

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

KARIM BARDEESY
February 09, 2018

neesons

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Court File No. 842/12

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

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 Karim Bardeesy, a non-party witness herein, taken
11 at the offices of Neeson Court Reporting Inc.,
12 77 King Street West, Suite 2020, Toronto, Ontario,
13 on the 9th day of February 2018.

14 -----

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

16 Jonathan Lisus, Esq.

17 & Vivien Milat, Esq , for the Plaintiffs.

18
19 Robert Ratcliffe, Esq.,

20 & Rodney Kort, Esq., for the Defendant
21 Crown.

22
23 Michael Rosenberg, Esq., for the OLG.

24
25 REPORTED BY: Carissa Stabbler, RPR, CSR

I N D E X

WITNESS: KARIM BARDEESY

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

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INDEX OF ADVISEMENTS

(NONE MARKED)

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1 -- Upon Commencing at 10:04 a.m. --

2 KARIM BARDEESY: PREVIOUSLY SWORN.

3 CONTINUED CROSS-EXAMINATION BY

4 MR. LISUS:

5 1095 Q. Good morning, Mr. Bardeesy.

6 A. Good morning.

7 1096 Q. Thank you for coming back. We're
8 going to break at five to 11 and then reconvene at
9 11:45.

10 A. Yeah.

11 1097 Q. We had additional documents
12 produced to us -- was it yesterday evening?

13 MR. MILAT: Yesterday evening, yes.

14 BY MR. LISUS:

15 1098 Q. Have you reviewed any of the
16 documents that were --

17 A. I have reviewed documents I
18 received last night, yes.

19 1099 Q. Okay. You just reviewed those by
20 yourself?

21 A. Yes.

22 1100 Q. When we adjourned last day, we had
23 a discussion about some of the findings of the
24 interim panel.

25 A. Yes.

1 1101 Q. Do you recall that?

2 A. Yes.

3 1102 Q. And I want to just ask you some
4 questions about how that panel came to be
5 appointed. Were you involved in the decision to
6 appoint an interim panel?

7 A. I was part of the conversations.
8 I don't recall if I specifically had a
9 recommendation on it, but I recall that I was part
10 of those conversations, yes.

11 1103 Q. All right. And I want to show you
12 an email, Document Number CRE98853 and 54, which
13 has a deck attached to it. And the sequence starts
14 on May 16, 2012, with an email from Mr. Shortill to
15 Michael Keegan, Richard Linley, David Gene, you,
16 and Blair Stransky and Natale Milana. Do you see
17 that?

18 A. Yes.

19 1104 Q. It attaches a deck. Have you seen
20 this deck before?

21 A. I don't recall seeing this email
22 in my -- in the documents I reviewed.

23 MR. RATCLIFFE: Just take a moment to
24 look through it.

25 BY MR. LISUS:

1 1105 Q. I'm not going to ask you detailed
2 questions about it. This group on the email, sir,
3 were these the folks that you were working with in
4 2012, '13, and '14 with respect to the horse racing
5 file?

6 A. Yes, a subset of them I worked
7 with primarily or I was engaged on with them.

8 1106 Q. You mean a subset of this group --

9 A. Yes.

10 1107 Q. -- you worked with?

11 A. Yes.

12 1108 Q. So let me guess. You worked with
13 Michael Keegan, Dave Gene, and Blair Stransky and
14 Tim Shortill?

15 A. And Tim Shortill, yeah, and Blair
16 to some extent, yes.

17 1109 Q. Blair Stransky?

18 A. Yes.

19 1110 Q. The subject is "advice to
20 Cabinet." So I presume that a -- this group of
21 which you were a part was preparing to give advice
22 to Cabinet as to whether or not to strike an
23 interim panel to review the situation. That was
24 the decision that advice was being given about?

25 A. If I understand the context of

1 this email correctly, it appears as though there
2 was -- one of the pieces of context was to
3 operationalize the commitment that had been made to
4 provide 50 or \$60 million of transitional support
5 as had been announced in the government
6 accommodation with a third party.

7 1111 Q. Okay. So this was not about the
8 appointment of a panel? Let me see if I can direct
9 you to something.

10 A. Yes.

11 1112 Q. You see Mr. Goodwin's email on the
12 first page at the bottom. It says:

13 "With respect to a panel, I did
14 just yesterday discuss briefly with
15 Blair. That is in abeyance since we
16 have the two industry leaders now
17 identified. This was not in
18 anyone's sight when we were
19 designing the panel of experts."

20 So it seems to me that there was a discussion of
21 the appointment of a panel at this point in time?

22 A. Yes.

23 1113 Q. And we know from the documents and
24 the evidence that the panel is appointed in the
25 first week of June, so it's three weeks after this

1 date.

2 A. Yes.

3 1114 Q. Do you recall there being
4 consideration of the appointment of a panel?

5 A. Yes. It appears from the last
6 paragraph of Mr. Goodwin's email that he's
7 referring to two approaches: One, a panel of
8 experts, one to industry leaders. I don't recall
9 that differentiation being discussed.

10 1115 Q. We do know that Mr. Wilkinson,
11 Mr. Snobelen, and Mr. Buchanan were appointed;
12 correct?

13 A. Yes.

14 1116 Q. Did you or your office have input
15 into the identity of the panel members?

16 A. Yes.

17 1117 Q. Okay. And how were those
18 gentlemen identified?

19 A. To my recollection, they were
20 identified -- I don't remember who articulated this
21 preference, but there was a preference articulated
22 to have a multi-partisan panel, a preference for
23 people who had either experience in the industry,
24 experience in rural Ontario, and experience in
25 politics.

1 1118 Q. And finance?

2 A. I don't recall that being a
3 specific piece. I recall that Mr. Snobelen was
4 seen as having some expertise given his role in the
5 industry historically.

6 1119 Q. And Mr. Wilkinson had experience
7 with rural Ontario as did Mr. Buchanan?

8 A. That's right. Correct. And
9 Mr. Buchanan was also former Minister of
10 Agriculture, and that was seen as an asset.

11 1120 Q. And Mr. Wilkinson was a former
12 Minister of Revenue and had finance experience?

13 A. Yes. I don't recall that as being
14 named as a particular asset.

15 1121 Q. So why was Mr. Wilkinson
16 identified?

17 A. He was -- I believe he was also at
18 one point the parliamentary -- he had some
19 connection to finance. I think he had -- he was --
20 in the creation of a multi-partisan panel, he was
21 seen as a Liberal-associated former minister who
22 had some credibility.

23 1122 Q. With who?

24 A. I believe with rural Ontario and
25 with the minister as to whom recommendations were

1 going to be given.

2 1123 Q. And the minister as to whom
3 recommendations were going to be given was
4 principally Minister Duncan; right?

5 A. Principally Minister Duncan. I
6 don't recall as it was constituted -- I believe
7 there was a discussion about whether it would be
8 co-reporting to Ministers Duncan and McMeekin or
9 just to Minister Duncan.

10 1124 Q. You're going to have to help me
11 out here with a little elementary lesson in civics.
12 Is the Premier a minister?

13 A. Yes.

14 1125 Q. Always?

15 A. Yes. The Premier in the
16 legislation -- I believe the title is president of
17 the executive council and Premier.

18 1126 Q. All right. And then the Premier
19 may or may not have a Cabinet portfolio; is that
20 correct?

21 A. The Premier may have additional
22 Cabinet portfolios in addition to being Premier.

23 1127 Q. Did Mr. McGuinty have any Cabinet
24 portfolios in addition to being the Premier in 2011
25 and '12 and '13?

1 A. Again, this would be a matter of
2 public record. He -- at different points, he
3 served as Minister of Intergovernmental Affairs and
4 also as Minister of Research and Innovation.

5 1128 Q. In '11, '12, and '13?

6 A. Yes. I believe -- again, it's a
7 matter of public record, but...

8 1129 Q. You don't have to worry about it
9 being public record.

10 A. I believe -- I believe, to my
11 recollection, he also served as Minister of
12 Intergovernmental Affairs in 2012.

13 1130 Q. Okay. All right. And so the
14 ministers who were going to have to make decisions
15 about what was going to happen in the aftermath of
16 the cancellation were Duncan, McGuinty, and --

17 A. McMeekin as Minister of
18 Agriculture and Rural Affairs.

19 1131 Q. So there's a deck attached to
20 this. The purpose of the deck is to brief Cabinet
21 so that it can make a decision about a panel and
22 the \$50 million over three years funding that was
23 being considered at that point; is that right?

24 A. Yes. So the funding required
25 Treasury Board approval because the funding had

1 been announced but not -- had been agreed to in
2 this deal but had not actually been given life
3 through the Cabinet process.

4 1132 Q. We see, if we follow the chain up,
5 that the email circulates, and it goes to
6 Greg Orencsak in which he says:

7 "Heads-up on a quickly
8 developing file in terms of support
9 to the horse racing industry."

10 A. Yes.

11 1133 Q. What does that mean?

12 A. So he appears to be -- to my
13 memory of the people to whom he's writing, he's
14 alerting his staff. He would have been, at this
15 time, the Assistant Deputy Minister for fiscal
16 policy or some set of responsibilities with respect
17 to the fiscal plan of the government in the
18 Ministry of Finance. I recognize a number of these
19 names as people who worked in that unit of the
20 Ministry of Finance for him.

21 And he refers in the last sentence to a
22 special board agenda toward the end of May. So,
23 again, this is the Treasury Board -- the board
24 there refers to Treasury Board for which
25 Mr. Orencsak would have had some public service

1 responsibilities.

2 And the deck there primarily speaks to
3 ways of operationalizing the government commitment
4 that Treasury Board would have had to execute.

5 1134 Q. So it's pretty clear at this point
6 in time, being mid May 2012, that there's no
7 approval for any transition funding; right?

8 A. At this point, there -- a
9 government commitment had already been made. So in
10 April -- I don't recall the exact date, but at some
11 point in April, the government made a commitment to
12 provide transitional funding to the industry.

13 1135 Q. Could the government follow
14 through on its commitment if Cabinet and Treasury
15 Board did not sign off on it?

16 A. No. No.

17 1136 Q. So Cabinet and Treasury Board, as
18 of May 16, had not signed off on the government
19 commitment?

20 A. That's correct.

21 1137 Q. So it wasn't a real commitment?

22 A. It was a commitment that was put
23 in a government press release that was the outcome
24 of negotiations with a third party, and so --

25 1138 Q. Who was the third party?

1 A. The New Democratic Party, their
2 caucus.

3 1139 Q. The hope was that Cabinet would
4 support -- Cabinet and Treasury Board would support
5 this commitment that had been negotiated between
6 the Liberal government and the NDP?

7 A. That's correct. And there were a
8 number of commitments that were made in that April
9 press release that Cabinet and/or Treasury Board
10 would have had to execute on, not just this one.

11 1140 Q. All right. What's the purpose of
12 the deck that's being composed for advice to
13 Cabinet?

14 A. So this appears -- this does
15 not -- this deck from my examination of it in my --
16 this is a deck which is not intended to support a
17 decision but to recommend -- it's intended to
18 support a decision, but it's not itself a decision
19 deck. It creates options which then get translated
20 into Cabinet-ready material.

21 1141 Q. Okay. And when you say
22 "Cabinet-ready material," what do you mean?

23 A. So Cabinet material would have a
24 minute associated with it. It would have documents
25 that we saw -- the kinds of documents we looked at

1 on Wednesday with respect to a Cabinet briefing
2 note prepared by Cabinet office, as well as a
3 decision document. And in this case, further
4 analytical support provided by Treasury Board.

5 1142 Q. And so is this deck composed by
6 Treasury Board?

7 A. I recognize the -- I recognize
8 some of the font as something that was likely
9 composed either at Finance or Ministry of
10 Agricultural, Food and Rural Affairs. And Treasury
11 Board at that time was part of the Ministry of
12 Finance.

13 1143 Q. All right. And so the purpose of
14 this deck is to provide the background facts
15 relevant to the decision that Cabinet and Treasury
16 Board will ultimately have to make; is that fair?

17 A. That's correct.

18 1144 Q. All right. Were you involved in
19 its composition?

20 A. I don't recall being involved in
21 its composition, no. I recall being involved in
22 the discussions around -- I recall instigating or
23 being part of the instigation of the discussions
24 around the need to operationalize the commitment
25 that was made in the press release.

1 1145 Q. The purpose of this deck was to
2 bring forward new facts to Cabinet and Treasury
3 Board about the industry so it could consider
4 whether or not to authorize or approve the
5 commitment announced in April to additional funding
6 or transition funding; is that fair?

7 A. I don't know if there were new
8 facts in this deck. The primary purpose was to
9 brief Ministers of Agriculture, Food and Rural
10 Affairs, Finance, and Premier's office on how --
11 which options they would then bring forward to
12 Cabinet and Treasury Board.

13 1146 Q. If I look at page 7 of the deck,
14 it says:

15 "Solely for purposes of
16 discussion, the target for the
17 breeder support program options as
18 outlined in this deck has been
19 assumed to be the standardbred
20 industry. This is, however, an
21 important point of discussion that
22 is linked to program intent."

23 And then it has four points about the standardbred
24 industry.

25 A. Yes.

1 1147 Q. I don't recall seeing those points
2 in the Cabinet briefing minute which is why I said
3 this appears to be additional information brought
4 forward.

5 A. Okay. So I don't recall the
6 specific linkage between any of these points and
7 the materials.

8 1148 Q. And the materials --

9 A. That we looked at on Wednesday.

10 1149 Q. Being the February 2012 Cabinet
11 briefing note?

12 A. That's correct. I don't recall
13 the specific linkage.

14 1150 Q. Okay.

15 MR. LISUS: So the email and the deck
16 are the next exhibit.

17 MR. ROSENBERG: For identification.

18 MR. LISUS: He's on the email exchange.

19 MR. ROSENBERG: He's not copied on the
20 top four emails in that exchange.

21 MR. LISUS: Next exhibit in sequence.

22 MR. ROSENBERG: You have my objection,
23 Counsel.

24 MR. MILAT: Exhibit 18.

25 EXHIBIT NO. 18: CRE0098853 and

1 CRE0098854.

2 MR. ROSENBERG: It's also not clear
3 that that was attached to the email.

4 MR. LISUS: Well, your co-counsel
5 provided it to us that way, Mr. Rosenberg. You can
6 take it up with them. That's how we got it.

7 MR. ROSENBERG: I don't think that's
8 accurate, Mr. Lisus, but, again, you have my
9 objection.

10 MR. LISUS: Why do you say it's not
11 accurate? It's provided as CRE98853 and CRE98854.

12 MR. ROSENBERG: Yes. It appears that
13 the deck is attached to CRE98853, which is the
14 first of five emails in the chain, the fifth of
15 which Mr. Bardeesy is copied on.

16 MR. MILAT: If I may, I'll just point
17 out none of these emails make any reference to
18 changing anything. They're just passing it around
19 to inform others.

20 MR. ROSENBERG: That's your
21 speculation. You have my position.

22 BY MR. LISUS:

23 1151 Q. I want to have you look at 360926,
24 please. Now, you're getting an email here on the
25 following week, May 23, Mr. Bardeesy --

1 A. Yes.

2 1152 Q. -- which attaches a deck, which is
3 360927?

4 A. Yes.

5 1153 Q. So just tell me what's going on
6 here.

7 A. So this appears to be -- let me
8 just finish reading -- looking at this. So this
9 appears to be a more elaborated version of the
10 previous deck we just looked at with some further
11 details.

12 In this deck, there is now -- there are
13 some details on a -- on a -- on a panel which
14 was -- there's more details in this deck than there
15 were in the previous deck.

16 1154 Q. Show me where you --

17 A. So that starts on page 556 or
18 page 8 of the deck, with the page --
19 "consultations" at the top.

20 1155 Q. Yes. Okay. That's page 8 of the
21 deck; right?

22 A. Yes.

23 1156 Q. All right. And were you and the
24 Premier in favour of the appointment of a
25 three-person panel comprised of prominent,

1 knowledgeable individuals?

2 A. To my recollection, yes.

3 1157 Q. Okay. Were you aware of the
4 public commentary that Mr. Snobelen was making
5 commencing in February 2012?

6 A. If I recall correctly, we would
7 have seen -- he had a column in the Toronto Sun,
8 and so we would have -- as part of our clippings
9 package, we would have been receiving -- I would
10 have received, on occasion, clips referencing his
11 comments, if I recall correctly.

12 1158 Q. And I presume you recollect that
13 he made comments that were highly critical of the
14 government's decision and the consequences of it;
15 correct?

16 A. Yes. Yes.

17 1159 Q. And he made those comments in
18 advance of the public announcement of the decision
19 to terminate revenue share; correct?

20 A. I didn't recall that.

21 1160 Q. But they were highly critical?

22 MR. RATCLIFFE: Do you have a specific
23 story that you can take us to in terms of the date
24 just so that it assists the --

25 MR. LISUS: They're on the record,

1 and they're --

2 MR. RATCLIFFE: Yeah, I know, but there
3 were a number, and this witness wouldn't have
4 necessarily had a chance to --

5 BY MR. LISUS:

6 1161 Q. Let me ask you this, sir: You
7 were aware that Mr. Snobelen was generally very
8 critical of the decision in February 2012?

9 A. Yes.

10 1162 Q. Okay. Did you, when you became
11 aware of his comments, for example, in the
12 Toronto Sun, raise them with the Premier?

13 A. I didn't specifically. The
14 Premier would have received media briefings that I
15 occasionally participated in, occasionally didn't.
16 It wasn't for me to raise them.

17 1163 Q. Did you know who Mr. Snobelen was
18 in February 2012?

19 A. Yes.

20 1164 Q. Okay. And who did you understand
21 him to be?

22 A. I understood him to be a former
23 MPP and minister.

24 1165 Q. Did you understand him to be
25 someone who was very knowledgeable about the horse

1 racing industry in rural Ontario?

2 A. I understood him to have some form
3 of connection. I didn't know exactly the form of
4 connection. I recall knowing that he had some
5 connection also to agricultural activities in the
6 United States. I wasn't exactly aware what those
7 were.

8 1166 Q. Did you know he was a Cabinet
9 minister in the government that implemented the
10 slots at revenue --

11 A. Yes.

12 1167 Q. -- sharing program; right?

13 A. Yes.

14 1168 Q. So you would have known he knew
15 something about it?

16 A. Yes.

17 1169 Q. Were you aware that he said in
18 February 2012 publicly in the press that the
19 cancellation of revenue sharing would kill the
20 horse racing industry?

21 A. I don't recall that specific
22 article, but I -- it could well have -- I could
23 well have read it at the time, yes.

24 1170 Q. Okay. But his comments about the
25 consequences of the impact of the decision were not

1 the subject of a discussion between you and the
2 Premier; is that --

3 A. Not that I recall.

4 1171 Q. Were they the subject of any
5 discussion between you and anyone in the Ministry
6 of Finance?

7 A. Not that I -- not that I recall.

8 1172 Q. Okay. Are you aware that prior to
9 the announcement of the decision, Mr. Stransky
10 spoke with Mr. Seiling to tell him that revenue
11 share was going to be terminated?

12 A. I didn't -- I don't specifically
13 recall that. As I mentioned on Wednesday, in our
14 office, we had an expectation that Finance would
15 have some form of engagement with their commission.

16 1173 Q. Okay. So you weren't aware that
17 Mr. Stransky had a discussion with Mr. Seiling, and
18 Mr. Seiling told him Finance's numbers were all
19 wrong?

20 A. I wasn't aware of that, no.

21 1174 Q. So back to this panel, you were
22 supportive, as I understood you to say, of the
23 appointment of the three-person panel?

24 A. Yes.

25 1175 Q. And that you were a supporter of

1 the panel meeting with representatives from the
2 horse racing industry?

3 A. Yes.

4 1176 Q. All right. I wanted to ask you to
5 look at page 18 of the deck.

6 A. Yes.

7 1177 Q. What is this slide about?

8 A. So this is part of the options
9 slide, an analysis of the options around how to
10 operationalize the \$50 million in funding. So this
11 is -- this has considerations that are -- would be
12 around not implementing the commitment.

13 It says support industry through the
14 horse improvement program as the option, and so it
15 has a number of considerations around why that
16 would be undesirable from a policy perspective or
17 from other perspectives.

18 1178 Q. And it says:

19 "The impact of 50 million over
20 three years is small compared to the
21 approximately 350 million that SARP
22 would have paid to standardbred
23 horse people over the same time."

24 Do you see that?

25 A. Yes.

1 1179 Q. So the understanding appears to
2 have been that SARP paid 350 million to
3 standardbred horse people?

4 A. That would be the implication in
5 that bullet, yes.

6 1180 Q. All right. And that's not
7 accurate, is it?

8 A. Within the same deck as we saw,
9 there was a mention of -- you took me earlier to
10 page -- no, the previous deck had a page that said
11 that around 70 percent of SARP went to standardbred
12 horse people. And in fact --

13 1181 Q. Do you understand that to be
14 accurate, sir, that 70 percent of SARP revenue went
15 to standardbred horse people?

16 A. I recall it was a -- I recall it
17 was a majority share in my general recollection of
18 the issue, and upon review of the materials I had
19 seen, 70 percent --

20 1182 Q. So that was the understanding of
21 your office and government at the time?

22 A. My recollection is that I
23 understood that a majority share of SARP funding
24 went to standardbred, yes.

25 MR. LISUS: That's the next exhibit in

1 sequence.

2 MR. MILAT: Exhibit 19.

3 EXHIBIT NO. 19: CRE360926 and
4 CRE360927.

5 BY MR. LISUS:

6 1183 Q. Did you meet with the panel?

7 A. I attended one meeting of the
8 panel when Premier Wynne was Premier and Minister
9 of Agriculture, Food and Rural Affairs that they
10 were getting briefed by her. I never attended any
11 other at which Mr. Buchanan did not attend.

12 1184 Q. But Premier Wynne became Minister
13 of Agricultural Affairs in 2013; right?

14 A. That's correct.

15 1185 Q. And so that one meeting that you
16 attended was after the release of the interim
17 report in August 2012?

18 A. Yes.

19 1186 Q. Did you meet with the panel at any
20 point prior to the release of the interim report in
21 August of 2012?

22 A. No.

23 1187 Q. Did Mr. McGuinty meet with the
24 interim panel prior to the release of the interim
25 report in 2012?

1 A. I don't know.

2 1188 Q. Do you know if Mr. Shortill did?

3 A. He definitely engaged with
4 panelists. I don't recall if he met with the
5 panel.

6 1189 Q. Okay. I want to show you
7 Exhibit 14 to Mr. Shortill's examination.

8 A. Thank you.

9 1190 Q. Just take a look at the email
10 sequence and an extract from a radio interview that
11 Mr. Sorbara gave on August 2.

12 A. Yes.

13 1191 Q. Now, Mr. Sorbara appears to have
14 given a radio interview in which he said:

15 "We are having another
16 look-see. I just got off the phone
17 awhile ago with transition panel
18 member John Wilkinson, and I'm
19 hopeful."

20 Do you see that?

21 A. Yes.

22 1192 Q. And this is picked up by Finance
23 folks and escalated up the chain to David Gene and
24 Tim Shortill; correct?

25 A. Yes.

1 1193 Q. Were you aware of this at the
2 time? Do you recall?

3 A. I don't remember this, so it's
4 possible it was drawn to my attention. It's also
5 possible it was not.

6 1194 Q. Okay. Do you know if the Premier
7 was aware of this interview and Finance's
8 unhappiness about it?

9 A. I don't know.

10 1195 Q. And Mr. Gene's unhappiness about
11 it?

12 A. I don't know.

13 1196 Q. Okay. Now, that's in August. I
14 want to ask you, please, to look at Exhibit J on
15 Mr. Shortill's examination. This is an email
16 sequence in Finance which attaches a letter sent by
17 Mr. Seiling to Mr. Godfrey with a blind copy to
18 Blair Stransky?

19 A. Yes.

20 1197 Q. Do you recall Mr. Seiling writing
21 a letter to Mr. Godfrey, blind copying Finance?

22 A. I don't recall this specific
23 letter. I recall hearing about some of the
24 concerns that Mr. Seiling is articulating in this
25 letter.

1 1198 Q. What did you hear about with
2 respect to those concerns?

3 A. I'd heard that Mr. Seiling was
4 concerned about uncertainty with respect to the
5 cancellation of SARP with no path forward in his
6 view.

7 1199 Q. And he was also expressing concern
8 that the ORC was not included in the decision
9 making and the implementation of the decision;
10 correct?

11 A. He speaks in the letter to -- I'm
12 quoting here from the letter:

13 "The ORC is disappointed that
14 an opportunity was not afforded to
15 jointly work through an approach to
16 implementation of this critical
17 decision to the horse racing
18 community."

19 So there, it seems like he's speaking to the
20 implementation of the decision.

21 1200 Q. I think that you and I agreed so
22 that as far as you understood, the ORC was not
23 consulted or aware of the decision made to go to
24 zero with no transition support?

