



INDEX

	PAGE
OPENING STATEMENT BY MR. NASH	11
OPENING STATEMENT BY MR. JOHNSTON	71
OPENING STATEMENT BY MR. NASH (Cont'd)	81
OPENING STATEMENT BY MR. SCOTT LITTLE	148
OPENING STATEMENT BY MR. SPELLISCY	214
OPENING STATEMENT BY MR. SCOTT LITTLE (Cont'd)	275

1 Toronto, Ontario.  
2 --- Upon commencing on Monday, February 19, 2018,  
3 at 9:35 a.m.  
4 PRESIDING ARBITRATOR: Good  
5 morning, everybody. And it is good to see you  
6 again. Which is not just a figure of speech and a  
7 phrase, because it indicates that, after a  
8 particularly long and demanding proceeding, the  
9 end is in sight.  
10 The hearing will be devoted to  
11 questions of compensation and quantum, and I am  
12 afraid that the hearing will again be a long and  
13 demanding exercise. I just noticed that there is  
14 a holiday in Canada, but we don't care about  
15 holidays, we don't care about long weekends, so we  
16 are going to work on Saturday, but I am sure that  
17 everybody involved will do his or her best to make  
18 that an efficient exercise.  
19 Could I ask the parties to  
20 briefly introduce their teams. And I start with  
21 the claimant, Mr. Nash, you have the floor, sir.  
22 MR. NASH: Thank you, Judge  
23 Simma. Members of the tribunal. It's very good  
24 to see you again after all these years.  
25 PRESIDING ARBITRATOR: I think

1 maybe the mic, could the mic be put on the --  
2 MR. NASH: Can you not hear me  
3 through the other mic that I have got here?  
4 PRESIDING ARBITRATOR: Let's  
5 see how it goes, please.  
6 MR. NASH: I am Greg Nash and  
7 counsel for the claimants, and I would like to  
8 introduce our team, if I can, and I will ask  
9 everyone to stand up as I mention their name.  
10 At the first table, we have  
11 Brent Johnston, Chris Elrick, Lorinda Edmunds.  
12 And the second table, Frank  
13 Borowicz, QC; Randy Sutton; Alex Baer; and the  
14 other Mr. Little, Alex Little.  
15 The third table, we have Annie  
16 Ronen, Raman Bath, Alison Burns, and Chelsea  
17 MacDonald.  
18 And behind, we have Professor  
19 Lorne Sossin; John Lizak, who you have met before;  
20 Joe Forestieri, the CFO of the Clayton group of  
21 companies; Bill Clayton, Jr.  
22 And beyond, Tyler Lalande,  
23 Howard Rosen, Alex Lee, Leanne Langstaff, and  
24 David Estrin.  
25 Thank you.

1 PRESIDING ARBITRATOR: Thank  
2 you, thank you very much.  
3 Mr. Little?  
4 MR. SCOTT LITTLE: Good  
5 morning, Judge Simma, Professor Schwartz,  
6 Professor McRae, Mr. Pulkowski. Of course you  
7 know me, I am Scott Little, I have been here  
8 during the duration of the proceedings.  
9 Likewise, we have Mr. Shane  
10 Spelliscy, and we have some new faces on our team.  
11 We have Susanna Kam, we have Krista Zeman, two  
12 other counsel, Mark Klaver, Rodney Neufeld.  
13 And, of course, we have our  
14 most valuable paralegals, Darian Parsons, Benjamin  
15 Tait, and members of our technical support team,  
16 Derek Hehn and, Katie McInnes, who is in the very  
17 back.  
18 Now, in terms of experts and  
19 witnesses, we have Mr. Darrell Chodorow, Mr. Sujay  
20 Dave, Mr. Robert Connelly, Ms. Lesley Griffiths,  
21 Dr. Tony Blouin, the Honourable John Evans, the  
22 Honourable Thomas Cromwell, and Mr. Peter Geddes.  
23 All right, and we also have  
24 two party representatives from the Investment  
25 Trade Policy Division of Global Affairs Canada, we

1 have Ms. Evelyn Bolduc. And from the Government  
2 of Nova Scotia, we have Mr. Andrew Weatherbee. I  
3 believe I have covered everyone.  
4 PRESIDING ARBITRATOR: Thank  
5 you very much.  
6 And then, Dirk, we have some  
7 other people in the room, right? This is  
8 Mr. Olmsted from the State Department.  
9 Hi. You were on the list also  
10 in the last two weeks at the Iran-US Claims  
11 Tribunal?  
12 MR. OLMSTED: That's correct,  
13 we are both doing hearings.  
14 PRESIDING ARBITRATOR: Yes.  
15 So we have seen a lot of each other recently.  
16 MR. OLMSTED: Yes.  
17 PRESIDING ARBITRATOR: Good,  
18 welcome.  
19 I think that does it with  
20 regards to participants.  
21 There is a couple of  
22 organizational procedural matters that the  
23 tribunal have to decide; namely, first, the  
24 possibility of or the question of sequestration of  
25 Messrs. Geddes and Lizak. And, secondly, the

Page 7

1 issue of how do we handle the confidentiality  
2 matter.

3 With regard to the issue of  
4 the sequestration, the tribunal has considered the  
5 views of the parties in their correspondence, and  
6 it has had reviewed the reports of Mr. Geddes and  
7 Mr. Lizak; is that how you -- Lizak? Lizak -- I  
8 think arguments can be made on both sides. They  
9 will testify before this tribunal both on  
10 questions of fact and on the basis of expertise  
11 derived from their experience.

12 That said, on balance, the  
13 tribunal finds that the emphasis of the  
14 testimonies of both Mr. Geddes and Mr. Lizak is on  
15 general experience and expertise rather than  
16 specific facts. The tribunal does not consider  
17 that their testimony is likely to be influenced by  
18 pleadings or testimony of other witnesses and  
19 experts, and the proximity of each expert to the  
20 investors and the Government of Nova Scotia does  
21 not necessarily affect their status but is  
22 something that the tribunal may consider in  
23 assessing the weight of their evidence.

24 So, the bottom line is, the  
25 tribunal has decided that sequestration of the two

Page 9

1 immediate contradiction by the tribunal or the  
2 opposing party, the audiovisual operator is then  
3 simply requested to do so. And I have a comfort  
4 screen here which allows me to see whether the  
5 live feed has actually been cut, and at that  
6 point, I will simply signal to the party concerned  
7 that we have now changed to confidential session.

8 I believe the tribunal was  
9 taking the view that how well -- the question how  
10 well these arrangements function and whether they  
11 prove to be disruptive or not may be reevaluated  
12 over the course of the day of Wednesday when we  
13 are likely to have more of a forth-and-back  
14 between confidential and non-confidential session.

15 PRESIDING ARBITRATOR: So who  
16 is going to have the cards, the speaker?

17 MR. NASH: For our team,  
18 Mr. Baer.

19 PRESIDING ARBITRATOR: So the  
20 speakers have a card?

21 MR. NASH: No, Mr. Baer will  
22 have a card here for our team, and we have a red  
23 card and a green card. And he will pick up the  
24 red card when it's a confidential session and  
25 signal to the AV operator.

Page 8

1 gentlemen is not necessary.

2 The other issue is the -- how  
3 to handle confidentiality. And before I make a  
4 mistake in reading something, Dirk, why don't you  
5 explain how this is going to be handled in  
6 practice. I think it's pretty easy, actually.

7 DR. PULKOWSKI: Well, thank  
8 you, Mr. Chairman. I understand the tribunal has  
9 taken the view that Procedural Order Number 25  
10 should apply as it was issued by the tribunal,  
11 meaning that the parties are to identify the  
12 specific portions of the hearing that are to  
13 remain confidential.

14 However, the tribunal would  
15 like to proceed in as smooth a fashion as  
16 possible, and I understand that the parties have  
17 already made preparations in that regard by  
18 printing colour cards that might assist them in  
19 signalling directly to the AV operator as to when  
20 a confidential session is to be entered into and  
21 when the confidential session may end. And the  
22 idea is really to try to signal without an  
23 intervention from the tribunal at any particular  
24 moment that the session should proceed as a  
25 confidential session. And unless there is any

Page 10

1 PRESIDING ARBITRATOR: Watch  
2 the green cards, okay.

3 So two issues, which are more  
4 on the pleasant side. First of all, you will see  
5 on the schedule, there are short -- so-called  
6 short breaks or coffee breaks are indicated, but  
7 there is no time indicated. And so I think the  
8 best thing is for the tribunal to see when you  
9 consider a short coffee break to be apposite and  
10 fitting your schedule.

