly increase the revenues	10	A. Yes.
11	available to your government?	11	1745 Q. You get feedback from stakeholders
12	A. That was the theory.	12	as things are actually implemented?
13	1734 Q. The theory. The expectation,	13	A. Yes.
14	shall we put it?	14	1746 Q. And that's an ordinary part of
15	A. Yes.	15	government?
16	1735 Q. And that sort of changed the	16	A. Yes.
17	calculus of what Ontario could afford?	17	1747 Q. And it allows you to adjust with
18	A. That represented new revenue.	18	the data of experience, I suppose?
19	1736 Q. New revenue that could be used for	19	A. Yes.
20	new spending?	20	1748 Q. One of the things that your
21	A. Yes.	21	government did to study the question of whether and
22	1737 Q. And as Mr. Lisus pointed out, it	22	what transition funding was needed was appoint the
23	was in fact used for new spending?	23	Horseracing Transition Panel?
24	A. Yes.	24	A. Yes.
25	1738 Q. He pointed to childcare, but	25	1749 Q. You discussed that with Mr. Lisus.
Page 464		Page 466	
1	another thing that came out of that negotiation	1	A. Um-hmm, yes.
2	with the NDP, as I understand it, was some funding	2	1750 Q. The idea there, as I understand
3	for transition support to the horseracing industry?	3	it, was to show leadership to an often-divided
4	A. That's what I learned through	4	industry?
5	reading the documents.	5	A. Yes.
6	1739 Q. Now, even after the budget passed,	6	1751 Q. In terms of the policy rationale
7	your government continued to look at the question	7	behind the decision to terminate SARP with one year
8	of what support the horseracing industry needed,	8	of notice, I think -- perhaps it makes sense to
9	right?	9	actually look at the Cabinet submission on this
10	A. Yes. Again, to use my language,	10	point. Could I please have Exhibit --
11	we became focused on the how.	11	MR. RATCLIFFE: 46, I think it is.
12	1740 Q. The how. And the how is a study	12	MR. ROSENBERG: -- 46.
13	of whether and what transition funding --	13	BY MR. ROSENBERG:
14	A. Yes.	14	1752 Q. Just while I'm at it, while I'm
15	1741 Q. -- might be appropriate?	15	getting this document, the expert in how a budget
16	A. Yes. What did fairness demand of	16	is introduced in the legislature and how it
17	us without -- as interpreted through our commitment	17	actually gets passed by the legislature, would that
18	to our core policy priorities.	18	be Mr. Duncan as opposed to you?
19	1742 Q. Now, as I understand it, and	19	A. Well, I think the real expert --
20	Mr. Orsini testified to this, that's not unusual	20	experts are to be found among the civil service.
21	for a government to continue to consider the impact	21	1753 Q. Right.
22	of its policies?	22	A. He would take advice from the
23	A. Not at all. It happens all the	23	civil service and I think in particular from the
24	time.	24	Deputy Minister.
25	1743 Q. Right.	25	1754 Q. And he'd be closer to that process

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<p>1 than you would?</p> <p>2 A. Yes.</p> <p>3 1755 Q. So I have Exhibit 46 here for you, 4 sir. And if I could actually just direct you 5 within the Cabinet submission decision document to 6 page 17. For Mr. Lisus' benefit, this is page 797 7 of the document that he's now reading.</p> <p>8 Now, your government had a policy 9 rationale in putting this Cabinet submission 10 together, right?</p> <p>11 A. Yes.</p> <p>12 1756 Q. And is it fair to say that the 13 rationale under the heading "Rationale" on page 17 14 captures the policy rationale for -- or at least 15 part of the policy rationale for the decision to 16 terminate SARP?</p> <p>17 MR. RATCLIFFE: Take a moment just to 18 read those two paragraphs.</p> <p>19 THE WITNESS: (Witness reads document). 20 Yes.</p> <p>21 BY MR. ROSENBERG:</p> <p>22 1757 Q. So part of it, it appears, part of 23 the policy rationale for this decision is that: 24 "Termination of the SARP 25 program will provide the industry</p>	<p>1 Mr. Lisus.</p> <p>2 MR. LISUS: Mr. Ratcliffe?</p> <p>3 MR. RATCLIFFE: Well, again we don't 4 want any discussion about what actually went on in 5 Cabinet.</p> <p>6 MR. LISUS: Correct.</p> <p>7 MR. RATCLIFFE: In terms of the 8 document itself --</p> <p>9 MR. LISUS: I agree with the document 10 itself. There cannot be an attempt to indirectly 11 link the contents of the document itself to the 12 decision. That is exactly what's being done and it 13 is improper and Ms. La Horey did not allow it to be 14 done on the examination of Mr. Duncan and neither 15 should you.</p> <p>16 MR. RATCLIFFE: What was the question 17 again?</p> <p>18 MR. ROSENBERG: I think that first 19 question has been answered.</p> <p>20 The other piece of the policy 21 rationale, and Mr. Lisus wants to tie my question 22 now to this document, but the other thing that's 23 animating the decision to terminate SARP is in 24 addition to saying that the industry has to be 25 governed by market factors, the other piece is</p>
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<p>1 with an opportunity to address 2 long-term factors that threaten the 3 sustainability of the industry, such 4 as continued decline in the customer 5 base due to demographic pressures, 6 and imbalances in purses. 7 Specifically this approach will 8 allow the market to decide - to a 9 greater extent - where and how much 10 horseracing should exist in 11 Ontario." 12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 1758 Q. That's part of the policy 15 rationale for the decision to cancel SARP?</p> <p>16 A. Yes.</p> <p>17 MR. LISUS: He cannot answer that 18 question. You can ask him if it was part of the 19 policy rationale that is described in his Cabinet. 20 You cannot ask him about any connection to that and 21 the decision that came out because there is an 22 embargo on any discussion or deliberative or 23 decision-making process at Cabinet, and we went 24 through this with Mr. Duncan.</p> <p>25 MR. ROSENBERG: I have your objection,</p>	<p>1 about allocating scarce dollars amongst Ontario's 2 spending priorities.</p> <p>3 MR. LISUS: Mr. McGuinity said he didn't 4 know about the details or rationales. He relied on 5 Finance to have worked them up and have undertaken 6 the appropriate analysis and study of the 7 consequences.</p> <p>8 You ought not to be now trying to 9 indirectly link through a witness who has said he 10 didn't know the contents of this document and the 11 decision, which your co-defendant has refused the 12 plaintiffs any inquiry into.</p> <p>13 MR. ROSENBERG: Mr. Lisus, I have your 14 objection but I would prefer to hear the 15 witness' --</p> <p>16 MR. LISUS: It's not for you --</p> <p>17 MR. ROSENBERG: I would prefer to hear 18 the witness' evidence, not your evidence.</p> <p>19 MR. LISUS: It's for Mr. Ratcliffe to 20 address having regard to the fact that Ontario has 21 refused to permit any inquiry or discussion about 22 deliberations or content of the Cabinet meeting.</p> <p>23 MR. ROSENBERG: I'm sure Mr. Ratcliffe 24 appreciates your advocacy tips and I'm sure --</p> <p>25 MR. LISUS: It's not a tip,</p>

<p style="text-align: right;">Page 471</p> <p>1 Mr. Rosenberg. It's an important issue about the 2 defendants trying to split their case. They made 3 an election about inquiry into the contents of the 4 Cabinet meeting and now you're trying to get behind 5 that and make connections about the deliberations 6 at the Cabinet meeting. 7 MR. ROSENBERG: I understand this is a 8 sensitive point for the plaintiffs. 9 MR. LISUS: It is indeed a sensitive 10 point and you'll have to live with it because of 11 the decision of your co-counsel. 12 MR. ROSENBERG: Not my co-counsel, 13 Mr. Lisus. 14 MR. LISUS: But that doesn't answer the 15 question about whether or not you can properly try 16 and go behind a position taken. 17 BY MR. ROSENBERG: 18 1759 Q. Now, Mr. McGuinty, you've heard 19 our back and forth here, and I guess I'm simply 20 trying to ascertain the part of your government's 21 rationale. Let's not take this at the level of the 22 Cabinet meeting but let's just take it at the level 23 of preparing a submission for the Cabinet meeting. 24 Part of the rationale for terminating 25 SARP was the desire to allocate scarce dollars</p>	<p style="text-align: right;">Page 473</p> <p>1 established any of those and I do have some 2 questions on those points, so bear with me, 3 Mr. Lisus. 4 BY MR. ROSENBERG: 5 1763 Q. Mr. McGuinty, you have heard 6 Mr. Lisus' objection, we'll come back to it. But I 7 think you said it's all sort of the same thing, if 8 the money doesn't get paid to SARP it's available 9 to the consolidated revenue fund, right? 10 A. I saw this as -- I saw this as 11 public money. 12 1764 Q. It was money that was available to 13 the Government of Ontario to deploy through 14 decisions of Cabinet and the legislature? 15 A. Yes. 16 1765 Q. And so, I return to my question. 17 You would agree that you were of the view that 18 Ontario couldn't afford to keep spending \$345 19 million a year on horseracing? 20 A. Not given our economic context and 21 the imperative to protect our core priorities. 22 1766 Q. And just to give you a benchmark, 23 Mr. Duncan told us that the \$345 million a year was 24 more than half the size of the entire budget of 25 OMAFRA. I mean, this was not an insignificant</p>
<p style="text-align: right;">Page 472</p> <p>1 amongst competing priorities and to elevate those 2 core priorities of your government that needed 3 funding? 4 A. Yes. 5 1760 Q. And it was really about a choice, 6 at base, between, as you said earlier, protecting 7 dollars for health and education, and on the other 8 hand, as a matter of policy, secondary priorities? 9 A. Health and education were our 10 highest priorities. 11 1761 Q. And that meant that sometimes 12 dollars had to come from other even good programs? 13 A. Yes. 14 1762 Q. And one of the things that we saw 15 you discuss in the legislature and you, I think, 16 were pretty clear on this point, was your view that 17 Ontario couldn't afford to continue to spend \$345 18 million a year to support the horseracing industry? 19 MR. LISUS: To spend 345 million a 20 year? We've already established this didn't come 21 out of the consolidated revenue fund, wasn't a 22 transfer payment, an economic development program 23 or a business support program. How was Ontario 24 spending -- 25 MR. ROSENBERG: I don't think we have</p>	<p style="text-align: right;">Page 474</p> <p>1 amount of money you were talking about? 2 A. No. And I do recall being told 3 that it was disproportionately large in comparison 4 to the support levels offered in other provinces. 5 1767 Q. And it's particularly important 6 because so much of what's in a budget is already 7 sort of committed and fixed, things like debt 8 service payments, right? 9 A. You have much less flexibility 10 than you think you have. 11 1768 Q. Right. 12 A. It's easy from the outside to 13 say -- 14 1769 Q. Yes. 15 A. -- I'm going to find savings. 16 1770 Q. Right. 17 A. But when you get inside, that 18 money, most of it is locked up very tight. 19 1771 Q. Now, the plaintiffs say that the 20 decision to terminate SARP was really cooked up 21 between you and your Minister of Finance? 22 MR. LISUS: When did I say it was 23 cooked up? 24 MR. ROSENBERG: I think that that's a 25 fair characterization of the argument that you made</p>