25 A. As I -- as I said today and on

1 Wednesday, I knew that there was some contact with
2 them. I wasn't aware exactly when that was in the
3 process.

4 1201 Q. All right. You thought there was
5 some contact. You didn't know whether it was
6 before or after the February 3 discussions you had
7 with the minister and the February 8 Cabinet
8 meeting; correct?

9 A. That's correct, yes.

10 1202 Q. All right. And Mr. Seiling goes
11 on to say in the letter:

12 "The result could have been a
13 process that would have provided
14 some certainty to an industry that
15 is now in dire straits and, through
16 no fault of its own, has had a
17 process imposed on it by the OLG
18 that inhibits it for planning for
19 its future."

20 Do you see that?

21 A. Yes.

22 1203 Q. And you did understand, sir, that
23 in May 31, 2012, the industry was in dire straits
24 as a result of the decision that had been made;
25 right?

1 A. At the time, what I understood was
2 that we had announced funding of -- I don't recall
3 the specific number, if \$50 million was articulated
4 or not, and that we were working on further policy
5 measures.

6 And I understood that generally there
7 was a view in the industry that -- if I recall
8 correctly, the general view -- and, again, I wasn't
9 communicating with people in the industry. I was
10 receiving correspondence or seeing media clips.

11 My general impression was that there
12 was a desire to reinstate SARP or something very
13 much like SARP.

14 1204 Q. So the question I asked you, sir,
15 is that the head of the ORC, the regulator
16 responsible for the horse racing industry, is
17 saying that the industry was in dire straits?

18 A. Yes.

19 1205 Q. And my question to you, sir, is
20 did you understand that in May 31, 2012, the
21 industry was in dire straits?

22 A. I understood there were many
23 players who had that view.

24 1206 Q. Okay. One of them being the
25 regulator?

1 A. I don't -- again, because I don't
2 recall if I saw this letter or not, I don't recall
3 if I would have seen those words. Again, I would
4 have been aware of his concern.

5 1207 Q. Okay. And did you have any
6 discussion with Mr. McGuinty that, you know, the
7 agency responsible for regulating the industry is
8 writing saying "the industry is in dire straits as
9 a result of our decision"?

10 A. I don't recall that. I recall
11 working on the policy path forward as was shown in
12 the previous deck. I don't recall the context in
13 which I articulated various concerns about what was
14 underway at the time.

15 1208 Q. Okay. I want to show you
16 Exhibit 14, as I said, to Mr. Shortill's
17 examination. This is continuing the sequence in
18 response to the radio interview that Mr. Sorbara
19 gave. Do you see where Dave Gene says "WTF!"?

20 A. Yes.

21 1209 Q. What is your understanding as to
22 why Dave Gene said "WTF!" in response to being
23 shown Mr. Sorbara's comments on SARP?

24 A. To me, it expresses displeasure.

25 1210 Q. Right, but what's your

1 understanding as to why he would be displeased
2 about Mr. Sorbara's comments?

3 A. So at this time in August, the
4 panel was meeting and working on its interim
5 report, and I believe -- I can tell you -- I can
6 tell you -- I don't recall Mr. Gene's specific
7 views with respect to some of these issues.

8 1211 Q. What were his general views?

9 A. He, along with I, was giving --
10 had given advice in February and subsequently
11 around -- around the policy and transitional
12 measures.

13 So I don't recall -- on the point I'm
14 about to give, I don't know his view; however, the
15 radio interview does indicate that there's a
16 revisitation of the issue with some amending steps
17 in the words of Mr. Sorbara. And so it's possible
18 that Mr. Gene would have had the view that this was
19 concerning.

20 1212 Q. What was concerning?

21 A. The amending steps which could
22 have, at least in our discussions -- my discussions
23 with Finance that Mr. Gene, I believe, participated
24 in at least once, we had a concern that the
25 transition panel might be making a recommendation

1 about a significant expansion of the fiscal piece
2 of the -- of the new transitional arrangements.

3 1213 Q. What you're telling me is that you
4 and Mr. Gene were concerned that the panel might
5 recommend a provision of support well in excess of
6 the \$50 million over three years that the
7 government had announced; right?

8 A. That's correct. And that concern
9 is articulated in one of the decks we saw earlier
10 today.

11 1214 Q. And part of the concern is that an
12 announcement like that by an independent
13 tri-partisan panel would be seen to be as an
14 indictment of the decision-making process or the
15 decision that was made; is that fair?

16 A. It would have had several
17 implications. Perhaps the way you characterized it
18 is one of them. And more importantly, I believe it
19 was going to put the Minister of Finance in a
20 difficult position because he is the minister
21 responsible for the fiscal plan, and the fiscal
22 plan was already changed once to put some
23 transitional arrangements in place.

24 And I believe the minister was
25 concerned that a panel that did not have fiscal

1 responsibilities was going to make recommendations
2 that would have fiscal impacts. There may have
3 been other dynamics involved. Those are some of
4 them.

5 1215 Q. Part of the concern that I've seen
6 expressed in the documents is that if there was a
7 recommendation for greater funding that was
8 accepted, it would be seen as a capitulation by
9 government. Do you recall that?

10 A. I don't recall those words. My
11 position had always been that we were going to need
12 some sort of new policy arrangements and that work
13 was going to have to be done around that, which is
14 why I was more supportive of the panel perhaps than
15 some others, but I shared their concern about the
16 fiscal implications of the panel.

17 1216 Q. Did Mr. Gene support the
18 \$50 million over three years or not?

19 A. I can't recall correctly -- sorry,
20 I can't recall exactly. I recall that it was part
21 of the package that was done, deal that was done to
22 secure support from the third party to get the
23 budget passed. So he would have been generally
24 supportive of that.

25 1217 Q. I see. That's helpful context to

1 me. The 2012 Liberal government was a minority
2 government; correct?

3 A. That's correct.

4 1218 Q. It needed cooperation from
5 opposition parties to get its budget passed; right?

6 A. That's correct.

7 1219 Q. NDP had communicated that it would
8 withhold support for the budget unless the
9 government provided \$50 million over three years;
10 is that right?

11 A. I don't recall what they publicly
12 communicated. We knew that the Progressive
13 Conservative party was going to oppose the budget
14 regardless and that there was an opportunity to
15 work with the NDP and their members to get support.

16 And I was not part of those
17 discussions. They made some public statements
18 about the things that they -- that they were
19 seeking. I don't recall if horse racing funding
20 was part of that or not.

21 1220 Q. But leaving aside the public
22 record, because this process isn't really concerned
23 with the public record. Our process is concerned
24 with what actually happened.

25 A. Yes.

1 1221 Q. What I'm hearing you say is that
2 the -- and what I understood you to tell me earlier
3 was that the NDP agreed to support the Liberal
4 budget provided there was \$50 million over three
5 years to assist the horse racing industry cope with
6 the consequences of the termination of revenue
7 share?

8 A. I don't know if they made their
9 support conditional on that specific piece. I
10 recall there was ultimately a deal that had a
11 number of pieces to them.

12 1222 Q. No, I understand, a number of
13 pieces. One of them was the \$50 million?

14 A. Absolutely.

15 1223 Q. Okay. And so Mr. Gene, I
16 understand from what you're telling me, was
17 prepared to accept the \$50 million over three years
18 transition payment because it was a negotiated
19 arrangement connected to support for the budget,
20 but he was not in support of anything over and
21 above that. Fair?

22 A. I don't recall that specifically.
23 He may have had other reasons for supporting the
24 50 million in the NDP deal at the time. One of the
25 reasons would have definitely been that it had the

1 effect of continuing support for the government.

2 1224 Q. Right.

3 A. I don't recall specifically what
4 his views were ongoing above and beyond that. I
5 recall that Finance, Tim Shortill and I shared a
6 view once the panel was struck and before the panel
7 was struck that going -- that there was a fiscal
8 risk that the panel would come back with
9 recommendations that would go significantly beyond
10 50 million.

11 1225 Q. There was also a political
12 embarrassment risk to Minister Duncan if the panel
13 went significantly beyond the \$50 million that had
14 been announced; correct?

15 A. I think any minister doesn't want
16 his or her decisions significantly revised in a
17 fashion that might have been a part of that.

18 1226 Q. Okay. You've helped me out with
19 some civic points before, but I presume if there
20 wasn't support from either the PC party or the NDP
21 party for the budget, the government would fall; is
22 that correct?

23 A. That's correct. That's correct.
24 There would have been a vote on the budget motion
25 which the -- well, the government -- it was a

1 one-seat minority.

2 So the dynamics of parliamentary -- the
3 dynamics of individual attendance of MPPs sometimes
4 make strange things happen, but we knew that -- to
5 be more certain that we needed some accommodation
6 with one of the parties.

7 1227 Q. So the appointment of the panel --
8 and its mandate was a pretty politically risky step
9 to take; right?

10 A. We knew it would expose the
11 government to new demands that created a process
12 that would put new demands, including fiscal
13 demands, on the table, yes.

14 1228 Q. Okay.

15 MR. LISUS: Let's go off the record.

16 -- OFF THE RECORD DISCUSSION --

17 -- Recess at 10:50 a.m. --

18 -- Upon resuming at 12:05 p.m. --

19 BY MR. LISUS:

20 1229 Q. Did you, Mr. Bardeesy, speak to
21 Mr. Wilkinson about his opinions before they were
22 released in the interim panel report?

23 A. Yes.

24 1230 Q. Okay. And do you recall how long
25 in advance of the release of the report?

1 A. I don't recall. I recall seeing
2 in the materials that I reviewed last night that
3 there was a debrief phone call -- a debriefing --
4 that I prepared debriefing notes that I emailed
5 around to some people in advance of the --
6 I believe in advance of the interim report coming
7 out. I don't recall the exact dates.

8 1231 Q. And what did Mr. Wilkinson tell
9 you?

10 A. If we can produce that record, I
11 can speak to that.

12 MR. MILAT: Is it this?

13 THE WITNESS: No. Some of this may
14 have some of that information, but I -- last night
15 I saw an email from me.

16 BY MR. LISUS:

17 1232 Q. Okay. Who do you recall it was
18 going to?

19 A. I believe it was some combination
20 of people at the Premier's office, Minister of
21 Finance's office, and Minister of Agriculture's
22 office.

23 1233 Q. You believe that was before the
24 release of the report?

25 A. I believe so. I don't recall the

1 exact dates.

2 1234 Q. All right. While we try to put
3 our hands on that, I want to ask you to look at an
4 email of August 2nd from Mr. Wilkinson to
5 Mr. Keegan which was then sent on to Dave Gene.

6 I presume you've seen this email
7 before. It's Exhibit 15 on the examination of
8 Mr. Shortill.

9 A. I don't recall seeing this email.

10 1235 Q. Okay.

11 A. I'm reviewing it now. Okay, I've
12 reviewed the email.

13 1236 Q. Okay. And you don't recall
14 getting -- having a direct -- you don't recall
15 receiving that email in August; right?

16 A. I don't recall receiving this
17 email. I recall in the conversation with
18 Mr. Wilkinson some of these points being made for
19 sure.

20 1237 Q. Okay. And so which ones do you
21 recall being made to you in the conversation with
22 him?

23 A. I recall -- I recall, in the first
24 paragraph, his view that he had some disagreement
25 or concern with the McKinsey analysis.

1 1238 Q. He says:

2 "They confirmed under their
3 wildly optimistic best case
4 scenario, i.e., no collapse of the
5 industry, we are looking at 13,000
6 job losses and 16,000 euthanized
7 horses."

8 That's what he was saying McKinsey has confirmed;
9 right?

10 A. That's what he's saying here. I
11 don't recall what he told me about what McKinsey
12 said. And I don't recall -- I remember being
13 engaged at some point on the McKinsey analysis, but
14 I don't recall the specific numbers that
15 McKinsey -- he is -- he is saying McKinsey
16 generated.

17 1239 Q. Who engaged McKinsey?

18 A. So that was the -- it says here
19 Finance, and I believe it was the -- I believe it
20 was the Ministry of Finance.

21 1240 Q. Were you aware that McKinsey had
22 been engaged?

23 A. Yes.

24 1241 Q. Okay. What were they engaged to
25 do?

1 A. I don't remember the specific
2 terms. I recall they were -- to my general
3 recollection, they were involved in assessing
4 options for industry support and policy, including
5 policy options for Ministry support.

6 1242 Q. They also assessed, it would
7 appear, the impact of the decision; correct?

8 A. According to this, yes.

9 1243 Q. When were they engaged?

10 A. I don't remember exactly.

11 1244 Q. But it was after the February 8,
12 2012, Cabinet meeting; right?

13 A. I don't see any reference to their
14 being engaged before then.

15 1245 Q. And you weren't aware of them
16 being engaged before then?

17 A. Not that I recall.

18 1246 Q. Okay. And so what else do you
19 recall him telling you?

20 A. I recall to the point of -- the
21 second paragraph, I recall him saying there's a way
22 to -- there's a path forward that we're coming up
23 with.

24 In the third paragraph, I recall him --
25 I recall him thinking it was important to have a

1 larger annual envelope of funding. I don't -- I
2 don't recall that specific number in my
3 conversation with him.

4 1247 Q. 300 million over three years?

5 A. Yeah, I don't recall that specific
6 number, but it could be in the -- in my debriefing
7 notes.

8 1248 Q. Okay.

9 A. In the fourth paragraph, I recall
10 him saying and, I believe, giving a bit more detail
11 than what is in this fourth paragraph about how
12 raceways were going to be engaged with new
13 agreements, which I believe is sort of a further
14 elaboration of what he's saying here in the fourth
15 paragraph of this email.

16 1249 Q. Okay.

17 A. I recall him speaking to me about
18 the need for a revised mandate for the Ontario
19 Racing Commission, which is referred to in the
20 fifth paragraph of this email.

21 1250 Q. Okay. Go on.

22 A. In the sixth paragraph of this
23 email, I recall him, again, putting this duality
24 before us that the panel was planning on saying
25 that SARP was -- had become over time bad public

1 policy, but that without support, the industry was
2 at great risk.

3 I forget the exact words he used to
4 characterize in my conversation with him. Again,
5 that may be in the debriefing notes in that email.

6 In the seventh email --

7 1251 Q. Paragraph.

8 A. Pardon me, yes, in the seventh
9 paragraph, I remember him characterizing future
10 support as -- in his view, would have the effect of
11 being net revenue positive for the province, which
12 is captured in this seventh paragraph.

13 I recall -- I don't recall this
14 specifically being his view, but I recall that
15 there was a view at Finance and perhaps shared by
16 Mr. Wilkinson that single-game sports betting was
17 an opportunity for the industry.

18 Again, that was part of the
19 conversation in the policy sphere as early as
20 January, February as I reported on Wednesday.

21 I don't recall him specifically
22 mentioning the Ontario Sires Stakes program.
23 Again, my debriefing notes may say differently, but
24 to my recollection...

25 Second last paragraph is, in many ways,

1 a recapturing of the fourth paragraph.

2 The final paragraph, it's possible he
3 communicated to me some of the political aspects in
4 the same way that it's characterized in this email,
5 but I don't specifically recall that. Again, that
6 may be in my debriefing notes, but I don't
7 specifically recall that.

8 1252 Q. Okay. Thank you. If I can ask
9 you to look at CRE0029294, which is Exhibit 16 on
10 Mr. Shortill's examination. This is an email of
11 August 7, 2012, to Mr. Shortill, and it's enclosing
12 a deck which appears to be a horse racing industry
13 transition panel update.

14 A. Yes.

15 1253 Q. Just take a look at the deck.
16 This appears to be a summary of the options and
17 recommendations of the panel; correct?

18 A. Yes.

19 1254 Q. Okay. And is this information
20 consistent with what you recall the options and
21 recommendations being shortly before the interim
22 panel's release?

23 A. Yes. I don't recall seeing this
24 specific deck. I don't believe I attended this
25 briefing.

1 1255 Q. Did you understand in August of
2 2012 that the timing was urgent for the
3 implementation of transition support funding?

4 A. Yes. Specifically I understood
5 that -- or specifically I was aware of the timing
6 of the yearling horse sales. And I believe by this
7 point, we had already received some information
8 about the prices of -- at auction for certain
9 categories of horses, from what I recall. I don't
10 recall the prices.

11 1256 Q. What was the nature of the
12 information that you had received?

13 A. That the prices were -- again, to
14 my -- to my recollection now. I don't recall
15 seeing this in any of the documents with the one
16 exception that the prices had been depressed.

17 1257 Q. By how much?

18 A. I believe one of the documents
19 that I reviewed last night -- this might be in the
20 interim report of the panel -- referred to a
21 reduction in price. There's a percentage there. I
22 just don't recall.

23 1258 Q. 50 percent?

24 A. There was a -- I don't recall. I
25 remember a number that I reviewed last night. I

1 just -- I don't remember the number.

2 1259 Q. You did understand that in 2012,
3 that as a result of the decision, there had been a
4 dramatic reduction in the prices or value for
5 yearlings at auction; correct?

6 A. A reduction, yes. We were getting
7 information on occasion.

8 1260 Q. But you knew it to be a dramatic
9 reduction?

10 A. I don't recall --

11 1261 Q. A significant reduction?

12 A. Significant. Yes, I agree. I
13 would characterize it as significant, yes.

14 1262 Q. Okay. And you understood in 2012
15 that the horse-breeding industry had been severely
16 impacted by the announcement of the cancellation of
17 SARP, 50 percent drop. Do you see that?

18 A. What page is that on?

19 1263 Q. Page 15 of the deck. Does that
20 refresh your memory?

21 A. Yes. Is that -- I don't know what
22 50 percent is, if that's referring to an average
23 price drop.

24 1264 Q. Okay. But you understood there
25 had been --

1 A. A significant drop, yes.

2 1265 Q. Right.

3 A. Yes.

4 1266 Q. And a severe impact --

5 A. Yes.

6 1267 Q. -- to the breeding industry?

7 A. Yes, I understood there was a
8 significant impact, yes.

9 1268 Q. And you understood that you and
10 Finance understood that yearling horse sales occur
11 in the fall?

12 A. Yes.

13 1269 Q. And that there was significant
14 uncertainty in the industry as of that point in
15 time, summer 2012?

16 A. Yes, I would have primarily
17 understood that through the correspondence, the
18 media clips, and the conversation with
19 Mr. Wilkinson.

20 1270 Q. And do you recall, sir, that in
21 2010 and 2011, the ORC had told Finance that
22 stability was essential for the breeding industry?

23 A. I believe when I was working on
24 this file in January and February, I became aware
25 of that.

1 1271 Q. January and February of --

2 A. 2012. I became aware of that
3 general perspective.

4 1272 Q. So in January and February of
5 2012, you were aware that stability was essential
6 for the breeding industry; correct?

7 A. Yes. I don't know if I attributed
8 that to the ORC, in particular. I was aware that
9 that was an important aspect of the industry. And
10 that, from my understanding, was also related to
11 the stability around race dates. So this was --
12 these were -- issues were seen as correlated.

13 1273 Q. Okay. And the slide also talks
14 about the uncertainty negatively impacting yearling
15 prices; correct?

16 A. Yes.

17 1274 Q. Which would crystallize industry
18 financial losses?

19 A. Yes.

20 1275 Q. And the next point in the slide
21 refers to a heightened litigation risk triggered by
22 losses; right?

23 A. Yes.

24 1276 Q. There was a discussion in Finance
25 and the Premier's office of the possibility of

1 litigation from the breeders in 2012; correct?

2 A. I don't recall specifically
3 participating in that discussion. I think, in
4 general, governments are always aware when they
5 take policy changes that there's litigation risk.

6 On occasion, those are -- on occasion,
7 you would get a separate briefing note on the
8 litigation risk of a policy decision. I don't
9 recall that in this specific circumstance.

10 1277 Q. Okay. And here it says:

11 "Industry needs a clear signal
12 from government about what the
13 future of the industry will look
14 like prior to September 1."

15 Bold, underlined.

16 A. Yes.

17 1278 Q. What did you understand was being
18 communicated there?

19 A. That information about the
20 government's general policy orientation was going
21 to be important.

22 1279 Q. And, in particular, the extent to
23 which the government was prepared to reinstitute
24 some measure of funding?

25 A. Financial support, yes. The

1 extent of financial support was a -- something that
2 was communicated at least by Mr. Wilkinson as being
3 important, and his view was that the \$50 million
4 that had been publicly committed was not enough.

5 1280 Q. Did you share that view in August
6 of 2012?

7 A. I don't recall exactly whether I
8 shared that view. I think I was, you know,
9 receiving information about -- that view that he
10 was putting forward was coincidental with other
11 aspects of the proposal he was putting together.

12 1281 Q. But in August of 2012, sir, you
13 were aware that a commitment had been brokered
14 between the NDP and the Liberal government for
15 \$50 million over three years; correct?

16 A. That's correct.

17 1282 Q. And then in August of 2012, the
18 industry panel is telling government that
19 \$50 million over three years is completely
20 inadequate, and the industry will collapse; right?

21 A. Yes.

22 1283 Q. And the panel is telling
23 government that 300 million over three years is
24 required to prevent a collapse; right?

25 A. Yes.

1 1284 Q. So my simple question to you, sir,
2 is as an advisor receiving this information, did
3 you agree with it? Accept it?

4 A. I accepted that the change from
5 \$345 million a year to 50 million over three years
6 was a significant, dramatic change. So I
7 understood the advice coming in. I anticipated --
8 in fact, we anticipated before we struck the panel
9 that the panel was going to come back with advice
10 on increasing the commitment.

11 I don't know if I was in a position at
12 that time to judge what was appropriate because
13 they -- my question was around not just the fiscal
14 aspect, but other policy measures that might be
15 taken to continue to have an industry of some
16 viability.

17 So the question -- one of the policy
18 questions that we needed to understand with respect
19 to the amount of money that was being recommended
20 was what size of industry does that support.

21 1285 Q. So you didn't have a position on
22 whether 300 million was needed to prevent industry
23 collapse or not; is that fair?

24 A. That's fair. I was in receipt of
25 advice from the panel.

1 1286 Q. What was Mr. Shortill's opinion?

2 A. I recall him being -- as I
3 mentioned earlier in ascribing my own concern,
4 being concerned about the erosion of the fiscal
5 choice that had been made.

6 I don't recall his specific view on how
7 much -- I don't recall his specific view on how
8 much more money he thought might be necessary to,
9 in the words used here, avert collapse.

10 1287 Q. Were you satisfied that the panel
11 had undertaken a proper analytical process to
12 arrive at its views?

13 A. The panel, from being constituted
14 to providing its first set of advice, had only
15 worked for perhaps eight to ten weeks, which in a
16 process like this where an independent process is
17 being initiated with new pieces of information, new
18 pieces of research, that is a -- in relative terms
19 to other files I've seen, that is a very short
20 period of time. So I was -- I remarked on that.
21 However --

22 1288 Q. You felt that the period of time
23 was short having regard to the complexity and scope
24 of the issues that the panel had to evaluate and
25 make recommendations about; is that fair?

1 A. I believed it was a short period
2 of time. I don't know if any of these panelists
3 were working full-time on the file. I don't recall
4 the -- well, I guess in reviewing the interim
5 report, I now see some reference to some studies
6 that were procured.

7 1289 Q. I'm just trying to understand your
8 point, sir. I'm not challenging it. You felt that
9 it was -- eight weeks or so was a short period of
10 time having regard to the scope and complexity of
11 the issues that they were evaluating; is that fair?

12 A. It was a short period, yes.
13 However, I knew that -- I understood the reasons
14 and --

15 1290 Q. The reasons being there was
16 urgency to come up with a plan before the industry
17 collapsed; right?

18 A. In their view, yes. And also to
19 my sense -- to my sense of the work that was done,
20 it appeared to be work that was of sufficient
21 quality to take seriously.

22 1291 Q. Okay. So were you prepared to
23 recommend to the Premier the \$300 million as
24 recommended by the panel?

25 A. So perhaps there are records that

1 clarify this. I don't recall my specific
2 recommendation.

3 1292 Q. Okay.

4 A. I recall reiterating my concern
5 about the fiscal plan, and I recall --

6 1293 Q. The erosion of the fiscal plan?

7 A. Yes.

8 1294 Q. Meaning going back on a decision
9 that had been made by the Minister of Finance and
10 endorsed by Cabinet?

11 A. That's correct.

12 1295 Q. Okay.

13 A. I also recall that there wasn't --
14 I recall wanting to force the policy conclusion
15 around what size of industry the province thought
16 was appropriate.

17 1296 Q. Okay. And how were you going to
18 do that? How were you going to force the policy
19 conclusion?

20 A. Well, in part, it's a factor of
21 how much money is being chosen to put into it. In
22 part, it's a product of the advice that we were
23 getting from the panel around how many racetracks
24 might participate in the proposal they were putting
25 forward, which in turn -- sorry, I'll just

1 finish -- which in turn might affect how many
2 tracks ultimately participated.

3 1297 Q. Were you concerned about the
4 panel's advice that there was going to be an
5 imminent industry collapse?

6 A. Yes. I mean, that's a fairly
7 dramatic conclusion, which was designed to be -- to
8 alert government and the public because it was --
9 the interim report was put in the public domain as
10 well.