11 The other issue is the lunch  
12 break. I love lunch breaks, and the -- for me,  
13 the idea of living on sandwiches for one and a  
14 half weeks is not pleasant because I usually work  
15 in Holland where sandwiches are more or less a  
16 loud cuisine and, therefore, I don't like that.  
17 So I just would like to test that. Would the  
18 parties have a problem with -- because now we have  
19 a lunch break envisaged for one hour, which is  
20 really very, very tight if you want to go outside  
21 just in the neighbourhood and have something  
22 reasonable to eat. Would you mind if the lunch  
23 break was extended for, say, 15 or 30 minutes and  
24 then we would go on until 5:15, for instance?  
25 Would that be a problem, could I just ask what you

Page 11

1 think of that? Mr. Nash.  
2 MR. NASH: I think it's a good  
3 idea.  
4 PRESIDING ARBITRATOR: Good  
5 idea.  
6 Mr. Little?  
7 MR. SCOTT LITTLE: Absolutely  
8 no problem with that, Judge Simma.  
9 PRESIDING ARBITRATOR: No  
10 problem. So shall we try it out at 15 minutes and  
11 see? Thank you very much. That is a very nice  
12 gesture on your part to start this exercise.  
13 Is there anything  
14 organizational? So, without further ado, I ask  
15 representative of claimants, Mr. Nash, to take the  
16 floor.  
17 OPENING STATEMENT BY MR. NASH:  
18 MR. NASH: Thank you, Judge  
19 Simma.  
20 Judge Simma and members of the  
21 tribunal. Sixteen years after the Claytons were  
22 invited to develop the quarry at Whites Point, ten  
23 years after their NAFTA claim was initiated, and  
24 almost three years after this tribunal found  
25 liability, we are now at the hearing of the

Page 13

1 come to Nova Scotia to develop the quarry.  
2 Long-standing government policies promoted their  
3 development of the quarry. The government has  
4 encouraged the development of quarries for  
5 decades, and it continues to do so.  
6 No government official ever  
7 said there was any reason to treat this quarry,  
8 the Whites Point Quarry, any differently from the  
9 multitude of quarries which had been approved in  
10 Nova Scotia.  
11 All of the comparable projects  
12 described by David Estrin in the merits phase and  
13 considered by the tribunal in its merits award  
14 make this abundantly clear, as does Mr. Estrin's  
15 elaboration on comparable projects in his damages  
16 expert's reports, most notably the new mega quarry  
17 at Black Point approved in 2016, just two years  
18 ago, after a streamlined 14-month environmental  
19 assessment.  
20 For no valid lawful reason,  
21 the Whites Point Quarry is the singular exception  
22 to the ordinary treatment of quarries in Nova  
23 Scotia. This is not a hypothetical case to be  
24 considered and assessed in the abstract.  
25 As the tribunal has found, the

Page 12

1 damages phase of this arbitration.  
2 There is voluminous evidence  
3 before you, but the import of all of the evidence  
4 is that the assessment of the Claytons' damages is  
5 straightforward and simple. It is based on one  
6 irrefutable fact, and that is this: But for the  
7 discriminatory, unfair, and inequitable treatment  
8 the Claytons received, which you have already held  
9 in the merits phase of this arbitration to be a  
10 breach of Articles 1105 and 1102 of the NAFTA, the  
11 Claytons would today be operating a highly  
12 successful and profitable quarry at Whites Point.  
13 The international law  
14 principle governing the assessment of the  
15 Claytons' damages is equally simple; it is full  
16 reparation. This means that the Claytons are  
17 entitled in law to full reparation of their loss.  
18 In that regard, the evidence  
19 is unassailable. In the ordinary course, if the  
20 Claytons had received fair and equitable treatment  
21 without discrimination, Bilcon would undoubtedly  
22 have received environmental approval for the  
23 quarry and every industrial permit required to  
24 build and operate it.  
25 The Claytons were invited to

Page 14

1 evidence shows conclusively that the treatment  
2 accorded to the Claytons was demonstrably not fair  
3 and equitable.  
4 In the real world, if the  
5 Whites Point Quarry had been treated as in the  
6 ordinary course it would have been, there can be  
7 no doubt that the Claytons would have been granted  
8 all regulatory approvals and permits to operate  
9 their quarry.  
10 Contrary to the theoretical,  
11 in fact imaginary world Canada invites this  
12 tribunal to speculate about, the evidence shows  
13 clearly and conclusively that Canada's breaches of  
14 the NAFTA led directly to the Claytons' loss.  
15 There is a straight, solid  
16 black line between Canada's egregious, illegal  
17 conduct and treatment of the Claytons and the  
18 Claytons' loss of the Whites Point Quarry.  
19 Apart from the plain, obvious,  
20 and stunning injustice of it all, in the result,  
21 the Claytons lost the value of 160 million tons of  
22 high-quality stone to supply their already  
23 well-established markets in New Jersey and New  
24 York.  
25 There is only one way to wipe

Page 15

1 out all the consequences of Canada's egregious  
2 treatment of the Claytons and to remedy Canada's  
3 NAFTA breaches, and that is to provide the  
4 Claytons with full reparation for their loss.

5 Article 1135 of the NAFTA  
6 prescribes that a NAFTA tribunal's final relief  
7 shall be an award of monetary damages. The  
8 standard for assessing the appropriate measure of  
9 monetary damages was articulated by the Permanent  
10 Court more than 80 years ago in Chorzow Factory.  
11 The full reparation, Chorzow Factory standard, is  
12 universally accepted as the authoritative standard  
13 and has been, as you are aware, adopted by NAFTA  
14 tribunals.

15 As the NAFTA stated in ADC and  
16 Hungary, and I am quoting:

17 "There can be no doubt  
18 about the present  
19 vitality of the Chorzow  
20 Factory principle, its  
21 full current vigor having  
22 been repeatedly attested  
23 to by the International  
24 Court of Justice."[as  
25 read]

Page 17

1 their established aggregate businesses, with the  
2 predictable and foreseeable result that they lost  
3 very significant profits.

4 The evidence before you at  
5 this damages phase shows that had Canada's illegal  
6 conduct not occurred, the Claytons would have  
7 constructed the Whites Point Quarry and operated  
8 it as an integrated and highly profitable  
9 component of their business.

10 The full reparation standard  
11 requires that Canada restore to the Claytons the  
12 benefit of the quarry that was wrongfully denied  
13 to them. The investors seek an award of lost  
14 profits to compensate them for what the Whites  
15 Point Quarry would have otherwise earned. But for  
16 Canada's breaches, these lost profits are the  
17 logical, fully foreseeable, inexorable and natural  
18 consequences of Canada's breaches of the NAFTA.  
19 The evidence establishes clearly each element in  
20 the chain of events leading to the investors'  
21 losses.

22 In this case, the best measure  
23 of the investors' loss is properly arrived at by  
24 calculating the profits they would have earned if  
25 the quarry had operated. Tribunals will accept a

Page 16

1 The full reparation standard  
2 is codified in Article 31 of the International Law  
3 Commission's article on state responsibility,  
4 which provide that:

5 "The responsible State is  
6 under an obligation to  
7 make full reparation for  
8 the injury caused by the  
9 internationally wrongful  
10 act."[as read]

11 The object of the standard is,  
12 so far as possible, to wipe out all the  
13 consequences of the State's illegal conduct and to  
14 reflect what would, in all probability, in all  
15 probability, have existed if the illegal conduct  
16 had not occurred.

17 Here, Canada illegally denied  
18 regulatory approval for the Whites Point Quarry,  
19 contrary to its NAFTA obligation to accord fair  
20 and equitable and non-discriminatory treatment to  
21 the Claytons.

22 The consequence of Canada's  
23 unlawful conduct is that the Claytons were  
24 deprived of a secure, long-term, independent  
25 supply of high-quality stone suitable for use in

Page 18

1 DCF valuation approach once the fact of future  
2 profits, the fact of future profits, is proved on  
3 a balance of probabilities.

4 As the tribunal in the Gold  
5 Reserve case put it, and I quote:

6 "The tribunal finds no  
7 support for the  
8 conclusion that the  
9 standard of proof for  
10 damages should be higher  
11 than for proving merits,  
12 and therefore is  
13 satisfied that the  
14 appropriate standard of  
15 proof is the balance of  
16 probabilities."[as read]

17 Tribunals routinely award  
18 damages for lost profits where the investment is a  
19 commodity, even where the investor has not  
20 received all permits, completed its mine decision  
21 or produced the commodity. As the tribunal noted  
22 in Crystallex:

23 "Gold, unlike most  
24 consumer products or even  
25 other commodities, is



1 and their market, in the markets to which they  
2 were planning to ship.  
3 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
4 10:01 A.M.

5 MR. NASH: Canada is also a  
6 stable political and economic environment governed  
7 by the rule of law, in which the Claytons fully  
8 expected, with every good reason, to do business  
9 for generations to come. And, like in Crystallex,  
10 Nova Scotia knew full well that the stone at  
11 Whites Point Quarry on the North Mountain was very  
12 valuable.

13 The government itself had  
14 mapped it out. It had written about it. The  
15 government had promoted it on the basis that the  
16 Nova Scotia economy would reap benefits from  
17 increased employment and tax revenue. That was  
18 the government's agenda, was to develop quarries  
19 in Nova Scotia, in particular on the North  
20 Mountain at Whites Point.

21 Shamefully, the government  
22 continued to promote the quarry potential at  
23 Whites Point in 2006 while the Claytons were being  
24 subjected to an unprecedented, unlawful,  
25 unwinnable from the outset JRP assessment. At

1 that very moment, the government was continuing to  
2 promote the very site the Claytons were  
3 endeavouring to develop.

4 There was virtually no  
5 execution risk for the Claytons to establish and  
6 operate the Whites Point Quarry. The actual  
7 operation of a quarry is simple. It is a  
8 mechanical process of taking big rocks, large  
9 rocks, and crushing them into small rocks. That's  
10 all it's about. The Claytons had long and deep  
11 experience in the industry and a predetermined  
12 market for the stone.

13 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
14 10:03 A.M.

15 [REDACTED]

1 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 If the Claytons had been  
4 fairly treated, if they had not been unfairly  
5 denied the regulatory approval which, in the  
6 ordinary course, they would have received, there  
7 were no hurdles to complete the Whites Point  
8 Quarry. Those same experts and same expert  
9 employees have, for this hearing, updated their  
10 work to model the most likely outcome for the  
11 Whites Point Quarry based on actual market  
12 information which is now available and was not  
13 available in 2007.

