



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

November 28th, 2019

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1	TABLE OF CONTENTS	
2		PAGE NO.
3	List of Exhibits	4
4		
5		
6	CONFLICT OF INTEREST PANEL:	
7	VALERIE JEPSON	
8	RICK O'CONNOR	
9	DAVID WAKE	
10		
11	Discussion	5
12		
13		
14		
15		
16	Certificate of Transcript	114
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	List of Exhibits		
2	Exhibit No.	Description	Page No.
3	2980	CJI0114542	
4	2981	CJI0114541	
5	2982	CJI0114529	
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 --- Upon commencing at 11:34 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Well,
4 let me repeat what I said yesterday. I want to thank
5 the panelists in advance for their contributions so
6 far in terms of the written material, and thank them
7 for voluntarily contributing their knowledge to the
8 Inquiry. And I'm sure will be a -- a big help to me
9 when I -- I have to write my report. So thank you in
10 advance.

11 Mr. Libman...?

12

13 CONFLICT OF INTEREST PANEL:

14 VALERIE JEPSON

15 RICK O'CONNOR

16 DAVID WAKE

17

18 DISCUSSION:

19 MR. MAX LIBMAN: There we go. Good
20 morning. Today's panel will be discussing conflicts
21 of interest in the municipal context and the Municipal
22 Conflicts of Interest Act.

23 Just to introduce our panelists
24 briefly, on the left, we have Valerie Jepson. Ms.
25 Jepson is the integrity commissioner for the City of

1 Toronto. In this role, she is responsible for
2 overseeing the Municipal Conflicts of Interest Act and
3 the code of conduct for elected and appointed
4 officials in Toronto. From 2007 to 2014, Ms. Jepson
5 was counsel to the integrity commissioner for the
6 Province of Ontario. As counsel, Ms. Jepson advised
7 the Ontario integrity commissioner on matters
8 involving the conduct of MPPs, lobbyist registration,
9 and disclosure of wrongdoing, and provided day-to-day
10 management of the disclosure of wrongdoing framework.

11 Next, we have Rick O'Connor. Mr.
12 O'Connor was appointed as city solicitor for the City
13 of Ottawa in 2006, and was appointed to the newly
14 established position of Ontario city clerk and
15 solicitor in 2008. He was certified as a specialist
16 in municipal law and local governance by the Law
17 Society of Ontario in 2010, and received the Queen's
18 Diamond Jubilee medal in recognition of his leadership
19 in the evolution of open and accountable public
20 administration in Ontario in 2013.

21 Finally, we have Commissioner David
22 Wake. Commissioner Wake was appointed as the Ontario
23 integrity commissioner, effective February 1st, 2016.
24 In 1994, he was appointed as the judge of what is now
25 the Ontario Court of Justice presiding in Brampton.

1 He was appointed as associate Chief Justice of the
2 court in 1999, and served as executive director of the
3 Canadian Council of Chief Judges from 2004 to 2009.
4 Most recently, he was appointed as vice chair of the
5 Federal Social Security Tribunal from 2013 to 2016.

6 And with that, I turn it over to
7 Commissioner Wake.

8 THE HONOURABLE J. DAVID WAKE: Okay.
9 The Provincial Government's ethics regime is unique to
10 all other jurisdictions in Canada, since there is now
11 one (1) officer who is an independent officer of the
12 legislative assembly from whom elected officials,
13 public servants, and lobbyists can all seek advice and
14 direction on how Ontario's ethical rules apply to
15 their various situations.

16 The commissioner can also conduct an
17 Inquiry as to whether an MPP has contravened the
18 Members Integrity Act upon the request of another MPP.
19 I can conduct an Inquiry with respect to a public
20 servant on my own initiative as to whether the public
21 servant has contravened a conflict of interest rule.
22 I can also conduct an investigation on my own
23 initiative with respect to whether a lobbyist has
24 contravened the Lobbyist Registration Act, and I can
25 impose penalties if I find that to be the case.

1 I thought what I do is just outline for
2 you my jurisdiction under the five (5) acts that I
3 have. I have seven (7) mandates under five (5) pieces
4 of legislation. On the foundational piece of
5 legislation, on the foundational mandate, is my
6 mandate under the Members Integrity Act of 1994, which
7 succeeded the Conflict of Interest Act of 1988.

8 Ontario was the very first jurisdiction
9 to delve into this area and create legislation
10 establishing my office, and the rules affecting all
11 elected officials in -- in the Ontario legislature.
12 The Act hasn't changed much since 1994. Perhaps we
13 can get into that as to where there might be some
14 areas that can be looked at. So this has been a help
15 for me as well to review the jurisdiction, and I look
16 forward to discussions from the other panelists, what
17 assistance we can give.

18 The office of the integrity
19 commissioner is responsible for ensuring all members
20 of the legislative assembly and executive Council
21 comply with the Members Integrity Act. The
22 commissioner has the power to provide confidential
23 advice to members about their duties under the Act,
24 and to conduct inquiries and to complaints about a
25 member's compliance with the Act initiated by another

1 member of the legislative assembly or the executive
2 Council.

3 Integrity commissioner is responsible
4 for receiving and analyzing members' financial
5 disclosure statements and meeting with all one hundred
6 and twenty-four (124) MPPs to discuss these statements
7 each year and to provide advice on their obligations
8 under the Act. I'm currently in the process of doing
9 that. That process started on October 15th, and will
10 continue through until about December the 20th.

11 Some of these discussions with the
12 members, these face-to-face meetings with the members,
13 I find are very productive. They all have very
14 compelling stories, and very often during the course
15 of the discussions, things come up that might not
16 otherwise arise. If they -- they might feel shy about
17 picking up the phone, or sending me an email, but
18 face-to-face, I find it's a very productive session
19 that we have. I think these meetings are -- are very
20 valuable. Some jurisdictions don't do them. Ours
21 does.

22 A redacted statement of the financial
23 information is filed with the clerk and the legis --
24 of the legislative assembly for public viewing, and is
25 also published on the offices website. The -- out of

1 order, but I'll deal with the Lobbyist Registration
2 Act of 1998. Under that Act, I am also the lobbyist's
3 registrar. Duties of the registrar include
4 administering the lobbyist registration process. I
5 also, since July 1st, 2016 have had investigative
6 powers, and this has changed the role dramatically.

7 It's certainly significantly increased
8 the workload for the office, as investigations are
9 required by law to follow a prescribed and meticulous
10 procedure. Integrity commissioner can receive
11 complaints, as well as self initiate investigations in
12 compliance matters. In a finding of noncompliance,
13 the integrity commissioner can prohibit a person from
14 lobbying for up to two (2) years, which for anybody
15 knows anything about the lobbyist industry knows that
16 that's basically a career killer, and -- or make
17 public the person's name, and a description of the
18 noncompliance, and any other information deemed
19 necessary to explain the matter.

20 Under the Public Service of Ontario
21 Act, I have three (3) mandates. The first deals with
22 minister's staff designated as the ethics executive
23 for current and former minister's staff, providing
24 authority to make determinations regarding the
25 application of conflict of interest rules, including

1 post-employment obligations, which are very important,
2 and political activity.

3 The office receives financial
4 disclosures from certain minister's staff involved in
5 matters that may involve the private sector, so
6 analyze this material and provide direction according
7 to the individual circumstances.

8 The second heading under the Public
9 Service of Ontario Act is the disclosure of wrongdoing
10 mandate, or the whistle blowing mandate. I think this
11 is an important component of any ethics regime, that
12 there be a whistle blowing mandate.

13 In Ontario, the Public Service of
14 Ontario Act assigns responsibility to me to receive
15 and deal with disclosures of wrongdoing regarding the
16 work of the Ontario public service. The office
17 receives disclosures and reviews them based on the
18 requirements of the Act. A disclosure may be referred
19 to the Ministry or public body for internal
20 investigation, or in some cases, the Commissioner may
21 conduct an independent investigation.

22 Investigations that have been referred,
23 the Commissioner reviews the work and prepares a
24 report after referral to summarize the conclusions and
25 make recommendations. This report is provided to the

1 Ministry or public body. If the Integrity
2 Commissioner conducts his own investigation, the
3 report can be made public if it is considered to be of
4 public interest.

5 Some disclosures of wrongdoing result
6 from conflict of interest complaints like
7 inappropriate hiring, which the discloser finds has
8 been inadequately handled by the -- the person who
9 received the conflict of interest complaint initially,
10 and then the disclosure wrongdoing comes to me with
11 respect to the complaint itself and to the systemic
12 problem of -- of it not having been investigated
13 appropriately by the Agency or the Ministry involved.

14 Public sector ethics, this is a new
15 mandate for me. It's as a result of the merger of my
16 office and the Conflict of Interest Commissioner's
17 office on May 1st of 2019. I am now the Ethics
18 Executive for the Secretary of the Cabinet and for all
19 appointees to Ontario's agencies, boards, and
20 commissions.

21 In this role, the Commissioner also has
22 responsibility for education and training regarding
23 the conflict of interest rules. I can also advise on
24 appointments and whether appointments are likely to
25 create a conflict of interest, and how that conflict

1 of interest can be managed if the appointment is to be
2 made.

3 There are other areas, I won't spend
4 too much time on them, but not to diminish their
5 importance, the Public Sector Expenses Review Act of
6 2009 authorizes me to review travel, meal, and
7 hospitality expenses of certain public servants
8 employed by the provincial agencies, boards, and
9 commissions, and to determine whether those expenses
10 are in compliance with the standards for expenses
11 determined by the Act.

12 Originally, it was just the twenty-one
13 (21) largest agencies in Ontario; that was expanded in
14 2015 to approximately one hundred and eighty (180)
15 agencies that we now have the authority to review.
16 Obviously I can't review them all, so I review them --
17 about twenty (20), twenty-five (25) at a time, and as
18 one (1) agency demonstrates compliance, I -- I
19 graduate them and they move on, and with great
20 rejoicing, and are replaced by another agency with
21 less rejoicing when we call to advise them that we
22 will be examining all of their expenses for probably
23 the next two (2) years.

24 The final act of my mandates is the
25 Cabinet Ministers' and Opposition Leaders' Expenses

1 Review and Accountability Act, and that deals with --
2 since 2002, my office has been reviewing cabinet
3 ministers, opposition leaders, parliamentary
4 assistants, and their staff expenses.

5 Generally I found, and my annual
6 reports have indicated, that the level of compliance
7 from elected officials has been extraordinarily high.
8 Begs the question of -- of whether it would be if it
9 weren't for my office in place, but the response has
10 been very good.

11 I -- I report to the Speaker of the
12 Legislative Assembly on all of my mandates which
13 summarize all the activities in an annual report
14 that's published usually in June unless there's an
15 election.

16 So that is a brief overview of -- of
17 the mandates that I have. Certainly deal with
18 conflicts of interest on a daily basis, so I look
19 forward to being engaged on -- on this exercise today
20 so that we can talk about a subject that's dear and
21 close to my heart.

22 MR. MAX LIBMAN: All right. Thank
23 you. I think we'll move on to the presentation from
24 Ms. Jepson and Ms. O'Connor now.

25 MS. VALERIE JEPSON: Good morning.

1 Okay. Good morning, Justice Marrocco and -- it's a
2 real pleasure for me to be here on this panel -- on
3 this panel to talk about something that is also near
4 and dear to my heart and something that I have a
5 passion for.

6 So Rick and I have worked together on
7 this presentation, so we agreed that I'll -- I'll lead
8 through the slides but we're going to do kind of a tag
9 team, so I might be looking over -- Rick is going to
10 interrupt me if I'm getting off track.

11 THE HONOURABLE FRANK MARROCCO: That's
12 fine.

13 MS. VALERIE JEPSON: Just to give you
14 a bit of perspective from where I'm coming from in
15 offering the comments that I have today, I just wanted
16 to make -- give you sort of three (3) bits of
17 information about how I approach the work that I've
18 been privileged to be able to do as the Toronto
19 Integrity Commissioner for the past five (5) years.

20 So, first and foremost, I start from
21 the proposition that we are very lucky as members of
22 our society to have people who volunteer to run for
23 elected office, to stand for elected office, and to do
24 the very difficult job that we expect of them, and we
25 have to be -- we have to recognize that we put in

1 place some very high expectations rightfully, that
2 they do the job by putting the public interest first.
3 And that's easy to say but it's hard to live up to if
4 you're an elected official.

5 And so the real value in having an
6 Integrity Commissioner is to be able to help those
7 people who make that hard choice to do that job, to be
8 able to do the right things when it matters most, and
9 that's what Integrity Commissioners do.

10 I don't purport to be a judge of
11 anybody's morality, or whether they're a good or a bad
12 person, but I try to make sure that if their actions
13 could give rise to a concern on the part of the public
14 about harm that could come to the institution that
15 they serve, that they will choose the better choice,
16 so that their actions will promote trust and
17 confidence in the Government and not detract from it.

18 And that's a hard mess -- message for
19 elected officials sometimes because it's inevitable
20 that you will feel personally picked on or accused of
21 doing wrongdoing when you start talking about things
22 like integrity and conflicts of interest. So I try to
23 depersonalize it and relate to public officials as a
24 public officeholder, of which I am one, to acknowledge
25 that it's hard, but that doesn't mean that the

1 obligations need to be relaxed or that we have to give
2 them a break on those rules, because it is a public
3 trust that they're exercising when they carry out
4 their work.

5 So what I like to say is it's not
6 personal, that the actions that all of us as public
7 officials undertake matter, and we do have to adjust
8 our actions when we're acting on behalf of the public
9 trust.

10 Integrity Commissioners can be very
11 valuable in helping public officeholders meet these
12 obligations as can Ethics executives, which is
13 something we're going to talk about today.

14 The other thing I want to bring to the
15 table, Rick and I are on the same page about this, is
16 we've had Integrity Commissioners now for a few years
17 in -- at the municipal sector, and city councils need
18 to start doing a better job about how they treat
19 Integrity Commissioners and the institution of
20 Integrity Commissioners. I can get a bit more into
21 that.

22 The last thing I wanted to say before I
23 start is that the -- it's easy to read the codes of
24 conduct and in preparation for this I have reviewed
25 the codes of conduct for Simcoe and for Collingwood

1 and the ones that were in place before.

2 They all say the same things. We can
3 all read them and understand them. What's hard about
4 conflicts of interests is to do the right thing in the
5 hard moment when nobody is looking, and making sure
6 that you have the culture and the personal fortitude
7 to say no when somebody is asking you to do something
8 that you shouldn't.

9 And that takes practice and it requires
10 advice and guidance.

11 So with that backdrop, that's my
12 perspective. Rick was -- I wanted, before we go on I
13 want Rick to be able to provide his perspective too.

14 MR. RICK O'CONNOR: Thank you,
15 Valerie. And just to reiterate the words that Valerie
16 indicated, I'm honoured to be here, Mr. Justice, and
17 hopefully we can provide some insights from our many
18 years working both in the municipal sector and on
19 conflicts of interest.

20 In Ontario, of course, the Conflict of
21 Interest Act, the Municipal Conflict of Interest Act
22 came about in 1972, and was in fact the first one in
23 the country.

24 In 1983 there were some minor
25 amendments to the Municipal Conflict of Interest Act,

1 and then virtually nothing until more recently.

2 In 2005, Madam Justice Bellamy's
3 groundbreaking report, I know she was here yesterday
4 testifying, was released, which led to some changes in
5 2006, 2007, with the Municipal Act. And Mr. Justice
6 Cunningham's report in 2011 with Mississauga led
7 directly to changes in Bill 68 in 2017.

8 The changes in 2017, for the purposes
9 of our work, have been that there has been significant
10 changes in the Municipal Conflict of Interest Act, but
11 also as Valerie alluded to, codes of conduct are
12 required by all four hundred and forty-four (444)
13 municipalities and integrity commissioners across
14 Ontario as of March 1st of this year.

15 So municipalities, I suggest, are now
16 dealing with, for the first time, wholeheartedly this
17 dual regime of having a statutory code of conduct, so
18 to speak, and then codes of conduct at the individual
19 level.

20 And I think at this point with this
21 judicial inquiry, there's the possibility for
22 significant and change in both the Municipal Conflict
23 of Interest Act and those codes of conduct.

24 MS. VALERIE JEPSON: So, because the
25 topic is conflict of interest, we thought it would be

1 helpful just to sort of set the table and talk about -
2 - build on what David already mentioned, was the
3 concept of conflict of interest.

4 And we know this is just setting the
5 table, so we won't go into line and verse of all these
6 things, but in the world of conflict of interest we
7 have these terms, these persistent terms, that are
8 referred to as real or apparent -- real or actual
9 conflict of interest, potential conflict of interests,
10 and apparent conflict of interests.

11 So, real conflict of interest is just
12 what that sounds like. Pretty straight-forward
13 concept that you -- you can't be making a decision in
14 the public interests when it coincides with an
15 interest of a personal, private interest that you --
16 that you would not be able to reconcile properly,
17 because as a public official, you have to put the
18 public interests first.

19 A potential conflict of interest is a -
20 - something that sometimes we say is a bit of an
21 unhelpful thing to have to spend too much time
22 thinking about it, because it just is a recognition
23 that there will inevitably be potential conflict of
24 interests whenever any government actor is acting.
25 And what the trick is, is for a -- an elected official

1 to be able to identify situations that give rise to a
2 possible conflict, and that that triggers for them
3 their duty to deal properly with it. And that could
4 include and should include seeking advice of the
5 appropriate officials.

6 So, for elected officials it's
7 integrity commissioners; for public servants working
8 in public organizations, it would be, in some cases,
9 their ethics executive or whoever else is identified
10 to fulfill that role.

11 An apparent conflict of interest is
12 sometimes thought of as arguably less straight-forward
13 than a real conflict of interest. But it's my view,
14 it's -- and I think -- I think I'm speaking for the
15 consensus that's emerged here, that there's a wide
16 consensus that public officials need to be concerned
17 about apparent conflict of interests as well and that
18 -- and it causes equally -- it can equally damage the
19 trust and confidence that the public has in the
20 government actors.

21 Apparent conflict of interests is
22 defined -- we can always look to the Parker Commission
23 Report for these sort of foundational definitions, but
24 apparent conflict of interest is helpfully defined as
25 this:

1 "An appearance of conflict exists
2 when there's a reasonable
3 apprehension which a reasonably
4 well-informed person could properly
5 have that a conflict of interest
6 exists."

7 So it's not just a mere suspicion or a
8 mere concern, there has to be some reasonable person
9 test applied to it.

10 Now, you can understand why someone who
11 is bound by that standard might find that frustrating
12 to apply, but these days you can consult an integrity
13 commissioner to get an opinion in advance, about
14 whether or not that standard has met -- has been met.

15 In the municipal sector we have a very
16 unique concept called a pecuniary interest, which is a
17 concept established by the Municipal Conflict of
18 Interest Act, which sets in place a conflict of
19 interest regime only arise -- only pertaining to
20 financial interests that could arise, and that's -- as
21 is well-documented in the -- in many places, including
22 the Cunningham Inquiry Report and the Mississauga
23 Judicial Inquiry.

24 So this is an overly-narrow definition
25 of a conflict of interest.

1 But this is what I think you see a lot
2 of, and Rick might have more comment on this, about --
3 this is what most municipal councillors focus on
4 because this was really the only game in town, so to
5 speak, prior to integrity commissioners and codes of
6 conduct came in place.

7 MR. RICK O'CONNOR: Yes, so Mr.
8 Commissioner, at the end of the day when you look at
9 the Municipal Conflict of Interest Act and when we see
10 it on the screen it -- it looks reasonably
11 comprehensible in understanding a direct and direct
12 and deemed financial interest.

13 But it's unusual in the fact that the
14 Municipal Conflict of Interest Act is actually a
15 misnomer as a title, because it's only referenced once
16 in the legislation at section 13, and it's largely
17 with regards to whether or not the jurisdiction for
18 removing a member of council and various other severe
19 penalties is limited to that legislation; that's the
20 only time it's referenced.

21 What it actually talks about, and what
22 most municipal councillors actually have to declare
23 during the course of a meeting or their duties, is
24 that they have a deemed direct or indirect pecuniary
25 interest.

1 And this was a -- this was a challenge
2 for members back in 2006 and previous years trying to
3 understand the changes in the legislation.

4 So I -- I mention that simply because
5 under MCIA even it is not exactly clear to members of
6 council who first come in and say oh, yeah, well
7 that's great, what's a pecuniary interest? I don't
8 actually know what that is.

9 And you have to say well, it's not
10 defined in the legislation, it's in fact something
11 that the case law has designated to us and given to us
12 to understand to be of a monetary interest and
13 something that you can define in a monetary interest.

14 And then members of council say well
15 that's great, what's a direct pecuniary interest? And
16 we say well, it's not defined in the legislation,
17 however, case law has dictated that it's where an
18 individual member has a direct interest in something
19 and then we try to explain it.

20 Indirect and deemed financial or
21 pecuniary interests are defined, but they could use
22 some work as we go through the process of refining
23 these matters to make sure that members of the public
24 also understand how all of this legislation and the
25 common law and codes of conduct should be in a more

1 integrated fashion dealt with.

2 MS. VALERIE JEPSON: And it's a good
3 example so it -- in taking -- drawing on experience
4 from being an integrity commissioner, when I do my
5 outreach and education for councillors and all of the
6 board members in Toronto, for instance, the main
7 message I want them to understand when I leave that
8 training session is that the Municipal Conflict of
9 Interest Act is something they're bound by, but that
10 it's technical and that they shouldn't try to read it
11 themselves and apply it to themselves, and that they can
12 see advice from my office if they need to.

13 And that's a really important thing
14 because it is not -- it's not an easy thing to read or
15 apply to particular situations.

16 We also know that there is a whole body
17 of law that defines common law conflict of interests
18 for public officials in general. This has been
19 written about in various places and discussed again in
20 the Mississauga Judicial Inquiry.

21 The commissioners now -- municipal
22 commissioners are, when possible, reflecting on and
23 incorporating the common law conflict of interests
24 into their consideration of different complaints that
25 may be received. I can talk about -- more about that,

1 if you like.

2 And then there's also the possibility
3 that a code of conduct could include a conflict of
4 interest obligation, which would be broader than
5 what's included in the Municipal Conflict of Interest
6 Act. And there is an example in Simcoe.

7 THE HONOURABLE J. DAVID WAKE: I don't
8 know how we're going to do this, but --

9 THE HONOURABLE FRANK MARROCCO: It'll
10 be -- it'll be more in the nature of a discussion,
11 that's the way we've tended to do it. So people
12 should speak up and then questions will flow as the
13 topics are addressed.

14 We're not going to follow the more
15 traditional question-and-answer format. I think it's
16 too inhibiting in this context.

17 THE HONOURABLE J. DAVID WAKE: Well,
18 I'm glad to hear that. Thank you, Justice Marrocco,
19 because when I feel something welling up inside me I
20 don't know whether I should be suppressing it or
21 whether I'm at liberty to jump in at -- at the
22 appropriate time.

23 I just -- I just note with a note of
24 caution with respect to Justice Parker's definition of
25 apparent conflict of interest, of course, that came

1 out of the -- out of the Sinclair Stevens Inquiry back
2 in the -- in the '80s, I believe, in 1987. We have to
3 remember that -- and I -- it's quoted very often, but
4 of course it was overturned by the Federal Court and
5 --

6 THE HONOURABLE FRANK MARROCCO: I was
7 going to say, many years later.

8 THE HONOURABLE J. DAVID WAKE: Yeah,
9 many years had expired at that time.

10 It doesn't take away from the general
11 acceptance that many have relied on, many conflict of
12 interest commissioners have relied on it.

13 The other point, just from a provincial
14 perspective, we -- in -- in decisions I've been
15 obliged to render, beginning with Commissioner Gregory
16 Evans, who -- who ruled initially in -- in a matter
17 that the Act -- the Members Integrity Act does not
18 concern itself with a perceived conflict of interest
19 as opposed to an actual conflict.

20 So in a case I had dealing with pay for
21 access a few years ago, these were the very expensive
22 dinners that were being given to stakeholders \$7,500 a
23 pop of -- to the -- the governing party of the day. A
24 complaint was made that the Minister of Energy and the
25 Minister of Finance were attending these small,

1 intimate gatherings with people who had been involved
2 very directly and benefited to some extent from the
3 divestiture of the Hydro One -- the privatization of
4 Hydro One, the divestiture by the government.

5 So I -- I applied Justice Parker's
6 definition, I quoted it with the -- with the caveat
7 that it -- it had been overturned at a later point.

8 And I -- I said:

9 "It is conceivable that a reasonably
10 well-informed person could have
11 reasonable concerns about a \$7,500
12 per person fundraising event, held
13 one month after the conclusion of a
14 significant transaction, chaired and
15 attended largely by individuals
16 affiliated with organizations that
17 benefited from that transaction."

18 But I felt obliged to follow my
19 predecessor, former Chief Justice Gregory Evans,
20 commission -- our first commissioner, who made it
21 quite clear that the Act does not concern itself with
22 perceived conflicts of interest.

23 I -- in my report I urged the
24 legislature to re-examine that and whether the
25 appearance of a conflict of interest should not or a

1 potential conflict of interest should not be part of
2 the Act.