11 I was concerned that they -- they
12 obviously had a very strong view on the seriousness
13 of the -- on the extent of the change that they
14 were anticipating, and that needed to be taken
15 seriously by government.

16 1298 Q. And what were you concerned about?

17 A. I was concerned about the economic
18 impact. I was concerned about the original policy
19 proposal not being received in the way it was
20 anticipated, and I was concerned about the
21 political impact on the government.

22 1299 Q. And I presume you discussed those
23 concerns with the Premier?

24 A. I don't recall specifically
25 engaging the Premier on this question.

1 1300 Q. Was the Premier concerned about
2 the advice being communicated by the panel, that
3 the collapse was imminent?

4 A. I don't think he would have
5 supported the collapse of the industry. And so,
6 again, he would have been -- I don't recall a
7 specific conversation with him.

8 1301 Q. Why don't you think he would have
9 supported the collapse of the industry?

10 A. Because I don't think that was his
11 policy intention.

12 1302 Q. Okay. Do you recall him ever
13 raising the collapse of the industry as a
14 consequence of the decision that was made with you?

15 A. He -- again, there was always an
16 intention to have other policy supports and
17 potentially funding supports in place, and so --

18 1303 Q. So you say that in the February
19 2012 materials. I haven't seen any reference to
20 other funding supports in place other than
21 maintaining the Pari-Mutuel tax reduction.

22 A. So there's that -- there's a
23 reference in the Cabinet decision document around
24 initiating a process in 2012 to look at other
25 policy options to support the industry.

1 1304 Q. That's it; right?

2 A. That was in -- there was a -- that
3 was in the Cabinet's decision document, yes.

4 1305 Q. Now, I want to just show you
5 CRE32576, please, which is an email sequence of
6 August 17. So this is an email sequence August 17
7 that starts with Mr. Goodwin commenting on the
8 horse racing panel report?

9 A. Yes.

10 1306 Q. And do you see where he says in
11 the second paragraph:

12 "As we discussed MOFMO" --
13 Which I presume is Minister Duncan's office?

14 A. Yes, that's correct.

15 1307 Q. -- "feels the panel has
16 selectively used economic reports
17 and excluded work undertaken by
18 MOF, office of economic policy, or
19 its consultants, McKinsey."

20 Do you see that?

21 A. Yes.

22 1308 Q. Do you recall Finance expressing
23 these kinds of views about the panel report?

24 A. Yes. Yes. I didn't recall -- I
25 don't recall now if any of the information that

1 Mr. Goodwin is referring to here actually made it
2 into the interim panel report or not. I don't
3 recall that.

4 1309 Q. Okay. And do you recall whether
5 or not Mr. Shortill accepted as valid the panel's
6 findings?

7 A. I remember him being concerned --
8 and this is reflected in this email -- around the
9 short period of turnaround from the panel's
10 provision of the report internally to their desire
11 to publish it.

12 1310 Q. Right. But apart from that, do
13 you recall Mr. Shortill expressing the view that he
14 did not accept the panel's findings on job losses
15 and horse destruction and collapse of the industry?

16 A. I recall that he was concerned
17 about the -- some of the assessments that were
18 being made in the absence of some finance data. I
19 just don't recall to what extent -- I don't recall
20 to what extent those were accommodated in the
21 ultimate interim report.

22 1311 Q. Okay. Do you recall whether
23 Mr. Shortill also had a view that the panel hadn't
24 had adequate time to make the findings that it had
25 made?

1 A. I don't specifically recall that.

2 1312 Q. Okay. Now, you get involved in
3 the sequence, and you say:

4 "Hi all, I spoke to
5 John Wilkinson just now."

6 Do you see that?

7 A. Yes.

8 1313 Q. Is that what you were thinking
9 about briefing note or something else?

10 A. I believe -- I don't recall
11 whether my briefing note email is in reference to
12 this phone call. If I recall correctly, this is
13 some troubleshooting that I would have been doing
14 with respect to the panelist that I knew --

15 1314 Q. That being Mr. Wilkinson?

16 A. -- Mr. Wilkinson, trying to
17 explain the concern.

18 1315 Q. Of Mr. Shortill and Mr. Goodwin?

19 A. Yes.

20 1316 Q. Okay.

21 A. Part of my job in Premier's office
22 would have been to communicate things prior to them
23 being communicated by others.

24 1317 Q. And explain that to me in this
25 context.

1 A. So the context here is
2 Mr. Shortill being -- well, in fact, Mr. Shortill
3 sends an email, his view of what he needed to do
4 and --

5 1318 Q. Which was make a very angry
6 call --

7 A. Yes. And then --

8 1319 Q. -- on behalf of, quote, our
9 government; right?

10 A. Yes. And then he continues:

11 "I suggest someone with a
12 little more patience than me call
13 the panel and indicate it would be
14 wise to reopen the time frame so
15 they can accept the comments from
16 Finance that we worked hard and in
17 good faith to provide."

18 1320 Q. Okay. How much more time did he
19 want?

20 A. I don't remember. I remember
21 Mr. Wilkinson expressing urgency generally in
22 August about the need to get the report out.

23 1321 Q. Because of the yearling sales
24 coming up in September; right?

25 A. Yes. And if I recall correctly,

1 there was also an important event in rural Ontario
2 called the International Plowing Match that usually
3 happens in mid to late September.

4 1322 Q. And was Mr. Shortill moved by
5 those upcoming events at all?

6 A. I don't recall. I know that the
7 interim report did indeed come out in late August.

8 1323 Q. Okay.

9 A. I don't -- and I don't recall the
10 specific extent to which changes were made based on
11 Finance's desire to have more context and more
12 information.

13 1324 Q. Okay.

14 MR. LISUS: That's the next exhibit,
15 please.

16 EXHIBIT NO. 20: CRE0032576.

17 MR. ROSENBERG: Sorry, what's the next
18 exhibit?

19 MR. LISUS: The email, CRE32576.

20 MR. ROSENBERG: It's not -- I object to
21 it being marked with a number. It should be marked
22 for identification because it's an email between
23 Barry Goodwin and Elizabeth Yeigh and Tammy
24 Watkins, not this witness.

25 BY MR. LISUS:

1 1325 Q. We know the interim report comes
2 out on August 17, 2012; right?

3 A. I don't think so because the email
4 correspondence that I just reviewed had a date of
5 August 17th, and the report had not yet come out
6 then.

7 1326 Q. Okay. The report is dated
8 August 17, 2012. I'm looking at it. Do you
9 believe it was released sometime after August 17?

10 A. I believe so, because just on my
11 review of that correspondence, that correspondence
12 is dated August 17th, and the report had not yet
13 come out.

14 1327 Q. Okay. When do you think it came
15 out?

16 A. I don't recall specifically. I
17 recall it being in August before the events in
18 September that Mr. Wilkinson told me he was
19 concerned about.

20 1328 Q. All right. And I take it that the
21 folks at Finance were not happy -- I understand
22 that the report was publicly released around
23 August 25. Does that accord with your
24 recollection?

25 A. Approximately, yes.

1 1329 Q. Okay. And so we know, then,
2 from -- there was obviously a composed copy of it
3 on August 17 because I'm looking at one, SB3784,
4 with that date on it, and it appears to be
5 complete; right?

6 A. Yes. As --

7 1330 Q. So the report is completed on
8 August 17 and provided to Finance and your office
9 and OMAFRA, I presume, to review; correct?

10 A. Yes. I don't recall the specific
11 dates, but it wouldn't be unusual to receive a copy
12 of a report with a certain date and, depending on
13 the actual publication date, the date on a copy
14 being changed.

15 1331 Q. Fair enough. So between August 17
16 and what we believe to be the release date of
17 around August 25, there's commentary on the report;
18 correct?

19 A. That's correct.

20 1332 Q. And Finance, I understand, wasn't
21 happy with the report as composed?

22 A. I think that's probably fair.

23 1333 Q. They viewed the report as a
24 capitulation to the horse racing industry; right?

25 A. I don't recall that --

1 1334 Q. Do you recall --

2 A. -- terminology.

3 1335 Q. Leaving aside the terminology, do
4 you recall that perspective or sentiment?

5 A. I think they saw the advice as
6 constituting some fiscal erosion that they were
7 very concerned about.

8 1336 Q. When you say "fiscal erosion,"
9 sir, we can agree that that includes the sentiment
10 that the advice given was a capitulation or
11 aboutface from Finance's decision; correct?

12 A. Yeah, I would -- yes, I would
13 characterize the words maybe a bit differently.
14 Significant reversal perhaps, but yes.

15 1337 Q. Okay. And the reason I ask you
16 that, sir, if we look together at a document
17 produced last night, I believe, it has a
18 handwritten number on it, which I can't read. It
19 doesn't otherwise have a number. I'll try and read
20 the number. CRE560801. It's an email sequence
21 dated August 21.

22 MR. ROSENBERG: Is the handwritten note
23 yours, or is the handwritten note in the actual
24 document that was produced?

25 MR. MILAT: This was one of the

1 documents with no document ID stamped on it.

2 MR. LISUS: Just off for a second.

3 -- OFF THE RECORD DISCUSSION --

4 MR. LISUS: The document number
5 CRE560801 is the file number.

6 MR. MILAT: And I have the copy here
7 where I had the computer put the file name in the
8 footer.

9 BY MR. LISUS:

10 1338 Q. You've seen this document before
11 today, Mr. Bardeesy?

12 A. I don't recall seeing this in my
13 review a couple nights ago. I'm just reading it
14 now.

15 MR. RATCLIFFE: Take a minute to read
16 it.

17 THE WITNESS: Okay. Yes.

18 BY MR. LISUS:

19 1339 Q. So starting with the beginning of
20 the sequence, what's going on here? Beginning of
21 the sequence being Tuesday, August 21, 5:34 in the
22 afternoon.

23 A. So Tyler Charlebois in Premier's
24 office, communications, would have been in receipt
25 of a draft of Mr. McMeekin's statement on the

1 interim report of the horse racing transitional
2 panel.

3 Typically when reports by outside
4 bodies tasked by the government to do something are
5 solicited and then published, there will often be a
6 response by the responsible minister or the
7 ministry involved. So in this case, Mr. Charlebois
8 is in receipt of a proposed statement from
9 Mr. McMeekin.

10 1340 Q. Who is he sending it to?

11 A. He's sending it to his -- he's --
12 to Wendy McCann and Laura Miller.

13 1341 Q. Who are they?

14 A. So Laura Miller was the deputy
15 chief of staff for communications, and Wendy McCann
16 was the executive director of communications.

17 1342 Q. I haven't seen -- I don't think
18 I've seen Laura Miller's name. She was a senior
19 official in the --

20 A. Yes. She was deputy chief of
21 staff. I believe the title was deputy chief of
22 staff for communications or perhaps for
23 communications and strategy. I don't recall the
24 specific descriptor of her job title, but that
25 was -- so he would have been a report to

1 Wendy McCann who was, in turn, a report to
2 Laura Miller.

3 1343 Q. Why is Laura Miller getting
4 involved in this?

5 A. So Premier's office would
6 typically be in receipt of public communications
7 planned by ministers by press release.

8 1344 Q. I get that, but not Laura Miller.

9 A. She was deputy chief of staff for
10 communications.

11 1345 Q. I understand that, but I haven't
12 seen her involvement in any of the communications
13 about the horse racing matter up until now.

14 A. Okay.

15 1346 Q. So why is --

16 MR. RATCLIFFE: Do you know the answer?

17 BY MR. LISUS:

18 1347 Q. -- deputy chief of staff involved?

19 A. I don't know except to reiterate
20 what I said as a general practice.

21 1348 Q. Is she in your office?

22 A. We are -- we were both colleagues
23 in Premier's office.

24 1349 Q. Okay.

25 A. She was the deputy chief of staff

1 for communications and strategy. I was the
2 executive director of policy reporting to the
3 deputy chief of staff for policy.

4 1350 Q. And what was her view on this
5 report?

6 A. I don't -- I don't recall
7 specifically.

8 1351 Q. What was Wendy McCann's view on
9 the report? And just remind me again who
10 Wendy McCann was.

11 A. So Wendy McCann was the executive
12 director for communications in the Premier's
13 office.

14 1352 Q. What was Wendy McCann's view of
15 the transition panel's report?

16 A. I don't recall any specific view,
17 other than what is represented in her email
18 response to Tyler Charlebois.

19 1353 Q. But you do recall that view?

20 A. I don't -- I don't specifically
21 recall it until seeing it now.

22 1354 Q. Okay. When I asked you a question
23 about the perception of the report before I showed
24 you this email, you agreed with me that that is how
25 the folks in the Premier's office would have viewed

1 the transition report. Do you remember that?

2 A. Yes. I thought I ascribed that
3 more to Finance than to our own office, but yes.

4 1355 Q. So you now see that that view
5 appears to have been held by your own office as
6 well?

7 A. Yes.

8 1356 Q. Okay. Now, you're included on the
9 email that the interim panel report is going to be
10 reported as an aboutface or capitulation especially
11 after all our messaging about choosing children
12 over horses. Do you see that?

13 A. Yes.

14 1357 Q. I take it that that's --
15 Ms. McCann's message there is not a positive one?

16 A. With respect to the draft
17 statement that she's in receipt of, I suspect not.
18 Potentially also with respect to the report --
19 underlying report to which the statement is
20 reacting, yes.

21 1358 Q. Right. Why didn't this group view
22 the interim report as positive? Why didn't they
23 view it positively?

24 A. I believe for some of the same
25 reasons I articulated earlier, that the

1 government's policy, posture overall -- and I said
2 this on Wednesday -- was about strong action to
3 reduce the deficit while preserving core public
4 services.

5 1359 Q. And then Ms. Miller instructs
6 Wendy to take a cut at it. What does she want her
7 to take a cut at?

8 A. I believe she's -- by my
9 interpretation of this line, she's asking
10 Wendy McCann to edit the draft statement from
11 Minister McMeekin which would then be sent back
12 through Tyler Charlebois to Minister McMeekin's
13 office.

14 1360 Q. And Wendy McCann says:
15 "Have we committed to a policy
16 yet?"
17 Is that what she's asking there?

18 A. Yes.

19 1361 Q. Meaning has the Premier's office
20 committed to revisiting the decision made in
21 February 2012, is how I interpret this.

22 A. It's a bit more complicated than
23 that, I would say. So the decision had already
24 been partially revisited because of the deal with
25 the NDP to put \$50 million of transitional support

1 in place.

2 1362 Q. And that's why you say in
3 response:

4 "There's considerable pressure
5 to reconsider a second time!"

6 A. Correct.

7 1363 Q. So your view and the view of the
8 Premier's office was a decision had been made, and
9 then there had been a capitulation to the NDP to
10 have \$50 million, and now there was a second
11 potential capitulation of \$300 million. Is that
12 why you've put the second time an exclamation mark?

13 A. Yes, but to put some shape to
14 that, when I get a question like from Wendy McCann
15 with a question are we committed to a policy, I
16 understand that both broadly in the sense of what
17 kind of advice are we giving but also in the very
18 specific sense that the recommendation to put more
19 money on the table would require Cabinet and/or
20 Treasury Board approval.

21 1364 Q. More than the 50 million?

22 A. Correct.

23 1365 Q. So you'd have to go back again for
24 300 million?

25 A. Or whatever amount was recommended

1 by whichever minister was bringing the item
2 forward.

3 1366 Q. As of August 21, 2012, had
4 Treasury Board and Cabinet approved the \$50 million
5 deal done with NDP?

6 A. I believe so, yes. I believe we
7 saw in earlier materials there was reference to a
8 late May Treasury Board meeting around that.

9 1367 Q. So now you having the Premier's
10 office and Finance having to reconsider a second
11 time which is, to use your language, further
12 erosion of the decision; is that fair?

13 A. That's one aspect of it, yes. I
14 suspect we don't have the -- I don't have the draft
15 statement here in front of us now, but if I recall,
16 the draft statement opened the door to positive
17 action on some aspects of the transition panel
18 report.

19 1368 Q. That was the concern that the
20 transition panel report was going to open the door
21 to more changes and then more erosion of the
22 decision taken in February. Fair?

23 A. I think more specifically the
24 draft statement as then received also opened the
25 door.

1 1369 Q. Okay. Did you speak to the
2 Premier about these concerns?

3 A. I don't recall doing so.

4 1370 Q. Okay. Was the Premier engaged in
5 this issue at this time?

6 A. I sent him a note that we have --
7 or Dave Gene, rather, sent him a note with my
8 input.

9 1371 Q. Is this period of time being the
10 same period of time that the gas plant issue was
11 extant or going on?

12 A. There was definitely a public
13 discussion around that decision and some of the
14 legislative activities around that.

15 1372 Q. Being the committee -- the
16 legislative committee that was compelling
17 documents?

18 A. I believe so. I don't recall
19 exactly.

20 1373 Q. Okay. That was occurring around
21 this time as well, being Q3 2012; correct?

22 A. I believe so, yes. And so I was
23 with -- I was supporting a note that Dave Gene
24 provided -- I was supporting a note that Dave Gene
25 provided to the Premier here dated August 22,

1 2012 -- that's CRE0554525 that you've given me
2 earlier today -- that informed the Premier about
3 the state of play of this file generally.

4 1374 Q. Okay. I see. Draft of note to
5 the P?

6 A. I don't have that, but I have a
7 note here that is -- was in the document package.

8 1375 Q. Okay. So we'll come to that in a
9 minute.

10 Was the Premier focused on the horse
11 racing file at this point, or was his time pretty
12 much occupied with the gas plant issues?

13 A. The main -- one of the main policy
14 questions that the Premier was focused on at the
15 time -- well, there are two that I recall
16 specifically.

17 One was the work of the jobs and
18 prosperity council, which was a body looking at the
19 economic policy future of the province that he was
20 quite involved in and that I was supporting.

21 The other was legislation to -- with
22 respect to public sector salaries and contracts
23 that he was quite engaged on.

24 So those -- those are two of the major
25 policy issues he would have been engaged on. The

1 legislature wasn't sitting in July or early August,
2 so the gas plant issue would have been less of a
3 concern legislatively.

4 MR. LISUS: Thank you. CRE560801 is
5 the next exhibit.

6 EXHIBIT NO. 21: CRE0560801.

7 MR. LISUS: Off the record.

8 -- OFF THE RECORD DISCUSSION --

9 BY MR. LISUS:

10 1376 Q. If you take a look at CRE30559522,
11 which is a document we got last night, you and
12 Mr. Gene were collaborating on a note for the
13 Premier?

14 A. That's correct.

15 1377 Q. And this is because you want him
16 to be up to speed on the background because you
17 know that the interim panel report is going to come
18 out in the next few days, and you would like him to
19 have some basic familiarity with the context.
20 Fair?

21 A. That's correct, with the
22 information about the policy considerations, not
23 just the communications considerations.

24 1378 Q. Right. So you compose the note
25 which we got last night at 554525. Now, 554523,

1 554524, 554525, that's the note you composed?

2 A. I participated in the composition
3 of this note, yes.

4 1379 Q. It appears to be a draft. Was it
5 sent?

6 A. So I don't -- I don't specifically
7 recall. I notice there's a couple of typos and
8 incomplete sentences at the conclusion.

9 1380 Q. Right, but can we -- let me ask
10 you this: Can we infer it's unlikely you gave a
11 note with typos and incomplete sentences to the
12 Premier?

13 A. That would have happened on
14 occasion.

15 1381 Q. Okay. Fair enough.

16 A. It's possible -- it's possible
17 that happened in this case.

18 1382 Q. Fair enough, but we can also infer
19 that the information that's contained in that note
20 was communicated to the Premier by you or Mr. Gene?

21 A. I suspect -- I suspect so.

22 1383 Q. Right.

23 A. I suspect so.

24 1384 Q. Okay. Because the panel report is
25 going to come out, and there's been a lot of media

1 and public discussion about the decision, and you
2 obviously understood that the industry and the
3 media was eagerly anticipating the release of the
4 panel report; right?

5 A. That's correct. It's also
6 possible we prepared this because it's possible
7 that he was not in Toronto these days or that week.

8 1385 Q. Fine.

9 MR. LISUS: So the cover email in that
10 note is the next exhibit.

11 MR. MILAT: That's Exhibit 21.

12 MR. ROSENBERG: I believe that's
13 Exhibit 22. I have 21 marked as CRE560801.

14 Let's go off the record for a moment.

15 -- OFF THE RECORD DISCUSSION --

16 EXHIBIT NO. 22: CRE0554522, CRE0554523,
17 CRE0554524, CRE0554525

18 BY MR. LISUS:

19 1386 Q. CRE560731 which was given to us
20 last night, so it's a handwritten document number.
21 Take a look at that email.

22 So it would appear here, Mr. Bardeesy,
23 that the group that was working on the minister's
24 statement on August 21 which we discussed a few
25 minutes ago was Ms. Miller and Mr. Gene. And you

1 are still working on the minister's statement,
2 Minister McMeekin; right?

3 A. That's correct.

4 1387 Q. And there's a reference at the
5 bottom of Mr. Tindal's 9:58 p.m. email about a need
6 to bring back reference to the sire stakes and HIP.

7 "Those are key messages to
8 breeders before yearling sales."

9 What does that mean?

10 A. I don't recall specifically. I
11 can interpret as being -- this meaning that the
12 edit that the Premier's office was sending back to
13 Mr. Tindal, who I believe was the director of
14 communications, to Mr. McMeekin may have -- may
15 have eliminated a reference to those two aspects of
16 the release of the draft that it sent back in.

17 1388 Q. What did you understand the
18 statement "those are key messages to breeders
19 before yearling sales" to mean?

20 A. I don't recall.

21 1389 Q. Did you understand that there were
22 yearling sales at a certain point in the year?

23 A. Yes.

24 1390 Q. Did you understand that the
25 breeding sector needed clarity from the government

1 about whether or not it was going to provide
2 funding to the industry so that it didn't collapse
3 which would have a significant downward impact on
4 breeding -- on yearling sale prices?

5 A. Yes.

6 1391 Q. Okay.

7 MR. LISUS: That's the next exhibit.

8 MR. MILAT: 23.

9 EXHIBIT NO. 23: CRE0560731.

10 BY MR. LISUS:

11 1392 Q. And then CRE566461 or 56042, this
12 appears to be a note of some kind for the purposes
13 of briefing the Premier; right?

14 A. Yes. The email is dated either
15 October 12th or December 10th. I can't tell.

16 1393 Q. I think it's October 12th.

17 A. Okay. Yes.

18 1394 Q. And did Mr. Teefy work for you?

19 A. Yes. Mr. Teefy was the -- had
20 policy files that included agriculture in the
21 Premier's office policy.

22 1395 Q. So he composed this to you to give
23 to the Premier?

24 MR. RATCLIFFE: Did you want to take a
25 look at that?

1 THE WITNESS: Yes, I'll take a look.

2 MR. RATCLIFFE: No, no, well --

3 THE WITNESS: Sorry.

4 MR. ROSENBERG: Again, Mr. Milat, have
5 we been provided with this document?

6 MR. LISUS: We were only provided with
7 it last night, so you probably got it the same time
8 we did from the Crown.

9 MR. ROSENBERG: But you haven't brought
10 me a copy for --

11 MR. MILAT: I'm sending it to you right
12 now.

13 MR. ROSENBERG: Thank you.

14 BY MR. LISUS:

15 1396 Q. Okay?

16 A. Yes.

17 1397 Q. Now, under the heading "Analysis,"
18 can you just explain to me what you were advising
19 the Premier there? It says:

20 "The new approach will be to
21 ask the Ministry of Finance to
22 negotiate directly with the industry
23 to reach an agreement on what a
24 small and more efficient industry
25 would look like."

1 Do you see that?

2 A. Yes. It also says "panel" and a
3 question mark in brackets after Finance.

4 1398 Q. Right. So it was intended in
5 October 2012 that there would be a negotiation with
6 the industry for additional funding; correct?

7 A. Yes. So this analysis conveys
8 that -- or this statement conveys that both the
9 horse racing panel and the ministry are now in
10 agreement that \$50 million is not enough.

11 And so the general purpose of this
12 email -- sorry, of this briefing note appears to be
13 an update. It doesn't seem to be seeking any
14 specific decision or guidance.

15 1399 Q. Right. And there was going to be
16 a negotiation between the government on the one
17 hand and the industry on the other about the amount
18 of funding to be provided to prevent a collapse;
19 right?

20 A. That's one of the things that
21 appears to be suggested here. I believe that
22 coincidental with this, there was a -- the
23 beginnings of a discussion which is represented by
24 the fourth bullet on the first page:

25 "OLG rents for slot machines,

1 TBD."

2 There was the beginnings of discussion with
3 individual tracks on new siteholder agreements for
4 slot machines.

5 1400 Q. And are you aware that there was
6 subsequently a negotiation with the three breeding
7 sectors, thoroughbred, quarter horse, and --

8 A. I remember they were engaged. I
9 don't remember the specific way that that
10 negotiation took place.

11 1401 Q. Who's responsible for negotiating
12 with them?

13 A. If I recall correctly, the panel
14 had a -- had a significant role and that the
15 Ministries of Agriculture and Rural Affairs and
16 Finance were also involved.