14 [REDACTED]

22 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
23 10:07 A.M.

24 MR. NASH: Although Canada  
25 accepts that the Chorzow Factory principle

Page 27

1 governs, Canada, I say respectfully, distorts its  
2 meaning.  
3 Canada argues that damages  
4 should be calculated from the date the quarry was  
5 lost, the breach date, October 22nd, 2002, or the  
6 date of the ministerial decisions in November and  
7 December of 2007.  
8 Chorzow Factory provides that:  
9 "Reparation must, as far  
10 as possible, wipe out all  
11 the consequences of the  
12 illegal act and  
13 re-establish the  
14 situation which would, in  
15 all probability, have  
16 existed if the act had  
17 not been committed."[as  
18 read]  
19 That is the test. What would  
20 have happened but for the illegal act, in all  
21 probability?  
22 It is simply impossible to  
23 re-establish what would most likely have existed  
24 by looking at a snapshot in time as Canada  
25 advocates. Rather, to put the investors in the

Page 28

1 same position as if Canada had not breached the  
2 NAFTA, the valuation date must be the date of the  
3 damages award. This approach allows the tribunal  
4 to account for everything that has actually  
5 occurred since Canada's wrongdoing and which, but  
6 for Canada's breaches, would have, in reality,  
7 directly affected the investors and their  
8 investment.  
9 Guided by this perspective,  
10 the investors have not treated the evidence  
11 selectively. They have presented the picture of  
12 what would most likely have occurred. Mr. Rosen  
13 explains why the current valuation date is much  
14 more accurate. He says, and I am quoting:  
15 "A current date analysis  
16 allows experts to  
17 incorporate actual market  
18 data available up to the  
19 effective date of the  
20 report rather than  
21 attempting to  
22 artificially create a  
23 proxy for the market  
24 outlook as of the breach  
25 date."[as read]

Page 29

1 He says further:  
2 "My approach, the award  
3 date approach, also  
4 avoids potential  
5 hindsight issues as all  
6 available information can  
7 be included in my  
8 analysis."[as read]  
9 This approach has been  
10 repeatedly adopted by tribunals assessing an  
11 investor's loss in multiple cases. In ADC and  
12 Hungary, the tribunal valued the claim on the  
13 basis of lost profits. It also specifically  
14 rejected the date of breach as the appropriate  
15 date of valuation since that date would not result  
16 in full reparation.  
17 Similarly, in von Pezold and  
18 Zimbabwe, the tribunal explained that:  
19 "Compensation should be  
20 calculated at the time of  
21 the award rather than at  
22 the time of the unlawful  
23 acts as that is the value  
24 'which would have existed  
25 had the respondent not

Page 30

1 acted unlawfully'."[as  
2 read]  
3 Once the right to damages has  
4 been proven on a balance of probabilities, the  
5 tribunal may estimate an actual loss. There is no  
6 prescribed burden an investor must meet.  
7 Likewise, the valuation method chosen need not  
8 precisely quantify damages, particularly since --  
9 this is important -- any uncertainty regarding  
10 quantum was caused by the wrongdoer. Any  
11 uncertainty regarding the quantum was caused by  
12 the wrongdoer, Canada. A more onerous standard  
13 would place an almost insurmountable burden on  
14 claimants while benefitting the very party who  
15 caused the damage. No wrongdoer can benefit or  
16 enjoy any advantage from his or her own  
17 wrongdoing.  
18 The tribunal in Crystallex  
19 also held that ambiguity or uncertainty should be  
20 resolved in a claimant's favour where that  
21 uncertainty is the State's fault. And I quote:  
22 "In the tribunal's view,  
23 this approach may be  
24 particularly warranted if  
25 the uncertainty in

1 determining what exactly  
 2 would have happened is  
 3 the result of the other  
 4 party's wrongdoing."[as  
 5 read]  
 6 That makes total common sense.  
 7 The real-world evidence the  
 8 FTI valuation takes into account includes the  
 9 witness statements and expert reports of Paul  
 10 Buxton and John Wall regarding the design,  
 11 capacity and operating costs of the Whites Point  
 12 Quarry;  
 13 George Bickford and Mike  
 14 Washer regarding the design, capacity and capital  
 15 cost of the plant;  
 16 SNC Lavalin regarding the  
 17 design and capital cost of the marine terminal;  
 18 Michael Cullen, geologist,  
 19 regarding the quality and quantity of the stone;  
 20 Wayne Morrison, with 30 years  
 21 of experience in the shipping industry working for  
 22 CSL and now an independent consultant regarding  
 23 shipping costs;  
 24 Tom Dooley, a veteran in the  
 25 concrete and aggregates industry, regarding the

1 New York City and New Jersey market;  
 2 John Lizak, regarding the  
 3 regional US market;  
 4 Dan Fougere, regarding the  
 5 aggregates industry in Nova Scotia, his promotion  
 6 by the government of Nova Scotia, including the  
 7 Whites Point site, and plant operations related to  
 8 the Whites Point Quarry model and marketing plan;  
 9 Importantly, Dan Kontak,  
 10 regarding the policy and practice of Nova Scotia  
 11 to promote investment in quarries generally and  
 12 the Whites Point site in particular;  
 13 George Seamen, regarding the  
 14 differences between large public companies and  
 15 small family companies in the aggregates industry;  
 16 And Stephen Shay, regarding  
 17 the tax equity adjustment, the quantum of which is  
 18 uncontested.  
 19 All of this evidence has been  
 20 reviewed, vetted, analyzed and synthesized by FTI  
 21 into a model that produces a transparent analysis  
 22 of lost profits from the Whites Point Quarry  
 23 caused by Canada's unfair and inequitable  
 24 treatment of the Claytons.  
 25 FTI's model and analysis also

1 takes into account all of the ordinary business  
 2 risks that might be associated with the quarry.  
 3 And, of course, the evidence  
 4 includes the testimony of Bill Clayton, Jr., and  
 5 Joe Forestieri, CFO of the Clayton group of  
 6 companies. And Bill Clayton's evidence explains  
 7 the Claytons' business and philosophy, their way  
 8 of doing business, their values, their  
 9 relationships, all of which explains how they have  
 10 actually made the entrepreneurial business  
 11 decisions that have taken them from his father,  
 12 Bill Clayton, Sr., starting literally with a  
 13 shovel and a wheelbarrow in the '50s, in  
 14 three generations to become the largest --  
 15 continues to be the largest concrete supplier in  
 16 the state of New Jersey, notwithstanding  
 17 significant consolidation in that industry, they  
 18 continue to be the largest concrete supplier in  
 19 the state of New Jersey, a manufacturing business  
 20 with over 600 loyal employees.  
 21 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
 22 10:15 A.M.  
 23  
 24  
 25

1  
 2  
 3  
 4  
 5  
 6  
 7 Mr. Clayton also recounts how  
 8 the Claytons were invited and encouraged by the  
 9 Government of Nova Scotia to develop a quarry at  
 10 Whites Point and to export aggregate from the  
 11 quarry to the United States in accordance with the  
 12 government's long-standing policy to promote the  
 13 economy by attracting US investors to do just  
 14 that, and how they were led to believe the JRP  
 15 would be an honest, scientific, environmental  
 16 assessment, not, and I say again respectfully, the  
 17 outright sham it turned out to be and, it might be  
 18 said, was intended to be from the beginning.  
 19 In summary, the Whites Point  
 20 Quarry fit strategically into the Claytons' other  
 21 business ventures. It had properties well known  
 22 and understood by the Claytons, their employees  
 23 and their experts. It was a carefully planned  
 24 business venture, consistent with their past  
 25 investments. The Claytons were and remain a  
 private family business that was not subject to

Page 35

1 the requirements and practices of public companies  
2 where a management group is paid to make corporate  
3 investments on behalf of different shareholders  
4 and stakeholders who are focussed on quarterly  
5 results and monthly share prices. They were and  
6 are highly successful and experienced investors  
7 investing their own resources to extend their  
8 business in which they had already succeeded for  
9 two generations.

10 Indeed, the real-world  
11 evidence demonstrating how the Claytons were to  
12 develop, process, transport, market and sell the  
13 basalt at Whites Point is fundamentally realistic  
14 and compelling. The evidence provides a full and  
15 complete foundation for the FTI evaluation of the  
16 Claytons' loss. Taken together, the evidence and  
17 valuation proves the fact and the measure of the  
18 Claytons' loss of profits far beyond a balance of  
19 probabilities. And it provides the tribunal with  
20 the necessary basis for an award of damages equal  
21 to loss of profits as full reparation.  
22 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
23 10:17 A.M.

24 MR. NASH: Notable is that  
25 Canada has not presented the tribunal with a

Page 37

1 reality, all of the evidence Canada tenders to the  
2 tribunal is, in sharp contrast, theoretical and  
3 make-believe. It is imaginary. To make its case,  
4 Canada has to ignore the real-world evidence.

5 Canada's evidence is based on  
6 hypothetical speculation and abstract models and  
7 theory devoid of reality. Canada presents no  
8 evidence of any substance or consequence to  
9 counter the Claytons' claim.

10 Instead, Canada relies on  
11 fiction, conjecture, misinformation, false  
12 projections, and artificial speculative  
13 estimations. Canada's experts simply ignore the  
14 facts of this case. The facts demonstrate beyond  
15 doubt the true value of the Whites Point Quarry to  
16 the Claytons based on the actual profits that  
17 would have been earned over the 50-year life of  
18 the quarry.

