

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

TIMOTHY SHORTILL
January 31, 2018

neesons

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Toronto, ON M5K 1A2
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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 Rule 39.03 Examination of
10 Timothy Shortill, a non-party witness herein, taken
11 at the offices of Neeson Court Reporting Inc., 77
12 King Street West, Suite 2020, Toronto, Ontario, on
13 the 31st day of January, 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 Lisa La Horey, Esq., for the Defendant

20 Crown.

21

22 Michael Rosenberg, Esq., for the OLG.

23

24 Also present: Michele Valentini, Articling Student

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I N D E X

WITNESS: Timothy Shortill

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

INDEX OF ADVISEMENTS

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

INDEX OF REFUSALS

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1 -- Upon commencing at 10:00 a.m.

2 TIMOTHY DAVID SAMUEL SHORTILL:

3 AFFIRMED.

4 CROSS-EXAMINATION BY MR. LISUS:

5 1 Q. Good morning, Mr. Shortill.

6 A. Good morning.

7 2 Q. Have you been examined before?

8 R/F MS. LA HOREY: Refusal. That's not
9 relevant.

10 BY MR. LISUS:

11 3 Q. Have you ever given evidence in
12 which there is a court reporter taking a transcript
13 of the question and answer?

14 R/F MS. LA HOREY: That's also a refusal.
15 I briefed him on the dos and don'ts and making sure
16 that he lets you finish your question before his.
17 If you want to go over that before we start,
18 that's -- again, before we start, that's fine.

19 BY MR. LISUS:

20 4 Q. Okay. Give me your educational
21 history, please, Mr. Shortill.

22 A. Sure. Graduated high school in
23 1996. I started at Western a little over a year
24 later, did a bachelors of --

25 5 Q. Sorry, I can't hear you.

1 A. Did a bachelors of arts at
2 Western, four-year degree. I then went to Humber
3 College.

4 6 Q. When did you finish your BA?

5 A. It was 2002. I did an extra year.

6 7 Q. Okay. You graduated BA 2002
7 Western?

8 A. That's right.

9 8 Q. Right. Then what did you do?

10 A. I went to Humber College for a
11 year and did a post grad in public administration.

12 9 Q. When did you complete that?

13 A. It would have been a year later,
14 so the fall of 2003.

15 10 Q. Okay. What did you do after you
16 completed your public administration course at
17 Humber?

18 A. I had started at Queen's Park
19 shortly before completing, so after completing I
20 remained at Queen's Park.

21 11 Q. So you started at Queen's Park in
22 2003?

23 A. 2002.

24 12 Q. 2002. Where?

25 A. In the office of Gerard Kennedy,

1 who was a Member of Provincial Parliament.

2 13 Q. What did you do there?

3 A. I was an assistant, research
4 assistant.

5 14 Q. Was that a full-time job?

6 A. It initially started as a
7 volunteer job and then turned full-time.

8 15 Q. When?

9 A. When did it turn full-time? I
10 can't remember exactly.

11 16 Q. Okay. So we are up to the fall of
12 '03.

13 A. Pardon me?

14 17 Q. We were at the fall of '03 on your
15 completion of Humber College. Did you get
16 full-time employment?

17 A. At Queen's Park, yes.

18 18 Q. When?

19 A. It would have been shortly before
20 the 2003 election. So it would have been in 2003.

21 19 Q. All right. And who were you
22 employed by at Queen's Park?

23 A. As mentioned before, Gerard
24 Kennedy.

25 20 Q. All right. And how long did you

1 remain employed by Gerard Kennedy?

2 A. Until November 2003.

3 21 Q. What did you do then?

4 A. Went to work for Linda Jeffrey who
5 was then a Member of Provincial Parliament.

6 22 Q. As what?

7 A. Her executive assistant.

8 23 Q. Okay. And how long did you remain
9 in that position?

10 A. About a year, and I believe I
11 started in the office of Minister Gerretsen who was
12 then Minister of Municipal Affairs, I believe it
13 was December 2004. About a year with Linda.

14 24 Q. In what capacity with Minister
15 Gerretsen?

16 A. I think my title was special
17 assistant, stakeholder and policy.

18 25 Q. Okay. And what ministry did
19 Minister Gerretsen head up?

20 A. It was Municipal Affairs and
21 Housing.

22 26 Q. Okay. And how long did you remain
23 in that job?

24 A. About a year as well. Then I
25 started -- it would have been a little over a year,

1 so I started in 2006 in the office of Jim Bradley
2 who was then Minister of Tourism.

3 27 Q. What job did you have in Jim
4 Bradley's office?

5 A. Policy advisor.

6 28 Q. How long did you remain in that
7 position?

8 A. Until after the '07 election. He
9 was moved to Transportation. I was a policy
10 advisor to him as the Minister of Transportation
11 for about two months, and then I became his Chief
12 of Staff.

13 29 Q. Okay. So you were Chief of Staff
14 to the Minister of Transportation in '07; is that
15 correct? Starting in '07?

16 A. It might have been December of '07
17 or January of '08.

18 30 Q. How long were you in that
19 position?

20 A. Until the end of December 2009.

21 31 Q. Right. What did you do at the end
22 of January 2010?

23 A. Sure. I became Chief of Staff to
24 the Minister of Finance who was then Dwight Duncan.

25 32 Q. What were your responsibilities as

1 Chief of Staff to Minister Duncan?

2 A. Sure. So, there's no, as I
3 understand it, formalized job description, but, as
4 I understood my role, I was responsible for the
5 political staff in the office.

6 33 Q. And how many would that be?

7 A. It would fluctuate from time to
8 time. It was probably a low of 19 or 20, a high of
9 23. So, I was responsible for the staff, I was
10 principal advisor to the Minister, I was
11 responsible for liaising between the Minister and
12 his office and the civil service, between the
13 Minister and his office and other ministries, other
14 ministries' offices, and then with the Premier's
15 Office as well.

16 There is a stakeholder relations
17 component to it, although for the most part I
18 delegated that to my staff.

19 34 Q. Who was your counterpart in the
20 Premier's Office?

21 A. Well, the Premier's Chief of Staff
22 when I started with Minister Duncan was Peter
23 Wilkinson. After Peter, it was Chris Morley, and
24 after Chris it was David Livingston. And, sorry,
25 and then after David it was Tom Teahen.

1 35 Q. Tom?

2 A. Teahen.

3 36 Q. Spelled?

4 A. T-E-A-H either A or E. Sorry, I
5 should also mention, because your question was
6 about my educational background, in the fall of
7 2012, I believe, I started my MBA at the same time
8 I was working, it was a year-long program, and
9 that's it.

10 37 Q. All right. And how long did you
11 remain as the Chief of Staff in Minister Duncan's
12 office?

13 A. Until he stepped aside from the
14 office.

15 38 Q. Which was when?

16 A. He announced he was not running in
17 November of 2012. He stepped down whenever the
18 transition of government occurred, it might have
19 been the end of January or beginning of February
20 2013.

21 39 Q. And so you left government then?

22 A. No, I was asked to stay on and I
23 became Minister Sousa's Chief of Staff.

24 40 Q. That's the current Minister of
25 Finance?

1 A. That's correct.

2 41 Q. Did he replace Duncan when Duncan
3 stepped down?

4 A. That's correct.

5 42 Q. Okay. And how long did you stay
6 on for?

7 A. So, whenever that transition
8 occurred, I stayed until mid-May after the budget
9 was presented.

10 43 Q. Mid-May of '13?

11 A. That's correct.

12 44 Q. So by mid-year '13, you had left
13 government?

14 A. Um-hmm.

15 45 Q. Yes?

16 A. Yes.

17 MS. LA HOREY: Sorry, you need to say
18 yes or no; that was one of the rules.

19 BY MR. LISUS:

20 46 Q. Where did you go?

21 A. I did not go to another
22 employment. I travelled essentially for eight or
23 nine months.

24 47 Q. All right. And when you'd
25 finished travelling, what did you do?

1 A. I started at OPTrust, which is a
2 public sector pension plan, mid-February 2014.

3 48 Q. Okay. And are you still employed
4 at OPTrust?

5 A. Yes, I am.

6 49 Q. What is your position there?

7 A. Senior vice-president of strategy,
8 communications and public affairs.

9 50 Q. All right. During your tenure
10 from January 2010 to mid-2013, I take it that you
11 worked closely with the Minister?

12 A. That's fair to say, yes.

13 51 Q. And was Mr. Stransky in the
14 Minister's Office as well?

15 A. Yes, he was.

16 52 Q. What was his role in the
17 Minister's Office?

18 A. He was a policy advisor.

19 53 Q. And I understand that he came into
20 the Minister's Office in 2010 as well; does that
21 accord with your recollection?

22 A. I hired him, so it was most
23 definitely after I started but I can't remember the
24 date.

25 54 Q. Did you know him before you hired

1 him?

2 A. I did not.

3 55 Q. Now, I want to understand a little
4 bit about how the Minister's Office works as it
5 relates to the role of Chief of Staff, okay?

6 Are there scheduled Cabinet meetings
7 every year other than emergency Cabinet meetings?

8 A. Yes.

9 56 Q. So, there was a calendar schedule
10 for Cabinet meetings; is that right?

11 A. There was a traditional Cabinet
12 time. Whether or not that was prepared as a
13 schedule in advance, I don't know.

14 57 Q. And I presume that in the course
15 of your duties as Chief of Staff, you attended
16 Cabinet meetings that your Minister attended; is
17 that fair?

18 A. Not in totality. I would attend
19 certain meetings, not all the ones he attended.

20 58 Q. Okay. But you attended some of
21 the meetings that he attended?

22 A. Correct.

23 59 Q. And did you ever attend Cabinet
24 meetings as his representative when he did not
25 attend?

1 A. I don't believe so.

2 60 Q. Now, we're going to be discussing
3 in a little while a Cabinet meeting that occurred
4 on February 8, 2013, at which -- excuse me, 2012.

5 So a Cabinet meeting that occurred on
6 February 8, 2012, at which the OLG modernization
7 process was discussed and the Slots at Racetrack
8 Program, okay?

9 Do you know whether you attended that
10 meeting on February 8, 2012?

11 A. I attended the meeting at which
12 that policy was discussed.

13 61 Q. The Cabinet meeting?

14 A. Yes. I believe it was on that
15 date.

16 62 Q. Okay.

17 A. But I don't recall the actual
18 date.

19 63 Q. All right. I understand you don't
20 -- might not recall the precise date, but you do
21 recall attending the February 8, 2012 Cabinet
22 meeting?

23 A. Yes, I do.

24 64 Q. And did Mr. Duncan attend as well?

25 A. Yes, he did.

1 65 Q. Did Mr. Orsini attend?

2 A. I can't remember.

3 66 Q. And I'm also going to ask you
4 about some meetings which appear to have occurred
5 in advance of that February 8 Cabinet meeting on
6 February the 2nd between Mr. Bardeesy and
7 Mr. McGuinty.

8 Do you recall attending meetings on
9 February 2nd or in the days leading up to the
10 February 8 Cabinet meeting at which the question of
11 Slots at Racetrack Program was discussed?

12 A. I would have been part of some
13 meetings leading up to that discussion. I don't
14 recall on the specific date though.

15 67 Q. Now, you used the phrase "I would
16 have been." I take it you're telling me that you
17 were but you don't recall the precise date and
18 time?

19 A. That's correct.

20 MS. LA HOREY: Dates and times. He
21 said he would have attended some meetings leading
22 up to.

23 MR. LISUS: I think I got that.

24 BY MR. LISUS:

25 68 Q. And on the February 8th, 2012

1 Cabinet meeting, did Mr. Duncan make a presentation
2 to the Cabinet about the Ontario Lottery and Gaming
3 Corporation and Slots at Racetrack Program?

4 R/F MS. LA HOREY: The question is refused.
5 What happens at a Cabinet meeting is subject to
6 immunity and this witness will not be permitted to
7 answer any questions with respect to what happened
8 at the Cabinet meeting on February 8th or any other
9 Cabinet meetings he may have attended.

10 MR. LISUS: I'm going to invite you to
11 carefully think about that, Ms. La Horey, because
12 you put it directly in issue with your material on
13 summary judgment and have delivered documents in
14 support.

15 MS. LA HOREY: I understand your
16 position. I put my position on the record. If
17 necessary, we'll adjudicate it somewhere else.

18 MR. LISUS: Okay.

19 BY MR. LISUS:

20 69 Q. Now, you are here today pursuant
21 to a Summons to Witness; you understand that?

22 A. I do.

23 70 Q. And were you served personally,
24 Mr. Shortill, or do you recall being served by a
25 process server with a summons?

1 A. I don't recall. It was some time
2 ago but I recall receiving this. Whether it was
3 left or given to me personally, I can't remember.

4 71 Q. All right. And do you recall
5 approximately when it was?

6 A. I don't. It was some time ago.

7 72 Q. And I understand that you met with
8 counsel for Ontario to prepare for giving evidence
9 here today. Did you also meet with counsel for
10 OLG?

11 A. Yes, they were present.

12 73 Q. And in the course of preparing to
13 give evidence, I presume you looked at the
14 documents that are referred to in the Summons to
15 Witness?

16 A. I scanned some of the documents
17 that were submitted to me.

18 74 Q. Did you have any documents in your
19 possession?

20 A. I turned over, I think, two or
21 three emails some months ago.

22 75 Q. All right. And are these
23 emails -- I presume they're emails on your personal
24 account if you had them two or three months ago?

25 A. That's correct.

1 76 Q. Which address is that?

2 A. That's tshortill@rogers.com.

3 77 Q. And is that the address that you
4 were using in 2011 and 2012?

5 A. Yes.

6 78 Q. And did you search your email
7 records for emails sent to and from that address in
8 2011 and 2012 responsive to the summons that you
9 were sent?

10 A. There was a criteria provided to
11 me, I forget if it was in the summons or another
12 document, and I searched my email according to that
13 criteria.

14 79 Q. And you found three?

15 A. I found however many documents I
16 turned over.

17 80 Q. Okay. Have those been produced to
18 us, Ms. La Horey?

19 MS. LA HOREY: Yes. Yes, and just
20 while we're on that point, one of the documents
21 contains some commercially sensitive information.
22 I understand that was provided to OLG in
23 confidence, and we have sent you an email
24 indicating that we will be redacting that and we
25 will provide you with the redacted version in

1 substitute.

2 I don't think it's material but I just
3 wanted to put it on the record, and we would object
4 if you wanted to make that an exhibit.

5 MR. LISUS: I'm going to mark your
6 Summons to Witness the first exhibit.

7 EXHIBIT NO. 1: Summons to Witness.

8 BY MR. LISUS:

9 81 Q. Prior to joining or becoming
10 Minister Duncan's Chief of Staff, and I want to
11 make sure I've remembered this accurately, you went
12 over to Minister Duncan's office as his Chief of
13 Staff, right?

14 A. I was hired into that role.

15 82 Q. Okay. By him?

16 A. Yes.

17 83 Q. Did you know him prior to him
18 hiring you?

19 A. I did somewhat. I won't pretend
20 to know him as well as I know him today.

21 84 Q. And how did you know him? Had you
22 worked with him?

23 A. There was a major transportation
24 file that was a local issue of his.

25 85 Q. Local meaning Windsor?

1 A. That's correct.

2 86 Q. Right.

3 A. And in the course of the evolution
4 of that file, I would have taken several meetings
5 with Minister Duncan in his capacity as a local
6 member, with my then-Minister Jim Bradley.

7 87 Q. And so when the position of Chief
8 of Staff became available in his office, you
9 applied for it; is that what happened?

10 A. I was recommended by the Office of
11 the Premier.

12 88 Q. Okay. And do you know who
13 recommended you?

14 A. I don't.

15 89 Q. And so, following that
16 recommendation, you were contacted by Minister
17 Duncan's office and they said you've been
18 recommended for the role of Chief of Staff, are you
19 interested, and you said yes, and you applied and
20 got hired; is that how it happened?

21 A. It did. Actually, I was initially
22 interviewed by him. He went with another
23 candidate. That candidate left months later.

24 90 Q. Okay. Now, prior to joining
25 Minister Duncan's office, which I understood was at

1 the beginning of 2010, had you had any dealings
2 with the Ontario Lottery and Gaming Corporation?

3 A. Not that I recall.

4 91 Q. Okay. Had you had any experience
5 with, or exposure to, the horseracing industry
6 prior to joining in January 2010?

7 A. No.

8 92 Q. So, I take it when you joined
9 Minister Duncan's office in January 2010 you knew
10 nothing about the Ontario horseracing industry
11 generally and the Slots at Racetrack Program in
12 particular; is that fair?

13 A. I would say I knew very little.

14 93 Q. Okay. You knew that there was a
15 horseracing industry, you knew that there was an
16 Ontario Lottery and Gaming Corporation, right?

17 A. I would say both of those are
18 accurate.

19 94 Q. And I take it you didn't know
20 anything about the Slots at Racetrack Program in
21 January 2010?

22 A. I can't recall what I knew or
23 didn't know in terms of that specific at that time.

24 95 Q. Were you familiar with who
25 regulated the horseracing industry in 2010?

1 A. I don't believe I was.

2 96 Q. At some point in 2010 did you
3 become aware of who regulated the horseracing
4 industry in Ontario?

5 A. During my time in Minister
6 Duncan's office, I would have become aware. I
7 don't know that it was in 2010 or in a subsequent
8 year.

9 97 Q. When you joined Minister Duncan's
10 office in 2010, I take it, based on what you're
11 telling me, that you didn't know anything about the
12 siteholder agreements that governed the revenue
13 sharing from slot machines at racetracks in
14 Ontario?

15 A. When I joined his office, I don't
16 believe I knew very much about that.

17 98 Q. Did you at some point become aware
18 of the existence of those siteholder agreements?

19 A. At some point I would have, yes.

20 99 Q. Did you review them?

21 A. No.

22 100 Q. Did you ever?

23 A. Not to the best of my knowledge.

24 101 Q. And I take it you also weren't
25 aware of the June 1998 Letter of Intent between the

1 Ontario Lottery Corporation, as it then was, on
2 behalf of the Government of Ontario, and various
3 other signatories governing the Slots at Racetrack
4 Program, right?

5 A. I'm not aware of it now.

6 102 Q. You've never seen it, correct?

7 A. To the best of my recollection, I
8 don't believe I have.

9 103 Q. All right. And the same is true
10 of the 2000 addendum to that Letter of Intent,
11 correct?

12 A. Not that I recall.

13 104 Q. All right. And so, I presume as
14 well, sir, that in 2010 you didn't know anything
15 about the Standardbred breeding industry. Fair?

16 A. I would have known very little
17 about that.

18 105 Q. Do you still know very little
19 about it?

20 A. That's correct.

21 106 Q. So, you didn't know in 2010 or
22 2011, I presume, what the breeding cycle for a
23 Standardbred race horse is?

24 A. I would have become aware of it at
25 some point. I don't recall when. And I actually

1 don't recall what the cycle is now. But I recall
2 that that would have been a briefing point at some
3 point provided to me; I just don't recall it.

4 107 Q. In 2010 did you ever meet with
5 representatives of the Ontario Racing Commission
6 regarding the horseracing industry in Ontario and
7 the Slots at Racetrack Program?

8 A. Not that I recall.

9 108 Q. What about in 2011?

10 A. Not that I recall.

11 109 Q. What about in 2012?

12 A. Not that I recall.

13 110 Q. What about in 2013?

14 A. Not that I recall.

15 111 Q. And I presume as well you didn't
16 ever speak with Mr. Seiling in particular about the
17 racing industry and the Slots at Racetrack Program
18 in 2010, '11, '12 or '13?

19 A. I have no recollection of speaking
20 with him. It doesn't mean I didn't; I just don't
21 recall it. He was not somebody I know or
22 interacted with.

23 112 Q. And I presume as well in 2010 you
24 did not have an understanding of the connection, if
25 any, between the Slots at Racetrack Program and the

1 ability of racetracks to offer live horseracing?

2 A. I can't recall if I knew that.

3 113 Q. And you also can't recall knowing
4 of the connection, if any, in 2011 or 2012; fair?

5 A. Can you restate the question?

6 114 Q. The connection between the Slots
7 at Racetrack Program and the ability of racetracks
8 to offer live horseracing?

9 A. I would have been aware in 2012 of
10 horseracing and betting at horse tracks. I would
11 have been aware of the Slots at Racetracks Program
12 at that time.

13 115 Q. And in 2012, when you became aware
14 of the Slots at Racetrack Program, did you become
15 aware of the connection, if any, between the
16 revenue generated from the slot machines at
17 racetracks and the ability of those racetracks to
18 offer live horseracing?

19 A. I was aware of for sure in 2012
20 the Slots at Racetrack Program. I may have been
21 aware of that in earlier years. For sure in 2012
22 though.

23 116 Q. Okay. But my question is more
24 particular. Were you aware of the connection, if
25 any, between the existence of the revenue sharing

1 from Slots at Racetrack Program with racetracks and
2 the horseracing industry, and the ability of those
3 racetracks to offer live horseracing?

4 A. I was aware of the connection of
5 the Slots at Racetracks between the slot machines
6 and the racing industry. I would not extend that
7 to the end of your question, which is the ability.

8 117 Q. So what was your awareness of the
9 connection between the Slots at Racetrack Program
10 and the horseracing industry that you had.

11 A. I was aware that a percentage of
12 the revenue generated from the slots was directed
13 towards the horseracing industry.

14 118 Q. Okay. And that was the extent of
15 your awareness?

16 A. For the most part.

17 119 Q. So it's fair to say, sir, that you
18 didn't know one way or another whether live
19 horseracing would continue if the revenue share was
20 terminated? You weren't made aware of that one way
21 or the other?

22 A. I'd be aware that there would be
23 an impact on the industry, yes.

24 120 Q. Okay. And what was your awareness
25 of the impact on the industry?

1 A. It would be a negative impact.

2 121 Q. And how much of a negative impact?

3 A. There was no degree that I recall
4 being provided to me.

5 122 Q. When did you become aware that
6 there would be a negative impact if the revenue
7 sharing was terminated?

8 A. In the course of the policy
9 discussions, it was, in my mind, naturally assumed
10 that any subsidy to the industry, once removed,
11 would have a negative impact.

12 123 Q. And you used the word "subsidy."
13 When did you form the belief that the revenue
14 sharing arrangement was a subsidy?

15 A. I don't recall the specific date.

16 124 Q. Did you ever do any analysis to
17 make that determination, or is that what you were
18 simply given to understand by the civil service?

19 A. I think that was probably an
20 opinion I formed myself based upon the structure of
21 how the revenues are shared.

22 125 Q. Tell me the basis upon which you
23 formed that opinion?

24 A. Well, there's about 350 million or
25 -- at that point directed towards the horseracing

1 industry.

2 126 Q. Is that it?

3 A. That's it.

4 127 Q. So, you determined that this was a
5 subsidy because the horseracing industry received
6 \$345 million in 2012 from the revenue sharing
7 arrangement?

8 A. If that's the number. That sounds
9 about right.

10 128 Q. All right. Did you ever have any
11 communication with Mr. Drummond?

12 A. I would have, yes.

13 129 Q. Do you recall having communication
14 with Mr. Drummond?

15 A. I recall at least two meetings I
16 was in with Mr. Drummond and Mr. Duncan.

17 130 Q. And did you ever have any
18 communication with Mr. Drummond regarding his views
19 on the Slots at Racetrack Program revenue share?

20 A. Not that I recall.

21 131 Q. Did you ever have any
22 communications with Mr. Drummond's staff regarding
23 their views on the Slots at Racetrack Program
24 revenue share?

25 A. I wasn't aware Mr. Drummond had

1 staff.

2 132 Q. You didn't think that he wrote his
3 report himself, right?

4 A. There were Ministry officials
5 assigned to assist him. I wouldn't refer to them
6 as staff.

7 133 Q. Not his staff, they were Ministry
8 staff?

9 A. That's right.

10 134 Q. Okay. I want to ask you to take a
11 look at a document from July 2010. It's Exhibit 3
12 on Mr. Stransky's examination. It's document
13 CRE55923.

14 And this is an email, Mr. Shortill,
15 that includes a number of attachments. It's an OLG
16 business plan and an Ontario Racing Commission
17 business plan.

18 You understood in 2010, obviously, that
19 the Ontario Lottery and Gaming Corporation was a
20 government agency?

21 A. I understood it was a government
22 business enterprise. I'm not sure if "agency" has
23 a specific definition, but yes.

24 135 Q. Which Ministry was responsible for
25 the OLG in 2010?

1 A. The Ministry of Finance.

2 136 Q. Right. And the OLG was one of a
3 number of very profitable government business
4 enterprises, correct?

5 A. That's correct.

6 137 Q. And another one was the LCBO?

7 A. Correct.

8 138 Q. And was the Ministry of Finance
9 responsible for the LCBO?

10 A. That's correct.

11 139 Q. Okay. What were the other
12 government business enterprises that the Ministry
13 of Finance was responsible for?

14 A. I think the only four big ones
15 were those two that you mentioned, and Hydro One
16 and OPG. Those were responsible to the Ministry of
17 Energy, but the Ministry of Finance had some
18 responsibility, given the debt borrowing of those
19 two enterprises.

20 I believe those are the only four that
21 were classified as government business enterprises.

22 140 Q. I presume when you assumed the
23 duties of Chief of Staff to the Minister of
24 Finance, part of those duties included
25 familiarizing yourself with the business of the

1 government business enterprises that were
2 responsible to the Ministry of Finance?

3 A. That was not a requirement of the
4 job but in the normal course of practice I would
5 familiarize myself with, for sure, those two
6 agencies, given the amount of revenue they directed
7 towards the province.

8 141 Q. Those two agencies being Ontario
9 Lottery and Gaming Corporation and LCBO?

10 A. And LCBO.

11 142 Q. And did you do that? Did you
12 familiarize yourself with the operations of those
13 two government business enterprises?

14 A. I'd hesitate to use the word
15 "operations." That sounds operational. But I
16 certainly familiarized myself with the policy
17 constructs within which they operated.

18 143 Q. And I presume you familiarized
19 yourself with the business lines of OLG?

20 A. That would -- no, I don't think I
21 would have.

22 144 Q. You didn't. And so, in 2010, upon
23 assuming your duties, you did not familiarize
24 yourself with the manner in which the OLG generated
25 revenue; is that fair?

1 A. I can't recall if I did in that
2 year or subsequent years. I would have a high
3 level understanding of how they generated the
4 revenue, yes.

5 145 Q. And I take it that means you had a
6 high level understanding of their business lines as
7 the means by which they generated their revenue?

8 A. I would have an understanding of
9 the revenue sources.

10 146 Q. Okay. So, you understood in 2010
11 that one of the revenue sources of the OLG was
12 something called a prescribed lottery scheme, which
13 was slot machines installed at private racetracks
14 in Ontario?

15 A. I would have been aware that some
16 of the revenue was generated from slots as well as
17 from lottery tickets and casinos, yes.

18 147 Q. Now, this Exhibit 3 on the
19 examination of Mr. Stransky with the business plans
20 of OLG and Ontario Racing Commission is in the
21 possession of Mr. Stransky, who is your direct
22 report, correct?

23 A. That's correct.

24 148 Q. And he is asking someone called
25 Steen Hume -- do you know who Steen Hume is?

1 MS. LA HOREY: Well, just a second. I
2 don't think that's -- it may be a true -- a minor
3 point, but let's be clear on the record because we
4 don't know that the reports ended up with
5 Mr. Stransky because the email says can you share
6 them with Darcy in the comms group, so we don't
7 know whether or not Mr. Stransky had them.

8 BY MR. LISUS:

9 149 Q. Do you know who Steen Hume is?

10 A. Yes, I do.

11 150 Q. Who is he?

12 A. Well, I don't know what he's doing
13 today.

14 151 Q. Who was he in 2010?

15 A. At the time he was one of the lead
16 policy people in the Ministry for the gaming file.

17 152 Q. Okay. And so, was he in your
18 office or was he a civil servant?

19 A. He was a civil servant.

20 153 Q. And Elizabeth Yeigh, what was her
21 role in 2010 and 2011?

22 A. Yes, similar. I don't recall her
23 exact title or responsibilities, but she was with
24 Steen, part of the policy group.

25 154 Q. So, here we have the business

1 plans for the OLG and the ORC. Did you review
2 these business plans in 2010?

3 A. I don't know.

4 155 Q. Is that something that you expect
5 you would have done in the course of your duties
6 for the purposes of familiarizing yourself with the
7 business plans of, in the case of OLG, an important
8 government business enterprise?

9 A. I don't know if I would have or
10 not.

11 156 Q. And you don't have any
12 recollection of doing so?

13 A. I do not have any recollection.

14 157 Q. But certainly Mr. Stransky was in
15 your office and he appears to have these business
16 plans?

17 MS. LA HOREY: No, that's not a fair --
18 you're putting an email to him --

19 MR. LISUS: Okay, I'll withdraw the
20 question.

21 BY MR. LISUS:

22 158 Q. Let me ask you this. In 2010 did
23 anyone in your office familiarize themselves with
24 the business plans of OLG?

25 A. I don't know.

1 159 Q. Okay. And then in the package is
2 also a business plan for the Ontario Racing
3 Commission 2010 to 2013. In 2010 were you familiar
4 with the business plan of the Ontario Racing
5 Commission?

6 A. I can't recall.

7 160 Q. What is your understanding of the
8 role of the Ontario Racing Commission? What was
9 your understanding of the role of the Ontario
10 Racing Commission in 2010?

11 A. I don't recall what my
12 understanding of them in 2010 was.

13 161 Q. Do you recall having an
14 understanding of the role of the ORC in 2011?

15 A. I don't recall.

16 162 Q. Do you recall having an
17 understanding of the role of the ORC in 2012?