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<p>1 in court before Mr. Justice Emery at our last 2 meeting and expressed in your submissions. 3 MR. LISUS: I said that the 4 plaintiff -- that the thing was cooked up by 5 Mr. McGuinty? I'd like you to show me that. 6 MR. ROSENBERG: I'm going to say that 7 it was a decision -- 8 MR. LISUS: I can tell you, 9 Mr. McGuinty, I did not say anything was cooked up. 10 BY MR. ROSENBERG: 11 1772 Q. Well, if the language offends you, 12 Mr. Lisus, the plaintiffs say the decision to 13 terminate SARP was really one taken between you and 14 your Minister of Finance. What do you say to that? 15 A. It's a decision I ultimately 16 supported. I can't recall its source. I can't 17 recall what took place at that meeting with me and 18 Karim Bardeesy. I mean, there were -- we've viewed 19 iterations here today, but, I mean, from my 20 perspective this had been red-flagged as a result 21 of the modernization report and it represented a 22 source of public dollars that warranted my 23 attention. 24 1773 Q. And ultimately this was a 25 recommendation that your Minister of Finance</p>	<p>1 1777 Q. But there is a program, right, you 2 understood the Slots at Racetrack Program, that's 3 what SARP stands for? 4 A. Um-hmm, yes. 5 1778 Q. And part of that is a payment of 6 20 percent of OLG's net win from its slot machines 7 at racetracks to racetrack siteholders pursuant to 8 siteholder agreements. Does that sound correct? 9 A. Yes. Something I've learned more 10 about as a result of these -- 11 1779 Q. Fair enough. 12 A. -- days. 13 1780 Q. Now, OLG paid its profit into the 14 consolidated revenue fund, right? 15 A. Yes. 16 1781 Q. That was money that OLG was 17 collecting for Ontario? 18 A. Yes. 19 1782 Q. By exploiting a monopoly on 20 legitimate gambling in Ontario? 21 A. Yes. I mean, it was well 22 understood in government that OLG money was 23 government money. 24 1783 Q. Right. And in fairness, the 25 Ontario Lottery and Gaming Corporation Act requires</p>
<p>1 carried forward to Cabinet? 2 A. Yes. 3 1774 Q. And as we've seen, Cabinet reached 4 a decision and that decision was to terminate SARP 5 on one year's notice? 6 A. Yes. 7 1775 Q. Did you personally have authority 8 to make the decision to terminate SARP? 9 A. No. That would be a decision that 10 has to be made by Cabinet. 11 1776 Q. Now, Mr. Lisus a moment ago 12 objected to the idea this was Ontario's money, and 13 he challenged you on your characterization of SARP 14 funds as public money. 15 He attributed some significance to the 16 fact that the money to pay for SARP was from OLG as 17 opposed to directly from the consolidated revenue 18 fund. 19 MR. LISUS: Money to pay for SARP? 20 MR. ROSENBERG: Right, to pay -- 21 MR. LISUS: You mean the SARP revenue? 22 That's what you're referring to? 23 MR. ROSENBERG: No, sir, I think I was 24 clear when I spoke. 25 BY MR. ROSENBERG:</p>	<p>1 OLG to develop, undertake, organize, conduct and 2 manage lottery schemes on behalf of Her Majesty in 3 Right of Ontario, right? 4 A. Sounds right to me. 5 1784 Q. You can take my word for it, it's 6 section 3 of the OLG Act. 7 A. Right. 8 1785 Q. And so, if OLG didn't pay monies 9 to fund SARP, those monies would be available to 10 Ontario to fund any of its programs from the 11 consolidated revenue fund? 12 MR. LISUS: And SARP wouldn't exist, 13 Mr. Rosenberg. 14 MR. ROSENBERG: I appreciate your 15 evidence, Mr. Lisus, but you are going to have to 16 let the witness answer. 17 MR. LISUS: You have to be fair. There 18 wouldn't be any funds generated for Ontario without 19 the business run by -- 20 MR. ROSENBERG: Mr. Lisus -- 21 MR. LISUS: By OLG which includes 22 operating expenses, which is what the horseracing 23 industry's share was. You have to be fair. 24 MR. ROSENBERG: I'm going to come to 25 that, Mr. Lisus.</p>

<p style="text-align: right;">Page 479</p> <p>1 BY MR. ROSENBERG: 2 1786 Q. Mr. McGuinty, do you think I'm 3 being unfair to you? 4 A. I'm feeling badly browbeaten here. 5 1787 Q. Is that right? We're all smiling 6 around the table here. 7 A. Put a smiley face beside that one 8 too. 9 1788 Q. I think we're all smiling because 10 it's late in the day and we're just trying to get 11 through and the idea that I'm being unfair is that 12 silly. 13 So, I have your agreement that if the 14 money wasn't paid for SARP, it would be available 15 to fund programs from the consolidated revenue 16 fund? 17 A. Yes. 18 1789 Q. I know that Mr. Lisus in his 19 testimony disagrees with that view, but just to 20 understand that dynamic, if you look back at 21 Exhibit 11 that Mr. Lisus put to you. 22 So Exhibit 11 was the 2004 Cabinet 23 minute, and it says on page 2 under Topic B: 24 "Increase provincial revenue 25 from racetracks through slot</p>	<p style="text-align: right;">Page 481</p> <p>1 1794 Q. Mr. Lisus directed you to the 2 Financial Administration Act. Are you familiar 3 with this Act? 4 A. No. 5 1795 Q. Not familiar with this 6 interpretation? 7 A. No. 8 1796 Q. Now, OLG differs from a private 9 corporation insofar as it is charged with carrying 10 out the gaming policy of Ontario, right? 11 A. Sounds reasonable. 12 MR. LISUS: Do you know that, sir, how 13 and whether OLG differs from a private corporation 14 as a matter of law? 15 MR. ROSENBERG: Well, I'm not asking 16 that question, Mr. Lisus. You'll have an 17 opportunity to ask your questions. 18 MR. LISUS: Okay. 19 MR. ROSENBERG: But I need to conduct 20 my examination before you conduct your second 21 examination. 22 MR. LISUS: Fine. 23 BY MR. ROSENBERG: 24 1797 Q. We saw, for example, that the 25 decision first to implement SARP, and then</p>
<p style="text-align: right;">Page 480</p> <p>1 machines and from the introduction 2 of table games working with PO, MEDT 3 and MOF by renegotiating commissions 4 to the horseracing industry." 5 Do you see that? 6 A. Sorry, I'm not sure where we are 7 on this. 8 1790 Q. B, Topic B. You see you can 9 increase revenue to Ontario by -- 10 A. Through slot machines and from the 11 introduction of table games. 12 1791 Q. And the first topic, you can 13 increase revenue to the Province of Ontario by 14 paying less in commissions to the horseracing 15 industry, right? 16 A. Yes. 17 1792 Q. In other words, you reduce the 18 amount of money you spend on SARP, there's more 19 revenue for Ontario? 20 A. Yes. 21 1793 Q. All right. Thank you. And I 22 think you said that OLG was a means of raising 23 revenue for the Province of Ontario? 24 A. Yes, that was its -- that was one 25 of its prime responsibilities.</p>	<p style="text-align: right;">Page 482</p> <p>1 terminate SARP, that OLG was directed to take 2 certain measures? 3 A. Yes. 4 1798 Q. Directed by government? 5 A. Directed by government. 6 1799 Q. And insofar as OLG was directed by 7 government to enter into siteholder agreements for 8 SARP, it was directed by government to incur policy 9 expenses, the expense of carrying out government 10 policy? 11 MR. LISUS: What are policy expenses? 12 MR. ROSENBERG: I just said, but let's 13 go for an example. 14 BY MR. ROSENBERG: 15 1800 Q. Mr. Orsini testified that OLG has 16 two head offices, one in Toronto and the other in 17 Sault Ste. Marie because maintaining a head office 18 in Sault Ste. Marie is an important economic 19 development program. You accept that, sir? 20 A. I've heard that. 21 1801 Q. That's what I mean by a policy 22 expense. It's not something that a profit 23 maximizing corporation would necessarily do, but 24 it's -- it has a policy dimension to it because 25 government wants it to happen. Is that fair?</p>

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1 A. Yes, it is.

2 1802 Q. Another example of a policy
 3 expense, you'll recall that Mr. Lisus had a giant
 4 binder, the public accounts of Ontario and some
 5 other documents, that was marked as Exhibit 8 on
 6 your examination.

7 So, within this document, Mr. Lisus had
 8 directed you to OLG's financial statements and he
 9 had drawn your attention to the definition of
 10 commissions, and if you look to page 2-84, you'll
 11 see the Ontario Lottery and Gaming Corporation's
 12 notes to consolidated financial statements. Do you
 13 see that?

14 A. Yes.

15 1803 Q. Mr. Lisus directed you to the fact
 16 that commissions are recorded as an operating
 17 expense of OLG. Do you see that under operating
 18 expenses? It's towards the bottom.

19 A. Yes, yes.

20 1804 Q. And we saw that commissions as
 21 they're recorded here includes the 20 percent of
 22 the net win that OLG paid to racetrack operators
 23 under SARP. Remember reviewing that with
 24 Mr. Lisus?

25 A. You're getting technical on me

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1 here.

2 1805 Q. In fairness, I don't expect you to
 3 be able to get into the technical details, it's
 4 just Mr. Lisus put this to you and he also just
 5 asked me what's an example of policy expense so I
 6 wanted to give you another example of the policy
 7 expense.

8 MR. LISUS: I wasn't asking you for an
 9 example of a policy expense. I was asking you what
 10 is a policy expense, where can I see that term.

11 MR. ROSENBERG: I'm answering by giving
 12 you some examples, Mr. Lisus.

13 BY MR. ROSENBERG:

14 1806 Q. You saw the commissions under
 15 operating expenses?

16 A. Yes.

17 1807 Q. Another thing that you see under
 18 the things that OLG records as operating expenses
 19 is something called win contribution. Do you see
 20 that?

21 A. Yes.

22 1808 Q. That's Note 16 which you see on
 23 2-85?

24 A. Yes.

25 1809 Q. Now, "Win Contribution," it says:

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1 "The corporation remits a
 2 contribution to the Province of
 3 Ontario equal to 20 percent of the
 4 gaming revenue from the resort
 5 casinos and the Great Blue Heron
 6 slot machine facility in accordance
 7 with the Ontario Lottery and Gaming
 8 Corporation Act, 1999. In fiscal
 9 2011 the win contribution payments
 10 were..." it's approximately \$274
 11 million.

12 Do you see that?

13 A. Yes, I see that.

14 1810 Q. Now, this is another example of an
 15 expense that OLG is directed by government, you see
 16 here the OLG Act, to incur as a matter of policy?

17 MR. LISUS: Where is the evidence
 18 that's directed by government to incur that
 19 expense?

20 MR. ROSENBERG: It says that it is paid
 21 in accordance with the Ontario Lottery and Gaming
 22 Corporation Act, 1999.

23 BY MR. ROSENBERG:

24 1811 Q. Now, Mr. McGuinty --

25 MR. LISUS: It is directed to pay, you

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1 said, but where is it directed to incur such as
 2 expense and where is there any definition or
 3 statement of a policy expense, let alone one
 4 directed to be incurred by government? Where is
 5 this coming from?

6 MR. ROSENBERG: Mr. Lisus, I appreciate
 7 you might have argument on this and that's what
 8 we're going to have a motion on, but I need you to
 9 let me ask my questions and I need to get through
 10 this because it's now 4:30 and we've got to get
 11 through this. So please let me ask my questions.
 12 I need you to let me ask my questions.

13 MR. LISUS: You can ask your question
 14 but, Mr. Ratcliffe, this has to bear some semblance
 15 of --

16 MR. ROSENBERG: Mr. Lisus, you have
 17 made --

18 MR. LISUS: -- connection to a rational
 19 foundation. Where does the policy expense come
 20 from? Is it in the statute? Is it in a pleading?
 21 Is it in a financial statement?

22 MR. ROSENBERG: Mr. Lisus, these are
 23 all interesting questions but I need to ask my
 24 questions to the witness. I'm not here to answer
 25 your questions. You can put your objection on the