19 Moreover, as it did in the  
20 merits phase, Canada is once again hiding from the  
21 tribunal all of the witnesses who could actually  
22 provide this tribunal with direct firsthand  
23 testimony of what the true effects of this project  
24 were likely to be and how they could be mitigated  
25 and what actually happened.

Page 36

1 valuation of its own. Apart from a few contrived  
2 criticism, Canada contends only that if FTI had  
3 used the date of Canada's breach of the NAFTA as  
4 the base date for the valuation of the Claytons'  
5 loss rather than the current date, the valuation  
6 would be lower. Canada's contention is simply  
7 wrong.

8 It is inapplicable. The date  
9 of the breach is only relevant in assessing  
10 damages for lawful expropriation. Article 1110 of  
11 the NAFTA specifically provides that the legal  
12 standard for damages in expropriation is the fair  
13 market value of the asset on the date it was  
14 expropriated. This case is not an expropriation  
15 case. It was never pleaded as such. It was not  
16 argued or decided as such. It is not an  
17 expropriation case. It is a lost profits case.

18 In this case, the damage is  
19 being assessed for the lost profits that, but for  
20 Canada's breaches, the Claytons would have derived  
21 from the Whites Point Quarry on the basis of full  
22 reparation.

23 While all of the Claytons'  
24 evidence that establishes the assessment of full  
25 reparation is rooted in fact and grounded in

Page 38

1 Canada has not brought to this  
2 arbitration the ministers, the deputy ministers,  
3 or, indeed, any official who was actually involved  
4 in the denial of the quarry.

5 Canada has not brought to this  
6 arbitration the members of the JRP who could  
7 explain what they did in their analysis, in their  
8 extensive deliberations, in their three and a half  
9 years of involvement in this project, in the two  
10 weeks of public hearings, in the four public  
11 scoping sessions, in their review of the extensive  
12 EIS, in their review of all of the information  
13 request responses, the 56 undertakings, and their  
14 three and a half, four months deliberation between  
15 the end of the public hearings on June 30th, 2007,  
16 to the issuance of their report on October 22nd,  
17 2007.

18 They could be here to explain  
19 what it is they did and how it is they came to  
20 their conclusion. What we have instead are  
21 substitutes who can only speculate as to what they  
22 might have done, what they could have done, what  
23 they might possibly have been thinking, what they  
24 might possibly miss and how they possibly missed  
25 it. In the legions of review of the environmental

Page 39

1 legislation in Canada, likely significant  
2 environmental effects after mitigation, anyone in  
3 the environmental community in 2007 knew that was  
4 the test. It was articulated by the JRP. It was  
5 told to Bilcon that would be the test. They knew  
6 the test. They were experienced people. They had  
7 100 years of combined study of the various matters  
8 involved in environmental assessment, and they  
9 have not come here to explain to this tribunal  
10 exactly what they did and why they did it, and we  
11 have a theory about that which we will articulate  
12 at the end of this, at the end of the evidence in  
13 this hearing.

14 As I say, Canada, instead --  
15 let me also just add that there were senior  
16 government officials, there were 11 of them from  
17 the DFO who actually appeared before the JRP or --  
18 and others who gave internal advice; in  
19 particular, those were the government's experts,  
20 the DFO experts and specialists on shipping,  
21 lobster and right whales. There were eminent  
22 scientists from the DFO, very experienced and very  
23 involved in studying right whales and lobster and  
24 other issues involving oceans and fisheries.  
25 Dr. Fournier himself was a 40-year professor of

Page 41

1 The people Canada is afraid to  
2 bring to this tribunal are the people who know  
3 what did happen. If the JRP could have found  
4 likely significant adverse environmental effects  
5 which could not be mitigated, they would have.  
6 And they didn't. Instead, they based their  
7 recommendation on CCV, a concept unknown to the  
8 law.

9 In the absence of these  
10 critical witnesses, Canada fails to present to the  
11 tribunal any credible evidence to contradict the  
12 evidence of the investors.

13 Instead, Canada's witnesses  
14 regarding the JRP present evidence is founded on  
15 speculation. The witnesses are not impartial.  
16 They make so-called findings of fact which usurp  
17 the function of the tribunal. It is not for  
18 expert witnesses to make findings of fact. It is  
19 for experts to offer impartial, unbiased,  
20 arm's-length third-party advice to you, the  
21 members of this tribunal, to assist this tribunal  
22 in coming to a just conclusion.

23 What we hear from Canada's  
24 witnesses is the party line. They are advocates,  
25 they are cheerleaders for Canada. They attempt to

Page 40

1 oceanography. He understood what they were  
2 saying. It's on the record, it did not support a  
3 finding that there were significant adverse  
4 environmental effects that could not be mitigated  
5 with respect to the right whale or the lobsters.  
6 And now we have Canada bringing evidence before  
7 you through witnesses who were not there, who did  
8 not participate, to say, after the fact, they want  
9 to rewind the film and say, in all of this  
10 evidence, they could have found that there were  
11 significant adverse, likely significant adverse  
12 environmental effects which could not be mitigated  
13 and that these three eminent professors who sat on  
14 that JRP, they just missed it.

15 It's not possible that they  
16 missed it. They knew what they were doing, and  
17 they wanted to kill the project, and they found  
18 CCV, which was not lawful, and they knew it wasn't  
19 lawful, and they aren't here to explain themselves  
20 as to how they came to that result. Canada  
21 therefore offers government spokesmen who are no  
22 substitutes for the real actors in the piece and  
23 who only can speculate as to what might have  
24 happened, what could have happened, what might  
25 possibly have happened.

Page 42

1 reopen the merits phase and invite the tribunal to  
2 change its findings. And contrary to fact, law,  
3 and logic, they use the JRP's unlawful  
4 recommendation as a pretext to invent ways the JRP  
5 might, in different hypothetical circumstances,  
6 have done something else.

7 However, like a car that hits  
8 the pedestrian, it is futile. It is too late. It  
9 is too late to speculate on what possibly could  
10 have happened if the driver was driving slower or  
11 more carefully or if the driver was not impaired  
12 or if the street was not wet, or if it was not  
13 raining and the visibility was not clouded. The  
14 pedestrian has been hit. The damage is done. The  
15 egregious treatment of the Claytons has occurred.  
16 It is now time to put these investors in the  
17 position they would have been in had it not  
18 occurred.

19 In short, Canada's focus on  
20 the hypothetical and the theoretical and its  
21 disregard for reality shows very clearly that it  
22 cannot effectively dispute the fact that the  
23 Claytons would have completed and profitably  
24 operated the Whites Point Quarry as an integral  
25 part of their established aggregate business.

Page 43

1 I will now review the  
2 real-world evidence that anchors and proves the  
3 Claytons' loss.

4 That is, Canada set the table  
5 and invited and actively encouraged the Claytons  
6 to invest in Nova Scotia generally and in the  
7 North Mountain specifically. It is uncontested  
8 that as a matter of essential policy, a matter of  
9 essential policy, the Nova Scotia government has  
10 long recognized the importance of aggregate  
11 exploration and development to Nova Scotia's  
12 economy. In one publication entitled "Minerals -  
13 A Policy for Nova Scotia", and this was in 1996,  
14 six years before the Claytons came to Nova Scotia  
15 to invest in the quarry, to explore it first and  
16 then invest, the government proclaimed, and I  
17 quote:

18 "Industrial minerals have  
19 been consistent  
20 contributors to the  
21 province's mineral  
22 production for over 200  
23 years. These include  
24 building stone, sand and  
25 gravel and crushed rock.

Page 45

1 That's in 1996, that's the  
2 expression of the 1996 Mineral Policy, which was  
3 enacted with much fanfare at the time and  
4 continues to be in the record.

5 As the tribunal notes, Nova  
6 Scotia government publications also specifically  
7 identified the North Mountain, the exact location  
8 of the Whites Point Quarry, as a particularly  
9 attractive location for the development of a  
10 quarry for the export of aggregate. In one  
11 publication, Nova Scotia championed the:

12 "Unlimited amount of trap  
13 rock available at the  
14 North Mountain and the  
15 deep ice-free harbours  
16 that provide Nova  
17 Scotia's mineral products  
18 with a window on the  
19 world."[as read]

20 In another publication, Nova  
21 Scotia proclaimed the excellent quality of North  
22 Mountain basalt saying:

23 "The North Mountain is an  
24 important component of  
25 the bedrock aggregate

Page 44

1 The mineral industry is  
2 an important participant  
3 to the province's  
4 economic strategy,  
5 especially with its  
6 contribution to  
7 value-added production  
8 and export revenue. The  
9 Government of Nova Scotia  
10 recognizes mineral  
11 exploration and mining as  
12 a key sector contributing  
13 to jobs, wealth and a  
14 high quality of life for  
15 Nova Scotia. The  
16 government will provide  
17 leadership by  
18 implementing the policy  
19 and ensuring that the  
20 necessary conditions are  
21 maintained for the  
22 mineral industry to  
23 create wealth for present  
24 and future generations of  
25 Nova Scotians."[as read]

Page 46

1 resource. Commonly  
2 called trap rock by the  
3 industry, it has been  
4 used to produce crushed  
5 stone for several  
6 decades, as witnessed by  
7 the presence of numerous  
8 active and abandoned  
9 quarries along the  
10 mountain length."[as  
11 read]