18 A. I don't recall, but presumably I
19 would have at that point.

20 163 Q. Okay. So if you take a look at
21 page 3 of the Ontario Racing Commission business
22 plan --

23 A. That's included in this?

24 164 Q. Yes, it's after the OLG business
25 plan.

1 A. Okay.

2 165 Q. And do you see where it says
3 "Overview of the Ontario Racing Commission"?

4 A. I do.

5 166 Q. And in the box it says "Industry
6 statistics." Do you see that on the right-hand
7 side of the page?

8 A. I do.

9 167 Q. And it says, second paragraph:
10 "HLT..."
11 Do you know what HLT is an acronym for?

12 A. I do not.

13 168 Q. "... suggests that
14 approximately 40,000 full-time,
15 part-time and casual jobs come from
16 racing."

17 Were you aware of that in 2010?

18 A. No.

19 169 Q. And if you look over the page
20 under "Mandate," where the Ontario Racing
21 Commission mandate is identified, take a minute and
22 just read mandate, vision, mission and core values.

23 MS. LA HOREY: Can we just wait until I
24 get there? Which document? It is the ORC --

25 MR. LISUS: ORC business plan, page 3,

1 page 65 in the upper right-hand corner.

2 THE WITNESS: (Witness reads document).

3 BY MR. LISUS:

4 170 Q. Okay, Mr. Shortill? Were you
5 aware of the statutory mandate of the ORC under the
6 Racing Commission Act in 2010 or 2011?

7 A. I don't recall.

8 171 Q. You don't recall being aware of
9 that?

10 A. That's correct, I do not recall
11 being aware of that.

12 172 Q. Thank you. And were you aware in
13 2010 and 2011 that:

14 "The ORC reports to the
15 Ministry of Finance and assists the
16 Ministry in its mission to promote a
17 dynamic, innovative and growing
18 economy and to manage the fiscal,
19 financial and related regulatory
20 affairs of Ontario."

21 A. Sorry, your question is?

22 173 Q. Were you aware of the role that
23 the ORC played in assisting the Ministry of
24 Finance?

25 A. I was not aware of that.

1 174 Q. Okay. Were you generally aware
2 that it was the mandate of the ORC to regulate the
3 horseracing industry in Ontario?

4 A. I am aware of that today.

5 175 Q. But you weren't in 2010?

6 A. I can't recall.

7 176 Q. All right. Were you aware in
8 2010 that the --

9 MS. LA HOREY: Sorry, are we going to
10 another page?

11 MR. LISUS: Yes.

12 BY MR. LISUS:

13 177 Q. Were you aware in 2010 that the
14 Ontario Racing Commission was undertaking a review
15 of the number of race days in Ontario?

16 A. I don't recall.

17 178 Q. Do you recall becoming aware of
18 that review in 2011?

19 A. I don't recall.

20 179 Q. Okay. Do you recall in 2010 that
21 there had been a moratorium imposed by the ORC on a
22 reduction in race dates across the province?

23 A. I don't recall becoming aware of
24 that in 2010, no.

25 180 Q. And nor in 2011?

1 A. I don't know about 2011 and '12.

2 181 Q. You just don't have a
3 recollection?

4 A. Of the timing, no.

5 182 Q. So, if you take a look at page 8
6 of the deck. Page 85 in the upper right-hand
7 corner might be easier for you. It's also on the
8 screen, if that's easier, Mr. Shortill. Okay?

9 A. Sure.

10 183 Q. Do you see the first bullet --
11 well, it says "Key initiatives for 2010-2011, race
12 date model." Just read that first bullet and let
13 me know if that refreshes your memory as to whether
14 you knew the ORC in 2010 was undertaking a review
15 of race dates and racing generally in the province.

16 A. It doesn't refresh my memory, no.

17 184 Q. All right. And the bullet also
18 says that:

19 "The ORC board will be
20 presented with recommendations for
21 method of determining the number of
22 live race dates in 2011 by the fall
23 of this year," being 2010.

24 It doesn't refresh your recollection at
25 all, right?

1 A. It does not.

2 185 Q. Okay. I would like to have you
3 look at Exhibit number 4 on the examination of
4 Mr. Stransky.

5 MS. LA HOREY: Just while the witness
6 is looking at the document, it is CRE0028369,
7 CRE0028370 and following. And CRE0028371.

8 BY MR. LISUS:

9 186 Q. Now, we see that Mr. Stransky is
10 sending you two examples of a letter sent by
11 Mr. Paul Godfrey. Do you see that?

12 A. I do.

13 187 Q. And do you have any recollection
14 of the circumstances surrounding Mr. Godfrey's
15 sending this letter to various raceways or
16 racetracks?

17 A. I don't recall.

18 188 Q. You don't recall?

19 MS. LA HOREY: You need to wait until
20 Mr. Lisus finishes his question before you start
21 yours, because otherwise we will make Ms. Neeson's
22 life much harder than it needs to be.

23 BY MR. LISUS:

24 189 Q. Just looking at the letter, I take
25 it you were aware in July 2010, or you were

1 certainly aware in August 2010 when you received
2 copies of these letters, that the siteholder
3 agreements between OLG and racetracks had been
4 extended for five years?

5 A. I'll acknowledge receiving the
6 letters. I don't recall reading them or forming an
7 opinion.

8 190 Q. Okay. This issue, being the
9 extension of the siteholder agreements, wasn't
10 something that was on your radar screen in 2010; is
11 that fair?

12 A. I can't recall what was on my
13 radar screen at that time.

14 191 Q. Okay. Do you recall in 2010
15 whether or not there was any concern in your
16 Ministry regarding reporting from racetracks about
17 the manner in which they used revenue from slot
18 machines?

19 A. I do not recall having that
20 opinion in 2010.

21 192 Q. I didn't hear what you said.

22 A. Having that opinion.

23 193 Q. No, fair enough, but my question
24 was, are you aware of there being an issue in your
25 Ministry about transparency at racetracks regarding

1 their use of revenues derived from slot machines
2 installed at their tracks?

3 A. If there was an issue within the
4 Ministry along those lines and I was made aware of
5 it, I don't recall it.

6 194 Q. So, you're not able to tell me why
7 it was that Mr. Stransky was sending you two
8 examples of the letters from Mr. Godfrey to various
9 tracks; fair?

10 A. I don't know why.

11 195 Q. Do you know Kathryn Royal?

12 A. The name does not ring a bell.

13 196 Q. Brad Parlinton or Partington?

14 A. Doesn't ring a bell.

15 197 Q. Okay. What was Steve Orsini's
16 position in 2010?

17 A. He would have been an Assistant or
18 Associate Deputy Minister in the Ministry of
19 Finance. I don't recall his specific role only
20 because it changed from time to time, so I don't
21 recall what role he was in when I arrived at the
22 Ministry. It would have either been an Associate
23 or Assistant Deputy Minister role.

24 198 Q. My understanding, sir, is that in
25 July 2009 the Ministry of Finance became

1 responsible for the Ontario Racing Commission, so
2 the year before you arrived at Finance. Do you
3 know that to be the case?

4 A. I don't know.

5 199 Q. In 2010 were you aware that the
6 Ministry of Finance was responsible for the Ontario
7 Racing Commission?

8 A. I don't know if I was made aware
9 in that year.

10 200 Q. Okay. Did you become aware in
11 2011, '12 or '13 that the Ministry of Finance was
12 responsible for the Ontario Racing Commission?

13 A. I don't recall when I became aware
14 of it. I would have known it through the policy
15 discussions in 2012 for sure.

16 201 Q. Okay. And I want to show you
17 Exhibit number 5 on Mr. Stransky's examination.

18 MS. LA HOREY: Do you want these back?

19 MR. LISUS: If you wish.

20 MS. LA HOREY: Well, I don't know if
21 Mr. Milat wants them back. He's running the show.

22 BY MR. LISUS:

23 202 Q. I can't recall if you told me if
24 you knew Steen Hume or not?

25 A. I knew him at the time, yes.

1 203 Q. And what was his role?

2 A. He was in the policy branch within
3 the gaming policy.

4 204 Q. So is that Ms. Yeigh's group?

5 A. I can't remember who the director
6 of the group is. It might have been Steen.

7 205 Q. Okay. So, this is an email from
8 Steen to Mr. Stransky enclosing a deck created by
9 Finance.

10 A. Um-hmm.

11 206 Q. And if you go to the deck itself,
12 it's entitled "Update on Ontario Racing
13 Commission's Race Dates Consultation" and --

14 MS. LA HOREY: Which slide in the deck?

15 MR. LISUS: The first one.

16 THE WITNESS: Entitled "Purpose"?

17 BY MR. LISUS:

18 207 Q. Yes. So, before we look at the
19 deck, it appears from this email that this deck has
20 been given to Mr. Stransky and others, and Steen
21 says:

22 "We are briefing Steve O on
23 Monday using the attached."

24 Do you understand Steve O to be Steve
25 Orsini?

1 A. That's my understanding.

2 208 Q. And he says:

3 "As discussed, I'd likely move
4 a few slides into appendix for
5 briefing the MIN," in caps.

6 Would that be a reference to the
7 Minister, Minister Duncan?

8 A. I don't know who he's referring
9 to, but I would use that acronym when referring to
10 the Minister myself.

11 209 Q. Okay. And so, just take a look
12 through the deck, would you, Mr. Shortill. So,
13 just take a look at the deck.

14 MS. LA HOREY: While he's reviewing it,
15 the email which is the first document, Exhibit 5,
16 is CRE0017331 and the deck is CRE0017332.

17 MR. LISUS: Thank you for keeping me
18 honest on these numbers.

19 MS. LA HOREY: I'm just mindful of
20 getting in trouble with my staff and my colleagues
21 if I don't. I just do what I'm told as well.

22 BY MR. LISUS:

23 210 Q. So you've looked at the deck?

24 A. I've skimmed it.

25 211 Q. Okay. What I wanted to ask you is

1 what you knew about the subject matter of this deck
2 that the civil service -- is that the right term to
3 use?

4 A. It is.

5 212 Q. The civil service are giving to
6 your office. Mr. Stransky is in your office,
7 right?

8 A. Yes.

9 213 Q. Okay. So, the deck slide on page
10 6 talks about a need for action and a moratorium.
11 Does that assist you in remembering whether you
12 were aware in 2010 of a moratorium?

13 A. It does not assist me in
14 remembering that.

15 214 Q. Okay. And if you take a look at
16 page 10 of the deck, there is a discussion of
17 defined purse structures.

18 A. I see it.

19 215 Q. And did you understand the role
20 that purses played in horse supply to racetracks?

21 A. I don't believe I did.

22 216 Q. And I presume you weren't
23 briefed -- you don't believe you did because you
24 weren't briefed on it?

25 A. I don't believe I did because I

1 don't today understand it.

2 217 Q. Okay.

3 A. That doesn't mean I wasn't briefed
4 on it.

5 218 Q. Fair enough, but you don't have a
6 recollection of being briefed and having an
7 understanding of the relationship between purse
8 structures and the supply of horses to racetracks?

9 A. That's correct, I do not remember
10 being briefed on it.

11 219 Q. All right. And were you aware in
12 2010 and 2011, Mr. Shortill, of the connection, if
13 any, between the number of live racing days and the
14 supply of horses to racetracks?

15 A. I don't recall knowing that.

16 220 Q. And you don't know that today
17 either?

18 A. No.

19 221 Q. You're going to have to keep your
20 voice up, sir.

21 A. I'm sorry.

22 222 Q. Would you take a look at page 16
23 of the deck under "Draft Key Messages."

24 A. I see it.

25 223 Q. There's five key messages on the

1 deck. Do you recall being aware of any of those
2 key messages in 2010?

3 A. I do not recall.

4 224 Q. And if you look at page 18 of the
5 deck, the slide "Industry Snapshot," I take it as
6 well, sir, from your prior answers, that you were
7 not aware or do not recall being aware of the
8 number of approved race days in 2010?

9 A. I do not recall.

10 225 Q. Did you, in 2010 or 2011, have any
11 discussion with Minister Duncan about these key
12 messages that are on page 16 of the deck at Exhibit
13 5 on Mr. Stransky's examination?

14 A. I do not recall having a
15 discussion with him on that.

16 226 Q. And I presume you also do not
17 recall having any discussion with him about those
18 key messages in 2011 or '12?

19 A. I do not recall.

20 227 Q. And I presume as well you don't
21 recall ever having a discussion with Mr. Duncan at
22 any time about the number of live racing days in
23 Ontario and their connection, if any, to the supply
24 of horses?

25 A. I do not recall that.

1 MR. LISUS: I'm content, Ms. La Horey,
2 just to have the record refer to me examining Mr.
3 Shortill on Exhibit 6 to Mr. Stransky and we know
4 what document we're talking about.

5 MS. LA HOREY: Sure.

6 MR. LISUS: Excuse me, Exhibit 5. I am
7 about to do Exhibit 6.

8 BY MR. LISUS:

9 228 Q. I want to show you Exhibit 6, Mr.
10 Shortill.

11 MS. LA HOREY: Although I think we'll
12 find later down the line it will be useful to just
13 refer to the document numbers on the record as
14 well.

15 MR. LISUS: Right.

16 BY MR. LISUS:

17 229 Q. I'm showing you Exhibit 6 on
18 Mr. Stransky's examination, and this is an email
19 from Brad Partington to Ms. Yeigh and Gina Stephens
20 and Salvatore Cristani, and what's attached to this
21 email sequence is a shorter presentation for the
22 MIN, M-I-N, again.

23 So just take a look at the email.

24 MS. LA HOREY: So the email is
25 CRE0008996 and then the deck that is attached is

1 CRE0008997.

2 MR. LISUS: Thank you.

3 BY MR. LISUS:

4 230 Q. This appears to be a condensed
5 version and I'm trying to understand the process,
6 Mr. Shortill. If I look at the deck attached, it
7 is entitled "Minister's Briefing, Gaming Policy
8 Branch, September 2010." Right?

9 A. That's correct.

10 231 Q. And I presume these are speaking
11 notes to guide someone in their presentation to the
12 Minister?

13 A. It appears to be a deck to brief
14 the Minister on.

15 232 Q. All right. And so, how would it
16 work? Would the Minister himself get the deck and
17 flip through it, or would the Minister's Chief of
18 Staff or the Minister's designate get the deck,
19 familiarize themselves with it and then just talk
20 to the Minister?

21 A. Those are all possible options,
22 yes.

23 233 Q. Okay. So sometimes the Minister
24 would actually get the deck himself or herself?

25 A. Many times, yes.

1 234 Q. All right. And in the course of
2 the three and a bit years that you worked with
3 Minister Duncan, what was his practice? Did he
4 often get the deck and review it himself?

5 A. Many times he did, yes.

6 235 Q. And do you know if he reviewed
7 decks himself on the horseracing file?

8 A. I do not know.

9 236 Q. But certainly you don't recall
10 discussing these decks, the decks at Exhibit 5 and
11 Exhibit 6, with Minister Duncan?

12 A. I do not recall.

13 237 Q. And if we take a look at page 4 of
14 the deck --

15 A. Titled "Key features"?

16 238 Q. Correct, "Key features of the
17 updated race date approach." I take it that you
18 still don't recall having any awareness in 2010 or
19 2011 of ORC undertaking a review to come up with an
20 updated race date approach that would apply across
21 the province to live horseracing, correct?

22 A. That's correct, I don't recall
23 that.

24 239 Q. And you therefore don't recall one
25 of the purposes of that review being to standardize

1 racing conditions and to coordinate horse supply
2 management?

3 A. That's correct, I do not recall.

4 240 Q. Was Minister Duncan in 2010
5 knowledgeable about the horseracing industry?

6 A. I can't speak to his level of
7 knowledge of the industry at that point.

8 241 Q. You don't know whether he was or
9 was not?

10 A. That's correct, I do not know.

11 242 Q. Did he become knowledgeable about
12 the horseracing industry subsequently and while you
13 were his Chief of Staff?

14 A. I can't speak to his level of
15 knowledge.

16 243 Q. I'm taking from that, sir, that at
17 no time while you were his Chief of Staff did
18 Minister Duncan discuss with you issues about the
19 horseracing industry, and in particular the revenue
20 -- the sharing of revenue with the industry from
21 the Slots at Racetrack Program?

22 A. We did speak about the Slots at
23 Racetrack Program, yes, we did.

24 244 Q. All right. And when did you speak
25 with -- when did you start speaking with him about

1 the Slots at Racetrack Program?

2 A. I can't recall when. It would
3 have been around the time that we were starting to
4 discuss policy options.

5 245 Q. And when do you recall that being?

6 A. That would have been late 2011,
7 early 2012.

8 246 Q. That's helpful, thank you. So to
9 try and truncate this, as far as you can recollect,
10 the first time that you began to have any
11 discussions with Mr. Duncan about the revenue
12 sharing with the horseracing industry was in late
13 2011, early 2012?

14 A. That's when I would have been --

15 247 Q. That's when you were?

16 A. -- discussing that with Mr.
17 Duncan. That doesn't mean others weren't
18 discussing it at other times.

19 248 Q. I understand, but that is when you
20 believe you began discussing it with Mr. Duncan?

21 A. That's correct.

22 249 Q. And tell me what you recollect
23 about how these discussions arose?

24 A. Well, they arose in the context of
25 the gaming modernization package.

1 250 Q. And when you say the "gaming
2 modernization package," what are you referring to?

3 A. I am referring to the package of
4 policies that Minister Duncan eventually brought
5 forward to Cabinet and embedded in the budget
6 regarding the modernization of the gaming structure
7 in Ontario.

8 251 Q. And did you work with anyone at
9 OLG regarding the development of those package of
10 policies, as you describe them?

11 A. Primarily I would have been
12 working with the chair, the CEO, and there were two
13 other individuals that were in senior roles at OLG
14 that were part of the policy discussions.

15 252 Q. Now, you say "would have been."
16 Do you have a recollection of working with the
17 chair and CEO regarding what you describe as the
18 policy recommendations or discussions about revenue
19 sharing in the horseracing industry?

20 A. Yes, I do.

21 253 Q. And who were you speaking with?

22 A. Well, it would have been the
23 chair, Paul Godfrey, CEO Rod Phillips.

24 254 Q. Right.

25 A. There was a third individual who

1 worked for Mr. Godfrey, whose name escapes me, and
2 Beth Webster, who was also a senior official at
3 OLG.

4 255 Q. All right. So, when we look at
5 Exhibit 6 and the deck attached to it, you don't
6 have any recollection of any -- of seeing the
7 information in this deck or being aware of it in
8 2010?

9 A. That's the --

10 256 Q. Exhibit 6.

11 A. Yes, the deck I'm looking at right
12 now, "Update on Ontario Racing Commission's Race
13 Date Consultation"?

14 257 Q. Yes.

15 A. No, I don't recall seeing this.

16 258 Q. Okay. But can I assume that,
17 although you don't recollect being aware of the
18 content of this deck, that you were aware, as the
19 Chief of Staff of the Minister responsible for the
20 Ministry that oversaw the Ontario Racing
21 Commission, that the Ontario Racing Commission was
22 undertaking a review of live racing in Ontario in
23 2010?

24 A. No, you shouldn't assume that I
25 knew that.

1 259 Q. Okay.

2 MS. LA HOREY: Can we take a short
3 comfort break?

4 MR. LISUS: Yes.

5 -- RECESS AT 11:10 --

6 -- UPON RESUMING AT 11:18 --

7 BY MR. LISUS:

8 260 Q. I need you to help me here, Mr.
9 Shortill, about how the Minister's Office works.
10 Why is the Minister being briefed on these issues
11 in 2010?

12 A. Somebody would have suggested that
13 he be briefed.

14 261 Q. All right. But you can't shed any
15 light on that?

16 A. It could have come from any number
17 of sources, the Minister, the Ministry, my office,
18 myself.

19 262 Q. So he's the only one who can tell
20 me why he's being briefed.

21 A. I don't know what he can tell you.

22 263 Q. No, no, but I'm just trying to
23 understand the structure here. You're his Chief of
24 Staff, right?

25 A. That's correct.

1 264 Q. So you run his staff?

2 A. Correct.

3 265 Q. Mr. Stransky is your direct
4 report?

5 A. Correct.

6 266 Q. Someone in Finance is putting a
7 fair bit of care into preparing these Minister's
8 briefing decks and I'm just trying to understand
9 what's going on that that's occurring.

10 I understand you can't tell me
11 specifically, but I want you to tell me the
12 process. When you look at the Minister's Office
13 preparing -- excuse me, receiving briefing decks
14 with, you know, three or four Finance people
15 working on them, and ORC, what does that tell you
16 with the benefit of your experience as Chief of
17 Staff?

18 A. It tells me that they were
19 preparing a briefing deck for the Minister.

20 267 Q. What's done with these briefing
21 decks, by the way? We obviously got them in the
22 course of this litigation so they're kept
23 somewhere, but when your office, Mr. Stransky of
24 your office receives these, what does he do with
25 them? What's the protocol?

1 A. There is no formal protocol so I
2 don't know what he would have done with them.

3 268 Q. They're obviously retained
4 somewhere?

5 A. They're retained for certain in
6 the Ministry.

7 269 Q. Okay.

8 A. By the civil service.

9 270 Q. All right. Can I infer from the
10 product that we are seeing here, the work product
11 that we're seeing here, that the ORC is keeping its
12 Ministry up-to-date with the review that it is
13 undertaking?

14 A. You would have to ask the ORC
15 that.

16 271 Q. Well, I have trouble understanding
17 that. These decks are being sent to your office
18 for briefing your Minister. My read of that fact,
19 Mr. Shortill, is that the ORC is doing that to keep
20 the Ministry that it reports to updated as to what
21 it is doing. Is that a fair reading or you can't
22 say?

23 A. I think the reading is, as I see
24 it, the Ministry officials were preparing a
25 briefing deck for the Minister. I'm not going to

1 ascribe motive or source to that.

2 272 Q. But they don't waste the
3 Minister's time? They don't waste the Minister's
4 time, right?

5 A. It would have been my job to
6 ensure that they don't waste the Minister's time.

7 273 Q. Okay. Now, I want to have you
8 look at Exhibit 7 on Mr. Stransky's examination.
9 This is CRE320557, is the email, and the deck
10 attached to it is 320558.

11 A. (Witness reviews document).

12 274 Q. Okay. So Exhibit 7 to
13 Mr. Stransky's examination is a deck provided from
14 the ORC to Mr. Stransky with a copy to, among
15 others, Mr. Seiling, and it's entitled, the deck is
16 entitled "A Revised Model for Horseracing in
17 Ontario."

18 You have now reviewed that deck?

19 A. Pardon me?

20 275 Q. You have now reviewed that deck?

21 A. I've skimmed through it.

22 276 Q. All right. Do you recall your
23 office receiving this deck for the purposes of a
24 briefing of the Minister?

25 A. I do not recall.

1 277 Q. And let me ask you about the
2 second page of the deck, where beneath the slide
3 about half-way down the deck says:

4 "Horse people, however,
5 continue to rely on the live race
6 date as the only way to compete and
7 earn purse money (their revenue and
8 cash flow)."

9 Do you see that?

10 A. I do see that.

11 278 Q. Now, were you aware, sir, that in
12 2010 that horse people relied on live race dates as
13 the only way to earn purse money which was their
14 revenue and cash flow?

15 A. I do not recall knowing that in
16 2010.

17 279 Q. I take it as well you didn't
18 really understand the connection between live race
19 dates and horse people revenue and cash flow?

20 A. I do not recall knowing that
21 connection.

22 280 Q. And if I refer you back to the
23 deck at Exhibit 5, for instance, on page 3 of that
24 deck, I'll just give you the quote from it, it
25 says:

1 "The standardbred horseracing
2 industry is sustained by revenue
3 from the Slots at Racetrack
4 Program."

5 I take it you weren't aware that the
6 Standardbred horseracing industry was sustained by
7 revenue from the Slots at Racetrack Program in
8 2010?

9 A. I was not aware of that -- I don't
10 recall being aware of that in 2010. I was
11 certainly aware of it at some point thereafter.

12 281 Q. And were you aware in late 2011
13 and early 2012 that the Standardbred horseracing
14 industry was sustained by revenue from the Slots at
15 Racetrack Program?

16 A. I would have recalled knowing that
17 the horseracing industry was. I would not have
18 used that specific reference to Standardbred.

19 282 Q. Okay.

20 A. That was a level of detail I
21 certainly wasn't familiar with.

22 283 Q. And is it fair to say, sir, that
23 you understood the horseracing industry to mean
24 largely the racetracks?

25 A. Well, the racetracks and the

1 horses that raced on the tracks, yes.

2 284 Q. And the breeders that bred the
3 horses?

4 A. I understand that today. I don't
5 know if I understood that then.

6 285 Q. Fair enough. And when you say
7 "then," you mean 2010, '11 and '12?

8 A. Correct.

9 286 Q. Are you aware as to whether or not
10 Mr. Duncan understood the reliance of the
11 Standardbred breeding sector on purses earned from
12 revenue at racetracks generated from slot machines?

13 A. I do not know if he understood
14 that.

15 287 Q. At any point?

16 A. At any point.

17 288 Q. And because you didn't know it,
18 you weren't able to brief him on that, right?

19 A. I did not have a conversation with
20 him at that level specific, no.

21 289 Q. And you also, as you explained to
22 me a minute ago, weren't aware of the connection,
23 so you couldn't have, correct?

24 A. Correct.

25 290 Q. And you don't know if anyone else

1 did?

2 A. I don't know specifically, no.

3 291 Q. We were looking at Exhibit 7 to
4 Mr. Stransky's examination, and if you look, sir,
5 at the second page of the deck, page number 3, in
6 2010 and 2011 were you aware that the ORC collected
7 the racetrack's annual audited financial statements
8 and had since the inception of the slot program?

9 A. I do not recall if I knew that at
10 that time.

11 292 Q. Okay. And at that time, I'm
12 referring to 2010, '11 and '12.

13 A. Correct.

14 293 Q. Right. Jump out of sequence here
15 for a minute. We've heard evidence in the course
16 of this case that in early 2012 Mr. Seiling had
17 some discussions with Mr. Stransky after the
18 decision to terminate revenue share with the
19 horseracing industry was made in February 2012.
20 Okay?

21 Were you aware of any discussions
22 between Mr. Seiling and Mr. Stransky after the
23 decision in February 2012 to terminate revenue
24 sharing was made?

25 A. I don't recall being aware of

1 that.

2 294 Q. Okay. You don't recall
3 Mr. Stransky telling you that he had spoken with
4 Mr. Seiling and Mr. Seiling had told him that the
5 decision was wrong, or the information it was based
6 on was wrong, nothing like that?

7 A. I don't recall that.

8 295 Q. Okay. And do you think that that
9 is something you would recall if it occurred?

10 A. I can't say for certain.

11 296 Q. You didn't have any discussions
12 with Mr. Seiling?

13 A. I did not, no.

14 297 Q. At any time?

15 A. Not that I recall.

16 298 Q. Okay. And so, the reason I was
17 asking you about whether you were aware in 2010,
18 '11 or '12 that the ORC had collected the
19 racetracks' annual audited financial statements
20 since before the inception of the slot program is
21 to confirm that you weren't aware that the ORC had
22 all of the financial statements of the racetracks?

23 A. Yeah, I was not aware of that.

24 299 Q. And I take it you also therefore
25 weren't aware that in 2007 and 2008 the ORC had

1 implemented measures that led to the collection of
2 standardized financial statements for horse
3 people's purse accounts and the financial
4 statements for each operator?

5 A. I do not recall being aware of
6 that.

7 300 Q. At some point, sir, in your tenure
8 as Chief of Staff in Mr. Duncan's office, I presume
9 you did become aware that the ORC was the entity
10 that knew the most about live horseracing in
11 Ontario; is that fair?

12 A. I won't speculate on who knew the
13 most about the horseracing industry.

14 301 Q. All right. I'm not asking you to
15 speculate about who knew the most. Let me
16 rephrase.

17 You became aware that the ORC knew a
18 lot about the horseracing industry in Ontario?

19 A. I won't ascribe an opinion as to
20 their level of knowledge. I was aware that they
21 were the regulator of the horseracing industry.

22 302 Q. Okay. And were you aware of what
23 their responsibilities as regulator were?

24 A. I wasn't aware of their specific
25 responsibilities other than in my mind I understood

1 them to be the regulator.

2 303 Q. All right. And I understand you
3 to have told me that you weren't aware in 2010 or
4 '11 of the information that is contained in these
5 decks that we've been reviewing?

6 A. That's correct. I don't recall
7 knowing this information.

8 304 Q. Okay. So, let me ask you this.
9 If you go to the sixth page of the deck, "Revised
10 model for racing," stakeholders, were you aware
11 that breeders were -- I presume you were aware that
12 breeders were a stakeholder in the racing industry
13 in Ontario?

14 A. No, you shouldn't presume that. I
15 don't believe I was aware.

16 305 Q. Okay. Well, I presume you were
17 aware that the breeders supplied the horses that
18 ran around the track?

19 A. I don't recall ever thinking that
20 deep into the source of the horseracing industry.

21 306 Q. Okay. And so, when you see terms
22 like horse supply, that didn't suggest to you that
23 the breeders were the suppliers of horses?

24 A. Having seen the term, I don't
25 recall ever thinking about certainly the origin of

1 that, no.

2 307 Q. If you continue on with the
3 package that's attached to the email, you see there
4 is a Q and A?

5 MS. LA HOREY: While the witness is
6 looking at it, for the record it's CRE0320559.

7 BY MR. LISUS:

8 308 Q. Thank you.

9 A. Yes, I see the section.

10 309 Q. And at the bottom left-hand corner
11 of the page it says "Q and A for Meeting with
12 Minister."

13 Do you recall there being a meeting
14 with Minister Duncan and the ORC to discuss the
15 review and proposals that the ORC was advancing?