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<p>1 record but I need to ask questions. 2 MR. LISUS: That's what I'm doing, and 3 I'm asking Mr. Ratcliffe to exercise some control 4 over a process that is completely untethered from 5 any foundation in the pleadings or -- 6 MR. RATCLIFFE: Yes, Mr. Rosenberg, I 7 guess what would be helpful perhaps, just for the 8 record, is if you can indicate with this line of 9 questioning how it arises out of earlier questions. 10 MR. ROSENBERG: Sure. 11 MR. LISUS: And what a policy expense 12 is. 13 MR. ROSENBERG: I'm coming to that, 14 Mr. Lisus. I thought I had given an example of 15 one. This is another. 16 MR. LISUS: The first example was what? 17 MR. ROSENBERG: That OLG maintains two 18 head offices, one in Sault Ste. Marie because a 19 head office in Sault Ste. Marie is an important 20 part of the government's regional development, 21 regional economic development policy, and that's an 22 example. 23 So that is an expense that was recorded 24 as an expense of OLG, but that is an expense that 25 is incurred to carry out a government policy.</p>	<p>1 Mr. McGuinty is in a position to answer or not 2 answer. 3 BY MR. ROSENBERG: 4 1812 Q. Fair enough. All I'm doing, sir, 5 is I'm directing you to this Note 16 where it 6 appears that OLG is required by statute to pay 20 7 percent of gaming revenue from some casinos to 8 Ontario. Do you see that? 9 A. I see that. 10 1813 Q. And that statutory direction is 11 recorded as an expense, as an operating expense on 12 OLG's consolidated financial statements. You see 13 that? 14 MR. RATCLIFFE: Which line are you 15 looking at? 16 BY MR. ROSENBERG: 17 1814 Q. It is the second to last line 18 under operating expenses. Do you see that? 19 MR. RATCLIFFE: Under "Win 20 Contribution"? 21 BY MR. ROSENBERG: 22 1815 Q. Yes, that's where we were looking 23 at at Note 16. Do you see that? 24 A. I see that. 25 1816 Q. And that's an example of an</p>
Page 488	Page 490
<p>1 MR. LISUS: And where do I see that in 2 the statute or a pleading or an affidavit? 3 MR. RATCLIFFE: Mr. Lisus, I have your 4 objection. I'm going to move on with my 5 questioning. 6 MR. LISUS: Mr. Ratcliffe, as counsel 7 for Ontario and responsible for this witness, and 8 having regard to the fact that we didn't have an 9 examination of these documents, we're getting 10 made-up terms -- 11 MR. RATCLIFFE: I think, Mr. Lisus, you 12 would ask for certain leeway when I would object to 13 your questions and you would say "I'm getting 14 there," and I think perhaps on this question of 15 what's a policy and what's not -- 16 MR. LISUS: What's a policy expense is 17 the issue. 18 MR. ROSENBERG: Why don't I ask my 19 questions and Mr. Ratcliffe will decide whether he 20 wants to refuse them. Mr. Lisus, you've given him 21 some guidance on what you think he should be 22 refusing. I'm sure he appreciates it but I need to 23 ask my questions; otherwise we're going to be here 24 forever. 25 MR. RATCLIFFE: And it may well be that</p>	<p>1 operating expense that OLG is directed to incur by 2 statute; fair? 3 A. I see that. 4 1817 Q. Now, another one of the expenses 5 that OLG incurred by direction of the government 6 was the 20 percent of its net win that was paid to 7 racetrack operators; fair? 8 MR. LISUS: Where is that direction? 9 MR. ROSENBERG: You showed it to him. 10 You showed him the Letter of Intent and you said it 11 was directed by a budget in 1996 -- 12 MR. LISUS: No, I didn't. 13 MR. ROSENBERG: -- and by Cabinet. 14 MR. LISUS: Excuse me, Mr. Rosenberg, 15 show me the statutory direction as in Footnote 16 16 -- 17 MR. ROSENBERG: I didn't say statutory 18 direction, I said directed by government. 19 MR. LISUS: -- that requires OLG to 20 share its revenue with the horse -- not its 21 revenue -- which requires OLG to share revenue 22 generated from slot machines in a prescribed 23 lottery scheme with the horseracing industry. 24 Where is that statutory direction? 25 MR. ROSENBERG: Mr. Lisus...</p>

Page 491	<p>1 MR. LISUS: But this is the point I'm</p> <p>2 making, Mr. Ratcliffe.</p> <p>3 MR. ROSENBERG: Mr. Lisus, you can ask</p> <p>4 whatever questions you want.</p> <p>5 MR. LISUS: The premise of the question</p> <p>6 is that a statutory direction in a completely</p> <p>7 different statute is being put to the witness.</p> <p>8 There is no, we all know, unless I've missed</p> <p>9 something, statutory direction that revenues from</p> <p>10 slot machines be shared with the horseracing</p> <p>11 industry. That statutory direction came in the</p> <p>12 form of a grant in 2015.</p> <p>13 BY MR. ROSENBERG:</p> <p>14 1818 Q. Mr. McGuinty, do you remember that</p> <p>15 you reviewed a June 25th, 1998 Letter of Intent</p> <p>16 with Mr. Lisus? It was marked as Exhibit number 4</p> <p>17 to your examination. Do you remember that?</p> <p>18 A. Vaguely.</p> <p>19 MR. RATCLIFFE: A long time ago. It</p> <p>20 was yesterday morning.</p> <p>21 THE WITNESS: That was a thousand</p> <p>22 documents ago.</p> <p>23 BY MR. ROSENBERG:</p> <p>24 1819 Q. And you remember Mr. Lisus pointed</p> <p>25 out to you that the Ontario Government had</p>	Page 493	<p>1 question that you're asking in terms of policy</p> <p>2 direction or whatever, but we seem to be spinning</p> <p>3 our wheels here a little bit.</p> <p>4 BY MR. ROSENBERG:</p> <p>5 1823 Q. Yes, let me try to make this</p> <p>6 easier for Mr. Lisus. And you told Mr. Lisus that</p> <p>7 you understood SARP to be a subsidy, right, sir?</p> <p>8 A. Yes, support.</p> <p>9 1824 Q. Support. For an industry?</p> <p>10 A. Yes.</p> <p>11 1825 Q. And the subsidy, as Mr. Lisus has</p> <p>12 said, was paid most directly by OLG?</p> <p>13 A. Yes.</p> <p>14 1826 Q. Now --</p> <p>15 MR. LISUS: I don't think I said the</p> <p>16 subsidy was paid by OLG, Mr. Rosenberg. I</p> <p>17 certainly didn't say subsidy.</p> <p>18 BY MR. ROSENBERG:</p> <p>19 1827 Q. Well, whether or not Mr. Lisus</p> <p>20 said it, you would have understood that this was a</p> <p>21 subsidy program that was being administered by OLG?</p> <p>22 A. Yes.</p> <p>23 1828 Q. Now, the OLG was administering</p> <p>24 that subsidy because it was a policy of the</p> <p>25 Government of Ontario to subsidize the horseracing</p>
Page 492	<p>1 originally announced the 1996 budget will be</p> <p>2 introducing slot machines into Ontario racetracks.</p> <p>3 Do you remember that?</p> <p>4 A. I recall that.</p> <p>5 1820 Q. And you remember that Mr. Lisus</p> <p>6 reviewed with you your understanding as a member of</p> <p>7 the opposition at the time that SARP was introduced</p> <p>8 in 1998?</p> <p>9 A. Yes. He reviewed that with me.</p> <p>10 1821 Q. And you understood that SARP was</p> <p>11 implemented at the direction of the government of</p> <p>12 the day, Mike Harris' Conservative government?</p> <p>13 A. Yes.</p> <p>14 1822 Q. And that's where we get this</p> <p>15 Letter of Intent from that directs a payment of 20</p> <p>16 percent of the net win to racetrack operators?</p> <p>17 MR. LISUS: It doesn't do that, Mr.</p> <p>18 Rosenberg. It's an agreement that speaks for</p> <p>19 itself. There is no government direction in it.</p> <p>20 It's a bargain for agreement.</p> <p>21 MR. RATCLIFFE: I guess that's a legal</p> <p>22 argument. Again, I'm not -- Mr. Rosenberg, I'm not</p> <p>23 sure that Mr. McGuinty is in a position to</p> <p>24 ultimately answer your question. I wonder if</p> <p>25 there's a way of simplifying in some way the</p>	Page 494	<p>1 industry, right?</p> <p>2 A. Yes.</p> <p>3 1829 Q. And so, this is what I mean by an</p> <p>4 expense that OLG incurs to carry out government</p> <p>5 policy. Fair?</p> <p>6 A. Yes.</p> <p>7 1830 Q. These are not expenses that an</p> <p>8 ordinary private corporation would incur, right?</p> <p>9 A. No. No, OLG was seen -- I cannot</p> <p>10 give you the legal or the accounting</p> <p>11 interpretation, but I can give you, as a denizen of</p> <p>12 Queen's Park for many years, the common</p> <p>13 understanding was that OLG's job was to, in part,</p> <p>14 provide us with revenues and to make expenditures</p> <p>15 authorized by us or directed by us.</p> <p>16 1831 Q. And Mr. Lisus showed you Exhibit</p> <p>17 9, which was the 2011 Ontario budget and excerpt</p> <p>18 therefrom, and he directed you in fact to the last</p> <p>19 page of this exhibit, which says:</p> <p>20 "Approximately 20 percent of</p> <p>21 gross revenue from slot machines at</p> <p>22 racetracks is used to promote the</p> <p>23 economic growth of the horseracing</p> <p>24 industry."</p> <p>25 That's part and parcel of what we've</p>

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1 just been discussing, right?
2 MR. RATCLIFFE: Take a moment to read
3 it.
4 THE WITNESS: (Witness reads document).
5 Your question?
6 BY MR. ROSENBERG:
7 1832 Q. This is what you're talking about
8 when you say that OLG was providing support for an
9 industry?
10 A. Yes.
11 1833 Q. And that's clearly disclosed in
12 the 2011 budget?
13 A. Yes.
14 1834 Q. Now, Mr. Lisus asked you whether
15 the subsidy that was SARP was secret?
16 MR. LISUS: I did not ask him whether
17 the subsidy that was SARP was secret.
18 BY MR. ROSENBERG:
19 1835 Q. He asked you whether SARP was a
20 secret subsidy in reviewing those attack ads with
21 you. Do you remember that, sir?
22 A. Yes.
23 1836 Q. And I suppose the difficulty is
24 that it was hard to separate how much of that 20
25 percent of the net win that was paid to racetrack

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1 operators under SARP was to rent slots for -- rent
2 space for slot machines on the one hand, and how
3 much was to support the horseracing industry?
4 MR. LISUS: He won't know that Mr.
5 Rosenberg and none of the 20 percent was to rent
6 space from slot machines or slot machines. This is
7 not an appropriate line of questioning to get into
8 with Mr. McGuinty. You know he has no idea about
9 that issue.
10 MR. ROSENBERG: I have your evidence on
11 that point, sir.
12 MR. LISUS: Mr. Ratcliffe, this is not
13 helpful to the court.
14 MR. RATCLIFFE: I want to hear the
15 question.
16 MR. LISUS: Well, you heard one
17 question already. Mr. McGuinty doesn't know how or
18 why or where slot revenues at racetracks were
19 allocated. He made that very clear. He didn't
20 even know that they were under the siteholder
21 agreements. Now to put words in his mouth is not
22 helpful to the record.
23 MR. RATCLIFFE: I think that we have
24 heard that he's familiar with the big picture but
25 not the details, so again, I don't know whether or

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1 not there is an issue here that needs to be
2 addressed.
3 BY MR. ROSENBERG:
4 1837 Q. I'm happy to rephrase. I trust
5 that the witness will tell me what he does and
6 doesn't know, won't you, sir?
7 A. Yes.
8 1838 Q. Mr. Lisus showed you a number of
9 documents that contemplated a transfer payment
10 following the termination of SARP. Do you remember
11 that? There were proposals for a transfer payment.
12 MR. RATCLIFFE: Are you speaking of the
13 first year after termination, second year, third
14 year after termination?
15 BY MR. ROSENBERG:
16 1839 Q. I can go through the documents
17 that he showed you, but there was certainly a
18 discussion contemplated option where there would be
19 a transfer payment to the horseracing industry
20 after SARP was terminated?
21 A. Yes, yes.
22 1840 Q. And it would be easy to see that
23 that transfer payment was a subsidy, right?
24 A. Yeah, yeah. I thought it was
25 transition funding, you're calling it transfer

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1 payment, but I understand.
2 1841 Q. Sure. I think the transfer
3 payment was the mechanism by which transition
4 funding was to be implemented.
5 A. I understand.
6 1842 Q. My only point was if you were to
7 compare that to SARP, it's much less transparent
8 how much of SARP, how much of that 20 percent net
9 win is a subsidy, right?
10 A. I can't really speak to that.
11 1843 Q. Fair enough.
12 THE REPORTER: Do you think we could
13 take five?
14 -- RECESS AT 4:50 --
15 -- UPON RESUMING AT 4:55 --
16 BY MR. ROSENBERG:
17 1844 Q. You reviewed a number of radio
18 advertisements with Mr. Lisus and I think your
19 words were that this was not the way that you would
20 characterize the issues. Do you remember that,
21 sir?
22 A. Yes.
23 1845 Q. Is that because you were not
24 thinking about the decision to terminate SARP in
25 terms of scoring political points?

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1 A. That's correct.
 2 1846 Q. You were thinking about what was
 3 the best thing for the public interest?
 4 A. Yes.
 5 1847 Q. You would have expected your
 6 Cabinet to do the same?
 7 A. Yes.
 8 1848 Q. To consider what was best for the
 9 people of Ontario?
 10 A. Yes.
 11 1849 Q. You weren't thinking about wedging
 12 Tim and Andrea?
 13 A. No, I wasn't.
 14 1850 Q. You were trying to make good
 15 public policy?
 16 A. I was trying to support health
 17 care and education.
 18 1851 Q. Those were your priorities?
 19 A. Yes.
 20 1852 Q. I want to talk for a moment about
 21 the Ontario Racing Commission. Mr. Lisus showed
 22 you a number of documents from the Ontario Racing
 23 Commission. Do you remember that?
 24 A. I remember seeing some documents.
 25 1853 Q. And is it fair to say that you had

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1 not seen these documents before?
 2 A. Yes.
 3 1854 Q. You were just reading along with
 4 Mr. Lisus as he walked you through the documents?
 5 A. Yes.
 6 1855 Q. You weren't purporting to
 7 interpret what the ORC did or didn't do?
 8 A. No.
 9 1856 Q. You weren't testifying as to what
 10 the ORC said or didn't say?
 11 A. No, I have at best a passing
 12 familiarity with the ORC.
 13 1857 Q. Right. And just to put a pin in
 14 this, you reviewed all of those documents with
 15 Mr. Lisus. Did any of them change your view on --
 16 the ORC documents, you reviewed the ORC documents
 17 with Mr. Lisus. Did any of them change your view
 18 on the wisdom of cancelling SARP?
 19 MR. LISUS: That's not an appropriate
 20 question.
 21 MR. ROSENBERG: You asked the same
 22 question to the witness.
 23 MR. LISUS: It's not appropriate in
 24 re-cross-examination to say do you want to change
 25 your answers or does it change your opinion.