12 Exactly where the Claytons  
13 were encouraged to go and explore and find and  
14 develop the Whites Point Quarry.

15 The government concluded by  
16 highlighting the importance of quarrying on the  
17 North Mountain saying:

18 "Industry, communities  
19 and individuals have a  
20 shared interest in  
21 continued quarrying on  
22 the North Mountain.  
23 These stone resources are  
24 vital to the development  
25 of the communities,

1 employment and tax  
2 revenue in the  
3 region."[as read]  
4 In his witness statement, Dan  
5 Fougere, a chartered accountant who for 13 years  
6 was administrative manager of the Martin Marietta  
7 quarry at Auld's Cove, Nova Scotia, one of the  
8 largest quarries in Canada. In the early 2000s,  
9 was producing about 1.8 million tons of stone a  
10 year. By the late 2000s, was producing  
11 3.8 million tons a year. That expansion all  
12 without an environmental assessment, right during  
13 the time when the Claytons were endeavouring to  
14 invest in the Whites Point Quarry, right during  
15 the time they were going through an unprecedented  
16 JRP proceeding, at that very time, expanding by  
17 twice, Dan Fougere was the administrative manager  
18 of the quarry and was responsible for its  
19 financial management, he notes that, in 1996, the  
20 Nova Scotia government published the brochure  
21 entitled "Take Advantage of Mineral Exploration  
22 and Development in Nova Scotia", which featured an  
23 aerial photo of the Martin Marietta quarry, his  
24 quarry. We have seen that photo in many  
25 publications as the poster child for quarries in

1 that Nova Scotia is open for business. A  
2 photograph of the Martin Marietta quarry was again  
3 featured on the front page of the brochure. And  
4 you see that photograph in that brochure, and, by  
5 that photograph, you will understand the  
6 differences between a modern, highly automated,  
7 efficient, brand-new quarry on the side of a hill  
8 using gravity to allow the rock, the stone to  
9 tumble down and to be put into surge piles as  
10 distinct from what is seen on the brochure with  
11 respect to the Martin Marietta quarry, it's a much  
12 more efficient model, and it was designed from the  
13 beginning to be a much more efficient, lower-cost,  
14 higher-output, quicker process.  
15 And Dr. Kontak's witness  
16 statement, he being the former Nova Scotia  
17 government geologist, explains that the government  
18 directed very significant efforts to assessing the  
19 development potential of industrial minerals in  
20 the province, including the North Mountain, and  
21 provided free geological consulting services. And  
22 you may recall Mr. Lizak's evidence from the  
23 merits round where he said he was treated like  
24 royalty, never been treated anywhere else in the  
25 world, he has been a geologist working all around

1 Nova Scotia, exactly what they wanted the Claytons  
2 to invest in.  
3 It was located at the Canso  
4 Causeway to Cape Breton. To attract investors,  
5 the brochure promised a "one window" expedited  
6 system of regulation of approval:  
7 "A 'one window' fast  
8 track approach to  
9 regulatory approvals and  
10 permits and touted the  
11 benefits of Nova Scotia's  
12 strategic location for  
13 fast, easy transportation  
14 to deep-water, ice-free  
15 seaports in US  
16 markets."[as read]  
17 Mr. Fougere notes that in  
18 2006, exactly the time that the JRP's assessment  
19 of the Whites Point Quarry was ongoing, the Nova  
20 Scotia government published two promotional  
21 brochures, one entitled "Opportunity for Export  
22 Aggregate", which highlighted the fact that Nova  
23 Scotia has an excellent record in permitting new  
24 quarries and heavy industrial projects. The  
25 brochure reiterated the government's declaration

1 the world with governments and was welcomed with  
2 open arms, taken on a helicopter tour and treated  
3 like royalty by the representatives of the Nova  
4 Scotia government.  
5 The government was providing  
6 free geological consulting services to private  
7 companies like the Claytons to promote their  
8 investment in the development of Nova Scotia  
9 quarries for the export of aggregate to the United  
10 States. Indeed, Dr. Kontak himself personally  
11 provided this assistance to John Lizak when he  
12 first came to Nova Scotia to locate the quarry  
13 site. Dr. Kontak actually spent time -- he's an  
14 employee of the government, he's a senior  
15 geologist in the government, in Natural Resources  
16 department, and he goes out with Mr. Lizak to the  
17 Whites Point site, spends several days with him on  
18 the site to assist him in coming to an  
19 understanding of the quality, the quantity of the  
20 rock. Showing him the features of North Mountain  
21 basalt which Dr. Kontak considered to be  
22 high-quality aggregate for the Claytons to pursue  
23 for the long-term future development.  
24 Canada does not contest  
25 anything about Dr. Kontak's evidence as set out in



[REDACTED]

15 They did that through the  
16 2000s. So, during the time that the JRP process  
17 was ongoing, having -- the JRP having been the --  
18 the referral to the JRP having been made in June  
19 of 2003, the JRP having been constituted by  
20 November 2004, during that period, [REDACTED]

[REDACTED]  
25 In eight years, [REDACTED]

1 [REDACTED]  
4 Recall  
5 that Bill Clayton, Sr., and Bill Clayton, Jr., had  
6 been up to Nova Scotia, met with the minister many  
7 times, had very, very favourable greetings from  
8 the minister, very favourable soundings, right in  
the period as [REDACTED]

[REDACTED] It is  
11 important to know that at that time  
[REDACTED] And during the period of time in the  
14 2000s when [REDACTED]

[REDACTED] It's  
17 important to recognize that and to remember that  
18 as we hear the evidence unfold during the course  
19 of this week.

20 With New York Sand & Stone's  
21 [REDACTED]

[REDACTED]

22 The Whites Point Quarry was a  
23 singular opportunity of extraordinary value which  
24 provided all of the benefits the Nova Scotia  
25 government said it would. [REDACTED]

[REDACTED]

9 It is to be recalled that  
10 Mr. Buxton retained a leading socioeconomic  
11 expert, Susan Sherk, to undertake a comprehensive  
12 study of the socioeconomic effects and  
13 consequences of the project. And also it retained  
14 a leading, perhaps the leading, economic  
15 consultancy firm, Gardner Pinfold. Both of those  
16 individuals appeared before the JRP. Susan Sherk  
17 gave a long presentation and, at the end,  
18 concluded that there were no significant adverse  
19 effects of the project from a socioeconomic  
20 standpoint that could not be mitigated. She went  
21 through all of the employment industries --  
22 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
23 10:48 A.M.

24 MR. NASH: -- fishing, lobster  
25 fishing, whale touring, whale watching, and any

1 other industries, and it was a poor area, but any  
2 other industries that were operating on Digby  
3 Neck, which are a thousand people. It was going  
4 to provide 34 full-time well-paying jobs. It was  
5 important. That is not to be ignored or forgotten  
6 that socioeconomic issues were studied as part of  
7 the JRP process.

8 The evidence is also clear  
9 that the same Government of Nova Scotia policy of  
10 attracting investors to develop quarries in Nova  
11 Scotia and to promote the development of quarries  
12 in Nova Scotia was in place during the JRP hearing  
13 process. It was in place when the Nova Scotia  
14 minister decided to deny regulatory approval of  
15 the Whites Point Quarry. It remains in place  
16 today. It's a formal government policy, never  
17 been reversed to develop minerals, in particular  
18 aggregates, in Nova Scotia for the purpose of  
19 export. None of this is contested.

20 As Dan Fougere describes in  
21 his witness statement, this Nova Scotia policy is  
22 what attracted Martin Marietta to Nova Scotia in  
23 the 1990s. Just by way of background, the Auld's  
24 Cove Quarry had been built to facilitate the  
25 building of the Canso Causeway in the '50s, and it

1 had been operated as a quarry. But Martin  
2 Marietta, being by that time now a major, one of  
3 the major aggregates producers in North America,  
4 came and, I think it's 1995, to Auld's Cove at the  
5 invitation of the government in pursuance of the  
6 policy it was about to announce in 1996 to take  
7 over the Auld's Cove Quarry. It became one of the  
8 most profitable quarries in the Martin Marietta  
9 family and is the largest quarry in Canada.

10 All the more noteworthy is the  
11 Nova Scotia government's quick approval in 2016,  
12 as I mentioned, of the new Black Point Quarry and  
13 marine terminal in Nova Scotia without a joint  
14 review panel.

15 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
16 10:50 A.M.

17 MR. NASH: And just looking at  
18 the map again, we see on the east coast of --  
19 southeast coast of Nova Scotia, up towards Cape  
20 Breton Island is where the Black Point Quarry is  
21 located. Again, further from New York City and  
22 Oceanside. And that quarry is, having been  
23 approved, is to be producing between 6 and 8  
24 million tons of aggregate per year, it's a mega  
25 quarry, it's three to four times larger than

1 Whites Point, after a comprehensive study and a  
2 streamlined approval process.

3 [REDACTED]

9 The Black Point Quarry, as I  
10 say, will produce about 6 to 8 million tons of  
11 rock per year for export by ship to the US, and it  
12 required, itself, the expropriation, the  
13 government facilitated by expropriating storied  
14 private land which was justified because of the  
15 royalty revenue it will generate.