16 A. I do not recall that meeting.

17 310 Q. Okay. I want to ask you about
18 Exhibit 8, please, to Mr. Stransky's examination.

19 MS. LA HOREY: While the witness is
20 looking at it, is it convenient, Mr. Lisus, if I
21 put the numbers into the record if that's helpful
22 to you?

23 MR. LISUS: I just keep forgetting.

24 MS. LA HOREY: That's okay. So that
25 will be my job while the witness is looking at the

1 document. So, there is an email which is
2 CRE0057322, and then the deck attached is
3 CRE0057323.

4 BY MR. LISUS:

5 311 Q. And, sir, the deck that's attached
6 appears to be a continued evolution of this deck,
7 but we're now in September 2010, and if you go to
8 13, again we see this reference in the first
9 bullet:

10 "The standardbred horseracing
11 industry is sustained by revenue
12 from the Slots at Racetrack
13 Program."

14 I take it that doesn't assist you in
15 remembering whether you were aware of that fact in
16 2010 or 2011?

17 A. I don't recall being aware of it
18 -- when I became aware of that.

19 312 Q. You did at some point?

20 A. At some point I understood that
21 the Slots at Racetrack Program subsidized the
22 horseracing industry, yes.

23 313 Q. Am I correct that before an agency
24 that reports to the Ministry of Finance releases a
25 news release about a review it's undertaking and

1 changes it's going to make, the Ministry of Finance
2 has to approve it?

3 A. Not in all cases. In some cases
4 where the agency is a regulatory body, for instance
5 the Ontario Securities Commission, it would be
6 highly unlikely for the Ministry to even see or
7 approve such a release.

8 314 Q. Okay.

9 A. It would be standard practice for
10 organizations like OLG or LCBO on policy matters,
11 yes.

12 315 Q. To have a release reviewed by the
13 Ministry?

14 A. Correct.

15 316 Q. All right. So, if we take a look
16 at Exhibit 9 on the examination of Mr. Stransky,
17 75818 and 75819, 75818 is an email sequence
18 involving Mr. Stransky and others, and just read
19 from the bottom up quickly to get a sense of it.

20 A. (Witness reads document).

21 317 Q. We see from the subject matter of
22 the email, beginning with an email from
23 Mr. Stransky on September 9, 2010, "NR for
24 September 10," I presume that means news release
25 for September 10?

1 A. That's how I would understand
2 that, yes.

3 318 Q. And the news release appears to
4 have been passed around through various people
5 regarding 2010 race date framework. Do you see
6 that?

7 A. I do.

8 319 Q. And then over the page is the news
9 release?

10 A. I see it.

11 320 Q. And take a minute and read it.

12 A. (Witness reads document).

13 321 Q. And what it appears to be doing is
14 releasing or informing the public about the ORC's
15 new framework to support live horseracing in
16 Ontario. Do you see that?

17 A. I do.

18 322 Q. And it says at the beginning -- at
19 the end of the second paragraph:

20 "Our first order of business
21 will be to apply the framework to
22 the standardbred industry."

23 And it goes on to say:

24 "The framework includes key
25 features to support and sustain live

1 racing in Ontario into the future,
2 including..."

3 And it has three bullets. Do you see
4 that?

5 A. I do.

6 323 Q. And it also talks about, in the
7 next paragraph, second line:

8 "Long-term implementation of
9 the framework will continue to be an
10 evolving process based on industry
11 engagement and collaboration."

12 And Mr. Seiling is quoted as saying:

13 "To all stakeholders involved,
14 this commitment to live horseracing
15 means they can see themselves
16 re-investing, building, and growing
17 a racing industry for the future."

18 Do you see that?

19 A. I do.

20 324 Q. Now, in the fall of 2010, sir, I
21 take it we can agree that the industry is told by
22 the ORC, with knowledge of the Ministry of Finance,
23 that there's going to be a new framework applied to
24 the Standardbred industry for the purposes of
25 ensuring a commitment to live horseracing into the

1 future?

2 A. I acknowledge that.

3 325 Q. And does that accord with your
4 recollection of events in the fall of 2010 with
5 respect to live horseracing?

6 A. I don't have any recollection of
7 these events.

8 326 Q. Did I ask you already if you were
9 aware of what the breeding cycle for a Standardbred
10 race horse is?

11 MS. LA HOREY: You did.

12 BY MR. LISUS:

13 327 Q. And I got an "I don't know,"
14 correct?

15 A. That's right.

16 328 Q. And again, sir, no recollection of
17 this communication to the industry in the fall of
18 2010?

19 A. That's correct, I have no
20 recollection of this.

21 329 Q. Exhibit 10 on the examination of
22 Mr. Stransky, CRE56726. You've conditioned me now,
23 Ms. La Horey.

24 MS. LA HOREY: Excellent.

25 MR. LISUS: It took a while. 56727.

1 MS. LA HOREY: Young dogs can learn new
2 tricks.

3 BY MR. LISUS:

4 330 Q. Can you help me understand what
5 this email and the deck attached to it is?
6 Mr. Stransky didn't remember much about it.

7 It appears to be about -- it appears to
8 be Finance talking about the ORC, the agency it is
9 responsible for.

10 A. (Witness reviews document).

11 331 Q. And as you flip through it, Mr.
12 Shortill, it might be of assistance to you if you
13 look at page 9 which talks about next steps.

14 A. I see that.

15 332 Q. Can you tell me what this was
16 about, what the purpose of this deck was?

17 A. I have no knowledge of this, but I
18 would refer you to the page that says "Purpose."

19 333 Q. All right. And all you can tell
20 me is what are those words, right?

21 A. I have no other additional
22 information to provide you.

23 334 Q. There is a reference on page 9:
24 "In early 2011, updated ORC MOU
25 will be scheduled for Management

1 Board of Cabinet review/approval.

2 Following Management Board
3 Cabinet approval, ORC chair and
4 Minister to jointly sign the updated
5 ORC MOU."

6 Do you see that?

7 A. I do.

8 335 Q. Now, are you aware that a
9 Memorandum of Understanding in 2011 between the
10 Ministry of Finance and the ORC was signed by
11 Minister Duncan and Mr. Seiling?

12 A. I don't recall.

13 336 Q. You don't recall having any
14 involvement in that MOU?

15 A. I don't recall having any
16 involvement. I don't recall the MOU was signed. I
17 just don't recall.

18 337 Q. I'll show it to you in a minute
19 and see if it helps you remember. Before I do
20 that, I want to ask you about number 11 on the
21 examination of Mr. Stransky, CRE76151 and 152.

22 What was Barry Goodwin's job in 2010
23 and 2011?

24 A. At some point he became the
25 Assistant Deputy Minister responsible for gaming

1 and alcohol. There may have been other
2 responsibilities under him. I believe that was the
3 role he was in in 2010.

4 338 Q. Okay.

5 A. But I can't recall if he was
6 promoted into that role or not.

7 339 Q. Okay. Sir, if you look at page 4
8 of that deck, the third bullet, I want to see if
9 this at all refreshes your recollection.

10 This is now December of 2010 and it
11 says:

12 "During the past twelve months,
13 ORC has consulted closely with the
14 industry to develop a new approach
15 to the allocation of race dates.
16 These consultations have resulted in
17 the 2011 Ontario racing program, a
18 provincially focused approach to
19 allocating race dates that seeks to
20 align customer demand with horse
21 supply and ultimately aims to
22 sustain the racing industry in
23 Ontario into the future."

24 Do you see that?

25 A. I do see it.

1 340 Q. And does that assist your
2 recollection as to what the ORC was doing in 2010
3 and reporting to the Ministry on?

4 A. No, it does not assist my
5 recollection.

6 341 Q. And if we look at page 8, "Key
7 messages," I've seen that used before. What is the
8 purpose of a key messages book -- excuse me, box.
9 A key message to who, for who? What's the purpose
10 of this construct of a key message box in a deck?

11 A. Sure. The key messages box is
12 intended to articulate the government's position
13 that can be used with any external audience,
14 whether it's a stakeholder, the media, in the
15 legislature.

16 342 Q. Okay. Thank you. So that's how
17 I'm to understand the key messages in the box on
18 page 8 of the deck in Exhibit 11, right?

19 A. That's correct. I don't know if
20 this is intended to be a confidential deck, but a
21 key message slide within a deck that has
22 confidential policies directs the reader to
23 understand that those are the messages that can be
24 shared externally.

25 343 Q. Got it. I can take that back, 10

1 and 11. Thank you.

2 Exhibit B for identification on
3 Mr. Stransky's examination, it's the MOU between
4 the Minister of Finance and the ORC.

5 A. Thank you. (Witness reviews
6 document).

7 344 Q. Okay? Is today, sir, the first
8 time you became aware of the existence of a 2011
9 MOU between the Minister of Finance and the Ontario
10 Racing Commission?

11 A. I don't know that it is.

12 345 Q. But you have no recollection of
13 this document?

14 A. I do not.

15 346 Q. And you have no recollection of
16 being aware of this document in 2011, '12 or '13?

17 A. That's correct.

18 347 Q. So you certainly weren't involved
19 in its composition on behalf of the Minister of
20 Finance?

21 A. I do not recall being involved in
22 its composition or whether or not I had any input
23 into it.

24 348 Q. Okay. He obviously signed it?

25 A. Indeed.

1 349 Q. Is that the kind of thing that
2 would occur without his Chief of Staff knowing?

3 A. It's possible, yes.

4 350 Q. Because he would just deal
5 directly with the civil service in the Ministry?

6 A. Not in isolation, no. He would
7 have had political staff involved.

8 351 Q. That's what I'm trying to
9 understand. But it wasn't you, as far as you can
10 recollect?

11 A. That's correct. And I should say
12 that it would have been my practice that political
13 staff would have been involved in the discussion
14 and giving advice prior to him signing. That
15 doesn't mean it happened in every case but that
16 would have been my standard practice.

17 352 Q. Right. But this is signed during
18 your tenure? He signs it July 10, 2011.

19 A. Yes.

20 MS. LA HOREY: The Minister signs it
21 August 10th, 2011 and Mr. Seiling signs it on July
22 7th, 2011.

23 MR. LISUS: That's August. I read that
24 as July.

25 MS. LA HOREY: Oh.

1 MR. LISUS: I don't know. It's one or
2 the other.

3 THE WITNESS: I don't know.

4 MS. LA HOREY: Hmmm, looked like August
5 to me but I could be wrong.

6 BY MR. LISUS:

7 353 Q. But summer of 2011?

8 MS. LA HOREY: We can agree on that.

9 BY MR. LISUS:

10 354 Q. So, if I asked you to reflect back
11 on the way your office worked when you were the
12 chief in the summer of 2011, do you believe -- or
13 was it your practice that someone from the
14 political side would have advised the Minister
15 before he signed off on a document like this?

16 A. Yes, that would have been my
17 standard practice.

18 355 Q. And you don't believe it was you.
19 Who else -- it could have been one of your staff?

20 A. It would have been -- the standard
21 practice would be the policy advisor for the
22 particular file, so in this case Mr. Stransky
23 should be the one advising him on whether or not to
24 sign or not sign an MOU like this. That's not to
25 say that that's how it occurred, but that's the

1 level of standard that I would have expected.

2 356 Q. All right. And was it the
3 practice of the Minister to engage his policy staff
4 before signing this, or would he make a judgment as
5 to whether or not he required policy advice?

6 A. He was free to make any judgment
7 he wanted. My advice would have been for him to
8 listen to his policy advisor, but he was the
9 Minister.

10 357 Q. Okay. So, if we look at article
11 3.4, for instance, where it says in describing the
12 mandate of the commission, it says:

13 "The commission will provide
14 economic oversight of the
15 horseracing industry and set out a
16 policy framework to encourage value
17 for the government's investment, and
18 support the sport of horseracing and
19 the sustainability of the industry
20 in the long-term."

21 Do you recall, sir, that being the
22 mandate of the Ontario Racing Commission in 2011?

23 A. I do not recall that.

24 358 Q. Okay. And you don't recall any of
25 the elements of the Commission's mandate as

1 identified in the sub-paragraphs of article 3.4?

2 A. I don't recall being aware of
3 this.

4 359 Q. Do you recall ever discussing with
5 Minister Duncan in 2011, '12 or '13 the mandate of
6 the Commission as reflected in this Memorandum of
7 Understanding?

8 A. I do not recall having such a
9 discussion with him about that.

10 360 Q. And if you look at article 6 for
11 the roles and responsibilities of the Minister, do
12 you recall the Minister undertaking, pursuant to
13 this MOU:

14 "Informing and consulting with
15 the chair, as appropriate, on the
16 government's priorities and broad
17 policy directions for the
18 Commission."

19 A. I do not recall if he did or if
20 any of his staff did, no.

21 361 Q. Are you aware, sir, of the
22 circumstances in which the government's February
23 2012 decision regarding revenue sharing at Slots at
24 Racetrack Program was communicated to Mr. Seiling
25 in his capacity as chair of the ORC?

1 A. I do not recall the manner in
2 which it was communicated, no.

3 362 Q. You do, however, recall that you
4 did not communicate the decision to him?

5 A. I do not believe I did, no.

6 363 Q. Does it refresh your recollection
7 if I tell you that the evidence from Mr. Seiling
8 has been that Mr. Stransky telephoned him and
9 communicated the decision to him?

10 A. I don't recall that, but that
11 feels like the way it should have occurred.

12 364 Q. All right. And why does it feel
13 like the way it should have occurred?

14 A. It would have been practice to
15 inform relevant internal stakeholders of policy
16 decisions. It's generally not the Minister who
17 does that; it's generally either the Minister's
18 staff or senior Ministry officials.

19 365 Q. And was Mr. Stransky the senior
20 Ministry official in February 2012?

21 A. He was the political advisor.

22 366 Q. Pardon?

23 A. He was the Minister's advisor,
24 political staff.

25 367 Q. So does he qualify for the term

1 that you used, a senior Ministry official?

2 A. No, a senior Ministry official is
3 a civil servant.

4 368 Q. Okay. That's what I'm asking you.
5 The evidence to date from Mr. Seiling has been that
6 he learned of this, of the decision to terminate
7 the revenue share with the horseracing industry
8 from Slots at Racetrack Program in a telephone call
9 from Mr. Stransky.

10 I am understanding you to say that that
11 doesn't reflect the standard procedure because --

12 A. No, it entirely does reflect the
13 standard procedure. What I said was either
14 somebody from the Minister's Office, which
15 Mr. Stransky was, or a senior Ministry official
16 would communicate such a policy decision.

17 369 Q. I see. Mr. Stransky was not a
18 senior Ministry official, correct?

19 A. No, he was a political advisor.

20 370 Q. And he was not a senior political
21 advisor?

22 A. I would refer to him as senior,
23 certainly.

24 371 Q. So he was a senior political
25 advisor?

1 A. That's how I would refer to him.

2 372 Q. Was he the most senior --

3 MS. LA HOREY: Sorry, gentlemen, you're
4 talking over each other.

5 BY MR. LISUS:

6 373 Q. Was he the most senior after you?

7 A. There was a director of policy in
8 the office.

9 374 Q. Who was that?

10 A. His name, it was Alex Mazer but I
11 don't know when Alex left, and then it was Jen
12 Rook. I can't recall who was in the role at that
13 time.

14 375 Q. All right. I'm going to show you
15 Exhibit 12 on Mr. Stransky's examination which is
16 an email, 105060, and 105062 and 61 attached.

17 While we're off the record, why don't
18 you review that.

19 -- OFF THE RECORD --

20 BY MR. LISUS:

21 376 Q. This is Exhibit 12 and it's
22 Mr. Stransky receiving from Mr. Serpe, S-E-R-P-E,
23 at the OLG, terms of reference, and he forwards it
24 on to Ms. Yeigh. Do you see that?

25 A. I do.

1 377 Q. Now, in early 2011 did you become
2 aware of a strategic business review at the OLG?

3 A. I don't recall if that was part of
4 the gaming modernization or not, so no, I don't
5 believe I was aware of it.

6 378 Q. At some point did you become aware
7 of the OLG undertaking a review of its operations?

8 A. I believe so. I connected that in
9 my memory with the gaming modernization, but I
10 don't know if the two were linked. I can't recall.

11 379 Q. Okay. And I want to show you
12 CRE105085. This is --

13 MS. LA HOREY: It's part of Exhibit 15
14 to Mr. Stransky's examination.

15 MR. LISUS: Yes, thank you, it is.

16 BY MR. LISUS:

17 380 Q. Exhibit 13 is an email and
18 attachment, Mr. Shortill, and it's an ORC notice to
19 the industry which Ms. Yeigh is sending to
20 Mr. Stransky. Do you see that?

21 A. I do.

22 381 Q. Now, we see, sir, that
23 Mr. Stransky is receiving a lot of this horseracing
24 industry material and you don't appear to be on the
25 email chains at this point. Is that because

1 Mr. Stransky was responsible for that file at this
2 point in time?

3 A. That's correct.

4 382 Q. And we see the civil service side
5 of Finance informing or keeping Mr. Stransky in the
6 loop with a copy of the notice to the industry that
7 updates stakeholders on the Ontario Racing Program.
8 Right?

9 A. I see that.

10 383 Q. And if we look at the update, it's
11 called a "Phase-in of the Standardbred Racing
12 Program"?

13 A. I see that.

14 384 Q. And does this assist you in
15 remembering the racing program that had just been
16 instituted in 2011 under the direction of the
17 Ontario Racing Commission?

18 A. No, it does not assist my memory.

19 385 Q. If I look at the last page of the
20 notice, under the heading "What's Next?", second
21 paragraph, it says:

22 "Horseracing makes a
23 significant contribution to the
24 economy and well-being of
25 rural/agricultural Ontario."

1 Do you recall being aware of
2 horseracing being a significant component of the
3 rural economy?

4 A. No, I do not recall being aware of
5 that.

6 386 Q. What other files in 2011 were you
7 responsible for as Minister Duncan's Chief of
8 Staff?

9 A. I don't recall having primary
10 responsibility for any specific files. I would
11 generally get involved in those files that were
12 pressing before the Minister or the government on
13 their way to Cabinet, or just generally contentious
14 or high profile.

15 From time to time I would take on
16 specific policy files as policy advisors left. I
17 don't recall if I had any specifically in 2011.
18 2012 I had the pension file.

19 387 Q. 20...?

20 A. '12 I had the pension file.

21 388 Q. So I'm taking from your answer,
22 sir, that when you became involved in the
23 horseracing file in late 2011, early 2012, it was
24 because it was going to Cabinet?

25 A. That's correct.

1 389 Q. And when you became involved, in
2 addition to it going to Cabinet, was it expected to
3 be contentious?

4 A. Can you restate the question
5 again?

6 390 Q. I understood your answer to be
7 that you became involved in files either as they
8 were going to go to Cabinet or if they were going
9 to be contentious or controversial.

10 A. Correct.

11 391 Q. Right? And so, you became
12 involved in the horseracing file in late 2011, as I
13 understood your evidence. Right?

14 A. Correct.

15 392 Q. And I asked you, is that because
16 it was going to go to Cabinet in early 2012?

17 A. Correct. And the reason I asked
18 you to restate it is I became involved in the
19 gaming modernization file, which encompassed the
20 horseracing file. The contentious aspect was the
21 location of casinos within the City of Toronto.

22 393 Q. Got it. That's helpful. I
23 remember that being a contentious issue.

24 So, it was the proposal that we'll see
25 in a little bit to locate a casino in the GTA which

1 caused you to be involved in the gaming file; is
2 that fair?

3 A. I think that's fair, as well as
4 the revenue that was generated from the gaming
5 modernization was part of the fiscal plan which was
6 part of the upcoming budget. For those two
7 reasons, I became involved.

8 394 Q. Got it. And then the horseracing
9 industry was just one small part of the overall
10 gaming file; is that fair?

11 A. I would agree with that.

12 395 Q. Okay. And then in particular the
13 location of slot machines at racetracks versus
14 elsewhere was another small part of the overall
15 gaming file?

16 A. I think that's fair, yes.

17 396 Q. Okay. And so we're seeing here in
18 early 2011, at the beginning of the modernization
19 or the strategic business review, and I'm going to
20 just ask you to look, sir, at Exhibit 14 which is
21 something called a weekly status update, and it's
22 an update from a consultation.

23 A. Again, it's from some folks at the OLG
24 to Mr. Stransky.

25 A. Okay.

1 397 Q. And this is helpful to me, sir, at
2 the point being early 2011, Mr. Stransky is running
3 the file because it's still in its consultation
4 phase, it's not yet Cabinet-ready or about to go to
5 Cabinet. Fair?

6 A. Yeah, I wouldn't use the word
7 "running the file." He was the policy advisor on
8 the file.

9 398 Q. You would have ultimate
10 responsibility for it; is that why you're saying
11 he's not running it?

12 A. Well, he's not the decision-maker.

13 399 Q. Who is?

14 A. The Minister and ultimately
15 Cabinet.

16 400 Q. Okay. So, if you take a look at
17 the document at Exhibit 14, 360 --

18 MS. LA HOREY: That's OLGSB0000360.

19 BY MR. LISUS:

20 401 Q. And attached to it is OLG699. And
21 this is a summary of a stakeholder meeting. The
22 stakeholder meeting summarized here is between the
23 OLG and the Central Ontario Standardbred
24 Association. Do you see that?

25 A. I do.

1 402 Q. Now, did you receive these
2 consultation memos either from Mr. Stransky or from
3 OLG in the course of 2011?

4 A. I don't recall receiving these.

5 403 Q. Did Mr. Stransky brief you on
6 their contents as he received them?

7 A. I don't recall him briefing me on
8 the specific contents. He would have kept me in
9 the loop, so to speak, but I doubt on these
10 specific weekly status reports.

11 404 Q. Fair enough. And if you just
12 continue on with that document 699, at the bottom
13 left-hand corner there is a page number 91. Are
14 you with me there?

15 A. I see that.

16 405 Q. And this is a consultation memo
17 between OLG and OHHA, O-H-H-A, Ontario Harness
18 Horse Association.

19 Were you familiar with OHHA in 2011?

20 A. I was aware of their existence. I
21 wouldn't say I was familiar with them.

22 406 Q. Did you know who they were?

23 A. I recall the name of the
24 stakeholder, not much more.

25 407 Q. And if you take a look at this

1 consultation memo, we see the second bullet:

2 "Economic development,
3 agricultural sector..."

4 And three sub-bullets, it says:

5 "The 10 percent slot revenue
6 that horse people receive yearly is
7 essential to the Ontario horse
8 [racing] industry." [As read].

9 Were you aware of that in 2011?

10 A. Aware of the 10 percent slot
11 revenue?

12 408 Q. Being essential to the Ontario
13 horseracing industry.

14 A. I was aware of the reliance on the
15 Slots at Racetrack Program. I don't recall if I
16 was aware of that in 2011 or after.

17 409 Q. But were you aware that the OLG
18 and the Ministry were told that OHHA informed OLG
19 in the consultation process that the 10 percent
20 received pursuant to the share was essential to the
21 horseracing industry?

22 A. I don't recall being aware of
23 that.

24 410 Q. And do you see the bullet where it
25 says:

1 "Stability in the industry is
2 essential for the development of
3 horses - investment in each horse is
4 4-5 years as they are bred, raised,
5 trained and raced."

6 Do you recall being made aware of those
7 facts in 2011?

8 A. I do not recall being made aware
9 of that.

10 411 Q. It says:

11 "Currently, there are about
12 60,000 standardbred horses in
13 Ontario."

14 Do you recall knowing that there were
15 about 60,000 standardbred horses in Ontario in
16 2011?

17 A. I don't believe I knew that.

18 412 Q. Okay. And you didn't know about
19 the 60,000 horses or the stability being essential
20 for the development of horses in either 2011 or
21 2012; is that fair?

22 A. I think that's fair. Certainly I
23 was not aware of the 60,000 standardbred horses.

24 413 Q. All right. What was the purpose
25 of OLG consulting stakeholder -- excuse me -- well,

1 OLG consulting stakeholders?

2 A. I can't recall the specific
3 purpose in this case, but it's routine for agencies
4 like OLG or even the Ministry to consult on policy
5 matters.

6 414 Q. Okay. And what was the purpose of
7 OLG sharing the information it was receiving in its
8 consultations with the Ministry?

9 A. I don't recall the specific
10 purpose or I wasn't aware of it, but it's not
11 unusual for an agency like OLG to share that type
12 of information with the Ministry and the Minister's
13 Office.

14 415 Q. Okay. And if I can have that
15 back, Mr. Shortill, thank you. Exhibit 15 on
16 Mr. Stransky's examination, CRE94314, which
17 attaches 94316.

18 This is an email of April 2011 from --
19 it originates from the ORC and it goes to, among
20 others, Mr. Stransky, and it encloses the business
21 plan approved by the ORC board in March 2011.

22 Okay?

23 A. I see that.

24 416 Q. And it's a business plan for 2011
25 to 2014.

1 Now, my question, sir, is whether in
2 2011, or 2012, for that matter, you became aware of
3 the Ontario Racing Commission's business plan for
4 2011 to 2014?

5 A. I don't recall being made aware of
6 that.

7 417 Q. And so, if you look at page 3
8 under "Executive Summary," it talks about in the
9 third paragraph:

10 "The Ontario racing program
11 developed in collaboration with the
12 industry during the 2010-2011 fiscal
13 year, will continue to be
14 implemented in the coming year."

15 Do you see that?

16 A. I do see it.

17 418 Q. And if we go over to page 4,
18 second last paragraph, it says that:

19 "According to industry studies,
20 the horseracing industry is the
21 third largest agricultural industry
22 in Ontario next to dairy and beef."

23 Were you aware of that in 2011?

24 A. I don't believe I was.

25 419 Q. Do you know if Minister Duncan

1 was?

2 A. I don't know.

3 420 Q. And it goes on to say:

4 "The links to the rural economy
5 are complex and the industry
6 supports a large agricultural
7 infrastructure and way of life in
8 the rural economy."

9 Were you aware of that in 2011?

10 A. I don't believe I was.

11 421 Q. Okay. Were you aware of it the
12 beginning of 2012?

13 A. I don't believe so.

14 422 Q. And I think we agreed, sir, that
15 you weren't aware of the genesis of the Slots at
16 Racetrack Program in 1998?

17 A. I was aware that a previous
18 government had established the program. I would
19 say that that was the limit of my recollection.

20 423 Q. And that was your awareness in
21 2011?

22 A. That's correct.

23 424 Q. You were aware it was profitable
24 for the OLG?

25 A. I believe I would have been aware

1 of that, yes.

2 425 Q. And if you look at page 10 of the
3 business plan under the heading "Implementation of
4 the Ontario Racing Program," it says:

5 "The newly-launched Ontario
6 racing program is discussed as a key
7 initiative on page 15 of this
8 document. During 2010-2011 it was
9 used in the determination of the
10 live race date schedule for calendar
11 2011."

12 Did you become aware, sir, in 2011 that
13 the Ontario Racing Commission had, over the prior
14 year, worked with the industry to establish a
15 racing program which committed to a certain number
16 of race dates in 2011 and into the future?

17 A. I don't recall being aware of
18 that.

19 426 Q. May I have that back? Thank you.

20 MS. LA HOREY: Is now a good time to
21 take lunch?

22 MR. LISUS: We can take lunch now if
23 you want.

24 MS. LA HOREY: Thank you.

25 -- LUNCHEON RECESS AT 12:27 --

1 -- UPON RESUMING AT 1:04 --

2 BY MR. LISUS:

3 427 Q. Mr. Shortill, I'm showing you
4 Exhibit 19 on the examination of Mr. Stransky. I'm
5 going to get you a better copy, but make do with
6 that one while it's being retrieved.

7 A. Certainly.

8 428 Q. And what's its number? CR928.

9 MR. LA HOREY: CR0000928.

10 MR. LISUS: I learned you don't have to
11 say the zeroes.

12 MS. LA HOREY: I was told you are
13 supposed to. Okay, we'll go your way.

14 MR. LISUS: Do you have to say the
15 zeroes, Mr. Rosenberg?

16 MR. ROSENBERG: It depends.

17 BY MR. LISUS:

18 429 Q. All right. You've got a sense of
19 the document?

20 A. I do.

21 430 Q. And I want to just ask you a
22 couple of preliminary things. It says at the
23 bottom of it, "pre-read and draft, confidential
24 advice to Minister." What does "pre-read" mean?

25 A. I don't know what they intended it

1 to mean, but I would understand that to be it was
2 provided in advance for reading, in advance of a
3 discussion.

4 431 Q. Having looked at it, do you know
5 what this document is about? It's the fall of
6 2011.

7 A. It appears to be with regards to
8 the OLG modernization project.

9 432 Q. All right. And in the fall of
10 2011 you do recall being aware of an OLG
11 modernization project being underway?

12 A. Yes, I do.

13 433 Q. Okay. And so that had come across
14 your desk?

15 A. Yes, it was announced, I believe,
16 the year prior, so it would have been about this
17 time that it was reaching its, you know,
18 conclusion.

19 434 Q. Okay. And again so that I
20 understand the mechanics of how these things work,
21 Mr. Shortill, as of October 2011 would there have
22 been a February 8 Cabinet meeting already booked?

23 A. Generally the meetings were every
24 Wednesday or every other Wednesday, so it likely
25 would have been in the Ministry's schedule.

1 435 Q. As of October 11?

2 A. Certainly.

3 436 Q. For February 8, 2012?

4 A. Just the meeting, not the agenda
5 though.

6 437 Q. Got it. And so, the Cabinet meets
7 Wednesday, did you say every Wednesday or Wednesday
8 of every month? Or met at that time?

9 A. I can't recall if it was every
10 Wednesday or every other Wednesday.

11 438 Q. Okay.