17 1402 Q. But your office was not involved,
18 the negotiations with thoroughbred, quarter horse,
19 and standardbred --

20 A. I was not involved. No one on my
21 team was involved. We were, I believe, informed
22 and provided policy updates as necessary.

23 1403 Q. Were you aware that memoranda of
24 understanding were concluded -- I'm informed by
25 Mr. Wilkinson --

1 A. Yes.

2 1404 Q. -- with thoroughbred breeders and
3 quarter horse breeders?

4 A. I don't specifically recall that
5 because I wasn't -- I don't recall the specific
6 instruments by which negotiations were meant to be
7 concluded.

8 1405 Q. Okay.

9 MR. LISUS: That's the next exhibit.

10 MR. MILAT: Exhibit 24.

11 EXHIBIT NO. 24: CRE0560461 and
12 CRE0560462.

13 BY MR. LISUS:

14 1406 Q. I want to have you look at 359818
15 and 359819, please. This is an email going to a
16 lot of people about a meeting which appears to be
17 called a multi-corners on horse racing?

18 A. Yes.

19 1407 Q. And you're one of the people who
20 got the email. You're one of the people who was
21 required to attend the multi-corner meeting; right?

22 A. In the view of the organizer, I
23 was a Cabinet office official. Listed me as a
24 required attendee. I don't know if I necessarily
25 attended this meeting. I would have expected

1 Brian Teefy to have attended. I don't know if I
2 specifically attended this meeting.

3 1408 Q. The attachment is a Four Corners
4 Deck Strategic Discussions for October 3rd Ultimate
5 Final PowerPoint; Four Corners Horse Racing
6 Backgrounder.

7 A. Yes.

8 1409 Q. What is this document?

9 A. Can I have a moment to review?

10 1410 Q. Yes.

11 A. The purpose of this document
12 appears to be to work towards policy options that
13 would have been discussed in this meeting with
14 the -- with the document providing some background
15 and context towards a position with respect to the
16 industry informed by the panel.

17 1411 Q. And part of the context that's
18 been provided on slide 4, second hashmark, is:

19 "The horse race breeding
20 industry is extremely vulnerable
21 without clarity on government
22 direction."

23 A. Yes.

24 1412 Q. And if you look at deck 5, slide
25 5, second hashmark:

1 "An analysis based on extensive
2 engagement with the sector and
3 review of financial statements of
4 tracks by the HRIT panel."

5 Right?

6 A. Yes.

7 1413 Q. What information did the
8 government learn from the panel's review of the
9 financial statements of tracks by the HRIT panel?

10 A. I don't recall seeing the
11 statements myself. I believe the panel summarized
12 based on their interaction, so a few things were
13 learned.

14 Of the -- of the tracks that submitted
15 their statements, I believe there were a couple of
16 tracks, from my review of the documents last night,
17 that chose not to participate in the process of
18 providing statements.

19 For those that did, the panel had some
20 sense of the aggregate revenues from policy --
21 government policy that was required to sustain the
22 sector at a certain level. I don't recall what
23 that level was.

24 1414 Q. What you're telling me is by
25 looking at the financial statements of the horse

1 racing tracks, the panel was able to determine
2 whether they would be able to continue to offer
3 live horse racing without the SARP revenue share;
4 right?

5 A. Well, by that point, I think the
6 panel was of the view that it could not.

7 1415 Q. Right, but they learned that, in
8 part, by looking at the financial statements to
9 determine the extent of their revenue and income
10 derived from Slots at Racetrack Program revenue
11 share; right?

12 A. I believe so. I did not
13 specifically engage on the review of those
14 statements.

15 1416 Q. And if the tracks couldn't
16 continue to offer live horse racing, there wouldn't
17 be live horse racing. Horse racing only occurred
18 at tracks; right?

19 A. Correct.

20 1417 Q. And if there wasn't going to be
21 live horse racing at tracks, there wouldn't be any
22 need for horses; right?

23 A. A significant part of the breeding
24 would not be required.

25 1418 Q. And were you aware, sir, that the

1 Ontario Racing Commission had the financial
2 statements of every track going back to the
3 inception of SARP?

4 A. I wasn't specifically aware of
5 that, but that wouldn't surprise me.

6 1419 Q. Were you aware that the siteholder
7 agreements required racetrack operators to make
8 their financial statements available to OLG for
9 review?

10 A. I don't specifically recall that.
11 I recall in the work in which we were engaged
12 through 2012 on this issue, there was some question
13 about some of the statements of some of the tracks.

14 1420 Q. Were you aware that OLG had the
15 power to require those statements to be provided to
16 it?

17 A. I don't specifically recall that.

18 1421 Q. But what you do recall is the
19 first time this data point was analyzed was when
20 the HRIT did so as part of its mandate?

21 A. We had some information in the
22 Cabinet materials in February that we looked at
23 yesterday with respect to revenues from tracks.
24 I believe these were all in revenue, the numbers.
25 The detailed statements did not form part of that

1 submission.

2 1422 Q. If you take a look at -- there
3 appears to be a subsequent version of this document
4 or another version of this document or a
5 continuation of this document, CRE359820.

6 A. Yes.

7 1423 Q. And that one has a slide called
8 "Current Status"?

9 A. Yes.

10 1424 Q. And current status, which is
11 Slide 3 of 59820, what is being communicated in
12 this slide?

13 A. So this communicates the overall
14 position of the government with respect to the
15 transition panel at the time, which I think was
16 reflected in Minister McMeekin's ultimate statement
17 that went out.

18 It communicates the consultation with
19 industry to determine its willingness to work
20 together in such a way to recognize public interest
21 and the current fiscal climate.

22 1425 Q. And then the second point, it
23 says:

24 "The panel's interim report was
25 time to provide a signal to the

1 industry prior to the fall yearling
2 sales which are a major source of
3 revenue for horse breeders."

4 A. Yes.

5 1426 Q. And it says:

6 "The government's announcement
7 appears to have partially mitigated
8 a collapse of horse breeding
9 returns, thoroughbred average prices
10 were down 22 percent to 50 percent,
11 and standardbred prices were down to
12 40 percent."

13 Were you aware of that in October 2012?

14 A. I was aware of the average price
15 declines. I don't know if I was specifically -- I
16 don't recall if I was specifically aware of the
17 specific numbers.

18 1427 Q. And you also understood in the
19 fall of 2012 that without clarity about the extent
20 of funding the government was prepared to provide
21 to mitigate the consequences of its decision, a
22 racing schedule for the following year could not be
23 established?

24 A. I was aware that it would make it
25 very difficult to establish such a schedule, yes.

1 1428 Q. Well, it's not only very
2 difficult, it says that many decisions need to be
3 made before a racing schedule can be established,
4 and the government has to respond quickly to the
5 panel's report; right?

6 A. Where does it say that?

7 1429 Q. The last bullet.

8 A. Yes.

9 1430 Q. You understood as well that as a
10 result of the decision in February, the race
11 breeding industry was extremely vulnerable without
12 clarity on government direction?

13 A. Yes.

14 1431 Q. And the panel refers to an ongoing
15 analysis being done by McKinsey & Company; right?

16 A. Yes.

17 1432 Q. To complete two separate reports
18 in advance of the panel's final report; right?

19 A. Yes.

20 1433 Q. As you and I go through this, sir,
21 what I'm seeing is that in 2012, the government had
22 appointed this panel of three who undertook an
23 initial eight weeks of study and consultation
24 before producing an interim report?

25 A. Correct.

1 1434 Q. And it also engaged McKinsey who
2 was conducting a study and analyzing the industry?

3 A. Yes. I don't recall the timing of
4 the McKinsey study in relation to the panel
5 appointment, but yes.

6 1435 Q. And in addition to those two
7 steps, in March 2012, the Ministry of Finance
8 completed an economic impact analysis with respect
9 to the end of the Slots at Racetrack Program;
10 right?

11 A. Yes. This would, I believe, have
12 been the office of economic policy analysis that
13 Mr. Goodwin is referring to.

14 1436 Q. Right. That was undertaken in
15 March 2012 after the decision was communicated;
16 correct?

17 A. Yes.

18 1437 Q. And then also after the decision
19 was communicated in July and September, the
20 Ministry of Finance had additional work done by an
21 external consulting firm to further inform the
22 government and based on feedback from the expert
23 panel; right?

24 A. Yes. I don't recall that specific
25 work.

1 1438 Q. Okay.

2 A. It may be in the materials here.

3 1439 Q. This deck appears to be presenting
4 the views of the McKinsey economic analysis on one
5 hand versus the panel interim report on the other
6 hand; right?

7 A. Yes.

8 1440 Q. And they aren't necessarily
9 aligned?

10 A. That's correct.

11 1441 Q. Although both McKinsey and the
12 panel agreed on certain facts as reflected in
13 Slide 9 of the deck; right?

14 A. Yes.

15 1442 Q. That the standardbred industry
16 grew the most as a result of SARP; right?

17 A. Yes.

18 1443 Q. That the horse racing industry is
19 highly reliant on SARP?

20 A. Yes.

21 1444 Q. And the other factors identified
22 in that slide. I don't need to read them to you.
23 Correct?

24 A. Yes.

25 1445 Q. And Slide 10 records the view of

1 the panel that McKinsey is understating the
2 employment impact of the horse racing industry?

3 A. Yes.

4 1446 Q. So it appears that in October of
5 2012, with the benefit of the March study of the
6 office of economic policy, the McKinsey analysis,
7 the work of the panel, there is agreement that
8 without funding, the industry will collapse?

9 A. Yes.

10 1447 Q. That there will be very
11 significant job losses, but there's a disagreement
12 about exactly how many; right?

13 A. Yes.

14 1448 Q. And that substantially more
15 funding is required than the 50 million over three
16 years which was agreed as part of the NDP budget
17 deal as we've seen it described; right?

18 MR. RATCLIFFE: Counsel, haven't we
19 been over this two or three times? I mean, this
20 seems to be just a repeat of what you've asked and
21 what the --

22 MR. LISUS: Not the complete.

23 MR. RATCLIFFE: -- answers you received
24 in terms of the funding. Not the specifics of the
25 chart, but in terms of -- I mean, you know, time is

1 drawing on. We're well into our second day here,
2 and you're just asking the same questions that
3 you've asked before.

4 MR. LISUS: Well, I don't think so.
5 I'm just trying to establish a clear narrative of
6 how this decision was actually made.

7 BY MR. LISUS:

8 1449 Q. The answer to my question is yes?

9 A. To which question?

10 MR. LISUS: Can you read back my
11 question, please.

12 THE REPORTER:

13 "And that substantially more
14 funding is required than the
15 50 million over three years which
16 was agreed as part of the NDP budget
17 deal as we've seen it described;
18 right?"

19 THE WITNESS: Yes. I.e., yes, McKinsey
20 and the panel are in agreement on that point.

21 BY MR. LISUS:

22 1450 Q. I'm showing you a document also
23 given last night. It doesn't have a number on it.
24 Oh, it does. CRE554523. Perhaps this is what I
25 showed you earlier, is it?

1 MR. ROSENBERG: It's marked in
2 Exhibit 22, I believe, Counsel.

3 MR. LISUS: Thank you.

4 BY MR. LISUS:

5 1451 Q. CRE560559, this was also produced
6 yesterday.

7 MR. MILAT: Do you want to mark this as
8 the next exhibit first?

9 MR. LISUS: Yes. The 359818 is --

10 MR. MILAT: Exhibit 25.

11 EXHIBIT NO. 25: CRE0359818,

12 CRE0359819, and CRE0359820

13 THE WITNESS: Can we just pause?

14 MR. LISUS: Sure.

15 -- Recess at 1:49 p.m. --

16 -- Upon resuming at 1:52 p.m. --

17 BY MR. LISUS:

18 1452 Q. So this is an email from you
19 October 1. I presume this is the briefing note
20 that you recall seeing yesterday; right?

21 A. Yes.

22 1453 Q. Okay. So just tell me what this
23 is about.

24 A. So this is information that
25 John Wilkinson, member of the panel, is conveying

1 to me.

2 1454 Q. At this point in time, is he
3 trying to persuade you of the wisdom of the
4 government accepting the panel's recommendations?

5 A. Yes, I believe he was pushing for
6 a policy position based on the interim report and
7 the coming findings of their final report and
8 wanting to inform the government policy position in
9 reaction to those.

10 1455 Q. So what facts was he giving you to
11 inform government?

12 A. So he -- in this -- in this email,
13 he's referring to the first -- I can go sentence by
14 sentence. The first email is referring to --

15 1456 Q. Sure, this is your email, though;
16 right?

17 A. Yes.

18 1457 Q. So you're communicating to some
19 people about what Mr. Wilkinson --

20 A. Is telling me.

21 1458 Q. Correct.

22 A. That's correct.

23 1459 Q. Okay. And the people you're
24 speaking to is John Brodhead. Who's he?

25 A. I was directly reporting to him.

1 He was the deputy chief of staff for policy and
2 Cabinet affairs to the Premier.

3 1460 Q. Brian Teeffy reports to you?

4 A. That's correct.

5 1461 Q. Laura Miller?

6 A. She's the deputy chief of staff
7 for communications and strategy.

8 1462 Q. Who was the chief of staff at that
9 time?

10 A. David Livingston.

11 1463 Q. Okay. And Tim Shortill we know.

12 A. Yes.

13 1464 Q. And David Gene is --

14 A. I believe his title was deputy
15 chief of staff for operations in the Premier's
16 office.

17 1465 Q. Okay. This is a pretty
18 high-powered group?

19 A. A number of these are direct --
20 John, Laura, and Dave are all -- report through the
21 chief of staff to the Premier.

22 1466 Q. Okay. So he says:

23 "Cabinet needs to decide
24 whether this thing will sunset over
25 next couple months or give someone

1 ability to negotiate a new deal."

2 What does that mean?

3 A. So I don't know whether this thing
4 refers to the panel, the existence of the panel.
5 I believe the panel was advocating for a role in
6 continuing their work, not only to inform
7 government policy but to help implement government
8 policy.

9 1467 Q. Okay.

10 A. Or whether he was referring to
11 something else.

12 1468 Q. The next point.

13 A. Standardbred auction was cancelled
14 because there are no buyers, so this is a point of
15 information that Mr. Wilkinson is giving to me.

16 1469 Q. What does that mean?

17 A. So I don't know if there was a
18 specific auction he had in mind. I don't recall
19 the specific context of that remark other than what
20 I've written there.

21 1470 Q. But what that's telling you and
22 what you're reporting to these people is that there
23 is no market for yearlings; right?

24 A. I recall that it was significantly
25 depressed. I don't recall that there was no

1 market. I recall --

2 1471 Q. There are no buyers, sir, seems to
3 me to be saying that no one is buying standardbred
4 yearlings in the fall of 2012 because no one knows
5 whether there's going to be any racing; right?

6 A. I just don't recall --

7 1472 Q. Isn't that what that means?

8 A. Yes. I'm just not recall -- I
9 don't recall if that was a specific auction he had
10 in mind or not.

11 1473 Q. Whether it was a specific auction
12 or not, you understood the message being given to
13 you by the panel was that in the current
14 environment, there was no market for standardbred
15 yearlings; correct?

16 A. In this specific case, yes. More
17 generally, he was communicating, from what I
18 remember, a very depressed market.

19 1474 Q. Right. And it says:

20 "Another market indicator that
21 there won't be a soft landing."

22 Right?

23 A. Yes.

24 1475 Q. So there were additional market
25 indicators over and above the absence of any buyers

1 for yearlings to show that the consequences of the
2 February decision were catastrophic; right?

3 A. Yes.

4 1476 Q. Okay. And he is reporting that
5 McKinsey who is reporting lesser numbers or lesser
6 impacts has basic flaws in it; correct?

7 A. Yes.

8 1477 Q. All right. And his recommendation
9 was that someone ought to be appointed to quickly
10 negotiate with the industry to bring some certainty
11 and to try and mitigate the economic consequences
12 of the decision that had been made; correct?

13 A. Yes. That was his view.

14 1478 Q. Okay. And what he was telling
15 government needed to do was to decisively act to
16 announce funding to deal with job losses and dead
17 horses; correct?

18 A. He was urging action with respect
19 to both a policy position and someone or some
20 entity to negotiate and implement that. So he was
21 seeking both.

22 1479 Q. Now, what is the reference
23 McKinsey set aside 28 million to deal with the
24 horses mean?

25 A. I don't recall that. I don't

1 recall what that is in reference to.

2 1480 Q. Politically it's suicidal.

3 What --

4 A. I don't recall what that's in
5 reference to.

6 1481 Q. You wrote it, sir.

7 A. Yes.

8 1482 Q. Those are --

9 A. Yes.

10 1483 Q. -- memorable words.

11 A. Yes.

12 1484 Q. And I presume that what you are
13 telling the folks on this email is that the
14 consequences of the February 2012 decision being
15 dead horses, thousands of job losses was
16 politically suicidal for the government if it
17 wasn't rectified in some way; right?

18 MR. RATCLIFFE: Well, he's indicated he
19 doesn't recall.

20 MR. LISUS: Excuse me. Don't --

21 MR. ROSENBERG: You asked him a couple
22 of times. He said he doesn't recall.

23 MR. LISUS: I'm entitled to
24 cross-examine Mr. Bardeesy on this point. This is
25 his document.

1 MR. RATCLIFFE: He's given an answer.

2 MR. LISUS: I'm entitled to
3 cross-examine him.

4 BY MR. LISUS:

5 1485 Q. That is what that means; fair
6 enough?

7 A. So here again, I'm reporting
8 Mr. Wilkinson's words to me.

9 1486 Q. All right.

10 A. So I don't recall the specific --
11 what might be underneath some of these specific
12 sentences.

13 1487 Q. How do you interpret your words
14 "politically it's suicidal"?

15 A. Those are his words, not my words,
16 so I'm reporting his words.

17 1488 Q. How did you interpret them?

18 A. I think my general interpretation
19 and thus the -- I think the purpose of this email
20 generally was to indicate not only his specific
21 views but any aspect of this, but also the urgency
22 that he felt this issue required.

23 1489 Q. Okay. And what about the
24 situation did Mr. Wilkinson feel was politically
25 suicidal?

1 A. I don't recall specifically what
2 he thought. I think he thought that in general --
3 in general, I remember his view that the policy
4 position that was in place at the time was very
5 damaging to the -- to the government in rural
6 Ontario.

7 1490 Q. Because of the factors that we
8 discussed, job losses, dead horses, emotional
9 distress, suicide; is that --

10 A. He focused on the job loss and the
11 prospect of large scale euthanization. That's my
12 memory of what his focus was, and more generally
13 his -- the context that he communicated to us was
14 the policies that we had brought forward did not
15 indicate a sufficient understanding of rural
16 Ontario in his view.

17 1491 Q. Okay. And I take it as a senior
18 policy advisor, you agreed with Mr. Wilkinson who
19 was offering you these views as a former Cabinet
20 minister and a member of the panel that had studied
21 these issues for --

22 A. I had to take it seriously.

23 1492 Q. -- four months at that time? You
24 had to take it seriously?

25 A. I had to take it seriously, which

1 is why I -- as the person who is -- one of the
2 people who is in touch with him, I wanted to make
3 sure that my colleagues and -- my senior level
4 colleagues and others were aware of his views.

5 1493 Q. Did you report this to the
6 Premier?

7 A. I don't specifically recall
8 reporting this to the Premier. I may have given
9 this information in anticipation that someone else
10 would have reported to the Premier.

11 1494 Q. Now, we've discussed a few minutes
12 ago, sir, that at this point in time, you and other
13 senior advisors were aware that the horse racing
14 industry and breeders, in particular, were
15 extremely vulnerable at this point?

16 A. Yes.

17 1495 Q. That the industry had been
18 destabilized; correct?

19 A. That was the -- what we were being
20 told, yes.

21 1496 Q. And that the panel was
22 recommending an upper cost of \$300 million in
23 support?

24 A. Yes.

25 1497 Q. But that you felt -- well, the

1 government felt that a lower price could be
2 negotiated?

3 A. So this is -- the lower price that
4 could be negotiated was something that is in
5 Mr. Wilkinson's words here, and I'm reporting that
6 in this email.

7 1498 Q. Did you feel comfortable with
8 negotiating a price below the recommended number
9 with people who were extremely vulnerable
10 economically and emotionally?

11 A. I was comfortable with, as in with
12 many negotiations, empowering a negotiator, whoever
13 that negotiator was, with a mandate. And the
14 mandate would go up to a certain amount, but in the
15 course of negotiation, trying to secure the best
16 arrangement for the taxpayer and others.

17 1499 Q. Even though the negotiating
18 counterpart was vulnerable and economically
19 distressed?

20 A. Many negotiations involved that,
21 yes.

22 1500 Q. Many negotiations involve
23 vulnerability and economic distress caused by one
24 of the negotiating counterparts?

25 A. That can happen.

1 1501 Q. That did happen; right? Yes?

2 A. Sorry, what happened?

3 1502 Q. That did happen here. That
4 vulnerability and distress was caused by the
5 negotiating counterpart; right?

6 A. That's what the people involved
7 were telling us, yes.

8 1503 Q. Okay. Now, you understood as well
9 that there wasn't any horse racing industry
10 anywhere in the world that was viable without
11 government support?

12 A. Yes. I accepted that to be -- to
13 be true when it was conveyed to us by Mr. Wilkinson
14 and by others.

15 1504 Q. Okay. That's when you learned
16 that?

17 A. No. No, I was aware of that
18 before this email.

19 1505 Q. When? In the summer of 2012?

20 A. As a general matter that -- where
21 all policy supports -- where there were no policy
22 supports for the industry, that there was not an
23 industry. I was aware of that generally.

24 1506 Q. When?

25 A. In January and February.

1 MR. LISUS: Next exhibit.

2 MR. MILAT: This is Exhibit 26.

3 EXHIBIT NO. 26: CRE0560559.

4 BY MR. LISUS:

5 1507 Q. As of October 2012, I presume a
6 decision had been made that the government would
7 have to extend more than \$50 million over three
8 years; right?

9 A. That was the matter for -- that
10 was the matter being deliberated. The context of
11 our deliberation was that --

12 1508 Q. Go on.

13 A. -- that we would receive a
14 recommendation from the Ministers of Finance and
15 Agriculture and Food and Rural Affairs that we
16 would have to increase that amount, yes. So that
17 was -- that was an assumption but not yet a
18 decision.

19 1509 Q. Okay. CRE560458, this is an email
20 sequence, sir, which appears to be directed at
21 trying to determine who would lead and conduct the
22 negotiation with industry; right?

23 A. Yes.

24 1510 Q. And that was an important question
25 for the government; right?

1 A. Yes.

2 1511 Q. Was it ultimately Mr. Snobelen who
3 was the point of negotiation with the industry?

4 A. I don't recall specifically. I
5 know he was involved.

6 1512 Q. Okay. And were you monitoring the
7 negotiation process?

8 A. No. And this email is prior to
9 that process. This correspondence dated
10 October 12th is in reference to the decision that
11 government was going to make about how to structure
12 a negotiation and under what mandate.

13 1513 Q. Right. And by mid-October, sir,
14 just so that I understand, no decision had been
15 made on increased funding above the NDP budget
16 deal; right?

17 A. That's correct.

18 1514 Q. And the funding agreed in the NDP
19 budget deal hadn't been released; is that correct?

20 A. That I don't remember. I believe
21 there's some documents that speak to that issue.
22 So I believe there was a May Treasury Board meeting
23 that some of the documents referred to where
24 that -- the release of that funding.

25 1515 Q. My impression is that no funds

1 were released before March 2013 because that was
2 the end of the notice period; right?

3 A. That would make sense.

4 1516 Q. Okay.

5 A. It would have been approved by
6 Treasury Board from what I recall in the May, June
7 of 2012 period, but...

8 1517 Q. So as of October 2012, there is no
9 communication to the industry of any funding either
10 by way of the NDP budget deal or the interim
11 panel's recommendations; right?

12 A. No. I believe that the fact of a
13 \$50 million three-year provision was in the public
14 domain.

15 1518 Q. But by October 2012, so it was
16 understood by both McKinsey and the panel and the
17 government that \$50 million over three years was
18 not sufficient to prevent an industry collapse;
19 right?

20 A. That was the advice we were
21 getting, yes.

22 1519 Q. Okay. So by mid-October 2012, we
23 have the fall yearling auctions, and there's no
24 buyers; right? You've been told?

25 A. For at least one of them, yes.

1 1520 Q. Correct. For others, the
2 standardbred prices are down 40 percent; right?

3 A. Yes.

4 1521 Q. 50 million which has been
5 announced is recognized by everyone, government,
6 McKinsey, panel, to be completely insufficient to
7 prevent collapse; right?

8 A. Insufficient, yes.

9 1522 Q. There's another breeding season
10 coming up in February 2013; right?

11 A. Yes.

12 1523 Q. And the government hasn't made any
13 decision or announcement on whether there's going
14 to be sufficient funding to prevent a collapse;
15 right?

16 A. That's the subject of this email
17 in October, is the decision-making process around
18 both an amount and a negotiating mandate and
19 negotiators.