16 From the outset, the  
17 conditions for the Whites Point Quarry existed.  
18 In 2002, John Lizak, with the assistance of Kontak  
19 and other Nova Scotia officials, confirmed that  
20 the North Mountain location of the quarry had

21 [REDACTED]

22 The independent expert report  
23 of Michael Cullen, [REDACTED]

1 [REDACTED]

3 In 2002, the Claytons hired  
4 John Wall to be the general manager of the quarry  
5 and to oversee its construction. At that time,  
6 Mr. Wall had over 25 years' experience. He was an  
7 expert in quarry management and operation. He had  
8 25 years of experience managing quarries,  
9 including the tenth largest hard rock quarry in  
10 the US.

11 After visiting Whites Point in  
12 2002 and reviewing the geological information the  
13 Claytons had received from John Lizak, Mr. Wall  
14 began a close collaboration with Paul Buxton, as  
15 you know, the Claytons' project manager. John  
16 Wall began making bi-weekly trips from New Jersey  
17 to Nova Scotia before moving there permanently  
18 from New Jersey to Nova Scotia with his family in  
19 2006. His two youngest daughters graduated high  
20 school from Digby high school. He was there for  
21 two and a half years, all on the expectation of  
22 what every reasonable projection would be, and  
23 that is that the quarry would get approved and it  
24 would start operating -- start being built in  
25 about 2008 and start operating in about 2010.

1 It was, of course, planned  
 2 that it would be operating much earlier, but that  
 3 was on the basis -- Mr. Buxton was led to expect  
 4 at the early stage that it would be on the basis  
 5 of a comprehensive study and not that it would be  
 6 on the basis of what turned out to be, in total, a  
 7 four-year environmental review. But by 2006, John  
 8 Wall's moved up to Nova Scotia, they are expecting  
 9 the quarry to be approved, they are expecting  
 10 ministerial approval in late 2007 by this stage,  
 11 and, of course, we know what happened after that.

12 In 2003 -- as early as 2003,  
 13 John Wall engages LB&W Engineering to work with  
 14 him to develop and engineer the Whites Point  
 15 Quarry and to prepare the design drawings for  
 16 construction.

17 He selected LB&W because they  
 18 specialized in the design, engineering and  
 19 construction of processing systems for quarries.  
 20 That's what they do. They were renowned for their  
 21 expertise in the planning and oversight of  
 22 conveyor systems and crushing systems, which is a  
 23 lot of what a crushing plant is about. Before  
 24 being engaged by John Wall, George Bickford, who  
 25 you will hear from, the president of LB&W

1 Engineering, had over 30 years' field experience  
 2 in the design of quarries, and he had designed  
 3 over 20 aggregate crushing plants. Mike Washer,  
 4 the professional engineer at LB&W, reviewed and  
 5 sealed final engineer drawings. This is before  
 6 the quarry is denied. He prepared cost estimates,  
 7 and over the past 25 years, Mr. Washer has  
 8 prepared over 75 cost estimates for projects  
 9 costing upwards of \$30 million. These are very  
 10 experienced people.

11 The Claytons gave everyone  
 12 that they had involved in this a full mandate to  
 13 get this job done, to hire the best people, to  
 14 find the best people, to do the best research.  
 15 Mr. Wall went out to the west coast. He flew --  
 16 he was commissioned to fly out to Vancouver Island  
 17 and to Sechelt on the Pacific to view marine  
 18 terminals that had been designed and built or were  
 19 being designed and built by Seabulk, from which he  
 20 ultimately received a design-build proposal. He  
 21 went out three, four, five times, but it was all  
 22 done for the purpose of getting the best evidence  
 23 and the best assessment of what was needed to  
 24 build the quarry, long before the denial. This  
 25 was happening in 2004, 2005, 2006, as the

1 environmental approval process was running its  
 2 course.

3 Together, George Bickford and  
 4 Washer combined, over 80 years of professional  
 5 experience in the design, engineering, costing and  
 6 construction of quarries.

7 From 2003 to the denial of the  
 8 Whites Point Quarry in 2007, George Bickford  
 9 worked closely with John Wall to design a quarry  
 10 that would meet the Claytons' initial goals of  
 11 approximately 2 million tons per year of  
 12 marketable aggregate.

13 With a capacity for subsequent  
 14 expansion, the plant lifespan would be  
 15 approximately 50 years. And you might be  
 16 interested in knowing that [REDACTED]  
 17 [REDACTED] They are very  
 18 sturdy, they are built to last, they are  
 19 engineered, and this plant was designed to last  
 20 for 50 years.  
 21 [REDACTED]

[REDACTED]

6 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
 7 10:57 A.M.

8 MR. NASH: I think now, I see  
 9 the time is 11 o'clock, Judge Simma, perhaps now  
 10 might be an appropriate time, from your  
 11 standpoint, for a break and come back in half an  
 12 hour.

13 PRESIDING ARBITRATOR: Yes, I  
 14 think we have reached about a little less than  
 15 half the time available, so it's a good time. So  
 16 we will break until 11:15 sharp.

17 MR. NASH: Very good, thank  
 18 you.

19 --- Upon recess at 10:58 a.m.

20 --- Upon resuming at 11:19 a.m.

21 PRESIDING ARBITRATOR: I just  
 22 noticed, not terribly sharp we were, but we will  
 23 improve. Okay, Mr. Nash, you have the floor  
 24 again.

25 MR. NASH: Thank you, Judge

1 Simma.  
 2 We left off on the design of  
 3 the quarry.  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 Mr. Bickford achieved this  
 9 result by [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 George Bickford's expert  
 20 reports describe how the Whites Point Quarry was  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
 25 11:20 A.M.

1 MR. NASH: Throughout, George  
 2 Bickford worked closely with Mr. Wall, who, from  
 3 his own extensive experience, knew exactly what he  
 4 wanted to do to make the Whites Point Quarry  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 As George Bickford and John  
 10 Wall [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 I will  
 25 shortly ask my colleague Mr. Johnston to provide  
 you with an overview of the plant with the

1 PowerPoint slides.  
 2 AggFlow is the internationally  
 3 accepted industry standard for calculating a  
 4 quarry's output. It simulates the real-world  
 5 operations and production results of using  
 6 specific crushing equipment for specific  
 7 applications of size, quantity, and product type,  
 8 to exact specifications and tested for optimized  
 9 performance.  
 10 Using extensive embedded data,  
 11 including rock geology, equipment specifications  
 12 and screen throughput capacities, AggFlow  
 13 replicates the crushing plant's operation and  
 14 models the flow of aggregate to virtually  
 15 construct and operate a plant.  
 16 In verifying the design of a  
 17 particular plant, AggFlow generates a screen  
 18 display that shows the quantity of material that  
 19 will pass through or across all elements of the  
 20 plant and be deposited into each stockpile.  
 21 AggFlow also identifies any aspect of the plant  
 22 design that is incompatible with the planned  
 23 volume and flow of crushed stone, and it allows  
 24 for revisions to the design to be made virtually.  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 The actual cost of the quarry,  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 . The Whites Point Quarry was, therefore,  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 All that Canada contends is  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 George Bickford explains that  
 25 this is a theoretical fantasy that can only be

1 based on a fundamental lack of understanding of  
 2 [REDACTED]  
 3 [REDACTED]  
 4 I will now turn the podium to  
 5 Mr. Johnston to speak to the design of the  
 6 project.  
 7 OPENING STATEMENT BY MR. JOHNSTON:  
 8 MR. JOHNSTON: Judge Simma and  
 9 members of the tribunal, as Mr. Nash indicated, I  
 10 will review several of the PowerPoint slides  
 11 attached to Mr. Bickford's reply witness statement  
 12 as Exhibit 1 in order to briefly review how the  
 13 Whites Point Quarry crushing plant was designed to  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Now, in basic terms, as  
 17 Mr. Nash indicated, an aggregates plant crushes or  
 18 reduces large rock into smaller rock and separates  
 19 the smaller rock into marketable aggregate  
 20 product.  
 21 The process of reducing and  
 22 separating the rock is accomplished by crushers  
 23 that break the rock, by screens that separate the  
 24 rock by size, and by conveyors that move the rock  
 25 through the plant. [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 Now, the Whites Point Quarry  
 5 plant was to produce, [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 I will now return the floor to  
 2 Mr. Nash to continue with the investors' opening  
 3 statement.  
 4 CONTINUED OPENING STATEMENT BY MR. NASH:  
 5 MR. NASH: So the aggregate  
 6 has now been produced, as Mr. Johnston described,  
 7 and it needs to go onto a ship. The ship needs to  
 8 dock at a marine terminal.  
 9 The real-world evidence for  
 10 the marine terminal is the same as the real-world  
 11 evidence for the plant. The Claytons planned for  
 12 a marine terminal that would [REDACTED]  
 [REDACTED]  
 16 The evidence is that the  
 17 Claytons commissioned studies confirming that the  
 18 seabed adjacent to Whites Point would support a  
 19 marine terminal and, through John Wall, engaged a  
 20 leading firm, as I have said, specializing in the  
 21 design and construction of marine terminals to  
 22 provide a design-build proposal.  
 23 The expert reports of  
 24 SNC-Lavalin confirmed the feasibility of the  
 25 marine terminal and that its estimated cost [REDACTED]

1 [REDACTED]  
 7 The SNC-Lavalin reports  
 8 include the expert report of Bill Collins, a  
 9 structural engineer with over five decades of  
 10 experience in the design and construction of  
 11 marine facilities, including at Digby Neck along  
 12 the Bay of Fundy. None of this is disputed by  
 13 Canada.  
 14 The real-world evidence also  
 15 proves that shipping from Whites Point was readily  
 16 available. As I have said, the New York Sand &  
 17 Stone Company ha [REDACTED]  
 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Based on Mr. Morrison's

7 extensive experience [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 The Claytons' business plan

14 was t [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Mike Wick, who you will hear

21 from, has over 30 years' experience in aggregate

22 engineering operations and management and the

23 preparation of comprehensive and detailed

24 aggregate market studies. The analysis in his

25 expert report demonstrates that the market was and

1 remains robust; [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 To estimate future demand for

10 aggregate from the Whites Point Quarry, Mr. Wick

11 took into account the [REDACTED]

12 [REDACTED] as well as various

13 market indices and metrics, including market

14 forecasts, projected commercial and infrastructure

15 construction spending, population trends, New York

16 City economic forecasts, and a variety of federal,

17 state, and local data. His expert report on the

18 volume and pricing of aggregate is also based on

19 actual market conditions [REDACTED] and

20 verifiable data from trusted industry sources,

21 such as the US Geological Service, the New York

22 State Department of Transport, the New York

23 Building Congress, Dodge Analytics, the New Jersey

24 Construction Reporter, and the Portland Cement

25 Association, which he notes is a 100-year old

1 independent organization that is the undisputed

2 authority on cement forecasting and customarily

3 and routinely used by companies and organizations

4 worldwide.