12 A. The summer would not meet as
13 frequently, and December/January is generally none.

14 439 Q. Is the entire Cabinet at every
15 Cabinet meeting?

16 A. Not always.

17 440 Q. So, it's likely that the February
18 8 Cabinet meeting where modernization was discussed
19 was scheduled but the agenda not set?

20 A. It would have been unlikely to
21 have been set that far in advance.

22 441 Q. Okay. How far in advance was the
23 agenda typically set in 2011 and '12?

24 A. I'm not well placed to be able to
25 answer that.

1 442 Q. Now, in the fall of 2011 what was
2 your understanding of the process that was underway
3 at the OLG?

4 A. They were making policy
5 recommendations about the modernization project and
6 were making recommendations to government. I don't
7 know if that occurred by the fall or was still to
8 come or had already occurred.

9 443 Q. Right. And when you say the
10 modernization project, what do you understand the
11 modernization project to be?

12 A. Primarily it was casinos and
13 digital gaming, but it also included the Slots at
14 Racetrack Program and horseracing as well.

15 444 Q. And I understood your evidence
16 earlier to be that the proposal to locate a casino
17 in the GTA was expected to be a controversial one?

18 A. In my mind, yes.

19 445 Q. Okay. And was that the primary
20 reason that you were becoming engaged in the file?

21 A. Yeah, as I indicated earlier,
22 there were two reasons I was becoming engaged. One
23 was around the casino issue, and two, the revenue
24 generated from the modernization of gaming is part
25 of the fiscal plan, which meant it was part of the

1 upcoming budget.

2 446 Q. All right. And if we take a look
3 at Exhibit 19 on Mr. Stransky's examination, there
4 are handwritten notes on the document. Do you know
5 whose handwriting that is?

6 A. I do not.

7 447 Q. Not yours?

8 A. I don't believe it was.

9 448 Q. Okay. If we take a look at the
10 second -- it's page 10 of the document, bottom
11 left-hand, you see page 10? It says there's three
12 dark banners, one stakeholder consultation and
13 analysis, two, market intelligence and opportunity
14 sizing, three --

15 A. Sorry, it doesn't appear on our
16 document.

17 MS. LA HOREY: My copy doesn't show
18 what's in the banner. So if we can just get the
19 document turned around?

20 MR. MILAT: We're printing a cleaner
21 copy right now. Maybe we should wait until they
22 print that copy.

23 MR. ROSENBERG: It also appears that
24 the document in the exhibit to Mr. Stransky's
25 examination was a double-sided document that has

1 only been scanned on one side so that every other
2 page is missing.

3 MS. LA HOREY: It may be more than
4 every other page because I've got the deck at page
5 2 and then page 10. So I don't know if the
6 original production --

7 MR. LISUS: That's the way it appears
8 to me too, but that's the way in which I believe we
9 received it. No?

10 MR. MILAT: I don't think so, but the
11 version they're printing now is 40 pages. Let me
12 go and check.

13 MR. ROSENBERG: It appears that perhaps
14 the exhibit was an excerpt.

15 BY MR. LISUS:

16 449 Q. Okay. Well, while we wait for the
17 document, let me.

18 Ask you some general questions.

19 Do you recall receiving a document like
20 this in the fall of 2011?

21 A. I don't recall, but I do recall
22 some of the information in here.

23 450 Q. Okay. And what was your role in
24 receiving this information?

25 A. I don't know that I had a specific

1 role necessarily. I would have been involved most
2 likely in any policy discussion that the Minister
3 was involved in.

4 451 Q. Okay. In the fall of 2011,
5 Mr. Stransky -- excuse me, Mr. Shortill, do you
6 recall the Minister having a view on the revenue
7 sharing of revenue generated from Slots at
8 Racetrack Program with the horseracing industry?

9 A. I don't recall if he had a view at
10 that time.

11 452 Q. Okay. Do you recall when he came
12 to form a view?

13 A. He certainly had his view formed
14 prior to the Cabinet meeting.

15 453 Q. Okay. And was his view formed in
16 the course of meetings or discussions with you?

17 A. I don't know if I was a
18 contributing factor. I certainly had my input. I
19 don't know what led to his formation of views.

20 454 Q. Okay. And is it your recollection
21 that his view was formed shortly before, as in days
22 before, the February 8th Cabinet meeting?

23 A. I can't speak to that.

24 455 Q. But as far as you are aware, in
25 the fall of 2011 he had not yet formed a view as to

1 whether the Slots at Racetrack Program revenue
2 sharing with the horseracing industry should be
3 terminated?

4 A. I can't say for certain whether or
5 not he had formed a view or not about that topic at
6 that time.

7 456 Q. He hadn't expressed a view to you?

8 A. If he had, I can't recall it.

9 457 Q. But this would have been, or this
10 was one of the issues on which you were advising
11 him from a policy perspective?

12 A. That's correct.

13 458 Q. And so, I presume I can safely
14 infer that once he formed a view, you became aware
15 of it because you would have discussed it with him
16 from a policy perspective?

17 A. Certainly.

18 459 Q. And your recollection is that he
19 formed his view at some point in 2012, prior to the
20 February 8th Cabinet meeting?

21 A. That's correct.

22 460 Q. So we've got the full draft
23 discussion document now, and why don't we just mark
24 it as the first exhibit on your examination.

25 You don't recall receiving this

1 particular document, but you recall the contents
2 that are discussed, the contents of this document
3 or the topics discussed in it, right?

4 A. That's correct.

5 THE REPORTER: That's Exhibit 2.

6 EXHIBIT NO. 2: Draft discussion
7 document.

8 BY MR. LISUS:

9 461 Q. Were you aware in the fall of 2011
10 that OLG had gone through an extensive consultation
11 process with stakeholders?

12 A. Yes, I believe I was.

13 462 Q. And were you aware that those
14 stakeholders included participants in the
15 horseracing industry, such as breeders and breeding
16 associations?

17 A. I can't recall that specific, but
18 it's possible.

19 463 Q. Okay. Do you recall that OLG had
20 engaged outside experts such as Oliver Wyman,
21 W-Y-M-A-N?

22 A. That name doesn't ring a bell.

23 464 Q. And if you take a look at page 20
24 of Exhibit 2 --

25 MS. LA HOREY: Page 20 of the deck?

1 MR. LISUS: Yes.

2 BY MR. LISUS:

3 465 Q. Were you aware in the fall of 2011
4 that several coordinated changes in OLG's opinion
5 needed to occur to achieve its overall plan?

6 A. Yes, I would have been aware of
7 that.

8 466 Q. One of the changes that OLG was
9 recommending occurring was changing what it calls
10 the horseracing funding for greater accountability,
11 right?

12 A. Yes.

13 467 Q. Another was renew municipal
14 funding for greater transparency?

15 A. Yes.

16 468 Q. Two, was establish a new model of
17 private sector operation and OLG oversight of
18 land-based gaming sites?

19 A. Yes.

20 469 Q. And did that include the location
21 of casinos in cities, and in particular Toronto?

22 A. Yes. We refer to it as zones,
23 though. So where I mentioned a Toronto casino
24 earlier, properly I should have said the GTA, and
25 the reason I specify that is there is no guarantee

1 that the existing location of a casino under this
2 new proposal would stay there. It may have moved
3 within the zone.

4 470 Q. Well, was there any location in
5 this proposal for a city casino?

6 A. Not that I recall. It was
7 supposed to be a competitive process to best
8 determine the location within a zone.

9 471 Q. The third thing to be done or
10 change was to modernize OLG's business and IT
11 systems. Do you remember that?

12 A. Yes, I do.

13 472 Q. And 2B was also:

14 "Expand commercial
15 opportunities for current lottery
16 retailers through private sector
17 operation of lottery channels."

18 What did that mean?

19 A. There were other jurisdictions
20 across the globe that had success in utilizing
21 private sector lottery distributors. OLG and the
22 government at the time were looking at that as
23 well.

24 473 Q. So OLG and the government were
25 looking at a number of changes to a number of

1 features of the OLG's business and operations,
2 right?

3 A. That's correct.

4 474 Q. One of the elements of those
5 changes that were being looked at was moving slot
6 machines away from rural racetracks and trying to
7 locate them in urban centres where there would be
8 greater demand, right?

9 A. That's correct.

10 475 Q. And then as part of that process,
11 figuring out what to do with the revenue share with
12 the horseracing industry that was currently in
13 place, right?

14 A. I think that's right.

15 476 Q. And we heard from Mr. Phillips,
16 and the documents reflect, and tell me if you
17 remember this, that OLG recommended that the
18 revenue share be -- with the horseracing industry
19 be restructured such that funding was maintained
20 but that it come through funds from the
21 consolidated revenue fund pursuant to a transfer of
22 payment agreement. Do you recall that?

23 A. I recall OLG's recommendation
24 coming in the final modernization report.

25 477 Q. Right. That funding to the

1 horseracing industry continue, but that it be
2 decoupled from slot machine revenue share, and
3 instead occur as a transfer payment from the
4 consolidated revenue fund?

5 A. That is not my recollection.

6 478 Q. What is your recollection?

7 A. That in the final modernization
8 report, they recommended eliminating the subsidy to
9 the horseracing industry.

10 479 Q. And when you say in their final
11 modernization report they recommended the
12 elimination of the subsidy, you're talking about
13 the final report that came in March 2012?

14 A. That's correct.

15 480 Q. But are you aware, sir, that in
16 their prior recommendations, the recommendation was
17 that funding be maintained in the form of a payment
18 from the consolidated revenue fund pursuant to a
19 transfer payment agreement?

20 A. I'll acknowledge that there were
21 several policy options under consideration, but the
22 final recommendation was contained in the report.

23 481 Q. I'm not at the final
24 recommendation yet. I'm talking about the
25 recommendation in 2011 and early '12 leading up

1 to --

2 A. I wouldn't characterize those as
3 recommendations. The recommendation came in their
4 public report.

5 482 Q. Sir, I can walk you through
6 various OLG documents, if you want, in which they
7 recommend maintaining funding in the form of a
8 transfer payment from the consolidated revenue
9 fund.

10 But I'd like to avoid that in the
11 interests of time, so my question to you is, do you
12 recall in 2011, OLG recommending in its prior
13 versions, or prior reports, maintaining funding in
14 the form of a transfer payment from the
15 consolidated revenue fund?

16 A. I recall that being a policy
17 option under consideration, but, as I stated
18 previously, the recommendation came in the final
19 report.

20 483 Q. Okay. And what do you recall
21 about, as you say, the maintaining of funding from
22 the consolidated revenue fund as being a policy
23 recommendation being under --

24 MS. LA HOREY: He said policy option.

25 BY MR. LISUS:

1 484 Q. Policy option under consideration.
2 What do you recall about that?

3 A. I don't recall anything in
4 terrible detail.

5 485 Q. You just recall that one of the
6 policy options under recommendation was the
7 maintaining of the funding in the form of a payment
8 from the consolidated revenue fund; is that fair?

9 A. I recall that one of the policy
10 options was to maintain the funding for the
11 industry. Whether or not it came from the CRF or
12 from the Slots at Racetrack Program, I can't
13 remember.

14 486 Q. But, you do recall the various
15 recommendations being reflected in documents which
16 you reviewed; is that fair?

17 A. I recall that there were several
18 policy options under consideration.

19 487 Q. Okay. So, if we look at Exhibit
20 20 on the examination of Mr. Stransky, this is a
21 document from OLG to Mr. Stransky. Do you remember
22 the term "Gaming Innovation Project" or GIP?

23 A. I don't, no.

24 488 Q. Okay. If you go over to the first
25 page of the attachment, and the email is OLG1912

1 and the attachment is OLG1913, at page 1 we see 1A:

2 "Revise horseracing funding for
3 greater accountability - allows OLG
4 to relocate slots away from
5 racetracks and build new casinos in
6 the GTA and elsewhere in the
7 province that cannibalize racetracks
8 without reducing support for
9 horseracing."

10 Do you see that?

11 A. I do.

12 489 Q. And so do you recall, sir, that in
13 November 2011, one of the recommendations from OLG
14 or, in fact, the recommendation from OLG was to
15 relocate slots from racetracks, build new casinos
16 in the GTA and elsewhere in the province that
17 cannibalize racetracks without reducing support for
18 horseracing? Right?

19 A. I recall that that was a policy
20 option under consideration. I wouldn't
21 characterize it as a recommendation.

22 490 Q. Okay. Was OLG not making
23 recommendations to government?

24 A. OLG made a recommendation in their
25 final modernization report.

1 491 Q. Okay. And the process that led up
2 to that final modernization report included the
3 consultation and the expert advice that we referred
4 to a minute ago?

5 A. Sorry, which expert advice?

6 492 Q. From Oliver Wyman.

7 MS. LA HOREY: The witness said he
8 didn't know that name.

9 BY MR. LISUS:

10 493 Q. As of November 11, the only option
11 being presented by OLG is to relocate slots away
12 from the racetracks, build new casinos without
13 reducing support for horseracing, right?

14 A. I'm not going to accept that that
15 was the only option.

16 494 Q. Well, take a look at the document,
17 sir, and see if there's any other?

18 MS. LA HOREY: Sorry, you need to let
19 the witness finish his answer and you need to let
20 Mr. Lisus finish his question. You're keen, but --

21 BY MR. LISUS:

22 495 Q. You're not going to accept that
23 that was the only recommendation in November 2011?

24 A. That that was the only policy
25 option.

1 496 Q. Well, can you show me any other
2 policy option identified in November 2011?

3 A. I have no records at my disposal.

4 497 Q. Well, you had records at your
5 disposal to prepare for giving evidence here today.

6 A. I was provided records which I
7 read. I don't have them.

8 498 Q. Let's take a look at this record
9 together. Take a look through it and tell me if
10 there's any other policy option being presented by
11 OLG in this document, November 2011, with respect
12 to funding for the horseracing industry.

13 A. (Witness reads document). It
14 appears to be the only option.

15 499 Q. Okay. Now, I'm going to ask you
16 to look at Exhibit 21, please, on the examination
17 of Mr. Stransky.

18 Are there any options other than
19 relocating slots away from racetracks without
20 reducing support for horseracing in the November 17
21 version of the document?

22 MS. LA HOREY: For the record, that's
23 OLGSB0000970 is the email, and the attachment is
24 OLGSB0000972.

25 MR. LISUS: Thank you.

1 THE WITNESS: (Witness reviews
2 document). This appears to be substantially the
3 same document.

4 BY MR. LISUS:

5 500 Q. Any other option?

6 A. No.

7 501 Q. Now, you received this document on
8 November 17, 2011, correct?

9 A. I did.

10 502 Q. And I presume you would have
11 reviewed it?

12 A. I can't recall.

13 503 Q. Do you recall?

14 A. No.

15 504 Q. Do you recall in mid-November 2011
16 being aware of this policy option being presented
17 by the OLG to the Ministry of Finance?

18 A. I don't recall if I was aware of
19 it at that time. I certainly was aware of it being
20 one option that was being considered, yes.

21 MR. LISUS: This is Exhibit 3 on your
22 examination, Mr. Stransky (sic).

23 EXHIBIT NO. 3: Email, Bates numbered
24 OLGSB0000970, and attachment, Bates
25 numbered OLGSB0000972.

1 MS. LA HOREY: Sorry, you called
2 Mr. McNeill, Mr. Stransky.

3 THE WITNESS: Mr. Shortill.

4 MS. LA HOREY: Mr. Shortill.

5 MR. LISUS: I'm looking at the exhibit
6 stamp on the document. It's Exhibit --

7 MS. LA HOREY: 3 to Mr. Shortill's
8 examination.

9 MR. LISUS: Yes, and Exhibit 21 on
10 Mr. Stransky's examination.

11 MS. LA HOREY: Correct.

12 BY MR. LISUS:

13 505 Q. Now, we were at mid-November 2011.
14 OLG's review has been underway since 2010, correct?

15 A. I believe that's right.

16 506 Q. And you are now, as the Chief of
17 Staff, being copied on policy options being
18 presented by OLG with respect to the gaming
19 innovation project and one element of it being the
20 revision of horseracing funding, correct?

21 A. That's correct.

22 507 Q. And what policy advice, if any,
23 were you giving the Minister as of this time in
24 response to the receipt of this information from
25 OLG?

1 A. I can't recall what I was advising
2 him at that time.

3 508 Q. Okay. Do you recall having a view
4 one way or the other?

5 A. I recall forming a view, yes.

6 509 Q. In November 2011?

7 A. I don't know if I formed a view at
8 that point.

9 510 Q. You formed a view shortly before
10 the Cabinet meeting?

11 A. With respect to horseracing,
12 absolutely.

13 511 Q. I want to show you Exhibit 22 on
14 Mr. Stransky's examination, CRE105863. Do you
15 recall what that email sequence is about?

16 A. It appears to be we're preparing
17 the presentation deck for Cabinet.

18 512 Q. Okay.

19 A. We're preparing -- sorry, we're
20 preparing a presentation deck. I assume it's for
21 Cabinet but I don't know for sure.

22 513 Q. And for Cabinet would be the
23 Cabinet meeting scheduled for February 8, 2012?

24 A. There may have been a policy
25 meeting of Cabinet before that, but I don't recall

1 there being.

2 514 Q. Okay, thank you. Now, if I can
3 ask you to look at -- can I have that back?

4 A. Sorry.

5 515 Q. Exhibit 23 on Mr. Stransky. This
6 is CRE28760, attaching 28761, 62 and 63. And I'm
7 going to hold that for a minute because I'm a bit
8 out of sequence and we'll come to that one, okay?

9 I want to show you, before we get to
10 Exhibit 23 on Mr. Stransky, CRE18263.

11 A. (Witness reads document).

12 516 Q. Have you reviewed the email and
13 the attachment, Mr. Shortill?

14 A. I have reviewed the email.

15 517 Q. Okay. Take a look at the
16 attachment.

17 A. Sure.

18 MS. LA HOREY: Are you able to put it
19 up on the screen?

20 MR. MILAT: I'm trying to find it.

21 MR. LISUS: I think we have a copy.

22 MR. MILAT: Actually, I have a hard
23 copy.

24 THE WITNESS: I looked through it.

25 BY MR. LISUS:

1 518 Q. Okay. Now, it appears from this
2 document that on December the 8th of 2011 folks in
3 Finance circulate what's described as a horseracing
4 five-year approach. Do you see that?

5 A. Yes.

6 519 Q. And do you recall in December
7 2011, because we know that at this point you were
8 engaged in the file, do you recall Finance
9 presenting a, to use your words, policy option with
10 respect to horse funding for the horseracing
11 industry?

12 A. I don't recall at that time, but
13 it was certainly a policy option under
14 consideration around that time, yes.

15 520 Q. What was certainly a policy option
16 under consideration?

17 A. The steady decline of the
18 horseracing subsidy as referenced on the bottom of
19 page 1.

20 521 Q. And what are you referring to when
21 you're saying that?

22 A. I'm referring to the very last
23 bullet point on slide 1.

24 522 Q. Okay. So, the last bullet point
25 says:

1 "Slots at Racetrack Program
2 funding will be phased out over a
3 five-year period. First year
4 funding is status quo, followed by a
5 25 percent year reduction in the
6 following years (i.e. moving from
7 \$340 million annually in year 1;
8 \$255 million in year 2; \$170 million
9 in year 3; \$85 million in year 4;
10 and by year 5 the only government
11 support available to the industry
12 will be the PMTR)."

13 So, do you recall that being an option
14 presented or developed by the Ministry of Finance?

15 A. I recall an option where there was
16 a steady decline. Whether or not these were the
17 numbers, that I can't recall, but yes.

18 523 Q. Did you give advice to the
19 Minister on the phaseout option?

20 A. I actually gave him advice, yes.

21 524 Q. Did you give the Minister advice
22 on this option?

23 A. I can't recall.

24 525 Q. Okay. Do you recall ever giving
25 him advice on a phaseout?

1 A. It would have been part of my
2 advice that I gave.

3 526 Q. You're saying "would have." I'm
4 just asking if you have a recollection of it?

5 A. Not specifically.

6 527 Q. Do you have any recollection on
7 giving him advice about a phaseout option developed
8 by Finance?

9 A. I recall giving him my final
10 advice which would have negated this potential
11 option.

12 528 Q. And your final advice was
13 terminate the revenue sharing with the horseracing
14 industry with no phaseout?

15 A. That's correct.

16 529 Q. And was that your advice?

17 A. Yes.

18 530 Q. And what was your advice based on?

19 A. It was based upon our government's
20 priorities for funding healthcare and education,
21 not subsidizing the horseracing industry.

22 531 Q. Is that it?

23 A. That is it.

24 532 Q. What did you study to formulate
25 that advice?

1 A. I just had general knowledge of
2 our government's policy priorities.

3 533 Q. And what study did you make of the
4 effect that that recommendation would have on the
5 horseracing industry?

6 A. I made no study. I simply
7 prioritized our government's priorities.

8 534 Q. What study did you make of the
9 consequences that that recommendation would have on
10 the ability of racetracks to offer live
11 horseracing?

12 A. Again, I made no study. It was
13 based upon our government's priorities.

14 535 Q. What study did you make of the
15 consequences that that decision would have on the
16 investments that breeders had made in their horses
17 and farms?

18 A. Again, I made no study. It was
19 based solely on our government's priorities.

20 536 Q. What study did you make of the
21 consequences that that decision would make on the
22 60 -- would have on the 60,000 Standardbred horses
23 then existing in the Province of Ontario?

24 A. Again, I made no study based upon
25 that criteria. It was solely based on our

1 government's priorities.

2 537 Q. What study did you make of the
3 consequences of that decision on employment in
4 rural Ontario in the agricultural sector?

5 A. I made no study based upon that.
6 It was solely based on our government's priorities.

7 538 Q. Did you ask anyone to make any
8 study of the various consequences that I have just
9 asked you about when you made that recommendation?

10 A. I recall that there were requests
11 for studies made at some point. I don't know if I
12 made those requests or not.

13 539 Q. But they were not made before that
14 recommendation was made and for the purpose of
15 making that recommendation?

16 A. I can't recall when they were
17 made, but for purposes of making the recommendation
18 I made, it was based solely upon our government's
19 priorities for healthcare and education.

20 540 Q. Did you know, sir, what the
21 consequences of your recommendation would be on the
22 investment that Standardbred breeders had in their
23 horses, farms and operations?

24 A. I understood the consequences and
25 my recommendation to be informing the Minister and

1 Cabinet was a deliberative process.

2 541 Q. I'll give you the question again.

3 Did you know what the consequences of your
4 recommendation would be on the investment of
5 breeders in their horses, farms and operations?

6 MS. LA HOREY: He answered your
7 question.

8 BY MR. LISUS:

9 542 Q. So that's a no?

10 A. I would answer my question exactly
11 as I previously answered it.

12 543 Q. Okay. Was it on the basis of your
13 recommendation that Minister Duncan decided to
14 terminate the revenue sharing effective March 2013
15 with no transition assistance?

16 A. I don't know what he based his
17 decision on. Most likely it encompassed a few
18 viewpoints and advice.

19 544 Q. And your advice was among those
20 points?

21 A. It was.

22 545 Q. And I take it from your prior
23 answers that you didn't see any analysis of the
24 consequences that we have discussed when you made
25 your decision?

1 A. I can't recall if I saw any of the
2 analysis you speak of.

3 546 Q. And I take it you didn't undertake
4 any study or analysis of the consequences on
5 racetracks of the decision to terminate revenue
6 sharing effective March 2013?

7 A. I undertook no analysis.

8 547 Q. And you didn't confer in any
9 manner with the Ontario Racing Commission about the
10 consequences of the decision to terminate revenue
11 sharing effective March 2013 with no transition
12 assistance?

13 A. I don't recall speaking with them
14 at that time.

15 548 Q. And similarly, you didn't confer
16 at all with OMAFRA about the consequences of
17 termination of revenue sharing effective March 2013
18 without any transition assistance?

19 A. I recall there were discussions
20 with OMAFRA, but I don't believe I asked for that
21 particular analysis.

22 549 Q. When you made the recommendation
23 to Minister Duncan, did he direct you to have any
24 analysis or study undertaken of the consequences of
25 the decision you were recommending?

1 A. I can't recall. I do know that
2 there was a discussion at some point about the
3 economic analysis.

4 550 Q. Okay.

5 A. I don't recall if it was at that
6 time or later or earlier.

7 551 Q. Did you have any discussions with
8 Dalton McGuinty about your recommendation?

9 A. No.

10 552 Q. Did you make a recommendation to
11 Dalton McGuinty?

12 A. I made a recommendation to his
13 office.

14 553 Q. Who?

15 A. I can't recall specifically but it
16 would have been any number of his staff.

17 554 Q. Karim Bardeesy?

18 A. Most likely but I don't recall
19 specifically.

20 555 Q. Do you believe that the
21 recommendation that you made to his staff was then
22 communicated to Mr. McGuinty for final decision?

23 A. I don't know.

24 556 Q. Was that your expectation?

25 A. It would have been, yes.

1 557 Q. Do you know why or how Elizabeth
2 Yeigh and her staff developed a five-year phaseout
3 approach?

4 A. I don't know.

5 558 Q. And you became aware of the
6 phased-out approach and decided to recommend
7 against it; is that correct?

8 A. Yeah, it may not have happened in
9 that sequence. I would have been aware of some of
10 the policy options under consideration, and then at
11 some point in the future I would have formed an
12 opinion.

13 559 Q. When you made your recommendation,
14 did you understand that there would be 23,000 job
15 losses?

16 A. I don't recall what the number
17 was.

18 560 Q. When you made your recommendation,
19 were you aware that the consequences of it would be
20 a collapse of the industry?

21 A. No.

22 561 Q. When you made your recommendation,
23 were you aware that the consequences of it would be
24 27,000 dead horses?

25 A. No. Nor do I accept either of

1 those figures.

2 562 Q. Okay. Were you aware that one of
3 the consequences of your recommendation would be
4 16,000 euthanized horses in 2012?

5 A. Again, that wasn't the basis upon
6 which I was making my recommendation.

7 563 Q. Meaning, you weren't turning your
8 mind to that potential consequence when you were
9 making your recommendation?

10 A. That's correct.

11 564 Q. And you also weren't turning your
12 mind to the potential of 23,000 job losses when you
13 were making your recommendation?

14 A. I was aware that there would be
15 negative reaction, but one, I don't agree with the
16 statistics you cite, nor would they have been
17 predominant in my decision-making in terms of the
18 advice I was giving.

19 565 Q. If you were aware of them?

20 A. If I was aware of them.

21 566 Q. Okay. Did Minister Duncan agree
22 with your recommendation?

23 A. Ultimately that was what the
24 Cabinet submission recommended.

25 567 Q. Are you aware, sir, that the

1 statistics that I'm using for job losses and dead
2 horses are from Mr. Wilkinson and the industry
3 panel?

4 A. I'm not aware of it but it doesn't
5 surprise me.

6 568 Q. I was asking you about the
7 five-year phaseout plan that Ms. Yeigh and her
8 staff developed, and I think I understood you to
9 say you are not aware of the genesis of that plan?

10 A. No, but it's not unusual for
11 Ministry staff to design various policy
12 recommendations.

13 569 Q. Did you read the Auditor General's
14 report in 2014 when it was released and its
15 commentary on the manner in which this decision to
16 terminate revenue sharing effective March '13 was
17 made?

18 A. I didn't read the entirety of the
19 report. I read a section in there that referenced
20 me.

21 570 Q. And did you agree with it?

22 A. Agree with what?

23 571 Q. Did you agree with the Auditor
24 General's conclusions about the manner in which the
25 decision was made?

1 A. I would have to see her
2 conclusions.

3 572 Q. What was the reference to you, do
4 you recall?

5 A. No, but I recall being referenced
6 because I felt obligated to inform my employer that
7 I was being referenced.

8 573 Q. Your employer at that time being
9 OPTrust?

10 A. OPTrust, that's correct.

11 574 Q. Do you think that the decision you
12 recommended in 2012 was a good one?

13 A. Without question.

14 MS. LA HOREY: Can we take a short
15 break, please?

16 MR. LISUS: Not just yet.

17 MS. LA HOREY: Off the record.

18 -- OFF THE RECORD --

19 MR. LISUS: I want to mark Ms. Yeigh's
20 email with the draft -- with the proposed five-year
21 approach as the next exhibit in the sequence.

22 MS. LA HOREY: Did we establish that he
23 saw this?

24 MR. LISUS: He said he knew about it.

25 MS. LA HOREY: Okay.

1 THE WITNESS: Sorry, I knew about the
2 information in there. I'm not suggesting I knew
3 about the actual document.

4 MS. LA HOREY: Let's mark it for
5 identification then. Exhibit A for identification.

6 EXHIBIT A (for identification): Email,
7 Bates numbered CRE18263, and
8 attachment.

9 BY MR. LISUS:

10 575 Q. Did you discuss the proposed
11 five-year approach with Ms. Yeigh or any of the
12 other civil servants in Finance?

13 A. Are you referring to the approach
14 being the last bullet point?

15 576 Q. Yeah, slide 1:
16 "Funding will be phased out
17 over a five-year period."

18 A. I recall discussing policy
19 options, including a phaseout. I don't know if I
20 discussed the specific one.

21 577 Q. And I take it, sir, in Q4 '11 and
22 Q1 '12, you weren't aware of the manner in which
23 Standardbred racing horses were brought to market?

24 A. I don't believe I was.

25 578 Q. So you weren't aware of the

1 auction process, right?

2 A. No, I don't believe so.

3 579 Q. And when you made your
4 recommendation, you weren't aware of how many race
5 days had been -- how many live race dates had been
6 planned and communicated by ORC, right?

7 A. It's possible I was shown them. I
8 don't recall it though.

9 580 Q. It's possible what?

10 A. I was shown that information, but
11 I don't recall it.

12 581 Q. And you don't recall it being a
13 factor in your recommendation?