20 1524 Q. Sure. And we know from slides
21 we've seen earlier that government is being told by
22 OMAFRA the situation is urgent. Industry needs to
23 know.

24 A. Yes.

25 1525 Q. But it hasn't been told anything;

1 right?

2 A. Correct. They have the -- and
3 they have, by that point, in hand the statement by
4 Minister McMeekin which would have indicated some
5 work that government was going to do towards
6 bringing that greater certainty.

7 1526 Q. You, sir, knew by this point a lot
8 of livelihoods were hanging in the balance; right?

9 A. We knew it was a significant issue
10 that needed to be resolved, yes.

11 MR. LISUS: That's the next exhibit.

12 MR. MILAT: Exhibit 27.

13 EXHIBIT NO. 27: CRE0560458.

14 BY MR. LISUS:

15 1527 Q. And you also knew that the
16 transition panel members were telling you that this
17 had to be done quickly?

18 A. Yes.

19 1528 Q. Why wasn't it?

20 A. So I believe the time frame in the
21 October period is a bit different than the August
22 time frame. The August -- the period between
23 August and early September was indeed very short
24 which is why they pressed to have their interim
25 report out in August to communicate prior to the

1 auctions and to the -- to the International Plowing
2 Match. That was their intent in August, as I
3 understand it.

4 In October, the situation was
5 clearly -- they felt was urgent, but I don't
6 recall -- if we can bring back the email debriefing
7 notes, I think I -- I don't say it's a matter of
8 weeks there. I think Mr. Wilkinson was saying in
9 the next few months this needs to be resolved.

10 1529 Q. You made the decision to go from a
11 three-year phased step-down to steady state
12 100 million a year in three days; right?

13 A. You'll have to give me some
14 context for what you're saying there.

15 MR. RATCLIFFE: What are you referring
16 to? Are you referring to a specific document then?

17 BY MR. LISUS:

18 1530 Q. You know what I'm referring to,
19 sir; right?

20 A. You'll have to give me some
21 context.

22 1531 Q. February 2012, you made a
23 recommendation to go to zero over the course of two
24 days; right?

25 A. Oh, I see, the February 2012.

1 Yes, I mean, a decision was recommended to Cabinet,
2 yes.

3 1532 Q. Right. In a matter of days --

4 A. Yes.

5 1533 Q. -- after Finance had recommended a
6 three-year phased step-down of -- from 345 million
7 and then 100 million go forward on a steady state;
8 right?

9 A. Well, Finance had generated a
10 number of options, and that was one of the options.

11 1534 Q. And here we're seeing five months,
12 and the government can't make a decision to
13 mitigate the consequences of its February 2012
14 decision?

15 A. I don't think I'd agree with that
16 characterization. There was a decision made in
17 April to provide some funding.

18 1535 Q. Which you knew was completely
19 inadequate to prevent a collapse?

20 A. As I said earlier, in February,
21 there was always some intent to do some further
22 policy work, and that work started with the April
23 agreement with the NDP and the appointment to the
24 panel.

25 1536 Q. And this is the policy work we're

1 seeing being done; right?

2 A. Many of the documents we've
3 reviewed have that, yes.

4 1537 Q. CRE560406, this is a document,
5 again, which just seems to be talking about how to
6 structure the negotiations; is that correct?

7 A. That's right. I don't know if
8 this was prepared in advance of or after a
9 government policy decision on how to structure
10 things.

11 1538 Q. Was Mr. Orsini involved in these
12 deliberations in the summer and fall of 2012?

13 A. I don't specifically recall.
14 I think you've seen the extent of my involvement,
15 which was through Brian Teefy and an occasional
16 conversation with John Wilkinson.

17 MR. LISUS: Next exhibit.

18 MR. MILAT: Exhibit 28.

19 EXHIBIT NO. 28: CRE0560406.

20 BY MR. LISUS:

21 1539 Q. Were you involved in the decision
22 to provide compensation to certain racetracks?

23 A. To the extent that it was
24 required, Treasury Board or Cabinet approval, I may
25 have.

1 1540 Q. Do you remember?

2 A. I don't remember specifically.

3 1541 Q. Do you remember that some
4 \$80 million was paid in compensation to racetracks?

5 A. I remember that there were
6 compensation -- I remember that there were payments
7 made. I don't remember being specifically involved
8 in any of those -- in any of those dealings.

9 1542 Q. Who was?

10 A. I don't recall specifically. I
11 suspect that the institutions involved were the OLG
12 and Ministry of Finance.

13 1543 Q. So I want to show you CRE554102.
14 And these appear -- start at the back. Okay?

15 A. Yes.

16 1544 Q. We're now March 2013; right?

17 A. Yes.

18 1545 Q. The slots at revenue share program
19 is going to end at the end of that month; correct?

20 A. Yes.

21 1546 Q. The slot machines are still at the
22 racetracks; correct?

23 A. Yes.

24 1547 Q. They are generating a great deal
25 of revenue for OLG; correct?

1 A. Yes. I believe at this point, a
2 couple of racetracks may have already closed.

3 1548 Q. All right. But the racetracks
4 that are open are still there and generating a
5 great deal of revenue; correct?

6 A. Yes.

7 1549 Q. And the siteholder agreements are
8 going to end; right?

9 A. Yes.

10 1550 Q. And the plan that this decision
11 was based upon was to have those slot machines
12 located elsewhere closer to unmet demand; right?

13 A. The original 2012 policy position
14 contemplated that, yes, in the case of a number of
15 racetracks, never slots.

16 1551 Q. You didn't have any locations in
17 any cities ready for the location of those slot
18 machines, correct, by March of 2013?

19 A. Not that I recall.

20 1552 Q. So your agreements were coming to
21 an end with the racetrack operators; right?

22 A. Yes.

23 1553 Q. The government wanted to keep the
24 revenue from the slot machines; correct?

25 A. Yes.

1 1554 Q. The so-called policy decision was
2 to move the slot machines into cities; correct?

3 A. Conditional on new procurements
4 for new gaming facilities in some cases, yes.

5 1555 Q. And there were no new gaming
6 facilities in any city for the slot machines to go
7 into; right?

8 A. Not at that time, no.

9 1556 Q. So you had to negotiate a deal
10 with the racetracks in March 2013 to keep the slot
11 machines in the racetracks; right?

12 A. Yes. I don't know if that was
13 merely a consequence of your other questions, but
14 that was a -- it was --

15 1557 Q. It was the reality?

16 A. Yes. Yes.

17 1558 Q. Okay. And so the government,
18 then, had to run around negotiating deals with the
19 racetracks to keep the slot machines there; right?

20 A. Yes. I don't recall when that
21 process started.

22 1559 Q. And the government wasn't going to
23 negotiate with the horse racing sector and the
24 breeders until it concluded a deal with all the
25 racetracks; right?

1 A. I don't recall the specific order
2 of events.

3 1560 Q. Isn't that what this email
4 sequence says?

5 MR. RATCLIFFE: Can you take him to the
6 part you're referring to?

7 BY MR. LISUS:

8 1561 Q. March 1, 2013:

9 "Just had a good discussion
10 with Tim Shortill along same lines
11 re: the negotiations. These need to
12 be complete before we would announce
13 more funding - Orsini seems to be in
14 the same space."

15 Right?

16 A. Yes.

17 1562 Q. Okay. Because you didn't have
18 anywhere to put your slot machines in the cities,
19 they had to stay in the racetracks; right?

20 A. Yes. I just can't recall when we
21 would have landed on that.

22 1563 Q. There's still no compensation or
23 support announced for the breeding sector; correct?

24 A. I don't recall. I don't recall
25 that, but there's an indication in this email of

1 a -- in this chain, rather, of a potential
2 announcement.

3 1564 Q. There was no deal reached with the
4 horse racing sector for support to mitigate the
5 consequences of the cancellation of the revenue
6 share as of March 1 --

7 A. Okay.

8 1565 Q. -- 2013; right?

9 A. I don't specifically recall.

10 1566 Q. Okay. And February and March are
11 breeding season; right? You know that?

12 A. Yes.

13 1567 Q. Pretty chaotic; right?

14 A. So the new government was sworn in
15 in early to mid-February 2013.

16 1568 Q. Is that why it was chaotic?

17 R/F MR. ROSENBERG: Objection.

18 THE WITNESS: No, I wouldn't
19 characterize the swearing in of the government as
20 chaotic.

21 BY MR. LISUS:

22 1569 Q. Would you characterize the state
23 of the Slots at Racetrack Program and the horse
24 racing industry and the racetracks as chaotic?

25 A. I know there was a lot of concern

1 and a lot of desire for policies of certainty on
2 this file as there were for a number of other files
3 whenever there's a new government in place.

4 1570 Q. There's a suggestion here to have
5 the Premier do an announcement signalling a clear
6 shift in horse racing policy; new approach, new
7 government?

8 A. Yes.

9 1571 Q. What was that about?

10 A. Well, the Premier was the minister
11 responsible -- was the Minister of Agriculture,
12 Food and Rural Affairs.

13 1572 Q. You're talking about Wynne at this
14 point?

15 A. Yes, Premier Wynne. When she
16 was -- when her government was sworn in in early to
17 mid-February, she was -- she appointed herself on
18 the advice to the Lieutenant Governor which was
19 accepted as Minister of Agriculture, Food --
20 actually Minister of Agriculture and Food.

21 1573 Q. Why?

22 A. She had a separate Minister of
23 Rural Affairs sworn in.

24 1574 Q. Why did she appoint herself to the
25 Ministry of Agriculture and Rural Affairs?

1 A. It was a campaign commitment that
2 she made in the leadership race to -- if she was to
3 win the leadership, she would do that. And she had
4 a number of rationales with respect to the
5 importance of the -- of agriculture and agri-food
6 to the Ontario economy and out of a desire to
7 foster better connections with rural Ontario.

8 1575 Q. Why?

9 A. I believe one of the discussion
10 points in the leadership race was that the Ontario
11 Liberal party had lost some seats in rural Ontario
12 in 2011 and that she wanted to rebuild those
13 connections to rebuild the connection between the
14 party and rural Ontario.

15 1576 Q. And so announcing a clear shift in
16 horse racing policy was one way to do that?

17 A. I don't remember her specific
18 campaign commitment as a leadership candidate with
19 respect to horse racing, but she definitely had a
20 view once she was sworn in, which is along the
21 lines of what you're seeing in this email chain.

22 1577 Q. What were her views when she was
23 sworn in?

24 A. She thought that more transitional
25 funding needed to be put in place. The point on

1 which I remember her being especially seized with
2 was the integration of horse racing within the
3 Ontario Lottery and Gaming Corporation.

4 MR. LISUS: That email is the next
5 exhibit.

6 MR. MILAT: Exhibit 29.

7 EXHIBIT NO. 29: CRE0554102.

8 BY MR. LISUS:

9 1578 Q. I want to show you two letters
10 dated May 1, 2013, and September 10, 2013, from
11 Kathleen Wynne to the panel members. INA8613.
12 Now, Dalton McGuinty left -- he prorogued the
13 legislature when?

14 A. Mid-October 2012.

15 1579 Q. And he resigned as Premier when?

16 A. February 2013.

17 1580 Q. And Kathleen Wynne became Premier?

18 A. That's correct.

19 1581 Q. And you remained in the job you
20 were in?

21 A. Yes.

22 1582 Q. And so she became the Premier and
23 the Minister of Agricultural --

24 A. Minister of Agriculture and Food,
25 yes.

1 1583 Q. Minister of Agriculture and Food.
2 And remind me what your job title was.

3 A. My job title was executive
4 director of policy.

5 1584 Q. So you became the executive
6 director of policy to the -- you remained the
7 executive director of policy to the Premier and
8 became the executive director of policy to the
9 Minister of Agriculture and Food?

10 A. No, not the second part. The way
11 her operation -- or the operation was structured
12 was that she had a chief of staff responsible in
13 her minister's office --

14 1585 Q. Who's that?

15 A. -- of agriculture and food --

16 1586 Q. Keegan?

17 A. -- who is Michael Keegan. First
18 Michael Keegan and then Bobby Seeber.

19 And her office had a direct
20 reporting -- the chief of staff had a direct
21 reporting relationship to her that was also --
22 often involved her chief of staff and principal
23 secretary.

24 1587 Q. So you've told me she ran on her
25 leadership campaign, in part, on restoring

1 connections to rural Ontario; right?

2 A. Yes.

3 1588 Q. I take it you're aware of comments
4 she made in the public record after she became
5 Premier that she did not think that the decision to
6 cancel Slots at Racetrack Program was made
7 thoughtfully?

8 A. Yes, I'm aware of that, yes.

9 1589 Q. All right. And that she thought
10 that it was not made with due consideration for the
11 impact on the supply chain?

12 A. I don't recall that specific
13 point, but yes.

14 1590 Q. But I presume given that you were
15 her director of policy and she was making these
16 comments publicly, that you had spoken to her about
17 these issues?

18 A. Not in any great length because,
19 again, she would have had her own chief of staff
20 responsible for agriculture and food. And in the
21 leadership campaign, I wasn't in interaction with
22 her. She would have had her own campaign team who
23 then joined her in government.

24 1591 Q. Were you surprised when she made
25 those statements?

1 A. No.

2 1592 Q. What was her position in February
3 2012?

4 A. So I recall her being concerned
5 about the expansion of gaming in Toronto.

6 1593 Q. No, no, I've seen her concerns as
7 recorded.

8 A. Yes.

9 1594 Q. What I meant was what was her
10 office in February 2012?

11 A. Oh, I see. She was the Minister
12 of Municipal Affairs and Housing and the Minister
13 of Aboriginal Affairs.

14 1595 Q. Was she Deputy Premier?

15 A. No.

16 1596 Q. Who was?

17 A. Minister Duncan was Deputy
18 Premier, Dwight Duncan.

19 1597 Q. Okay. Were you aware of that
20 letter that was sent out -- those two letters sent
21 out in May and September of 2013?

22 A. So I was aware of some of these
23 elements, the request of a plan from the panel and
24 the overarching principles. I was aware of them.
25 I don't recall seeing this specific letter.

1 1598 Q. Just so that I'm tracking the
2 sequence, Mr. Bardeesy, as of September 2013, there
3 was still no announcement of or agreement on a
4 final plan and funding for the industry; right?

5 A. There was yet more -- there were
6 yet more announcements to come. I don't recall
7 what had been announced by September 2013.

8 1599 Q. There hadn't been an announcement
9 of \$300 million of support; right?

10 A. I don't remember that.

11 1600 Q. Okay.

12 MR. LISUS: Next exhibit.

13 MR. MILAT: Exhibit 30.

14 MR. LISUS: There's two letters there,
15 so make it 30 and 31.

16 EXHIBIT NO. 30: CRE0550364 dated
17 May 1, 2013

18 EXHIBIT NO. 31: CRE0550364 dated
19 September 10, 2013

20 BY MR. LISUS:

21 1601 Q. Do you know what the acronym TKTK
22 means? You need some TKTK?

23 A. Yes.

24 1602 Q. What does it mean?

25 A. So it's an acronym that I use on

1 occasion to indicate areas to be filled in at some
2 point later. I was a former journalist, and it was
3 an acronym that is used in the journalism
4 profession.

5 1603 Q. Well, what does it actually stand
6 for?

7 A. To kome, where kome is spelled
8 with a K.

9 1604 Q. Do you recall shortly after the
10 announcement in March 2012 that Minister McMeekin
11 was upset about the absence of analysis?

12 A. I don't specifically recall that,
13 but I recall in the spring-summer period that he
14 was generally concerned about the file.

15 1605 Q. And part of the general concern
16 was that there was an absence of the kind of
17 analysis he expected would have been done of the
18 consequences of the decision; correct?

19 A. I remember him indicating that
20 there were going to be consequences that were going
21 to be negative for the industry, yes.

22 1606 Q. And that there hadn't been an
23 analysis of them before the decision was taken;
24 right?

25 A. I don't specifically recall him

1 saying that.

2 1607 Q. Isn't that why the office of
3 economic policy undertook a study in March 2012?

4 A. It's possible that -- it's very
5 possible that was in reaction to his concerns, yes.

6 1608 Q. Okay. Now, I want to show you a
7 document given yesterday, CRE0545345, and its
8 attachment, CRE545346. This is an email sequence
9 which is providing you an attachment for what
10 appears to be fields dinner. Do you recall this?

11 A. Yes. I don't recall what this
12 might be specifically referring to. Today -- I can
13 tell what you today's memo refers to. That would
14 have been a --

15 1609 Q. You're talking about the deck,
16 CRE545346?

17 A. No. I'm referring to the email.

18 1610 Q. Okay.

19 A. So Michael Keegan, the Premier's
20 chief of staff in her capacity as Minister of
21 Agricultural and Food, would prepare regular memos
22 about matters of concern to her in her capacity as
23 minister that was sent through to the people shown
24 there. And on occasion, I would receive those
25 memos.

1 1611 Q. Okay. So this memo is a
2 memorandum of issues that were of concern to the
3 minister?

4 A. Her as minister, yes.

5 1612 Q. "Her" being who?

6 A. Sorry, the Premier.

7 1613 Q. Okay. All right. And you're
8 getting them because you're a director of policy;
9 right?

10 A. Yes. So I would get them on
11 occasion, not always.

12 1614 Q. So these memoranda reflect the
13 Premier's views at that time?

14 A. No. These are updates from her
15 chief of staff about things that are going on that
16 are relevant to her as minister. And then memos
17 tended to be written by the chief of staff, and
18 then on occasion, there would be other attachments.

19 1615 Q. Are these memos done for the
20 purpose of informing the Premier as well as her
21 staff about --

22 A. Things such as upcoming policy
23 issues, stakeholder communications, events, media
24 clippings. It was a daily or a regular summary
25 from her chief of staff to her copying some senior

1 people, sometimes me, on things that were going on.

2 1616 Q. Belinda Hanson is her chief of
3 staff?

4 A. No. Belinda Hanson is her special
5 assistant who --

6 1617 Q. I see. Michael Keegan was her
7 chief of staff?

8 A. That's correct, for agriculture
9 and food.

10 1618 Q. To cut to the chase here, this is
11 Michael Keegan whose name we've seen and who was
12 the Minister of Agriculture's chief of staff
13 composing a deck which summarizes and presents the
14 issues of importance to the Ministry of
15 Agriculture?

16 A. The specific deck that we have,
17 545346, would have been a ministry deck. He would
18 have had a covering note. His -- the reference to
19 "memo" refers to a covering note that he would have
20 written to her.

21 1619 Q. When we look at this, he's giving
22 the context of horse racing and wagering in
23 Ontario; right?

24 A. This is a ministry deck. I don't
25 think this would have been prepared by Mr. Keegan,

1 but rather by the ministry.

2 1620 Q. Ministry of --

3 A. Agriculture and Food.

4 1621 Q. Okay. And perhaps I'm being
5 obtuse. This deck is for the Minister, to brief
6 the Minister?

7 A. Yes, and it could be -- could well
8 have been used to brief others as well.

9 1622 Q. Okay. So here's the context that
10 is being given. It gives some context about the
11 Slots at Racetrack Program?

12 A. Yes.

13 1623 Q. And it says:

14 "SARP revenue increased far
15 beyond government projections of
16 200 million a year increasing to
17 340 million in 2011."

18 Do you see that?

19 A. Yes.

20 1624 Q. And then we see:

21 "2012 racing industry plunged
22 into disarray."

23 A. Yes.

24 1625 Q. And we see there:

25 "As part of OLG modernization

1 strategy in March 2012, government
2 announces intention to end SARP
3 effective March 31, 2013."

4 A. Yes.

5 1626 Q. "One-time government assistance
6 (\$50 million, subsequently
7 increased to \$100 million)
8 announced but no long-term plan."

9 Correct?

10 A. Yes.

11 1627 Q. So as of November 2013, there's an
12 announcement of 100 million but no long-term plan;
13 right?

14 A. September 2013.

15 1628 Q. Yes.

16 A. I don't recall if that was
17 100 million over three years or 100 million a year.

18 1629 Q. Right. And the breeding sector
19 was immediately impacted, right, by the decision?

20 A. Yes.

21 1630 Q. "Four years of SARP-incented
22 breedings, foals and yearlings are
23 in the system."

24 A. Yes, that's what it says.

25 1631 Q. So what people came to understand

1 after the decision was that there was a four-year
2 pipeline of foals and yearlings that were
3 immediately impacted by the decision; correct?

4 A. Yes. I don't know if that text
5 appeared for the first time in that deck on that
6 date.

7 1632 Q. That's the first time I've seen
8 it. I certainly didn't see it in February of 2012.
9 Did you?

10 A. I don't recall seeing it, no. Can
11 we take a pause?

12 1633 Q. I'll just ask you one more
13 question. It says:

14 "The prices dropped because of
15 oversupply and uncertainty of
16 industry's future."

17 And you knew that; right?

18 A. We knew that the prices did drop,
19 yes.

20 MR. LISUS: Okay. Ten minutes.

21 -- Recess at 2:42 p.m. --

22 -- Upon resuming at 2:51 p.m. --

23 BY MR. LISUS:

24 1634 Q. So just continuing on with the
25 context -- and this is, I take it, being generated

1 for the benefit of Ms. Wynne who's new in the job?

2 A. At this point, she's been in the
3 job for about six, seven months.

4 1635 Q. But she's also the Premier; right?

5 A. Yes. But as we saw earlier, she
6 was active on the file, including correspondence to
7 ask for -- correspondence to the panel to ask them
8 to continue their work and report back.

9 1636 Q. Okay. So the reported context to
10 her as of this date, which is September 2013, is
11 effective April 1, 2013, transition funding of
12 180 million over three years is in place?

13 A. That's right. So that would be --
14 that would be -- yes.

15 1637 Q. Okay. So I guess the negotiators
16 did a good job of coming in under the \$300 million
17 cap?

18 A. I don't recall the specific
19 mandate they were given. I just recall what
20 they -- what they'd asked for. I don't recall the
21 mandate.

22 1638 Q. But in any event, the deal was
23 done at 120 million less than what was authorized
24 to spend; right?

25 A. Yeah, I don't recall -- I don't

1 recall the specifics around the -- how the
2 transition funding was allocated. There are some
3 details in the deck on that.

4 1639 Q. Okay. There's a 41 percent
5 decline in race dates?

6 A. Yes.

7 1640 Q. There's a 37 percent decline in
8 racing industry revenue?

9 A. Yes.

10 1641 Q. Breeding activity has decreased on
11 average by 46 percent?

12 A. Yes. I believe that factors in
13 one of the panel reports.

14 1642 Q. Okay. And then if I look at
15 Slide 11, there appears to have been consideration
16 of a proposed funding model of up to 80 million a
17 year for five years; right?

18 A. Yes.

19 1643 Q. And an alternative funding model
20 of up to 60 million a year for five years; right?

21 A. Yes.

22 MR. LISUS: That's the next exhibit.

23 MR. MILAT: Exhibit 32.

24 EXHIBIT NO. 32: CRE0545345 to
25 CRE0545368.

1 BY MR. LISUS:

2 1644 Q. I asked you a few minutes ago
3 about you being aware about Minister McMeekin's
4 concerns about the absence of a detailed study of
5 the consequences of the decision in February 2012.
6 Do you remember that?

7 A. Yes. Yes.

8 1645 Q. Do you remember him conveying that
9 concern or becoming aware of that concern?

10 A. As I said, I don't remember the
11 specific concern about a specific -- lack of a
12 specific study, but I remember that his -- that he
13 had a concern, in general, about the analysis
14 and --

15 1646 Q. I'm just reading you Exhibit H to
16 Mr. Shortill, which is an email from Mr. Goodwin to
17 Mr. Orsini, Cote, Valido, Yeigh, and Watkins in
18 which he says February 17, 2012:

19 "Discussed issues on a call
20 with Minister McMeekin this
21 afternoon. As agriculture minister,
22 he was hoping that there was a more
23 in-depth economic impact analysis
24 that had been done of the strategy
25 of one year withdrawal of subsidy.

1 We clarified some direct
2 employment numbers with him on the
3 phone and said ORC was doing a few
4 scenarios for next week, but
5 frankly, we do not have a detailed
6 study of the sort that he was hoping
7 we had."

8 Does that refresh your recollection about the --

9 A. I don't recall if I was ever made
10 aware of that correspondence or that conversation,
11 but that would be consistent with the actions that
12 were subsequently taken, yes.

13 1647 Q. Okay. CRE0545139, this is from
14 the batch last night.

15 A. Yes.

16 1648 Q. What is this document reflecting?

17 A. This is a chain of correspondence
18 primarily between public servants in Finance
19 Cabinet office and agriculture in preparation for
20 what appears to be a jobs and economic policy
21 committee of Cabinet meeting in late September
22 where some policy and, I suspect, fiscal options
23 for consideration by Cabinet are going to be
24 tabled.

25 1649 Q. And Minister Sousa is now involved

1 in this?

2 A. So there's a reference -- yes,
3 there's a reference about input from Minister Sousa
4 to the material, which is presumably attached.

5 1650 Q. September '13 he's the Minister of
6 Finance?