5 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT

6 11:43 A.M.

7 MR. NASH: In addition, you

8 have the expert reports of John Lizak on the

9 viable regional market for aggregate from the

10 Whites Point Quarry down the US Atlantic coast.

11 Mr. Lizak explains that the

12 regional US market for the crushed stone exported

13 from Bilcon's Whites Point Quarry is [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Mr. Lizak's analysis for the broader

6 regional market demand for Whites Point Quarry

7 aggregate is entirely undisputed.

8 In addition to being a

9 licensed geologist, John Lizak has over 25 years

10 in specializing in the valuation, development,

11 acquisition, and divestiture of construction

12 material companies. Mr. Lizak is eminently

13 qualified to provide real-world perspectives and

14 analysis. He has extensive credentials, including

15 the Certified Mineral Appraiser designation, and

16 he is a member of the International Mineral

17 Valuation Standards Committee of the Society of

18 Mining and Exploration, which is mandated to

19 harmonize global mineral valuation standards.

20 In addition to completing

21 postgraduate studies in corporate finance and

22 mineral economics, Mr. Lizak has operated quarries

23 in New York and New Jersey. He owns mineral

24 leases. He manages mineral trusts to ensure

25 operators maximize market opportunities for his

clients. He has held leadership positions with

1 large international companies, like Exxon and  
2 British Petroleum, and has conducted import and  
3 export opportunity studies along the US east coast  
4 for US and multinational clients, including US  
5 Concrete, which purchased New York Sand & Stone,  
6 and Vulcan, which is developing the mega quarry at  
7 Black Point.

8 The tribunal will recall that  
9 Mr. Lizak had been engaged by the Claytons back in  
10 2002 to locate a long-term supply of aggregate in  
11 Nova Scotia that specifically [REDACTED]  
12 [REDACTED]. His  
13 report in the merits phase of the arbitration  
14 chronicles how he was welcomed and assisted by  
15 Nova Scotia government officials who provided him  
16 with material explaining the Nova Scotia policy of  
17 attracting US investors to develop quarries in  
18 Nova Scotia for the export of aggregate and how  
19 the officials personified the Nova Scotia policy  
20 in action.

21 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
22 11:46 A.M.

23 MR. NASH: The geological and  
24 locational assistance of the Nova Scotia officials  
25 informed his recommendation to the Claytons as the

1 MR. NASH: Like the reports of  
2 Mr. Wick, Mr. Lizak's reports are not based on  
3 desktop theory. They are informed by practical  
4 reality. They are based on real statistics and  
5 information from trusted industry sources, [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 All in all, one irrefutable  
9 point that underlies the entire assessment of  
10 damages is that, in the ordinary course, the  
11 evidence shows the overwhelming probability that,  
12 but for Canada's wrongful treatment of the  
13 Claytons, they would, today, be operating a highly  
14 successful quarry in Whites Point. In the  
15 ordinary course, the Whites Point Quarry would not  
16 have been referred to a JRP. In the ordinary  
17 course, the environmental assessment would have  
18 recommended approval of this quarry. In the  
19 ordinary course, ministerial approvals would have  
20 been granted. And, in the ordinary course, all  
21 industrial permits would have been issued.

22 The tribunal will recall from  
23 David Estrin's reports in the merits phase that  
24 the most common type of EA in Canada typical for a  
25 quarry is a screening, of which around 60,000 were

1 most advantageous location in Nova Scotia [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 His reports also explain in  
5 regard to the market, [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 Canada's theory is  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 The theory is without any basis whatsoever. It is  
meritless.

26 Canada's suggestion is not  
27 based on any economic studies. Instead, it is  
28 based on a theoretical and fundamentally flawed  
29 population and pricing model that ignores the  
30 demand side of basic economic models of supply and  
31 demand and on the equally fundamentally flawed  
32 assumption that competitive market share is an  
33 impediment to growth.  
34 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
35 11:48 A.M.

1 conducted between 1995 and 2003, a comprehensive  
2 study, not uncommon for a major work project like  
3 a quarry with a wharf. But a joint  
4 federal-provincial review panel is reserved for  
5 and was reserved for large, complex mega projects  
6 in the most rare and extraordinary circumstances.  
7 Between 1995 and 2003, only three CEAA panel  
8 reviews were conducted. Between 1995 and 2012, 27  
9 projects were assessed by review panels. Except  
10 for the Whites Point Quarry, a JRP remains unheard  
11 of for any quarry in Canada, including, as I have  
12 said, the Black Point mega quarry.

13 In the background, of course,  
14 as the evidence and merits phase revealed, was the  
15 abuse of public office by elected officials who  
16 wanted the heat off for the upcoming election and  
17 who, with the complicity of government officials,  
18 empanelled a JRP without jurisdiction and caused  
19 the true information to be withheld from the  
20 Claytons by deliberate deceit and deception.

21 I will return to this in the  
22 context of Canada's mitigation argument.  
23 David Estrin is undoubtedly  
24 Canada's preeminent and internationally renowned  
25 legal scholar, practitioner, and teacher of

Page 91

1 environmental law. As he so clearly puts it:  
 2 "Since at least 2000,  
 3 Nova Scotia never met a  
 4 quarry or marine terminal  
 5 project it did not like  
 6 and approve." [as read]  
 7 To put Mr. Estrin's expert  
 8 reports in context, the tribunal -- this tribunal  
 9 has held that the legitimate expectation of an  
 10 investor may depend crucially on the legal  
 11 landscape, including existing statutes and  
 12 judicial and administrative precedents that  
 13 existed before an alleged breach took place.  
 14 In this case, the real legal  
 15 landscape and the actual administrative precedents  
 16 regarding environmental approval in Nova Scotia  
 17 are clear. During the 17 years from 2000 to 2017,  
 18 for which records are publicly available, every  
 19 completed application for a quarry and marine  
 20 terminal under the Nova Scotia Environment Act was  
 21 approved.  
 22 Between 2000 and 2017, Nova  
 23 Scotia received 49 completed applications for  
 24 environmental approval of quarries, mines, and  
 25 sandpits and marine terminals. All 49

Page 93

1 what's called the rubble mound technique and 57  
 2 hectares of wetland and still received approval in  
 3 record time.  
 4 In the ordinary course, the  
 5 Whites Point Quarry would never have been referred  
 6 to a joint review panel for environmental  
 7 assessment, and, in the ordinary course, the  
 8 environmental assessment would have recommended  
 9 approval of the quarry. Mr. Estrin's expert  
 10 reports prove clearly that, apart from the  
 11 reasonable expectations from the Claytons, if the  
 12 ordinary evaluation criteria and practice  
 13 standards of Nova Scotia and the CEEA were  
 14 honestly, fairly, and objectively applied to the  
 15 environmental assessment of the Whites Point  
 16 Quarry, it would, in the ordinary course, have  
 17 received regulatory approval. The denial of that  
 18 approval was without precedent. It was arbitrary;  
 19 it was unreasonable; and, as this tribunal has  
 20 found, constituted unfair, inequitable, and  
 21 discriminatory treatment under the NAFTA.  
 22 Professor Lorne Sossin, dean  
 23 of the Osgoode Hall Law School, is Canada's  
 24 leading authority on the lawful exercise of  
 25 discretion. His expert reports make clear that

Page 92

1 applications were approved.  
 2 Approval was the Claytons'  
 3 well-founded and wholly-reasonable expectation.  
 4 In the entire history of regulatory approval of  
 5 quarries in Nova Scotia, only the Whites Point  
 6 Quarry was denied approval, the only one.  
 7 The same is true in all of  
 8 Canada. Before the Whites Point Quarry, no quarry  
 9 had ever been referred to a CEEA panel for  
 10 environmental assessment, and before the Whites  
 11 Point Quarry, there was no project of any kind  
 12 assessed by a CEEA review panel that was not  
 13 ultimately approved.  
 14 And neither has any quarry,  
 15 since the Whites Point Quarry, been referred to a  
 16 JRP.  
 17 As David Estrin's expert  
 18 reports show, all comparable projects always were  
 19 and continue to be routinely approved by both  
 20 Canada and Nova Scotia.  
 21 The recent approval of the  
 22 Black Point Quarry is particularly compelling.  
 23 For perspective, while the footprint of the Whites  
 24 Point Quarry was minimal, the Black Point Quarry  
 25 will destroy nearly 3 acres of the ocean floor by