14 A. It was not a factor.

15 582 Q. And similarly, the ability of
16 tracks to offer live racing was not a factor in
17 your recommendation?

18 A. I was aware that there would be a
19 negative impact, but it was not the deciding factor
20 in the advice I gave.

21 583 Q. And who did you formulate your
22 advice with?

23 A. I can't recall if this is
24 something I formulated in a small discussion or a
25 broader discussion, but the policies were being

1 debated between Ministry officials, OLG, the
2 Minister, the Premier's Office, and likely caucus
3 and Cabinet ministers.

4 584 Q. Right. I don't want you to give
5 me your sort of general supposition, I just want to
6 understand what led you to make the specific
7 recommendation that you did to the Premier's Office
8 and to your Minister?

9 A. Sure. So I recall a briefing in
10 which it was communicated to those in the room,
11 myself included --

12 585 Q. And who was in the room?

13 A. The Minister was in the room.

14 586 Q. Minister Duncan?

15 A. Yes. Ministry officials.

16 587 Q. Do you remember who?

17 A. Barry Goodwin certainly. I don't
18 recall other Ministry officials. Rod Phillips was
19 in the room and there may have been others.

20 In that discussion it was communicated
21 to those in the room that the government subsidizes
22 the horseracing industry to a number greater than
23 the government support for research and innovation
24 in the province.

25 That was certainly a catalyst in

1 forming my decision to provide the advice I
2 ultimately did.

3 588 Q. And so, once you were told of that
4 fact, you formed the opinion that it made no sense
5 for this to continue and should stop?

6 A. At some point thereafter, yes.

7 589 Q. Do you recall who communicated
8 that fact?

9 A. My memory is it was Barry Goodwin,
10 but I could stand to be corrected on that.

11 590 Q. All right. And was it your
12 practice to make notes in these discussions?

13 A. Generally not.

14 591 Q. Did you make any notes?

15 A. I can't recall.

16 592 Q. Have you looked for notes?

17 A. I don't have any records other
18 than the emails I turned over.

19 593 Q. All right. We've seen some
20 handwritten notes where discussion like that is
21 referred to and someone using the word "insane."
22 Do you recall that word being used?

23 A. I don't.

24 594 Q. Do you know Josh Cogan?

25 A. The name sounds familiar, yes.

1 595 Q. In the course of preparing to give
2 your evidence here today, did you review
3 transcriptions of handwritten notes made in the
4 course of several meetings?

5 A. In the documents I was provided in
6 advance, there were some handwritten notes.

7 596 Q. And did those handwritten notes
8 refresh your memory of the content of those
9 meetings?

10 A. To be frank, I couldn't decipher
11 them.

12 597 Q. Okay. You didn't see the
13 typewritten transcriptions of them?

14 A. No. If they were provided, I
15 didn't see them.

16 598 Q. I want to ask you to look at
17 Exhibit 23 on the examination of Mr. Stransky.

18 A. (Witness reviews document).

19 599 Q. I'm going to put Exhibit 23 aside
20 for a minute, Mr. Shortill.

21 A. Sure.

22 600 Q. Do you know the name Poland Lai,
23 L-A-I?

24 A. No, I don't.

25 601 Q. If you could help me understand

1 the process leading up to the Cabinet meeting. Is
2 there a process by which ministers are briefed in
3 advance of a Cabinet meeting about the subject
4 matter of the Cabinet meeting?

5 A. There's a formal committee process
6 of Cabinet where policies will generally go first,
7 but not always. I recall in this case, so I stand
8 to be corrected, that this was a direct-to-Cabinet
9 item. There was an informal --

10 602 Q. Meaning, direct?

11 A. Meaning it doesn't go to a Cabinet
12 committee first.

13 603 Q. Okay.

14 A. I recall in this instance that we
15 would have discussed with several Cabinet ministers
16 and caucus members the potential policy, or at
17 least sought their views in advance of Cabinet,
18 yes.

19 604 Q. Okay. I want to give you Exhibit
20 E to Mr. Stransky. Do you have it there, Ms. La
21 Horey?

22 MS. LA HOREY: Yes.

23 BY MR. LISUS:

24 605 Q. This is a document called "Our
25 Input to the Drummond Report." It says:

1 "Please find attached a
2 fleshed-out narrative designed to be
3 parachuted into the Drummond report,
4 reflecting your discussions with
5 senior folks at MOF. The purpose is
6 to precondition for change."

7 Do you know what this document means?

8 A. I take it to mean they were
9 providing input into the government report.

10 606 Q. Is that how the process was
11 working?

12 A. Mr. Drummond and his commission
13 were seeking widespread comment on policies they
14 ultimately recommended.

15 607 Q. Is that the way in which input or
16 recommendations was provided?

17 A. Sorry, in what way?

18 608 Q. By Ministry making proposals for
19 inclusion in his report?

20 A. I wouldn't have characterized them
21 as proposals. They definitely provided input.
22 Ultimately the Commission decided on what their
23 proposals were.

24 609 Q. Right. What does the term
25 "precondition for change" mean?

1 A. I would take it to mean there was
2 some change coming that somebody was
3 preconditioning for. I don't know what Alexandra
4 was referring to.

5 MR. LISUS: Let's take a brief break
6 because our documents have hit a technical
7 roadblock.

8 -- RECESS AT 2:11 --

9 -- UPON RESUMING AT 2:18 --

10 BY MR. LISUS:

11 610 Q. Mr. Shortill, Exhibit G, please,
12 on the examination of Mr. Stransky. Just take a
13 look at the email and what's embedded within it.

14 A. (Witness reads document).

15 611 Q. Okay? So, we're now at December
16 22, 2011 and we see Ms. Watkins providing an email
17 and the subject is "Urgent - HR Slide for PO
18 Briefing." Can you help me understand the acronyms
19 in the subject line?

20 A. Sure. I believe HR refers to
21 horseracing. PO definitely refers to Premier's
22 Office.

23 612 Q. All right. So we're now, I
24 presume, in the decision-making process or the
25 process designed to come up with a recommendation

1 for Cabinet; is that --

2 A. That's how I would characterize
3 it, yes.

4 613 Q. Then just mechanically, Mr.
5 Shortill, help me understand what's going on here.
6 So there's a Cabinet meeting booked for February 8,
7 2012 that's on the agenda, correct?

8 A. I don't know that this is on the
9 agenda.

10 614 Q. But there is a Cabinet --

11 A. Correct.

12 615 Q. And it looks like this issue, the
13 folks are trying to get this on the agenda for that
14 Cabinet meeting?

15 A. At this point I don't know that
16 they are. I think they're formulating policy
17 options.

18 616 Q. Can you tell me whether there was
19 an intention to have this decision made, this
20 decision being OLG modernization and the additional
21 revenue it was expected to generate, for the spring
22 2012 budget?

23 A. Yes, that was our intent, that the
24 recommendations from OLG on gaming modernization
25 would have the government policy response to that

1 contained within the budget.

2 617 Q. So in order for the OLG's
3 recommendation and the government's response to it
4 contained within the budget, the OLG recommendation
5 would have to be approved by Cabinet in sufficient
6 time for the recommendation to be included in the
7 budget or not, right?

8 A. Yeah. And I don't know if I
9 misheard you, but Cabinet wouldn't approve the OLG
10 recommendations. Cabinet would just approve or
11 consider and approve the Minister's recommendation.

12 618 Q. I understand that. Thank you.
13 OLG would make a recommendation; the Minister of
14 Finance, being your office, the Minister and you,
15 would make a recommendation to Cabinet and Cabinet
16 would approve that recommendation or not?

17 A. To be very clear, the Minister
18 would make a recommendation to Cabinet, and Cabinet
19 would reject, change or approve that
20 recommendation.

21 619 Q. Right. And what was your role in
22 that process?

23 A. I was an advisor. I was also
24 coordinating the policy options and essentially
25 coordinating the machinery of government in terms

1 of the actual policy process in the Cabinet.

2 620 Q. Okay. And so, as we have
3 discussed policy options in the course of our
4 discussion today, we see that a policy option
5 presented by OLG in November '11 was to maintain
6 funding but from a different source, i.e. the
7 consolidated revenue fund, correct?

8 A. I believe that's correct.

9 621 Q. And then we see another policy
10 option coming out of Ms. Yeigh and her team, being
11 a five-year phased-out approach?

12 A. Correct.

13 622 Q. And now what I'm seeing in this
14 email, you tell me if I've got this right, another
15 policy option being a three-year phaseout approach
16 and this is as of December 22?

17 A. Yeah, I read this option as a
18 three-year step-down and then a steady state into
19 the future.

20 623 Q. Got it. And so, walk me through
21 the step-down and steady state.

22 A. I'm looking at the second bullet
23 point under what I think the title is "Proposed
24 Approach" gradually reduced from 2012-'13 levels,
25 250 million in '13-'14, 150 '14-'15, and 100

1 million in '15-'16 which -- and then the sub-bullet
2 point under that says the hundred million would be
3 continued into the future.

4 624 Q. Got it. Do you recall this option
5 being presented for consideration to your team?

6 A. I recall an option with a
7 step-down and a steady state, yes, and I'm being
8 purposely specific here. I just don't know if the
9 numbers were what were proposed.

10 625 Q. But this is the only document I
11 have seen.

12 A. Understood.

13 626 Q. So these are likely the numbers?

14 A. Likely, yeah. I just want to be
15 accurate.

16 627 Q. Fair enough. And you do recall
17 the step-down and then the steady state approach in
18 or about the end of December 2012; is that correct?

19 A. That's correct.

20 628 Q. And you didn't think that was the
21 right approach, I take it from your prior answers?

22 A. Yeah, I formed an opinion at some
23 point through this process that that was not the
24 correct approach.

25 629 Q. Okay. But you don't recall, or do

1 you recall seeing this particular proposal?

2 A. I don't recall seeing it.

3 630 Q. Did you ever speak with
4 Ms. Watkins or Ms. Yeigh about these proposals in
5 December 2012?

6 A. I would have spoken with Ms. Yeigh
7 about the policy options, absolutely.

8 631 Q. Do you remember doing so?

9 A. No, but I would have.

10 632 Q. And then if I could just ask you,
11 sir, to look at Exhibit H on Mr. Stransky's
12 examination. This is an email, 87519, attaching
13 87520, and it's a "Government Deck Final," is what
14 it's called.

15 And you know what? Is that hard to
16 read?

17 A. Yes, it is.

18 633 Q. I've got a better one.

19 MR. MILAT: If you've got a better one,
20 I must have a copy for the witness.

21 MR. LISUS: It's actually dated January
22 26.

23 MS. LA HOREY: The email is the 26th.

24 MR. LISUS: And the document is
25 attached to it.

1 MS. LA HOREY: The document is dated
2 January 20th.

3 MR. LISUS: Yes, the document is dated
4 January 20th.

5 BY MR. LISUS:

6 634 Q. I want you just to look at the
7 document. Okay?

8 A. (Witness reviews document).

9 635 Q. So Ms. Watkins and Ms. Oh are
10 emailing each other on the 26th including a
11 document of January 20, 2012. And it says
12 "Government Deck Final."

13 Can you help me out what this
14 government deck --

15 A. It appears to be a briefing deck
16 from OLG to the government.

17 636 Q. And this is an OLG, it appears --
18 excuse me, it appears to be an OLG-created deck,
19 right?

20 A. That's correct.

21 637 Q. And if you look at the 24th page
22 of the deck, you see there's a proposed approach?

23 MS. LA HOREY: Just before we get
24 there, Exhibit H appears to be miscopied as well,
25 just so you know. We printed out Exhibit H from

1 Mr. Stransky's but it appears to be missing pages.

2 BY MR. LISUS:

3 638 Q. So, the 24th page of the deck
4 entitled "Horseracing - Proposed Approach." Do you
5 see that?

6 A. I do.

7 639 Q. And it would appear, sir, that as
8 of January 20th, and this email of the 26th, the
9 proposed approach is the three-year step-down with
10 the steady state that we discussed a moment ago,
11 correct?

12 A. That's what the document states.

13 640 Q. And if you go to page 27, there is
14 reference to individual ministers. It says
15 "Placeholders for custom slide based on Ministry."
16 Can you explain that to me?

17 A. No, I don't know what they're
18 trying to convey on that slide.

19 641 Q. So, as of January 20 and 26, it
20 appears that we're still on the three-year phaseout
21 and then step -- what did you call it, steady
22 state?

23 A. Steady state.

24 642 Q. Proposal, right?

25 A. Well, I would note that this

1 document is still draft.

2 643 Q. Agreed.

3 A. But that's what the document
4 states, yes.

5 MR. LISUS: All right. We'll mark the
6 full copy as an exhibit to make sure we capture all
7 of them.

8 MS. LA HOREY: We can mark it for
9 identification.

10 EXHIBIT B (for identification):
11 Email, Bates numbered 87519, and
12 attachment, Bates numbered 87520.

13 MS. LA HOREY: So it's 87519 and 87520
14 is the next exhibit.

15 BY MR. LISUS:

16 644 Q. And if we look at Exhibit 23 on
17 Mr. Stransky's examination, which I handed you some
18 time ago --

19 A. Sorry, that's --

20 645 Q. No, Exhibit 23 - we'll give it to
21 you - on Mr. Stransky's. Mr. Shortill, I'm asking
22 you to look now at Exhibit 23 which is an email
23 from Will Hill. He's at OLG, right?

24 A. That's correct. He was the fourth
25 individual I couldn't remember earlier.

1 646 Q. Right. And here is an email to
2 you and Mr. Stransky, and it says Friday's meeting
3 and it attaches Minister's generic letter,
4 stakeholder engagement and government deck final.
5 Right?

6 A. Correct.

7 647 Q. And the government deck final was
8 the draft of the deck that we just looked at, okay?
9 So if you go forward in Exhibit 23 to page 24 of
10 the deck -- are you with me?

11 A. I am.

12 648 Q. We see there the proposed approach
13 as of January 19 is the three-year phaseout or
14 phase-down and steady state, correct?

15 A. Correct.

16 MR. LISUS: And that's the next exhibit
17 on your examination, sir.

18 EXHIBIT NO. 4: Email from Will Hill
19 and attachment.

20 MR. LISUS: We'll send you a set, as we
21 do usually, Ms. La Horey.

22 MR. LA HOREY: Yes.

23 BY MR. LISUS:

24 649 Q. And is this the deck that is going
25 to be presented? You tell me, Mr. Shortill, what

1 is underway here? Who is this deck for?

2 A. So in the lead-up to the Cabinet
3 discussion, there are meetings that the Minister
4 had with Mr. Godfrey and several other OLG and
5 Finance officials, but there were also meetings
6 that Mr. Stransky and I had with Mr. Philips.

7 I don't know if this deck was in
8 preparation of the meetings with the Minister or
9 just with myself, but it would have been one or the
10 other.

11 650 Q. And if you take a look at page 3
12 of the deck --

13 A. Yes.

14 651 Q. -- this is a summary of the gaming
15 proposal that was being put forward for approval by
16 the Ministry of Finance, correct?

17 A. Yeah, to be clear, ultimately
18 Cabinet would approve these, not the Ministry of
19 Finance.

20 652 Q. But the Ministry of Finance first?

21 A. That's right.

22 653 Q. Make a recommendation to Cabinet,
23 right?

24 A. Correct.

25 654 Q. And we see here that, as I

1 understand it, the proposal looks at two sides of
2 the government business enterprise, which is OLG
3 lottery and gaming, right?

4 A. That's right.

5 655 Q. And the lottery, and a number of
6 changes are proposed to each side of the business,
7 right?

8 A. Correct.

9 656 Q. And the revenue sharing with
10 horseracing industry is one part of the proposals
11 being made with respect to gaming, right?

12 A. Correct.

13 657 Q. And in particular, changes to
14 relocate gaming sites and slot machines, right?

15 A. Correct.

16 658 Q. And to decouple the current link,
17 decouple links between the slot machines and
18 racetracks in rural locations?

19 A. Correct.

20 659 Q. The audience for this deck though,
21 sir, is you and your boss, Mr. Duncan? Is that who
22 the audience is?

23 A. And potentially the Ministry
24 officials as well, or a combination of all three.

25 660 Q. Thank you. And the information in

1 this deck is part of the information upon which you
2 were going to make a recommendation or form a view;
3 is that right?

4 A. It would have helped me form my
5 view, yes.

6 661 Q. And part of the information in
7 this deck which would have helped you form your
8 view is the statement on the third page of the
9 deck, second bullet:

10 "We did substantial
11 consultations with stakeholders and
12 validated our analysis with external
13 experts."

14 A. I would have looked to see that
15 they would have consulted. I'm not sure that that
16 would have formed a predominant factor in my
17 decision on what to advise.

18 662 Q. Okay.

19 A. In saying that, an absence of
20 consultation would have been concerning.

21 663 Q. And then on slide 24, we see the
22 description of the phased-down and steady state
23 approach, second bullet:

24 "Our proposal will mean
25 reducing support to the sector by

1 about two-thirds rolled out over
2 four years."

3 Right?

4 A. I see that.

5 664 Q. Now, I presume that the preferred
6 outcome of the process is that Cabinet endorses the
7 recommendation of the Minister?

8 A. I think that was the expected
9 outcome.

10 665 Q. Right.

11 A. Your reference to the word
12 "preferred," you'd have to put that question to Mr.
13 Duncan.

14 666 Q. Expected outcome is helpful, thank
15 you. Your Minister and you and your staff would
16 not be pleased if you went through a process of
17 analysis, arrived on a view, made a recommendation
18 to Cabinet and Cabinet said, no, we don't accept
19 that?

20 A. No, I don't agree with that. That
21 happens from time to time and we take it in stride,
22 or took it in stride.

23 667 Q. All right. Now, prior to the
24 Cabinet meeting, I take it there's a process of
25 briefing ministers on the proposal?

1 A. There's not a formal process, but
2 from time to time I would expect that as just a
3 matter of course in terms of the operation of my
4 office.

5 668 Q. And we've seen from the prior
6 exhibits that as of January 26th at least the
7 proposal was this three-year reduction and then
8 steady state, correct?

9 A. I think that was the option at the
10 time.

11 669 Q. Right. And I'm looking at Exhibit
12 27 on the examination of Mr. Stransky. We see that
13 on February 1, Mr. Stransky is reporting to you on
14 meetings that he's had so far. Do you see that?

15 A. I do.

16 670 Q. Okay. And do you recall
17 Mr. Stransky meeting with various ministers?

18 A. I do.

19 671 Q. Okay. Did you participate in any
20 of those meetings?

21 A. I did. I recall participating in
22 one with then-Minister Wynne and then-Minister
23 McMeekin. I may have participated in others, but
24 those are two I remember.

25 672 Q. Okay. Towards the end of January,

1 were you working with Mr. Bardeesy in the Premier's
2 Office?

3 A. Yes.

4 673 Q. And was he your equivalent in the
5 Premier's Office?

6 A. It's tough to say. He was the
7 director of policy. And of his responsibilities,
8 one was as the primary liaison from his office to
9 the Ministry of Finance in terms of budget
10 preparation, so he would be one of the ones I would
11 deal with most frequently. Whether or not you
12 would consider him my sort of counterpart, I don't
13 know.

14 674 Q. I want to just ask you to look at
15 CRE80704. It's an email dated January 31 from
16 Barry Goodwin to Mr. Stransky, an email sequence.
17 Just look at the sequence.

18 You don't appear to be directly on it,
19 but your office is.

20 A. (Witness reads document). Yes.

21 675 Q. So we can see as well that
22 certainly from Finance, as of January 31 at 3:51
23 p.m.:

24 "The option still being
25 presented by Finance is the

1 three-year phaseout and steady state
2 for...B, appointing a provincial
3 lead to work with the industry in
4 2012-13 to produce a three-year plan
5 that achieves industry
6 sustainability by 2015-16."

7 A. Yes, this looks like the Cabinet
8 minute that they're preparing.

9 676 Q. And C, it again appears to be the
10 language for a draft Cabinet minute?

11 A. That's correct. That's what it
12 looks like.

13 677 Q. And so that I understand the
14 process, what they're doing there is composing the
15 content of the actual desired outcome to be
16 reflected in a Cabinet minute at the end of a
17 Cabinet meeting, correct?

18 A. Yes, it's essentially the marching
19 orders of Cabinet to the respective ministries.

20 678 Q. And the marching order with
21 respect to revenue sharing with the horseracing
22 industry is that a proposed transfer payment
23 program be developed to fund the horseracing
24 industry in the phaseout that we discussed, \$250
25 million in 2013-14, 150 million in 2014-15, and

1 \$100 million in 2015-16 going forward, right?

2 A. Yeah, although I don't see the
3 going-forward aspect, but I agree with the first
4 part of your statement.

5 679 Q. And that's as of 3:51 p.m.,
6 January 31?

7 A. Correct.

8 MR. LISUS: Let's mark that as the next
9 exhibit, please.

10 MR. MILAT: Exhibit 5.

11 EXHIBIT NO. 5: Email, Bates numbered
12 CRE80704.

13 BY MR. LISUS:

14 680 Q. And if I asked you to look at
15 CRE29902 and 29903, I'll just describe it to you
16 while we're getting it. This appears to be
17 Mr. Stransky sending to Mr. Goodwin and Ms. Yeigh
18 the feedback from OMAFRA, who have been consulted
19 as of February 2nd.

20 A. Yes, these sort of notes were sort
21 of typical.

22 681 Q. Okay. And so OMAFRA has been
23 included in the discussion and we see, on the
24 bottom of the first page:

25 "Eliminating the Slots at

1 Racetracks Program that currently
2 transfers approximately \$345 million
3 to the horseracing industry, in
4 favour of a new transfer payment
5 program capped at \$100 million to
6 support the industry in Ontario."

7 And that is the proposal we've been
8 discussing, this phaseout and steady state at \$100
9 million, right?

10 A. That's right.

11 682 Q. And so those -- and I presume
12 looking at the email, Mr. Shortill, Mr. Stransky is
13 advancing this process of getting buy-in or
14 acceptance for the proposal as of February 2nd?

15 A. He would have been doing that at
16 some point. That's not what this is, though.

17 683 Q. What is this?

18 A. This is a briefing note that the
19 OMAFRA officials have prepared for their Minister
20 in advance of a Cabinet discussion highlighting
21 what they know to believe -- or what they believe
22 to be the most current policy option being
23 recommended.

24 684 Q. Okay. As of January 27th, 2012?

25 A. Yes, that's correct. So what I

1 mean is, I don't know if Blair is seeking input or
2 if OMAFRA is simply sharing their Minister's
3 briefing note with them.

4 685 Q. I'll speak with Mr. Keegan when I
5 examine him --

6 A. Certainly.

7 686 Q. -- but I understand this to be
8 Blair passing on OMAFRA's views on the proposal
9 which is what the briefing note appears to be.

10 A. Yes, the suggested comments on the
11 submission would presumably be OMAFRA civil service
12 advice and what the Minister should say at Cabinet.
13 It doesn't mean he did say it or agreed with it.

14 687 Q. And the Minister being Duncan or
15 McMeekin?

16 A. McMeekin.

17 MR. LISUS: That's the next exhibit,
18 please.

19 EXHIBIT C (for identification):

20 Briefing note, Bates numbered CRE29902
21 and CRE29903.

22 BY MR. LISUS:

23 688 Q. So as far as I can tell, sir, from
24 the documents as of certainly January 27 and
25 February 2, the only proposal on the table is this

1 phased-down, steady state, capped at \$100 million
2 approach, right?

3 A. I would say that that was the
4 policy that had risen to the top at that point.

5 689 Q. Now, I want to ask you, I haven't
6 seen any -- I haven't seen any reference to any
7 other policy or approach as of February 2. Are you
8 aware of any?

9 A. Certainly. There were several
10 options under consideration. One would have been
11 no change, one would have been the step-down and
12 completely phase out, one would have been --

13 690 Q. Let me rephrase my question. I
14 haven't seen any evidence of any of the kinds of
15 policies you're just telling me about now --

16 A. I understand that.

17 691 Q. Let me finish. Being presented to
18 ministers or advisors for consideration.

19 A. I understand. I'm saying there
20 were other policies under consideration.

21 692 Q. All right. Have you seen any of
22 them reflected in any documents?

23 A. I have not.

24 693 Q. Any emails?

25 A. Not that I'm aware of.

1 694 Q. Any proposals?
2 A. Not that I've seen here.
3 695 Q. Any ministers' briefing notes?
4 A. No.
5 696 Q. Any key messages?
6 A. Not that I'm aware of.
7 697 Q. Any Q's and A's?
8 A. No.
9 698 Q. So, if you take a look at
10 CRE360917, have you seen this email before today?
11 A. Yes, I have.
12 699 Q. When?
13 A. Presumably I saw it when it was
14 sent, but it was also part of the package that was
15 provided to me in advance.
16 700 Q. So you have reviewed this email?
17 A. Yes.
18 701 Q. Now, tell me what this email is
19 about? This is an email from Mr. Bardeesy to you
20 and to Mr. Dave Gene. Who is Dave Gene?
21 A. Dave Gene was the Deputy Chief of
22 Staff in the Premier's Office.
23 702 Q. Had you been speaking with
24 Mr. Gene about proposals regarding the revenue
25 share from Slots at Racetrack Program?

1 A. I would have been, yes.

2 703 Q. You say you would have been. Do
3 you recall if you were?

4 A. I don't recall, but...

5 704 Q. You think you would have been
6 because of the nature of the topic?

7 A. Correct.

8 705 Q. Okay. And Chris Morley, he was
9 the Premier's Chief of Staff?

10 A. He was -- he was the Premier's
11 director of communications, but at this point I
12 believe he was Chief of Staff.

13 706 Q. Okay. Jamison "Steve"?

14 A. "Stee-vee." Was the Premier's
15 principal secretary, which is a senior policy
16 advisor.

17 707 Q. Okay. And so why is Mr. Bardeesy
18 sending you and these other fellows this email?

19 A. Well, I can't speak to why he's
20 sending the other individuals the email, but often
21 in the development of policy they would brief the
22 Premier in advance and his office would provide
23 that feedback to our office so that the Minister
24 would have a sense of where the Premier's thinking
25 was at prior to a Cabinet meeting.

1 708 Q. And was this email the first
2 information that you had of what the Premier's
3 thinking was about the treatment of the revenue
4 sharing with the horseracing industry?

5 A. I can't remember if it was the
6 first.

7 709 Q. Okay. Do you remember getting
8 this email?

9 A. No. I acknowledge I received it.

10 710 Q. Fine. But do you remember being
11 informed of this decision?

12 A. I remember that that was the
13 Premier's thinking. Whether or not I was informed
14 of that by this email or previous or subsequent
15 conversations, I can't recall.

16 711 Q. So, tell me what this email meant
17 to you when you got it?

18 A. It aligned with the advice I was
19 providing the Minister, which was eliminating the
20 subsidy to the horseracing industry.

21 712 Q. Entirely, with no transition
22 effective March 13?

23 A. I believe that's correct. At some
24 point we did discuss a transition fund. I can't
25 remember if we discussed it prior to this or

1 afterwards.

2 713 Q. So, your recollection, sir, is
3 that as of February 2nd you had come to the view
4 that the revenue share should be entirely
5 eliminated with no transition, correct?

6 A. That's correct.

7 714 Q. And you had communicated that to
8 the staff in the Premier's Office?

9 A. That's correct.

10 715 Q. And so, when you received this
11 email on February 2nd, it was not a surprise to you
12 because you were of the same view?

13 A. It may have been a surprise that
14 the Premier had that view. I don't think it was,
15 though. I think I had a sense of that going in.

16 716 Q. From who?

17 A. From discussions with his office.

18 717 Q. Okay. And when did you understand
19 the Premier had come around to that view?

20 A. It would have been in the weeks
21 leading up to the Cabinet meeting of February.

22 718 Q. Okay.

23 A. And just to be clear, your
24 previous question had a comment about transition
25 funding. I eventually came around to the opinion

1 that there should be transition funding. I can't
2 recall if I had that view at this time or not.

3 719 Q. When did you eventually come
4 around to it?

5 A. I can't recall.

6 720 Q. It was after the decision had been
7 made and communicated?

8 A. I believe it was, but I can't say
9 for certain.

10 721 Q. Was it as a result of the work of
11 the transition panel?

12 A. It may have been. I can't recall.

13 722 Q. All right. And it says:

14 "He was inclined to go to zero
15 for horseracing."

16 Do you see that?

17 A. I do.

18 723 Q. What does that mean?

19 A. I take that as meaning eliminating
20 the subsidy.

21 724 Q. Immediately and without any
22 transition support? Or do you not know?

23 A. I do not know. I just can't
24 remember at what point we started to discuss the
25 transition funding that we ultimately announced. I

1 feel like it was months later.

2 725 Q. All right. What decision had been
3 made as of February 2nd about the phaseout, the
4 time at which it would go to zero?

5 A. To be clear, no decision had been
6 made. The Minister had certainly formed his advice
7 to Cabinet, but ultimately -- sorry, to -- well, he
8 would have formed the opinion when he signed the
9 Cabinet submission, whenever that occurred. It
10 might have been a week or so in advance.

11 The actual decision was made by Cabinet
12 on February 8th.

13 726 Q. But the Minister's decision to go
14 to zero with no transition, that was your view on
15 February 2nd?

16 A. To be clear, just the use of the
17 word "decision" is one that I would reserve for
18 Cabinet. The Minister had formed his opinion.

19 727 Q. Around February 2nd, same time as
20 the Premier?

21 A. I believe that's correct.

22 728 Q. And that was your view as well,
23 correct?