3 What they did instead was to change the
4 Election Finances Act so that the amounts that could
5 be given for these dinners was taken down from \$39,000
6 in an election year per donor down to \$3,900.

7 So that's how they handled it, but I'm
8 still left with an act that leaves me without any way
9 of challenging an apparent conflict of interest.

10 So I jump in at that point to say that
11 before I forget.

12 THE HONOURABLE FRANK MARROCCO: If --
13 if -- one (1) of the things that I'm -- I'm interested
14 in is when someone is elected, what kind of -- and
15 newly elected, what kind of training should they get
16 because -- because -- especially with reference to the
17 Municipal Conflict of Interest Act, to get people's
18 heads around the limits of that legislation and to
19 make people appreciate conflicts of interest a little
20 more precisely.

21 Do you have any thoughts on -- on the
22 kind of training that people should get?

23 MR. RICK O'CONNOR: Yes, and I would
24 posit my remarks by saying it will depend on the
25 municipality, and it will depend on its size and its

1 resources and its availability of individuals. At the
2 City of Ottawa, we go through -- there's an election
3 in the third week of October, and then almost
4 immediately thereafter for the next five (5) or so
5 weeks, we are meeting in public session on a daily
6 basis with our newly elected members of Council.

7 We call them councillors-elect because
8 they don't actually take office until December 1st. So
9 during that period of time, we give them a -- a rather
10 heavy load of training with regards to what their
11 statutory responsibilities are, largely with the
12 Municipal Act. We have entire sections of that that
13 deal with codes of conduct and deal with what the
14 expectations are in dealing with staff and Council-
15 staff relations, and I'm going to leave it there
16 because I -- I want Valerie to pipe in.

17 At the City of Ottawa, we have an
18 auditor general, and we have an integrity
19 commissioner. So they each do individual sessions in
20 public with the newly appointed members of Council
21 that staff just leave to the -- to the integrity
22 officials.

23 MS. VALERIE JEPSON: Yes, so I agree
24 that it really does depend on the municipality, but
25 the training that I think is essential is having a --

1 for sure, something at the beginning that you can --
2 you know, I always call it a high flyover. This is --
3 you're not going to remember all this line and verse,
4 Councillors, but here's a high flyover of what is
5 here. All I want you to do is remember if anything
6 around this topic comes up, you have somewhere to
7 call.

8 But then I think it also needs to be
9 backed up with training the councillor staff, because
10 the councillor staff in busy workplace -- I don't --
11 and again, not all municipalities have staff for their
12 councillors, but they -- they need to -- again, this
13 isn't -- these are not obvious things.

14 These may be things that councillors
15 have never interacted with or encountered before, so
16 the more help they can get, the better. And if the
17 staff supporting those offices are also trained and
18 it's part of their ethic to help the councillor meet
19 their obligations, that's a really helpful part of the
20 training program.

21 And then the other thing that I've done
22 is -- to take a page from the provincial model -- is
23 in Toronto, I -- as -- and it's a luxury for me to be
24 able to do this, but I try to meet with the
25 councillors every year, whether or not they're seeking

1 advice, because that is another opportunity to remind
2 councillors about the obligations and to create a -- a
3 friendly environment of them to seek advice.

4 And that's one (1) thing I know Rick
5 and I wanted to talk about was we have to find ways to
6 de-stigmatize the seeking of advice and the get -- and
7 the obtaining of education, because I think there's an
8 unfair, sometimes, expectation on the part of the
9 public, or maybe the media even, that councillors
10 shouldn't need training and they shouldn't need to
11 seek advice, because if they're elected officials,
12 they should know all these answers and have all this
13 information and that's just not fair or reasonable.

14 So having opportunities to make it easy
15 for councillors to do that, including regular, routine
16 meetings to provide the opportunity to share
17 information, I think is really important. And I --
18 and I think that that is something that -- that works.

19 THE HONOURABLE FRANK MARROCCO: Yeah.

20 MS. VALERIE JEPSON: Yeah.

21 THE HONOURABLE J. DAVID WAKE: As I
22 said in my -- my opening remarks, I do meet with each
23 of the members, and I -- I do find it works, meeting
24 with a member face to face. Last year, with seventy-
25 three (73) new members elected to the Legislature, I

1 conducted an orientation session in the Legislature
2 chamber itself, there were so many of them. But that
3 was one-and-a-half-hour session to try and -- and at
4 that point, they had just been elected. How much of
5 it was retained, one -- one can only suspect.

6 It was followed up, though, during the
7 course of the year, by five hundred and thirty-three
8 (533) written inquiries requesting advice from my
9 office -- from me. Everything that goes out of my
10 office is -- is signed by me. So there is -- mind
11 you, some people have us on speed dial; other people,
12 I never hear from at all. So I -- I'm concerned about
13 that group.

14 THE HONOURABLE FRANK MARROCCO: M-hm.

15 THE HONOURABLE J. DAVID WAKE: And I
16 try and make myself available and remind them at these
17 annual meetings I have with the members that our
18 office is there to help them, and -- and that does
19 produce a result.

20 THE HONOURABLE FRANK MARROCCO: Do --
21 do -- do you -- do you -- recognizing that -- that
22 some municipalities are smaller than others, do you
23 have -- do you try to teach people how to recognize
24 when -- when they should ask for advice or recognize a
25 problem? How -- how do you approach that?

1 MS. VALERIE JEPSON: Yeah, yeah, I
2 think I do. I guess it's for others to really judge
3 if we're -- if we do, but we try to do that, in
4 Toronto, anyway, by having -- I issue interpretation
5 bulletins, and I communicate with members of Council,
6 so I -- I send letters to councillors. And I don't --
7 I do it privately. Like, I'm not -- I send it to all
8 the whole Council individually, but I don't also
9 release it publicly. I want them to feel like these
10 are helpful resources to remind them of things.

11 So I can think of a few examples where,
12 on specific matters, I would have done that as sort of
13 a proactive thing. Again, it's a luxury, because I
14 have permanent role. I think what you're seeing
15 across Ontario is, with this new requirement that all
16 municipalities have municipal integrity commissioners,
17 we are as a group of municipal integrity commissioners
18 working our hardest to share best practices and to
19 borrow from each other so that the smaller
20 municipalities can hopefully take some of the things
21 from the bigger municipalities to -- to use at a
22 modified -- as appropriate for their jurisdictions,
23 because we know that, that that's a challenge that --
24 like, I have a -- I relate with my colleagues who are
25 in the small centres about, you know, how are they

1 going to do this, and I hope -- and I think they do
2 use some of the resources that get developed in the
3 bigger centres.

4 What we don't want, and this is
5 something Rick and I wanted to talk about, is, you
6 know, we have, theoretically, four hundred and forty-
7 four (444) different integrity commissioners and
8 different approaches and codes that are slowly
9 emerging, and as I've already said, you can read all
10 these things. It's all the same goals in mind.

11 So we recognize it has to be unique for
12 each community and each culture of every city, but
13 there's enough in common that we can come up with some
14 common resources that would be helpful for -- to -- to
15 address that concern in particular, to -- to help them
16 have that little bell ringing when something that
17 crosses their desk should cause them to seek advice or
18 declare an interest.

19 MR. RICK O'CONNOR: It's -- it's also
20 -- with the larger municipalities, we have codes of
21 conduct that are annotated. We not only have
22 guidelines, but we also have FAQs we put online, so
23 not only members of the Council or local board members
24 can see them, but also members of the public, which
25 is, I think, also a very important role that the

1 integrity commissioner plays in sort of setting those
2 expectations, trying to appreciate that something
3 under a code of conduct is not going to end up in a
4 member's seat being vacated, which is actually what a
5 lot of people think the first time they lay a
6 complaint against an individual member.

7 So there's all of those things, and
8 indeed, I do one (1) or two (2) every four (4) years.
9 When orientation comes around, I get asked by local
10 municipalities in and around Ottawa, and I go and do
11 those types of things and very clearly try to remind
12 members that they should have this in mind, conflicts
13 of interest, every time they read an agenda.

14 Now, the first time they read an
15 agenda, if there's something that clicks with them,
16 whether or not it's a financial interest or something
17 else -- and we're going to call them apparent
18 conflicts of interest -- those are the types of things
19 that they should be picking up the phone and calling
20 the integrity commissioner for.

21 And I appreciate that in the smaller
22 municipalities, I hear, well, it costs money. Well,
23 understandable, but the two (2) most recent integrity
24 commissioner reports in the province that were of some
25 significant length have been in the hundred (100) and

1 two hundred thousand dollar (\$200,000) range. So I'll
2 say, Well, pay me now or pay me later. I'd rather do
3 it upfront and get them that appropriate advice.

4 All of my staff -- and I have about a
5 hundred and forty (140) or so FTEs -- all of them who
6 deal with councillors on a regular basis remind the
7 councillors, You might want to talk to the integrity
8 commissioner about that, because as indicated by my
9 colleagues, at any point in time, a councillor may
10 just mention it. And we often -- and I had a phone
11 call from one (1) of my councillors last week, who
12 said, Rick, I want to ask you a question.

13 And I said, Oh, you've confused me.
14 You actually want to be talking to the integrity
15 commissioner.

16 And he paused and said, you know,
17 you're right. Thanks very much. And he hung up the
18 phone. So it's that constant trying to drive them to
19 the appropriate people to give the professional advice
20 that they can rely on.

21 THE HONOURABLE FRANK MARROCCO: Has --
22 has it been, in your experience, fairly consistently
23 put forward that when you're dealing with a Municipal
24 Conflict of Interest Act, it is best to get an opinion
25 rather than read it yourself and -- and think that

1 you've exhausted its -- you've -- you've -- you've
2 exhausted what it has to tell you because you've read
3 it?

4 MR. RICK O'CONNOR: Absolutely. At
5 the end of the day, I probably have hundreds of times
6 over thirty (30) years recommended members of Council
7 -- even prior to the changes in March 1st, 2019,
8 recommended that they go get an independent legal
9 opinion on that.

10 And whether there's a mechanism for the
11 municipality to pay for that or their office budget or
12 the clerk's budget or they pay for it themselves, I
13 don't recall a councillor ever coming back to me and
14 saying, Gee, that was a bad idea. They're usually
15 very satisfied, whatever the answer is, and then they
16 rely upon it.

17 And I think out of the forty (40) or so
18 cases that deal with the fact that a legal opinion was
19 rendered, I don't remember any member of Council ever
20 being penalized by a judge for following their
21 independent legal advice.

22 THE HONOURABLE FRANK MARROCCO: Okay.

23 MS. VALERIE JEPSON: I guess on that I
24 have a -- I can offer this perspective, because I -- I
25 came from the provincial integrity commissioner where

1 there's only one (1) place to ask the integrity
2 commissioner. So I came to a municipality, and at
3 that time, integrity commissioners, including me,
4 didn't have jurisdiction to give advice under the
5 Municipal Conflict of Interest Act. So I found it
6 quite, on behalf of councillors, frustrating that they
7 didn't have a sort of a one (1) stop shop to come and
8 get advice.

9 And what I learned was there was this --
10 you know, this was the common fare is, that, you know,
11 you have a potential interest. A councillor's going
12 to have to go out and hire their own lawyer to get an
13 opinion and get a -- find an opinion and -- and
14 probably do the right thing. But, you know, you do
15 that enough times, you don't want to pay the same
16 price for the same opinion. You're probably going to
17 -- you know, you can think of all the reasons why
18 councillors might start self-determining. And that
19 was kind of the way it was.

20 So now, after March 1st, it's a whole
21 new world, because councillors don't need to do that
22 anymore. Some councillors still want to do that. I
23 think -- and it could be because they recognize that
24 an integrity commissioner is a public officeholder.
25 They're not their legal counsel.

1 And that is a -- a factor I think that
2 will probab -- I think the demand for those external
3 legal opinions will diminish over time because I think
4 we're witnessing a culture change in terms of there
5 being a more of a willingness or an embracing of the
6 one (1) stop shop for integrity commissioner advice
7 about these issues, because I think what we recognize
8 is that there should be some consistency about what
9 the advice is about whether certain circ -- circ --
10 certain circumstances give rise to an issue under the
11 Act or not. And if councillors are seeking legal
12 opinions from a variety of lawyers about it, you're
13 going to get different opinions.

14 At least through the integrity
15 commissioner's office -- and I think that's the virtue
16 in the recommendation and, certainly, the virtue of
17 the provincial model -- is that there's one (1) --
18 call it a reasonable person -- who's going to bring
19 appropriate scrutiny to these issue and provide a
20 neutral, fair opinion to those who are bound by the
21 rules. And that's a real new innovation at the
22 municipal level for that Act.

23 MR. WILLIAM MCDOWELL: Could I jump in
24 with just a question here? So I wanted to talk a
25 little bit about the common-law notions of conflict of

1 interest, because I was involved in Mississauga, and
2 in Mississauga Mayor McCallion said, So what if I was
3 promoting my son's business? I wasn't caught by the
4 MCIA, and really, that's all I'm concerned about. And
5 you know, you may think there are these other notions,
6 but really that's all I'm bound by.

7 And so we have moved on from that, and
8 I think a number of the common-law concepts are caught
9 by individual municipal codes of conduct, but there's
10 still this issue where you've got a public
11 officeholder who's promoting a private interest, or I
12 guess, the -- the companion problem where the private
13 businessperson is using an officeholder to promote a
14 private interest for -- I guess, how do you educate
15 councillors about that?

16 And is there a better way of getting
17 the idea that this is a real part of our substantive
18 law out there, because, you know, without going into
19 it too much, we've certainly heard here in the
20 evidence before us that this was -- either wasn't on
21 the radar or wasn't considered to be something
22 particularly top of mind.

23 MS. VALERIE JEPSON: I -- I think I'll
24 start us on this. So we have -- I'm just going to
25 flip to the slides. We won't go through them sort

1 of... Is that where we want to go? Let me see here.

2 MR. WILLIAM MCDOWELL: I saw the word
3 'uncertainty' there somewhere.

4 MS. VALERIE JEPSON: Yeah. Yeah, so I
5 think you -- I think that's a real -- I think your
6 question kind of hits the nail on the head of what is
7 a present problem -- is that there is disparate var --
8 a variety of approaches being undertaken right now,
9 and you can't blame municipal councillors for having
10 some question about, like, well our code doesn't say
11 that. We know the MCIA applies, where -- is -- you
12 know, we -- we can read the Cunningham report and know
13 that -- I think we can all agree that that report says
14 that com -- common-law conflict of interest matter,
15 and that's something that elected officials have to be
16 concerned with.

17 Making it that complicated and provide
18 -- having that many sources for councillors to have to
19 look at and be familiar with is not a good situation.
20 So I think what Rick and I is thinking is that there
21 can be some changes to surface these issues, and it
22 links back a bit to what Mr. Wake said earlier about,
23 you know, there's a lot of legal uncertainty, let's
24 call it, about concept -- the concept of apparent
25 conflict of interests for a variety of reasons that

1 would take several days of this, increased time, to
2 sort out.

3 So we don't need to do that. But what
4 we can do is try to change the things we have to make
5 them clearer. So one (1) thing would be to change the
6 definition of who the conflicts of interest pertain to
7 in the Municipal Conflict of Interest Act. Another
8 thing would be to amend codes to have clear
9 obligations about avoiding conflict of interest as
10 that term is understood by the law.

11 So there are examples, for instance,
12 the Toronto lobbyist registrar Linda Gehrke, who I
13 know you're going to be hearing from, in a report she
14 wrote, you know, her determination was that conflict
15 of interest means, you know, and there -- she wasn't
16 bound by a prior determination like Commissioner Wake
17 was in the case he talked about -- that it means if
18 you take into account the common law, this broader
19 concept.

20 And so it would help councillors,
21 though, if that concept found its way into code of
22 conduct, and it's why Rick and I think that it would
23 be helpful if the Province required all codes of
24 conduct to have a conflict of interest provision.

25 There is a regulation that requires

1 certain subject matters to be included, and I was on
2 the record advocating for that -- for one (1) of those
3 to be conflict of interest. I think we already have
4 some evidence now about the different approaches that
5 are being taken and this would be one (1) sort of
6 tangible solution that could help with that.

7 MR. RICK O'CONNOR: Sort of just to
8 follow up, yeah, basically, change the definition for
9 close relative of -- under the Municipal Conflict of
10 Interest Act. That will be of some assistance.

11 Part of the thought process that
12 Valerie and I went through over the last couple of
13 weeks talking about this is if you make a
14 recommendation at the end of the day that says, let's
15 retain the sort of two (2) key pieces of the Municipal
16 Conflict of Interest Act that I believe that members
17 of Council and members of local Board understand.

18 First off, that it's about financial
19 matters. I say let's keep that very clearly in the
20 conflict of interest legislation. And then also in
21 that statute, keep in the fact that the only person
22 that can remove a member of Council for a conflict of
23 interest is under that legislation and would be a
24 judge.

25 But then we do like the idea of saying,

1 then move over to the codes of conduct, and we've
2 indicated that under the provincial regulation that
3 they put out earlier, they wanted to include gifts,
4 respectful conduct, including staff, which we have
5 another issue with, confidential information, and use
6 of property.

7 But the Province of Ontario didn't make
8 any efforts to say your codes of conduct should
9 include those apparent, perceived, however you want to
10 talk about them. So we thought it might be easier for
11 members and local Board members to understand that
12 when you're in the MCIA, it's about your financial
13 interest, direct, indirect, and deemed, and when
14 you're talk -- and you might be removed from office,
15 and then under the code, we're looking at a broader
16 stretch of those types of conflicts of interests.

17 So those would be -- and we had a slide
18 earlier with regards to some of the sort of
19 overlapping and related interests that lot of people
20 put in their codes of conduct. They may not call them
21 apparent conflicts of interest, but when you've got
22 interests that are about preferential treatment, yeah,
23 sounds like an apparent conflict of interest. When
24 you've got improper use of influence of your office,
25 that also might be interpreted in a very broad sense.

1 So we thought it would be better to put
2 those -- and especially as a first go-around, if
3 you're making recommendations, that members would more
4 readily grasp -- they're already in there, so we can
5 understand, you're now saying, if it's -- my best
6 friend comes before Council, maybe I should perhaps
7 talk to the integrity commissioner and determine --
8 and we'll talk later about the disqualified versus
9 non-disqualified approach, but that would be the thing
10 that would let members of Council start very quickly
11 to understand the significance of both areas for the
12 real and the apparent conflicts.

13 MS. VALERIE JEPSON: If I could just
14 say too, think if -- I've noticed too in the municipal
15 sector, there's a real reticence to make changes that
16 are going to be disruptive, you know, like, fair
17 enough. The municipal councillors across Ontario are
18 used to dealing with the MCIA and the pecuniary
19 interest concept.

20 And so to just change that would --
21 would actually have quite enormous consequences for
22 just the administration of all the towns. And I think
23 that's a -- a fair consideration, but the ambiguity
24 that's been created by trying to preserve something,
25 and then have the sort of unwritten obligations that

1 we all agree, and various commissions of Inquiry, and
2 -- and some codes and not others, it makes it worse.

3 So I would urge -- I've urged the
4 Province in the past to -- I think any concern about
5 whether or not it could be implemented will be
6 addressed now, because there are integrity
7 commissioners in place, and they will be able to help
8 the municipality address those issues.

9 So I respect that concern, and I think
10 it's a fair one, but the clarity that would come from
11 making it clear that a code should and must include a
12 conflict of interest provision that's broader than the
13 MCIA I think would actually really help the -- the
14 work of integrity commissions and councillors, so they
15 would have predictability and clarity about what their
16 obligations are.

17 MR. WILLIAM MCDOWELL: One (1) of the
18 other tricky things is that content of the oath that
19 councillors take as prescribed by the statute, and it
20 says that they're to act -- act impartially. But how
21 does that fit into the statutory scheme Justice
22 Cunningham relied on it -- fairly heavily in some of
23 his analysis? Another thing that -- that -- sort of
24 another layer that, I guess you would say adds to the
25 uncertainty.

1 MS. VALERIE JEPSON: Sure, yeah. I
2 think -- and I think every city will have a, you know,
3 these different -- because of the size, their history
4 to culture, how a clerk -- a certain clerk -- you
5 know, different clerks have different styles. You
6 know, there is just not a lot of -- there isn't
7 uniformity.

8 But like I said, I think -- and it
9 comes back to me every time I look at another code.
10 It's all saying the same thing, that, you know,
11 there's not very many codes you're going to pick up
12 nowadays and be like, wow, this is really setting the
13 bar high.

14 No, they all set it high. It's just
15 that there is not potent -- arguably not sufficient
16 clarity in those documents about these issues that I
17 think we have consensus on around conflicts of
18 interest. And there's just an unhelpful sort of
19 jurisprudence, so to speak.

20 So I have a similar situation in
21 Toronto about apparent conflicts, because -- or about
22 including a conflict of interest in the code, because
23 it was the legal opinion of the City back 2005/'06
24 that it couldn't have a conflict of interest provision
25 because of the existence of the MCIA.

1 We're now past that post the Cunningham
2 report. I think that report clarified it, but I can't
3 un-write that history in Toronto.

4 So in Toronto, our code does not have a
5 generic conflict of interest provision. And I -- I,
6 like David, feel bound by that for predictability's
7 sake. So a change that would, you know, require the
8 code, you know, from this day forward, all municipal
9 codes shall have a conflict of interest provision, we
10 don't have to have the debate anymore.

11 And it was a -- a very fair and
12 interesting, if you're interested in this, legal
13 debate whether that Act occupied the field, but I
14 think we're over that now.

15 MR. WILLIAM MCDOWELL: So essentially
16 what you're saying, if I can distill it out, is that
17 the minimum contents of municipal code should be
18 longer?

19 MS. VALERIE JEPSON: Yes.

20 MR. RICK O'CONNOR: Absolutely.

21 MS. VALERIE JEPSON: And I -- I don't
22 want to speak for every municipal integrity
23 commissioner. I wouldn't ever do that. And there
24 will be other points of view. But I think some of us
25 were very disappointed at the short list that came out

1 from the Province when they put this regulation in
2 place, because although you've just heard me say,
3 Don't worry, the commissioners can deal with it, we
4 need help too, because we're the ones that have to go
5 to the Councils to persuade them to put these things
6 in their code.

7 And for things that are as important as
8 this, we shouldn't be having to debate that. The --
9 the law directs enough. This is an obvious one it
10 should also include.

11 MR. WILLIAM MCDOWELL: Could I ask Mr.
12 O'Connor a slightly different question? And that is:
13 Why is it that there's this reticence to consult
14 municipal conflict of interest or integrity
15 commissioners, but there -- the legislators are
16 beating a path to David Wake's door to talk late into
17 the night about these things? And why -- why is there
18 stigma attached to one but not the other?

19 MR. RICK O'CONNOR: Well, I'll -- I'll
20 leave the Commissioner to -- to speak for the
21 Provincial level, but at the municipal level, and I
22 think Valerie alluded to it earlier, it's -- it's very
23 much a personal slight. It's very much on your
24 reputation. You know, someone may have made this
25 allegation, or you have to go and check it out with

1 the integrity commissioner, and many of them are
2 reticent, at least in the first instance, to go and
3 have those discussions and conversations.

4 The City of Ottawa's integrity
5 commission does meet with every member of Council for
6 the first time, and -- and usually spends time. I've
7 often found in a -- in a related manner, dealing with
8 my members of Council, if there's something that we
9 need them to do from a governance perspective, and I
10 will go out and interview them all, I'll set aside an
11 hour for each interview, and I have twenty-four (24)
12 members of council, and sort of half an hour in
13 between that I leave open on my schedule.

14 And when you walk into the office, they
15 say I don't know why you're here, I have no questions,
16 you know, delegation of authority is fine, procedure
17 bylaw is fine, everything's fine, it's all good. And
18 then, like Mr. Wake indicated, the minute you start
19 discussing these things, they suddenly have these
20 really interesting questions, but, you know, how about
21 that?

22 So I think it's part of breaking down
23 that stigmatism, part of getting them to understand at
24 every level that this is actually to help you and to
25 support you, and, yes, there is that niggling issue

1 with a lot of municipal councillors about this is
2 costing the -- the corporation money, and I'm
3 contributing to that cost.

4 But as I said earlier, I think it's
5 better to have that money spent up-front and then if
6 the Integrity Commissioners write annual reports and
7 they write little summaries of what everyone else can
8 follow and produce guidelines, you are way ahead of
9 the game.

10 THE HONOURABLE FRANK MARROCCO: Is --
11 is there a -- a reluctance to have a statement in the
12 code of conduct that you're governed by the common law
13 as it applies to conflicts of interest? Is -- if they
14 -- if -- if you won't -- if they won't spell out -- I
15 mean, they are.

16 MS. VALERIE JEPSON: Yeah. Yeah. I
17 think -- I think that -- I think there would be a
18 reluctance because I think it would be perceived as
19 sort of -- as too ambiguous to understand what that
20 could be, and that's where I think -- the challenge
21 with codes of conduct is we all can agree what should
22 go in there and what we should expect -- our
23 expectations are, and I think even elected officials
24 would agree with us.