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1 MR. ROSENBERG: That's not even my
 2 question. My question is -- I'll say it again.
 3 BY MR. ROSENBERG:
 4 1858 Q. You reviewed those documents from
 5 the ORC with Mr. Lisus. Did the review of those
 6 documents change your view on the wisdom of
 7 cancelling SARP?
 8 MR. LISUS: You should be asking about
 9 the manner in which SARP was cancelled, Mr.
 10 Rosenberg, which is what Mr. McGuinty testified
 11 about.
 12 MR. ROSENBERG: Mr. Lisus, I need to
 13 ask questions of the witness. I can't have these
 14 constant interruptions of my examination. You have
 15 a right to re-examine on new issues. I think I'm
 16 just asking a question that arises from the
 17 documents that you've put to the witness.
 18 MR. RATCLIFFE: Could you just restate
 19 the question for Mr. McGuinty, please.
 20 BY MR. ROSENBERG:
 21 1859 Q. You reviewed a number of documents
 22 of what the ORC said or didn't say.
 23 MR. RATCLIFFE: And can you be just a
 24 little more specific about what are the type of
 25 documents that you're asking about.

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1 MR. ROSENBERG: They're made exhibits
 2 to the examination. We can hold them up again.
 3 MR. RATCLIFFE: No, again, I don't know
 4 that we need to see them, but can you give him an
 5 example rather than saying you've reviewed a number
 6 of documents. I think it would be helpful to the
 7 witness to understand what you're referring to.
 8 BY MR. ROSENBERG:
 9 1860 Q. For example, Mr. Lisus showed some
 10 correspondence from the Minister of Finance
 11 attaching ORC business plans. That was Exhibit 21
 12 and Exhibit 20.
 13 MR. RATCLIFFE: Again, just for
 14 Mr. McGuinty's benefit to understand what documents
 15 it is that you're referring to.
 16 BY MR. ROSENBERG:
 17 1861 Q. And Exhibit 18. I guess -- are
 18 these the kinds of documents that you would have
 19 expected to see at the time that you were
 20 considering the decision to terminate SARP in the
 21 1st Quarter of 2012?
 22 A. I would expect to receive all the
 23 information that I would need in order to make an
 24 informed decision. I would not be looking under
 25 rocks. I would count on my staff and I think, most

<p style="text-align: right;">Page 503</p> <p>1 importantly, the way they were put on Finance's 2 shoulders to review these matters and to offer 3 their best advice to me. 4 1862 Q. And insofar as some of these 5 letters are from Minister Duncan himself and 6 concern the ORC being an agency under his ministry, 7 you would have been looking to Minister Duncan to 8 raise any important points in these documents? 9 A. Yes. 10 1863 Q. All right. That was probably more 11 difficult than it had to be but I think we got 12 where we needed. 13 MR. LISUS: Phrased that way, it wasn't 14 difficult at all. 15 MR. ROSENBERG: Yes, because you didn't 16 interrupt me, although here we are again. 17 BY MR. ROSENBERG: 18 1864 Q. Mr. Lisus asked you about 19 consultations that OLG or the Ministry of Finance 20 conducted in support of OLG's modernization 21 initiative. Do you remember that? 22 A. Yes. 23 1865 Q. Is it fair to say that you don't 24 know what consultations OLG or the Ministry of 25 Finance actually conducted?</p>	<p style="text-align: right;">Page 505</p> <p>1 And I just direct your attention under 2 the heading "Economic Development/Agricultural 3 Sector" on the first page. Do you see that? 4 A. Yes. 5 1870 Q. And the information that OLG took 6 from this consultation was that: 7 "10 percent slot revenue that 8 horse people receive yearly is 9 essential to the Ontario horse 10 industry. Horseracing multiplier 11 effect on rural areas of Ontario 12 estimated to be \$2.6 million. 13 Stability in the industry is 14 essential for development of horses. 15 Investment in each horse is four to 16 five years as they are bred, raised, 17 trained and raced. Currently, there 18 are about 60,000 standardbred horses 19 in Ontario." 20 Do you see that? 21 A. Yes, I do. 22 1871 Q. And if we go back to the Cabinet 23 submission decision document that you were 24 reviewing with Mr. Lisus, I had asked that he show 25 you page 63 of that document which is where a</p>
<p style="text-align: right;">Page 504</p> <p>1 A. Well, I saw in the documentation 2 related to OLG that there was a fairly extensive 3 consultation process in the development of that 4 plan. 5 1866 Q. But you didn't read any 6 consultation reports from that process? 7 A. No. 8 1867 Q. You don't know exactly what 9 questions they asked stakeholders? 10 A. No. 11 1868 Q. Same with any Ministry of Finance 12 consultations? 13 A. I would not be aware of the 14 details. 15 1869 Q. What I want to show you is a 16 document that was marked as Exhibit 17 on 17 Mr. Phillips' examination. I have a copy for 18 counsel. 19 I understand that this is a summary 20 memorandum that OLG produced following a 21 consultation meeting in 2011 as part of its 22 strategic business review with the Ontario Harness 23 Horse Association, and it's intended to summarize a 24 discussion with that association and to relate the 25 views of a particular stakeholder.</p>	<p style="text-align: right;">Page 506</p> <p>1 summary of stakeholder consultations is presented. 2 A. I see that. 3 1872 Q. And if you look at page 63 next to 4 "Ontario Harness Horse Association," you will see a 5 summary of consultation with that association 6 towards the bottom of the page, 63. Do you see 7 that? 8 And it says that: 9 "The likely reaction to the 10 decision to cancel SARP will be 11 extremely negative." 12 A. Yes. 13 1873 Q. "Will have strong concerns 14 about termination of SARP and 15 reductions in funding." 16 A. Yes. 17 1874 Q. "Will react negatively to the 18 closure of the slots at Fort Erie, 19 Windsor and Hiawatha Racetrack." 20 A. Yes. 21 1875 Q. "Will be concerned about a 22 reduction in race dates. 23 Is opposed to purse pooling 24 between racetracks, and has been 25 issued a judicial review of the</p>

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1	ORC's authority to implement purse	1	1881 Q. And if we go just below to the
2	pooling."	2	bottom of page 63:
3	I think that speaks to the Ontario race	3	"The expected reaction of
4	dates model that Mr. Lisus asked you questions	4	regional standardbred associations,
5	about. And it continues.	5	northern horsemen's association,
6	MR. LISUS: Page 63?	6	National Capital Region Harness
7	MR. ROSENBERG: Correct.	7	Horse Association, and Central
8	MR. RATCLIFFE: Middle column, second	8	Ontario Standardbred Association
9	last box from the bottom.	9	was expected to be extremely
10	MR. ROSENBERG: This is under	10	negative to the decision to
11	position/concern/issue.	11	terminate SARP."
12	MR. LISUS: I'm just not seeing the	12	Do you see that?
13	judicial review part.	13	A. Yes.
14	MR. ROSENBERG: It's right there, see	14	1882 Q. "Will have strong concerns
15	judicial review?	15	about the termination of SARP and
16	MR. LISUS: Yes, thank you.	16	reductions in funding."
17	BY MR. ROSENBERG:	17	Do you see that?
18	1876 Q. And so, it appears that OLG's	18	A. Yes.
19	consultation that we saw at first instance has made	19	1883 Q. And I could continue. You'll see
20	its way into the Cabinet submission in terms of	20	the Ontario Horsemen's Benevolent and Protective
21	anticipating the reaction of horse people	21	Association on to page 64 "also expected to have an
22	stakeholders to the decision to terminate SARP?	22	extremely negative reaction to this decision." Do
23	A. Yes.	23	you see that?
24	1877 Q. And that's a conclusion that flows	24	A. Yes.
25	from the importance that horse people, here the	25	1884 Q. But is it fair to say that these
Page 508		Page 510	
1	Ontario Harness Horse Association, told OLG in	1	were the kinds of consultations that you expected
2	their consultation that they placed on the Slots at	2	to be undertaken to support the decision to
3	Racetracks Program?	3	terminate SARP?
4	A. Yes.	4	A. I'm not really sure I understand
5	1878 Q. So it would not have been lost to	5	the questions -- the question. This would have
6	Cabinet in --	6	told us that consultation had taken place. It told
7	MR. LISUS: Please don't do that. Do	7	us in no uncertain terms that there was going to be
8	not ask him about what was lost and what was not	8	a negative reaction to what we were proposing.
9	lost on Cabinet when there has been an embargo on	9	1885 Q. It told you what stakeholders were
10	what was discussed at Cabinet.	10	likely to think of the decision?
11	BY MR. ROSENBERG:	11	A. Yes.
12	1879 Q. So, it is clear from this Cabinet	12	1886 Q. And now, in fairness, you can see
13	submission document that you reviewed with	13	in this Cabinet package the reason for that
14	Mr. Lisus that the expected reaction of the Ontario	14	reaction. There is a chart, it should be labelled
15	Harness Horse Association to the decision to	15	page 716 of the document at the top.
16	terminate SARP would be extremely negative, right?	16	A. I have it.
17	A. Yes.	17	1887 Q. And it would have communicated the
18	1880 Q. And similarly, you can see that	18	expectation that many racetracks would close
19	with respect to the Ontario Horseracing Industry	19	following the decision to terminate SARP?
20	Association, just above the OHHA, their expected	20	MR. RATCLIFFE: Take a moment just to
21	reaction to the decision to terminate SARP would be	21	look at the chart.
22	extremely negative, "will have strong concerns with	22	BY MR. ROSENBERG:
23	the termination of SARP and reductions in funding."	23	1888 Q. You see there is a column,
24	Do you see that?	24	possible remaining racetracks after termination of
25	A. Yes.	25	SARP?