24 A. That was my advice, yes.

25 729 Q. Your advice, correct. And was it

1 Mr. Bardeesy's view and advice to the Premier?

2 A. I can't recall.

3 MR. LISUS: That's the next exhibit,
4 please.

5 EXHIBIT NO. 6: Email, Bates numbered
6 CRE360917.

7 MR. ROSENBERG: The doc number, please?

8 MR. MILAT: CRE0360917.

9 BY MR. LISUS:

10 730 Q. Now, I want to ask you to look at
11 Exhibit 27 to Mr. Stransky's examination. Do you
12 have that there?

13 MS. LA HOREY: I have my copy.

14 BY MR. LISUS:

15 731 Q. We know that on February 1
16 Mr. Stransky reports to you on meetings conducted
17 on January 31 and February 1.

18 A. Yes.

19 732 Q. And we see that Minister Wynne and
20 David Zimmer are consulted?

21 A. Yes.

22 733 Q. Now, as of January 31 and February
23 1, the only proposal we've seen in the decks was
24 the three-year phaseout and steady state, right?

25 A. In the decks, but that doesn't

1 mean that we weren't socializing other options with
2 them.

3 734 Q. Well, here's my question to you,
4 sir. Mr. Stransky had no recollection of these
5 things. What were these Ministers socialized to; a
6 three-year phaseout with steady state, or zero with
7 no transition?

8 A. I can't recall.

9 735 Q. Because you're aware that Minister
10 McMeekin stated publicly that he thought the ball
11 was dropped on the horseracing industry --

12 A. I am aware he made that comment,
13 yes.

14 736 Q. And you're aware that Kathleen
15 Wynne has made public statements as well that she
16 doesn't think the decision was made thoughtfully or
17 properly?

18 A. I am aware she's made those
19 comments, yes.

20 737 Q. And when I look at this briefing
21 of the discussions that were had with those
22 ministers, I don't see any reference to "go to
23 zero," right?

24 A. Acknowledged.

25 738 Q. And the only information, the only

1 proposal on the table as of the end of January that
2 we've seen, was the three-year phaseout steady
3 state, right?

4 A. That was what was in the draft
5 Cabinet submission at that time. But again, that
6 does not mean that other options were not discussed
7 in these meetings.

8 739 Q. But you don't have any information
9 as to whether it was or wasn't, right?

10 A. Because I don't recall. And for
11 the most part, I wouldn't have been in many of
12 these meetings.

13 MR. LISUS: Okay. Now, I'm going to
14 mark that as the next exhibit, please. It's an
15 email to him, Ms. La Horey.

16 MS. LA HOREY: Yes, just checking.

17 MR. MILAT: Exhibit 7.

18 EXHIBIT NO. 7: Email, Exhibit 27 to
19 Mr. Stransky's examination.

20 BY MR. LISUS:

21 740 Q. And I want you to look at
22 CRE360998, please. Can I just ask you this, sir.
23 Who in the Minister's Office is responsible for
24 ensuring that the Minister has accurate information
25 on which to make a decision and a recommendation

1 for Cabinet?

2 A. In the Minister's Office?

3 741 Q. Yes.

4 A. I would argue that we all had some
5 responsibility, but ultimately it was the Chief of
6 Staff's, so myself.

7 742 Q. Who in the Minister's Office has
8 responsibility to ensure that the Minister has
9 complete information about the consequences of a
10 decision he's making and a recommendation he's
11 giving to Cabinet?

12 A. Well, I think it would be
13 unreasonable to task anyone with ensuring complete
14 information is provided.

15 743 Q. Who is responsible in the
16 Minister's Office to ensure that the Minister
17 understands the consequences for a decision he is
18 making and a recommendation he is giving to
19 Cabinet?

20 A. His ministerial staff certainly
21 provide him with expected outcomes, but I wouldn't
22 say that anyone had specific responsibility to
23 ensure it. Ultimately the Minister, as Cabinet
24 minister, takes that responsibility the moment he
25 is sworn into Cabinet.

1 744 Q. And so that he has a
2 responsibility to say to his staff, have you
3 investigated the consequences, the economic
4 consequences, say, of this decision?

5 A. He could ask such a thing.

6 745 Q. And has done on prior occasions in
7 which you were his chief?

8 A. He has. For the most part such a
9 request would more so be directed at the civil
10 service, but it could be through his political
11 staff as a conduit.

12 746 Q. And he didn't, I think we've
13 agreed, ask those questions or give those
14 instructions in this instance?

15 A. I can't recall specifically what
16 he asked. I do recall there was an economic
17 analysis prepared, but I recall it being prepared
18 later on, again because the policy decision the
19 Minister was making was more about government
20 priorities.

21 747 Q. And when you say the analysis was
22 prepared later on, you mean after the
23 recommendation to Cabinet was made and Cabinet
24 accepted, right?

25 A. That's my recollection.

1 748 Q. That is what the documents
2 suggest. I want to have you look at that document.

3 A. (Witness reads document).

4 749 Q. Do you recall what was going on?

5 A. It looks like we were preparing
6 the Cabinet deck and Mr. Bardeesy was just going
7 back and forth with officials in Cabinet office
8 regarding it.

9 750 Q. And then if I look at the top of
10 the string, we're now at February 3, 2012, 11:31
11 a.m., Adrian Scott in the Cabinet office, do you
12 know that person?

13 A. It rings a bell.

14 751 Q. That person, is that a man or a
15 woman?

16 A. I don't know.

17 752 Q. It says:

18 "Okay, more changes coming."

19 Do you know what that means?

20 A. Well, it would have meant that
21 changes to the Cabinet submission were being made,
22 and that -- but I don't know on what or from where.

23 MR. LISUS: Okay. Exhibit for
24 identification, please.

25 EXHIBIT D (for identification): Email,

1 Bates numbered CRE360998.

2 BY MR. LISUS:

3 753 Q. Just before I hand that back, on
4 the top of the second page, February 3, '12 Karim
5 Bardeesy is asking:

6 "That might be best, thanks.

7 Can I see a draft before it goes
8 out? Also there's one more thing to
9 land, transition time to zero for
10 horseracing may be one year or
11 three, not sure yet, more soon."

12 Right? So it would appear that
13 although the government had decided that they were
14 going to go to zero, it wasn't known precisely
15 when?

16 A. To be clear, the government had
17 not made a decision at that point.

18 754 Q. Right. Mr. Duncan and
19 Mr. McGuinty have made a decision to go to zero,
20 but it doesn't -- they don't seem to have landed
21 how quickly they're going to go to zero, right?

22 A. Again, I would withhold the use of
23 the word "decision" to refer to Cabinet only. I
24 would say that by this point, Mr. Duncan was
25 forming his view on what he was going to submit to

1 Cabinet as a recommendation.

2 755 Q. Okay.

3 A. And it seemed that that was
4 aligning with Mr. McGuinty's view.

5 756 Q. Which was zero but still deciding
6 how quickly, may be one year or three, right?

7 A. In terms of the transition, that's
8 right.

9 757 Q. But your view, sir, at the time
10 was go to zero, do it immediately, and that was
11 ultimately the view that prevailed, correct?

12 A. I would agree with that, that's
13 right.

14 758 Q. Thank you. Next exhibit.

15 A. As I mentioned earlier, at some
16 point I formed a view on transition but I don't
17 believe it was at this point.

18 759 Q. Right. Did you know when the
19 breeding season for Standardbred horses began?

20 A. No. I did not.

21 760 Q. Do you know now?

22 A. I do not.

23 761 Q. Did you at any time know?

24 A. I may have, but I don't recall.

25 762 Q. Okay.

1 MR. MILAT: Exhibit D.

2 BY MR. LISUS:

3 763 Q. If I could show you 686 -- excuse
4 me, CR1885. You don't appear to be copied on this
5 but can you tell me, based on your experience, what
6 is going on here?

7 A. I believe the package that is
8 being referred to in terms of reviewing it with PO
9 and Karim would be the Cabinet submission. He has
10 some changes he wants made to it. It appears he
11 called me and spoke to me about this as well.

12 764 Q. Who is "he"?

13 A. He, Mr. Bardeesy.

14 765 Q. Yes. Was he responsible for the
15 composition of the package?

16 A. I wouldn't characterize it like
17 that. He was responsible for advising the Premier,
18 but as well as coordinating our submission into
19 Cabinet, as well as providing any comment to us and
20 the Minister as well.

21 766 Q. Okay. And as you point out, the
22 email indicates that Mr. Bardeesy spoke directly to
23 you about it, and so what were you and he working
24 on there?

25 A. The way -- I don't remember this,

1 but the way I read this email is that he had some
2 changes, he called me about making those changes in
3 the Cabinet submission.

4 767 Q. Do you recall what they were or
5 generally?

6 A. I don't.

7 MR. LISUS: Okay. Next exhibit.

8 MS. LA HOREY: I think we're at E.

9 MR. LISUS: Thank you.

10 EXHIBIT E (for identification): Email,
11 Bates numbered CR1885.

12 BY MR. LISUS:

13 768 Q. Okay. I want to show you
14 CRE361000, please. We're now at February the 3rd
15 at 11:29. Just review this string and tell me
16 what's going on here.

17 A. Certainly. (Witness reads
18 document). Do you want me to walk through it?

19 769 Q. Well, let me just see if I can
20 figure this out and you tell me if I've got it
21 right, okay?

22 It appears that at the end of this
23 exchange, Ms. Ampleford in Cabinet tells
24 Mr. Bardeesy that Finance has been directed by
25 their Minister to remove transition support, so the

1 one-year notice period is the transition.

2 A. Yes, what they're saying is
3 directed by the Minister's Office, but that would
4 have been on direction from the Minister.

5 770 Q. Right. And on your advice and
6 recommendation?

7 A. You'd have to ask him what he
8 based it on, but that would not be unusual.

9 771 Q. Okay. And so here is where we get
10 the answer to what the transition period will be
11 for going to zero, and there's no transition, it's
12 to zero with zero transition, right?

13 A. That was the recommended option,
14 yes.

15 772 Q. And that decision was made on
16 February the 3rd by the Minister with your
17 concurrence?

18 A. No, that decision was made on
19 February 8th by Cabinet.

20 773 Q. This decision, "I just heard from
21 the Minister of Finance to remove the transition
22 support," was made by the Minister of Finance on
23 February 3rd?

24 A. The Minister made the decision to
25 revise the recommendation to Cabinet. Cabinet made

1 the decision.

2 774 Q. I understand that's your view.
3 I'm not talking about Cabinet, I'm just talking
4 about the Minister, and my only question is that's
5 when the Minister made the decision about what he
6 was going to present to Cabinet, right?

7 A. I agree with that.

8 775 Q. And that decision was made with
9 your advice and recommendation, correct?

10 A. It was consistent with my advice,
11 yes.

12 776 Q. And had you received any new
13 information or analysis or reports in the period
14 from January 26 to February 3rd?

15 A. I can't recall.

16 777 Q. I haven't seen any anywhere. Do
17 you recall there being any?

18 A. In terms of forming the advice I
19 ultimately gave the Minister, I don't recall seeing
20 any, because my advice wasn't based upon that type
21 of analysis, it was based upon aligning with
22 government priorities.

23 MR. LISUS: Okay. And that's the next
24 exhibit, please.

25 MR. MILAT: Exhibit F.

1 EXHIBIT F (for identification): Email,
2 Bates numbered CRE361000.

3 MS. LA HOREY: Off the record for a
4 second.

5 -- OFF THE RECORD DISCUSSION --

6 BY MR. LISUS:

7 778 Q. And if we look now at CRE360994,
8 take a look at that sequence, it shouldn't take you
9 long.

10 A. (Witness reads document).

11 779 Q. So just walk me through it
12 beginning on February 3 at 10:31 a.m. What's going
13 on here?

14 A. Sure. Barry is saying that the
15 Deputy Minister, DM, has signed off.

16 780 Q. Who was that?

17 A. At that point that was Steve
18 Orsini.

19 781 Q. Okay. And he signed off on what?

20 A. So all Cabinet submissions must
21 have a Minister's signature. They typically will
22 have a Minister and a Deputy Minister's signature.

23 In order to start the sort of policy
24 analysis process through Cabinet office, often what
25 will happen is a deputy-signed Cabinet submission

1 will be submitted. The Minister may still be
2 making his or her decision at that point, but at
3 least it starts sort of the machinery working.

4 So what has happened in this case is a
5 deputy-only signed version was submitted into
6 Cabinet, and then it look like the Minister made
7 his final recommendation I guess that day.

8 782 Q. That's Minister Duncan?

9 A. Minister Duncan.

10 783 Q. Where do you see that? Where it
11 says:

12 "They are with the MIN for
13 signature now, should have fully
14 signed by 11."

15 Is that -- or is it "just got new final
16 PO and MO policy instruction on horseracing"?

17 A. Sorry, that's how I refer to
18 Minister Duncan finalizing his viewpoint, was on
19 that.

20 784 Q. On the statement "just got new
21 final PO and MO policy instruction on horseracing,"
22 right?

23 A. Yeah. That doesn't mean whatever
24 he had thought at that point he didn't change the
25 very next day, but I take that as reading he had

1 made up his mind on what to recommend.

2 785 Q. Right. We know that as of this
3 point in time, it's go to zero with no transition,
4 right?

5 A. Um-hmm.

6 786 Q. Yes?

7 MS. LA HOREY: Sorry, you need to say
8 yes for the record.

9 THE WITNESS: Yes, yes, sorry.

10 BY MR. LISUS:

11 787 Q. And we know that that didn't
12 change?

13 A. Correct.

14 788 Q. So a fair inference as of February
15 3, when he says "just got new final PO and MO
16 policy instruction," is go to zero with zero
17 transition, right?

18 A. That's how I would understand
19 that, yes.

20 789 Q. And PO, I presume, is a reference
21 to the Premier and MO is a reference to Minister of
22 Finance Duncan?

23 A. No, PO is a reference to the
24 Premier's Office and MO to the Minister's Office,
25 but on a Cabinet submission like this -- and the

1 reference to the use of the word "policy
2 instruction," I would take it that the Premier and
3 the Minister, their staff were giving this
4 instruction based upon conversations that they and
5 we had with our principals.

6 790 Q. Your principals being?

7 A. The Minister.

8 791 Q. Minister Duncan and Premier
9 McGuinty?

10 A. Correct.

11 792 Q. And the conclusion therefore is at
12 the top of the page: "Horseracing down to one
13 year." Right?

14 A. And the way I read that is the
15 one-year notice that was being given.

16 793 Q. And that's it, right?

17 A. I believe so, yes.

18 MR. LISUS: Next exhibit.

19 EXHIBIT G (for identification): Email,
20 Bates numbered CRE360994.

21 MR. LISUS: Do you want to take just a
22 brief break?

23 -- RECESS AT 3:25 --

24 -- UPON RESUMING AT 3:35 --

25 BY MR. LISUS:

1 794 Q. Mr. Shortill, we have CRE361079,
2 which is a February 3 to February 4 email sequence,
3 and can you tell me what this is about?

4 A. It looks like the Cabinet deck is
5 being revised. There is a suggestion that the
6 Deputy and the Minister signed the new Cabinet
7 submission. The Premier's Office is weighing in
8 with some potential changes.

9 795 Q. To what?

10 A. I read this as to the Cabinet
11 deck.

12 796 Q. Okay.

13 A. Mr. Bardeesy is making those
14 recommendations. And then the civil service is
15 just talking about revising the deck and getting it
16 ready for signature.

17 797 Q. So, if I look at the email from
18 Bardeesy at the bottom of page 692, Saturday,
19 February 4, 12:35, which you are copied on, and
20 Mr. Gene is copied on, why is Mr. Gene copied on
21 these emails, by the way?

22 A. Mr. Gene was brought in for the
23 most part to give advice on the casino aspect of
24 this, and because that was arguably the most
25 substantive part of this submission, I would assume

1 that's why he's being copied.

2 798 Q. And when you are talking about the
3 casino aspect, you're talking about the
4 recommendation to locate a casino in the GTA?

5 A. Not just that. I'm talking about
6 the whole casino policy within the submission, so
7 the zones, the tendering of the management of those
8 zones to the private sector, the location within
9 those zones, everything encompassing the new casino
10 model.

11 799 Q. Right. And one of the steps to
12 getting the new casino model obviously was getting
13 slots out of these rural areas away from racetracks
14 and into a casino in an urban centre, right?

15 A. Not necessarily. There was a
16 belief that a casino located near a racetrack with
17 slots would cannibalize one another, so there was a
18 policy goal to keep them separate so one doesn't
19 cannibalize the other.

20 800 Q. Keep racetracks and casinos
21 separate?

22 A. Keep the slots --

23 801 Q. Okay.

24 A. -- far away enough from the
25 casinos so that the slots, wherever they were,

1 racetracks or wherever, would not cannibalize the
2 slots at the casinos.

3 802 Q. I see. Wasn't the plan, as I have
4 understood it from looking at the documents, to
5 relocate the slots out of racetracks and into
6 casinos in urban centres?

7 A. I would specifically say that the
8 policy intent was to relocate them to urban areas.
9 That didn't necessarily mean they couldn't be at
10 racetracks, but the practical effect of that would
11 be most of them would be relocated, I would
12 imagine.

13 803 Q. Okay. And if we look at this
14 email I was talking to you about, Mr. Bardeesy
15 says:

16 "For the deck, the Cabinet deck
17 on page 1 should speak to subsidies
18 to the horseracing industry being
19 eliminated, not reduced."

20 Right?

21 A. Correct.

22 804 Q. So I presume that the version of
23 the Cabinet deck they're looking at, and we can
24 pull it up if we want, but referred to them being
25 reduced in accordance with the prior proposals that

1 we had looked at, which was the phaseout over three
2 years and steady state?

3 A. That's how I would read that.

4 805 Q. Okay.

5 A. I would stipulate that I don't
6 know if the reduction amount that was in the
7 Cabinet submission that Mr. Bardeesy is referring
8 to is aligned perfectly with those submissions but
9 I would agree that there was a reduced option at
10 that point.

11 MR. LISUS: Right. That's the next
12 exhibit, please.

13 MR. MILAT: Exhibit 8.

14 EXHIBIT NO. 8: Email, Bates numbered
15 CRE361079.

16 BY MR. LISUS:

17 806 Q. And at CRE12973, it is a
18 continuation of that same thread. I should have
19 given you the complete one. Do you see where
20 Mr. Bardeesy's email is in the exhibit I've just
21 given you, the bottom of the second page and the
22 string continues on?

23 A. (Witness reads document).

24 807 Q. Okay?

25 A. Yes.

1 MR. LISUS: Next exhibit, please.

2 MR. MILAT: Exhibit 9.

3 EXHIBIT NO. 9: Email, Bates numbered
4 CRE12973.

5 BY MR. LISUS:

6 808 Q. And CRE30238, I want to -- I'm
7 showing you a document from Mr. Stransky which
8 appears to be draft speaking points, Minister's
9 speaking points, and it starts out with
10 Mr. Stransky sending to you the latest version and
11 thereafter it goes over to Finance, including
12 Mr. Orsini. Do you see that?

13 A. I do.

14 809 Q. Now, what were you and
15 Mr. Stransky doing here?

16 A. These were -- so, in most policy
17 proposals put before Cabinet, the Minister or
18 Deputy Minister or sometimes both will make
19 remarks. So it appears that Blair is sending me
20 the suggested remarks that the Minister would use
21 in his opening comments when this item came up on
22 the agenda.

23 810 Q. Okay. And did the Minister make
24 remarks in the February Cabinet meeting?

25 R/F MS. LA HOREY: That's a refusal. As I

1 indicated before, we are taking the position that
2 what is said at the Cabinet meeting is not subject
3 to questions and questions on that will be refused.

4 BY MR. LISUS:

5 811 Q. But you and Mr. Stransky were
6 working on the Minister's speaking points for the
7 purposes of him delivering them to the Cabinet,
8 correct?

9 A. I wouldn't say I was working on
10 them, but I was made aware of them, yes.

11 812 Q. Right. You reviewed them, I
12 presume?

13 A. Presumably, and I may have had
14 some comments, but I wouldn't characterize it as
15 working on them.

16 813 Q. Mr. Stransky was?

17 A. I would acknowledge that, yes.

18 MR. LISUS: Okay. Thank you. That's
19 the next exhibit.

20 MS. LA HOREY: Both documents together,
21 right?

22 MR. MILAT: Exhibit 10.

23 MR. LA HOREY: So it's 30238 and
24 0030239. I don't think you read out the last one.

25 MR. MILAT: 30238 and 30239.

1 MS. LA HOREY: One is the email and the
2 other is the speaking notes.

3 EXHIBIT NO. 10: Email and attachment,
4 Bates numbered 30238 and 30239.

5 MR. LISUS: And, Ms. La Horey, I'm not
6 going to put each one to the Cabinet. I'm going to
7 identify the document number for the various
8 versions of these speaking notes that are developed
9 and we can agree that these documents are authentic
10 and were composed by the Ministry people that they
11 appear to be, right?

12 MS. LA HOREY: Presumably we can agree
13 that they're authentic. I'll let you know if
14 there's a problem once you've given me the document
15 numbers. It may not be apparent who drafted them
16 and there may have been many people having input.

17 BY MR. LISUS:

18 814 Q. CRE32045 --

19 MS. LA HOREY: Can you go a little bit
20 slower. I'm writing this down.

21 MR. LISUS: 32045 is the cover email;
22 32046 are the speaking points dated February 7.

23 MS. LA HOREY: Okay.

24 MR. LISUS: 32047 are the actual --
25 yes, 32047 are the speaking points, okay?

1 BY MR. LISUS:

2 815 Q. I want to ask you to look at 32045
3 and 32047 and 334573 and 25688, and 32045 is an
4 email --

5 MS. LA HOREY: Sorry, which one are we
6 on?

7 BY MR. LISUS:

8 816 Q. 32045 are emails attaching
9 documents which appear to be for the purposes of
10 the Cabinet meeting including a preliminary Cabinet
11 agenda, a Cabinet briefing note, a proposed Cabinet
12 minute, appendices, a Ministry of Finance jobs and
13 economic policy committee, documents signed by what
14 appears to be the Minister and Deputy Minister, and
15 a Cabinet submission decision document called
16 "Modernizing the Ontario Lottery and Gaming
17 Corporation." Okay?

18 Now, is the package under cover of the
19 email the Cabinet document that was given to
20 Cabinet with respect to the modernization of gaming
21 and the decision to be made with respect to revenue
22 share with the horseracing industry? Is this what
23 was before Cabinet?

24 It appears to me to be the package.

25 A. Yeah, as well as -- yeah, sorry,

1 in the presentation deck. This seems right that
2 this is what Cabinet would have received.

3 817 Q. Now, I forgot what your answer
4 was, whether you were at that February 8 Cabinet
5 meeting.

6 A. I was.

7 818 Q. You remember being there?

8 A. I do.

9 819 Q. And do you remember the
10 discussion?

11 MS. LA HOREY: You can answer the
12 question about whether you remember the discussion.

13 THE WITNESS: I remember aspects of the
14 discussion.

15 MS. LA HOREY: Beyond that, there are
16 to be no questions about the Cabinet meeting itself
17 and what was discussed. I understand your
18 position. You have mine on the record.

19 BY MR. LISUS:

20 820 Q. And you're not going to permit me
21 to ask him any questions about the discussion or
22 how the decision was made to accept the
23 recommendation?

24 R/F MS. LA HOREY: I'm not permitting the
25 witness to answer any questions about what happened

1 in that Cabinet meeting February 8th, that's
2 correct.

3 BY MR. LISUS:

4 821 Q. We've seen how much work was done
5 in preparing the documents to go before Cabinet,
6 correct?

7 A. Correct.

8 822 Q. And those included the speaking --
9 the Minister's speaking points?

10 A. Correct.

11 823 Q. Did the Minister deliver the
12 speaking points?

13 R/F MS. LA HOREY: Don't answer the
14 question.

15 BY MR. LISUS:

16 824 Q. Were you satisfied that the
17 content of the Minister's speaking points were
18 accurate?

19 R/F MS. LA HOREY: Don't answer the
20 question.

21 MR. LISUS: I'm not asking --

22 MS. LA HOREY: You're not asking what
23 he said, you're asking about the document, the
24 speaking points document? You can answer that
25 question.

1 MR. LISUS: Yes.

2 MS. LA HOREY: Do you need to see the
3 document?

4 THE WITNESS: Yes. Can I clarify
5 something I said earlier as well?

6 MS. LA HOREY: Yes, you can.

7 THE WITNESS: It's my recollection that
8 this policy did not go to a Cabinet committee in
9 advance, but it appears it did the day before.

10 BY MR. LISUS:

11 825 Q. And why didn't it?

12 A. Why didn't it? It did. I stated
13 I thought it did not go to a Cabinet committee, it
14 went direct to Cabinet, but it appears here that it
15 went to Cabinet committee the day before Cabinet.

16 826 Q. Who was on the Cabinet committee?

17 A. This particular committee I don't
18 know, but they were composed of Cabinet ministers
19 and government caucus members.

20 827 Q. So how big is that?

21 A. There might have been 10 or 15
22 people.

23 828 Q. At Cabinet committee?

24 A. That's right.

25 829 Q. And then how many people are at a

1 Cabinet meeting?

2 A. Well, if it's a full attendance,
3 it's all the Cabinet ministers.

4 830 Q. Which in February '12 was what?

5 A. I don't know. The Cabinet
6 secretary would be there as well as potentially
7 senior civil servants, and then the Premier's
8 senior staff. And for respective policy
9 discussions, generally a Minister who is proposing
10 something, their Chief of Staff and Deputy Minister
11 would attend but just for that item.

12 831 Q. So in this instance it sounds like
13 what, 50 people?

14 A. I don't know, but that's not an
15 unreasonable number. It feels a bit high though.

16 832 Q. All right. I mean, 40ish?

17 A. Sure.

18 833 Q. How many Cabinet ministers are
19 there?

20 A. At the time, I don't know, but
21 there might have been 20 some odd.

22 834 Q. Okay. And who conducts a Cabinet
23 meeting?

24 A. Between the chair of Cabinet,
25 which is in Mr. McGuinty's government not the

1 Premier, it would be between the chair of Cabinet
2 and the Premier.

3 835 Q. The chair of Cabinet and the
4 Premier. And so the chair of Cabinet is a staff
5 position?

6 A. No, it's another Minister.

7 836 Q. Okay. All right. And we've seen
8 the multiple versions and you heard me refer to
9 multiple versions of the Minister's speaking
10 points.

11 So my question to you is, were you
12 satisfied in 2012 that the Minister's speaking
13 points were accurate?

14 A. I don't know.

15 837 Q. Okay. I've seen reference in the
16 documents that 120 copies of the Cabinet materials
17 were made. Does that sound about right?

18 A. Well, all Cabinet ministers, all
19 deputy ministers, numerous officials in Cabinet
20 office, that number probably sounds right.

21 838 Q. Okay. And this wasn't the only
22 issue on the Cabinet agenda that day?

23 A. Unlikely it was. There were
24 several --

25 MS. LA HOREY: Just for the record, the

1 version of CRE0334573 is the unredacted copy. As I
2 indicated in correspondence, the fact that you were
3 provided this copy that was unredacted was
4 inadvertent. The Crown, by producing the
5 unredacted copy, does not waive privilege.

6 So you can ask him questions except
7 about the redacted parts. So we know that there
8 was -- for instance, there were other items on the
9 agenda, it would appear, but I don't want any
10 reference to the other matters that were before
11 Cabinet on that date on the record.

12 MR. LISUS: Well, as we responded to
13 your letter, this document was marked in its
14 entirety on Mr. Phillips' examination, he was
15 questioned about it. It was attached to
16 Ms. Yeigh's affidavit. It was before Justice Emery
17 in the court record in June 2016 and submissions
18 were made on it.

19 So, if there is confidentiality, Ms. La
20 Horey, I don't think it's there. If there was a
21 confidentiality, I don't think it's there anymore.

22 MS. LA HOREY: Well, we take the view
23 that we have --

24 MR. LISUS: I understand.

25 BY MR. LISUS:

1 839 Q. So, this was not the only agenda
2 on the Cabinet?

3 MS. LA HOREY: Item on the Cabinet
4 agenda.

5 BY MR. LISUS:

6 840 Q. Item on the Cabinet agenda on
7 February 8th, right?

8 A. I can't recall but it would be
9 unusual that this would be the only item.

10 841 Q. And the agenda identifies the
11 meeting being from 12:00 to 2:30?

12 A. Yes.

13 842 Q. Is there a break in the meeting?

14 A. Traditionally no.

15 843 Q. Do you recall discussion about
16 these other items?

17 R/F MS. LA HOREY: Don't answer the
18 question.

19 BY MR. LISUS:

20 844 Q. I did note in the Minister's
21 speaking points that reference was made to the
22 Drummond report. Do you recall that?

23 A. I don't recall it, but I'm not
24 surprised.

25 845 Q. And the Minister's speaking notes

1 say that:

2 "It is also worth noting that
3 the Drummond report will make
4 several recommendations for OLG that
5 the government will need to review."

6 I want to pause there. Are you with me
7 there, Mr. Shortill, bottom of page 4?

8 A. Yes, I see it.

9 846 Q. As of February 7th, had you
10 received and read a copy of the Drummond report
11 which I understand was provided to government at
12 the end of January?

13 A. I read an advance copy. I don't
14 know if I had read it by this point though.

15 847 Q. Were you generally aware of what
16 its recommendations were?

17 A. There were a lot of
18 recommendations. I was aware of some of them, yes.

19 848 Q. Were you aware of its
20 recommendations with respect to the Slots at
21 Racetrack Program?

22 A. By this point, I probably was.

23 849 Q. And what was your understanding of
24 Mr. Drummond's recommendations for the Slots at
25 Racetrack Program revenue share?

1 A. Certainly. So I think the
2 Commission, headed by Mr. Drummond, was
3 recommending eliminating the subsidy.

4 850 Q. And that's what your -- and that's
5 why you had, or Mr. Stransky had in the Minister's
6 speaking notes a report to Cabinet that
7 Mr. Drummond had recommended the elimination of the
8 revenue share?