25 But what becomes hard is when these are

1 enforced, and so they're going to be found to have
2 violated some part of the code, and it's in the
3 defence of those that they will raise the arguments
4 you would expect, like this was too ambiguous to be
5 enforced or I didn't realize it and -- because they're
6 trying to avoid a finding by a neutral party to --
7 that there's been a breach.

8 And so there has to be a balance
9 between setting the standards high but having some
10 predictability for -- because we're going to try to
11 enforce them, which we do do.

12 So I think the reticence would come
13 from an elected official, not because they didn't
14 agree it should be there, but that they would be
15 creating a risk for themselves to potentially be found
16 to have contravened the code because of the ambig --
17 you know, potentially arguably the ambiguity of it.

18 THE HONOURABLE FRANK MARROCCO: I
19 guess the difficulty that occurs to me is, the person
20 says, well, I -- I'm --- I have not gone off side the
21 Municipal Conflict of Interest Act, so that's the end
22 of the discussion, and it isn't necessarily because
23 there is -- there are common law rules and you've
24 alluded to them.

25 And how do they -- that's just a

1 mistake they're going to make, and they're going to
2 pay for that.

3 MS. VALERIE JEPSON: And this is where
4 I think the question is really, what's the remedy --
5 if they're not in the code and then, therefore, not
6 subject to the procedural rules that could lead to an
7 investigation, to breach the common law, to find that
8 there is a common law contravention, unless it was in
9 the code, and if it was in the code black and white,
10 yes, it could lead to that, but if it's -- I think we
11 saw this in the Cunningham Inquiry, a finding of a
12 common law breach. There's -- there's no remedy.

13 There is a finding, which is
14 significant, I would say, and a -- I think members
15 would want to avoid that too. But as long as we're
16 going to have potential consequences like suspension
17 of pay in our case or reprimands, I think you're going
18 to find a reluctance for codes to include these types
19 of concepts.

20 MR. MAX LIBMAN: I think I'll just
21 take this opportunity to turn back to our panelist's
22 presentation to make sure we can cover all the
23 materials.

24 MS. VALERIE JEPSON: We got through
25 some -- most of it, hey. Rick, you let me know if we

1 want to...

2 On this -- so we were going to -- we
3 got already ahead of ourselves a bit on some of the
4 solutions, which is good, because I know that's what
5 you want to do, but I think we can just pause for a
6 minute to say, you know, why do we worry about common
7 law conflict of interests? Why are we worrying about
8 that at all?

9 You know, we know this is sort of an
10 age old concept of avoiding serving two (2) masters,
11 which is heightened in the context of the public arena
12 because it's the public interest that's at stake. We
13 need for the decision-making to be done in the public
14 interest in fact and in appearance.

15 And I think a pitfall that we run into,
16 at least I do in my work as an Integrity Commissioner,
17 is that we -- we think that we're doing this because
18 we're just dealing with bad people or people of bad
19 intention and -- and that is very unhelpful language
20 to talk about when we're talking about conflict of
21 interest.

22 And it goes as part of what I was
23 talking about before, about trying to de-stigmatize
24 discussions about this and seeking advice, because I
25 think people inter -- co-relate conflict of interest

1 with -- an Integrity Commissioner sometimes with bad
2 person, bad action, when what we want is we want
3 elected officials to be able to talk about these
4 concepts without being fearful that the very fact
5 they're asking about it is going to raise questions
6 about whether they have personal integrity or other
7 things like that.

8 So how we deal -- we've talked about
9 how we deal with it at the municipal level. I'm just
10 going to review. I don't know that there is -- I
11 think we've touched on most of those.

12 I think the only thing we wanted to
13 flag was the last bullet there, that -- and this is a
14 bit outside my bailiwick, but there is inconsistent
15 treatment across the province for how city staffs'
16 ethical obligations are regulated, so, codes of
17 conduct or different policies.

18 I know Collingwood has a new policy,
19 which I reviewed before, which is quite robust.
20 Toronto has a bylaw that sets out its professional
21 public service obligations.

22 I think there are these types of things
23 that can go a long way, because I do think councillors
24 sometimes feel like it's all on them, and what about
25 the senior staff that are dealing with the same

1 transactions, and what are their obligations, and
2 where do they have to disclose things, and I think
3 that's a really important part of the puzzle. That's
4 a fair question for them to be asking.

5 MR. RICK O'CONNOR: And I think just
6 as a follow-up, four hundred and forty four (444)
7 municipalities are now required each to have a code of
8 conduct for members of council and local boards and
9 integrity commissioner, and there is very limited
10 statutory requirements for municipal staff.

11 In fact, the only one I'm aware of is
12 Section 7 under the Building Code Act, which says
13 building code officials must have a code of conduct
14 with regards to their accountability.

15 Now, many municipalities have codes of
16 conduct for staff. Many municipalities have codes of
17 conduct for staff that are written by staff and that
18 are not, in fact, bylaws but are in fact policies and
19 procedures. So there's a -- there's a great disparate
20 or dichotomy of the various ways people that do it.

21 As Valerie said, you've got -- in
22 Toronto you've got an entire bylaw dedicated to this
23 and other areas. You have literally a one-pager that
24 staff will be -- behave themselves. And as we go down
25 the -- the process of looking at this, I know members

1 of council will ask every time, what are staff doing,
2 what are staff's rules.

3 And the public is also confused by
4 that, because they don't have a sense of, well, I go
5 online and I can't find what the staff code of conduct
6 is. Well, that's because there is no staff code of
7 conduct.

8 So if there was some equity to be
9 brought in the field, we would want to make sure that
10 at the very least there's a bylaw that's a code of
11 conduct for members of staff.

12 Madam Justice Bellamy, I know in her
13 report spoke about this very clearly indicating
14 there's going to be differences between, you know,
15 staff and politicians, but they should both have those
16 types of requirements. They're not there yet in
17 Ontario.

18 MS. VALERIE JEPSON: And I think this
19 is, David, where the provincial experience could
20 really be helpful because you can have a code but
21 staff too need a resource.

22 Like, you can have a code every staff
23 member can read it and probably understand it, but to
24 -- to expect them to self-determine is not helpful
25 because none of us can see our own conflicts of

1 interest, we have to be able to admit that, and then
2 we have to have somewhere we can go and ask. And so
3 provincially we have the Ethics Executive framework.
4 Toronto has modelled it.

5 And that would be something, David,
6 you're more familiar with than me.

7 THE HONOURABLE J. DAVID WAKE: Yeah.
8 Yesterday I spent the day with a group of about
9 thirty-five (35) Ethics Executives, Chairs, and CEOs
10 of agencies, boards, and commissions, going over the
11 conflict of interest rules and their obligation to
12 ensure that the people in their organization were
13 aware of that, and that's statutory. They have an
14 obligation under the Public Service of Ontario Act to
15 ensure that.

16 Just as an aside, there's -- there's --
17 again, there's hundreds of these boards and agencies.
18 People are appointed to them without -- very often
19 from the private sector, without any concept of what
20 the conflict of interest rules apply to public
21 servants. So this is -- taken it upon ourselves to
22 give these programs two (2) or three (3) times a year
23 to as many as we can, but we're not getting everybody.

24 But it's there right in the Act that
25 they do have an obligation to -- to pass this on to

1 their staff, and many do, and we get -- through the
2 ethics executive regime, we get questions that filter
3 up to us for advice, but I'm sure we're not getting
4 all of it.

5 I -- I can -- one (1) other thing.
6 When talking to members, just going back to that part,
7 I try and keep it simple in the orientation sessions,
8 and the first sessions I have with them I -- I say
9 that there's no shame in having a conflict of
10 interest, but there is shame in doing nothing about
11 it.

12 And I can't tell you how many of them
13 come back to me with a phone call three (3) months
14 later reminding me of what I had told them at this
15 session. I mean, that's something that sticks with
16 them, and so they feel open to -- to come back to me.

17 We'll have Cabinet ministers will come
18 in and -- and have a -- have a conflict and think it's
19 fatal, that they have to resign, and -- and that's not
20 the case.

21 I assure them that once we know about
22 the conflict, we can often manage it. We can set up
23 screens. In fact, on any given Wednesday when the
24 Cabinet meets, there are people popping up and down
25 all through the course of the day because the -- the

1 secretary of the Cabinet is alerted to what the
2 conflict is.

3 And so there's -- there's nothing in
4 the briefing book for the Minister on that topic and
5 the Minister knows that he or she has to leave the
6 Cabinet room. And this goes on all the time.

7 And I think when members, particularly
8 Cabinet ministers, are aware that we're there to help
9 them on this, they can continue to do their job, we
10 just hive off a file, they see the advantage of
11 disclosing everything after -- after that.

12 THE HONOURABLE FRANK MARROCCO: Go
13 ahead, please.

14 MS. VALERIE JEPSON: I think I got a
15 real interesting perspective on that coming from the
16 provincial office and going to where I am now, because
17 -- because of the executive branch of government
18 structure and the support provided to the Cabinet
19 ministers, they do get a bit of help to administer
20 these things that isn't available to municipal
21 councillors, and municipal councillors don't have
22 portfolios either.

23 So their conflicts are -- are --
24 they're able to be managed, but not in -- not quite as
25 -- not in quite the same way.

1 It poses a unique challenge and it --
2 it -- it reinforces the importance of having an
3 integrity commissioner to help them.

4 But the councillors are really on their
5 own about this, and so I just think we have to
6 acknowledge that a bit, that the -- the -- for all
7 kinds of good reasons, the city staff can't be helping
8 -- like, the non-political city staff cannot be
9 helping the councillors to mind their conflicts the
10 way the provincial public servants might be able to,
11 for ministers anyway.

12 The -- so we're -- I think we're
13 getting to another solution, and I have to say the
14 current integrity commissioner for Collingwood and --
15 so I'll reveal my bias, I am a member of the group of
16 integrity commissioners who meet together, and Jeff
17 Abrams and Janice Atwood-Petkovski are the integrity
18 commissioners for Collingwood, they are principles
19 integrity.

20 Collingwood is very lucky to have such
21 great and talented an integrity commissioner team as
22 Jeff and Janice, and they have -- they are
23 commissioners for many municipalities across Ontario
24 and they have a very common sense approach that they
25 are introducing across Ontario, which you can see in

1 the Simcoe code of conduct, which was a code that Jeff
2 and Janice helped Simcoe to adopt.

3 And in that code, under 6.8, they have
4 included a conflict of interest provision, which is
5 great, and then they have identified different types
6 of conflicts and different ways that, as David was
7 mentioning, you can manage these conflicts ranging
8 from something that's a disqualifying interest, which
9 would obviously be something that's on MCIA issue, to
10 a non-disqualifying interest where it's a recognition
11 that it should be disclosed, but you could potentially
12 still participate.

13 And then a -- the other concept that
14 they have is the transparency disclosure, which may
15 not have made its way into that code.

16 And I wouldn't want to speak for Jeff
17 and Janice about that, but I think we have to
18 acknowledge that and I know -- I know, Rick, you have
19 some thoughts about that too.

20 MR. RICK O'CONNOR: Yes, because I
21 think what we're seeing from many of the cutting edge
22 integrity commissioners and codes of conduct, and I
23 include Jeff and Janice among those with principles
24 integrity, is this desire to clarify matters for
25 members of council so they better understand it.

1 They have gone in the -- in this code
2 of conduct for Simcoe to define, under Section 6.8,
3 avoidance of conflicts of interest and talk about
4 disqualifying interest and the non-disqualifying
5 interest, and we'll get into their specific
6 definitions.

7 At the City of Ottawa, our integrity
8 commissioner has moved along very similar lines. We
9 do not have an apparent conflict of interest clause,
10 we don't have a conflict of interest clause in our
11 code of conduct. But he relates them to, as we
12 indicated earlier, the -- the variety of other clauses
13 that you have where you might be perceived to be
14 providing preferential treatment to someone or a --
15 some sort of breach of a familiar relationship.

16 And those sorts of things in what we've
17 been able to work with our integrity commissioner in
18 the absence of those specific tools outlined in either
19 the -- the Act or the code is to talk about engaging
20 members of council to actually rise on a point of
21 privilege at a committee or a council meeting, and
22 being able to state that -- and I have one (1) in
23 front of me, a member's spouse is head of this non-
24 profit community association board for which he's paid
25 no money and this is drafted with the integrity

1 commissioner.

2 And while there's not -- there's no
3 pecuniary financial interest under the Municipal
4 Conflict of Interest Act, the member has decided to
5 declare his relationship to provide transparency in
6 the spirit of Section 1 of our code of conduct and to
7 fill his responsibilities under Section 243 of the
8 Municipal Act, but will be participating and voting on
9 the matter. And then he says in addition I filed in
10 the city clerk's office the integrity commissioner's
11 memorandum on this.

12 So we're trying other ways to build our
13 own accountability and transparency. Members of the
14 public hear it, they go oh yeah, that's a little --
15 little board, but it might be getting a grant of
16 \$1,200 at some point, but the member has gone to the
17 integrity commissioner, gone through the transparency
18 process and we've worked this sort of work-around.

19 A similar one (1) happened most
20 recently where a committee chair was actually invited
21 to sit on one (1) of these local boards, which was
22 slightly different, and the integrity commissioner
23 gave the advice that if she was still thinking about
24 it and hadn't actually declined, that she would read
25 through the various -- very much the same verbiage,

1 but then declined to participate and vote on it.

2 Now, that has some other legal
3 peculiarities for those of us that work in the
4 business, but it was very much understanding that she
5 has an interest in sitting on this board, it is a very
6 local board near and dear to the member's heart, but
7 she's chair of a committee and, therefore, she stepped
8 aside as a result of that vote going on.

9 So again, I see that integrity
10 commissioners -- I know Hamilton has gone through this
11 process, Kingston has also gone through it. So the
12 larger cities are trying to make headway in this sort
13 of apparent conflict of interest, and I think Janice
14 and Jeff in principles integrity have done it most
15 clearly in the code that we have before us.

16 MS. VALERIE JEPSON: This is something
17 that we -- we tried to do in Toronto too. And we
18 won't take any time to go into it in much detail, but
19 there are some legal peculiarities with this because
20 of the way the Municipal Conflict of Interest Act
21 works and if -- the long and short of it is you can
22 only not participate in a vote if you have an MCIA
23 interest.

24 And so we do -- some integrity
25 commissioners do sometimes encounter clerks who are

1 sort of saying you can't do actually what the
2 integrity commissioner has suggested that you do if
3 it's not an interest.

4 So, we don't need to go into that, but
5 there are some things in the Act that wouldn't
6 potentially need to be addressed, or cooler heads
7 could prevail, I guess.

8 The -- I think it's a good segway just
9 -- we'll wrap up our slides.

10 There is one, from my perspective, a
11 gap at the municipal level in Ontario is that we do
12 not have at all, in any form, a proactive financial
13 disclosure system.

14 So this is -- what we've talked about
15 today is disclosures that one might make if there's a
16 matter that comes before council that -- for which
17 they have an interest in, you would disclose it, or
18 other interests that could arise in the work that
19 they're doing.

20 But as you heard, Commissioner Wake
21 explain, provincially in every province in Canada and
22 federally, any elected official has to disclose
23 proactively on an annual basis their financial
24 interests and in most provinces and jurisdictions
25 there's some form of public disclosure of this.

1 We have nothing like that at the
2 municipal level in Ontario. I think this is a gap
3 because of the level of influence that members of
4 council have in relation to certain matters. I think
5 it would provide a certain degree of comfort to the
6 public that there would be this routine financial
7 disclosure.

8 I don't know that we could even think
9 of a case where it led to a finding or a breach, but I
10 think the process of going through it is something
11 that is well-recognized across North America as a key
12 component of a well-functioning accountability system
13 and there are many other provinces that through
14 provincial legislation require this level of
15 disclosure, not only for municipal elected officials,
16 but for senior public servants.

17 MR. RICK O'CONNOR: And I would tend
18 to agree. We did have a clause in Section 6 in the
19 local government disclosure of interest act from 1994,
20 Province of Ontario would have been leading again at
21 that point in time.

22 That legislation received royal ascent.
23 It was never declared in force and sat on the shelf
24 until January 1st, 2003 when it was quietly repealed.

25 The number 1 issue I know, because I

1 represented a lot of local government associations,
2 AMCTO and AMO on this, was that very section.

3 Many of the other sections in that now
4 defunct legislation have made their way through. But
5 the actual financial disclosure was one thing for many
6 municipalities and it's many of the smaller
7 municipalities. We say there's four hundred and
8 forty-four (444) municipalities, but if we count the
9 municipalities that have over fifty thousand (50,000)
10 residents in them, you're probably looking at twenty
11 (20) or twenty-five (25) all total.

12 So if that was going to be a challenge
13 for the smaller municipalities where individuals --
14 I'm repeatedly told everybody knows everyone else and
15 they wouldn't want their financial disclosure to be
16 public in any way, shape or form, then perhaps one of
17 the ideas would be to limit it to a municipalities of
18 a larger size, fifty thousand (50,000) or twenty-five
19 thousand (25,000) or some number.

20 But that would be negotiable, but I
21 know that there's some history behind this, but I
22 agree with Valerie that that's another one (1) of the
23 proactive disclosure things I think this -- this
24 Commission should look at.

25 THE HONOURABLE FRANK MARROCCO: What -

1 - what about the -- the disclosure of relatives or
2 people closely connected with the councillor, but
3 they're not the councillor's financial interests or
4 financial gain?

5 MS. VALERIE JEPSON: That -- it's --
6 it's interesting you ask that question because in
7 preparing for this I was looking at some of the other
8 jurisdictions. I mean, there's many models you can
9 choose from.

10 But -- for example, the New York City
11 example has a section for family members that are
12 doing business or employed by the city. So there
13 would be -- there is disclosure there. That's just
14 one (1) example.

15 So I -- I think what we wouldn't want
16 to do is have a disclosure system for municipalities
17 that just took off the shelf the provincial model. We
18 would want to do a disclosure form and framework that
19 was appropriate.

20 So important things would be land use
21 hold -- like, land holdings, property holdings, you
22 know, some significant debts probably, directorships.

23 So they're unlike ministers in Ontario,
24 members of council can and do carry on employment,
25 professions, businesses, while being councillors and

1 in many places where their jobs aren't full-time that
2 you can absolutely see why that is.

3 But those should be disclosed in a sort
4 of routine way so that there's appropriate
5 transparency so that maybe everybody thinks they know,
6 but there would be a definitive record about those
7 disclosures available for the public, including family
8 members who might have interests.

9 MR. MAX LIBMAN: Thank you very much.
10 Subject to any further questions, I was just looking
11 at the time and I'm thinking maybe we could take a
12 break.

13 THE HONOURABLE FRANK MARROCCO: We'll
14 take ten (10) minutes.

15

16 --- Upon recessing at 12:59 p.m.

17 --- Upon resuming at 1:12 p.m.

18

19 THE HONOURABLE FRANK MARROCCO: I
20 thought what we'd do is -- is stay at this till two
21 o'clock and see where we are rather than stop now or
22 something for lunch. So I -- we may be finished by
23 2:00. We may not be. But I thought we'd do it for
24 another -- is that satisfactory from the panel's point
25 of view?

1 MS. VALERIE JEPSON: Yes.

2 THE HONOURABLE FRANK MARROCCO: All
3 right. Okay, Mr. Libman, go ahead.

4 MR. MAX LIBMAN: Welcome back. So we
5 heard a bit during your presentation about the scope
6 of -- of the MCIA and -- and the difference -- you
7 know, the differences in which -- with which codes of
8 conduct are applied in different municipalities.

9 Why is it important for councillors to
10 be alert to conflicts of interest beyond those that
11 are identified in statute or any relevant bylaw or
12 code of conduct?

13 MS. VALERIE JEPSON: So my -- my
14 answer to that would be that members of the public are
15 expecting city councils to make decisions that are in
16 the public interest and those that are for the benefit
17 of the greater good. And when a public officeholder
18 is having to wrestle with making a decision that could
19 impact him or her personally, there's a risk that
20 those decisions won't be made in accordance with the
21 public's expectation.

22 And so what the solution has been in
23 most settings when trying to deal with conflicts of
24 interest is to remove that decision maker from that
25 quagmire so that they're not having to make decisions

1 and tradeoffs between what is the primary interest as
2 a public officeholder, the public good, and their own
3 personal stake.

4 It can be challenged in the public
5 sector because elected officials are members of the
6 public too, and there are lots of things that will
7 coincide with a member's participation in their
8 society as they -- as a decision maker. And we've
9 tried to sort some of those things out through some of
10 the things we talked about today, about interests in
11 common. That's a term we understand under the
12 Municipal Conflict of Interest Act, and the concept of
13 private interest, which means not to include interest
14 in common. Those are kind of well-tread areas that we
15 have ways to deal with.

16 But what we know is that if the public
17 thinks that its decision makers who it's trusted to
18 make those decision are making decisions to benefit
19 themselves, they're not going to have confidence in
20 that decision making, and that is the fundamental
21 issue that we -- the reason why we concern ourselves
22 with conflicts of interest.

23 THE HONOURABLE FRANK MARROCCO: Be --
24 before we get to -- I -- I just want to -- when you
25 say "decision makers," you include -- there was some

1 references earlier, but you would include senior
2 staff?

3 MS. VALERIE JEPSON: Yeah.

4 MR. RICK O'CONNOR: Yes.

5 MS. VALERIE JEPSON: Yes, absolutely.
6 I think anybody who can influence the decisions that
7 are taken by the -- any government institution, it's
8 the same obligation, that you're doing your job to put
9 for -- put first the public interest. So let's talk
10 about gifts. This is one (1) thing I talk about a lot
11 as an integrity commissioner. So we have rules about
12 gifts.

13 I say, as a public officeholder, I
14 don't need a gift to do the job I have either agreed
15 to do voluntarily or I'm being paid to do. I don't
16 need any other thing to do that job. And that's my
17 commitment as a public officeholder to do that.

18 So it's -- and that rule, that
19 expectation applies equally to elected, appointed, and
20 professional public servants who are staff.

21 MR. RICK O'CONNOR: And I think also
22 we would -- we would look forward to -- in the
23 Municipal Act right now, there is a section for
24 members of Council for Council which says it's
25 responsible for accountability matters of itself and

1 the municipality and also of its senior management.
2 And it's -- it's virtually one (1) line, but it -- it
3 is the beginnings of something that should be made
4 clear in codes of conduct or in MCIA to say that no.

5 That's why I referenced earlier that we
6 need a code of conduct. Everyone should have one.
7 And that is actually Council's responsibility to
8 ensure that senior management is accountable and
9 transparent as well to the public.

10 THE HONOURABLE J. DAVID WAKE: I think
11 there should be a distinction, though, between elected
12 officials and senior staff with respect to gifts. I
13 know provincially, the rules pertaining to gifts for a
14 minister's staff are much stricter than for elected
15 members of the provincial parliament, and I think
16 that's as it should be. I think they're expected to
17 be out and about. They're expected to be going to
18 dinners in their riding, and they're expected to be
19 attending galas, and so I -- I draw a distinction
20 between the two (2).

21 Some of the members say to me, If you
22 think it's a gift for me to have to go to three (3)
23 dinners on a Saturday night in February -- I never
24 even make the main course. I'm sympathetic with that,
25 but they are doing -- that's their job, and they're

1 out to -- to be seen, out and about.

2 If -- if staff are -- are staffing them
3 at these events, that's one (1) thing. If they're
4 just there accepting a ticket to -- to -- to an event
5 or a concert or something, that's something else. But
6 I -- I do see a distinction.

7 MR. MAX LIBMAN: So in the earlier
8 portion of your answer, you spoke a bit about ensuring
9 that public officeholders act in the public interest
10 and ensuring that public confidence in, you know,
11 these public officeholders is maintained.

12 Are there any other major risks to
13 municipal process that you see are posed by
14 unaddressed conflicts of interest?

15

16 (BRIEF PAUSE)

17

18 MS. VALERIE JEPSON: Well, I -- I
19 guess -- it's hard to provide any more detail than
20 sort of that sort of foundational sort of principle
21 that we're protecting. But I guess if you really got
22 into the weeds, I think when we have clear guidance
23 and expectations about conflicts of interest and
24 avoiding putting yourself in those situations, then
25 you're reducing the risk for more serious misconduct.

1 So if, you know, if we're not -- when we're talking
2 about codes of conduct and Municipal Conflict of
3 Interest Act, we're not talking about corruption or
4 bribery or anything like that.

5 So we -- it's a step away from that,
6 and so making sure that there is -- that -- you know,
7 that can be a benefit of it is having kind of a --
8 keeping a clear berth, or -- keeping a -- keeping away
9 from situations that could lead to a more serious
10 misconduct that truly does chip away at the trust and
11 confidence the public has.

12 And one (1) thing I can say is, you
13 know, I think if we looked up today what the latest
14 survey is about how -- you know, does the public trust
15 the government? Doesn't matter anymore if it's
16 Canada, the US, whatever; it's going to be a very high
17 level of cynicism about the public -- about the
18 government and public institutions. And my experience
19 is that level of cynicism -- cynicism is out of
20 proportion with what the objective evidence is about
21 what kind of corruption or abuse there is in -- in
22 fact, going on.