7 A. September 2013, yes.

8 MR. LISUS: Okay. That's the next
9 exhibit.

10 MR. MILAT: Exhibit 33.

11 EXHIBIT NO. 33: CRE0545139.

12 BY MR. LISUS:

13 1651 Q. Now, you were still involved, as
14 we see from this email and subsequent ones, in late
15 2013, the horse racing file; right?

16 A. Yes, much less actively because of
17 the Premier's concurrent role as Minister of
18 Agriculture and Food.

19 1652 Q. Why with the minister's concurrent
20 role were you less actively involved? Because
21 Mr. Keegan was supporting her?

22 A. Exactly.

23 1653 Q. Okay. I want to show you
24 Exhibit 27 to the examination of Mr. Snobelen,
25 which is an email from me to Mr. Snobelen dated

1 December 23, 2013, containing a draft agreement.

2 Were you aware in late 2013 that I had
3 been retained by standardbred breeders and was in
4 communication with Mr. Snobelen?

5 A. I don't recall that.

6 1654 Q. Okay. You don't recall being made
7 aware that standardbred breeders were contemplating
8 a lawsuit against the government and OLG for the
9 manner in which SARP revenue share was cancelled?

10 A. I had become aware in
11 conversations, not with stakeholders but within the
12 government that there was a possibility of that. I
13 don't recall becoming aware of when that was
14 advanced.

15 1655 Q. Right, but you recall becoming
16 aware in late 2013 that there was a possibility of
17 a lawsuit by standardbred breeders?

18 A. I don't recall specifically when.

19 1656 Q. I'm not asking you specifically
20 when. I'm just asking you, you were aware of it?

21 A. I don't know if I was aware in
22 December 2013.

23 1657 Q. Okay. Were you aware at any
24 point?

25 A. I don't recall specific plans --

1 hearing about specific plans. I recall being aware
2 that some people were saying there's a possibility
3 that this might happen.

4 1658 Q. Okay. So Exhibit 28 on the
5 examination of Mr. Snobelen is communications with
6 me and him in the first week of February 2014 about
7 a PACA notice. Do you know what a PACA notice is?

8 A. No.

9 1659 Q. Proceedings Against the Crown Act?

10 A. Oh, yes, I know that.

11 1660 Q. Were you aware of those
12 communications?

13 A. I don't recall that.

14 1661 Q. Okay. That's fine. I want to
15 show you CRE544114, email sequence February 10,
16 2014.

17 A. Yes.

18 1662 Q. And am I understanding correctly
19 that what is being discussed here is the need to
20 conclude a deal with the Woodbine Entertainment
21 Group with respect to slot machines at their
22 premises?

23 A. I believe so. It also relates to
24 other issues. This is an -- and this is an email
25 from Phil Olsson, who I believe at the time was the

1 chair of the OLG.

2 1663 Q. We're now in February of 2014;
3 right?

4 A. Yes.

5 1664 Q. And as of February 2014, the City
6 of Toronto has voted definitively against the
7 location of a casino and slot machines in the GTA;
8 correct?

9 A. Yes. I don't recall the specific
10 council. There was some question about whether it
11 would be returned to council and whether it would
12 become a municipal election issue as well.

13 1665 Q. In the spring of 2013, the City of
14 Toronto voted 40 to 2 or something like that
15 against a casino in the GTA; correct?

16 A. Okay. I don't specifically recall
17 that. I recall -- I recall that council did vote.

18 1666 Q. And there was, therefore, no
19 ability to locate slot machines in Toronto; right?

20 A. Beyond what was already in
21 existence at Woodbine, that's correct.

22 1667 Q. And there was no ability to locate
23 slot machines in Ottawa beyond what was already in
24 existence?

25 A. At Rideau.

1 1668 Q. At Rideau?

2 A. Correct.

3 1669 Q. In other words, the idea of taking
4 slot machines out of the racetracks and putting
5 them in cities was dead; right?

6 A. In those two cities, yes. I don't
7 recall the status of the RFPQ, RFP process in other
8 cities.

9 1670 Q. But the province very much wanted
10 to keep the revenue from slot machines; right?

11 A. Yes.

12 1671 Q. And so it had to do new deals with
13 all of the racetracks; right?

14 A. Yes.

15 1672 Q. And it did do new deals with the
16 racetracks; correct?

17 A. Yes.

18 1673 Q. And that included paying
19 compensation of some \$80 million to certain
20 racetracks; right?

21 A. Yes. I believe I saw that in some
22 of the previous documents, yes.

23 1674 Q. The slot machines are still in the
24 racetracks; right?

25 A. I've not been to those racetracks,

1 but I believe so, yes.

2 MR. LISUS: That's the next exhibit.

3 MR. MILAT: Exhibit 34.

4 EXHIBIT NO. 34: CRE0544114.

5 BY MR. LISUS:

6 1675 Q. I want to show you a letter dated
7 March 11, 2014. SB4506. It's a letter to
8 Kathleen Wynne from Mr. Snobelen. Were you aware
9 of the facts described in that letter?

10 MR. RATCLIFFE: Just give him a moment
11 to read it.

12 THE WITNESS: I don't recall any of
13 this with the exception of a conversation,
14 I believe, at the Treasury Board table around a
15 potential enhancement to the horse improvement
16 program.

17 BY MR. LISUS:

18 1676 Q. When was that?

19 A. That would have been in the 2013
20 period. I don't recall any other details.

21 1677 Q. Would Mr. Orsini have been part of
22 that discussion?

23 MR. RATCLIFFE: Where was the
24 discussion taking place?

25 MR. LISUS: Treasury Board.

1 THE WITNESS: Mr. Orsini would have
2 participated in any Treasury Board discussion in
3 the 2012-13 period.

4 BY MR. LISUS:

5 1678 Q. And '14?

6 A. Until he became secretary of
7 Cabinet in July 2014, yes.

8 1679 Q. Okay. And as secretary of the
9 Cabinet, would he not participate in the Treasury
10 Board discussions?

11 A. Ordinarily would not.

12 1680 Q. Okay.

13 A. And, in fact, there may have been
14 occasions in the -- I'm trying to recall. There
15 was a different -- the creation of a Treasury Board
16 ministry in 2014 as well which would have -- maybe
17 he would have absented himself from that as well.

18 1681 Q. All right. So you're not aware of
19 the agreements reached with the Thoroughbred Horse
20 Society and the quarter horse society for breeder
21 support programs?

22 A. Not beyond what's here. And
23 I believe I saw some reference in some of the other
24 documents previously.

25 1682 Q. Okay. And are you aware, sir,

1 that a similar support program was denied the
2 standardbred breeders in 2014 because they went to
3 court?

4 A. I was not aware of that. I
5 believe I may have seen some reference to that in
6 the documents but not previously aware.

7 1683 Q. I want to show you CRE547846,
8 which was produced last night. What is this
9 document?

10 A. So this is similar to what I
11 described earlier, the daily memo that would have
12 been received from the -- from the chief of staff
13 to the Minister of Agriculture and Food to the
14 Premier in her capacity as Minister of Agriculture
15 and Food.

16 1684 Q. So this is Michael Keegan to
17 Kathleen Wynne?

18 A. Yes. And this is written by --
19 this is from Michael Keegan's successor, Chief of
20 Staff Bobby Seeber.

21 MR. LISUS: What's redacted,
22 Mr. Ratcliffe? What's the basis for the redaction?

23 MR. RATCLIFFE: The report or the daily
24 report in all likelihood deals with a variety of
25 issues, and racing issues may be only one of them.

1 In terms of this particular redaction, I don't --

2 MR. LISUS: I know, but I've got pig
3 virus and beekeepers and the bee working group
4 and --

5 MR. RATCLIFFE: Yeah, I mean, the only
6 thing we can say is that it's something that isn't
7 responsive to the particular --

8 MR. LISUS: I just want to know the
9 basis of the redaction. Is it privileged?

10 MR. RATCLIFFE: It's not relevant, I
11 guess, because it had no bearing on the issues that
12 we're dealing with here.

13 MR. LISUS: It's irrelevance, not
14 privilege?

15 MR. KORT: It's not relevant.

16 MR. ROSENBERG: Yeah, it's not
17 relevant.

18 MR. LISUS: It's not a redaction for
19 some kind of privilege?

20 MR. KORT: No.

21 MR. LISUS: Is that correct?

22 MR. KORT: It's potentially
23 commercially -- some of it is potentially
24 commercially sensitive, but the fundamental basis
25 for the redaction is that it's not responsive.

1 MR. LISUS: Is it about horse racing?

2 MR. KORT: No.

3 MR. LISUS: Is it about gaming?

4 MR. KORT: No.

5 MR. LISUS: Okay.

6 BY MR. LISUS:

7 1685 Q. So this appears to be generated in
8 advance of a Cabinet meeting, or is it a Treasury
9 Board meeting?

10 A. Treasury Board that the Premier in
11 her capacity of minister would have had an item
12 going forward. I'm not sure if she would have
13 presented it herself or whether it would have been
14 presented by someone else.

15 1686 Q. Okay. And so she is being prepped
16 to go to Treasury Board to make a submission for
17 additional 20 million annually over five years; is
18 that what this is?

19 A. Yes, either because she's going or
20 she's to be alerted and someone -- presumably the
21 chief of staff and/or the deputy are going in her
22 stead.

23 1687 Q. And this briefing note is telling
24 them what message to give to Treasury Board on
25 behalf of the Premier/Minister; right?

1 A. The recommended messaging appears
2 to be in relation to an Auditor General's report.

3 1688 Q. Got it. That makes sense. So we
4 know that the Auditor General released her report,
5 which I'm going to talk to you about in a few
6 minutes, and Ms. Wynne as Premier and minister is
7 going to speak to Cabinet about the report?

8 A. Not necessarily. In general, the
9 ministers would not prepare messaging with respect
10 to Auditor General reports.

11 1689 Q. You just told me this is about the
12 Auditor General's report and the suggested
13 messaging.

14 A. Well, there's two separate items
15 here. There's -- the first bullet refers to the
16 Treasury Board submission, and the second item --
17 the second bullet refers to the Auditor General's
18 report.

19 1690 Q. Understood. I'm just focusing now
20 on the second --

21 A. Yes.

22 1691 Q. -- item. So the second item, the
23 second hashmark is about -- the second hashmark
24 with the sub-bullets is about the Auditor General's
25 draft report; right?

1 A. Yes.

2 1692 Q. Okay. So the Auditor General did
3 an investigation of the OLG modernization plan and
4 the certain implementation features of it like
5 cancellation of the Slots at Racetrack Program;
6 correct?

7 A. Yes.

8 1693 Q. And a draft of that report was
9 provided to government before it was publicly
10 released; right?

11 A. That's right.

12 1694 Q. And the Cabinet wanted to discuss
13 the contents of that report so it had its story
14 straight or messaging organized for when the report
15 became public?

16 A. So I don't know in that particular
17 case, but in general, that's not how it would have
18 worked. The ministers would have done their own
19 individual preparation with respect to items of
20 theirs that were analyzed in Auditor General
21 reports.

22 1695 Q. All right. So what do you believe
23 is going on here with the Auditor General's report?
24 He's giving the minister and the Premier messaging
25 about the draft of the report; right?

1 A. That's right.

2 1696 Q. And who is she to deliver that
3 messaging to?

4 A. It could well be public messaging.

5 1697 Q. Okay.

6 A. It's not necessarily -- it's not
7 necessarily for her Cabinet colleagues. It could
8 be public messaging.

9 1698 Q. So this is the messaging for the
10 minister to deliver?

11 A. That's right.

12 1699 Q. All right. And the messaging is,
13 point 1:

14 "I've always argued the
15 decision to cancel the Slots at
16 Racetrack Program was not done
17 properly which the AG confirms."

18 Right?

19 A. Yes.

20 1700 Q. And was that what the minister
21 always argued?

22 A. I don't recall exactly what she
23 said in her leadership race or at the Cabinet
24 table.

25 1701 Q. Don't tell me that or your counsel

1 is going to object.

2 A. But I do recall that when she came
3 in as Premier in February 2013 and concurrently as
4 minister, that she had -- she expressed those
5 concerns, which we've also covered in some of the
6 previous correspondence and questioning.

7 1702 Q. Okay. Those are my questions on
8 that document.

9 MR. LISUS: Next exhibit, please.

10 MR. MILAT: 35.

11 EXHIBIT NO. 35: CRE0547846 to
12 CRE0547855.

13 BY MR. LISUS:

14 1703 Q. Now, if I could just ask you to
15 look at SB4516, which is a letter from Ms. Wynne to
16 Mr. Parkinson. Were you aware of that letter at or
17 about the time it was sent?

18 A. I don't recall this letter.

19 1704 Q. Okay. Thank you. Now, you were
20 the Minister of Agriculture's chief -- give me your
21 title again in April '14.

22 A. I was executive director of policy
23 to the Premier.

24 1705 Q. No role with respect to the
25 Premier with an agriculture hat on; right?

1 A. No. I had -- in my office, I had
2 an agriculture policy advisor. At the time, I --
3 but, again, mostly work was done through her
4 minister's office.

5 1706 Q. So as executive director of policy
6 with the minister in 2014, you certainly would have
7 read the Auditor General report of April 2014;
8 correct?

9 A. With the Premier.

10 1707 Q. Excuse me, with the Premier.

11 A. Yes. Possibly only an executive
12 summary. Given the timing of that specific report,
13 it was off the usual cycle of Auditor General
14 reports.

15 1708 Q. Why was it off the usual cycle?

16 A. I don't know. I know that the
17 Auditor General has the -- under his or her
18 legislation, has the ability to respond to
19 public -- Standing Committee on Public Accounts
20 requests and can do other -- can issue reports at
21 other times other than under the usual cycle.

22 1709 Q. So I understand that this
23 particular report which you've identified was out
24 of cycle was the product of a motion passed on
25 April 10, 2013, by the legislature's Standing

1 Committee on Public Accounts?

2 A. Yes.

3 1710 Q. All right. And so on April 10,
4 2013, the legislature Standing Committee on Public
5 Accounts passed a seven-part motion requesting that
6 the Auditor General of Ontario commence an
7 immediate review of the Ontario Lottery and Gaming
8 Corporation; right?

9 A. Yes.

10 1711 Q. Why did that committee pass a
11 motion requesting the Auditor General commence a
12 review of the OLGC?

13 A. I don't recall the committee's
14 specific motivations.

15 1712 Q. The review was requested with
16 respect to the matters identified in Figure 2 on
17 page 14. And this was a special report of the
18 Auditor General?

19 A. Yes.

20 1713 Q. Okay. And the issues that the
21 Auditor General was requested to investigate are
22 identified in Figure 2?

23 A. Yes.

24 1714 Q. And Section 5.6:

25 "The Auditor General was

1 requested to review whether the
2 impact of cancelling the Slots at
3 Racetrack Program in Ontario's horse
4 racing industry was measured and
5 whether certain communities had been
6 impacted disproportionately as
7 compared to other communities and if
8 the Liberal government's decision to
9 end the program will be offset by
10 changes in the new modernization
11 plan."

12 Were you aware in April 2013 that the Auditor
13 General was directed to investigate that by a
14 legislature committee?

15 A. I would have been aware. I don't
16 know if I would have been conversing with all
17 aspects of the instructions to her -- or to him by
18 the committee.

19 1715 Q. And the Auditor General was also
20 instructed to review whether the province or OLG
21 properly consulted or consulted various industries,
22 businesses, and municipalities impacted by the
23 cancellation of the Slots at Racetrack Program and
24 did the province or the corporation assess the
25 economic impact on said industries, businesses, and

1 municipalities and factored that into their
2 decision.

3 A. Yes.

4 1716 Q. And you were aware, sir, that
5 between the date of that direction from the
6 legislature Standing Committee on Public Accounts
7 on April 2014, the Auditor General conducted an
8 investigation?

9 A. Yes, I would have been generally
10 aware that once a motion like that was received and
11 agreed to by the Standing Committee, that
12 activities like the ones described in this report
13 would have taken place, yes.

14 1717 Q. One of the things the Auditor
15 General did to conduct its investigation was meet
16 with and obtain documents from the Ontario Racing
17 Commission; right?

18 A. Where does it say that?

19 1718 Q. The first column on page 15.

20 A. Yes.

21 1719 Q. Okay. And the conclusions are
22 summarized. The Auditor General concluded that the
23 modernization plan had an overly ambitious time
24 line?

25 A. Yes.

1 1720 Q. That the modernization plan
2 depended on and assumed municipal stakeholder
3 agreement especially in the case of having a casino
4 in the GTA?

5 A. Yes.

6 1721 Q. That the modernization plan's
7 financial projections were overly optimistic?

8 A. Yes.

9 1722 Q. That as of April 2014, OLG has
10 already reduced its estimate of projected revenues
11 from its modernization plan by 48 percent?

12 A. Yes.

13 1723 Q. So within two years, it cut the
14 estimate of projected revenues by almost half?

15 A. Yes.

16 1724 Q. In addition to the cut by almost
17 half, the Auditor General estimated that
18 approximately 562 million or 12 percent of the net
19 profit to the province that OLG expects from its
20 modernization plan by March 31, 2018, is also at
21 risk of not being realized?

22 A. Yes.

23 1725 Q. That the modernization plan's job
24 and private sector capital investment projections
25 were overstated? That's what the Auditor General

1 found, bottom of page 16, left-hand column?

2 A. Yes.

3 1726 Q. That as of March 31, 2014, the
4 changes required to the modernization plan will
5 result in significantly fewer jobs and less private
6 sector capital investment than was originally
7 projected; right?

8 A. Yes.

9 1727 Q. It is more likely that there will
10 be a net loss of provincial gaming jobs instead of
11 the initially expected net gain?

12 A. Yes, that's what it says here.

13 1728 Q. Were you surprised by these
14 findings?

15 A. The ones that you've read out to
16 date?

17 1729 Q. Yes.

18 A. No.

19 1730 Q. You weren't surprised that two
20 years into its modernization plan, the OLG reduced
21 the revenue estimate by 48 percent?

22 A. No. It was an ambitious plan.

23 1731 Q. I see. And you knew that in
24 February 2012?

25 A. Yes.

1 1732 Q. So you knew in February 2012 that
2 the revenue could be overstated by about 50
3 percent?

4 A. I wouldn't say that specifically.

5 1733 Q. 48 percent?

6 A. I wouldn't say that specifically
7 either.

8 1734 Q. Significantly overstated?

9 A. I indicated that it was an
10 ambitious plan.

11 1735 Q. The Auditor General reviewed that
12 OLG's job projections did not factor in job losses
13 from ending the Slots at Racetrack Program. Do you
14 see that?

15 A. Yes.

16 1736 Q. That private sector capital
17 investment would be 71 percent lower than initially
18 projected?

19 A. Yes.

20 1737 Q. I presume, sir, that had this
21 information been known to you in February 2012, you
22 wouldn't have recommended the modernization plan to
23 the Premier?

24 A. The modernization plan was
25 dependent on certain assumptions and variables, not

1 all of which came to be. I'll put it that way.

2 1738 Q. That's a fair way of putting it.
3 It was also dependent upon certain steps being
4 taken by determining whether municipalities would
5 ever accept casinos; correct?

6 A. Yes. And that was a known factor
7 at the time.

8 1739 Q. And they never had before; right?

9 A. The way that casinos had been
10 cited in the past was a bit different.

11 1740 Q. Well, the reason slots were put
12 into racetracks, sir, is because the municipalities
13 refused to allow slot machines in municipalities;
14 right? You knew that?

15 A. That was one of the factors.

16 1741 Q. Okay. And there was this plan to
17 put slots into municipalities as part of
18 modernization and cancellation of SARP, but no one
19 had spoken to the municipalities about it; right?

20 A. That was part of the plan.

21 1742 Q. To speak to them after?

22 A. No, to work with municipalities to
23 secure municipal consent.

24 1743 Q. After the decision was taken to
25 endorse the modernization plan?

1 A. There were conversations generally
2 in the public domain about whether municipalities
3 would or wouldn't be in favour of these.

4 1744 Q. Well, we'll see what the Auditor
5 General says. The Auditor General found that the
6 decision to terminate the Slots at Racetrack
7 Program can hardly be considered to have been open
8 and transparent; right?

9 A. Yes.

10 1745 Q. Do you agree with that?

11 A. That's a -- that's a judgment that
12 the Auditor General made. I would agree with the
13 clause that it caught many stakeholders by relative
14 surprise.

15 1746 Q. The Auditor General concluded that
16 the overall savings from cancelling the Slots at
17 Racetracks Program taking into account the recent
18 government commitment for new funding is now
19 estimated to be 326 million up to March 31, 2018,
20 which is over 70 percent less than originally
21 projected; right?

22 A. Yes.

23 1747 Q. So the revenue projected from the
24 modernization plan was 48 percent less; correct?

25 A. Yes.

1 1748 Q. And the savings from Slots at
2 Racetrack is 70 percent less?

3 A. Yes.

4 1749 Q. There's no slot machines in
5 cities?

6 A. Not at this point, other than the
7 ones that were already cited at the time.

8 1750 Q. The job losses were significantly
9 understated, the job creation significantly
10 overstated; right?

11 A. I think specifically what's being
12 said here is that the OLG projections didn't
13 include the job losses from ending SARP.

14 1751 Q. All right. The Auditor General
15 investigated whether or not there was adequate
16 consultation by the OLG with municipalities on new
17 casinos; correct?

18 A. Where is that?

19 1752 Q. Page 19.

20 A. Yes.

21 1753 Q. The Standing Committee directed
22 the Auditor General to investigate whether the
23 province or OLG conducted a broad enough
24 consultation process to ascertain whether or not
25 new casinos were welcome in various communities

1 throughout Ontario?

2 A. Yes.

3 MR. ROSENBERG: Counsel, it is now
4 3:30. You're simply reading statements from the
5 Auditor General's report to the witness and asking
6 him to confirm that they appear on the page.

7 BY MR. LISUS:

8 1754 Q. The Auditor General concluded that
9 the answer to that question was no; correct?

10 A. That's right.

11 1755 Q. Would you have recommended the
12 modernization report if you knew that OLG hadn't
13 ascertained whether new casinos were welcomed in
14 various communities in the province?

15 A. So the Auditor General made a
16 judgment about that, and we knew going into the
17 recommended option in February that it was a -- it
18 was -- it was conditional on those -- on those
19 approvals and --

20 1756 Q. But did you know there hadn't even
21 been proper consultation?

22 A. Well, it's a judgment that the
23 Auditor General is making.

24 1757 Q. It's a conclusion she made
25 following an investigation, sir, which is more than

1 you ever did.

2 MR. RATCLIFFE: Well, Counsel, I think
3 the tone here -- he answered your question. You've
4 got the Auditor General's report, and what the
5 Auditor General has said -- and you keep harping
6 upon this issue, but it's there in the report, so
7 whatever you want to submit.

8 BY MR. LISUS:

9 1758 Q. Were you aware, sir, in February
10 2012 that communications with municipalities were
11 limited to some informal discussions between OLG
12 executives and individual city leaders? Were you
13 aware of that?

14 A. I was aware, as a general matter,
15 that there were discussions, yes.

16 1759 Q. Were you aware that communications
17 with municipalities were limited to some informal
18 discussions between OLG executives and individual
19 city leaders?

20 A. I don't know if I -- if I would
21 have characterized them as limited to that, but
22 that was my general understanding, that there were
23 informal discussions, yes.

24 1760 Q. Okay. Were you aware that over
25 20 percent of the new net profits to the province

1 that OLG projected in the modernization plan
2 depended on the gaming facility plans being
3 realized?

4 A. I remember a breakdown of where
5 the revenues were expected to come from. That was
6 in some of the previous materials.

7 1761 Q. And that over 20 percent depended
8 upon locating gaming facilities in areas where
9 there had not been any consultation?

10 A. That would have been in -- that
11 would have been in the Cabinet materials.

12 1762 Q. Were you aware of the Auditor
13 General's conclusions with respect to the
14 additional assumption specific to the GTA casino?

15 A. Which conclusions?

16 1763 Q. At page 33 of the report. You see
17 where the Auditor General concluded that the impact
18 of there not being a casino in the GTA was about
19 348 million in net profit to province -- that's
20 MPP; right?

21 A. Yes.

22 1764 Q. -- in the original modernization
23 plan financial projection?

24 A. Yes.

25 1765 Q. Do you see where she noted:

1 "Overly optimistic assumptions
2 about revenue expected from a GTA
3 casino had OLG proceeded with a GTA
4 casino."

5 A. Yes, I see that there, yes.

6 1766 Q. What was Premier Wynne's reaction
7 to the Auditor General's report?

8 A. I don't remember her specific
9 reaction to this report. I think we've seen in
10 some earlier correspondence the recommended
11 reaction with respect to the SARP part of the
12 report.

13 1767 Q. And you're aware that she
14 concluded the province -- that neither the province
15 or OLG properly consulted industries, businesses,
16 and municipalities impacted by the cancellation of
17 the Slots at Racetrack Program?