9 A. I think the significance of that
10 comment was the government didn't agree with all of
11 Mr. -- or the Commission's recommendations, so the
12 Minister was highlighting that this was a case
13 where there was alignment between the government
14 and the Commission on this particular item.

15 851 Q. And again, the alignment was that
16 Mr. Drummond recommended the elimination of the
17 revenue sharing with zero transition in alignment
18 with your own view and Minister Duncan's view and
19 the recommendation being made to Cabinet?

20 A. I can't remember if the Commission
21 report recommended transition funding or not. But
22 for the most part, yes.

23 852 Q. Okay. And was that generally
24 understood in Finance to be the position of
25 Mr. Drummond?

1 A. Well, of the Commission. There
2 were three commissioners.

3 853 Q. Excuse me, good point.
4 Mr. Drummond and his co-commissioners?

5 A. I can't recall. But I did
6 understand that that was going to be part of the
7 Commission's final recommendations, yes.

8 854 Q. Okay. And I presume the Cabinet
9 meeting went off as anticipated?

10 R/F MS. LA HOREY: Don't answer the
11 question.

12 BY MR. LISUS:

13 855 Q. Okay. So this package is the next
14 exhibit. It's L on Stransky. But you were there
15 at the Cabinet meeting, right?

16 A. Yes.

17 MR. LISUS: So I'm going to have this
18 marked as an exhibit on your examination.

19 MS. LA HOREY: I am going to object to
20 CRE0334573 unredacted made as an exhibit to this
21 examination.

22 MR. LISUS: Well, are you going to
23 object to the unredacted portions being part of the
24 exhibit? Right?

25 MS. LA HOREY: Yes. If you like,

1 without anybody waiving their position on whether
2 privilege was waived, we can provide you with a
3 redacted version and we can mark that as the next
4 exhibit.

5 MR. LISUS: No, no, we will just leave
6 it like this and we can hash it out.

7 MS. LA HOREY: Alrighty then.

8 MR. MILAT: So this is Exhibit 11.

9 MS. LA HOREY: We're not marking this
10 but we can mark -- and it's already been made an
11 exhibit, as you said, so why don't -- we can mark
12 the rest of the package.

13 MR. LISUS: Well, I am marking it, and
14 you can, without prejudice to your position -- it's
15 already in the court record, Ms. La Horey.

16 MS. LA HOREY: I understand that.

17 MR. LISUS: And the subject of
18 submissions and I even think it was referred to in
19 the reasons. I'm not saying anything on your
20 position. I just want to have a record of what was
21 put to the witness today.

22 MS. LA HOREY: So, we didn't refer to
23 any of the redacted parts so my preference is,
24 without prejudice to anybody's position, is we
25 provide a redacted copy of this and the only parts

1 of the document that were put to the witness were
2 the unredacted parts anyway, so it's neither here
3 nor there in respect to both of our views without
4 anybody having to compromise at this stage, and we
5 can deal with it later if we need to. Would that
6 be acceptable?

7 MR. LISUS: I'm not -- let's go off.

8 -- OFF THE RECORD DISCUSSION --

9 MR. LISUS: So here's my position,
10 Ms. La Horey. As you know, I think that whatever
11 privilege or what confidentiality there may or may
12 not have been is gone. You're concerned about the
13 reference to initial legal analysis on page 10 of
14 334573. I'm not going to try and pull out of
15 Ontario's witnesses what legal advice was given to
16 them, okay?

17 MS. LA HOREY: That's helpful. I mean,
18 there were other redactions, but that, I
19 appreciate, is helpful. I would still prefer that
20 it not be made an exhibit and that we provide you
21 with a redacted version.

22 MR. LISUS: I'm sorry, I can't give you
23 everything you asked for, but I will give you the
24 comfort that I'm not going to pursue your legal
25 advice. But the rest of it I want marked and you

1 can make an argument that it should be removed from
2 the record. It's in the record already. Okay,
3 that's the next exhibit.

4 MS. LA HOREY: Is it the whole thing?

5 MR. MILAT: I think the plan was to
6 make the whole thing Exhibit 11.

7 MR. LISUS: All of those documents are
8 attached to that email.

9 MS. LA HOREY: Okay.

10 EXHIBIT NO. 11: Email and attachments,
11 Bates numbered CRE0334573.

12 MS. LA HOREY: Sorry, you marked that
13 as Exhibit 11?

14 MR. LISUS: Yes.

15 BY MR. LISUS:

16 856 Q. I'm going to ask you to look at,
17 please, CRE106086. Start from the back, Mr.
18 Shortill.

19 A. (Witness reads document).

20 857 Q. Okay?

21 A. Okay.

22 858 Q. The discussion starts on February
23 17 with Mr. Goodwin sending Mr. Orsini an email
24 saying that he had a call with Minister McMeekin
25 and Mr. Orsini says:

1 "Discussed issues on a call
2 with Minister McMeekin this
3 afternoon. As Agriculture Minister
4 he was hoping that there was a more
5 in-depth economic impact analysis
6 that had been done of the strategy
7 of one year withdrawal of subsidy."
8 And the email sequence goes on.

9 Do you recall Minister McMeekin being
10 unhappy about the lack of analysis regarding the
11 consequences of the elimination of the revenue
12 share with no transition support?

13 A. I don't recall that in terms of
14 unhappy. I would characterize it as uneasy.

15 859 Q. Okay. And what is your
16 understanding as to why he was uneasy?

17 A. I think he felt that this was a
18 stakeholder group within --

19 860 Q. "This" being OMAFRA?

20 A. Yes. Within his Ministry, he was
21 bringing that viewpoint, I think, to bear.

22 861 Q. But my understanding of his
23 subsequent comments is that he only heard about the
24 decision to eliminate the revenue share with one
25 year's notice and no transition for the very first

1 time and in Cabinet. Is that your understanding?

2 A. I don't know when he first heard
3 of it.

4 862 Q. Okay. And I want to -- if you
5 look at Ms. Yeigh's email at the bottom of the
6 first page of the sequence, she says:

7 "Bit of another factor for us
8 to think about. Spoke with someone
9 who mentioned the quick removal of
10 these funds will result in excess
11 horse supply which could cause us
12 further negative press if they are
13 euthanized."

14 Do you see that?

15 A. I do see that.

16 863 Q. And were you aware in February
17 that the quick removal of funds would result in
18 excess horse supply?

19 A. I don't know if I was aware of
20 that.

21 864 Q. Okay. Were you aware of this
22 discussion going on in the third week of February?

23 A. I can't recall.

24 MR. LISUS: That's an exhibit for
25 identification, please.

1 EXHIBIT H (for identification: Email,
2 Bates numbered CRE106086.

3 BY MR. LISUS:

4 865 Q. Were you aware that Mr. Seiling
5 wrote a letter to Mr. Godfrey in which he was
6 critical of the decision and the way it was made?

7 A. I don't recall knowing that.

8 866 Q. Take a look at CRE32142.

9 MS. LA HOREY: Before we move on, is
10 this CRE0106086, is that H?

11 MR. MILAT: That's what I intended to
12 say as soon as I get it.

13 MS. LA HOREY: Okay.

14 BY MR. LISUS:

15 867 Q. Do you have CRE32142? This is an
16 email where Mr. Stransky copies you to Mr. Phillips
17 asking that certain language be replaced in the OLG
18 report. Do you see that?

19 A. I do see it.

20 868 Q. Do you recall that?

21 A. I don't.

22 869 Q. Why was Mr. Stransky asking
23 Mr. Phillips to change the language in the OLG
24 report?

25 A. I don't know.

1 MR. ROSENBERG: Counsel, I'm objecting
2 to putting an incomplete string of emails to this
3 witness. I would ask that you use the more
4 complete string that you put to Mr. Phillips.

5 MR. LISUS: Okay, what is that?

6 MS. LA HOREY: It's OLGSB1130.

7 MR. MILAT: Do you know which exhibit
8 in Mr. Phillips' examination it was?

9 I've got it here.

10 MS. LA HOREY: Which exhibit?

11 MR. MILAT: It's Exhibit 41.

12 BY MR. LISUS:

13 870 Q. Do you have it there, Mr.
14 Shortill?

15 A. I do.

16 MR. LISUS: So, your objection,
17 Mr. Rosenberg, is that he should have the email
18 back from Mr. Phillips saying "Okay, we are a go
19 then, back to the print room," and Mr. Stransky
20 saying "Wonderful"?

21 MR. ROSENBERG: No, it's the first
22 email in the chain. It appears to be cut off from
23 the production you had.

24 MS. LA HOREY: I don't know that we
25 have it.

1 MR. LISUS: What document number?

2 MS. LA HOREY: And what page?

3 MR. LISUS: Oh, "The Slots at Racetrack
4 Program runs counter to providing locations that
5 meet all of our customer needs"?

6 MR. ROSENBERG: Correct, that first
7 email from Mr. Phillips to Mr. Stransky.

8 BY MR. LISUS:

9 871 Q. So, you have that Mr. Shortill?

10 A. Yes.

11 872 Q. Now, why was Mr. Stransky, with
12 the benefit now of the complete email exchange,
13 asking Mr. Phillips to change the language of the
14 report?

15 A. I still don't know.

16 873 Q. All right. You were copied on it,
17 I think? Yes?

18 A. I was.

19 MR. LISUS: Right. The next exhibit.

20 EXHIBIT NO. 12: Email, Bates numbered
21 OLGSB0001130.

22 MS. LA HOREY: So we're making
23 OLGSB0001130, that's Exhibit 12 then?

24 MR. LISUS: Yes.

25 BY MR. LISUS:

1 874 Q. I want to show you a copy of a
2 radio ad that ran late February 2012, and this is
3 an ad -- this is an email from Mr. Orsini sending
4 to various folks a copy from the two radio ads.

5 A. Sorry, to be clear, it's from
6 Mr. Goodwin to Mr. Orsini.

7 875 Q. Correct, thank you.

8 A. (Witness reads document).

9 876 Q. Do you remember these radio ads?

10 A. I do not.

11 877 Q. Did you have any involvement in
12 the decision to run these radio ads?

13 A. No.

14 878 Q. So I presume these radio ads would
15 not be funded by the government?

16 A. That's correct.

17 879 Q. Why is that?

18 A. They were partisan in nature. I
19 am assuming these are coming from the Liberal
20 Party, although potentially could be coming from
21 the NDP.

22 880 Q. Why do you think that?

23 A. Well, I assume the Progressive
24 Conservative Party didn't run these ads, so it
25 would only leave the other two.

1 881 Q. Well, why would the NDP want to
2 run these ads?

3 A. I don't know.

4 882 Q. It wasn't an NDP decision to
5 terminate the revenue sharing?

6 A. I agree with that.

7 883 Q. And you and I can agree these ads
8 don't have anything to do with gaming policy?

9 A. They appear to have to do with the
10 Slots at Racetrack policy which is a subset of
11 gaming policy.

12 884 Q. So you think that these ads are a
13 reflection of government gaming policy?

14 A. I don't know if I would say that.

15 885 Q. Would you have approved these ads
16 if you were asked to as Chief of Staff to Minister
17 Duncan?

18 A. I was not asked to approve these
19 ads, nor would it have been appropriate for me to
20 do so.

21 886 Q. Here's an email from Minister
22 Broten confirming that these ads were put out not
23 by the NDP or the PCs, but by --

24 A. By the Liberal Party.

25 887 Q. Yes. So, I mean, you're a policy

1 person. What purpose do these ads play in February
2 2012, some five months after an election?

3 A. You would have to ask the people
4 that made the decision on this.

5 888 Q. You can't tell me? You can't tell
6 me what purpose they would serve?

7 A. I can only speculate.

8 889 Q. Okay.

9 A. Is it appropriate to speculate?

10 MS. LA HOREY: No, it's not.

11 MR. LISUS: Can I have that back?

12 MS. LA HOREY: Both of them?

13 MR. LISUS: Yes.

14 MS. LA HOREY: Did you want to refer to
15 the document number of the --

16 MR. LISUS: The ads are CRE0081193.

17 Thank you.

18 BY MR. LISUS:

19 890 Q. And I see that Mr. Stransky
20 receives the email from Laurel Broten. Why would
21 Mr. Stransky get the email if these are not ads
22 which your office was involved in and did not
23 approve and would not have approved, if I
24 understood you, if they were presented to them --
25 presented with them?

1 A. May I see the document?

2 891 Q. And you received it as well, Mr.
3 Shortill?

4 A. So it looks like the Ontario
5 Liberal Party put this ad out on February 26. Jon
6 Wypych, who was a staff member in my office,
7 presumably received that email on his personal
8 account, sent it to his government account and sent
9 it on to several of us in the office.

10 892 Q. And why would you get that email?

11 A. I presume it was an FYI that the
12 ads had gone out or this email had been sent.

13 893 Q. So my question to you, sir, is if
14 your office didn't have any involvement and it
15 wouldn't have been appropriate to be involved in
16 such ads, why are you receiving that?

17 A. We're simply being informed that
18 this political commentary was going on.

19 894 Q. And what was your reaction to it?

20 A. I can't remember what my reaction
21 was.

22 895 Q. Can I have it back, please? It's
23 not an accurate -- the ads aren't accurate. The
24 so-called subsidy was not secret, correct?

25 A. I can't speak to that.

1 896 Q. You don't know?

2 A. I certainly was aware of it.

3 897 Q. The revenue sharing arrangement
4 was reported in every provincial budget, right?

5 A. I don't know. It may have been.

6 898 Q. You never considered it to be
7 secret, correct?

8 A. I was aware of it. That's the
9 extent of my comment on that.

10 899 Q. But you never considered the
11 subsidy to be secret?

12 MS. LA HOREY: He's answered the
13 question.

14 THE WITNESS: I was aware of it.

15 BY MR. LISUS:

16 900 Q. And did you, leaving aside secret,
17 did you consider it to be a subsidy for the benefit
18 of a few very wealthy racetrack owners?

19 A. I wouldn't agree with that
20 sentiment.

21 MR. LISUS: So the email and the radio
22 ad are the next exhibit. Single exhibit, email to
23 you attaching the radio ad as the next exhibit,
24 numbered exhibit.

25 MS. LA HOREY: Which document number?

1 MR. MILAT: CR0038429.

2 MS. LA HOREY: So that's Exhibit 13?

3 THE REPORTER: Yes.

4 MR. MILAT: That would be Exhibit 13.

5 And the other email is also part of Exhibit 13.

6 MS. LA HOREY: But he didn't receive
7 that.

8 MR. MILAT: Do you want to call it
9 Exhibit I?

10 MR. LISUS: Stop. He received the
11 email with the radio ad attached.

12 MS. LA HOREY: But it's two different
13 documents. So he didn't receive this one, so mark
14 this one as an exhibit for identification.

15 MR. ROSENBERG: Could we just be clear
16 on the record what is being marked by document
17 number and what is being marked as a lettered
18 exhibit, please.

19 MR. LISUS: So the document that
20 Ms. Broten sends an email to Mr. Wypych enclosing
21 the radio ads. Mr. Wypych sends that email to
22 Melanie Wright with the ads enclosed. Melanie
23 Wright sends the email with the ads enclosed to Mr.
24 Shortill. So Mr. Shortill got the email with the
25 ads embedded in it.

1 MS. LA HOREY: No, he might have gotten
2 the email with the ads embedded, but he didn't
3 receive the other email, which is CRE0081193, which
4 should be marked as a lettered exhibit.

5 MR. LISUS: Okay.

6 MR. MILAT: So one is 13, the other is
7 I.

8 MR. ROSENBERG: Tell us what's what,
9 please.

10 MR. MILAT: CRE0081193 is Exhibit I.
11 EXHIBIT I (for identification): Email,
12 Bates numbered CRE0081193.

13 MR. MILAT: CRE0083429 is Exhibit 13.
14 EXHIBIT NO. 13: Email, Bates numbered
15 CRE0083429.

16 BY MR. LISUS:

17 901 Q. I want you to look at CRE24235 and
18 24236. This is an email enclosing a letter from
19 Mr. Seiling to Mr. Godfrey dated May 31, 2012.

20 A. (Witness reads document).

21 902 Q. Okay?

22 A. Okay.

23 903 Q. Now, Ms. Yeigh, when she sends
24 this letter on, says:

25 "Blair has indicated his strong

1 displeasure with it and obviously
2 was not engaged by Rod Seiling prior
3 to it being sent."

4 Do you recall Mr. Seiling sending this
5 letter and Mr. Stransky being very upset about him
6 doing so and speaking with him about it?

7 A. I do not recall it.

8 MR. LISUS: Thank you. That is the
9 next exhibit for identification.

10 MS. LA HOREY: That's J.

11 EXHIBIT J (for identification): Email
12 and attachment, Bates numbered CRE24235
13 and CRE24236.

14 BY MR. LISUS:

15 904 Q. CRE288984. And what I'm going to
16 give you, Mr. Shortill, is an email enclosing the
17 text of comments Mr. Sorbara made on the radio on
18 August 2, 2012. So, the radio interview or the
19 radio comments is the second document.

20 And these comments are captured and
21 circulated within Finance and then by Barry Goodwin
22 to you on Thursday, August 2. See that?

23 A. Yes.

24 905 Q. And you then send them on to Dave
25 Gene?

1 A. Yes.

2 906 Q. Why did you do that?

3 A. I wanted Dave to be aware of
4 Mr. Sorbara's comments.

5 907 Q. Why?

6 A. He works in the Premier's Office.

7 908 Q. What was it about Mr. Sorbara's
8 comments that you thought Dave Gene needed to be
9 aware of?

10 A. That they weren't in line with
11 government policy.

12 909 Q. And how so?

13 A. (Witness reads document). His
14 comments about:

15 "We will take amending steps
16 that will ensure a strong
17 horseracing industry in this
18 province."

19 910 Q. That was not in line with
20 government policy?

21 A. It feels like he's commenting that
22 the steps we've taken are not ensuring a strong
23 horseracing industry.

24 911 Q. Well, were you of --

25 A. In the sense that we'll have

1 another look-see.

2 912 Q. Can I stop you there.

3 A. Sure.

4 913 Q. Were you of the view on August
5 2nd, 2012 that the steps you had taken would ensure
6 a strong horseracing industry in the province?

7 A. The steps were taken to right-size
8 the industry which would eventually put it on a
9 sustainable track that didn't rely on subsidy.
10 That was our intention.

11 914 Q. That was your intention? And was
12 it your belief that the decision to terminate the
13 revenue share with zero transition was a decision
14 that would right-size the industry?

15 A. That's what I believed at the
16 time, yes.

17 915 Q. And so, you thought that
18 Mr. Sorbara was just speaking out of turn, making
19 things up, what?

20 A. I just felt he was making comments
21 that were not in alignment with the government's
22 policies.

23 916 Q. But he does say that he has spoken
24 with Mr. Wilkinson who was a participant of the
25 transition panel. Right?

1 A. Correct.

2 917 Q. And you were aware, obviously, of
3 the existence of the transition panel?

4 A. I was.

5 918 Q. It had been in place since June?

6 A. I can't recall when but...

7 919 Q. Were you in favour of the
8 appointment of a transition panel to review the
9 consequences of the decision and make
10 recommendations?

11 A. I can't recall if I was in favour
12 of it. Ultimately I accepted it was the
13 government's decision.

14 920 Q. Mr. Wilkinson testified and he
15 said that there was resistance to it in Finance's
16 office.

17 A. Yeah, if he was referring to me, I
18 would accept that I was potentially resistant.

19 921 Q. He didn't identify you, he just
20 referred to resistance.

21 A. I would acknowledge it.

22 922 Q. Why was there resistance to the
23 panel?

24 A. Well, I can say why I had
25 resistance, certainly. I can't speak for others.

1 It was my belief that the government had made a
2 decision and I saw the appointment of a transition
3 panel as the thin edge of the wedge to potentially
4 unwind that decision, which ultimately came to
5 pass.

6 923 Q. What ultimately came to pass?

7 A. The government ultimately restored
8 a substantial part of the subsidy to the industry.

9 924 Q. And your view is that it should
10 not have done that?

11 A. It was -- I recall being not
12 wholly in favour of the appointment of that panel.

13 925 Q. But you didn't think that the
14 decision should be re-visited in any way and there
15 should be no restoration of what you term a
16 subsidy; is that fair?

17 MS. LA HOREY: Well, does it matter
18 what he thinks?

19 MR. LISUS: Yes, he was an important
20 advisor to the Minister.

21 MS. LA HOREY: As opposed to what he
22 advised?

23 BY MR. LISUS:

24 926 Q. Well, I presume you advised about
25 what you thought, being a straightforward guy?

1 A. I can't recall if I actually
2 advised the Minister or not about the appointment
3 of the panel.

4 927 Q. Do you recall what the Minister's
5 view was about the panel?

6 A. He was supportive of appointing
7 the panel.

8 928 Q. And you were not. Were your
9 counterparts in the Premier's Office supportive of
10 appointing a panel? Mr. Bardeesy?

11 A. I can't recall.

12 929 Q. And what was Mr. Gene's reaction?

13 A. Well, he has a short form there.

14 930 Q. Right. "W-T-F"?

15 A. Yes.

16 931 Q. And we can agree that means what
17 the F-U-C-K, right?

18 A. Right.

19 932 Q. Okay. Was that your reaction as
20 well?

21 A. It appears my reaction was a
22 little more subdued than that.

23 933 Q. Yes, you said:

24 "Yeah, it's not helpful."

25 And can you explain to me what you

1 meant by that, please?

2 A. Again, his comments as a -- I
3 believe he was just retired from the legislature,
4 but his comment as a prominent member of the
5 Liberal Caucus, I didn't feel that his comments
6 were helpful to the government's agenda.

7 934 Q. I'm trying to understand in what
8 way they were unhelpful.

9 MS. LA HOREY: You've answered.

10 MR. LISUS: No, he hasn't.

11 MS. LA HOREY: Yes, he's answered.

12 It's asked and answered.

13 BY MR. LISUS:

14 935 Q. They were unhelpful because they
15 second-guessed the decision; is that fair?

16 A. I don't know if they
17 second-guessed it, but they're certainly not in
18 line with the government's stated policy.

19 936 Q. All right. So Dave Gene says he
20 put a call into him, right?

21 A. Yes.

22 937 Q. And what became of that?

23 A. I don't know.

24 938 Q. Did you ever follow up with
25 Mr. Gene?

1 A. I can't recall if I did.

2 MR. LISUS: Okay. Next exhibit,
3 please, in the sequence.

4 EXHIBIT NO. 14: Email, Bates numbered
5 CRE288984.

6 BY MR. LISUS:

7 939 Q. The day after this email, and
8 we're looking at Exhibit -- looking at CRE0029291,
9 the day after this email, Mr. Wilkinson sends an
10 email to Dave Gene on August the 3rd.

11 Now, you saw this email in preparation
12 for giving your evidence here today, right?

13 Mr. Shortill?

14 MS. LA HOREY: He's looking at it.

15 THE WITNESS: Just reading (Witness
16 reads document). Yes, I did see this.

17 BY MR. LISUS:

18 940 Q. So, Mr. Gene sent you this email
19 on August the 3rd after he received it from
20 Mr. Wilkinson, correct?

21 A. Yes.

22 941 Q. Did you ever speak with
23 Mr. Wilkinson?

24 A. Throughout the course of his work
25 I certainly spoke to him. I don't know if I spoke

1 to him in regards to this email.

2 942 Q. Did he ever tell you that he
3 believed that the government had made a decision
4 based on incorrect assumptions?

5 A. I don't recall him ever saying
6 that to me.

7 943 Q. Did he ever tell you that the
8 government didn't understand the consequences of
9 its decision?

10 A. I recall that that was a view that
11 he had formed, yes.

12 944 Q. And did you agree with it?

13 A. No.

14 945 Q. And did you ever speak with
15 Mr. Snobelen in the course of the panel's review?

16 A. I don't recall meeting or speaking
17 with the full panel but it's possible I did.

18 946 Q. Okay. And what did you understand
19 from this email?

20 MS. LA HOREY: That's kind of a vague
21 question. Do you have something more specific?

22 MR. LISUS: Sure.

23 BY MR. LISUS:

24 947 Q. I presume you read this email when
25 you got it?

1 A. Presumably.

2 948 Q. Now, Mr. Wilkinson, with the
3 benefit of his work and with McKinsey's analysis,
4 writes that McKinsey confirmed that under their
5 wildly optimistic best case scenario, i.e. no
6 collapse of the industry, we are looking at 13,000
7 job losses and 16,000 euthanized horses between
8 September 4 and December 31.

9 You saw that, right?

10 A. I saw the email. I did not see
11 the source document.

12 949 Q. Agreed. But when you saw the
13 email, did you then understand that the consequence
14 of the decision you recommended would be 13,000 job
15 losses and 16,000 euthanized horses?

16 A. I don't accept those numbers as
17 fact, no.

18 950 Q. Did you review the McKinsey
19 report?

20 A. I may have, I don't recall.

21 951 Q. Did you review any other report
22 which gave you a foundation to believe that those
23 numbers were inaccurate?

24 A. No, I don't recall.

25 952 Q. And he goes on. Did you review

1 any other information that caused you to believe
2 that those numbers weren't accurate?

3 A. I don't recall.

4 953 Q. And he goes on to say:

5 "Collapse (which we think is
6 what will actually happen) is 23,000
7 job losses and 27,000 dead horses."
8 You see that, right?

9 A. I see that there.

10 954 Q. And I take it from the previous
11 answers to the questions I just asked you that you
12 didn't then accept those job loss and dead horse
13 numbers, right?

14 A. I certainly didn't accept the dead
15 horse number, and on the job loss, I acknowledge
16 that any job loss that was associated with the
17 industry, without taking into account the job
18 creation that was created with our investments in
19 the healthcare and education sector.

20 955 Q. And where will I see that in any
21 of the documents that reflect the thinking behind
22 the decision?

23 A. The thinking behind the decision
24 was about government priorities.

25 956 Q. Where will I see in any of the

1 documents which record or reflect the
2 decision-making process an equivalent number of job
3 creation in health and education?

4 A. I don't have any of the documents
5 other than this in front of me.

6 957 Q. Well, can you tell me that you saw
7 any when you made your recommendation?

8 A. I recall being of that opinion,
9 that there were associated job increases with our
10 investments in healthcare and education.

11 958 Q. 23,000?

12 A. If I may. I recall that, because
13 in most of the policies that we put forward,
14 especially in healthcare and education, there were
15 associated job creation numbers next to them.

16 959 Q. So I haven't seen any of those
17 documents or analysis, Mr. Shortill, and I've
18 looked at this record. So are you telling me that
19 I have missed them, or that they might not be
20 there, or that --

21 A. I'm saying implicit in any
22 increase to the healthcare and education budget
23 there are associated job creation numbers. This
24 number, if it is in fact even accurate, and I will
25 not ascribe that it is, only tells one half of the

1 job story.

2 960 Q. Okay. So, McKinsey's got it
3 wrong?

4 A. I'm not suggesting that. I'm just
5 saying this doesn't take the full picture. And I'm
6 also not suggesting that this number is even
7 accurate.

8 961 Q. McKinsey isn't taking the full
9 picture into account?

10 A. I would agree with that.

11 962 Q. Mr. Wilkinson is not taking the
12 full picture into account?

13 A. I would agree with that.

14 963 Q. Mr. Snobelen was not taking the
15 full picture into account?

16 A. I've seen no document, nor do I
17 have any recall of what Mr. Snobelen said.

18 964 Q. Well, did you read the interim
19 report of the panel?

20 A. I may have. I don't recall it.

21 965 Q. These same numbers are referred to
22 in the interim report. So the interim report --
23 the panel when it released its interim report was
24 not taking the full picture into account; that is
25 your view, fair?

1 A. If they were using these job
2 numbers, then yes, I think that's fair.

3 966 Q. All right. And Minister Duncan
4 accepted the panel's report on the job losses and
5 euthanization?

6 A. I don't know if he accepted them
7 or not.

8 967 Q. And why do you think McKinsey
9 didn't take the full picture into account?

10 A. I don't know.

11 968 Q. And so, I take it that you were
12 concerned that a panel appointed by the government
13 wasn't taking the full picture into account? That
14 was of concern to you in August 2012?

15 A. I don't know if it was a concern
16 or not but I did acknowledge that they weren't
17 taking the full picture into account. That may not
18 necessarily have been their role.

19 969 Q. Did you, as Chief of Staff of
20 Minister Duncan, ever write to Minister Duncan or
21 anyone else and say, the industry panel and
22 McKinsey have an incomplete picture and the data
23 they are giving the government is wrong? Did you
24 ever do that?

25 A. I don't believe I ever sent such a

1 note.

2 970 Q. Did you ever say that to anyone in
3 government or anything like that to anyone in
4 government?

5 A. I certainly remember believing
6 that. Whether or not I communicated that, I can't
7 remember.

8 971 Q. But that was your -- you're
9 telling me, your honestly-held view?

10 A. Yes.

11 972 Q. And so, why wouldn't you, as a
12 senior policy advisor and Chief of Staff to
13 Minister Duncan, say Minister Duncan, this panel
14 and their advisors, McKinsey, are wrong, they're
15 not looking at the complete picture, the government
16 is getting the wrong advice?

17 A. I can't say why I would have or
18 would not have advised Minister Duncan.

19 973 Q. But you didn't, right?

20 A. I can't recall.

21 974 Q. Isn't that something you'd recall?

22 A. A specific conversation that I had
23 with Minister Duncan?

24 975 Q. Well, telling Minister Duncan that
25 the industry panel and McKinsey have got an

1 incomplete picture and the data is all wrong?

2 A. If I recalled it, I would tell you
3 I recall it.

4 976 Q. But you don't?