23 So what that says to me is it just puts
24 the burden, again, on the public officeholders to try
25 to chip away at that level of cynicism through -- by

1 doing things that promote trust and confidence. And
2 so that's -- it kind of dovetails back with the -- the
3 main purpose.

4 MR. MAX LIBMAN: We spoke a bit during
5 your presentation --

6 THE HONOURABLE FRANK MARROCCO: Sorry,
7 Mr. -- in -- in your experience, do you notice that
8 sometimes, in order to try to regain public
9 confidence, you -- the -- the municipality or the
10 institution is put to efforts that it wouldn't
11 otherwise have to go through to try to restore some
12 sense in the community that -- that -- that it's
13 worthy of their confidence?

14 MR. RICK O'CONNOR: I think that's --
15 that's a very astute observation. I think it's true,
16 and without relying upon any specific examples at my
17 municipality, I think there are times that
18 municipalities, when they get down a path that may not
19 be about corruption or anything, but if the public
20 thinks that there have been something amiss, then we
21 will usually make an extra effort to produce more
22 documents, push contracts out online, be more
23 proactive in our disclosure, and certainly think about
24 what might be a best practice or a lesson learned for
25 the next time we go down that path that we will not

1 make those sorts of mistakes. Because the -- the
2 public trust is something that's hard to get back when
3 they lose it.

4 THE HONOURABLE FRANK MARROCCO: Hmm.

5 MS. VALERIE JEPSON: I do think the
6 former provincial conflict of interest commissioner,
7 Sidney Linden, used to say this, that, you know, we
8 don't need to pick which -- any particular one, but --
9 and I think, Rick, you mentioned something like this
10 before -- the cost to have a full public inquiry into
11 something would pay -- would be much greater than the
12 cost to a municipality to have a well-functioning
13 accountability system that could prevent these types
14 of things from happening in the first place.

15 THE HONOURABLE FRANK MARROCCO: Thank
16 you. Mr. Libman...?

17 MR. MAX LIBMAN: So we heard a bit
18 during your presentation about training that can be
19 provided to councillors and institutions that can be
20 implemented to help councillors recognize when their
21 obligations with regards to conflicts of interest have
22 been triggered.

23 What are some best practices that
24 councillors themselves can use to recognize when that
25 bell has been rung or when those obligations have been

1 triggered?

2 MS. VALERIE JEPSON: You keep looking
3 over at me to answer. Okay, the -- the --

4 THE HONOURABLE FRANK MARROCCO: Well,
5 you keep answering them --

6 MS. VALERIE JEPSON: I know.

7 THE HONOURABLE FRANK MARROCCO: --
8 because he's going to keep doing that.

9 MS. VALERIE JEPSON: I think the best
10 practices, I would say, is I think they have to be
11 aware, and you have to take it seriously.

12 So, you know, we have to acknowledge
13 there's, like, an overwhelming amount of information
14 that comes before a municipal councillor at any given
15 time, not just at the beginning of the term, but at
16 any point in time, and so acknowledging that but
17 making sure that the information that they have about
18 these obligations is -- is something that's a priority
19 to them, so having that mind set.

20 And then, like I've said already, I
21 think they need to enlist their staff or anyone who is
22 available to them to help them meet these obligations,
23 and sometimes that means they have to have more frank
24 discussions about it than they might kind of out of
25 the gate feel comfortable doing. But it's part and

1 parcel of sort of normalizing conversations about
2 conflicts of interest.

3 So some advice I give to local boards -
4 - so I -- when I do the training for local boards in
5 Toronto, and these are usually volunteer boards, what
6 I suggest them -- suggest and encourage them to do is
7 to be able to talk to each other about it, because as
8 I've already said, it can be a really taboo issue, and
9 someone raising a possible conflict can feel like a
10 personal attack.

11 And what I really encourage is avoiding
12 that gut reaction and recognizing that the reason
13 someone might raise it is because they're concerned
14 about the institution, and so we have to have a way to
15 discuss it.

16 Now, it's a lot easier to say that than
17 do it, because it's human interactions. It's human
18 beings. There could be other agendas at play. I'm
19 not suggesting that's not the case. But if we could
20 fin -- have a way to talk about conflicts of interest
21 and these issues that's less of a taboo, that is
22 mindfully -- that councillors don't need to know all
23 the answers, that they should and can consult the
24 integrity commissioner, each other, other appropriate
25 places to help them sort it out, then I think that

1 that would be something that -- that they could --
2 that they'd benefit from.

3 MR. RICK O'CONNOR: So a couple of the
4 simple remedies that we provide first off when we have
5 new members of Council is we assign them a -- a
6 councillor's -- a former councillor's assistant who
7 has probably moved over into the administration. The
8 City of Ottawa, twenty-three (23) member of Council
9 each have about a two hundred and seventy-five
10 thousand dollar (\$275,000) operating budget, so they
11 usually hire between three (3) and four (4) members of
12 staff.

13 But before they go through that
14 process, we assign them -- and it's almost always from
15 the clerk's office -- a -- a -- a junior mentor who
16 can be with the councillor, who can walk up and down
17 the hallways, who can show them where the washrooms
18 are and do all of that things.

19 And also when they are going through
20 some of the preparatory agendas that they see from
21 committee meetings that are going on before they
22 assume office, it would be the responsibility of the
23 mentor to say, These are the types of things you need
24 to start thinking about. One (1) of them is conflict
25 of interest. Every time you read a report, that

1 should be first and foremost in your mind. Is this a
2 friend? Is this family? Is this business? Is this
3 property you either own or nearby? Those sorts of
4 mental checklists.

5 We also have a one (1) pager inside of
6 the drawers of every member of Council at Council and
7 at the committee meeting room, where if you open it
8 up, it's literally one (1) page on how to do the code
9 -- or, conflict of interest matters.

10 The other thing I would suggest is --
11 and I think Valerie alluded to it earlier -- is don't
12 stop with orientation. Orientation doesn't stop after
13 the first five (5) or six (6) weeks of Council. It
14 should probably be brought back on either an annual
15 basis or a semi-annual basis, and I try to do this
16 with my staff as well, recognizing these types of
17 things.

18 From a code of conduct and for a
19 clerk's office, sort of closed meetings are a big
20 issue, so we look at those every couple of years just
21 to give everybody in the room a refresher and make
22 sure they all remind themselves of these issues.

23 MR. MAX LIBMAN: Thank you. We
24 discussed the Simcoe code of conduct during your
25 presentation. I'd like to just bring those relevant

1 provisions up on the screen. If we could have
2 CJI114529 brought up.

3

4 (BRIEF PAUSE)

5

6 MR. MAX LIBMAN: CJI114529.

7

8 (BRIEF PAUSE)

9

10 MR. MAX LIBMAN: And it should be at
11 the bottom of page 8.

12

13 (BRIEF PAUSE)

14

15 MR. MAX LIBMAN: I think we just need
16 to scroll a little further to six point eight point
17 two (6.8.2) and six point eight point three (6.8.3).
18 Yeah.

19

20 So we have here the definitions of
21 disqualifying interest and part of the definition of
22 non-disqualifying interest. I was just hoping that
23 you could elaborate a little bit more on after a
24 conflict of interest has been identified, what are
25 some of the ways that councillors can proceed within
the context of their -- their role in Council and

1 their responsibilities?

2 MR. RICK O'CONNOR: With regards to
3 the way we've approached it and the way I read the
4 document, there's two (2) options, right? The first
5 option is -- it's disqualifying interest, so -- and
6 again, hopefully, we'll get the legislation that will
7 amend those procedural inequities -- is that the
8 member would not participate in the debate.

9 The member would not -- so it would be
10 largely like the five (5) rules we have for the
11 Municipal Conflict of Interest Act. You don't debate
12 it. You don't discuss it. You don't attempt to
13 influence someone before, during, or after the
14 meeting. Or if it's delegation of authority under
15 Section 5.1 of the Municipal Conflict of Interest Act,
16 you would not make those approaches to senior staff or
17 whoever had that delegated authority.

18 With regards to non-disqualifying
19 interest, that is, I think, from our perspective --
20 that is the proactive disclosure, the enhanced
21 disclosure that the members of the public should be
22 able to see, and they should be able to hear it
23 publicly at a committee meeting or Council meeting.
24 They should know that notwithstanding that, the member
25 has spoken to the integrity commissioner and he has

1 provided the advice or she's provided the advice that
2 they can continue to participate in the matter.

3 But then again, it'll be in the minutes
4 that this -- this non-disqualifying interest was
5 raised and also any documentation, if they're signing
6 it, as they are proposing to do in this instance.

7 MS. VALERIE JEPSON: I think the only
8 other thing I -- I can add is in practice, the -- and
9 I -- those are a lot of -- these are -- these concepts
10 in the Simcoe code are excellent and provide a lot of
11 clarity, which I -- you heard me say earlier is
12 necessary. But in practice, what happens is a member
13 of Council calls my office and says, I'm not sure if I
14 have an interest. My spouse works here. They might
15 be -- it might be something that could come up.

16 And what I would say is, Let's have a
17 meeting about it. Why don't you send me the
18 information? Maybe there's no matter right now that
19 we need to deal with, but the fact that you thought
20 about it is really great, and we want to record that
21 so that you have a baseline comfort that you've told
22 me, an appropriate level of disclosure, and I'm going
23 to give you some guidance about things you should look
24 for that could trigger these issues, and you'll have
25 that.

1 And then you can follow that advice and
2 you come back to me and when there's a particular
3 matter, if that happens, then I'll give you specific
4 advice, in my case now under the Municipal Conflict of
5 Interest Act, if you have to declare an interest about
6 how to do it, I'm going to write the words for you to
7 say to council, you can read it and file it.

8 So, this seems very complicated if
9 you're just looking at this. But what I hope we've
10 cultivated in Toronto, and I know this is the case at
11 many municipalities across Ontario, and it's certainly
12 the case -- I don't want to speak for Commissioner
13 Wake, but I know that that's what would be going on
14 there too is call, get the advice. You might not even
15 needing to disclose or do something yet, but at least
16 you have comfort that you've told the right person,
17 and then you're kind of in our hands to help you
18 navigate this as you go forward.

19 It is always going to be the
20 councillor's obligations to follow those rules. And
21 integrity commissioners aren't going to try to be
22 policing it or helping them, like a lawyer might, or
23 something.

24 But we can help provide comfort and
25 help them understand when would this actually arise,

1 like, give me an example. So that when I'm looking at
2 the agendas, I know what to look for.

3 And that's what we do, and that
4 hopefully is helpful to members of council who take us
5 up on the offer of getting the help.

6 MR. WILLIAM MCDOWELL: Could I just
7 ask a question?

8 Something you said just before the
9 break, I just wanted to explore a little bit. You
10 talked about instances where members of council get
11 advice from integrity commissioners, but then the
12 clerk takes a different view about whether the -- the
13 member must vote.

14 I'm intrigued by that, because the
15 members aren't conscripted to vote. If they don't
16 want to vote, surely, they can decide that they're not
17 going to vote.

18 MR. RICK O'CONNOR: There's a section
19 in the Municipal Act, Section -- I think it's 242,
20 that states where any member of council asks for a
21 recorded vote, all members shall vote unless they are
22 disqualified by statute.

23 So, part of the discussion we weren't
24 going to get into the nitty-gritty of it is that there
25 are clerks and I was certainly originally one (1) of

1 them who would say, well, okay, so if you have -- by
2 statute you are disqualified, that means you are
3 disqualified by the Municipal Conflict of Interest
4 Act.

5 So you have a pecuniary direct,
6 indirect or deemed, under the Municipal Conflict of
7 Interest Act, you've made the public declaration, so
8 you can leave your seat and you could actually, you
9 know, go have a coffee, do whatever, and not
10 participate, not influence the vote and not vote.

11 However, if you have at this point in
12 time, with no statute to say that you are -- so for
13 example, when I look at 682 of the code in front of
14 us, it says the disqualifying interest, you know, they
15 shall not participate impartially in the decision-
16 making process. But you would have the clerk in some
17 municipalities say, well, that's not legal because
18 that is a code of conduct disqualifying interest,
19 that's not a statute.

20 So when we get to the Section 242,
21 there's actually legislation that says you shall vote
22 unless the statute says you're disqualified.

23 So what we would look to is if
24 recommendations were made to be changed to say these
25 types of apparent conflicts should be in codes, we

1 would want a similar amendment to Section 242 that
2 says unless you're disqualified from voting by a
3 statute, and/or a code as enacted by the Municipal
4 Act.

5 MR. WILLIAM MCDOWELL: Right, but just
6 let me be difficult a little here.

7 You know, so a member of council says I
8 am uncomfortable voting having regard to the advice
9 that I have received and doesn't vote.

10 There's no sanction for not having
11 voted, is there?

12 MR. RICK O'CONNOR: No, there is no
13 sanction that I am aware of not having voted.

14 MR. WILLIAM MCDOWELL: It would be a
15 bit of a looming Charter challenge if there were, but
16 --

17 MR. RICK O'CONNOR: But I am aware of
18 speaking to clerk colleagues around the province where
19 having endeavoured to do this on one (1) occasion
20 where there's a code disqualification, so to speak, at
21 least one (1) of my colleagues last week told me that
22 she now has members of council regularly leaving their
23 seats and individually deciding well, now I have a
24 disqualification under the code, so I'm just going to
25 go have a coffee now.

1 So they're sort of jumping ahead,
2 they're not meeting with the integrity commissioner,
3 they're not getting a disclosure document or
4 something, they're reading into the record or filing
5 something, they've now leapt ahead light years and
6 that looks like they were trying to avoid obligations
7 under the statute to actually vote.

8 And that's, I think, a perception
9 problem.

10 MR. WILLIAM MCDOWELL: Right. But it
11 has to be unhealthy that if we're on the one hand
12 encouraging members to get the advice and then they're
13 acting on the advice, we've got this sort of arcane
14 part of the statute.

15 MR. RICK O'CONNOR: I agree and I
16 would love to see the statute amended and updated.

17 MS. VALERIE JEPSON: I guess the only
18 thing I'll add, I think it was sort of inherent in
19 what you were saying, Rick, is that I think clerks
20 have -- are very well-intentioned and -- in policing
21 this the way they are, because they don't -- they also
22 don't want councillors to sort of conveniently not
23 vote, because it's politically not expedient.

24 And so it could be a convenient way to
25 not vote. I -- I'm not suggesting that's what's

1 happening, but I think clerks are alert to that too.

2 And so if someone is going to not vote,
3 they want them to make the declaration, and if they
4 can't because it's not an MCI issue, it's another
5 related issue.

6 MR. WILLIAM MCDOWELL: But it's really
7 tricky because if we only have the Ford versus Tor --
8 or Magder and Ford I guess, there's a whole question
9 about whether or not parts of the code are authorized
10 by the statute and --

11 MS. VALERIE JEPSON: Yes. I think
12 there can be a debate legally about whether I -- I'm
13 of the view that the code is mandated by statute.

14 MR. WILLIAM MCDOWELL: I've pulled us
15 down a rabbit hole, but thank you for that.

16 THE HONOURABLE FRANK MARROCCO: The --
17 just help me with -- because I'm not familiar with it.

18 So if there's a recorded vote, you
19 can't abstain?

20 MR. RICK O'CONNOR: That's correct,
21 there is no abstaining in municipal politics.

22 THE HONOURABLE FRANK MARROCCO: All
23 right, thank you. I wasn't aware of that. Thanks.

24 MR. MAX LIBMAN: So just to turn back
25 to non-disqualifying interests for a second, what is

1 it about a non-disqualifying interest that makes it
2 appropriate for a councillor to participate in a
3 matter pending appropriate disclosure.

4 MR. RICK O'CONNOR: When I look at the
5 couple of examples that we had at the City of Ottawa,
6 and clearly I'm reading into my integrity
7 commissioner's mind, he was looking at it as a matter
8 of -- that this was a small non-profit charitable
9 organization that was subject to a spouse being on the
10 board, which is a non-compensation board which they
11 were doing, and the member was sitting on a committee
12 that he was one (1) vote out of many where they might
13 have received up until the twelve hundred dollar
14 (\$1200) grant.

15 So I think it's for the integrity
16 commissioner to take all of those facts into
17 consideration, make a determination and say this out
18 of a \$3.8 billion budget whether or not his wife is
19 there in any way, shape or form, twisting his arm or
20 he's now doing something to try to get them that vote.
21 I think there's a -- there's some determinations that
22 the integrity commissioner is going to make in the
23 recommendation.

24 I think for the member it's good
25 because they get to publically state it and then

1 follow the advice and, quite frankly, they're golden
2 at the end of the day because they've made that
3 proactive disclosure.

4 MS. VALERIE JEPSON: I'll just add, I
5 think it's a question of magnitude that the
6 commissioner could assess.

7 And I think the thing that is trying to
8 be surfaced here is to recognize that -- a bit of a
9 mouthful -- that there are probably things that are
10 potential interests that the public should know, but
11 that it wouldn't give rise to -- because of the
12 magnitude, no reasonable person would be concerned
13 about a bias, just to use a shorthand.

14 But then we also have to reconcile that
15 with the Municipal Conflict of Interest Act, which if
16 it's pecuniary, you can't have that magnitude
17 discussion, it's all -- you know, we know from the
18 Magder case it's -- it can be pretty small.

19 So there's no magnitude assessment if
20 it's pecuniary. But for things that aren't pecuniary,
21 but could give rise to a potential conflict if it's on
22 the magnitude scale, you're going to still be able to
23 make the decision with a -- not with a closed mind,
24 then it's -- this might be one (1) solution.

25 MR. MAX LIBMAN: And sort of on the

1 flip side of that question, outside of the MCIA, when
2 is a recusal appropriate?

3 I mean, you spoke a bit about the
4 magnitude, but if there's anything else along those
5 lines?

6 MS. VALERIE JEPSON: I think it's a
7 question of magnitude, and you know -- and there --
8 like, we don't have to look too far because the
9 provincial conflict of interest rules don't focus
10 solely on pecuniary interests, and there's -- you
11 know, almost every other jurisdiction would have a
12 more -- a broader -- more broadly understood notion of
13 conflict of interest.

14 But it's not every relationship or
15 every connection or everything like -- it -- it would
16 have to be a magnitude question.

17 MR. RICK O'CONNOR: I think there was
18 an example in Hamilton about a year or so ago where a
19 member of council who had gone off for four (4) years
20 and then got re-elected, but during the four (4) years
21 he was actively lobbying and advocating for a couple
22 of groups which he was paid for.

23 And Hamilton has a lobbyist registry,
24 so I don't think it was an issue. So he ceased those
25 employment opportunities when he became a councillor

1 again.

2 But, in that instance, I know he
3 declared with the IC's sort of blessing and permission
4 that there was a -- an apparent conflict of interest
5 because these were two (2) very high level, high
6 profile issues in the City of Hamilton in the day and
7 people knew that he was a lobbyist for one (1) of the
8 key groups.

9 So therefore he decided, with the
10 integrity commissioner's permission, to withdraw and
11 not vote. So it was all very clear, and again, I
12 think it's the proactiveness that's good for the public
13 and from the municipality's point of view then there's
14 no story.

15 The media then doesn't write oh,
16 there's a person sitting there and they used to be
17 working for this group and now they're not working for
18 them, but now they're not telling everyone that. So
19 the -- the proactive disclosure is really important
20 for us.

21 MR. MAX LIBMAN: From a practical
22 perspective, what does recusal look like when it comes
23 to staff that's subject to a conflict of interest
24 that's of a particularly high magnitude?

25 MR. RICK O'CONNOR: Recusal for us at

1 the City of Ottawa, and we did this with the auditor
2 general's insights, it must be in writing, it must be
3 to your immediate manager or if not your immediate
4 manager then somewhat higher up in the -- in the
5 process.

6 So it must indicate sort of all of the
7 five W's. I have a potential conflict of interest
8 with regards to the fact that we're going ahead with
9 this project. The planner on the project from the
10 private sector is actually my brother-in-law, and
11 interestingly enough, the City of Ottawa's code of
12 conduct, we don't define family or friends, we just
13 leave it to the individuals and for them to work it
14 out with their managers.

15 And you can always touch base with the
16 city clerk or city solicitor to get insights into
17 that.

18 So probably ever week or two I get an
19 email from a member of staff saying can we talk about
20 what this might be, and then I explain to them what
21 it'll look like, and I actually, as the ICs do, I help
22 them draft what it will look like for their manager to
23 get a copy of it.

24 If it's a matter that's at committee or
25 council, we will certainly share with the chair and

1 vice chair and say, you will note that the senior
2 manager is not sitting at the table for this purpose,
3 they are disclosed that they have a -- a conflict of
4 interest and they will not be participating.

5 And if it comes up publically, then so
6 be it, it's raised publically and it's not an issue.

7 MR. MAX LIBMAN: Great. We've heard
8 you discuss during your presentation a little bit
9 about proactive financial disclosure and changes that
10 you think should be made to the regime.

11 For councillors who are currently
12 operating in a world without these changes having yet
13 been made, when is proactive financial disclosure
14 required of council and staff?

15 MS. VALERIE JEPSON: So just to
16 clarify, so at present, is that your question?

17 MR. MAX LIBMAN: Yes, at -- yeah.

18 MS. VALERIE JEPSON: So there -- so
19 there is no requirement right now for municipal
20 councillors that I'm aware of in Ontario anywhere to
21 make proactive financial disclosure.

22 So distinguish -- distinct from
23 disclosures made under the Municipal Conflict of
24 Interest Act.

25 MR. MAX LIBMAN: Yeah.

1 MS. VALERIE JEPSON: And for staff,
2 I'm -- there would be obligations, so in the Toronto
3 public service bylaw, and again it's a bit outside my
4 bailiwick, but if you had an interest that was -- a
5 financial interest that was potentially relevant, you
6 might have to make a disclosure, but there would be no
7 -- there is no existing sort of routine financial
8 disclosure that I'm aware of, and I'm not aware of any
9 city that has that.

10 THE HONOURABLE FRANK MARROCCO: But if
11 -- but if they were going to do it, they would do it
12 by bylaw, requiring that the -- in setting out the
13 disclosure that was required.

14 MS. VALERIE JEPSON: I think it could
15 be done by bylaw, I think it could be a provincial
16 legislation change. But I believe -- and again this
17 is a legal issue, I think it could be -- I advocated
18 in Toronto for the introduction of a bylaw to permit
19 this type of framework for councillors. Yeah.

20 MR. MAX LIBMAN: Right. So to
21 rephrase slightly, aside from what's currently on the
22 books, when it is advisable, given the current regime,
23 in your mind to give proactive financial disclosure?

24 MS. VALERIE JEPSON: Yeah, so you mean
25 when -- like, when in the course of a term or som --

1 MR. MAX LIBMAN: Yeah, for a
2 councillor or -- yes.

3 MS. VALERIE JEPSON: I see, yeah.
4 I have -- I'll just say I don't have an answer to that
5 because I think this is -- this would be such a big
6 change that there would need to be sufficient
7 consultation and review and research about what works,
8 like, what's the right model.

9 Quite reasonably, this would be
10 something that councillors across Ontario would need
11 to input in and want to input in. And coming up with
12 the right mix of what would that disclosure look like,
13 how often, where, how. Even if it took place in a
14 city, that would take place.

15 So -- so I said to you I've advocated
16 for it, I advocated for -- to get the council talking
17 about it, but I'm very -- I want -- I don't want there
18 to be any misunderstanding. It would be a
19 consultation process to make sure that we came up with
20 the right mix.

21 MR. RICK O'CONNOR: And just to add to
22 that, I would think that from the municipal
23 perspective this would probably require a change under
24 the Municipal Act, because as Valerie indicated, and
25 I'm not certain that many municipalities would

1 voluntarily pass their own bylaw for this, and even if
2 they did I would think that it would be the next term
3 of council which is scheduled to start on November
4 15th, 2022.

5 So if the Province changed the
6 legislation, said, here's the template that you're
7 going to have to provide financial disclosure within
8 ninety (90) days of assuming public office, I think
9 that would give municipalities the time to prepare for
10 it, and also members of Council or candidates for
11 members of Council to decide whether or not that they
12 wanted to be part of that new system.

13 So I would look at it as a couple of
14 years down the road.

15 THE HONOURABLE FRANK MARROCCO: Is --
16 is there a proactive disclosure at a provincial level?

17

18 (BRIEF PAUSE)

19

20 THE HONOURABLE J. DAVID WAKE: Sorry.
21 By statute and with respect to individual
22 circumstances, they -- they -- there's a requirement
23 rate in the Act that they have to use that as the
24 basis for recusing themselves from --

25 THE HONOURABLE FRANK MARROCCO: Okay.

1 THE HONOURABLE J. DAVID WAKE: --
2 either the -- a -- a legislative committee, from the
3 executive committee, or from -- from a debate.

4 THE HONOURABLE FRANK MARROCCO: And
5 does it apply to senior staff?

6
7 (BRIEF PAUSE)

8
9 THE HONOURABLE J. DAVID WAKE: It
10 applies -- yes. Yeah, it's -- it's -- certainly, if
11 senior staff have financial interests in the private
12 sector, they're working on a file in the private --
13 they have to declare that -- they have to declare that
14 proactively to me, and I get a number of those, from -
15 - from senior staff as well as from deputy ministers
16 and all persons director level and up.