18 MR. RATCLIFFE: Where are you reading
19 from? What page?

20 MR. LISUS: Page 46.

21 THE WITNESS: Yes, I see that
22 conclusion there.

23 MR. LISUS: Those are my questions for
24 you for the time being, Mr. Bardeesy.

25 MR. ROSENBERG: I have a few questions

1 on behalf of OLG.

2 MR. MILAT: Do you want to mark this?

3 MR. LISUS: Yes.

4 MR. MILAT: That will be 36.

5 EXHIBIT NO. 36: SB0005062.

6 -- Recess at 3:37 p.m. --

7 -- Upon resuming at 3:42 p.m. --

8 BY MR. LISUS:

9 1768 Q. Were you spoken to by the Auditor
10 General or her staff for the purposes of her
11 investigation?

12 A. No.

13 1769 Q. Was Minister Wynne?

14 A. I don't know.

15 CROSS-EXAMINATION BY MR. ROSENBERG:

16 BY MR. ROSENBERG:

17 1770 Q. Sir, my name is Michael Rosenberg,
18 and I'm counsel for OLG in this matter. I have a
19 few questions, and given that we are now late in
20 the day, I will try to make them brief. Most of my
21 questions arise from things that Mr. Lisus has
22 asked you.

23 So I wanted to start with the
24 discussion around your February 2nd, 2012, meeting
25 with Premier McGuinty and Dave Gene.

1 Mr. Lisus showed you an email coming
2 out of that meeting, but I think you told him that
3 you did as well have a recollection of that
4 meeting?

5 A. Yes.

6 1771 Q. What do you remember Premier
7 McGuinty saying to you in that meeting?

8 A. So the purpose of that meeting was
9 to update him on the state of the modernization
10 plan that was going to Cabinet shortly and to -- to
11 Cabinet committee into Cabinet.

12 And so he was in a mode of asking
13 questions based on the material that he had either
14 in advance or in front of him and wanting to make
15 sure that we had a proposal that was ready to go to
16 Cabinet.

17 1772 Q. Do you remember him saying
18 anything that spoke to the way he approached the
19 decision that Cabinet was being asked to make or
20 his rationale?

21 A. Yes, the context of the issue was
22 a desire to have strong action on deficit reduction
23 while preserving core public services, and so the
24 objectives of that particular modernization regime
25 primarily through those overarching lenses that he

1 and Mr. Duncan shared.

2 1773 Q. Did he consider the tradeoff that
3 this modernization initiative required, in
4 particular, the decision to cancel the SARP?

5 A. Yes. There were a number of
6 tradeoffs discussed with respect to each aspect of
7 the proposal.

8 1774 Q. Do you remember anything he said
9 on that point?

10 A. I don't have specific recollection
11 of specific words that were used, but he was very
12 intent on the protection of public services as
13 something that was important to him, in particular,
14 health and education, and therefore, the policy he
15 was seeking was to get sufficient revenue, find
16 sufficient savings through the modernization to be
17 able to protect those services.

18 1775 Q. In terms of how this progressed --
19 I don't want you to talk about the discussions at
20 the Cabinet meeting because I understand your
21 counsel has put that position on the record, but
22 just the progression here.

23 Mr. Lisus reviewed with you in minute
24 detail the emails that went back and forth in the
25 days leading up to the publication of the Cabinet

1 package.

2 I just want to understand, in your
3 experience, was there anything unusual about the
4 way that the decision on OLG's modernization
5 initiative came to the Cabinet committee first that
6 considered it?

7 MR. LISUS: What does that mean, was
8 there anything unusual? Have there been prior
9 modernization recommendations that came to Cabinet
10 that he can compare it with?

11 MR. ROSENBERG: Mr. Lisus, this is a
12 cross-examination. You can put objections on the
13 record, if you wish, but I would appreciate it if
14 you kept your suggestions on how to phrase my
15 questions to yourself.

16 MR. LISUS: What's the foundation to
17 the question about unusual?

18 BY MR. ROSENBERG:

19 1776 Q. Sir, you had been a staffer,
20 I think you said, starting in 2011?

21 A. Yes. And I'd been staffer in the
22 government from 2003 to 2006 as well.

23 1777 Q. And you had seen many policy
24 decisions come before Cabinet in that time?

25 A. Yes. I was still fairly new in

1 the current -- in the position I then held in
2 February 2012. I was already dealing with a --
3 quite a large volume of Cabinet decisions that were
4 coming forward.

5 1778 Q. And subsequently, you obviously
6 saw many decisions come before Cabinet?

7 A. Yes.

8 1779 Q. So what I'm asking is in your
9 experience with the way that Cabinet works, was
10 there anything unusual about the timing or the way
11 in which the decision on OLG's modernization
12 initiative came before, first, the Cabinet
13 committee that considered it, I think we saw,
14 February 6, 2012?

15 A. Yes. So it was not uncommon for
16 items to go to a Cabinet committee and then to go
17 to Cabinet the next day. That did happen on
18 occasion.

19 It was also not uncommon for minutes to
20 be still under discussion until a few days before
21 the Cabinet committee or the Cabinet in question.

22 In fact, I participated in many -- on
23 many occasions in discussions between ministers,
24 officials, the Premier, and colleagues in the
25 Premier's office where minutes were still being

1 amended close to the Cabinet meeting itself and
2 sometimes on the floor of Cabinet.

3 1780 Q. Now, which committee did the
4 modernization initiative come before?

5 A. The jobs and economic policy
6 committee of Cabinet.

7 1781 Q. What's the function of the
8 committee receiving, I think you said, a
9 recommendation with respect to the modernization
10 initiative?

11 A. Yes. The committee -- Cabinet
12 committees are there to do an evaluation of
13 proposals being brought forward by minister and
14 then to make a recommendation to Cabinet, to full
15 Cabinet, about the proposal.

16 In this particular instance, it seems
17 as though that committee made a couple of
18 amendments to the minute that we reviewed. There
19 were some that referred to as being in bold or in
20 red where the Cabinet committee asked for a few
21 changes to the minute, which were subsequently
22 reflected on -- in the presentation, the item went
23 to the full Cabinet the next day.

24 1782 Q. Again, is there anything unusual
25 about that?

1 A. No. One of the roles of a Cabinet
2 committee is to make -- to recognize amendments
3 that it is -- it has a view are required and for
4 the proponent minister to accept those recommended
5 changes. And it seems like that's what happened in
6 this case.

7 1783 Q. Now, Mr. Lisus suggested to you
8 that civil servants were for cancelling SARP but
9 recommended a three-year step-down funding plan.
10 And ultimately, the Minister of Finance preferred a
11 one-year phaseout; right?

12 A. Yes.

13 1784 Q. And the Premier endorsed the
14 Minister of Finance's view, I think you told us?

15 A. That's correct.

16 1785 Q. And Cabinet ultimately accepted
17 the recommendation to cancel SARP effective March
18 2013 without further funding?

19 A. That's correct.

20 1786 Q. Was there anything unusual about
21 the elected officials preferring a different policy
22 option than the agency or some of the civil
23 servants?

24 A. No, that's not unusual. Also in
25 the preparation of materials, what becomes a

1 recommended option is sometimes -- sometimes only
2 becomes articulated by the minister, and sometimes
3 there are recommended options that are prepared in
4 advance by minister officials.

5 So sometimes you'll get recommendations
6 coming from officials. Sometimes the part about a
7 recommendation is reserved for a recommendation by
8 the minister himself or herself.

9 1787 Q. I suppose that's an important
10 point here. Is it the case that some decisions are
11 identified by the civil servants as decisions
12 requiring the input of an elected official to make
13 a recommendation?

14 A. When it comes to a Cabinet minute
15 with a policy decision, the entirety of the minute
16 is what is -- the minister is being asked to
17 endorse.

18 These will typically be drafted by
19 officials in partnership with minister's office and
20 Premier's office in advance, but it's the entirety
21 of the minute which is -- which requires the
22 ministerial endorsement and recommendation.

23 1788 Q. Mr. Lisus suggested with his
24 questions that perhaps it was not clear to Cabinet
25 that what was, in fact, being recommended was that

1 SARP be terminated with a one-year funding period
2 such that funding would expire in March of 2013.

3 Based on the materials that we reviewed
4 for that Cabinet meeting, I take it you would agree
5 that suggestion is preposterous?

6 A. I would agree that the minute and
7 supporting materials were quite clear that what was
8 being proposed was a cancellation of SARP with a --
9 by March 2013, yes.

10 1789 Q. With no further funding?

11 A. With no further funding
12 contemplated at that time.

13 1790 Q. So just so I can assemble this,
14 that recommendation from the Minister of Finance
15 with the endorsement of the Premier goes to a
16 Cabinet committee?

17 A. Yes.

18 1791 Q. The Cabinet committee recommends
19 it to Cabinet?

20 A. With some amendments to the
21 minute, yes.

22 1792 Q. The amended minute goes to Cabinet
23 for a decision?

24 A. Yes.

25 1793 Q. And Cabinet decides to endorse

1 that minute?

2 A. That's correct.

3 1794 Q. And that is how SARP gets
4 cancelled with one year of transition funding?

5 A. Yes, with some downstream activity
6 by the Ministry of Finance and Treasury Board to
7 bring effect to that minute.

8 1795 Q. While we're on the topic, when you
9 were making recommendations to Premier McGuinty in
10 February of 2012, did you consider SARP to be a
11 subsidy?

12 A. That was some of the language that
13 we used, yes.

14 1796 Q. Why?

15 A. Because it was a -- it was a
16 benefit being channelled through the dividend of
17 OLG effectively. And so that's effectively what it
18 was. So that dividend was not going to a
19 consolidated revenue fund but rather going to other
20 sources.

21 1797 Q. Not just going to other sources
22 but going to other sources with the aim of
23 promoting the policy objective of developing the
24 rural economy; correct?

25 A. Yeah, there were a number of

1 policy objectives that were involved in SARP at the
2 time when SARP was created and then, I believe,
3 amended.

4 1798 Q. Being --

5 A. I don't remember -- I mean, I
6 remember the policy objectives articulated that we
7 were inheriting -- that had that feature supporting
8 industry and supporting the rural economy, yes.

9 1799 Q. Mr. Lisus asked you about a budget
10 deal with the NDP, and I think you explained to him
11 that because the Liberals were a minority
12 government at the time, they likely needed the
13 support of another party in order to pass the
14 budget that contained these Cabinet decisions we've
15 been talking about?

16 A. Yes.

17 1800 Q. You were asked whether the NDP
18 demanded horse racing funding, and you weren't sure
19 about that. I wanted to ask you more generally
20 about that budget deal.

21 I understand that the biggest thing
22 that the NDP demanded in order to support the
23 budget was raising taxes on the highest income
24 earners in Ontario; is that right?

25 A. Yes. Which had the effect of

1 providing revenue for some other priorities.

2 1801 Q. Well, that's what I wanted to talk
3 about. So as I understand it, it was expected that
4 raising income taxes on Ontarians making \$500,000
5 or more each year was expected to raise revenues in
6 the neighbourhood of half a billion dollars?

7 A. Yes, we had analysis about the
8 amount that could be raised, yes.

9 1802 Q. And it was about that range? Do
10 you remember?

11 A. I don't recall specifically.

12 1803 Q. I can give you a Toronto Star
13 article that I downloaded from the internet. It's
14 dated April 24, 2012.

15 A. We would have disclosed an
16 estimate when we announced the -- when we announced
17 the arrangement.

18 1804 Q. And you'll see towards the bottom
19 of that first page that the tax increase was
20 expected to raise \$470 million next year, all of
21 which goes toward paying down the \$15.2 billion
22 deficit?

23 A. Well, I'm not sure about their
24 characterization in that case because the
25 arrangement also included some spending that was

1 offset by the revenue.

2 1805 Q. Well, that is a fair point. So
3 the NDP strikes a deal where you raise more
4 revenue; right?

5 A. Yes.

6 1806 Q. And, you know, half a billion
7 dollars is significant because, one, it's a lot of
8 money, but, two, it's the marginal dollars that
9 make a real difference here. A lot of the revenues
10 are fixed; right?

11 A. Yes.

12 1807 Q. And, three, you've said spending.
13 So you had additional funds now to allocate to
14 spending priorities; is that right?

15 A. That's correct.

16 1808 Q. And this was the budget deal in
17 which you were able to find -- "you" being the
18 Government of Ontario were able to find an
19 additional \$50 million for horse racing transition
20 funds?

21 A. That's correct.

22 1809 Q. Is it fair to say that the half
23 billion dollars in additional revenue which you
24 were going to raise took some of the fiscal
25 pressure off that had required some particularly

1 difficult decisions in the 2012 budget?

2 A. Yes. In particular, the social
3 assistance increase would not have been possible
4 without the tax increase.

5 1810 Q. So new spending funded by the tax
6 increase?

7 A. That's correct.

8 MR. ROSENBERG: I'd like to mark the
9 Toronto Star article as the next exhibit.
10 I believe that is 37.

11 MR. MILAT: 37.

12 EXHIBIT NO. 37: Toronto Star article.

13 BY MR. ROSENBERG:

14 1811 Q. I understand as well that in
15 conjunction with this budget deal, I think you've
16 said earlier additional funding for the horse
17 racing industry was announced, this initial amount
18 of transition funding that we were just discussing?

19 A. Yes. I don't recall the amount
20 being announced, but I recall us having made a
21 provision through the deal for that which was then
22 executed by Treasury Board.

23 1812 Q. I see. So the initial
24 announcement, we're talking about April 2012?

25 A. That's right. The April 2012

1 announcement, to my recollection, included a
2 mention of transitional support but did not
3 announce the amount. That amount was announced
4 subsequently.

5 1813 Q. And that was because, as you told
6 Mr. Lisus, the amount had to be approved by
7 Treasury Board?

8 A. I believe so, yes.

9 1814 Q. Who sits on Treasury Board?

10 A. Treasury Board is composed of
11 ministers with a couple of backbench MPP advisors
12 and supported by public servants and political
13 staff.

14 1815 Q. And the decisions at Treasury
15 Board, are they made by elected officials?

16 A. Yes. And sometimes they sit as
17 Cabinet to endorse those decisions, and sometimes
18 the decisions of Treasury Board are recommendations
19 that go to full Cabinet.

20 1816 Q. Mr. Lisus gave you at Exhibit 22,
21 which I'm showing you here -- this is your draft
22 memorandum to the Premier?

23 A. Yes, to which I contributed, yes.

24 1817 Q. Right. And you see mention --
25 I think Mr. Lisus took you to this -- Finance

1 officials backed by McKinsey research be
2 commissioned on the topic. That's in the
3 background paragraphs.

4 A. Yes.

5 1818 Q. You remember that McKinsey was
6 performing research? You discussed this with
7 Mr. Lisus?

8 A. Yes.

9 1819 Q. Part of that research was to
10 gather certain data regarding the horse racing
11 industry?

12 A. Yes.

13 1820 Q. If you turn to the top of the
14 second page of the draft memorandum, this was
15 pretty surprising to me. If you recall, Mr. Lisus
16 asked you about the number of horses to be
17 euthanized --

18 A. Yes.

19 1821 Q. -- when SARP was cancelled. It
20 says here -- and this is addressing the Premier:

21 "You should know, however, that
22 there are an estimated 5,000 horses
23 bred for racing who are already
24 euthanized each year."

25 A. Yes.

1 1822 Q. Was that your understanding?

2 A. Yes. I don't recall exactly where
3 I got that piece of information, but that was --
4 that was my understanding that was conveyed in the
5 note.

6 1823 Q. Well, if you were conveying it to
7 the Premier, presumably you were satisfied with its
8 reliability?

9 A. Yes. I mean, the -- this is a
10 pretty well-considered note in terms of sourcing a
11 number of facts from a number of -- number of
12 different places.

13 1824 Q. So even with SARP in full swing,
14 the horse racing industry was killing 5,000 horses
15 a year?

16 A. That was the estimate that we had
17 available to us.

18 1825 Q. If we continue on in the note
19 under "revenue streams," you see -- you mentioned
20 to Mr. Lisus some other policy options that you
21 were considering to support the horse racing
22 industry.

23 It looks like these are some additional
24 discussions of policy options that you were
25 considering; is that fair?

1 A. Yes. There's three that would
2 remain -- three sources of revenue that would
3 remain in place. And there I speak to the
4 opportunity for single sports betting, which was
5 considered to be an additional source if a variety
6 of things worked out.

7 1826 Q. But other ways to support the
8 industry were that OLG would lease space at
9 racetracks to keep its slot machines?

10 A. Yes.

11 1827 Q. That's a way to support the horse
12 racing industry?

13 A. That's correct.

14 1828 Q. And in fairness, Mr. Lisus
15 suggested that this was some idea that came up only
16 because OLG wasn't able to open a casino in
17 downtown Toronto and Ottawa, but in fact, it was
18 never OLG's intention to remove all of the slot
19 machines at every racetrack, was it?

20 A. No. And moreover, we knew that
21 the process for procuring new gaming sites would
22 take some time.

23 1829 Q. Another listed policy option to
24 assist the horse racing industry is what's to be
25 done with revenues from a tax reduction to give on

1 horse betting. That's the Pari-Mutuel Tax
2 Reduction?

3 A. That's right.

4 1830 Q. That's worth -- I think we've seen
5 the numbers -- about \$70 million a year?

6 A. That's correct.

7 1831 Q. And then there's revenues from
8 betting itself. Do you remember what that was?

9 A. I don't recall the amount. I
10 recall in some of the other documents we've seen
11 that the degradation of that -- of those revenues
12 was actually quite modest in the 2012-2013 period.

13 1832 Q. If we go to the last page of the
14 memorandum, it says:

15 "Analysis and end game: What
16 problems are we trying to solve
17 for?"

18 And it references Mr. Wilkinson's views, and then
19 it says:

20 "But our ultimate decision on
21 this file should be guided by the
22 multiple problems and issues we are
23 trying to solve for."

24 A. Yes.

25 1833 Q. And those were the policy

1 objectives that were guiding your government; is
2 that fair?

3 A. That's right. The support for
4 health care and education was probably the primary
5 objective, and a number of secondary objectives are
6 then articulated.

7 1834 Q. And one of the objectives was the
8 sustainability of the industry at some minimum
9 number of operating tracks?

10 A. That's correct.

11 1835 Q. But as you said:

12 "The primary objective was to
13 get out of horse racing so that we
14 can support health care and
15 education."

16 That's what you've written?

17 A. Yes. "Get out of horse racing" is
18 maybe a pretty dramatic term, but the general focus
19 on health care and education, which would require a
20 much lower involvement in horse racing, is what is
21 intended here.

22 1836 Q. And you've said:

23 "Ideally, our policy would also
24 help address these two
25 problems/issues being sustainability

1 of jobs."

2 Right?

3 A. Yes.

4 1837 Q. What is "telling a compelling
5 story about the economies and committees for rural
6 Ontario" mean?

7 A. That the ultimate set of decisions
8 around not only this file but other files would
9 point to the viability and vibrancy of life in
10 rural Ontario which is supported by a number of
11 policy objectives, not just the relationship of
12 horse racing to those economies.

13 1838 Q. You continue under "recommended
14 decision and end game" to say:

15 "We don't think we can act on
16 the panel's suggestion that this
17 industry needs an ongoing subsidy in
18 light of the ground we've staked on
19 this issue and the real pressing
20 needs of."

21 And then it ends.

22 A. Yes.

23 1839 Q. What was going to go there?

24 A. I suspect the real and pressing
25 needs of priority of government -- in areas of

1 government, priorities such as health care and
2 education, is what I suspect I was implying there.

3 1840 Q. That was just reflecting the fact
4 there's only so much money to go around, and we
5 need to divert some of it to health and education?

6 A. Generally, that's correct, yeah.

7 1841 Q. And under your recommendations,
8 your last one is:

9 "Ensure that enough
10 transitional funding is available to
11 allow for safe retirement of maximum
12 number of horses and to allow for
13 career training for hard-to-employ
14 people in the sector."

15 A. Yes.

16 1842 Q. Now, that, I think, brings me to
17 my next item, which is the right amount of
18 transition funding.

19 Now, Mr. Lisus put to you a number of
20 different documents that showed the evolving view
21 on the right amount of transition funding. And
22 I think the initial discussion was about the
23 \$50 million over three years that you and I have
24 been discussing.

25 I think you told Mr. Lisus that you

1 were concerned that the horse racing transition
2 panel might recommend spending more than
3 \$50 million. You remember that?

4 A. Yes.

5 1843 Q. Now, you, sir, have a masters in
6 public policy -- is that right -- from Harvard?

7 A. Yes.

8 1844 Q. I don't, and you used some
9 language that I didn't really understand, so I'm
10 hoping you can explain your rationale in layman's
11 terms.

12 You said something about, I think, you
13 were concerned because the panel was making fiscal
14 policy recommendations without any overall
15 responsibility for the broader fiscal picture?

16 A. That's correct.

17 1845 Q. I think what you mean by that, in
18 language that I would understand, is that the panel
19 was making spending recommendations without a real
20 understanding of what Ontario could afford?

21 A. Or any responsibility for having a
22 view on what Ontario could afford. They were
23 focused on horse racing alone. They were not
24 looking at the whole set of demands and
25 considerations the government was facing.

1 1846 Q. Okay. So to break that down,
2 didn't know what Ontario could afford; right?

3 A. They may have known. They may not
4 have had much regard to it, but they --

5 1847 Q. So maybe that's the bigger point.
6 Accountability; right? The horse racing transition
7 panel was not accountable to Ontarians at the end
8 of the day for the budget that was being delivered?

9 A. No. They were working for the
10 provincial government to help deliver some advice
11 on what ministers needed to decide.

12 1848 Q. And advice specifically with
13 respect to horse racing?

14 A. That's correct, not on the -- not
15 on all the other matters they would have had to
16 deal with.

17 1849 Q. They weren't considering,
18 for example, if you spend this money on horse
19 racing, where the money has to come from in terms
20 of the consequences for other programs?

21 A. I didn't see any of that in their
22 work, no.

23 1850 Q. All right. Now, that's a
24 different set of considerations than those facing
25 the Minister of Finance; right?

1 A. That's correct.

2 1851 Q. He's the one who has to balance
3 all of his competing concerns?

4 A. Yes.

5 1852 Q. Mr. Lisus asked you if you were
6 concerned about the -- I think these were your
7 words -- erosion of the fiscal plan if Ontario
8 spent \$300 million over three years.

9 Do you mean this was a significant
10 additional expense beyond \$50 million at a time
11 when money was tight for the Government of Ontario?

12 A. Yes, and especially considering
13 some of the other demands. The newspaper article
14 you gave me refers to an increase in social
15 assistance rates of 1 percent, which was being
16 protested in this article as being dramatically
17 insufficient.

18 1853 Q. You're referring to Exhibit 37,
19 and that is a good point.

20 MR. LISUS: This is the Toronto Star
21 article?

22 MR. ROSENBERG: Yes.

23 MR. LISUS: What are we referring to in
24 there?

25 MR. ROSENBERG: Social assistance

1 funding.

2 THE WITNESS: There's a photo --
3 there's a photo with a caption, and the quote from
4 the caption says:

5 "They were mocking -- 'they'
6 being protesters from the Ontario
7 coalition against poverty -- were
8 mocking the 1 percent increase to
9 welfare and disability rates under
10 the Liberal NDP budget deal."

11 BY MR. ROSENBERG:

12 1854 Q. I guess that's really the point,
13 and I guess the point really is this: The horse
14 racing industry was well organized, you'd agree, in
15 terms of marshalling political support?

16 A. I would have seen that through the
17 correspondence that we subsequently received, yes,
18 as one example.

19 1855 Q. But not all groups -- you've given
20 the example of social assistance -- were equally
21 able to be owed political influence; is that fair?

22 A. That's fair, yes.

23 1856 Q. And so what the horse racing
24 industry was trying to do was rebalance the -- make
25 the careful considerations that had been made in

1 the 2012 budget in their favour?

2 MR. LISUS: I didn't hear what you
3 said. The careful considerations? Is that what
4 you said?

5 MR. ROSENBERG: Yes.

6 THE WITNESS: Yes, and understandably
7 so as any advocate who's facing a challenge would
8 do.

9 BY MR. ROSENBERG:

10 1857 Q. Mr. Lisus asked you whether a
11 panel recommendation to spend more money would
12 embarrass the Minister of Finance.

13 I can tell you when I examined
14 Mr. Wilkinson, he said the amount of support
15 required for the horse racing industry depended on
16 how large an industry you wanted. You would agree
17 with that?

18 A. Yes. And I make some reference to
19 that in the August -- my portion of the August 22nd
20 memo.

21 1858 Q. You're referring to Exhibit 22?

22 A. Correct.

23 1859 Q. Do you remember how big a horse
24 racing industry was contemplated when Cabinet made
25 its decision to cancel SARP in February of 2012?

1 A. The scenarios involved, at least
2 in terms of the footprint of tracks and races, from
3 six to nine tracks with some reduction. I don't
4 remember the specific reduction in race days or in
5 number of horses, but there were concomitant
6 reductions in both.

7 1860 Q. Now, as it happened with the
8 funding that was ultimately provided to the
9 industry, there are considerably more than six to
10 nine racetracks in operation in Ontario today;
11 right?