<p style="text-align: right;">Page 511</p> <p>1 A. Yes.</p> <p>2 1889 Q. And it identifies the ones that</p> <p>3 might stay open?</p> <p>4 A. Yes.</p> <p>5 1890 Q. And if you then go to page 17 of</p> <p>6 the Cabinet submission --</p> <p>7 A. Can I go back to that column?</p> <p>8 What do the blanks in the column signify?</p> <p>9 1891 Q. Those are, as I understand it,</p> <p>10 racetracks that are not expected to stay open</p> <p>11 following the decision to terminate SARP, and I can</p> <p>12 show you at page 17 on to 18 of the Cabinet</p> <p>13 submission decision document --</p> <p>14 MR. RATCLIFFE: Is that it?</p> <p>15 BY MR. ROSENBERG:</p> <p>16 1892 Q. Towards the bottom of page 17 to</p> <p>17 the top of page 18 you see that right-sizing of the</p> <p>18 industry by 2016 to 2017 is estimated to leave only</p> <p>19 six racetracks remaining from the 17 racetracks</p> <p>20 prior to the termination of SARP. Do you see that?</p> <p>21 A. I see that.</p> <p>22 1893 Q. Again, that was apparent from the</p> <p>23 Cabinet submission decision document, right?</p> <p>24 A. Yes.</p> <p>25 1894 Q. You don't remember how many jobs</p>	<p style="text-align: right;">Page 513</p> <p>1 change his evidence.</p> <p>2 MR. LISUS: Yes, you are.</p> <p>3 MR. ROSENBERG: He's already said that</p> <p>4 he can't say with precision what was or wasn't</p> <p>5 brought to his attention.</p> <p>6 BY MR. ROSENBERG:</p> <p>7 1898 Q. And, sir, I think to make this</p> <p>8 clear, you don't know what figures you were given</p> <p>9 for expected job losses?</p> <p>10 MR. LISUS: He testified he knows what</p> <p>11 was not told to him.</p> <p>12 MR. ROSENBERG: Mr. Lisus, I need you</p> <p>13 to let me ask my questions.</p> <p>14 MR. LISUS: Your questions have to be</p> <p>15 fair and founded in the evidence if you're putting</p> <p>16 them to him that way. If you're going to</p> <p>17 characterize what he said, characterize it</p> <p>18 accurately as the foundation for your question.</p> <p>19 BY MR. ROSENBERG:</p> <p>20 1899 Q. Mr. McGuinty, sitting here today,</p> <p>21 can you remember what you were told about the</p> <p>22 expected job losses from the decision to terminate</p> <p>23 SARP?</p> <p>24 A. I cannot.</p> <p>25 1900 Q. All right. Now, Mr. Duncan</p>
<p style="text-align: right;">Page 512</p> <p>1 you were told might be lost following the</p> <p>2 termination of SARP with one year's notice?</p> <p>3 A. That's correct.</p> <p>4 1895 Q. You don't remember how many horses</p> <p>5 you were told might be slaughtered as a result of</p> <p>6 this decision?</p> <p>7 A. I do not.</p> <p>8 1896 Q. But I think you told Mr. Lisus you</p> <p>9 appreciated that there could well be, and I'm</p> <p>10 paraphrasing here, very serious adverse</p> <p>11 consequences for the horseracing industry as a</p> <p>12 result of this decision?</p> <p>13 A. I think that's fair to say.</p> <p>14 1897 Q. And you took that into</p> <p>15 consideration in approaching the question of</p> <p>16 whether to terminate SARP with one year's notice?</p> <p>17 MR. LISUS: That is not a fair or</p> <p>18 appropriate question.</p> <p>19 MR. ROSENBERG: I'm simply saying that,</p> <p>20 you know --</p> <p>21 MR. LISUS: He's made very clear, Mr.</p> <p>22 Rosenberg, multiple times that information was not</p> <p>23 brought to his attention. You're just inviting him</p> <p>24 to change his evidence, that's all you're doing.</p> <p>25 MR. ROSENBERG: I'm not inviting him to</p>	<p style="text-align: right;">Page 514</p> <p>1 testified that at the time the decision to</p> <p>2 terminate SARP was taken, he wanted to study</p> <p>3 transition funding to the horseracing industry</p> <p>4 which was to be done during the year in which SARP</p> <p>5 remained in place, that was until the end of March</p> <p>6 2013.</p> <p>7 Let me show you page 39 of the Cabinet</p> <p>8 submission decision document.</p> <p>9 MR. LISUS: You are again, Mr.</p> <p>10 Rosenberg, trying to get into what was the subject</p> <p>11 of discussion at Cabinet.</p> <p>12 MR. ROSENBERG: I am not, and I am</p> <p>13 simply reviewing the same document that you</p> <p>14 reviewed with the witness.</p> <p>15 MR. LISUS: We'll see how we go.</p> <p>16 MR. ROSENBERG: I understand this is</p> <p>17 not helpful to your case but I am entitled to do</p> <p>18 it.</p> <p>19 MR. RATCLIFFE: Well, we can take it a</p> <p>20 step at a time and we can look at the document and</p> <p>21 see where things go from there.</p> <p>22 BY MR. ROSENBERG:</p> <p>23 1901 Q. All right. You see under 1(b) on</p> <p>24 page 39, one of the major activities next steps</p> <p>25 that are anticipated results, performance measures</p>

<p style="text-align: right;">Page 515</p> <p>1 and proposed monitoring methods for each key 2 initiative, one of the key initiatives listed at 3 the top of page 39 under 1(b) is "end SARP and 4 Ministry of Finance and relevant ministries report 5 back to Cabinet by late 2012 on whether and how to 6 provide ongoing support to the horseracing 7 industry." 8 Do you see that? 9 A. Yes. 10 1902 Q. And that is, in fact, what your 11 government did. It implemented that process? 12 MR. LISUS: Sorry, which process are 13 you talking about when you say "that process"? 14 MR. ROSENBERG: A process of study to 15 determine whether and what ongoing support the 16 horseracing industry required. 17 MR. LISUS: You're talking about the 18 transition panel when you say "that process"? 19 MR. ROSENBERG: That's part of it. 20 MR. LISUS: What are you talking about 21 when you say "that process"? 22 MR. ROSENBERG: I'm asking the witness. 23 I'm not going to give the evidence myself. Can I 24 ask the witness, Mr. Lisus? 25 MR. LISUS: You did ask the witness.</p>	<p style="text-align: right;">Page 517</p> <p>1 understood they were consulted, Mr. Rosenberg. 2 Come on, we spent a lot of time on that. The 3 witness testified he understood there had been 4 consultation with industry stakeholders. 5 MR. ROSENBERG: Mr. Lisus, I can't have 6 you do this. 7 MR. LISUS: Well, you can if you 8 improperly characterize my questions and his 9 evidence. He testified he understood there was 10 consultation with industry stakeholders. 11 MR. ROSENBERG: And you told him that 12 that question hadn't been put to stakeholders, and 13 I'm following up on that line of inquiry. And so I 14 have to be able to ask these questions, Mr. Lisus. 15 You can object. I can't have this constant 16 dialogue with you as I'm trying to follow up on 17 lines of inquiry that you have raised. 18 MR. RATCLIFFE: Can you repeat the 19 question for Mr. McGuinty, please? 20 BY MR. ROSENBERG: 21 1906 Q. Do you, sir, have a view on 22 whether Ontario should have asked industry 23 stakeholders what they thought of the decision to 24 terminate SARP before it was taken? 25 A. That's, in fact, debatable. I</p>
<p style="text-align: right;">Page 516</p> <p>1 You said "that process." I'm trying to understand 2 what you are referring to when you say "that 3 process." 4 BY MR. ROSENBERG: 5 1903 Q. Well, I'm asking did your 6 government implement a process following the 7 decision to terminate SARP to determine whether and 8 how to provide ongoing support to the horseracing 9 industry? 10 A. Yes, that was part of the work 11 done by the transition panel and, as I broadly like 12 to call it, it's the how. 13 1904 Q. Right. And was it your 14 government's intention in implementing that how, 15 that it would use the year in which SARP funds 16 continued to flow, that one-year notice period, to 17 determine whether and how to provide ongoing 18 support to the horseracing industry? 19 A. Well, it certainly gave us the 20 breathing space. 21 1905 Q. Right. Mr. Lisus suggested that 22 Ontario should have asked industry stakeholders 23 what they thought of the decision to terminate SARP 24 before it was taken. Do you have a view on that? 25 MR. LISUS: He testified that he</p>	<p style="text-align: right;">Page 518</p> <p>1 know what the answer would be. I think the issue 2 really is more, as I see it here today, of fully 3 understanding the consequences. 4 1907 Q. And that question of fully 5 understanding the consequences, does that dovetail 6 with what we were discussing a moment ago, this 7 one-year notice period in which to study the issue 8 further? 9 A. And address that. 10 1908 Q. In terms of OLG's role in all of 11 this, is it fair to say that until OLG had 12 direction, at least from Cabinet, on its 13 modernization initiative, it couldn't know what if 14 any of its recommendations would be implemented? 15 A. That's my understanding of how it 16 works. In this particular case OLG advises and 17 government decides. 18 1909 Q. Right. All OLG can do is make 19 recommendations? 20 A. Yes. 21 1910 Q. Do you have any evidence to 22 suggest that cancelling SARP was an irrational 23 decision when it was made? 24 A. No. 25 1911 Q. What about the decision to cancel</p>

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1	SARP with only one year of additional funding, any	1	1924 Q. What about the decision to
2	evidence to suggest that that was irrational?	2	discontinue funding in March of 2013, was that
3	A. No.	3	intended to hurt horse people?
4	1912 Q. Do you have any evidence to	4	A. March 2013?
5	suggest that the decision to cancel SARP was taken	5	1925 Q. Yes, so the year --
6	in bad faith?	6	A. Oh, the year end, yes.
7	A. Definitely not.	7	1926 Q. It's fair enough for you to raise
8	1913 Q. What about the decision to	8	that but the funding was never actually
9	terminate funding with only one year transition,	9	discontinued, but what about the decision to
10	was that decision taken in bad faith?	10	provide the one-year transition period?
11	A. No, definitely not, particularly	11	A. No, it wasn't about causing harm
12	because we had attached to that a commitment to	12	to any group of Ontarians.
13	transition.	13	1927 Q. Right.
14	1914 Q. Do you have any evidence to	14	A. It was about protecting core
15	suggest that the decision to cancel SARP was taken	15	priorities that benefitted all Ontarians.
16	in an extremely careless manner?	16	1928 Q. What about the advertisements that
17	A. No.	17	you reviewed with Mr. Lisus, the radio ads. So far
18	1915 Q. What about the decision with	18	as you know, was there any intention to hurt the
19	respect to the transition period?	19	plaintiffs in this lawsuit by running those ads?
20	A. No. Again, so long as that was	20	A. Understanding politics the way
21	accompanied by a commitment to transition.	21	that I do, they were more incidental casualties
22	1916 Q. The plaintiffs have suggested that	22	than a direct target. Unfair, nonetheless, and not
23	the decision -- sorry, just before I move on, and	23	something that I would support.
24	that commitment to transition was made, correct?	24	1929 Q. Right. And we talked about the
25	A. Yes.	25	way that you approached the decision to terminate
Page 520		Page 522	
1	1917 Q. The plaintiffs have suggested that	1	SARP. You were just doing this because you thought
2	the decision to cancel SARP was taken to inflict	2	it was in the best interests of Ontario, I think
3	pain on Tory ridings. What do you say to that?	3	you said?
4	A. I disagree with that.	4	A. Yes.
5	1918 Q. And, practically speaking, this	5	1930 Q. Not because you were playing
6	decision caused a lot of pain to Liberal ridings;	6	politics?
7	fair?	7	A. No.
8	A. I think, yes, I think it even	8	1931 Q. Not because you were out to hurt
9	caused some challenges for Mr. Duncan.	9	anybody?
10	1919 Q. You're referring to Mr. Duncan's	10	A. No.
11	home town of Windsor?	11	1932 Q. Although, in fairness, as a result
12	A. Yes.	12	of an austerity budget, there were people who got
13	1920 Q. Home of the Windsor Raceway?	13	hurt because you just didn't have enough money to
14	A. Yes.	14	go around?
15	1921 Q. Which was one of the sites that	15	A. That is correct.
16	lost slot machines as a result of the --	16	MR. ROSENBERG: Let's go off the record
17	A. I have a vague memory of that	17	for a moment. I think that's it for me. I just
18	being an issue for him personally.	18	want to confer briefly, if I might.
19	1922 Q. Right. And Minister McMeekin's	19	-- RECESS AT 5:28 --
20	riding as well, which was home to Flamboro Downs	20	-- UPON RESUMING AT 5:29 --
21	racetrack was also hurt; do you remember that?	21	BY MR. ROSENBERG:
22	A. I don't recall that.	22	1933 Q. The document I showed you earlier,
23	1923 Q. All right. Was the decision to	23	the Ontario Harness Horse Association draft minutes
24	cancel SARP taken to hurt horse people?	24	of February 25, 2011, had you seen this document
25	A. No.	25	before, sir?