17 THE HONOURABLE FRANK MARROCCO: Thank
18 you.

19 MR. MAX LIBMAN: So throughout the
20 day, we've spoken a bit about how some of these
21 specific issues apply to both Council and staff,
22 sometimes in different ways.

23 Are there any other major ways in which
24 conflict of interest issues apply staff that we have
25 yet to address?

1 MR. RICK O'CONNOR: I don't believe
2 so.

3 MS. VALERIE JEPSON: I don't think so.
4 I -- and the only thing I'd emphasize is that the --
5 the need for a neutral person to be designated to be a
6 resource and a decision-maker about the conflict of
7 interest is essential for this system to work.

8 So the -- whether it's an ethics
9 executive, or recognition that this person's manager
10 will have responsibility for receiving these
11 disclosures or questions about conflict of interest,
12 and that they'll get some kind of answer, because I
13 think you have a lot of public servants and -- who
14 will recognize it, but don't really know where to go
15 to -- who to tell, and how to deal with it.

16 And so there needs to be something in
17 the -- in the framework that helps them figure that
18 out.

19 MR. MAX LIBMAN: Right. And finally,
20 in -- in small communities, we have spoken a bit about
21 how municipal councillors often have other employment.
22 They sometimes have, you know, various pre-existing
23 business and personal relationships with other
24 residents.

25 But we've also spoken a bit about the,

1 you know, the respect that we should be providing
2 those who choose to run for municipal office, and the
3 fact that we want to be encouraging people to run for
4 municipal office.

5 How can a small municipality balance
6 these two (2) interests while formulating a -- a
7 regime for a conflict of interest?

8 MR. RICK O'CONNOR: I -- I'm going to
9 answer a slightly different question, because from my
10 clerk and electoral experience, it's important.

11 I -- I think it's important that now
12 that March 1st of this year, we have integrity
13 commissioners, and we have codes of conduct, I think
14 the next go round of the next municipal election in
15 2022, it would be very important to have every
16 integrity commissioner meeting with most of the
17 candidates at open meetings to explain to them, if you
18 win your municipal election, here's the code of
19 conduct you are going to have to follow, here is how
20 the municipal conflict of interest, in a very general
21 way, works, and I think that would be an incredibly
22 important thing to mandate for at least integrity
23 commissioners to do.

24 But I -- I can't mandate candidates to
25 do it. But the number of times we've had candidates

1 come in after they've won their election, and then
2 they have no idea what the scheme is, no, you can't do
3 that, you can't do -- no, that's actually a provincial
4 level thing, we don't actually do those things, and I
5 think to understand the accountability framework that
6 each municipal -- each municipality has, would
7 probably be a -- a huge uplift. And they would make
8 an informed choice as to whether or not they wanted to
9 actually run for Council.

10 MS. VALERIE JEPSON: I'll just say I
11 think it's a big challenge, because I -- I think it's
12 a real -- I'm very sympathetic to it, and I'm -- I'm
13 coming from Toronto jurisdiction on full time. The
14 Councils are full-time. They have staff.

15 I'm -- I know from my -- from the
16 colleagues that I have in the field, this is a big
17 challenge. But like I said at the outset, I -- I just
18 think there are some things where the answer is not to
19 relax the rules, but to provide more resources.

20 And I think we have lots of examples
21 now, you know, for the past several years, of
22 commissioners who have been successful in small
23 jurisdictions, I think, to -- to kind of shepherd
24 these systems through. And it's really before the
25 councillors and the public, I guess, to decide whether

1 it's having the effect.

2 But it's definitely doable, I think. I
3 don't know what the actual answer is to come up with
4 that balance, and that may be the virtue in the
5 Province's choice to have four hundred and forty-four
6 (444) integrity commissioners.

7 But we're going to see consist
8 practices emerge, and they'll definitely be what's the
9 -- you know, what's the right size solution for any
10 given jurisdiction.

11 THE HONOURABLE J. DAVID WAKE: I -- I
12 agree with -- I think that's well put, and it reminds
13 me of my earlier life when I was responsible for
14 assigning judges all over Ontario and how the
15 definition of conflict of interest would expand and
16 contract, depending on which jurisdiction was
17 involved.

18 THE HONOURABLE FRANK MARROCCO: And
19 the season.

20 THE HONOURABLE J. DAVID WAKE: And --
21 and the seas -- and -- yeah -- and -- and --

22 THE HONOURABLE FRANK MARROCCO: You
23 and I have a community of interest about that
24 particular --

25 THE HONOURABLE J. DAVID WAKE: -- in -

1 - in Ottawa, you couldn't hear a case if somebody
2 lived within thirty (30) miles of you, but if you were
3 the judge in Napanee, you know everybody in the town.
4 If you applied the same standard that's applied in
5 larger jurisdictions, you'd never get a case heard.

6 I -- it -- it's a problem and I think
7 it's fair to recognize it and to try and deal with it
8 and -- and the way that Valerie suggests I think is --
9 is a -- is a smart choice.

10 MR. MAX LIBMAN: Thank you. Those are
11 all my questions.

12 THE HONOURABLE FRANK MARROCCO: Well -
13 - well, one (1) last question before I -- I take it,
14 Mr. McDowell, you asked the questions you wanted to
15 ask?

16 MR. WILLIAM MCDOWELL: I think so.

17 THE HONOURABLE FRANK MARROCCO: Did --
18 did -- are your decisions published in any way? I
19 appreciate there's a privacy issue, but in terms of
20 bringing about uniformity, one (1) of the classic
21 common-law techniques has been the publication of --
22 of decisions. It's -- it's served us reasonably well.
23 Our -- there's --

24 MS. VALERIE JEPSON: A munic --

25 THE HONOURABLE FRANK MARROCCO: --

1 four hundred and forty-four (444) --

2 MS. VALERIE JEPSON: Yeah. So yes,
3 they are. So by -- by the law that provides us with
4 our jurisdiction, the reports that we make have to be
5 given in public, and so they're available -- I'm
6 talking Province-wide here -- on the agendas of city
7 councils that consider them.

8 But in addition, the Municipal
9 Integrity Commissioners of Ontario, which is not --
10 which is a very loose organization of Integrity
11 Commissioners, have worked together to make sure that
12 our decisions that are on council agendas are on
13 CanLII.

14 THE HONOURABLE FRANK MARROCCO: M-hm.

15 MS. VALERIE JEPSON: So we are --
16 during -- we're in a period of time right now where
17 there is more -- it's more -- the decisions we write
18 are more accessible.

19 And I agree with you, I think -- and I
20 think that's how we're seeing best practices emerge
21 across Ontario. So I could refer to you a couple of
22 cases. I won't do it today. But, you know, I learn -
23 - the Toronto Integrity Commissioner learns from our
24 colleagues in Ontario from -- there's some really
25 great reports being written by Integrity

1 Commissioners.

2 The thing I caution about reports is,
3 and it's maybe comment on the system as a whole, in
4 doing my work, when I write a report, I want -- my
5 only job is to do a neutral finding of fact and report
6 the facts for the public for their benefit.

7 If it's a case of an elected official -
8 - because they're the ones that are going to be making
9 the choice next time they have to go to the ballot
10 box, so here's some information. I also can include
11 recommendations about penalty. There might be a
12 finding that a councillor contravened the code.

13 A lot of times in the case of Toronto
14 and across Ontario, the councillor accepts that
15 finding, learns a lesson, and adjusts their behaviour.
16 That makes me really happy, because that's the point
17 of the code. But what unfortunately happens sometimes
18 is the only part that the public and the media
19 remember is that there was the breach, and the
20 councillor doesn't get any credit for what they did to
21 try to address it.

22 And so I think it can become overly
23 sensationalized in the coverage of it, and that is
24 detracting from what I hope happens, which is
25 improvement. And I know that ultimately it's going to

1 be for the electors to decide.

2 Is that important to me or how am I
3 going to weigh that in the balance of other
4 considerations I'll bring to bear when I choose who I
5 want to represent me?

6 So I just worry a bit about the
7 publicization. I think it's important. It has to be
8 public, but it can have this double-edged sword and it
9 will be why you might hear councillors be reluctant
10 for that, because they can't control how these things
11 are received, and despite sometimes their best efforts
12 to learn a lesson, that will never be what is the
13 common understanding of what happened.

14 MR. WILLIAM MCDOWELL: Could I -- I
15 just have a question. It's actually for you,
16 Commissioner.

17 What does the Canadian Judicial Council
18 do, because it -- it seems to me that it does some
19 kind of anonymized reporting of complaints and
20 results.

21 THE HONOURABLE FRANK MARROCCO: Yeah,
22 there is -- there is a -- there is a -- a sanitized
23 explanation of the decision.

24 MR. WILLIAM MCDOWELL: And --

25 THE HONOURABLE J. DAVID WAKE:

1 Similarly, with the Ontario Judicial Council.

2 MR. WILLIAM MCDOWELL: Right. And so
3 I guess that's a halfway ground. You could do it that
4 way on some sort of rolling basis where you anonymize
5 the --

6 THE HONOURABLE FRANK MARROCCO: But -
7 but I think it's a -- I think there's some validity in
8 the observation that -- because sometimes when -- when
9 you're in practice, you'll give the client advice and
10 say this case -- actually don't want to litigate this
11 case because this case is very litigious and this
12 issue is very alive --

13 MR. WILLIAM MCDOWELL: Right.

14 THE HONOURABLE FRANK MARROCCO: -- and
15 it's going to be associated with you.

16 MR. WILLIAM MCDOWELL: Right.

17 THE HONOURABLE FRANK MARROCCO: So
18 let's not -- let's not do that. So -- and so there --
19 there is a -- publicity does factor in.

20 MS. VALERIE JEPSON: Yeah.

21 MR. RICK O'CONNOR: I -- I think it
22 does, and I'm actually very much in favour of having
23 these Integrity Commissioner reports dealt with at
24 open council meetings. I see a number of
25 municipalities deal with them at closed sessions and

1 then rise and report.

2 I would -- if there was a
3 recommendation come forward that said that
4 municipalities had to put on their agenda and make
5 available to the public these reports, I think that
6 would be a good start.

7 I know an instance a couple of weeks
8 ago a report came out and the council dealt with it by
9 having a hard copy hand delivered to all of them
10 during the meeting and the Integrity Commissioner read
11 the report, and when I tried to get a copy of it the
12 next day, I phoned the Clerk and said can I get a copy
13 of that, and she said it's not actually available yet.
14 It will be available in another two (2) weeks.

15 I said, well, this is -- this is kind
16 of strange. I mean, there -- everything is on email
17 right now, you can just send it to me, and she said,
18 no, it -- she would have to mail me a hard copy. So I
19 had to put in a formal request and -- and ask for it.

20 So I think there's going to be some
21 municipalities that are going to be reticent and
22 there'll be some clerks that'll be reticent without an
23 express recommendation that says you need to put that
24 on your website so people can see it.

25 And I know in one (1) case of a

1 municipality were a mayor had a bad integrity report
2 and a bad occupational health and safety report, and
3 he moved a motion that got it withdrawn and taken down
4 from their online viewing.

5 So I understand that municipalities
6 would be reticent to do so, but I think it -- it would
7 be best if a recommendation came that these need to be
8 published. They need to be out there so that
9 residents can read whatever it is that the Integrity
10 Commissioners have recommended.

11 THE HONOURABLE FRANK MARROCCO: Well,
12 let me say that -- thank you again. It would have
13 taken -- we -- we've been at it, I guess, what, two
14 and a half (2 1/2) hours. It would have taken us an
15 endless amount of time to absorb all of the
16 information and advice that you've given us, and so
17 thank you all. You -- you've made our job a little
18 bit easier, and we really appreciate it. Thank you.

19 THE HONOURABLE J. DAVID WAKE: It was
20 a privilege.

21 THE HONOURABLE FRANK MARROCCO: We're
22 adjourned.

23

24 --- Upon adjourning at 1:58 p.m.

25

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2 Certified Correct,

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5 _____

6 Wendy Woodworth, Ms.

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38:4	80:12	74:23	87:25	advantage
49:20	acknowledg	76:9 77:3	89:8,21	61:10
71:2 74:5	ing 80:16	85:11,15	91:7	advice
absorb	across	87:5	97:10,21	7:13 8:23
113:15	19:13	88:19	105:3,4,9	9:7 18:10
abstain	34:15	89:4,7	110:15	21:4
92:19	46:17	90:4	111:10,22	25:12
abstaining	56:15	94:15	112:13	32:1,3,6,
92:21	62:23,25	98:24	add 86:8	11
abuse	68:11	100:24	91:18	33:8,24
77:21	87:11	101:23	94:4	35:17
acceptance	100:10	acting	100:21	37:3,19
27:11	108:21	17:8	addition	38:21
accepting	109:14	20:24	65:9	39:4,8
76:4	act 5:22	91:13	108:8	40:6,9
accepts	6:2	action	address	55:24
109:14	7:18,24	56:2	35:15	60:3
access	8:6,7,12,	actions	47:8	65:23
27:21	21,23,25	16:12,16	102:25	81:3 86:1
accessible	9:8	17:6,8	109:21	87:1,4,14
108:18	10:2,21	actively	addressed	88:11
accordance	11:9,14,1	95:21	26:13	90:8
72:20	8	activities	47:6 67:6	91:12,13
according	13:5,11,2	14:13	adds 47:24	94:1
11:6	4 14:1	activity	adjourned	111:9
account	18:21,25	11:2	113:22	113:16
43:18	19:5,10,2	actor	adjourning	advisable
accountabi	3 22:18	20:24	113:24	99:22
lity 14:1	23:9,14	actors	adjust	advise
57:14	25:9 26:6	21:20	17:7	12:23
65:13	27:17	acts 8:2	adjusts	13:21
68:12	28:21	actual	109:15	advised
74:25	29:2,4,8,	20:8	administer	6:6
79:13	17 30:12	27:19	61:19	advocated
105:5	37:24	69:5	administer	100:15,16
accountabl	39:5	106:3	ing 10:4	advocating
e 6:19	40:11,22	actually	administra	44:2
75:8	43:7	23:14,21,	tion 6:20	95:21
accused	44:10,16	22 24:8	46:22	affecting
16:20	47:20	30:8 36:4	82:7	8:10
acknowledg	49:13	37:14	admit 59:1	affiliated
e 16:24	53:21	46:21	adopt 63:2	28:16
62:6	57:12	47:13	advance	against
63:18	59:14,24	51:24	5:5,10	36:6
	64:19	64:20	22:13	age 55:10
	65:4,8	65:20,24		agencies
	66:20	67:1 75:7		
	67:5			
	68:19			
	73:12			

12:19	81:8	90:3	34:4	74:19
13:8,13,1	am 10:2	Andrea	62:11	appointees
5	12:17	2:15	anywhere	12:19
59:10,17	16:24	annotated	98:20	appointmen
agency	61:16	35:21	apparent	t 13:1
12:13	62:15	annual	20:8,10	appointmen
13:18,20	90:8,13,1	14:5,13	21:11,17,	ts 12:24
agenda	7 110:2	33:17	21,24	appreciate
36:13,15	ambig	52:6	26:25	29:19
112:4	53:16	67:23	29:9	36:2,21
agendas	ambiguity	83:14	36:17	107:19
81:18	46:23	anonymize	42:24	113:18
82:20	53:17	111:4	45:9,21,2	apprehensi
88:2	ambiguous	anonymized	3 46:12	on 22:3
108:6,12	52:19	110:19	48:21	approach
ago 27:21	53:4	answer	64:9	15:17
95:18	AMCTO 69:2	38:15	66:13	33:25
112:8	amend 43:8	72:14	89:25	46:9
agreed	85:7	76:8 80:3	96:4	62:24
15:7	amended	100:4	appearance	22:1
74:14	91:16	103:12	28:25	81:14
ahead 52:8	amendment	104:9	55:14	approached
55:3	90:1	105:18	APPEARANCE	85:3
61:13	amendments	106:3	S 2:1	approaches
72:3	18:25	answering	applicatio	35:8 42:8
91:1,5	America	80:5	n 10:25	44:4
97:8	68:11	answers	applicatio	85:16
alert	amiss	32:12	n 10:25	appropriat
72:10	78:20	81:23	applied	e 21:5
92:1	AMO 69:2	anybody	22:9 28:5	26:22
alerted	among	10:14	72:8	34:22
61:1	63:23	74:6	107:4	37:3,19
alive	amount	anybody's	applies	40:19
111:12	80:13	16:11	42:11	70:19
allegation	113:15	anymore	52:13	71:4
50:25	amounts	39:22	74:19	81:24
alluded	29:4	49:10	102:10	86:22
19:11	analysis	77:15	apply 7:14	93:2,3
50:22	47:23	anyone	22:12	95:2
53:24	analyze	80:21	25:11,15	appropriat
83:11	11:6	anything	59:20	ely 12:13
already	analyzing	10:15	102:5,21,	approximat
20:2 35:9	9:4	31:5 77:4	24	ely 13:14
44:3 46:4	and/or	78:19	appointed	arcane
55:3		95:4	6:3,12,13	91:13
80:20		anyway	,22,24	area 8:9
			7:1,4	areas 8:14
			30:20	
			59:18	

13:3	44:10	authorized	113:1,2	17:8 39:6
46:11	assistant	92:9	bailiwick	behave
57:23	82:6	authorizes	56:14	57:24
73:14	assistants	13:6	99:4	behaviour
arena	14:4	availabili	balance	109:15
55:11	associate	ty 30:1	53:8	behind
aren't	1:7 2:4	available	104:5	69:21
71:1	7:1	33:16	106:4	beings
87:21	associated	61:20	110:3	81:18
88:15	111:15	71:7	ballot	believe
94:20	associatio	80:22	109:9	27:2
arguably	n 64:24	108:5	bar 48:13	44:16
21:12	associatio	112:5,13,	base 97:15	99:16
48:15	ns 69:1	14	based	103:1
53:17	assume	avoid 53:6	11:17	bell 35:16
arguments	82:22	54:15	baseline	79:25
53:3	assuming	91:6	86:21	Bellamy
arise 9:16	101:8	avoidance	basically	58:12
22:19,20	assure	64:3	10:16	Bellamy's
67:18	60:21	avoiding	44:8	19:2
87:25	astute	43:9	basis	benefit
arm 93:19	78:15	55:10	14:18	72:16
ascent	attached	76:24	30:6 37:6	73:18
68:22	50:18	81:11	67:23	77:7 82:2
aside	attack	aware	83:15	109:6
51:10	81:10	57:11	101:24	benefited
59:16	attempt	59:13	111:4	28:2,17
66:8	85:12	61:8	bear 110:4	berth 77:8
99:21	attended	80:11	beating	best 34:18
assembly	28:15	90:13,17	50:16	37:24
7:12 8:20	attending	92:23	became	46:5
9:1,24	27:25	98:20	95:25	78:24
14:12	75:19	99:8	become	79:23
assess	Atwood-	away 27:10	109:22	80:9
94:6	Petkovski	77:5,8,10	becomes	108:20
assessment	62:17	,25	52:25	110:11
94:19	auditor	<hr/>	beginning	113:7
assign	30:18	B	27:15	better
82:5,14	97:1	backdrop	31:1	16:15
assigning	authority	18:11	80:15	17:18
106:14	10:24	backed	beginnings	31:16
assigns	13:15	31:9	75:3	41:16
11:14	51:16	bad 16:11	Begs 14:8	46:1 52:5
assistance	85:14,17	38:14	behalf	63:25
8:17		55:18		beyond
		56:1,2		

72:10	13:8 57:8	76:16	77:24	10:16
bias 62:15	59:10,17	84:4,8,13	business	carry 17:3
94:13	65:21	101:18	41:3 66:4	70:24
bigger	81:3,4,5	102:7	70:12	case 7:25
34:21	body 11:19	briefing	83:2	24:11,17
35:3	12:1	61:4	103:23	27:20
Bill 19:7	25:16	briefly	businesses	43:17
billion	Bonwick	5:24	70:25	54:17
93:18	2:7	bring	businesspe	60:20
bit 15:14	book 61:4	17:14	rson	68:9
17:20	books	40:18	41:13	81:19
20:20	99:22	83:25	busy 31:10	87:4,10,1
40:25	borrow	110:4	bylaw	2 94:18
42:22	34:19	bringing	51:17	107:1,5
55:3	bottom	107:20	56:20	109:7,13
56:14	84:11	broad	57:22	111:10,11
61:19	bound	45:25	58:10	112:25
62:6 72:5	22:11	broader	72:11	cases
76:8 78:4	25:9	26:4	99:3,12,1	11:20
79:17	40:20	43:18	5,18	21:8
84:22	41:6	45:15	101:1	38:18
88:9	43:16	47:12	bylaws	108:22
90:15	49:6	95:12	57:18	caught
94:8 95:3	box 109:10	broadly		41:3,8
98:8 99:3	Brampton	95:12	<hr/>	cause
102:20	6:25	brother-	C	35:17
103:20,25	branch	in-law	cabinet	causes
110:6	61:17	97:10	12:18	21:18
113:18	breach	brought	13:25	caution
bits 15:16	53:7	58:9	14:2	26:24
black 54:9	54:7,12	83:14	60:17,24	109:2
blame 42:9	64:15	84:2	61:1,6,8,	caveat
blessing	68:9	budget	18	28:6
96:3	109:19	38:11,12	Canada	ceased
blowing	break 17:2	82:10	7:10	95:24
11:10,12	71:12	93:18	67:21	centres
board 25:6	88:9	build 20:2	77:16	34:25
35:23	breaking	65:12	Canadian	35:3
44:17	51:22	building	7:3	CEOs 59:9
45:11	Breedon	57:12,13	110:17	certain
64:24	2:14	bullet	candidates	11:4 13:7
65:15	bribery	56:13	101:10	40:9,10
66:5,6	77:4	bulletins	104:17,24	44:1 48:4
93:10	brief	34:5	,25	68:4,5
boards	14:16	burden	CanLII	100:25
12:19			108:13	certainly
			career	

10:7	100:6,23	city 5:25	75:4	26:3 36:3
14:17	changed	6:12,14	76:22	42:10
40:16	8:12 10:6	17:17	77:8	43:21
41:19	89:24	30:2,17	96:11	45:15
78:23	101:5	35:12	clearer	47:11
87:11	changes	48:2,23	43:5	48:9,22
88:25	19:4,7,8,	51:4	clearly	49:4,8,17
97:25	10 24:3	56:15	36:11	50:6
102:10	38:7	62:7,8	44:19	52:12
Certificate	42:21	64:7	58:13	53:2,16
e 3:16	46:15	65:10	66:15	54:5,9
certified	98:9,12	70:10,12	93:6	57:7,12,13
6:15	charitable	72:15	clerk 6:14	58:5,6,10
114:2	93:8	82:8 93:5	9:23 48:4	,20,22
chair 7:4	Charter	96:6	88:12	63:1,3,15
65:20	90:15	97:1,11,1	89:16	64:1,11,1
66:7	check	6 99:9	90:18	9 65:6
97:25	50:25	100:14	97:16	66:15
98:1	checklists	108:6	104:10	72:12
chaired	83:4	CJI0114529	112:12	75:6
28:14	Chenoweth	4:5	clerks	83:8,18,2
Chairs	2:11	CJI0114541	48:5	4 86:10
59:9	Chief 1:7	4:4	66:25	89:13,18
challenge	7:1,3	CJI0114542	88:25	90:3,20,2
24:1	28:19	4:3	91:19	4 92:9,13
34:23	chip	CJI114529	92:1	97:11
52:20	77:10,25	84:2,6	112:22	104:18
62:1	choice	clarified	clerk's	109:12,17
69:12	16:7,15	49:2	38:12	codes
90:15	105:8	clarify	65:10	17:23,25
105:11,17	106:5	63:24	82:15	19:11,18,
challenged	107:9	98:16	83:19	23 23:5
73:4	109:9	clarity	clicks	24:25
challengin	choose	47:10,15	36:15	30:13
g 29:9	16:15	48:16	client	35:8,20
chamber	70:9	86:11	111:9	41:9
33:2	104:2	classic	close	43:8,23
Chambers	110:4	107:20	14:21	45:1,8,20
1:18	circ 40:9	clause	44:9	47:2
change	circumstan	64:9,10	closed	48:11
19:22	ces 11:7	68:18	83:19	49:9
29:3 40:4	40:10	clauses	94:23	52:21
43:4,5	101:22	64:12	111:25	54:18
44:8	cities	clear 24:5	closely	56:16
46:20	66:12	28:21	70:2	57:15,16
49:7		43:8	code 6:3	63:22
99:16		47:11	19:17	72:7 75:4
				77:2
				89:25