5 A. But I don't.

6 977 Q. And I won't see an email anywhere
7 where you're saying that?

8 A. Perhaps you would. I don't know.
9 I simply don't recall.

10 978 Q. So, when the industry -- the
11 interim report of the panel ultimately comes out --
12 we should mark it -- ultimately comes out, which is
13 SB3784, on August 17, 2012, did you read it?

14 A. I may have. I don't recall,
15 though.

16 979 Q. Were you interested to hear the
17 panel's recommendations?

18 A. I would think I was.

19 MR. MILAT: Can we mark the --

20 MS. LA HOREY: This is the one we've
21 been talking about, so that would be 15?

22 MR. MILAT: Yes, 15.

23 EXHIBIT NO. 15: Email, Bates numbered
24 CRE0029291.

25 MS. LA HOREY: Exhibit 15 is

1 CRE0029291. And the interim report, you gave an SB
2 number but on the document you provided to the
3 witness it's CRE0024643 which was Exhibit 44 to
4 somebody's examination, I presume Mr. Phillips.
5 No.

6 MR. MILAT: Would that have been
7 Mr. Snobelen?

8 BY MR. LISUS:

9 980 Q. So, the industry -- the interim
10 panel report at page 30 under the heading "Impact
11 on Employment" says:

12 "The horseracing industry is
13 labour intensive. It generates 20
14 to 30,000 full-time equivalent jobs
15 that would disappear if the industry
16 shut down."

17 And that's a point you don't agree
18 with, right?

19 A. Well, it appears that that
20 estimate is if the entire industry shuts down.

21 981 Q. Right. And you didn't believe
22 that a consequence of the decision you recommended
23 would be that the entire industry shuts down,
24 right?

25 A. That's correct. I acknowledge

1 that it would change but not shut down.

2 982 Q. And as I understood your evidence
3 earlier, sir, you didn't believe that in August
4 2012 and still don't believe that that would be the
5 consequence of the decision you recommended?

6 A. That's correct.

7 983 Q. And also at the bottom of page 30
8 it says that if the industry was shut down,
9 conservative estimates would be 13,000 horses not
10 needed and not salable in other jurisdictions.
11 Right?

12 A. I see that the report states that,
13 yes.

14 984 Q. But you also don't accept that as
15 accurate?

16 A. I don't.

17 985 Q. Okay. Now, the email between you
18 and Mr. Gene, Mr. Gene says:

19 "We need to slow them down.

20 Talk Tuesday."

21 And you respond:

22 "Yeah. I disagree with half of
23 this, and agree with the other
24 half."

25 Right?

1 A. Yes.

2 986 Q. Which half did you disagree with?

3 A. I was probably being a little
4 casual in my language. I'm not sure it was an
5 equal 50-50 split. I think what I was trying to
6 say is I agree with some of what's in there, and
7 some of it I don't agree with.

8 987 Q. Tell me what you don't agree with?

9 A. Well, I certainly, as I stated
10 earlier, don't agree with the job loss and numbers
11 referring to dead horses.

12 988 Q. Yes. Did you agree with the
13 recommendation for additional funding? You've
14 already told me you didn't agree with that?

15 A. Ultimately I came around to accept
16 it but I won't say I agreed with it.

17 989 Q. Okay.

18 A. I also recall don't being in
19 agreement with the panel's recommendation about a
20 new form of gaming, sports betting. As I
21 understood that, that was to be, if I'm recalling
22 correctly, a horseracing-based lottery aspect. I
23 think that came out in the report or maybe it was
24 just another option being discussed, but I recall
25 not being supportive of that. I actually don't

1 know if that ever came to pass.

2 990 Q. Did you agree with the last
3 paragraph?

4 A. I don't know if I did. It was a
5 level of political analysis that I'm not sure I
6 would have got into.

7 991 Q. And what do you mean by that?

8 A. It wasn't my role to make this
9 type of political analysis.

10 992 Q. Take a look, please, at CRE29294.
11 This is a deck sent to you by Michael Keegan on, it
12 looks like, August 8, and you've seen this before?

13 A. I would have seen it back then,
14 yes.

15 993 Q. What is your understanding of what
16 this was and why it was being sent to you?

17 A. It looks like the horseracing
18 panel was providing a briefing or an update, I
19 think, about what their conclusions were ultimately
20 going to be.

21 994 Q. If you look at page 15 under the
22 heading "Timing," do you see in the first bullet,
23 it says:

24 "The horse breeding industry
25 has been severely impacted by the

1 announcement of the cancellation of
2 SARP (50 percent drop)."

3 Did you --

4 A. I see that.

5 995 Q. -- understand that to have been
6 the impact of the announcement?

7 A. I do recall that there was an
8 impact. Whether or not it was a 50 percent drop or
9 not, I don't recall the specifics.

10 996 Q. And when you say there was an
11 impact, and I take it you mean an impact, you
12 understood there was an impact on the value of
13 horses sold at auction?

14 A. Yeah, I can't recall the exact
15 impact, but I recall a few times being informed
16 sort of how the policy was impacting the industry.
17 Whether or not it was horses being born or sold or
18 raced, I can't recall the specifics.

19 997 Q. Okay. I'm just referring to the
20 reference to a 50 percent drop. The drop, it has
21 been -- as it has been described, was in yearling
22 prices at auction.

23 A. Okay.

24 998 Q. Did you know that at the time?
25 Did you learn that?

1 A. I can't recall if I knew that at
2 the time.

3 999 Q. Well, do you see the next bullet
4 has:

5 "Yearling horse sales occur in
6 early September. With the
7 uncertainty that currently exists in
8 the industry buyers will not have
9 confidence, which will negatively
10 impact the prices paid for
11 yearlings, crystallizing industry
12 financial losses."

13 Did you learn that to be an issue or
14 consequence as a result of the decision?

15 A. I can't recall, but it's provided
16 in a deck that was sent to me so I accept that I
17 was provided that information.

18 1000 Q. Okay. And that was a consequence
19 that you became aware of only after the decision
20 was made, right?

21 A. This specific consequence? I
22 would say yes.

23 1001 Q. So, what was your understanding
24 about what you were being told about the urgency of
25 timing?

1 A. Just that it was urgent.

2 1002 Q. Okay. Why did you understand it
3 to be urgent?

4 A. Because the title of the slide
5 says "Urgent."

6 1003 Q. Right, but what was the nature of
7 the urgency?

8 A. I don't know.

9 1004 Q. This was being sent to you as the
10 Chief of Staff of the Ministry responsible for
11 gaming and the ORC, right?

12 A. Correct.

13 1005 Q. And so, I presume Mr. Keegan was
14 sending this to you because he wanted you to
15 understand the impact of the decision?

16 A. I'm not sure why he was sending it
17 to me other than perhaps to keep me informed.

18 1006 Q. You still don't know why he was
19 sending it to you?

20 A. It may have been just to keep me
21 informed. It may be because I was part of a
22 discussion that was to occur. I can't recall.

23 1007 Q. Could it have been because he
24 wanted Finance to understand the consequences of
25 the decision that it had recommended Cabinet accept

1 and Cabinet did accept?

2 A. You would have to ask him, but I
3 would accept that that was potentially a reason.

4 1008 Q. What was Minister Duncan's
5 reaction to all of this information coming out in
6 August 2012?

7 A. I don't know what his reaction is
8 and I'm not sure if he was provided this
9 information.

10 1009 Q. Were you discussing it with him?

11 A. Not that I recall.

12 1010 Q. So just to be clear, you never had
13 a discussion with Minister Duncan in which you
14 said, you know, that decision that I recommended
15 you take and which you did take and recommend to
16 Cabinet, we're being told is going to cause
17 thousands of job losses and thousands of dead
18 horses.

19 You never had a discussion like that
20 with him?

21 A. I don't believe I did.

22 1011 Q. And is it because you didn't
23 believe it to be the case?

24 A. Correct.

25 1012 Q. And if you had believed it to be

1 the case, you would have said to Minister Duncan, I
2 think we need to take another look at this?

3 A. I can't speculate on that but that
4 would be in keeping with character, yes.

5 MR. LISUS: That's the next exhibit in
6 the sequence.

7 MR. MILAT: 16.

8 EXHIBIT NO. 16: Interim report, Bates
9 numbered CRE0024643.

10 BY MR. LISUS:

11 1013 Q. Did you recommend against the
12 industry panel recommendation of \$300 million in
13 interim support?

14 A. I can't recall, but I recall not
15 agreeing with that recommendation.

16 1014 Q. You left in 2013?

17 A. May of 2013.

18 1015 Q. So, you obviously were not
19 involved at all in government when this action was
20 commenced in the spring of 2014?

21 A. That's correct.

22 MR. LISUS: Let's take a brief break
23 but I think I'm done.

24 -- RECESS AT 4:58 --

25 -- UPON RESUMING AT 5:07 --

1 CROSS-EXAMINATION BY MR. ROSENBERG:

2 1016 Q. Good afternoon, Mr. Shortill, my
3 name is Michael Rosenberg, I'm counsel for the
4 Ontario Lottery and Gaming Corporation and I just
5 have a few brief questions for you and then we can
6 finish for today as I know the hour is getting
7 late.

8 My friend, Mr. Lisus, took you to
9 OLGSB1130, which was marked as Exhibit 12, and that
10 is a string of emails on which you were copied.

11 I'm showing you --

12 MS. LA HOREY: I don't have a copy so
13 perhaps the witness can look at that copy? Oh,
14 it's here.

15 MR. MILAT: Exhibit 40 to Mr. Phillips,
16 and I found it here. It's on the screen.

17 MR. ROSENBERG: I believe it's Exhibit
18 41.

19 MR. MILAT: 41, right.

20 BY MR. ROSENBERG:

21 1017 Q. My friend asked you about the
22 paragraph from Mr. Stransky and the note on which
23 you are copied. Do you see that?

24 A. I do.

25 1018 Q. You didn't recall why Mr. Stransky

1 was providing that text to Mr. Phillips?

2 A. I don't, no.

3 1019 Q. So, I'm showing you OLGSB1131.

4 You'll see that same email in which you were copied
5 from Mr. Stransky?

6 MR. LISUS: Do you have a copy of the
7 document?

8 MR. ROSENBERG: I don't, but I'm happy
9 to provide it to you after I ask my questions.

10 BY MR. ROSENBERG:

11 1020 Q. So, sir, I just direct you to the
12 top email in the chain of Mr. Phillips to Lesley
13 Byrne saying:

14 "Here we go. Replace this
15 entire paragraph. Reads better
16 although same as original's intent.
17 We are done."

18 Does that assist you in recalling the
19 kind of --

20 MR. LISUS: That's not a proper
21 question for him. You had Mr. Phillips here. This
22 was put to Mr. Phillips, marked as an exhibit and
23 he was here for re-cross-examination by you. You
24 can't put this evidence in through this witness.
25 He's not even on this exchange.

1 MR. ROSENBERG: Well, we marked 1130 as
2 an exhibit.

3 MR. LISUS: No, but --

4 MR. ROSENBERG: Mr. Lisus, let me put
5 my point on the record. You marked 1130 as an
6 exhibit, despite the fact that Mr. Shortill was not
7 on the top email of that chain. You marked that as
8 an exhibit.

9 MR. LISUS: Mr. Shortill is on 1130.
10 It originates with Mr. Shortill. Mr. Shortill is
11 not on 1131, it's a conversation between
12 Mr. Phillips and Ms. Byrne. Mr. Phillips was
13 examined on this. You guys did not cross-examine
14 him on it.

15 He knows nothing about the
16 communication between Mr. Phillips and Ms. Byrne
17 and you're asking him to speculate about it and he
18 wasn't privy to it. It's completely inappropriate.

19 MR. ROSENBERG: Mr. Lisus, if you look
20 at 1130, you will see that the top email, SB1130,
21 is one on which Mr. Shortill is not copied, and yet
22 you made it an exhibit and you asked him questions.

23 MR. LISUS: Because you insisted I put
24 it to him. You objected that the email I put to
25 him didn't have 1130, so I put it to him to mollify

1 you.

2 Now you're asking him and
3 cross-examining him on a discussion that he wasn't
4 privy to and had no involvement in. It's not
5 appropriate. And the witness who was privy to the
6 discussion was here to be examined by you, and you
7 didn't.

8 MS. LA HOREY: Let me put my
9 perspective on the record. To be fair, Mr. Lisus,
10 I did allow you to mark as exhibits email chains
11 where as long as Mr. Shortill was one of the
12 recipients, even in some of the documents that were
13 marked, he wasn't on the final chain.

14 MR. LISUS: This is so silly. Mr.
15 Shortill is not privy to this particular
16 conversation. That's manifestly clear. If you
17 want to put it on the record, go ahead. It's not
18 going to look very helpful to the court.

19 It's very transparent what you're
20 doing, not examining Mr. Phillips on it, waiting
21 until he's long gone and then putting it to a
22 witness who had no involvement and asking him to
23 pipe in about it.

24 MR. ROSENBERG: I don't think that's a
25 fair assessment of Mr. Phillips' examination but I

1 have your objection, counsel. And I'll ask my
2 question.

3 BY MR. ROSENBERG:

4 1021 Q. Mr. Shortill, was it the case that
5 Mr. Stransky was providing wordsmithing that
6 preserved the original intent in the modernization
7 report and has suggested changes to Mr. Phillips?

8 A. I can't speak to what
9 Mr. Stransky's intent is, but reading this chain, I
10 would form that conclusion.

11 MR. ROSENBERG: All right. I'd like to
12 mark this as our next exhibit, please. That's
13 Exhibit 16?

14 MS. LA HOREY: No, it's not.

15 MR. LISUS: That's an exhibit for
16 identification. He's not privy to that
17 conversation.

18 MR. ROSENBERG: Well, then I insist on
19 1130 being in for identification.

20 MR. LISUS: Mr. Rosenberg, I put 1130
21 on the record because you asked me to in the
22 context of an objection. I'm perfectly content for
23 it not to be in and just have the sequence that Mr.
24 Shortill is privy to. So if that's what you want,
25 fine.

1 MR. ROSENBERG: I have your position,
2 counsel. I would like to mark this as an exhibit.
3 I have your objection.

4 MR. LISUS: It's an exhibit for
5 identification. He can't approbate it. He wasn't
6 privy to it.

7 MS. LA HOREY: It's Exhibit 17. You
8 marked an exhibit --

9 MR. LISUS: No, it's not, it's an
10 exhibit for identification.

11 MS. LA HOREY: You marked an exhibit
12 over my objection.

13 MR. LISUS: I marked it in response to
14 Mr. Rosenberg's objection, to get on with the
15 examination.

16 MS. LA HOREY: A different one. So
17 let's mark it and then you can fight about it
18 later.

19 EXHIBIT NO. 17: Email, Bates numbered
20 OLGSB1131.

21 MR. ROSENBERG: Exhibit 17 is
22 OLGSB1131.

23 BY MR. ROSENBERG:

24 1022 Q. I'm going to go -- my friend asked
25 you some questions about whether you had considered

1 the positive impact for health and education from
2 the use of monies that had previously been spent
3 on --

4 MR. LISUS: I didn't ask him that.

5 BY MR. ROSENBERG:

6 1023 Q. -- SARP?

7 MR. LISUS: I did not ask him that.

8 MR. ROSENBERG: Well, Mr. Lisus, what
9 do you think you asked him?

10 MR. LISUS: I certainly didn't ask him
11 that. Mr. Shortill said that he didn't agree with
12 the job loss numbers given by Mr. Wilkinson because
13 he thought there was an equivalent creation of
14 jobs, as I understood his evidence, in health and
15 education sectors, and I asked him where are the
16 documents or information reflecting the basis for
17 that belief; that's what I asked him.

18 BY MR. ROSENBERG:

19 1024 Q. Perhaps I can assist with that
20 then.

21 MR. LISUS: What document?

22 BY MR. ROSENBERG:

23 1025 Q. So this is a document that was
24 marked as Exhibit 4 to Mr. McNeill's examination,
25 it's CRE297789, and it is a transcript of remarks

1 of Dwight Duncan at the Economic Club of Canada,
2 February 13th, 2012.

3 Sir, do you remember Minister Duncan
4 giving his speech at the Economic Club of Canada?

5 A. I do, yes.

6 1026 Q. And it was in fact on February
7 13th, 2012?

8 A. I can't recall the date. We
9 consider these types of speeches pre-budget
10 conditioning speeches, so it would have occurred
11 prior to the budget.

12 1027 Q. What do you mean by pre-budget
13 conditioning speeches?

14 A. Generally what will happen is
15 policies that were considered for the budget we
16 will make reference to publicly in the lead-up to
17 the budget. This was such a case, and I recall we
18 made three pronouncements, LCBO headquarters, Slots
19 at Racetracks, and I can't remember the third.

20 1028 Q. It looks like, if you look at page
21 4, the second point seems to be improve the
22 performance of Service Ontario.

23 A. Right, yes.

24 1029 Q. I direct your attention, then, to
25 the bottom of the fourth page of this speech where

1 it appears that Mr. Duncan said that \$345 million a
2 year then being spent on the Slots at Racetrack
3 Program would pay for over 9 million hours of home
4 care. Do you see that?

5 A. I do.

6 1030 Q. And you will accept that 9 million
7 hours of home care is a lot of jobs?

8 MR. LISUS: How do you know that?

9 THE WITNESS: I don't know, but...

10 MR. ROSENBERG: Well, I mean, somebody
11 has to work the 9 million hours, Mr. Lisus,
12 presumably.

13 MR. LISUS: Are you giving evidence,
14 Mr. Rosenberg?

15 MR. ROSENBERG: No, I'm asking this
16 witness.

17 MR. LISUS: He's already said he
18 doesn't know.

19 BY MR. ROSENBERG:

20 1031 Q. Well, sir, I guess what I'm asking
21 is it looks as though someone within your Ministry
22 gave some consideration to the benefits that could
23 be realized with \$345 million a year, at least in
24 health, right?

25 A. Yeah, as I stated earlier,

1 generally when we make enhanced investments in
2 healthcare and education, frankly, any part of the
3 fiscal plan, there are associated job numbers that
4 go with those increased investments. Whether or
5 not they translate to 9 million hours of home care,
6 I don't know.

7 1032 Q. There are positive job impacts you
8 said?

9 A. It is those types of impacts that
10 we would have been aware of.

11 1033 Q. And I think you said looking only
12 at the job losses in horseracing would be an
13 incomplete picture because it would exclude those
14 positive impacts in healthcare and education?

15 A. That's correct.

16 MR. ROSENBERG: Why don't we mark this
17 transcript of the speech as our next exhibit.

18 MS. LA HOREY: Wasn't it already
19 marked?

20 MR. ROSENBERG: It was an exhibit to
21 Mr. McNeill's examination, Exhibit 4 to
22 Mr. McNeill's examination. That will be Exhibit 18
23 to Mr. Shortill's examination.

24 EXHIBIT NO. 18: Transcript of remarks
25 of Minister Duncan, Bates numbered

1 CRE297789.

2 BY MR. ROSENBERG:

3 1034 Q. In that kind of analysis, the
4 positive impact of spending more money on health
5 and education, who would have performed that
6 analysis?

7 A. The office of Economic Policy
8 which was a branch of the Ministry of Finance.
9 They generally had associated job impact numbers, I
10 believe it was sector by sector, so an increased
11 investment of a dollar in a particular sector
12 generated a spinoff number of jobs.

13 1035 Q. Do you remember OLG making a
14 presentation to Minister Duncan in the fall of 2011
15 setting out the modernization initiative?

16 A. I recall there were a few
17 discussions. I don't know which one you're
18 referring to.

19 1036 Q. And did you generally attend those
20 discussions with Minister Duncan when he was
21 receiving presentations from OLG?

22 A. Generally, yes. That's not to say
23 that there wasn't a discussion I didn't attend. My
24 practice, yes, I would be there.

25 1037 Q. So, I'm handing you a document

1 which is Exhibit W to the affidavit of Larry Flynn.
2 It is OLGSB992.

3 MR. LISUS: Mr. Rosenberg, when I've
4 done examinations I've provided witness copies, and
5 we discussed this last time, counsel copies in
6 addition to witness copies, and you would as well.
7 So I would appreciate a copy of the documents
8 because I'm going to re-cross-examine him, as is my
9 right.

10 MR. ROSENBERG: It certainly is your
11 right.

12 MR. LISUS: We're going to be here late
13 if I have to go and get another document.

14 MR. ROSENBERG: It is your right,
15 Mr. Lisus. This question arose from your
16 examination so I don't have another copy. I had
17 one copy printed. It's a 75-page document. I'm
18 hoping we can all make use of one copy of it or you
19 can pull it up electronically from your database so
20 we kill fewer trees. But obviously I can't stop
21 you from taking the time you need.

22 MS. LA HOREY: Is there a page that you
23 want the witness to go to, Mr. Rosenberg?

24 BY MR. ROSENBERG:

25 1038 Q. I was going to ask the witness if

1 he recognizes this document.

2 A. I don't, but I recognize the
3 information in here, so whether or not I saw it in
4 this document or others, I don't know.

5 1039 Q. And does that document represent
6 OLG's recommendations with respect to its
7 modernization initiative?

8 A. At that point, I would
9 characterize this as policy options. Their
10 recommendation came in the report that was
11 released.

12 1040 Q. Those policy options, did they
13 evolve over the fall of 2011?

14 A. I believe they did.

15 1041 Q. Now, I looked through that
16 document and I didn't see a recommendation that
17 anyone maintain the level of funding for
18 horseracing even through a different funding
19 mechanism.

20 You say there's an evolution in the
21 policy options.

22 Was there a point at which that policy
23 option of maintaining horseracing funding fell
24 away?

25 A. It would have at some point,

1 through OLG's process. I just don't know when that
2 was.

3 1042 Q. Do you remember if OLG ever
4 presented to Minister Duncan the idea that
5 horseracing funding could be maintained at current
6 levels?

7 A. I don't know about at current
8 levels, but I do recall one of their policy options
9 was something greater than simply ending it, as the
10 government ultimately decided. Whether that was at
11 existing levels or less than existing levels, I
12 can't say for certain.

13 MR. ROSENBERG: Can we mark that
14 document, OLG992, as our next exhibit, please,
15 Exhibit 19.

16 MR. LISUS: It's an exhibit for
17 identification. He didn't prepare the document, he
18 can't speak to what its recommendations were. He
19 says he was aware generally of the kind of
20 information in it.

21 MR. ROSENBERG: That's fine, I'm
22 content to have it marked for identification.

23 EXHIBIT K (for identification):
24 Document, Bates numbered OLG992.

25 MR. ROSENBERG: Off the record for a

1 moment.

2 -- OFF THE RECORD --

3 MR. ROSENBERG: Those are my questions.

4 Thank you very much, sir.

5 MR. LISUS: Any questions, Ms.

6 La Horey?

7 MS. LA HOREY: I have no questions.

8 MR. LISUS: I might have a few on this
9 document. I'm just taking a look at it, document K
10 that is.

11 -- OFF THE RECORD --

12 FURTHER CROSS-EXAMINATION BY MR. LISUS:

13 1043 Q. Just take a look at Exhibit K,
14 Mr. Shortill. I didn't see any discussion at all
15 about horseracing funding. Do you?

16 A. I would have to look through the
17 document.

18 MR. ROSENBERG: I object. Look at page
19 12.

20 MR. LISUS: Let's see page 12.

21 MR. ROSENBERG: It reflects what
22 stakeholders have told them about what they want
23 and the horse people wanted continued funding.
24 It's noted.

25 MR. LISUS: Okay.

1 MS. LA HOREY: Do you want it?

2 MR. LISUS: Yes.

3 BY MR. LISUS:

4 1044 Q. Do you see anything in Exhibit K
5 that talks about or reflects an OLG recommendation
6 about horseracing funding?

7 A. It looks like 4 references:

8 "Key gaming recommendation
9 provides the funding formula for
10 horseracing to decouple from
11 performance of slots."

12 1045 Q. Right. Does it say anything else?

13 A. There is a reference on slide 7 to
14 revising the horseracing funding program.

15 1046 Q. Does it say how?

16 A. It doesn't.

17 1047 Q. Okay. Anything else?

18 A. We already noted references in
19 slide 12. Slide 18 there is a reference to the
20 Slots at Racetrack Program, 17 sites with 270 to
21 360 day termination clauses.

22 1048 Q. Remember, we're only talking about
23 recommendations it makes about the manner in which
24 revenue is shared.

25 A. Sure. Well, right under it, it

1 references:

2 "Need to develop transition
3 plan for horseracing and municipal
4 funding prior to triggering
5 termination clauses."

6 1049 Q. Does it say how or what the
7 recommendation is for funding other than there
8 needs to be a plan?

9 A. No, it does not.

10 1050 Q. Okay.

11 A. In slide 21, there is a reference
12 to:

13 "Next steps confirm timing for
14 government decision points regarding
15 horseracing."

16 And a few other things.

17 Slide 63, there is just a reference to
18 the timing of the notice period for the Slots at
19 Racetrack termination.

20 1051 Q. All right. Okay. Have we looked
21 at the document?

22 A. I'm almost done. I'm done. It
23 doesn't look like there's any other references.

24 1052 Q. And so we can agree that OLG, in
25 that particular document, and at November 28

1 doesn't make a recommendation about how the funding
2 to the horseracing industry from the slots revenue
3 is to be dealt with, correct?

4 A. I think that's a fair statement,
5 yes.

6 1053 Q. We know then that shortly after
7 that, on December 8, which was Exhibit A to your
8 examination, Finance comes up with a five-year
9 phaseout period. Do you recall that?

10 A. I recall a phaseout like this
11 being considered, yes.

12 1054 Q. And are you aware prior to
13 November 28, 2011 OLG's recommendations or
14 proposals reflecting a continuation of funding to
15 the horseracing industry but from the consolidated
16 revenue fund after slots were relocated from
17 racetracks?

18 A. I recall one of the policy options
19 that was under consideration was sustaining the
20 horseracing funding in some form. Whether or not
21 it came from the consolidated revenue fund or not,
22 I can't recall.

23 MR. LISUS: Thank you. Thank you,
24 Mr. Rosenberg.

25 BY MR. LISUS:

1 1055 Q. Just one last question about the
2 document you gave us. On page 13 it says "Summary
3 of Ministry of Finance HR Funding Document." The
4 page is blank. Do you see that?

5 A. I do.

6 1056 Q. What's on the blank page,
7 Mr. Rosenberg?

8 MR. ROSENBERG: I noticed that as well,
9 counsel. I can't assist.

10 MR. LISUS: Would you have a look at
11 your documents, please, and see if that was
12 redacted or why it's blank?

13 MR. ROSENBERG: I have looked at the
14 document. It does not appear to have been
15 redacted.

16 MR. LISUS: So it's just a page that
17 says "Summary of Ministry of Finance HR Funding
18 Document" and that's blank.

19 BY MR. LISUS:

20 1057 Q. I want to show you Exhibit 27 to
21 the examination -- Exhibits 27 and 29 to the
22 examination of Mr. Phillips.

23 MR. ROSENBERG: Could you give us
24 document numbers, please?

25 BY MR. LISUS:

1 1058 Q. Sorry, I misread, 27 and 28 on the
2 examination of Mr. Phillips, which is OLG2315 and
3 OLG2316.

4 OLG2315 is an email from Laryssa
5 Hetmanczuk, H-E-T-M-A-N-C-Z-U-K, and it's entitled
6 "Horseracing Slide." Actually, if you have a copy
7 there, why don't you give that back to me.

8 MS. LA HOREY: Sure.

9 BY MR. LISUS:

10 1059 Q. Okay. Do you see where it says
11 "Horseracing Slide" and Exhibit 28 is the
12 "Horseracing Proposed Approach"?

13 A. I do.

14 1060 Q. And the proposed approach is
15 the -- appears to be the phased, stepped-down and
16 then the steady state at 100 million?

17 A. It doesn't mention the steady
18 state mainly because in policy decisions we only
19 look three years out because that aligns with the
20 fiscal plan. My understanding is that this
21 inherently had a steady state going out.

22 1061 Q. Fair enough. And that's what you
23 explained. So does that assist you in the missing,
24 the blank page for horseracing funding in the
25 November 28 exhibit --

1 A. I don't know if that blank page
2 relates to this or not.

3 1062 Q. Okay. It seems to be the logical
4 sequence to me. Thank you. The exhibit for
5 identification, Exhibit 27 on Mr. Phillips',
6 Exhibit L for identification with Mr. Stransky, and
7 Exhibit 28 for Mr. Phillips is Exhibit N for
8 identification with Mr. Stransky.

9 MS. LA HOREY: Sorry, the exhibit that
10 I have, Exhibit 27 for Mr. Phillips' examination,
11 is something else entirely. It's about the
12 Drummond report. What I have as 28 is the email
13 with the attachment.

14 MR. LISUS: What do you have as 28 on
15 Mr. Phillips?

16 MS. LA HOREY: So I have in my volume,
17 I have as Exhibit 28, OLGSB0002315, which is the
18 cover email at December 28th, with the attachment
19 at the same exhibit, 28, with the slide
20 OLGSB0002316.

21 MR. LISUS: Horseracing proposed
22 approach?

23 MS. LA HOREY: That's right. Why don't
24 we make that Exhibit L, those two documents, the
25 email and attachment.

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EXHIBIT L (for identification): Email,
Bates numbered OLGSB0002315, and
attachment, OLGSB0002316.
MR. LISUS: Thanks, Mr. Shortill.
THE WITNESS: A pleasure.

-- Whereupon the examination concluded at 5:45 p.m.

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REPORTER'S CERTIFICATE

I, KIMBERLEY A. NEESON, RPR, CRR,
CSR, CCP, CBC, Certified Shorthand Reporter,
Realtime Systems Administrator, 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 5th day of February, 2018.



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