<p style="text-align: right;">Page 523</p> <p>1 A. I don't believe so.</p> <p>2 MR. ROSENBERG: Why don't we mark this</p> <p>3 the next lettered Exhibit then.</p> <p>4 MR. MATTHEWS: C.</p> <p>5 MR. ROSENBERG: That's Exhibit C.</p> <p>6 EXHIBIT C (for identification):</p> <p>7 Ontario Harness Horse Association draft</p> <p>8 minutes of February 25, 2011.</p> <p>9 BY MR. ROSENBERG:</p> <p>10 1934 Q. Sir, Mr. Lisus asked you a number</p> <p>11 of questions about your preparation for today's</p> <p>12 examination.</p> <p>13 A. Yes.</p> <p>14 1935 Q. Were the questions that you</p> <p>15 received from me questions that had been provided</p> <p>16 to you in advance?</p> <p>17 A. No.</p> <p>18 1936 Q. Were they rehearsed with you?</p> <p>19 A. No.</p> <p>20 1937 Q. Were your answers scripted?</p> <p>21 A. No.</p> <p>22 1938 Q. Did you feel as though your</p> <p>23 answers were spoon-fed to you?</p> <p>24 A. No.</p> <p>25 1939 Q. And you throughout, I take it, did</p>	<p style="text-align: right;">Page 525</p> <p>1 messy process. It's been said that people should</p> <p>2 never see how their laws or sausages are made, and</p> <p>3 this is a good example of how it's messy. There is</p> <p>4 a lot of back and forth and at the end of the day</p> <p>5 that's what gives us democracy.</p> <p>6 1943 Q. So, to try to draw the inference</p> <p>7 that somehow the decision was poorly made or badly</p> <p>8 made because of these last-minute changes, do you</p> <p>9 have any comment on that?</p> <p>10 A. No, that's how the system works.</p> <p>11 1944 Q. I'd like to take you next to the</p> <p>12 Horseracing Industry Transition Panel interim</p> <p>13 report. I think you indicated during your</p> <p>14 testimony earlier that you would have reviewed this</p> <p>15 or maybe -- did you have a chance to review this?</p> <p>16 A. I did.</p> <p>17 1945 Q. In August of 2012 or subsequent to</p> <p>18 that?</p> <p>19 A. No, I'm talking about reviewing it</p> <p>20 in preparation for today.</p> <p>21 1946 Q. So, at the time. I'd like to just</p> <p>22 take you to page 26 and the panel's finding. This</p> <p>23 is Exhibit 44 of the -- this is Exhibit 44 in the</p> <p>24 examination.</p> <p>25 You weren't directly involved in the</p>
<p style="text-align: right;">Page 524</p> <p>1 your best to tell the truth?</p> <p>2 A. Yes.</p> <p>3 MR. ROSENBERG: Those are my questions.</p> <p>4 Thank you very much for bearing with me.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 MR. RATCLIFFE: If you could just go</p> <p>7 off for one minute.</p> <p>8 -- OFF THE RECORD --</p> <p>9 RE-EXAMINATION BY MR. RATCLIFFE:</p> <p>10 1940 Q. For the record, it's Robert</p> <p>11 Ratcliffe as counsel for the Province of Ontario.</p> <p>12 Mr. McGuinty, Mr. Lisus took you in</p> <p>13 great detail, hour by hour, day by day, as the</p> <p>14 matter progressed towards the ultimate Cabinet</p> <p>15 meeting on February 8.</p> <p>16 A. Yes.</p> <p>17 1941 Q. And there were changes at the last</p> <p>18 minute or in relatively short periods of time</p> <p>19 before the actual Cabinet decision?</p> <p>20 A. Yes.</p> <p>21 1942 Q. Do you recall that? Is that</p> <p>22 unusual? Was there anything novel about these</p> <p>23 kinds of changes that would occur shortly before a</p> <p>24 matter goes to Cabinet?</p> <p>25 A. Not unusual. These are -- it's a</p>	<p style="text-align: right;">Page 526</p> <p>1 setting up of the panel I take it from your earlier</p> <p>2 testimony?</p> <p>3 A. I was not.</p> <p>4 1947 Q. You were asked about the three</p> <p>5 panel members. They each came from a different</p> <p>6 political background; is that correct?</p> <p>7 A. Yes.</p> <p>8 1948 Q. So, in a sense there was a</p> <p>9 tripartisan panel looking at the problems?</p> <p>10 A. Yes.</p> <p>11 1949 Q. And their analysis was quite</p> <p>12 direct and frank and critical of the way things</p> <p>13 were done in certain places?</p> <p>14 A. Yes.</p> <p>15 1950 Q. And their decision was unanimous;</p> <p>16 is that your recollection?</p> <p>17 A. I can't recall, but if it was not,</p> <p>18 that would have been noted, but I do know</p> <p>19 Mr. Buchanan and Mr. Snobelen and Mr. Wilkinson</p> <p>20 personally, I know their personality types, and if</p> <p>21 they were -- if this did not constitute a</p> <p>22 consensus, one or more of them would have noted</p> <p>23 that.</p> <p>24 1951 Q. Okay, thank you. I'd like to take</p> <p>25 you to the last paragraph on page 26. It's the</p>

Page 527	<p>1 panel finding and, as you will see or observe, it's</p> <p>2 in bold.</p> <p>3 If you could just take a moment to look</p> <p>4 at that last paragraph, please.</p> <p>5 A. (Witness reads document). Yes, I</p> <p>6 read it.</p> <p>7 1952 Q. And in your earlier testimony you</p> <p>8 distinguished between the what and the how, I guess</p> <p>9 to use your own terminology?</p> <p>10 A. Yes.</p> <p>11 1953 Q. And the what in this instance</p> <p>12 would be the actual termination of SARP?</p> <p>13 A. Yes.</p> <p>14 1954 Q. And the how would be what do you</p> <p>15 do after it's terminated?</p> <p>16 A. Yes.</p> <p>17 1955 Q. And having reviewed the panel's</p> <p>18 finding, and I'll just read the first two or three</p> <p>19 lines:</p> <p>20 "Though it is outside our</p> <p>21 mandate to comment on the merits of</p> <p>22 the government's decision to cancel</p> <p>23 SARP, we will nevertheless do so</p> <p>24 because so many people we spoke with</p> <p>25 advocated reinstatement of the</p>	Page 529	<p>1 the Slots at Racetrack Program." It deals with the</p> <p>2 impact of cancelling the Slots at Racetrack</p> <p>3 Program. Just take a moment to read that paragraph</p> <p>4 and a bit below that.</p> <p>5 MR. LISUS: Which page?</p> <p>6 MR. RATCLIFFE: That is at page 45.</p> <p>7 THE WITNESS: (Witness reads document).</p> <p>8 Yes, I read it.</p> <p>9 BY MR. RATCLIFFE:</p> <p>10 1958 Q. And the paragraph in bold at the</p> <p>11 top says:</p> <p>12 "Was the impact of cancelling</p> <p>13 the Slots at Racetrack Program on</p> <p>14 Ontario's horseracing industry</p> <p>15 measured? Did the province or OLG</p> <p>16 assess the economic impact on</p> <p>17 various industries, businesses and</p> <p>18 municipalities (impacted by the</p> <p>19 cancellation of the Slots at</p> <p>20 Racetrack Program) and factor that</p> <p>21 into their decision?"</p> <p>22 Below that, the answer of the Auditor</p> <p>23 General is "yes." Is the Auditor General's finding</p> <p>24 there consistent with your understanding of what</p> <p>25 actually occurred in terms of weighing of</p>
Page 528	<p>1 program. It is the panel's view</p> <p>2 that continuing SARP would be poor</p> <p>3 public policy."</p> <p>4 Was that finding of the panel, was that</p> <p>5 -- how did that compare to your own assessment of</p> <p>6 the what decision?</p> <p>7 A. I don't recall the finding as it</p> <p>8 was presented at the time, but now it's heartening,</p> <p>9 frankly, to know that a tripartisan panel supported</p> <p>10 the termination of SARP.</p> <p>11 1956 Q. Again, I will be very brief.</p> <p>12 MR. MATTHEWS: Mr. Ratcliffe, would you</p> <p>13 like to mark that as an exhibit?</p> <p>14 MR. RATCLIFFE: Okay. It was marked as</p> <p>15 an exhibit but that was for somebody else, I guess.</p> <p>16 MR. LISUS: I think that's fine.</p> <p>17 MR. RATCLIFFE: It was Exhibit number</p> <p>18 44.</p> <p>19 BY MR. RATCLIFFE:</p> <p>20 1957 Q. I'd like to take you now to the</p> <p>21 Auditor General's report, Ontario Lottery and</p> <p>22 Gaming Corporation modernization plan, and this was</p> <p>23 Exhibit 45 to your examination today.</p> <p>24 Can you take a moment and just look at</p> <p>25 paragraph 5.6, which is entitled "Cancellation of</p>	Page 530	<p>1 consequences?</p> <p>2 A. What it does is supports my</p> <p>3 thinking that as an institution, a government,</p> <p>4 given all of its intellectual capacity, had an</p> <p>5 understanding of the consequences of cancelling</p> <p>6 SARP.</p> <p>7 1959 Q. So, the fact that you wouldn't</p> <p>8 have specific details of the degree, I believe your</p> <p>9 words were what in terms of there were going to be</p> <p>10 consequences?</p> <p>11 A. There were going to be</p> <p>12 consequences, I expected there would be serious</p> <p>13 consequences. Everything we were talking about at</p> <p>14 the time had serious consequences.</p> <p>15 1960 Q. And certainly is the Auditor</p> <p>16 General's understanding here and approach</p> <p>17 consistent with your understanding?</p> <p>18 A. Well, I can tell you the Auditor</p> <p>19 General is generally not seen as a friend of the</p> <p>20 government, so when the Auditor says something that</p> <p>21 says we've been thorough, I take that at her word.</p> <p>22 MR. RATCLIFFE: Thank you. Those are</p> <p>23 my questions.</p> <p>24 MS. WILLIAMS: Just off the record for</p> <p>25 a minute.</p>

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1	-- OFF THE RECORD DISCUSSION --	1	1969 Q. Are you with me, sir?
2	MR. RATCLIFFE: So the document that	2	A. Yeah, I see a column here with
3	Mr. Rosenberg referred you to, "Strong Action For	3	lots of bold.
4	Ontario," that's being marked as Exhibit 57.	4	1970 Q. Right. And do you see where it
5	EXHIBIT NO. 57: Document, "Strong	5	says Ontario Harness Horse Association on the
6	Action for Ontario."	6	left-hand side?
7	MR. LISUS: Are you done?	7	A. Yes.
8	MR. RATCLIFFE: Yes.	8	1971 Q. Do you recall Mr. Rosenberg
9	-- OFF THE RECORD --	9	walking you through the contents of the middle
10	FURTHER CROSS-EXAMINATION BY MR. LISUS:	10	column?
11	1961 Q. Okay, Mr. McGuinty, you were asked	11	A. Yes.
12	some questions by counsel for OLG regarding the	12	1972 Q. And you understood that you were
13	content of the Cabinet submission, particularly	13	being directed to the fact that the people who were
14	with respect to stakeholder management. Do you	14	responsible for the preparation of this deck did,
15	remember that?	15	in fact, bring to the document the content of OLG's
16	A. Yes.	16	consultation process, correct?
17	1962 Q. Take a look, please, at page 56,	17	A. Are you saying they've taken the
18	bottom left-hand corner of the Cabinet document.	18	information that they got from OLG and transposed
19	Are you with me there?	19	it to this?
20	A. Yes.	20	1973 Q. Well, that's what the document
21	1963 Q. That's where there the section on	21	appears to be saying. The document on stakeholder
22	stakeholder management begins?	22	management, page 56, are you with me?
23	A. Yes.	23	A. Yes.
24	1964 Q. It identifies the stakeholders	24	1974 Q. Says:
25	that were consulted at some point, correct?	25	"OLG undertook an extensive
Page 532		Page 534	
1	A. Yes.	1	stakeholder consultation process as
2	1965 Q. Do we agree that this is a	2	part of its review of land-based
3	reference to the stakeholder consultation process	3	gaming and lottery distribution
4	that OLG undertook?	4	networks. Specific stakeholder
5	A. Yes.	5	reactions are explored below."
6	1966 Q. And you relied upon Finance to	6	A. Um-hmm, yes.
7	accurately reproduce the important parts of that	7	1975 Q. And then the stakeholders and
8	stakeholder consultation process, correct?	8	their reactions are reported in the document. So
9	A. Yes, I would.	9	if you turn over the page you see OLG employees,
10	1967 Q. Mr. Rosenberg asked you to look at	10	unions, chain drug stores?
11	page 63, where he directed your attention to the	11	A. Yes.
12	Ontario Harness Horse Association. Do you see	12	1976 Q. And then if we get to 163, we see
13	that?	13	Ontario Horse Racing Industry Association and
14	A. Yes.	14	Ontario Harness Horse Association?
15	1968 Q. And we see there that the authors	15	A. Yes.
16	of this document had reproduced the contents of the	16	1977 Q. And it was your expectation, of
17	stakeholder consultation process undertaken by OLG.	17	course, that all of the relevant and important
18	Do you see that?	18	facts gathered in the consultation process would
19	MR. RATCLIFFE: Where are you pointing	19	have been included, right?
20	to?	20	A. Yes, but again, I think we talked
21	MR. LISUS: Ontario Harness Horse	21	about this earlier, my understanding of this
22	Association, extremely negative.	22	document in reading it is that these are reactions
23	MR. RATCLIFFE: Is that the middle	23	based on consultations that were taken prior to the
24	column, second box down?	24	discussion of the removal of SARP.
25	BY MR. LISUS:	25	1978 Q. I agree, and Mr. Rosenberg gave