104:13	23:2	104:16	65:20	110:19
coffee	109:3	108:23	66:7	compliance
89:9	comments	110:16	82:21	8:25
90:25	15:15	111:23	83:7	10:12
coincide	commission	112:10	85:23	13:10,18
73:7	21:22	commission	93:11	14:6
coincides	28:20	ers 19:13	97:24	complicate
20:14	51:5	21:7 23:5	102:2,3	d 42:17
colleagues	69:24	25:21,22	common	87:8
34:24	commission	27:12	24:25	comply
37:9	er 5:25	34:16,17	25:17,23	8:21
90:18,21	6:5,7,21,	35:7 39:3	35:13,14	component
105:16	22,23	47:7	39:10	11:11
108:24	7:7,16	50:3,15	43:18	68:12
Collingwoo	8:19,22	62:16,18,	52:12	comprehens
d	9:3	23 63:22	53:23	ible
1:2,17,20	10:10,13	66:10,25	54:7,8,12	23:11
2:13	11:20,23	87:21	55:6	conceivabl
17:25	12:2,21	88:11	62:24	e 28:9
56:18	15:19	104:13,23	73:11,14	concept
62:14,18,	16:6	105:22	110:13	20:3,13
20	22:13	106:6	common-law	22:16,17
com 42:14	23:8 25:4	commission	40:25	42:24
comes	27:15	er's	41:8	43:19,21
12:10	28:20	40:15	42:14	46:19
31:6 36:9	30:19	65:10	107:21	55:10
46:6 48:9	36:1,20,2	93:7	communicat	59:19
67:16	4 37:8,15	96:10	e 34:5	63:13
80:14	38:25	Commission	communitie	73:12
96:22	39:2,24	ers 16:9	s 103:20	concepts
98:5	40:6	17:10,16,	community	41:8
comfort	43:16	19,20	35:12	54:19
68:5	46:7	52:6	64:24	56:4 86:9
86:21	49:23	108:9,11	78:12	concern
87:16,24	50:20	109:1	106:23	16:13
comfortabl	51:1	113:10	companion	22:8
e 80:25	55:16	Commission	41:12	27:18
coming	56:1 57:9	er's	compelling	28:21
15:14	62:3,14,2	12:16	9:14	35:15
38:13	1 64:8,17	commission	complaint	47:4,9
61:15	65:1,17,2	s 12:20	12:9,11	73:21
100:11	2 67:2,20	13:9	27:24	concerned
105:13	74:11	47:1,14	36:6	21:16
commencing	79:6	59:10	complaints	33:12
5:1	81:24	commitment	8:24	41:4
comment	85:25	74:17	10:11	42:16
	87:12	committee	12:6	81:13
	91:2	64:21	25:24	
	93:16,22			
	94:6			

94:12	73:19	2 61:2	connected	5:21
concerns	76:10	63:4	70:2	26:16
28:11	77:11	64:9,10	connection	55:11
concert	78:1,9,13	65:4	95:15	84:25
76:5	confidenti	66:13,20	conscripte	continue
conclusion	al 8:22	73:12	d 88:15	9:10 61:9
28:13	45:5	77:2 79:6	consensus	86:2
conclusion	conflict	81:9	21:15,16	contract
s 11:24	3:6 5:13	82:24	48:17	106:16
conduct	7:21 8:7	83:9	consequenc	contracts
6:3,8	10:25	84:23	es 46:21	78:22
7:16,19,2	12:6,9,16	85:11,15	54:16	contravene
2 8:24	,23,25	87:4	consider	d
11:21	18:20,21,	89:3,6	108:7	7:17,21,2
17:24,25	25	94:15,21	considerat	4 53:16
19:11,17,	19:10,22,	95:9,13	ion 25:24	109:12
18,23	25	96:4,23	46:23	contravent
23:6	20:3,6,9,	97:7	93:17	ion 54:8
24:25	10,11,19,	98:3,23	considerat	contributi
26:3	23	102:24	ions	ng 5:7
30:13	21:2,11,1	103:6,11	110:4	52:3
35:21	3,17,21,2	104:7,20	considered	contributi
36:3 41:9	4	106:15	12:3	ons 5:5
43:22,24	22:1,5,17	conflicts	41:21	control
45:1,4,8,	,18,25	5:20,22	consist	110:10
20	23:9,14	6:2 14:18	106:7	convenient
52:12,21	25:8,17,2	16:22	consistenc	91:24
56:17	3	18:4,19	y 40:8	convenient
57:8,13,1	26:3,5,25	28:22	ly 37:22	ly 91:22
6,17	27:11,18,	29:19	consistent	conversati
58:5,7,11	19 28:25	36:12,18	ly 37:22	ons 51:3
63:1,22	29:1,9,17	43:6	constant	81:1
64:2,11	37:24	45:16,21	37:18	cooler
65:6	39:5	46:12	consult	67:6
72:8,12	40:25	48:17,21	22:12	Cooper 2:9
75:4,6	42:14,25	52:13	50:13	copy 97:23
77:2	43:7,9,14	58:25	81:23	112:9,11,
83:18,24	,24	61:23	consultati	12,18
89:18	44:3,9,16	62:9	on	co-relate
97:12	,20,22	63:6,7	100:7,19	55:25
104:13,19	45:23	64:3	content	corporatio
conducted	47:12	72:10,23	47:18	n 52:2
33:1	48:22,24	73:22	contents	correct
conducts	49:5,9	76:14,23	3:1 49:17	92:20
12:2	50:14	79:21	context	
confidence	53:21	81:2,20		
16:17	55:7,20,2	89:25		
21:19	5	confused		
	59:11,20	37:13		
	60:9,18,2	58:3		

114:2	31:9,10,1	councillor	46:24	26:7,17
corruption	8 37:9	s-elect	creating	27:8
77:3,21	38:13	30:7	53:15	32:21
78:19	70:2	councils	credit	33:15
cost 52:3	80:14	17:17	109:20	49:6
79:10,12	82:16	50:5	crosses	50:16
costing	93:2	72:15	35:17	58:19
52:2	95:25	105:14	cultivated	59:5,7
costs	100:2	108:7	87:10	63:6
36:22	109:12,14	Council's	culture	75:10
council	,20	75:7	18:6	101:20
1:18 7:3	councillor	counsel	35:12	102:1,9
8:20 9:2	s 23:3,22	2:3,5,7	40:4 48:4	106:11,20
23:18	25:5	6:5,6	Cunningham	,25
24:6,14	31:12,14,	39:25	22:22	110:25
30:6,14,2	25	count 69:8	42:12	113:19
0 34:5,8	32:2,9,15	country	47:22	day 23:8
35:23	34:6	18:23	49:1	27:23
38:6,19	37:6,7,11	couple	54:11	38:5
44:17,22	39:6,18,2	44:12	Cunningham	44:14
46:6,10	1,22	82:3	's 19:6	49:8 59:8
51:5,8,12	40:11	83:20	current	60:25
57:8 58:1	41:15	93:5	10:23	94:2 96:6
63:25	42:9,18	95:21	62:14	102:20
64:20,21	43:20	101:13	99:22	112:12
67:16	46:17	108:21	currently	days 22:12
68:4	47:14,19	112:7	9:8 98:11	43:1
70:24	52:1	course	99:21	101:8
74:24	56:23	9:14	cutting	day-to-day
82:5,8	61:21	18:20	63:21	6:9
83:6,13	62:4,9	23:23	cynicim	deal 10:1
84:25	70:25	26:25	77:19	11:15
85:23	72:9	27:4 33:7	cynicism	14:17
86:13	79:19,20,	60:25	77:17,19,	21:3
87:7	24 81:22	75:24	25	30:13
88:4,10,2	84:24	99:25	David 3:9	37:6
0 90:7,22	91:22	court 6:25	5:16 6:21	38:18
95:19	98:11,20	7:2 27:4	7:8 20:2	50:3
97:25	99:19	cover	created	56:8,9
98:14	100:10	54:22		72:23
100:16	103:21	coverage	daily	73:15
101:3,10,	105:25	109:23	14:18	86:19
11 102:21	110:9	create 8:9	30:5	103:15
105:9	councillor	12:25	damage	107:7
108:12	's 39:11	32:2	21:18	111:25
110:17	70:3 82:6	councillor	David 3:9	dealing
111:1,24	87:20	s 31:4	5:16 6:21	19:16
112:8	Councillor	s 31:4	7:8 20:2	27:20
councillor	s 31:4			30:14

37:23	decisions	28:6 43:6	desk 35:17	44:4
46:18	27:14	44:8	despite	48:3,5
51:7	72:15,20,	84:20	110:11	50:12
55:18	25 73:18	106:15	de-	56:17
56:25	74:6	definition	stigmatiz	63:5,6
deals	107:18,22	s 21:23	e 32:6	65:22
10:21	108:12,17	64:6	55:23	72:8
14:1	declaratio	84:19	detail	88:12
dealt 25:1	n 89:7	definitive	66:18	102:22
111:23	92:3	71:6	76:19	104:9
112:8	declare	defunct	determinat	difficult
dear 14:20	23:22	69:4	ion	15:24
15:4 66:6	35:18	degree	43:14,16	90:6
debate	65:5 87:5	68:5	93:17	difficulty
49:10,13	102:13	delegated	determinat	53:19
50:8	declared	85:17	ions	diminish
85:8,11	68:23	delegation	10:24	13:4 40:3
92:12	96:3	51:16	93:21	dinners
102:3	declined	85:14	determine	27:22
debts	65:24	delivered	13:9 46:7	29:5
70:22	66:1	112:9	determined	75:18,23
December	dedicated	delve 8:9	13:11	direct
9:10 30:8	57:22	demand	detract	23:11,24
decide	deemed	40:2	16:17	24:15,18
88:16	10:18	demonstrat	detracting	45:13
101:11	23:12,24	es 13:18	109:24	89:5
105:25	24:20	depend	developed	direction
110:1	45:13	29:24,25	35:2	7:14 11:6
decided	89:6	30:24	dial 33:11	directly
65:4 96:9	defence	depending	Diamond	19:7 28:2
deciding	53:3	106:16	6:18	director
90:23	define	depersonal	dichotomy	7:2
decision	24:13	ize 16:23	57:20	102:16
20:13	64:2	deputy	dictated	directorsh
72:18,24	97:12	102:15	24:17	ips 70:22
73:8,17,1	defined	descriptio	difference	directs
8,20,25	21:22,24	n 4:2	72:6	50:9
89:15	24:10,16,	10:17	difference	disappoint
94:23	21	designated	s 58:14	ed 49:25
110:23	defines	10:22	72:7	disclose
decision-	25:17	24:11	different	57:2
maker	definitely	103:5	25:24	67:17,22
103:6	106:2,8	desire	35:7,8	87:15
decision-	definition	63:24	40:13	disclosed
making	22:24			63:11
55:13	26:24			71:3 98:3

discloser 12:7	3:11 5:18 26:10	85:4 91:3	95:20	eight 84:16,17
disclosing 61:11	53:22 88:23 94:17	documentat ion 86:5	98:8 108:16 112:10	eighty 13:14
disclosure 6:9,10 9:5 11:9,18 12:10 63:14 67:13,25 68:7,15,1 9 69:5,15,2 3 70:1,13,1 6,18 78:23 85:20,21 86:22 91:3 93:3 94:3 96:19 98:9,13,2 1 99:6,8,13 ,23 100:12 101:7,16	discussion s 8:16 9:11,15 51:3 55:24 80:24	documents 48:16 78:22	duties 8:23 10:3 23:23 duty 21:3	either 41:20 61:22 64:18 74:14 83:3,14 102:2
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	disparate 42:7 57:19	done 31:21 34:12 55:13 66:14 99:15	<hr/> E <hr/> earlier 42:22 45:3,18 50:22 52:4 64:12 74:1 75:5 76:7 83:11 86:11 106:13	elaborate 84:22
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	disqualifi cation 90:20,24	donor 29:6	easy 16:3 17:23 25:14 32:14	elected 6:3 7:12 8:11 14:7 15:23 16:4,19 20:25 21:6 29:14,15 30:6 32:11,25 33:4 42:15 52:23 53:13 56:3 67:22 68:15 73:5 74:19 75:11,14 109:7
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	disqualifi ed 46:8 88:22 89:2,3,22 90:2	door 50:16	ed 110:8	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	disqualify ing 63:8 64:4 84:20 85:5 89:14,18	double- edged 110:8	edg 63:21	electoral 104:10
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	disruptive 46:16	dovetails 78:2	educate 41:14	electors 110:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	distill 49:16	draft 97:22	education 12:22 25:5 32:7	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	distinct 98:22	drafted 64:25	Edwin 2:11	effect 106:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	distinctio n 75:11,19 76:6	dramatical ly 10:6	effective 6:23	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	distinguis h 98:22	draw 75:19	effort 78:21	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	divestitur e 28:3,4	drawers 83:6	efforts 45:8 78:10 110:11	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	doable 106:2	drawing 25:3	Edwin 2:11	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11	document	drive 37:18	Edwin 2:11	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11		dual 19:17	effect 106:1	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11		during 9:14 23:23 30:9 33:6 72:5 78:4 79:18 83:24 85:13	effective 6:23	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11			effort 78:21	election 14:15 29:4,6 30:2 104:14,18 105:1
disclosure s 11:4,15,1 7 12:5 67:15 71:7 98:23 103:11			efforts 45:8 78:10 110:11	election 14:15 29:4,6 30:2 104:14,18 105:1

76:5 95:4	14:19	10:22	70:10,11,	15:24
email 9:17	engaging	11:11	14 88:1	52:22
97:19	64:19	12:14,17	89:13	53:4
112:16	enhanced	17:12	95:18	58:24
embracing	85:20	21:9	examples	expectatio
40:5	enlist	59:3,9	34:11	n 32:8
emerge	80:21	60:2	43:11	72:21
106:8	enormous	103:8	78:16	74:19
108:20	46:21	Evans	93:5	expectatio
emerged	ensure	27:16	105:20	ns 16:1
21:15	59:12,15	28:19	excellent	30:14
emerging	75:8	event	86:10	36:2
35:9	ensuring	28:12	executive	52:23
emphasize	8:19	76:4	7:2 8:20	76:23
103:4	76:8,10	events	9:1 10:22	expected
employed	entire	76:3	12:18	75:16,17,
13:8	30:12	everybody	21:9 59:3	18
70:12	57:22	59:23	60:2	expecting
employment	environmen	69:14	61:17	72:15
70:24	t 32:3	71:5	102:3	expedient
95:25	equally	83:21	103:9	91:23
103:21	21:18	107:3	executives	expenses
enacted	74:19	everyone	17:12	13:5,7,9,
90:3	equity	52:7	59:9	10,22,25
encounter	58:8	69:14	exercise	14:4
66:25	especially	96:18	14:19	expensive
encountere	29:16	everything	exercising	27:21
d 31:15	46:2	33:9	17:3	experience
encourage	essential	61:11	exhausted	25:3
81:6,11	30:25	95:15	38:1,2	37:22
encouragin	103:7	112:16	Exhibit	58:19
g 91:12	essentiall	everything	4:2	77:18
104:3	y 49:15	's 51:17	Exhibits	78:7
endeavoure	establishe	evidence	3:3 4:1	104:10
d 90:19	d 6:14	41:20	existence	expired
endless	22:17	44:4	48:25	27:9
113:15	establishi	77:20	existing	explain
Energy	ng 8:10	evolution	99:7	10:19
27:24	ethic	6:19	exists	24:19
enforce	31:18	exactly	22:1,6	67:21
53:11	ethical	24:5	expand	97:20
enforced	7:14	examining	106:15	104:17
53:1,5	56:16	13:22	expanded	explanatio
engaged	ethics 7:9	example	13:13	n 110:23
		25:3 26:6	expect	explore
				88:9

express 112:23	47:22	87:7	fine 15:12 51:16,17	forget 29:11
extent 28:2	familiar 42:19 59:6 64:15 92:17	filed 9:23 65:9	finished 71:22	form 67:12,25 69:16 70:18 93:19
external 40:2	family 70:11 71:7 83:2 97:12	filing 91:4	first 8:8 10:21 15:20 16:2 18:22 19:16 20:18 24:6 28:20 36:5,14 44:18 46:2 51:2,6 60:8 74:9 79:14 82:4 83:1,13 85:4	format 112:19 former 26:15 former 10:23 28:19 79:6 82:6
extra 78:21	FAQs 35:22	fill 65:7	former 10:23 28:19 79:6 82:6	formulatin g 104:6
extraordin arily 14:7	fare 39:10	final 13:24	fortitude 18:6	forty 35:6 37:5 38:17 57:6
<hr/> F <hr/>	fashion 25:1	finally 6:21 103:19	fit 47:21	forty-four 19:12 69:8 106:5 108:1
face 32:24	fatal 60:19	Finance 27:25	five 8:2,3 15:19 30:4 33:7 83:13 85:10 97:7	forward 8:16 14:19 37:23 49:8 74:22 87:18 112:3
face-to- face 9:12,18	favour 111:22	Finances 29:4	flag 56:13	framework 6:10 59:3 70:18 99:19 103:17 105:5
fact 18:22 23:13 24:10 38:18 44:21 55:14 56:4 57:11,18 60:23 77:22 86:19 97:8 104:3 109:5	fearful 56:4	financial 9:4,22 11:3 22:20 23:12 24:20 36:16 44:18 45:12 65:3 67:12,23 68:6 69:5,15 70:3,4 98:9,13,2 1 99:5,7,23 101:7 102:11	flip 41:25 95:1	
factor 40:1 111:19	February 6:23 75:23	findings 10:12 53:6 54:11,13 68:9 109:5,12, 15	flow 26:12	
facts 93:16 109:6	Federal 7:5 27:4	finds 12:7	flyover 31:2,4	
fair 32:13 40:20 46:16,23 47:10 49:11 57:4 107:7	federally 67:22		focus 23:3 95:9	
fairly 37:22	feel 9:16 16:20 26:19 34:9 49:6 56:24 60:16 80:25 81:9		follow-up 57:6	
	felt 28:18		force 68:23	
	field 49:13 58:9 105:16		Ford 92:7,8	
	fifty 69:9,18		foremost 15:20 83:1	
	figure 103:17			
	file 61:10			

frank 1:7	21:10	65:15	graduate	18:10
5:3 15:11	full 79:10	88:5 91:3	13:19	76:22
26:9 27:6	105:13	gift 74:14	grant	86:23
29:12	full-time	75:22	65:15	guidelines
32:19	71:1	gifts 45:3	93:14	35:22
33:14,20	105:14	74:10,12	grasp 46:4	52:8
37:21	fundamenta	75:12,13	great	gut 81:12
38:22	1 73:20	given	13:19	<hr/>
52:10	fundraisin	24:11	24:7,15	H
53:18	g 28:12	27:22	57:19	half 51:12
61:12	<hr/>	29:5	62:21	113:14
69:25	G	60:23	63:5	halfway
71:13,19	gain 70:4	80:14	86:20	111:3
72:2	galas	99:22	98:7	Hall 1:17
73:23	75:19	106:10	108:25	hallways
78:6	game 23:4	108:5	greater	82:17
79:4,15	52:9	113:16	72:17	Hamilton
80:4,7,23	gap 67:11	glad 26:18	79:11	66:10
92:16,22	68:2	goals	Gregory	95:18,23
99:10	gate 80:25	35:10	27:15	96:6
101:15,25	gatherings	go-around	28:19	hand 91:11
102:4,17	28:1	46:2	ground	112:9
106:18,22	Gee 38:14	golden	111:3	handled
107:12,17	Gehrke	94:1	groundbrea	12:8 29:7
,25	43:12	gone 53:20	king 19:3	hands
108:14	general	64:1	group	87:17
110:21	25:18	65:16,17	33:13	happened
111:6,14,	27:10	66:10,11	34:17	65:19
17	30:18	95:19	59:8	110:13
113:11,21	104:20	governance	62:15	happens
frankly	Generally	6:16 51:9	96:17	86:12
94:1	14:5	governed	groups	87:3
Frederick	general's	52:12	95:22	109:17,24
2:11	97:2	governing	96:8	happy
friend	generic	27:23	guess 34:2	109:16
46:6 83:2	49:5	government	38:23	hard
friendly	George 2:9	16:17	41:12,14	16:3,7,18
32:3	getting	20:24	47:24	,25
friends	15:10	21:20	53:19	18:3,5
97:12	41:16	28:4	67:7	52:25
front	51:23	61:17	76:19,21	76:19
64:23	59:23	68:19	91:17	79:2
89:13	60:3	69:1 74:7	92:8	112:9,18
frustratin	62:13	77:15,18	105:25	hardest
g 22:11		Government	111:3	34:18
39:6		's 7:9	113:13	
FTEs 37:5			guidance	
fulfill				

harm 16:14	43:13	helps	53:18	human
having	heart	103:17	59:7	81:17
12:12	14:21	here's	61:12	hundred
16:5	15:4 66:6	31:4	69:25	9:5 13:14
19:17	heavily	101:6	71:13,19	19:12
30:25	47:22	104:18	72:2	33:7 35:6
32:14	heavy	109:10	73:23	36:25
34:4	30:10	he's 64:24	75:10	37:1,5
42:9,18	heightened	80:8	78:6	57:6 69:7
50:8 53:9	55:11	93:20	79:4,15	82:9
60:9 62:2	held 1:16	hey 54:25	80:4,7	93:13
72:18,25	28:12	high 14:7	92:16,22	106:5
77:7	help 5:8	16:1	99:10	108:1
80:19	8:14 16:6	31:2,4	101:15,20	hundreds
90:8,10,1	31:16,18	48:13,14	,25	38:5
3,19	33:18	53:9	102:1,4,9	59:17
98:12	35:15	77:16	,17	hung 37:17
106:1	43:20	96:5,24	106:11,18	Hurontario
111:22	44:6	higher	,20,22,25	1:19
112:9	47:7,13	97:4	107:12,17	Hydro
head 42:6	50:4	hire 39:12	,25	28:3,4
64:23	51:24	82:11	108:14	
heading	61:8,19	hiring	110:21,25	<hr/>
11:8	62:3	12:7	111:6,14,	I
heads	79:20	history	17	<hr/>
29:18	80:22	48:3 49:3	113:11,19	ICs 97:21
67:6	81:25	69:21	,21	IC's 96:3
headway	87:17,24,	hits 42:6	honoured	I'd 37:2
66:12	25 88:5	hive 61:10	18:16	83:25
health	92:17	Hmm 79:4	hope 35:1	103:4
113:2	97:21	hold 70:21	87:9	idea 38:14
hear 26:18	helped	holdings	109:24	41:17
33:12	63:2	70:21	hopefully	44:25
36:22	helpful	hole 92:15	18:17	105:2
65:14	20:1	HONOURABLE	34:20	ideas
85:22	31:19	5:3 7:8	85:6 88:4	69:17
107:1	34:10	15:11	hoping	identified
110:9	35:14	26:7,9,17	84:21	21:9 63:5
heard	43:23	27:6,8	hospitalit	72:11
41:19	58:20,24	29:12	y 13:7	84:23
50:2	88:4	32:19,21	Houghton	identify
67:20	helpfully	33:14,15,	2:11	21:1
72:5	21:24	20 37:21	hour	I'll 10:1
79:17	helping	38:22	51:11,12	15:7 37:1
86:11	17:11	52:10	hours	41:23
98:7	62:7,9	huge 105:7	113:14	50:19
107:5	87:22			51:10
hearing				54:20

62:15	y 47:20	39:3 45:4	69:13	8:24 33:8
87:3	89:15	48:22	97:13	inquiry
91:18	implemente	71:7	industry	1:3 2:3,4
94:4	d 47:5	inconsiste	10:15	5:8
100:4	79:20	nt 56:14	inequities	7:17,19
105:10	importance	incorporat	85:7	19:21
110:4	13:5 62:2	ing 25:23	inevitable	22:22,23
I'm 5:8	important	increased	16:19	25:20
9:8	11:1,11	10:7 43:1	inevitably	27:1 47:1
15:10,14	25:13	incredibly	20:23	54:11
18:16	32:17	104:21	influence	79:10
21:14	35:25	indeed	45:24	inside
26:18,21	50:7 57:3	36:8	68:3 74:6	26:19
29:7,13	70:20	independen	85:13	83:5
30:15	72:9	t 7:11	89:10	insights
33:12	96:19	11:21	informatio	18:17
34:7	104:10,11	38:8,21	n 9:23	97:2,16
41:4,6,24	,15,22	indicate	10:18	instance
52:2	110:2,7	97:6	15:17	25:6
53:20	impose	indicated	32:13,17	43:11
56:9	7:25	14:6	45:5	51:2 86:6
57:11	improper	18:16	80:13,17	96:2
60:3	45:24	37:8 45:2	86:18	112:7
69:14	improvement	51:18	109:10	instances
71:11	t 109:25	64:12	113:16	88:10
74:15	inadequate	100:24	informed	instead
75:24	ly 12:8	indicating	105:8	29:3
81:18	inappropri	58:13	inherent	institutio
86:13,22	ate 12:7	indirect	91:18	n 16:14
87:6	include	23:24	inhibiting	17:19
88:1,14	10:3 21:4	24:20	26:16	74:7
90:24	26:3	45:13	initially	78:10
91:25	45:3,9	89:6	12:9	81:14
92:12,17	47:11	individual	27:16	institutio
93:6	50:10	11:7	initiate	ns 77:18
98:20	54:18	19:18	10:11	79:19
99:2,8	63:23	24:18	initiated	integrated
100:17,25	73:13,25	30:19	8:25	25:1
104:8	74:1	36:6 41:9	initiative	integrity
105:12,15	109:10	101:21	7:20,23	5:25
108:5	included	individual	innovation	6:5,7,23
111:22	26:5 44:1	ly 34:8	40:21	7:18
immediate	63:4	90:23	input	8:6,18,21
97:3	including	individual	100:11	9:3
immediatel	10:25	s 28:15	inquiries	10:10,13
y 30:4	22:21	30:1		12:1
impact	32:15			15:19
72:19				
impartiall				