12 A. Yes.

13 1861 Q. And so in terms of, you know,
14 embarrassing the Minister of Finance, it wouldn't
15 be very embarrassing to the Minister of Finance,
16 would it, if what the panel ultimately recommended
17 was more money for a larger horse racing industry?

18 A. That would have been expected.
19 And, in fact, that's what we -- we saw a version of
20 that. We saw that more money than was decided in
21 February, March 2012 being recommended.

22 1862 Q. And the consequences we have
23 today, a larger horse racing industry than Cabinet
24 had expected in February of 2012?

25 A. As far as I understand, yes,

1 indeed we have a larger one than was anticipated in
2 March 2012.

3 1863 Q. Now, Mr. Lisus did ask you
4 questions about whether \$50 million in transition
5 funding was adequate?

6 A. Yes.

7 1864 Q. And we looked earlier at the
8 research that McKinsey was doing. And you have --
9 MR. LISUS: What research did we look
10 at?

11 MR. ROSENBERG: You showed Mr. Bardeesy
12 a PowerPoint presentation that compared McKinsey's
13 numbers with --

14 MR. LISUS: We haven't been provided
15 with any McKinsey research. We've been provided
16 with government characterizations of McKinsey
17 research.

18 MR. ROSENBERG: Well, perhaps I can
19 assist with that, because the next document is in
20 OLG's productions. It's OLG SB1246, and it is also
21 attached as Exhibit DD to Larry Flynn's Affidavit.

22 So I hope there will be no dispute that
23 it has been produced and is identified as a deck
24 from McKinsey. It appears to be from the end of
25 July of 2012.

1 BY MR. ROSENBERG:

2 1865 Q. And I would just, for your
3 reference, sir, note the alignment in time
4 Mr. Lisus took you to, that August 3rd, 2012, email
5 from Mr. Wilkinson to Mr. Gene referencing
6 McKinsey's numbers with which he disagreed.

7 Can you take a moment to read through
8 that deck, please.

9 A. Yes.

10 1866 Q. Do you remember receiving this
11 deck?

12 A. Yes.

13 MR. LISUS: Sorry, when did he receive
14 this deck?

15 MR. ROSENBERG: End of July 2012.

16 MR. LISUS: You received this deck,
17 sir?

18 THE WITNESS: I would have participated
19 in a briefing that included this information, yes.
20 I don't recall exactly when, but...

21 BY MR. ROSENBERG:

22 1867 Q. All right. It's fair to say it
23 was likely around the end of July, start of August
24 2012?

25 A. Yes.

1 1868 Q. And you told Mr. Lisus that
2 McKinsey had been retained by the Ministry of
3 Finance to give them some advice and perform some
4 analysis?

5 A. Yes.

6 1869 Q. If you go to page 23 of 24 of the
7 deck, you'll see McKinsey's conclusion:

8 "The industry can remain viable
9 with cost reductions and
10 consolidation of races at key
11 facilities."

12 A. Yes.

13 1870 Q. That was their conclusion?

14 A. Yes.

15 1871 Q. The consequence, though, as you
16 see on page 24, would be consolidation that would
17 allow five to seven tracks to remain viable in the
18 province?

19 A. Yes.

20 1872 Q. And there would be job losses?

21 A. Yes.

22 1873 Q. Fewer race dates?

23 A. Yes.

24 1874 Q. Fewer horses required?

25 A. Yes.

1 1875 Q. If you go to page 31 of the deck,
2 under "Summary of the Future of the Industry,"
3 you'll see how McKinsey thought the economics of
4 the industry might work out?

5 A. Yes.

6 1876 Q. If you look at pages 26 and 27,
7 for example, you'll see what McKinsey expected,
8 for example, for Woodbine following the termination
9 of SARP?

10 A. Yes.

11 MR. LISUS: What is this probative of,
12 Mr. Rosenberg?

13 MR. ROSENBERG: Well, you just reviewed
14 the Auditor General's report, and I'm reviewing
15 this one.

16 MR. LISUS: The Auditor General's
17 report made findings about matters joined in the
18 pleadings, and the Auditor General's report is
19 specifically pleaded. What is this probative of?

20 MR. ROSENBERG: If you're going to give
21 up your argument that \$50 million was inadequate
22 transition funding, then I don't need to do any of
23 this, but if you're --

24 MR. LISUS: It's not my argument. It's
25 the panel's conclusion, and the government accepted

1 it. So it's not an argument. It's a fact.

2 BY MR. ROSENBERG:

3 1877 Q. Well, let me come to that, but
4 before I do, looking at page 27, you'll see that
5 what McKinsey was forecasting --

6 MR. LISUS: Just hold on a second here.
7 This witness is not the author or a participant in
8 this study. This study is not in evidence.

9 MR. ROSENBERG: It is in evidence. I'm
10 going to make it an exhibit right now. This is our
11 next exhibit in sequence, 38.

12 EXHIBIT NO. 38: SB1246.

13 MR. LISUS: That doesn't make it
14 admissible evidence, Mr. Rosenberg. If you want to
15 lead evidence from McKinsey, there's a way of doing
16 that.

17 MR. ROSENBERG: Mr. Bardeesy said he
18 received this. You put all sorts of presentations
19 to Mr. Bardeesy, like the panel report, like a
20 presentation comparing McKinsey's views.

21 MR. LISUS: The panel report was
22 identified by the people who authored --

23 MR. ROSENBERG: Then why did you put it
24 to Mr. Bardeesy who did not author it, Mr. Lisus?

25 MR. LISUS: Because he wrote many

1 documents and was party to many communications --

2 MR. ROSENBERG: Correct.

3 MR. LISUS: -- and decisions based upon
4 the panel report.

5 MR. ROSENBERG: And informed, as we
6 just saw, from his memorandum to the Premier by the
7 McKinsey report as well. That's why I'm asking
8 questions. You have to let me finish.

9 MR. LISUS: No, no, there's no need to
10 get excited. You can take a break so you can
11 regain your composure.

12 MR. ROSENBERG: Mr. Lisus, there's no
13 need to interrupt me.

14 MR. LISUS: My only point is you're
15 putting in a technical report from a witness who
16 had no involvement in it.

17 MR. ROSENBERG: You have to let me make
18 my submission here. I've let you say your piece.
19 And, you know, I disagree with your
20 characterization that I'm getting excited. I'm
21 simply trying to be overheard when you continue to
22 interrupt me, which is not the way to conduct an
23 examination.

24 What I'm doing, sir, is putting
25 questions to the witness. You can object to those

1 questions, and I have your objection, but now you
2 have to let me put them to the witness, unless his
3 counsel stops me.

4 MR. LISUS: If you want to prove a
5 document, there's a way of proving a document.

6 MR. ROSENBERG: Thank you for that
7 advocacy tip, Mr. Lisus. I'm going to continue
8 with my questions.

9 BY MR. ROSENBERG:

10 1878 Q. Now, if we look at page 27 of the
11 deck, which you will see, sir, I take it this is
12 what McKinsey presented to you, is that with OLG
13 rent at 1.9 percent of slot revenue for the space
14 to host a slot parlour --

15 A. Yes.

16 1879 Q. -- may expect that Woodbine would
17 be sort of break-even or slightly profitable;
18 right? You see that conclusion in the last column?

19 A. Yes, with downstream actions by
20 Woodbine and others, yes.

21 1880 Q. And so what McKinsey was telling
22 you was that for Woodbine and four to five other
23 tracks -- you see that on page 28 -- this industry
24 could survive without government funding and be
25 self-sustaining; right?

1 A. Yes. Just to clarify, I was -- I
2 was in receipt of and was taken through this
3 document. I don't recall McKinsey personnel
4 personally doing that with me.

5 1881 Q. Right.

6 MR. LISUS: You don't recall them
7 taking you through it?

8 THE WITNESS: Not McKinsey personnel.
9 So this inform --

10 BY MR. ROSENBERG:

11 1882 Q. Who took you through it?

12 A. I believe this was Finance
13 officials.

14 MR. LISUS: So we've got a
15 double-hearsay document now.

16 MR. ROSENBERG: No, Mr. Lisus, that's
17 not what he said.

18 BY MR. ROSENBERG:

19 1883 Q. If we look at the final page,
20 page 41, it looks like McKinsey's conclusion
21 support of \$16.7 million annually over three years
22 as a transition payment would allow the industry to
23 temporarily sustain more tracks and races. Do you
24 see that?

25 A. Yes.

1 1884 Q. That was information that was
2 conveyed to you as well?

3 A. Yes.

4 1885 Q. Now, Mr. Lisus has raised an issue
5 as to whether it was McKinsey themselves presenting
6 this information to you or whether it was Finance.
7 And I take it you would have understood that
8 McKinsey presented this information to the Ministry
9 of Finance?

10 A. Yes, which procured this study.

11 1886 Q. And they, in turn, shared the
12 information with you?

13 A. That's correct.

14 1887 Q. And you, in the Premier's office,
15 relied on this information in making your decisions
16 as a policy advisor?

17 MR. LISUS: Which decision? This is
18 August 2012.

19 BY MR. ROSENBERG:

20 1888 Q. Yes, so your assessment of the
21 evolving situation regarding horse racing.

22 A. That's right. This was one of
23 the -- one of the major inputs that we received,
24 yes.

25 1889 Q. And you understood these to be the

1 figures that McKinsey had provided to Finance?

2 A. Yes.

3 1890 Q. All right. And obviously you saw
4 that Finance was also relying on these McKinsey
5 data?

6 A. Yes.

7 1891 Q. And so when you said to Mr. Lisus,
8 in response to his questions, there were different
9 views about how much funding was required, one of
10 the views -- and Mr. Lisus himself put this to
11 you -- was McKinsey's?

12 A. Yes.

13 1892 Q. And this presentation that we've
14 been reviewing, Exhibit 38, is a representation of
15 McKinsey's views as you understood them?

16 A. Yes.

17 1893 Q. And so as much as the horse racing
18 transition panel recommended that significantly
19 more than \$50 million be provided in transition
20 funding, there were other competing views that
21 thought either less money was required or
22 \$50 million was adequate?

23 A. Yes.

24 1894 Q. And we saw -- Mr. Lisus took you
25 to a frustrated email from Tim Shortill saying that

1 the horse racing transition panel's report, their
2 interim report in August of 2012, does not
3 adequately consider the McKinsey view and Finance's
4 work around those numbers?

5 A. Yes.

6 1895 Q. Now, suffice to say that as
7 transition funding policy was coming together,
8 reasonable people could disagree about the right
9 number?

10 A. Yes.

11 1896 Q. And did disagree about the right
12 number?

13 A. Yes.

14 1897 Q. And McKinsey was a reputable
15 consulting firm?

16 A. Yes.

17 1898 Q. You couldn't just reject their
18 advice out of hand?

19 A. That's correct. I would add that
20 Mr. Wilkinson himself gave ranges within his
21 advice.

22 1899 Q. That's fair, and we did ask him
23 about that as well.

24 And ultimately, I think as you told
25 Mr. Lisus, we never got to see who was right

1 because the decision was taken to provide
2 significantly more funding to the horse racing
3 industry?

4 A. That's right.

5 1900 Q. Was the decision to cancel SARP a
6 matter of government policy?

7 MR. LISUS: That's a silly question.
8 It's not for him to decide. It's for the Court to
9 decide, Mr. Rosenberg.

10 BY MR. ROSENBERG:

11 1901 Q. You're a professor of policy;
12 right? That's what you teach at Ryerson; correct?

13 A. Yes.

14 1902 Q. You would consider this to be a
15 policy? You understand what I mean when I say "a
16 policy"?

17
18 A. It was definitely in the domain of
19 government policy, yes.

20 1903 Q. Why do you say that?

21 A. Well, because it was a creation of
22 government policy.

23 1904 Q. SARP was a creation of government
24 policy?

25 A. Yes.

1 1905 Q. And so terminating it was also a
2 government policy?

3 A. Yes.

4 1906 Q. And just so I understand the
5 mechanics of that, when you terminate SARP, the
6 government directs OLG to stop paying money by
7 terminating its siteholder agreements with
8 racetracks; right?

9 A. That's right, within the
10 provisions of those agreements.

11 1907 Q. And you understood that those
12 siteholder agreements were the way that OLG paid a
13 portion of its net win from slot machines to
14 racetracks, and then they paid the money to horse
15 people; right?

16 A. Yes.

17 1908 Q. So you direct OLG to terminate
18 those agreements. The money stops flowing to
19 racetracks and to horse people?

20 A. The Minister of Finance makes that
21 direction, yes.

22 1909 Q. Now, in terms of the mechanics, if
23 there was going to be any transition funding, any
24 replacement, what would have had to happen?

25 A. Government policy would have had

1 to create a program, and government would have had
2 to decide -- perhaps interaction with agencies,
3 stakeholders, and others -- how to flow the funding
4 under any transitional program.

5 1910 Q. I think you told us that requires
6 the Treasury Board to take action before any money
7 flows?

8 A. Yes, policy framework and
9 accountability agreements and other aspects. Any
10 new program requires features like that prior to
11 being executed.

12 1911 Q. So is it fair to say that
13 cancelling SARP was one decision that the
14 government took, and determining the appropriate
15 level of funding for the horse racing industry
16 thereafter was another decision?

17 A. Yes.

18 1912 Q. And was the government's funding
19 decision with respect to the appropriate level of
20 funding for horse racing a policy decision as well?

21 A. Yes.

22 1913 Q. What policy?

23 A. It was -- as we saw in the
24 documents on Wednesday, a number of inputs go into
25 the support for the industry, and so SARP was a

1 major contributor to that. There were other policy
2 enablers that, all together, constituted the
3 assistance that the industry received.

4 1914 Q. But we're talking about allocating
5 public funds here, the public purse; right?

6 A. Specifically the SARP funds, yes.

7 1915 Q. But likewise, with any replacement
8 funds for transition funding for the industry, that
9 would be the public purse being opened or closed by
10 the government; right?

11 A. To the extent that requests were
12 being made of the government for funding, then,
13 yes, it would be coming from government.

14 1916 Q. Where else might the requests be
15 made?

16 A. Well, part of the policy position
17 was that -- we haven't really discussed this in
18 this examination. Part of the policy position was
19 that government wanted to work with industry to
20 increase the appetite for wagering which would have
21 been a public source of -- not a government source,
22 but a source of funding from participants in the
23 industry, wagerers, people making bets.

24 1917 Q. What do you say to the suggestion
25 that cancelling SARP and providing only a year of

1 transitional funding were decisions taken by civil
2 servants or political staffers?

3 A. That would not be accurate. These
4 were decisions of ministers.

5 1918 Q. When you say "ministers," you mean
6 Cabinet?

7 A. Yes, specifically Cabinet acting
8 on the advice of the Minister of Finance
9 specifically.

10 1919 Q. Did you believe that cancelling
11 SARP was an irrational decision when it was made?

12 A. No.

13 1920 Q. What about the decision to
14 discontinue funding to the horse racing industry in
15 March 2013, was that irrational?

16 A. No.

17 1921 Q. Now, has any subsequent evidence
18 changed your view about the irrationality of these
19 decisions?

20 A. No. As I explained earlier, in
21 the work in February and March, we had anticipated
22 that there'd be other policy inputs that would be
23 required to sustain the industry at a certain
24 level.

25 1922 Q. Do you have any evidence to

1 suggest that cancelling SARP was done in bad faith?

2 A. No.

3 1923 Q. What about the decision to
4 discontinue funding to the horse racing industry of
5 March 2013, was that decision taken in bad faith?

6 A. No.

7 1924 Q. Was the decision to cancel SARP
8 taken to inflict pain on opposition ridings?

9 A. No.

10 1925 Q. In fact, I think your Exhibit 22
11 memorandum identified some specific Liberal members
12 who would feel pain as a result of the decision to
13 cancel SARP?

14 A. Yes.

15 1926 Q. So Kim Craitor in Niagara; right?

16 A. Yes.

17 1927 Q. Fort Erie is the racetrack there?

18 A. Yes. And the two ministers who
19 were most involved in the file.

20 1928 Q. So Ted McMeekin and Flamboro?

21 A. Yes.

22 1929 Q. Flamboro Downs is the racetrack?

23 A. Yes.

24 1930 Q. Jeff Leal later becomes Minister
25 of Agriculture. He was in Peterborough; right?

1 A. Yes.

2 1931 Q. That's Kawartha Downs, is the
3 racetrack?

4 A. Yes.

5 1932 Q. And, of course, Dwight Duncan and
6 the Windsor members who would be affected at the
7 Windsor Raceway; right?

8 A. Yes.

9 1933 Q. Was the decision to cancel SARP
10 taken in a manner that was extremely careless?

11 A. No.

12 1934 Q. Same answer for the decision to
13 discontinue funding to the horse racing industry in
14 March 2013?

15 A. No.

16 1935 Q. Sorry, let me ask that right. Was
17 the decision to discontinue funding to the horse
18 racing industry in March 2013 taken in a manner
19 that was extremely careless?

20 A. No.

21 MR. ROSENBERG: Those are my questions.
22 Mr. Lisus may have additional questions, but he may
23 tell us that we are done for the day.

24 MR. RATCLIFFE: Well, I will be less
25 than five minutes.

1 -- Recess at 4:38 p.m. --

2 -- Upon resuming at 4:42 p.m. --

3 CROSS-EXAMINATION BY MR. RATCLIFFE:

4 1936 Q. Just for the record, I'm
5 Robert Ratcliffe here on behalf of the Province of
6 Ontario. We're one of the defendants in this
7 proceeding.

8 I'd like to take you to the horse
9 racing industry transition panel interim report
10 dated August 17 of 2012 that we referred to
11 earlier.

12 A. Yes.

13 1937 Q. It's Exhibit Number 44 to the
14 witness that was examined, I guess, on December the
15 4th. Just for the record, it's CRE0024643.

16 I plan to be very brief. I'm just
17 going to take you to the executive summary. Now,
18 it sets out, you know, the fact that three Ontario
19 Cabinet Ministers or former Cabinet Ministers were
20 engaged to make the recommendations about the
21 government's -- how the government could help the
22 horse racing industry adjust to the end of the
23 Slots at Racetrack Programs.

24 Can you explain why or what the logic
25 would be behind choosing people from three

1 different political backgrounds as part of this
2 process and as a policy person?

3 A. Yes. It helps get the range of
4 views that might be prevailing in the public
5 domain. It helps guide government towards
6 decisions that might be less partisan than they
7 would be -- perhaps otherwise be perceived to be.

8 1938 Q. So there's value in having three
9 different political points of view or backgrounds,
10 I guess, and it makes it -- it adds to the
11 impartiality then, I guess is what you're saying?

12 A. Yes. And as I explained on
13 Wednesday, there's some further elements. The
14 former Minister of Agriculture, someone with
15 connections to rural Ontario and someone with a
16 background in the industry to help supplement some
17 of those other points that I made just now.

18 1939 Q. Now, they reached a consensus in
19 this report?

20 A. I understand this to be a
21 consensus document, yes, and that's what it says in
22 the executive summary.

23 1940 Q. And I'd like to just take you to
24 the panel's finding on page 26 where in the second
25 sentence it says:

1 "It is the panel's view that
2 continuing SARP would be poor public
3 policy."

4 As a policy person involved in this process, I
5 mean, do you -- are you in agreement with what they
6 said there?

7 A. Yes. And in our work in January
8 and February, we obviously had a chance to look at
9 the policy, not just the fiscal elements but the
10 regime as a whole.

11 1941 Q. So in other words, ending SARP was
12 sound public policy?

13 A. In my view, yes.

14 1942 Q. Now, we had a number of questions
15 over the last couple of days about the transition
16 funding and various debate about that.

17 Over a period of time, the transition
18 funding evolved, and at one point in time, we were
19 looking at \$400 million over five years. That
20 changed, did it not, to \$500 million over five
21 years?

22 A. Yes.

23 1943 Q. Is there currently funding
24 planning going forward, or are you in a position to
25 know that in terms of what the current thinking is

1 in terms of extending that?

2 A. I'm not aware. I believe, to my
3 recollection, it would be in -- we would be in year
4 three or four of that, but I'm not -- I'm no longer
5 involved, so I don't know.

6 1944 Q. But in terms of transition
7 funding, it ended up being \$500 million over five
8 years?

9 A. That's my recollection, yes.

10 1945 Q. Okay.

11 MR. RATCLIFFE: I don't have anything
12 to add to that.

13 RECROSS-EXAMINATION BY MR. LISUS:

14 BY MR. LISUS:

15 1946 Q. I wanted to pick up on something
16 that you said earlier about part of the
17 government's intent was to increase dollars bet on
18 horse races. Do you remember that? You said
19 dollars from wagerers?

20 A. Yes. There was a desire to see
21 that that amount be increased as part of a --

22 1947 Q. And the dollars bet by wagerers on
23 horses, that's the betting public; correct?

24 A. Yes.

25 1948 Q. Those dollars aren't a government

1 subsidy; correct?

2 A. I would not characterize them as
3 such, no.

4 1949 Q. And that's because they are monies
5 that come directly from the public betting on the
6 outcome of a race; correct?

7 A. That's -- yes. I mean, it
8 increases the revenue probably indirectly from
9 the -- one of the line items, but, yes, that's
10 coming from the public rather than coming from a
11 program of government.

12 1950 Q. So money that comes directly from
13 the public as Mr. Phillips pointed out to me,
14 that's gaming revenue; right?

15 A. Yes. Yes.

16 1951 Q. And are you aware, sir, how the
17 Ontario Lottery and Gaming Corporation accounted in
18 its financial statements for the payments that it
19 made to the horse racing industry?

20 A. I don't recall specifically how
21 they were characterized.

22 1952 Q. You're aware it's accounted for as
23 an expense?

24 MR. RATCLIFFE: Where does this come
25 from in terms of arising out of --

1 BY MR. LISUS:

2 1953 Q. The money put into slot machines
3 at racetracks was put in directly by the betting
4 public; correct?

5 A. Yes.

6 1954 Q. It did not come from government
7 coffers?

8 A. No. That's correct.

9 1955 Q. It did not come pursuant to a
10 transfer payment system?

11 A. No, but the product of SARP was
12 the product of a policy regime.

13 1956 Q. The money put into slot machines
14 came directly from the pockets of the betting
15 public?

16 A. That's correct.

17 1957 Q. Let me ask you something about
18 policy making. Do government policy decisions have
19 to be made rationally?

20 MR. RATCLIFFE: Isn't that a legal
21 question?

22 MR. LISUS: There were lots of legal
23 questions a minute ago, Mr. Ratcliffe, and lots of
24 questions about government policy making.

25 BY MR. LISUS:

1 1958 Q. Do government policy decisions
2 have to be made rationally?

3 A. In my performance of my duties as
4 an advisor on policy, I always sought to ensure
5 that there was a rational process.

6 1959 Q. And a rational basis for the
7 decision?

8 A. Yes.

9 1960 Q. Do government policy decisions
10 have to be made in good faith?

11 A. Again, similarly in my duties, I
12 always sought to ensure that that was one of the
13 objectives, yes.

14 1961 Q. Do government policy decisions
15 have to be implemented responsibly?

16 A. Again, in the performance of my
17 duties, that was always something that was
18 important, yes.

19 1962 Q. Do government policy decisions
20 have to be made with an appreciation of the
21 consequences of those decisions?

22 A. Again, in the performance of my
23 duties, I always thought that that was important.

24 1963 Q. Do government policy decisions
25 have to be made based on a due and proper

1 consideration of the information available about
2 the consequences of that decision?

3 A. Again, in the performance of my
4 duties, I always thought that that was important.

5 1964 Q. Do government policy decisions
6 have to be made on the basis of the best
7 information available to policy makers?

8 A. Again, in my duties, I always
9 thought that that was important, yes.

10 1965 Q. You are aware, sir, that policy
11 decisions that are implemented negligently can give
12 rise to legal consequences?

13 MR. RATCLIFFE: Well, here you're
14 talking about negligence. This is a legal
15 question.

16 BY MR. LISUS:

17 1966 Q. You're a professor of policy, sir.
18 Don't you teach that?

19 R/F MR. RATCLIFFE: It's a legal question.
20 It's not a proper question.

21 MR. LISUS: Those are my questions for
22 you, Mr. Bardeesy. Thank you.

23 THE WITNESS: Thank you.

24 -- Whereupon the cross-examination concluded at
25 4:51 p.m. --

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REPORTER'S CERTIFICATE

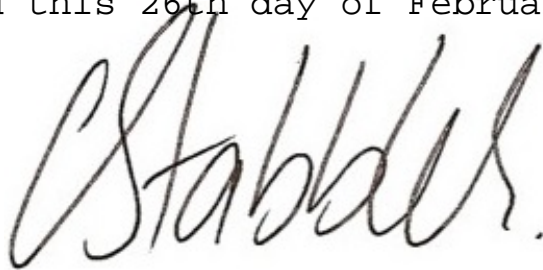
I, CARISSA STABBLER, Court
Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 26th day of February 2018.



NEESON COURT REPORTING INC.

PER: CARISSA STABBLER, RPR, CSR
COURT REPORTER

EXHIBITS

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