Page 535		Page 537	
1	you exhibit 17, which was the exhibit to the	1	essential to the Ontario horse
2	cross-examination of Mr. Phillips and it's now	2	industry."
3	Exhibit C to you. And I've given it to you. So do	3	Do you see that?
4	you recall, sir, when Mr. Rosenberg examined you,	4	A. Yes.
5	he gave you Exhibit 17 to the --	5	1987 Q. "Horseracing multiplier effect
6	MR. RATCLIFFE: Sorry, which document	6	on rural areas of Ontario estimated
7	are you referring to? Do we have that? Thanks.	7	to be 2.6 billion."
8	MR. LISUS: Exhibit C, can I see that	8	Do you see that?
9	for a moment, please.	9	A. Yes.
10	MR. RATCLIFFE: Um-hmm.	10	1988 Q. "Stability in the industry is
11	BY MR. LISUS:	11	essential for development of horses.
12	1979 Q. Yes, this is Exhibit C on your	12	Investment in each horse is four to
13	examination. It was Exhibit 17 on Mr. Phillips'	13	five years as they are bred, raised,
14	examination, okay? This is the stakeholder report	14	trained and raced."
15	generated by OLG when it conducted its stakeholder	15	Do you see that?
16	consultation process. Okay?	16	A. Yes.
17	A. Yes.	17	1989 Q. "Currently, there are about
18	1980 Q. You see where it says stakeholder,	18	60,000 standardbred horses in
19	Ontario Harness Horse Association?	19	Ontario."
20	A. Yes.	20	Do you see that?
21	1981 Q. Now, do you see, if you look at	21	A. Yes.
22	the Cabinet document page 63, it says stakeholder,	22	1990 Q. None of those points from the
23	Ontario Harness Horse Association?	23	stakeholder consultation process were reproduced
24	A. Yes.	24	for the benefit of Cabinet on page 63, correct?
25	1982 Q. And then do you see in the middle	25	A. That's correct.
Page 536		Page 538	
1	column where the authors of the Cabinet document	1	1991 Q. So, the position, concern or issue
2	summarize the position/concern/issue of the Ontario	2	of the Ontario Harness Horse Association, as it was
3	Harness Horse Association? Do you see that?	3	communicated to OLG on February 25, 2011, was
4	A. Which document am I looking at	4	excluded from the information given to Cabinet on
5	now?	5	February 8, 2012, correct?
6	1983 Q. Page 63 of the Cabinet document.	6	A. I'm not -- I'm not sure --
7	A. Um-hmm.	7	1992 Q. It's not in there, sir?
8	1984 Q. So just take a minute and just	8	A. It's not in there, but what is in
9	read what they have summarized to yourself of the	9	there I believe to be accurate.
10	position/concern/issue of the Ontario Harness Horse	10	1993 Q. I believe to be accurate too.
11	Association.	11	A. Yes.
12	MR. RATCLIFFE: And that's page 63 that	12	1994 Q. But what's not in there is the
13	you're looking at -- he's looking at first?	13	four to five year breeding cycle, right? That's
14	MR. LISUS: Yes.	14	not in there?
15	THE WITNESS: (Witness reads document).	15	A. No, it's not.
16	Yes, I've read it.	16	1995 Q. Not in there is that the 10
17	BY MR. LISUS:	17	percent slot revenue horse people receive yearly is
18	1985 Q. Now, take Exhibit C.	18	essential to the Ontario horseracing industry?
19	A. Yes.	19	A. Yes, I see that.
20	1986 Q. And have a look at the complete	20	1996 Q. That's not in there, right?
21	stakeholder reaction recorded by OLG in February	21	A. No.
22	2011, in particular the middle section, economic	22	1997 Q. Not in there is that stability in
23	development/agricultural sector.	23	the industry is essential for the development of
24	"The 10 percent slot revenue	24	horses. That's not in there, right?
25	that horse people receive yearly is	25	A. No.

<p style="text-align: right;">Page 539</p> <p>1 1998 Q. So it's not a complete picture of 2 what the positions/concerns/issues of the Ontario 3 Harness Horse Association were when they shared 4 them with OLG in its consultation process in 5 February 2011; fair? 6 A. Yes. 7 1999 Q. All right. Let's look at another 8 one. 9 MR. RATCLIFFE: Do you want that 10 document back? 11 MR. LISUS: You can keep it, if you 12 want. 13 BY MR. LISUS: 14 2000 Q. Do you see at the bottom, towards 15 the bottom of page 68, that Cabinet was told that 16 OMAFRA was part of the extensive stakeholder 17 consultation process? Do you see that? 18 MR. RATCLIFFE: Just give him a moment 19 to read it. 20 THE WITNESS: (Witness reads document). 21 Now we're on to the section "Interministry 22 Engagement"? 23 BY MR. LISUS: 24 2001 Q. Yes, and Cabinet was told that 25 OMAFRA was extensively consulted, correct? Bottom</p>	<p style="text-align: right;">Page 541</p> <p>1 expressly told that OMAFRA had been engaged in the 2 decision to terminate Slots at Racetrack Program 3 revenue share in accordance with Cabinet minute 4, 4 right? 5 MR. RATCLIFFE: Just give him a minute 6 to review the preamble. 7 THE WITNESS: (Witness reads document). 8 So it says the chart that follows outlines 9 "Feedback Received from Engaged Ministries." 10 BY MR. LISUS: 11 2006 Q. Right. And one of the engaged 12 ministries was OMAFRA? 13 A. Yes. 14 2007 Q. And the reason OMAFRA was 15 identified as being engaged, as you and I said, is 16 because it was a ministry that was going to be 17 affected by the decision, right? 18 A. Yes. 19 2008 Q. Now, going back to stakeholders, 20 Mr. Rosenberg directed you to, we are on page 63, 21 sir, directed you to the information regarding the 22 Ontario Horse Racing Industry Association and its 23 position, concern and issue. 24 A. I see that. 25 2009 Q. Now, reading from OLG's</p>
<p style="text-align: right;">Page 540</p> <p>1 of page 68, they're identified as the ministry 2 extensively consulted? 3 A. I don't know where you get the 4 "extensively." 5 2002 Q. Sir, it's just the explanation 6 given of this section on stakeholder management. 7 If you look at page 56: 8 "OLG undertook an extensive 9 stakeholder consultation process. 10 Specific stakeholder reactions are 11 explored below." 12 MR. RATCLIFFE: So you're speaking of 13 the preamble then? 14 MR. LISUS: Yes. 15 MR. RATCLIFFE: What page was that on? 16 BY MR. LISUS: 17 2003 Q. Fifty-six. 18 A. I don't think -- I think this is a 19 different section. This is Interministry 20 Engagement. 21 2004 Q. Okay, that's your interpretation, 22 that's fair enough. You see that ministry -- that 23 that section says that OMAFRA was engaged? 24 A. Yes. 25 2005 Q. Okay. So that Cabinet was</p>	<p style="text-align: right;">Page 542</p> <p>1 consultation memo dated May 5, 2011 in which it 2 summarized OHRIA's response to the consultation -- 3 MR. ROSENBERG: Do you have a copy for 4 us, counsel? 5 MR. LISUS: No, I'm looking at it on 6 the computer myself, it's OLG0699. 7 MR. ROSENBERG: Do you have a copy for 8 the witness? 9 MR. LISUS: No, because this was just 10 raised by you, Mr. Rosenberg. Do you have a copy 11 for the witness? 12 MR. ROSENBERG: How could I have a copy 13 for the witness of documents you're going to put to 14 the witness? I don't know what your questions are 15 in advance, Mr. Lisus. I went upstairs and printed 16 a copy for the witness. 17 MR. LISUS: I'm not going to do that. 18 I'm going to read it and give you the document 19 number. 20 BY MR. LISUS: 21 2010 Q. In the consultation memorandum, 22 Mr. McGuinty, dated May 5, 2011, this is what OLG 23 records OHRIA telling them: 24 "Horseracing has a mating cycle 25 of seven to nine years."</p>

<p style="text-align: right;">Page 543</p> <p>1 And we can agree, sir, that nowhere is 2 that contained in the Cabinet document. It's been 3 removed? 4 MR. ROSENBERG: I object. You keep 5 saying removed but the Cabinet document clearly 6 says it's about presenting the reactions of these 7 groups, not summarizing the entire consultation 8 memorandum. 9 MR. LISUS: Positions/concerns/issues. 10 MR. ROSENBERG: That's a chart but 11 you're ignoring the words that introduce the chart, 12 Mr. Lisus. 13 MR. LISUS: The words that introduce 14 the chart are OLG undertook an extensive 15 stakeholder consultation process as part of its 16 review of land-based gaming and lottery 17 distribution networks, specific stakeholder 18 reactions are explored below. 19 MR. ROSENBERG: That's my point. 20 Specific stakeholder reactions are what is supposed 21 to be recorded in the chart, Mr. Lisus. 22 MR. LISUS: I have your point, thank 23 you. 24 BY MR. LISUS: 25 2011 Q. We can agree, sir, that the chart</p>	<p style="text-align: right;">Page 545</p> <p>1 other questions, sir. Mr. Rosenberg asked you some 2 questions about policy expenses. Do you remember 3 that? 4 A. Yes. 5 2014 Q. Now, over the course of our 6 discussions, sir, and review of the documents, 7 you've seen reference to the word "transfer 8 payments," right? 9 A. Yes. 10 2015 Q. And you've seen reference to the 11 word "grants," right? 12 A. Yes. 13 2016 Q. And you've seen reference to the 14 words "business support programs"? 15 A. Yes. 16 2017 Q. And you've seen reference to the 17 words "economic development programs"? 18 A. Yes. 19 2018 Q. You're familiar with all those 20 terms from your time in government? 21 A. Yes. 22 2019 Q. Have you ever heard of an 23 accounting term, "policy expense"? 24 A. No, but I understand what it 25 means.</p>
<p style="text-align: right;">Page 544</p> <p>1 does not record the Ontario Horse Racing 2 Association that there is a mating cycle of seven 3 to nine years, right? 4 MR. RATCLIFFE: Well, Mr. Lisus, it 5 isn't in this box. 6 BY MR. LISUS: 7 2012 Q. Is it anywhere else? Because if 8 you want to show me, I'm very happy to look at it. 9 MR. RATCLIFFE: I believe there was 10 actually a cycle, not those numbers because those 11 numbers are new. All we've ever heard up to this 12 point in time is anywhere between three to five. 13 Seven to nine are completely new numbers. 14 MR. LISUS: No, we've heard up to 15 eight, including from Mr. Duncan, which seems to be 16 between seven and nine on my math. 17 MR. RATCLIFFE: Anyway, it's not in 18 this box. 19 MR. LISUS: And it's not in this 20 Cabinet document unless you can show me somewhere 21 where it is. 22 MR. RATCLIFFE: We'll get back to you 23 if it turns out. 24 BY MR. LISUS: 25 2013 Q. Now, I want to ask you a couple of</p>	<p style="text-align: right;">Page 546</p> <p>1 2020 Q. Okay. Are you aware, sir, of any 2 government directive or instrument or statute that 3 refers to a "policy expense"? 4 A. No. 5 2021 Q. Now, my friend Mr. Rosenberg asked 6 you to look at a note to the consolidated financial 7 statements of OLG that's in the public accounts. 8 Are you aware of that? 9 A. Yes. 10 2022 Q. Excuse me, do you remember that? 11 A. I remember that. 12 2023 Q. And he referred you to a note 13 which refers to a statute, in particular the 14 Workplace Safety and Insurance Act? 15 MR. ROSENBERG: I don't think I 16 referred to the Workplace Safety and Insurance Act, 17 Mr. Lisus. 18 MR. LISUS: Perhaps you could refresh 19 my memory. Which statute did you refer to? 20 MR. ROSENBERG: I'm sure it wasn't the 21 statute I referred to. I think it's perhaps the 22 more pertinent one, the Ontario Lottery and Gaming 23 Corporation Act which governs OLG's activities, as 24 opposed to WSIB. 25 BY MR. LISUS:</p>