16:6,9,22	55:19	47:12	g 49:12	ed 12:12
17:10,16,	inter	48:18,22,	51:20	investigat
19,20	55:25	24 49:5,9	61:15	ion 7:22
19:13	interacted	50:14	70:6	11:20,21
21:7	31:15	52:13	interestin	12:2 54:7
22:12	interactio	53:21	gly 97:11	investigat
23:5 25:4	ns 81:17	55:12,14,	interests	ions
27:17	interest	21,25	18:4	10:8,11
30:18,21	3:6	59:1,11,2	20:9,10,1	11:22
34:16,17	5:13,21,2	0 60:10	4,18,24	investigat
35:7	2 6:2	63:4,8,10	21:17,21	ive 10:5
36:1,20,2	7:21 8:7	64:3,4,5,	22:20	invited
3 37:7,14	10:25	9,10	24:21	65:20
38:25	12:4,6,9,	65:3,4	25:17,23	involve
39:1,3,24	16,23,25	66:5,13,2	42:25	11:5
40:6,14	13:1	0,23	45:16,19,	involved
46:7	14:18	67:3,17	22 55:7	11:4
47:6,14	16:2,22	68:19	67:18,24	12:13
49:22	18:19,21,	72:10,16,	70:3 71:8	28:1 41:1
50:14	25	24	73:10	106:17
51:1,4	19:10,23,	73:1,12,1	92:25	involving
52:6	25	3,22 74:9	94:10	6:8
55:16	20:3,6,9,	76:9,14,2	95:10	isn't
56:1,6	11,15,19	3 77:3	102:11	31:13
57:9	21:11,13,	79:6,21	104:6	48:6
62:3,14,1	24	81:2,20	internal	53:22
6,17,19,2	22:5,16,1	82:25	11:19	61:20
1	8,19,25	83:9	interpreta	issue 34:4
63:22,24	23:9,12,1	84:20,21,	tion 34:4	40:10,19
64:7,17,2	4,25	23	interprete	41:10
5	24:7,12,1	85:5,11,1	d 45:25	45:5
65:10,17,	3,15,18	5,19	interrupt	51:25
22	25:9	86:4,14	15:10	63:9
66:9,14,2	26:4,5,25	87:5	interview	68:25
4 67:2	27:12,18	89:3,7,14	51:10,11	73:21
74:11	28:22,25	,18 93:1	intimate	81:8
81:24	29:1,9,17	94:15	28:1	83:20
85:25	,19 35:18	95:9,13	intrigued	92:4,5
87:21	36:13,16,	96:4,23	88:14	95:24
88:11	18 37:24	97:7	introduce	98:6
91:2	39:5,11	98:4,24	5:23	99:17
93:6,15,2	41:1,11,1	99:4,5	introduc	107:19
2 96:10	4 42:14	102:24	g 62:25	111:12
104:12,16	43:6,7,9,	103:7,11	investigat	issues
,22 106:6	15,24	104:7,20		40:7
108:9,10,	44:3,10,1	106:15,23		42:21
23,25	6,20,23	interested		47:8
111:23	45:13,21,	29:13		
112:10	23 46:19	49:12		
113:1,9		interestin		
intention				

48:16	54:3,24	July 10:5	Kingston	53:23
81:21	58:18	jump 26:21	66:11	54:7,8,12
83:22	61:14	29:10	knew 96:7	55:7
86:24	66:16	40:23	knowledge	108:3
96:6	70:5	jumping	5:7	lawyer
102:21,24	72:1,13	91:1	<hr/>	39:12
it'll	74:3,5	June 14:14	L	87:22
26:9,10	76:18	junior	land	lawyers
86:3	79:5	82:15	70:20,21	40:12
97:21	80:2,6,9	jurisdicti	language	lay 36:5
I've 15:17	86:7	on	55:19	layer
27:14	91:17	8:2,8,15	largely	47:24
31:21	92:11	23:17	23:16	lead 15:7
35:9	94:4 95:6	39:4	28:15	54:6,10
46:14	98:15,18	95:11	30:11	77:9
47:3 51:6	99:1,14,2	105:13	85:10	leaders
80:20	4 100:3	106:10,16	larger	13:25
81:8	103:3	108:4	35:20	14:3
92:14	105:10	jurisdicti	66:12	leadership
100:15	107:24	ons 7:10	69:18	6:18
<hr/>	108:2,15	9:20	107:5	leading
J	111:20	34:22	largest	68:20
Janice	job 15:24	67:24	13:13	leaned
62:17,22	16:2,7	70:8	last 17:22	39:9
63:2,17,2	17:18	105:23	32:24	leapt 91:5
3 66:13	61:9	107:5	37:11	learn
January	74:8,14,1	jurisprude	44:12	108:22
68:24	6 75:25	nce 48:19	56:13	110:12
Jeff	109:5	Justice	90:21	learned
62:16,22	113:17	1:7 6:25	107:13	78:24
63:1,16,2	jobs 71:1	7:1 15:1	late 50:16	learns
3 66:14	John 2:4	18:16	later 27:7	108:23
Jepson 3:7	Jubilee	19:2,5	28:7 37:2	109:15
5:14,24,2	6:18	26:18,24	46:8	least
5 6:4,6	judge 6:24	28:5,19	60:14	40:14
14:24,25	16:10	47:21	latest	51:2
15:13	34:2	58:12	77:13	55:16
19:24	38:20	<hr/>	law 6:16	58:10
25:2	44:24	K	10:9	87:15
30:23	107:3	Kate 2:3	24:11,17,	90:21
32:20	judges 7:3	key 44:15	25	104:22
34:1	106:14	68:11	25:17,23	leave 25:7
38:23	judicial	96:8	41:18	30:15,21
41:23	1:3 19:21	killer	43:10,18	50:20
42:4	22:23	10:16	50:9	51:13
46:13	25:20	kinds 62:7	52:12	
48:1	110:17			
49:19,21	111:1			
52:16				

61:5 89:8 97:13 leaves 29:8 leaving 90:22 led 19:4,6 68:9 legal 38:8,18,2 1 39:25 40:3,11 42:23 48:23 49:12 66:2,19 89:17 99:17 legally 92:12 legis 9:23 legislatio n 8:4,5,9 23:16,19 24:3,10,1 6,24 29:18 44:20,23 68:14,22 69:4 85:6 89:21 99:16 101:6 legislativ e 7:12 8:20 9:1,24 14:12 102:2 legislator s 50:15 legislatur e 8:11 28:24 32:25 33:1 length	36:25 less 13:21 21:12 81:21 lesson 78:24 109:15 110:12 let's 42:23 44:14,19 74:9 86:16 111:18 letters 34:6 level 14:6 19:19 40:22 50:21 51:24 56:9 67:11 68:2,3,14 77:17,19, 25 86:22 96:5 101:16 102:16 105:4 liberty 26:21 Libman 2:5 5:11,19 14:22 54:20 71:9 72:3,4 76:7 78:4 79:16,17 83:23 84:6,10,1 5 92:24 94:25 96:21 98:7,17,2 5 99:20 100:1	102:19 103:19 107:10 life 106:13 light 91:5 likely 12:24 limit 69:17 limited 23:19 57:9 limits 29:18 Linda 43:12 Linden 79:7 line 20:5 31:3 75:2 lines 64:8 95:5 links 42:22 list 3:3 4:1 49:25 literally 57:23 83:8 litigate 111:10 litigious 111:11 little 29:19 35:16 40:25 52:7 65:14,15 84:16,22 88:9 90:6 98:8 113:17	live 16:3 lived 107:2 load 30:10 lobbying 10:14 95:21 lobbyist 6:8 7:23,24 10:1,4,15 43:12 95:23 96:7 lobbyists 7:13 lobbyist's 10:2 local 6:16 35:23 36:9 44:17 45:11 57:8 65:21 66:6 68:19 69:1 81:3,4 long 54:15 56:23 66:21 longer 49:18 looming 90:15 loose 108:10 lose 79:3 lot 23:1 36:5 42:23 45:19 48:6 52:1 69:1 74:10	81:16 86:9,10 103:13 109:13 lots 73:6 105:20 love 91:16 lucky 15:21 62:20 lunch 71:22 luxury 31:23 34:13 <hr/> M <hr/> Madam 19:2 58:12 Magder 92:8 94:18 magnitude 94:5,12,1 6,19,22 95:4,7,16 96:24 mail 112:18 main 25:6 75:24 78:3 maintained 76:11 major 76:12 102:23 maker 72:24 73:8 makers 73:17,25 manage 60:22 63:7
---	---	--	---	---

managed	79:4,15	71:9 72:4	16	91:2
13:1	80:4,7	76:7 78:4	McGrann	104:16
61:24	92:16,22	79:17	2:3	112:10
management	99:10	83:23	MCI 92:4	meetings
6:10	101:15,25	84:6,10,1	MCIA 24:5	9:12,19
75:1,8	102:4,17	5 92:24	41:4	32:16
manager	106:18,22	94:25	42:11	33:17
97:3,4,22	107:12,17	96:21	45:12	82:21
98:2	,25	98:7,17,2	46:18	83:19
103:9	108:14	5 99:20	47:13	104:17
managers	110:21	100:1	48:25	111:24
97:14	111:6,14,	102:19	63:9	meets
mandate	17	103:19	66:22	60:24
8:5,6	113:11,21	107:10	72:6 75:4	member 9:1
11:10,12	Marron 2:9	may	95:1	23:18
12:15	masters	11:5,18,2	meal 13:6	24:18
104:22,24	55:10	0 12:17	mean 16:25	32:24
mandated	material	25:25	52:15	36:6
92:13	5:6 11:6	31:14	60:15	38:19
mandates	materials	37:9 41:5	70:8 95:3	44:22
8:3 10:21	54:23	45:20	99:24	51:5
13:24	Mather 2:4	50:24	112:16	58:23
14:12,17	matter	63:14	means	62:15
manner	10:19	71:22,23	43:15,17	65:4,16
51:7	17:7	78:18	73:13	82:8 83:6
March	27:16	106:4	80:23	85:8,9,24
19:14	42:14	maybe 32:9	89:2	86:12
38:7	65:9	46:6	mechanism	88:13,20
39:20	67:16	71:5,11	38:10	90:7
104:12	67:16	86:18	medal 6:18	93:11,24
Marrocco	77:15	109:3	media 32:9	95:19
1:7 5:3	86:2,18	mayor 41:2	96:15	97:19
15:1,11	87:3	113:1	109:18	members
26:9,18	93:3,7	McCallion	meet 17:11	8:19,23
27:6	97:24	41:2	31:18,24	9:4,12
29:12	matters	McDowell	32:22	15:21
32:19	6:7 10:12	2:13	51:5	24:2,5,14
33:14,20	11:5 16:8	40:23	62:16	,23 25:6
37:21	24:23	42:2	80:22	30:6,20
38:22	34:12	47:17	meeting	32:23,25
52:10	37:21	49:15	9:5 23:23	33:17
53:18	44:1,19	50:11	30:5	34:5
61:12	63:24	88:6	32:23	35:23,24
69:25	68:4	90:5,14	64:21	36:12
71:13,19	74:25	91:10	83:7	38:6
72:2	83:9	92:6,14	85:14,23	44:16,17
73:23	Max 2:5	107:14,16	86:17	45:11
78:6	5:19	110:14,24		46:3,10
	14:22	111:2,13,		51:8,12
	54:20			54:14

57:8,25	message	55:6	months	49:8,17,2
58:11	16:18	minutes	60:13	2
60:6 61:7	25:7	71:14	morality	50:14,21
63:25	met 22:14	86:3	16:11	52:1
64:20	meticulous	misconduct	morning	53:21
68:3	10:9	76:25	5:20	56:9
70:11,24	M-hm 33:14	77:10	14:25	57:10
71:8	108:14	misnomer	15:1	61:20,21
72:14	miles	23:15	motion	65:3,8
73:5	107:2	Mississauga	113:3	66:20
74:24	mind 33:10	a 19:6	mouthful	67:11
75:15,21	35:10	22:22	94:9	68:2,15
82:5,11	36:12	25:20	move 13:19	73:12
85:21	41:22	41:1,2	14:23	74:23
88:4,10,1	62:9	mistake	45:1	76:13
5,21	80:19	54:1	moved 41:7	77:2
90:22	83:1 93:7	mistakes	64:8 82:7	80:14
91:12	94:23	79:1	113:3	85:11,15
101:10,11	99:23	misunderst	MPP	87:4
member's	mindfully	anding	7:17,18	88:19
8:25 36:4	81:22	100:18	MPPs 6:8	89:3,6
64:23	minimum	mix	9:6	90:3
66:6 73:7	49:17	100:12,20	munic	92:21
Members	Minister	model	107:24	94:15
7:18	27:24,25	31:22	municipal	98:19,23
8:6,21	61:4,5	40:17	5:21	100:22,24
27:17	ministers	70:17	6:2,16	103:21
65:13	14:3	100:8	17:17	104:2,4,1
memorandum	60:17	modelled	18:18,21,	4,18,20
65:11	61:8,19	59:4	25	105:6
mental	62:11	models	19:5,10,2	108:8
83:4	70:23	70:8	2	municipali
mention	102:15	modified	22:15,17	ties
24:4	minister's	34:22	23:3,9,14	19:13,15
37:10	10:22,23	11:4	,22	31:11
mentioned	11:4	moment	25:8,21	33:22
20:2 79:9	75:14	18:5	26:5	34:16,20,
mentioning	Ministers	monetary	29:17	21 35:20
63:7	13:25	24:12,13	30:12	36:10,22
mentor	Ministry	money	34:16,17	57:7,15,1
82:15,23	11:19	36:22	37:23	6 62:23
mere	12:1,13	52:2,5	39:5	69:6,7,8,
22:7,8	minor	64:25	40:22	9,13,17
merger	18:24	month	41:9 42:9	70:16
12:15	minute	28:13	43:7	72:8
mess 16:18	51:18		44:9,15	78:18
			46:14,17	87:11
				89:17
				100:25
				101:9
				111:25

112:4,21 113:5 municipali ty 29:25 30:24 38:11 39:2 47:8 75:1 78:9,17 79:12 104:5 105:6 113:1 municipali ty's 96:13 myself 33:16 <hr/> N nail 42:6 Napanee 107:3 nature 26:10 navigate 87:18 nearby 83:3 necessaril y 53:22 necessary 10:19 86:12 negotiable 69:20 neutral 40:20 53:6 103:5 109:5 newly 6:13 29:15 30:6,20 nigging	51:25 night 50:17 75:23 ninety 101:8 nitty- gritty 88:24 nobody 18:5 non 64:23 non- compensat ion 93:10 noncomplia nce 10:12,18 non- disqualif ied 46:9 non- disqualif ying 63:10 64:4 84:21 85:18 86:4 92:25 93:1 none 58:25 non- political 62:8 non-profit 93:8 normalizin g 81:1 North 68:11 note 26:23 98:1 nothing	19:1 60:10 61:3 68:1 notice 78:7 noticed 46:14 notion 95:12 notions 40:25 41:5 notwithsta nding 85:24 November 1:23 101:3 nowadays 48:12 np 2:7,9,11, 15 <hr/> O oath 47:18 objective 77:20 obligation 26:4 59:11,14, 25 74:8 obligation s 9:7 11:1 17:1,12 31:19 32:2 43:9 46:25 47:16 56:16,21 57:1 79:21,25 80:18,22 87:20 91:6 99:2	obliged 27:15 28:18 observatio n 78:15 111:8 obtaining 32:7 obvious 31:13 50:9 obviously 13:16 63:9 occasion 90:19 occupation al 113:2 occupied 49:13 occurs 53:19 o'clock 71:21 O'Connor 3:8 5:15 6:11,12 14:24 18:14 23:7 29:23 35:19 38:4 44:7 49:20 50:12,19 57:5 63:20 68:17 74:4,21 78:14 82:3 85:2 88:18 90:12,17 91:15 92:20 93:4 95:17	96:25 100:21 103:1 104:8 111:21 October 9:9 30:3 offer 38:24 88:5 offering 15:15 office 8:10,18 10:8 11:3,16 12:16,17 14:2,9 15:23 25:12 30:8 33:9,10,1 8 38:11 40:15 45:14,24 51:14 61:16 65:10 82:15,22 83:19 86:13 101:8 104:2,4 officehold er 16:24 39:24 41:11,13 72:17 73:2 74:13,17 officehold ers 17:11 76:9,11 77:24 officer 7:11 offices 9:25
--	--	---	--	--

31:17	Ontario	40:3,12,13	107:1	84:11
official	1:20	opportunit	Ottawa's	pager 83:5
16:4	6:6,7,14,	ies 32:14	51:4	paid 64:24
20:17,25	17,20,22,	95:25	97:11	74:15
53:13	25 8:8,11	opportunit	Ours 9:20	95:22
67:22	10:20	y 32:1,16	ourselves	panel 3:6
109:7	11:9,13,1	54:21	55:3	5:13,20
officials	4,16	opposed	59:21	15:2,3
6:4 7:12	13:13	27:19	73:21	panelists
8:11 14:7	18:20	opposition	outline	5:5,23
16:19,23	19:14	13:25	8:1	8:16
17:7	34:15	14:3	outlined	panelist's
21:5,6,16	45:7	option	64:18	54:21
25:18	46:17	85:5	outreach	panel's
30:22	58:17	options	25:5	71:24
32:11	59:14	85:4	outset	parcel
42:15	62:23,25	order 10:1	105:17	81:1
52:23	67:11	78:8	outside	Parker
56:3	68:2,20	organizati	56:14	21:22
57:13	70:23	on 59:12	95:1 99:3	Parker's
68:15	87:11	93:9	overlappin	26:24
73:5	98:20	108:10	g 45:19	28:5
75:12	100:10	organizati	overly	parliament
oh 24:6	106:14	ons 21:8	109:22	75:15
37:13	108:9,21,	28:16	overly-	parliament
65:14	24 109:14	orientatio	narrow	ary 14:3
96:15	111:1	n 33:1	22:24	participat
okay 7:8	Ontario's	36:9 60:7	overseeing	e 63:12
15:1	7:14	83:12	6:2	66:1,22
38:22	12:19	originally	overturned	85:8 86:2
72:3 80:3	open 6:19	13:12	27:4 28:7	89:10,15
89:1	51:13	88:25	overview	93:2
101:25	60:16	others	14:16	participat
old 55:10	83:7	33:22	overwhelmi	ing 65:8
one-and-a-	104:17	34:2 47:2	ng 80:13	98:4
half-hour	111:24	otherwise	<hr/>	participat
33:3	opening	9:16	P	ion 73:7
one-pager	operating	78:11	<hr/>	particular
57:23	82:10	Ottawa	p.m	25:15
ones 18:1	98:12	6:13	71:16,17	35:15
50:4	opinion	30:2,17	113:24	79:8 87:2
109:8	22:13	36:10	page 3:2	106:24
online	37:24	64:7 82:8	4:2 17:15	particular
35:22	38:9,18	93:5 97:1	31:22	ly 41:22
58:5	39:13,16		83:8	61:7
78:22	40:20			
113:4	48:23			
	opinions			

96:24	pending	10:13	37:10,18	points
party	93:3	12:8	60:13	49:24
27:23	people	16:12	phoned	policies
53:6	15:22	22:4,8	112:12	56:17
pass 59:25	16:7	28:10,12	pick 48:11	57:18
101:1	26:11	40:18	79:8	policing
passion	28:1	44:21	picked	87:22
15:5	29:19,22	53:19	16:20	91:20
past 15:19	33:11,23	56:2	picking	policy
47:4 49:1	36:5	87:16	9:17	56:18
105:21	37:19	94:12	36:19	political
path 50:16	45:19	96:16	piece 8:4	11:2
78:18,25	55:18,25	103:5	pieces 8:3	politicall
Paul 2:7	57:20	personal	44:15	y 91:23
pause 55:5	59:12,18	17:6 18:6	pipe 30:16	politician
76:16	60:24	20:15	pitfall	s 58:15
84:4,8,13	70:2 96:7	50:23	55:15	politics
101:18	104:3	56:6 73:3	places	92:21
102:7	112:24	81:10	22:21	pop 27:23
paused	people's	103:23	25:19	popping
37:16	29:17	personally	71:1	60:24
pay 27:20	per 28:12	16:20	81:25	portfolios
37:2	29:6	72:19	planner	61:22
38:11,12	perceived	persons	97:9	portion
39:15	27:18	102:16	play 81:18	76:8
54:2,17	28:22	person's	plays 36:1	posed
79:11	45:9	10:17	please	76:13
peculiarit	52:18	103:9	61:13	poses 62:1
ies	64:13	perspectiv	pleasure	posit
66:3,19	perception	e 15:14	15:2	29:24
pecuniary	91:8	18:12,13	point	position
22:16	perhaps	27:14	19:20	6:14
23:24	8:12 46:6	38:24	27:13	possibilit
24:7,15,2	69:16	51:9	28:7	y 19:21
1 46:18	period	61:15	29:10	26:2
65:3 89:5	30:9	67:10	33:4 37:9	possible
94:16,20	108:16	85:19	64:20	21:2
95:10	permanent	96:22	65:16	25:22
penalized	34:14	100:23	68:21	81:9
38:20	permission	persuade	71:24	post 49:1
penalties	96:3,10	50:5	80:16	post-
7:25	permit	pertain	84:16,17	employmen
23:19	99:18	43:6	89:11	t 11:1
penalty	persistent	pertaining	96:13	
109:11	20:7	22:19	109:16	
	person	75:13		
		phone 9:17		
		36:19		

potent 48:15	64:14	principles 62:18	probably 13:22	profession al 37:19
potential 20:9,19,2 3 29:1 39:11 54:16 94:10,21 97:7	preparatio n 17:24	63:23 66:14	38:5 39:14,16 58:23 69:10 70:22 82:7 83:14 94:9 97:18 100:23 105:7	56:20 74:20
potentiall Y 53:15,17 63:11 67:6 99:5	preparator y 82:20	prior 23:5 38:7 43:16		profession s 70:25
power 8:22	prepare 101:9	priority 80:18		profile 96:6
powers 10:6	prepares 11:23	privacy 107:19		profit 64:24
practical 96:21	preparing 70:7	private 11:5 20:15 41:11,12, 14 59:19 73:13 97:10 102:11,12	problem 12:12 33:25 41:12 42:7 91:9 107:6	program 31:20
practice 18:9 78:24 86:8,12 111:9	prescribed 10:9 47:19	privately 34:7	procedural 54:6 85:7	programs 59:22
practices 34:18 79:23 80:10 106:8 108:20	present 42:7 98:16	privatizat ion 28:3	procedure 10:10 51:16	prohibit 10:13
precisely 29:20	presentati on 14:23 15:7 54:22 72:5 78:5 79:18 83:25 98:8	privilege 64:21 113:20	procedures 57:19	project 97:9
predecesso r 28:19	preserve 46:24	privileged 15:18	proceed 84:24	promote 16:16 41:13 78:1
predictabi lity 47:15 53:10	presiding 6:25	proactive 34:13 67:12 69:23 78:23 85:20 94:3 96:19 98:9,13,2 1 99:23 101:16	process 9:8,9 10:4 24:22 44:11 57:25 65:18 66:11 68:10 76:13 82:14 89:16 97:5 100:19	promoting 41:3,11
predictabi lity's 49:6	pretty 20:12 94:18	proactivel y 67:23 102:14	produce 33:19 52:8 78:21	properly 20:16 21:3 22:4
pre- existing 103:22	prevail 67:7	proativene ss 96:12	productive 9:13,18	property 45:6 70:21 83:3
preferenti al 45:22	prevent 79:13	probab 40:2		proportion 77:20
	previous 24:2			proposing 86:6
	price 39:16			propositio n 15:21
	primary 73:1			protecting 76:21
	principle 76:20			provide 8:22 9:7 11:6 18:13,17 32:16 40:19

42:17	68:14	68:6,16	purport	quietly
65:5 68:5	70:17	69:16	16:10	68:24
76:19	75:15	71:7	purpose	quite
82:4	79:6 95:9	72:14,16,	78:3 98:2	28:21
86:10	99:15	17	purposes	39:6
87:24	101:16	73:2,4,6,	19:8	46:21
101:7	105:3	16	push 78:22	56:19
105:19	provincial	74:9,13,1	puts 77:23	61:24,25
provided	ly 59:3	7,20 75:9	putting	94:1
6:9 11:25	67:21	76:9,10,1	16:2	100:9
61:18	75:13	1	76:24	quoted
79:19	provision	77:11,14,	puzzle	27:3 28:6
86:1	43:24	17,18,24	57:3	<hr/>
provides	47:12	78:8,19	<hr/>	R
108:3	48:24	79:2,10	quagmire	<hr/>
providing	49:5,9	85:21	72:25	rabbit
10:23	63:4	89:7	Q	92:15
64:14	provisions	94:10	quagmire	radar
104:1	84:1	96:12	72:25	41:21
province	public	99:3	Queen's	raise 53:3
6:6 36:24	6:19	101:8	6:17	56:5
43:23	7:13,19,2	103:13	question	81:13
45:7 47:4	0 9:24	105:25	14:8	raised
50:1	10:17,20	108:5	37:12	86:5 98:6
56:15	11:8,13,1	109:6,18	40:24	raising
67:21	6,19	110:8	42:6,10	81:9
68:20	12:1,3,4,	112:5	50:12	range 37:1
90:18	14 13:5,7	publically	54:4 57:4	ranging
101:5	16:2,13,2	93:25	70:6 88:7	63:7
provinces	3,24	98:5,6	92:8 94:5	rate
67:24	17:2,6,8,	publicatio	95:1,7,16	101:23
68:13	11	n 107:21	98:16	rather
Province's	20:14,17,	publicity	104:9	30:9
106:5	18	111:19	107:13	37:2,25
Province-	21:7,8,16	publicizat	110:15	71:21
wide	,19 24:23	ion 110:7	question-	reaction
108:6	25:18	publicly	and-	81:12
provincial	30:5,20	34:9	answer	readily
7:9 13:8	32:9	85:23	26:15	46:4
27:13	35:24	public's	questions	reading
31:22	39:24	72:21	26:12	91:4 93:6
38:25	41:10	published	51:15,20	real 15:2
40:17	55:11,12,	9:25	56:5 60:2	16:5
45:2	13 56:21	14:14	71:10	20:8,11
50:21	58:3	107:18	103:11	21:13
58:19	59:14,20	113:8	107:11,14	40:21
61:16	62:10	pulled	quickly	
62:10	65:14	92:14	46:10	
	67:25			

41:17	62:7	40:16	74:1	32:15
42:5	recall	44:14	referral	37:6
46:12,15	38:13	93:23	11:24	regularly
61:15	receive	112:3,23	referred	90:22
105:12	10:10	113:7	11:18,22	regulated
realize	11:14	recommenda	20:8	56:16
53:5	received	tions	refining	regulation
really	6:17 12:9	11:25	24:22	43:25
23:4	25:25	46:3	reflecting	45:2 50:1
25:13	68:22	89:24	25:22	reinforces
30:24	90:9	109:11	refresher	62:2
31:19	93:13	recommende	83:21	reiterate
32:17	110:11	d 38:6,8	regain	18:15
34:2	receives	113:10	78:8	rejoicing
41:4,6	11:3,17	reconcile	regard	13:20,21
47:13	receiving	20:16	90:8	relate
48:12	9:4	94:14	regarding	16:23
51:20	103:10	record	10:24	34:24
54:4 57:3	recent	44:2 71:6	11:15	related
58:20	36:23	86:20	12:22	45:19
62:4	recently	91:4	regards	51:7 92:5
76:21	7:4 19:1	recorded	23:17	relates
81:8,11	65:20	88:21	30:10	64:11
86:20	recessing	92:18	45:18	relation
92:6	71:16	recusal	57:14	68:4
96:19	recognitio	95:2	79:21	relations
103:14	n 6:18	96:22,25	85:2,18	30:15
105:24	20:22	recusing	97:8	relationsh
108:24	63:10	101:24	regime 7:9	ip 64:15
109:16	103:9	redacted	11:11	65:5
113:18	recognize	9:22	19:17	95:14
reason	15:25	reducing	22:19	relationsh
73:21	33:23,24	76:25	60:2	ips
81:12	35:11	re-elected	98:10	103:23
reasonable	39:23	95:20	99:22	relative
22:2,8	40:7	re-examine	104:7	44:9
28:11	79:20,24	28:24	registrar	relatives
32:13	94:8	refer	10:3	70:1
40:18	103:14	108:21	43:12	relax
94:12	107:7	reference	registrati	105:19
reasonably	recognizin	29:16	on 6:8	relaxed
22:3	g 33:21	referenced	7:24	17:1
23:10	81:12	23:15,20	10:1,4	release
28:9	83:16	75:5	registry	34:9
100:9	recommenda	references	95:23	
107:22	tion		regular	
reasons				
39:17				
42:25				

released 19:4	45:14	reprimands 54:17	34:10 35:2,14 105:19	46:15 50:13 53:12
relevant 72:11 83:25 99:5	removing 23:18	reputation 50:24	respect 7:19,23 12:11 26:24 47:9	reticent 51:2 112:21,22 113:6
relied 27:11,12 47:22	render 27:15	request 7:18 112:19	26:24 47:9 75:12 101:21 104:1	reveal 62:15
reluctance 52:11,18 54:18	rendered 38:19	requesting 33:8	require 49:7 68:14 100:23	review 8:15 13:5,6,15 ,16 14:1
reluctant 110:9	repealed 68:24	required 10:9 19:12 43:23 57:7 98:14 99:13	respectful 45:4	56:10 100:7
rely 37:20 38:16	repeat 5:4	requirements 34:15 98:19 101:22	response 14:9	reviewed 17:24 56:19
relying 78:16	repeatedly 69:14	requirements 11:18 57:10 58:16	responsibi lities 30:11 65:7 85:1	reviewing 14:2
remarks 29:24 32:22	rephrase 99:21	requirements 11:18 57:10 58:16	responsibi lity 11:14 12:22 75:7 82:22 103:10	reviews 11:17,23
remedies 82:4	replaced 13:20	requires 18:9 43:25	responsibl e 6:1 8:19 9:3 74:25 106:13	Rick 3:8 5:15 6:11 15:6,9 17:15 18:12,13, 14 23:2,7 29:23 32:4 35:5,19 37:12 38:4 42:20 43:22 44:7 49:20 50:19 54:25 57:5 63:18,20 68:17 74:4,21 78:14 79:9 82:3 85:2 88:18 90:12,17
remedy 54:4,12	report 5:9 11:24,25 12:3 14:11,13 19:3,6 21:23 22:22 28:23 42:12,13 43:13 49:2 58:13 82:25 109:4,5 112:1,8,1 1 113:1,2	requiring 99:12	restore 78:11	
remember 27:3 31:3,5 38:19 109:19	reporting 110:19	research 100:7	result 12:5,15 33:19 66:8	
remind 32:1 33:16 34:10 36:11 37:6 83:22	reports 14:6 36:24 52:6 108:4,25 109:2 111:23 112:5	residents 69:10 103:24 113:9	results 110:20	
reminding 60:14	represent 110:5	resign 60:19	resuming 71:17	
reminds 106:12	represente d 69:1	resource 58:21 103:6	retain 44:15	
remove 44:22 72:24		resources 30:1	retained 33:5	
removed			reticence	

91:15,19	99:7	saw 42:2	88:18,19	annual
92:20	royal	54:11	89:20	83:15
93:4	68:22	scale	90:1	send
95:17	rule 7:21	94:22	sections	34:6,7
96:25	74:18	schedule	30:12	86:17
100:21	ruled	51:13	69:3	112:17
103:1	27:16	scheduled	sector	sending
104:8	rules 7:14	101:3	11:5	9:17
111:21	8:10	scheme	12:14	senior
riding	10:25	47:21	13:5	56:25
75:18	12:23	105:2	17:17	68:16
rightfully	17:2	scope 72:5	18:18	74:1
16:1	40:21	screen	22:15	75:1,8,12
ringing	53:23	23:10	46:15	85:16
35:16	54:6 58:2	84:1	59:19	98:1
rise 16:13	59:11,20	screens	73:5	102:5,11,
21:1	74:11	60:23	97:10	15
40:10	75:13	scroll	102:12	sensationa
64:20	85:10	84:16	Security	lized
94:11,21	87:20	scrutiny	7:5	109:23
112:1	95:9	40:19	seeing	sense
risk 53:15	105:19	seas	34:14	45:25
72:19	run 15:22	106:21	63:21	58:4
76:25	55:15	season	108:20	62:24
risks	104:2,3	106:19	seek 7:13	78:12
76:12	105:9	seat 36:4	32:3,11	serious
road	rung 79:25	89:8	35:17	76:25
101:14	Ryan 2:14	seats	seeking	77:9
robust	<hr/>	90:23	21:4	seriously
56:19	S	second	31:25	80:11
role 6:1	safety	11:8	32:6	servant
10:6	113:2	92:25	40:11	7:20,21
12:21	sake 49:7	secretary	55:24	servants
21:10	sanction	12:18	seems 87:8	7:13 13:7
34:14	90:10,13	61:1	110:18	21:7
35:25	Sandra 2:9	section	seen 76:1	59:21
84:25	sanitized	23:16	seguay	62:10
rolling	110:22	57:12	67:8	68:16
111:4	sat 68:23	64:2	self 10:11	74:20
room 61:6	satisfacto	65:6,7	self-	103:13
83:7,21	ry 71:24	68:18	determine	serve
round	satisfied	69:2	58:24	16:15
104:14	38:15	70:11	self-	served 7:2
routine	Saturday	74:23	determini	107:22
32:15	75:23	85:15	ng 39:18	service
68:6 71:4			semi-	10:20

11:9,13,1 6 56:21 59:14 99:3 servicing 55:10 session 9:18 25:8 30:5 33:1,3 60:15 sessions 30:19 60:7,8 111:25 sets 22:18 56:20 setting 20:4 36:1 48:12 53:9 99:12 settings 72:23 seven 8:3 seventy 32:24 seventy- five 82:9 several 43:1 105:21 severe 23:18 shame 60:9,10 shape 69:16 93:19 share 32:16 34:18 97:25 shelf 68:23	70:17 shepherd 105:23 she's 66:7 86:1 shop 39:7 40:6 short 49:25 66:21 shorthand 94:13 shy 9:16 Sidney 79:7 signed 33:10 significan ce 46:11 significan t 19:9,22 28:14 36:25 54:14 70:22 significan tly 10:7 signing 86:5 Simcoe 17:25 26:6 63:1,2 64:2 83:24 86:10 similar 48:20 64:8 65:19 90:1 Similarly 111:1 simple	60:7 82:4 simply 24:4 Sinclair 27:1 sit 65:21 sitting 66:5 93:11 96:16 98:2 situation 42:19 48:20 situations 7:15 21:1 25:15 76:24 77:9 six 83:13 84:16,17 size 29:25 48:3 69:18 106:9 slide 45:17 slides 15:8 41:25 67:9 slight 50:23 slightly 50:12 65:22 99:21 104:9 slowly 35:8 small 27:25 34:25 93:8 94:18 103:20	104:5 105:22 smaller 33:22 34:19 36:21 69:6,13 smart 107:9 Social 7:5 society 6:17 15:22 73:8 solely 95:10 solicitor 6:12,15 97:16 solution 44:6 62:13 72:22 94:24 106:9 solutions 55:4 som 99:25 somebody 18:7 107:1 someone 22:10 29:14 50:24 64:14 81:9,13 85:13 92:2 somewhat 97:4 somewhere 31:6 42:3 59:2 son's 41:3	Sorry 78:6 101:20 sort 15:16 20:1 21:23 34:12 36:1 39:7 41:25 43:2 44:5,7,15 45:18 46:25 47:23 48:18 51:12 52:19 55:9 64:15 65:18 66:12 67:1 71:3 73:9 76:20 81:1,25 83:19 91:1,13,1 8,22 94:25 96:3 97:6 99:7 111:4 sorts 64:16 79:1 83:3 sounds 20:12 45:23 sources 42:18 speak 19:18 23:5 26:12 48:19 49:22 50:20 63:16 87:12 90:20
--	---	--	--	--

Speaker 14:11	57:10, 16, 17, 24	101:3 112:6	71:21 83:12	67:2
speaking 21:14 90:18	58:1, 5, 6, 11, 15, 21, 22 60:1 62:7, 8	started 9:9	stories 9:14	suggesting 81:19 91:25
specialist 6:15	74:2, 20 75:12, 14	state 64:22 93:25	story 96:14	suggests 107:8
specific 34:12 64:5, 18 78:16 87:3 102:21	76:2 80:21 82:12 83:16 85:16 96:23 97:19 98:14 99:1	statement 9:22 52:11	straight- forward 20:12 21:12	summaries 52:7
speed 33:11	102:5, 11, 15, 21, 24 105:14	statements 9:5, 6	strange 112:16	summarize 11:24 14:13
spell 52:14	staffing 76:2	states 88:20	Street 1:19	support 51:25 61:18
spend 13:3 20:21	staffs 56:15	statute 44:21 47:19 72:11 88:22 89:2, 12, 1 9, 22 90:3 91:7, 14, 1 6	stretch 45:16	supporting 31:17
spends 51:6	staff's 58:2	92:10, 13 101:21	stricter 75:14	suppressin g 26:20
spent 52:5 59:8	stake 55:12 73:3	statutory 19:17 30:11 47:21 57:10 59:13	structure 61:18	sure 5:8 16:12 18:5 24:23 31:1 48:1 54:22 58:9 60:3 77:6 80:17 83:22 86:13 100:19 108:11
spirit 65:6	stakeholde rs 27:22	stay 71:20	subject 14:20 44:1 54:6 71:10 93:9 96:23	
spoke 58:13 76:8 78:4 95:3	stand 15:23	step 77:5	substantiv e 41:17	
spoken 85:25 102:20 103:20, 25	standard 22:11, 14 107:4	stepped 66:7	succeeded 8:7	surely 88:16
spouse 64:23 86:14 93:9	standards 13:10 53:9	Stevens 27:1	successful 105:22	surface 42:21
staff 10:22, 23 11:4 14:4 30:14, 15, 21 31:9, 10, 1 1, 17 37:4 45:4 56:25	start 15:20 16:21 17:18, 23 39:18 41:24 46:10 51:18 82:24	sticks 60:15	suddenly 51:19	surfaced 94:8
		stigma 50:18	sufficient 48:15 100:6	survey 77:14
		stigmatism 51:23	suggest 19:15 81:6 83:10	suspect 33:5
		stop 39:7 40:6	suggested	suspension 54:16 suspicion 22:7

sword 110:8	talked 43:17	5:4,6,9 14:22	42:23 46:15	61:24 67:19
sympatheti c 75:24 105:12	56:8 67:14 73:10 88:10	18:14 26:18 71:9 79:15 83:23	48:11,18 50:13 51:8 53:7 54:12 57:19	70:3,23 72:25 73:19 75:16,17, 18,25
system 67:13 68:12 70:16 79:13 101:12 103:7 109:3	talking 16:21 37:14 44:13 55:20,23 60:6 77:1,3 100:16 108:6	92:15,23 102:17 107:10 113:12,17 ,18	58:10,14 59:16,17 60:9 61:3 65:2 67:15,25 69:7,21 70:8 71:4 72:19 80:13 85:4 86:18	76:3 81:13 86:5 88:16 91:1,2,3, 4,12 94:1 96:17,18 102:12 108:5 109:8
systemic 12:11	talks 23:21	Thanks 37:17 92:23	87:2 88:18 89:21 90:10,20 92:8,18 93:21 94:19 95:4,10 96:13,16 101:22 107:19,23 108:24 111:7 112:20	they've 91:5 94:2 105:1
systems 105:24	tangible 44:6	that'll 112:22	99:4 100:13 101:19 102:10 103:13 104:19 105:13 106:13 107:13 108:13 109:13 110:13 111:13 112:13	third 30:3
<hr/> T <hr/>	teach 33:23	themselves 38:12 53:15 57:24 73:19 79:24 83:22 101:24	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	thirty 38:6 107:2
table 3:1 17:15 20:1,5 98:2	team 15:9 62:21	themselves 38:12 53:15 57:24 73:19 79:24 83:22 101:24	105:4,10 106:13,16 107:19,23 108:24 111:7 112:20	thirty-five 59:9
taboo 81:8,21	technical 25:10	theoretica lly 35:6	109:4 110:13 111:7 112:20	thirty-three 33:7
tag 15:8	techniques 107:21	thereafter 30:4	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	thoughts 29:21 63:19
taking 25:3	template 101:6	therefore 54:5 66:7 96:9	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	thousand 37:1 69:9,18,1 9 82:10
talented 62:21	ten 71:14	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	throughout 102:19
talk 14:20 15:3 17:13 20:1 25:25 32:5 35:5 37:7 40:24 45:10,14 46:7,8 50:16 55:20 56:3 64:3,19 74:9,10 81:7,20 97:19	tend 68:17	there's 14:14 19:21 21:15 22:2 26:2 30:2 32:7 35:13 36:7,15 38:10 39:1 40:17 41:9	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	ticket 76:4
	tended 26:11	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	till 71:20
	term 43:10 73:11 80:15 99:25 101:2	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	title 23:15
	terms 5:6 20:7 40:4 107:19	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	today 14:19 15:15
	test 22:9	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	
	testifying 19:4	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	
	thank	there'll 112:22	113:13 114:13 115:13 116:13 117:13 118:13 119:13 120:13 121:13 122:13 123:13 124:13 125:13 126:13 127:13 128:13 129:13 130:13 131:13 132:13 133:13 134:13 135:13 136:13 137:13 138:13 139:13 140:13 141:13 142:13 143:13 144:13 145:13 146:13 147:13 148:13 149:13 150:13	

17:13	46:22	92:7	65:12	47:25
67:15	track	tried	66:12	uncomforta
73:10	15:10	66:17	72:23	ble 90:8
77:13	tradeoffs	73:9	91:6 94:7	understand
108:22	73:1	112:11	turn 7:6	18:3
Today's	traditiona	trigger	54:21	22:10
5:20	l 26:15	86:24	92:24	24:3,12,2
tools	trained	triggered	twelve	4 25:7
64:18	31:17	79:22	93:13	44:17
top 41:22	training	80:1	twenty	45:11
topic	12:22	triggers	13:17	46:5,11
19:25	25:8	21:2	69:10	51:23
31:6 61:4	29:15,22	true 78:15	twenty-	52:19
topics	30:10,25	truly	five	58:23
26:13	31:9,20	77:10	13:17	63:25
Tor 92:7	32:10	trust	69:11,18	73:11
Toronto	79:18	16:16	twenty-	87:25
6:1,4	81:4	17:3,9	four 9:6	105:5
15:18	transactio	21:19	51:11	113:5
25:6	n	77:10,14	twenty-one	understand
31:23	28:14,17	78:1 79:2	13:12	able
34:4	transactio	trusted	twenty-	36:23
43:12	ns 57:1	73:17	three	understand
48:21	Transcript	try	82:8	ing 23:11
49:3,4	3:16	16:12,22	twisting	66:4
56:20	transparen	24:19	93:19	110:13
57:22	cy 63:14	25:10	type 99:19	understood
59:4	65:5,13,1	31:24	types	43:10
66:17	7 71:5	33:3,16,2	36:11,18	95:12
81:5	transparen	3 34:3	45:16	undertake
87:10	t 75:9	36:11	54:18	17:7
99:2,18	travel	43:4	56:22	undertaken
105:13	13:6	53:10	58:16	42:8
108:23	treat	60:7	63:5	unfair
109:13	17:18	77:24	79:13	32:8
total	treatment	78:8,11	82:23	unfortunat
69:11	45:22	83:15	83:16	ely
touch	56:15	87:21	89:25	109:17
97:15	64:14	93:20		unhealthy
touched	Tribunal	107:7	<hr/>	91:11
56:11	7:5	109:21	ultimately	unhelpful
town	trick	trying	109:25	20:21
1:2,17	20:25	24:2 36:2	unaddresse	48:18
2:13 23:4	tricky	37:18	d 76:14	55:19
107:3	47:18	46:24	uncertaint	uniformity
towns		53:6	y 42:3,23	48:7
		55:23		

107:20		validity	74:15	wasn't
unique 7:9	<hr/> V <hr/>	111:7	101:1	41:3, 20, 2
22:16	vacated	valuable	volunteer	1 43:15
35:11	36:4	9:20	15:22	92:23
62:1	Valerie	17:11	81:5	ways 32:5
unless	3:7	value 16:5	vote	57:20
14:14	5:14, 24	var 42:7	66:1, 8, 22	63:6
54:8	14:25	variety	88:13, 15,	65:12
88:21	15:13	40:12	16, 17, 21	73:15
89:22	18:15	42:8, 25	89:10, 21	84:24
90:2	19:11, 24	64:12	90:9	102:22, 23
unlike	25:2	various	91:7, 23, 2	website
70:23	30:16, 23	7:15	5 92:2, 18	9:25
unusual	32:20	23:18	93:12, 20	112:24
23:13	34:1	25:19	96:11	we'd
un-write	38:23	47:1	voted	71:20, 23
49:3	41:23	57:20	90:11, 13	Wednesday
unwritten	42:4	65:25	voting	60:23
46:25	44:12	103:22	65:8	weeds
updated	46:13	verbiage	90:2, 8	76:22
91:16	48:1	65:25	<hr/> W <hr/>	week 30:3
upfront	49:19, 21	verse 20:5	Wake 3:9	37:11
37:3	50:22	31:3	5:16 6:22	90:21
up-front	52:16	versus	7:7, 8	97:18
52:5	54:3, 24	46:8 92:7	26:7, 17	weeks 30:5
uplift	57:21	vice 7:4	27:8	44:13
105:7	58:18	98:1	32:21	83:13
upon 5:1	61:14	view 21:13	33:15	112:7, 14
7:18	66:16	49:24	42:22	weigh
38:16	69:22	71:25	43:16	110:3
59:21	70:5	88:12	51:18	Welcome
71:16, 17	72:1, 13	92:13	59:7	72:4
78:16	74:3, 5	96:13	67:20	we'll
113:24	76:18	viewing	75:10	14:23
urge 47:3	79:5	9:24	87:13	46:8
urged	80:2, 6, 9	113:4	101:20	60:17
28:23	83:11	violated	102:1, 9	64:5 67:9
47:3	86:7	53:2	106:11, 20	71:13
usually	91:17	virtually	, 25	85:6
14:14	92:11	19:1 75:2	110:25	well-
38:14	94:4 95:6	virtue	113:19	documente
51:6	98:15, 18	40:15, 16	Wake's	d 22:21
78:21	99:1, 14, 2	106:4	50:16	well-
81:5	4	voluntaril	walk 51:14	functioni
82:11	100:3, 24	y 5:7	82:16	ng 68:12
	103:3		washrooms	79:12
	105:10		82:17	
	107:8, 24			
	108:2, 15			
	111:20			

well-	67:14	39:20	64:17	52:6,7
informed	73:8 85:3	92:8	66:3	87:6
22:4	87:9	109:3	67:18	96:15
28:10	91:13	wholeheart	97:13	108:17
welling	98:7	edly	103:7	109:4
26:19	102:20	19:16	109:4	writing
well-	103:25	whom 7:12	work-	97:2
intention	104:25	who's	around	written
ed 91:20	113:13	40:18	65:18	5:6 25:19
well-	whatever	41:11	worked	33:8
recognize	38:15	wide 21:15	15:6	57:17
d 68:11	77:16	wife 93:18	65:18	108:25
well-tread	89:9	William	108:11	wrongdoing
73:14	113:9	2:13	working	6:9,10
Wendy	Wheeler	40:23	18:18	11:9,15
114:6	2:15	42:2	21:7	12:5,10
we're 15:8	whenever	47:17	34:18	16:21
17:8,13	20:24	49:15	96:17	wrote
26:8,14	whether	50:11	102:12	43:14
34:3	7:17,20,2	88:6	workload	W's 97:7
36:17	3 12:24	90:5,14	10:8	
40:4	13:9 14:8	91:10	workplace	<hr/> Y <hr/>
45:15	16:11	92:6,14	31:10	yesterday
49:1,14	22:14	107:16	works	5:4 19:3
50:4	23:17	110:14,24	32:18,23	59:8
53:10	26:20,21	111:2,13,	66:21	yet 58:16
54:15	28:24	16	86:14	87:15
55:17,18,	31:25	willingnes	100:7	98:12
20 59:23	36:16	s 40:5	104:21	102:25
60:3 61:8	38:10	win 104:18	world 20:6	112:13
62:12	40:9 47:5	withdraw	39:21	York 70:10
63:21	49:13	96:10	98:12	you'll
65:12	56:6	withdrawn	worry 50:3	86:24
76:21	88:12	113:3	55:6	111:9
77:1,3	92:9,12	witnessing	110:6	yourself
91:11	93:18	40:4	worrying	37:25
97:8	101:11	won 105:1	55:7	76:24
106:7	103:8	Woodworth	worse 47:2	you've
108:16,20	105:8,25	114:6	worthy	37:13
113:21	whistle	work	78:13	38:1,2
we've	11:10,12	11:16,23	wow 48:12	41:10
17:16	white 54:9	15:17	wrap 67:9	45:21,24
26:11	whoever	17:4 19:9	wrestle	50:2
41:19	21:9	24:22	72:18	53:23
45:1	85:17	47:14	write 5:9	57:21,22
56:8,11	whole	55:16		86:21
64:16	25:16			87:16
65:18	34:8			

89:7 113:16,17				
-------------------	--	--	--	--