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1	2024	Q.	Fair enough. Do you remember	1			Rural Affairs in order to enable the
2			being referred to a statutory -- do you remember	2			continued administration of that
3			there being a statutory reference to the	3			program."
4			contribution payments from resort casinos and Great	4	R/F	MR. RATCLIFFE:	Mr. Lisus, Mr. McGuinty
5			Blue Heron slot machine facility?	5			left government in 2013 and what you're asking
6		A.	I remember there being a statutory	6			again is a legal question.
7			reference.	7		BY MR. LISUS:	
8	2025	Q.	And I take it you and I can agree,	8	2029	Q.	Do you appreciate the point, sir,
9			sir, that there is no statutory reference in the	9			that in 2015 for the first time there was a
10			Ontario Lottery and Gaming Corporation Act --	10			statutory direction to OLG to direct payments to
11		MR. RATCLIFFE:	Here you're asking a	11			the horseracing industry pursuant to a grant?
12			legal question and I think you objected to Mr.	12		MR. RATCLIFFE:	Do you have any
13			Rosenberg's question.	13			knowledge?
14		MR. LISUS:	It didn't stop Mr.	14		THE WITNESS:	I'm not aware of that.
15			Rosenberg, so if we're going to have a complete	15		BY MR. LISUS:	
16			record, I'm going to put the same questions on the	16	2030	Q.	Okay. Mr. Rosenberg asked you
17			record, and if you want to object to them you can,	17			about budgets and budget discussion and the passage
18			Mr. Ratcliffe, and Mr. McGuinty will either answer	18			of the budget, right?
19			as he did Mr. Rosenberg's or he will choose not to,	19		A.	Yes.
20			but I'm going to put the questions on the record.	20	2031	Q.	Do you remember that?
21		MR. RATCLIFFE:	As a refresher, what	21		A.	Yes.
22			was --	22	2032	Q.	The budget as passed was passed as
23		BY MR. LISUS:		23			Bill 55, correct?
24	2026	Q.	Here's the question. There is	24		A.	I can't recall the number.
25			nothing in the OLG Act, 1999 that directs	25	2033	Q.	The budget is passed as a bill?
Page 548		Page 550					
1			racetracks to pay anything to the horseracing	1		A.	Yes.
2			industry, correct?	2	2034	Q.	And you and I can agree, sir, that
3		R/F	MR. RATCLIFFE:	3			there is no reference in Bill 55 to the Slots at
4			That's a legal	4			Racetrack Program?
5			question. We're not going to answer that.	5		A.	I haven't seen the budget. It
6		MR. LISUS:	It wasn't a legal question	6			would not surprise me. That's why I raised it
7			when Mr. Rosenberg asked it, Mr. Ratcliffe.	7			earlier myself.
8		MR. RATCLIFFE:	I don't think that	8	2035	Q.	It wouldn't surprise me either,
9			Mr. McGuinty answered that question.	9			sir. Thank you.
10		MR. ROSENBERG:	I certainly didn't ask	10			Now, when you sat as chair of the
11			that question.	11			public accounts committee, do you recall ever
12		BY MR. LISUS:		12			seeing a line item called policy expenses?
13	2027	Q.	Are you aware, sir, that the OLG	13		A.	No.
14			Act was amended in 2015?	14	2036	Q.	Do you recall ever looking at the
15		MR. RATCLIFFE:	Do you know the answer	15			Financial Administration Act to find guidance as to
16			to that? Again, it's sort of a legal question.	16			how policy expenses are to be treated or recognized
17		BY MR. LISUS:		17			or even what such things are?
18	2028	Q.	Are you aware that the OLG Act was	18		A.	No.
19			amended, article 2.12.3, to provide that:	19	2037	Q.	Do you recall the Auditor General
20			"On or before March 31, 2016,	20			ever talking to you about policy expenses and
21			the Minister may designate a grant	21			whether or not they are properly incurred, reported
22			program established under section 12	22			or recorded?
23			as the successor to the Horseracing	23		A.	No.
24			Partnership Funding Program	24	2038	Q.	Mr. Rosenberg asked you about the
25			established under section 7 of the	25			termination of Slots at Racetrack Program and the
			Ministry of Agriculture, Food and				

<p style="text-align: right;">Page 551</p> <p>1 passage of Bill 55, the budget, which I think 2 occurred in June 2012. 3 MR. ROSENBERG: I did not ask about 4 Bill 55 or about the interpretation, Mr. Lisus. 5 BY MR. LISUS: 6 2039 Q. Are you aware, sir, that notice 7 was given to racetracks to terminate siteholder 8 agreements effectively ending SARP on March 29, 9 2012, months before the budget was passed? 10 A. No, but that does not strike me 11 as -- 12 2040 Q. Odd? 13 A. As odd. 14 2041 Q. Me neither. Here's an example of 15 a letter sent on March 29th. 16 MR. RATCLIFFE: Mr. Lisus, how does 17 this re-examine or re-cross-examination flow from 18 anything that Mr. Rosenberg asked? 19 MR. LISUS: I think it flows directly 20 from it but I won't take everyone's time. 21 MR. RATCLIFFE: Well, I mean, you seem 22 to think it flows from it. 23 MR. LISUS: I don't have any more 24 questions on this point. 25 MR. RATCLIFFE: Okay.</p>	<p style="text-align: right;">Page 553</p> <p>1 A. (Witness reads document). I read 2 it. 3 2044 Q. Okay. Can you and I agree, sir, 4 that the sentiments expressed by Mr. Crisanti are 5 completely inappropriate? 6 A. They're not in keeping with what 7 we'd like to be at our best. 8 2045 Q. And he's not a political -- he's 9 not on the political side, is he? He's on the 10 civil servant side, right? 11 A. Yes, he appears to be so. 12 2046 Q. And civil servants were the ones 13 responsible for formulating the transition funding 14 approach -- 15 MR. RATCLIFFE: Mr. Lisus, you're 16 really going far afield here. How is this relevant 17 to anything? 18 BY MR. LISUS: 19 2047 Q. Let me ask you a couple of 20 questions about the comments in the legislature. 21 MR. RATCLIFFE: Whose comments? 22 MR. MATTHEWS: Could we have that 23 document back, Mr. Ratcliffe, and we'll mark it as 24 Exhibit 59, CRE94799. 25 EXHIBIT NO. 59: Email, Bates numbered</p>
<p style="text-align: right;">Page 552</p> <p>1 MR. LISUS: The letters were sent out 2 and the recital on March 29, 2012. Okay? That's 3 the next exhibit. 4 MR. ROSENBERG: Lettered exhibit. 5 MR. LISUS: I think it's a numbered 6 exhibit. It follows in the sequence. 7 MR. ROSENBERG: The witness hasn't 8 identified it. 9 MR. LISUS: It doesn't matter. The 10 witness was silent. 11 MR. MATTHEWS: 58. 12 EXHIBIT NO. 58: Letter dated March 13 29th. 14 BY MR. LISUS: 15 2042 Q. Let me ask you something, sir. We 16 did discuss how the decision with respect to 17 transition funding and timing occurred. Do you 18 remember that during the early days of February and 19 January 31? 20 A. Yes. 21 2043 Q. I want to show you an email that's 22 an exhibit on the examination of Mr. Orsini, and 23 you will have seen the names Mr. Salvatore and 24 Ms. Watkins on a number of the emails. I want you 25 to read that email.</p>	<p style="text-align: right;">Page 554</p> <p>1 CRE94799. 2 BY MR. LISUS: 3 2048 Q. You are aware, sir, I won't 4 necessarily take you to them, but certainly Mr. 5 Duncan, and there will be a record of it, and 6 perhaps you informed the House prior to the passage 7 of the budget that there had been extensive 8 consultations with the industry, including with 9 experts, prior to the decision being made. You've 10 seen those statements in the House? 11 MR. RATCLIFFE: Do you recall seeing 12 any statements? 13 THE WITNESS: I don't recall. 14 BY MR. LISUS: 15 2049 Q. Can we agree, sir, Hansard is an 16 accurate transcript of what is said in the House? 17 A. Yes. 18 MR. RATCLIFFE: On that basis, you are 19 free to make your argument based on Hansard, 20 Mr. Lisus. I don't know that we need to take up 21 time looking for it here today. 22 MR. LISUS: You might be right. It 23 won't take me long to find it. 24 BY MR. LISUS: 25 2050 Q. For instance, on March 20th, sir,</p>

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1 well in advance of any debate or even deal with the
 2 NDP, Mr. Duncan tells the House:
 3 "We had a full two-year, a full
 4 six-month consultation on this. We
 5 are no longer going to support the
 6 horseracing industry with \$345
 7 million a year. A variety of groups
 8 were consulted, more than 50. It
 9 was well documented. As difficult
 10 as these decisions are, our priority
 11 is with education, our priority is
 12 with health care and our priority is
 13 to get the budget balanced again.
 14 We simply cannot afford to subsidize
 15 the horseracing industry to that."
 16 And so on March 20th Mr. Duncan told
 17 the entire House that there had been a two-year
 18 consultation period, or a six-month consultation
 19 period, with more than 50 people consulted,
 20 correct?
 21 A. Yes. I'm assuming he said that in
 22 reference to the gaming modernization plan.
 23 MR. RATCLIFFE: Mr. Lisus, you were
 24 free to ask these questions of Mr. Duncan and
 25 inquire. Again, you're asking Mr. McGuinty this

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1 and I don't see how it arises out of any questions
 2 that we asked.
 3 MR. LISUS: I did ask Mr. Duncan these
 4 questions.
 5 MR. RATCLIFFE: Pardon me?
 6 MR. LISUS: I did ask Mr. Duncan these
 7 questions.
 8 MR. RATCLIFFE: And that's fine. So
 9 again, if you got an answer from that, why are you
 10 now asking Mr. McGuinty? He didn't make the
 11 statement.
 12 MR. LISUS: I know. Because the
 13 proposition was put to Mr. McGuinty that the
 14 decision was made and approved somehow by the full
 15 government after debate in the House, and what I'm
 16 demonstrating to Mr. McGuinty, in fairness to him,
 17 is that even if that proposition can be considered
 18 correct, that the decision and the vote was clearly
 19 made on certain --
 20 MR. RATCLIFFE: And --
 21 MR. LISUS: Let me finish.
 22 Representations of fact, which I think we all
 23 understand aren't at least complete and I say
 24 accurate.
 25 MR. RATCLIFFE: You've confirmed that

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1 you asked Mr. Duncan about that and he's the person
 2 that made the statements.
 3 MR. LISUS: Mr. Duncan wasn't
 4 questioned a few minutes ago about this.
 5 BY MR. LISUS:
 6 2051 Q. I want to give you another
 7 reference, sir, to see if you recollect this. On
 8 March 21, Mr. Duncan told the House:
 9 "My question in response to a
 10 question put to the Minister of
 11 Agriculture, sir, the question was:
 12 Minister, did you consult with the
 13 farm families that depend on the
 14 horse industry for their livelihood
 15 before your government decided to
 16 kill it?
 17 Honourable Ted McMeekin to the
 18 Minister of Finance and Deputy
 19 Premier, Honourable Dwight Duncan:
 20 Mr. Speaker, the Ontario Lottery and
 21 Gaming Corporation conducted public
 22 consultations beginning in January
 23 through to June 2011. They met with
 24 First Nations, they met with casino
 25 owners and operators, responsible


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1 gambling researchers, racetrack
 2 owners, horse people, industry
 3 leaders, operators in other
 4 jurisdictions, convenience store
 5 operators and government
 6 organizations. The consultations
 7 were conducted to hear stakeholder
 8 perceptions on the future of lottery
 9 and gaming in Ontario to learn about
 10 best practices from within the
 11 province and around the world and to
 12 identify opportunities to work with
 13 the private sector or stakeholders
 14 in new ways. The consistent
 15 message, Mr. Speaker, was that we
 16 had to change the way we are doing
 17 business, we had to be more
 18 effective and better at what we were
 19 doing."
 20 That's what the House was told, right?
 21 MR. RATCLIFFE: Not by Mr. McGuinty it
 22 wasn't.
 23 MR. LISUS: I completely agree, sir.
 24 MR. RATCLIFFE: So how is this
 25 relevant? You had your opportunity. It's

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1 highlighted in your book. I assume that you asked
2 Mr. Duncan about these comments and statements and
3 how it was answered.
4 BY MR. LISUS:
5 2052 Q. Are you aware, sir, in the House
6 that Mr. Duncan took responsibility for the
7 February 26th attack ads?
8 A. No.
9 2053 Q. Would you like me to show you
10 that?
11 MR. RATCLIFFE: He said he wasn't
12 aware.
13 MR. LISUS: Thank you, Mr. McGuinty.
14 THE WITNESS: Thank you all.
15
16 -- Whereupon the cross-examination concluded at
17 6:22 p.m.
18
19
20
21
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23
24
25

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1 REPORTER'S CERTIFICATE
2
3 I, KIMBERLEY A. NEESON, RPR, CRR,
4 CSR, CCP, CBC, Certified Shorthand Reporter,
5 Realtime Systems Administrator, certify;
6 That the foregoing proceedings were
7 taken before me at the time and place therein set
8 forth, at which time the witness was put under oath
9 by me;
10 That the testimony of the witness
11 and all objections made at the time of the
12 examination were recorded stenographically by me
13 and were thereafter transcribed;
14 That the foregoing is a true and
15 correct transcript of my shorthand notes so taken.
16
17 Dated this 28th day of March, 2018.
18
19 
20
21 NEESON COURT REPORTING INC.
22 PER: KIMBERLEY NEESON, FAPR, RPR, CRC,
23 CSR (ON & AB), CBC, RSA
24 CERTIFIED REAL-TIME REPORTER
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