Page 94

1 the bedrock constitutional principle underlying  
 2 all discretion is the rule of law. Under the rule  
 3 of law, no executive decision-maker -- not a  
 4 minister, nor a premier, nor a Prime Minister --  
 5 has inherent or unlimited legal authority. In  
 6 Canada, all executive action must have a source of  
 7 statutory law. All decisions of the executive  
 8 must be understood to be limited by an assessment  
 9 of the scope of the statute and its purpose.  
 10 As the Supreme Court of Canada  
 11 famously stated in *Roncarelli v. Duplessis*:  
 12 "In public regulation,  
 13 there is no such thing as  
 14 absolute and untrammelled  
 15 discretion. No  
 16 legislative act can,  
 17 without express language,  
 18 be taken to contemplate  
 19 an unlimited arbitrary  
 20 power, exercisable for  
 21 any purpose, however  
 22 capricious or irrelevant.  
 23 Regardless of the nature  
 24 or purpose of the  
 25 statute, discretion

1 necessarily implies good  
2 faith in discharging  
3 public duty. There is  
4 always a perspective  
5 within which a statute is  
6 intended to operate; and  
7 any clear departure from  
8 its lines or objects is  
9 just as objectionable as  
10 fraud or corruption."[as  
11 read]

12 In the secession reference  
13 case, the Supreme Court added:

14 "The rule of law is a  
15 highly textured  
16 expression, importing  
17 many things, for example,  
18 a sense of orderliness,  
19 of subjection to known  
20 legal rules, and of  
21 executive accountability  
22 to legal authority. At  
23 its most basic level, the  
24 rule of law vouchsafes to  
25 the citizens and

1 residents of a country a  
2 stable, predictable, and  
3 ordered society in which  
4 to conduct their affairs.  
5 It provides a shield for  
6 individuals from  
7 arbitrary state  
8 action."[as read]

9 In his expert opinion in the  
10 merits phase, Professor Murray Rankin also  
11 discussed the rule of law, noting, and I quote:

12 "Administrative law is  
13 itself the natural  
14 outcome of the rule of  
15 law and the transcendent  
16 idea it encompasses.  
17 Those exercising public  
18 authority must act within  
19 the scope of the  
20 authority granted to them  
21 by the legislation."[as  
22 read]

23 In this case, the CEAA and the  
24 Nova Scotia Environment Act provided the authority  
25 for the ministerial discretion that could be

1 exercised in regards to the Whites Point Quarry.  
2 In exercising their discretion under the statutes,  
3 the ministers abused their discretion, considered  
4 irrelevant factors, failed to consider relevant  
5 factors, and made decisions that were, in  
6 substance, so manifestly unreasonable that they  
7 were arbitrary. In addition, the tribunal found  
8 that the investors were denied procedural  
9 fairness. In other words, as Dean Sossin  
10 explains, there was no basis on which the  
11 ministers, acting reasonably, could have lawfully  
12 denied regulatory approval of the Whites Point  
13 Quarry.

14 Conversely, if they had acted  
15 reasonably, they would have approved the quarry.  
16 In the circumstances of this case, they were,  
17 therefore, legally compelled to approve the  
18 quarry.

19 Of central importance is that,  
20 except for the report of Thomas Cromwell,  
21 submitted with Canada's rejoinder and which  
22 focuses solely on the discretion available to the  
23 Nova Scotia minister, Canada does not present to  
24 the tribunal any legal voice that conflicts with  
25 Dean Sossin's opinion. And to the extent that the

1 Cromwell report expresses a different view, it is  
2 contradicted, with respect, by the most  
3 fundamental principles of the rule of law on which  
4 Dean Sossin's opinion is so firmly grounded.

5 In effect, the Cromwell report  
6 argues that, under the Nova Scotia Environment  
7 Act, the discretion of the minister is so broad --  
8 that's the word that is used -- so broad and not  
9 expressly constrained as to be unaccompanied by  
10 legislative limitation. So broad and not  
11 expressly constrained as to be unaccompanied by  
12 legislative limitation.

13 However, a simple review of  
14 the statute reveals that the Cromwell report,  
15 again with respect, fails to observe that the  
16 legislative scheme does, in fact, contain specific  
17 purposes, which the tribunal has already  
18 recognized, in regard to how ministerial  
19 discretion under the Act is to be reasonably  
20 exercised.

21 The Act has a specific  
22 context. It expressly states that the overarching  
23 goal of the legislation is to balance  
24 environmental protection and economic development.  
25 "Balance environmental protection and economic

Page 99

1 development", that's in the "Purpose" section of  
2 the Act. Indeed, as the tribunal noted in its  
3 merits award, the laws of Canada and Nova Scotia,  
4 as well as the NAFTA itself, expressly  
5 acknowledged that economic development and  
6 environmental integrity cannot only be reconciled,  
7 but can be mutually reinforcing. The tribunal  
8 also specifically referenced Section 2 of the Nova  
9 Scotia Environment Act, which clearly sets out the  
10 purpose of the Act.

11 At paragraph 485, I quote:

12 "The JRP also had a  
13 mandate to carry out the  
14 functions of a board  
15 under the NSEA, the Nova  
16 Scotia counterpart of the  
17 CEEA. The objectives of  
18 the provincial statute in  
19 many ways match those of  
20 the federal act. The  
21 provincial statute  
22 embodies the principle of  
23 sustainable development.  
24 It affirms the linkage  
25 between economic and

Page 100

1 environmental issues,  
2 recognizing that  
3 long-term economic  
4 prosperity depends upon  
5 sound environmental  
6 management and that  
7 effective environmental  
8 protection depends on a  
9 strong economy. The role  
10 of reconciling  
11 environmental protection  
12 and economic development  
13 is further embodied in  
14 the statute by the  
15 statement of the  
16 principle of shared  
17 responsibility of all  
18 Nova Scotians to sustain  
19 the environment and the  
20 economy, both locally and  
21 globally, through  
22 individual and government  
23 actions." [as read]

24 The regulatory purpose of the  
25 Nova Scotia Environment Act is plainly

Page 101

1 inconsistent with any notion that the legislature  
2 could possibly have intended the minister to have  
3 unlimited discretion.

4 If the discretion were  
5 intended to be entirely open-ended, the precise  
6 and clearly confined purpose of the Act and the  
7 definitions of key terms would be entirely  
8 unnecessary. Neither can the Act be properly  
9 interpreted to give the minister any -- and I put  
10 this in quotes -- 'political override discretion'.

11 As Dean Sossin observes, and I quote:

12 "In my view, the CEEA  
13 does not provide a  
14 residual discretion for a  
15 federal minister to  
16 reject a proposal where  
17 no significant adverse  
18 environmental effects  
19 have been found simply on  
20 the basis of the  
21 ministers' preference or  
22 political motivations.  
23 "Just as the CEEA does  
24 not permit a residual  
25 discretion for a federal

Page 102

1 minister to reject a  
2 proposal where no  
3 significant adverse  
4 environmental effects  
5 have been found simply on  
6 the basis of the  
7 minister's preference or  
8 political motivations, I  
9 am aware of no discretion  
10 of this kind which could  
11 be justified under the  
12 Nova Scotia Environment  
13 Act. And, as a result,  
14 in exercising discretion  
15 under the Act, the  
16 minister was not  
17 authorized to whimsically  
18 characterize any aspect  
19 of the Whites Point  
20 Quarry as constituting an  
21 "adverse effect".  
22 "Possible impacts that  
23 were not mentioned in the  
24 JR report that were not  
25 objectively,

Page 103		Page 104	
1	scientifically, and	1	"Without any evidence of
2	conclusively determined	2	a likely significant
3	on a verifiable	3	adverse environmental
4	evidentiary basis by the	4	effect after mitigation
5	JRP or the ministers to	5	or its provincial
6	be true recognized	6	counterpart, the
7	impacts that were not	7	ministers could not
8	otherwise part of the	8	reasonably deny the
9	record before the	9	project approval."[as
10	minister and without	10	read]
11	properly effecting the	11	He concludes:
12	necessary mitigation	12	"Where there is no
13	analysis simply could not	13	evidence of such
14	be considered adverse	14	significant adverse
15	effects, as referred to	15	environmental effects, a
16	in the statute,	16	minister does not retain
17	sufficient to justify	17	discretion to
18	lawfully regulatory	18	nevertheless deny
19	denial of the quarry	19	approval to a project.
20	under the Nova Scotia	20	"If the project does not
21	legislative scheme."[as	21	give rise to significant
22	read]	22	adverse environmental
23	In explaining the fundamental	23	effects, in other words,
24	reason why the ministers were bound to approve the	24	there is no provision in
25	project, Dean Sossin notes that:	25	the CEAA that would allow
Page 105		Page 106	
1	the responsible	1	submission is all the more obvious because, in
2	authority, or the GIC, to	2	Dunsmuir and New Brunswick, the landmark judgment
3	turn it down for reasons	3	of the Supreme Court of Canada on the substantive
4	of political expediency,	4	review of administrative decision-making, the
5	policy preference,	5	Court explicitly referenced the approach advanced
6	economic reasons, or in	6	in the Cromwell report, Justice Cromwell, who was,
7	response to public	7	at that time, a judge of the Nova Scotia Court of
8	opposition.	8	Appeal. The Supreme Court said, and I quote:
9	"In its consideration of	9	"In addition to the role
10	applicable jurisprudence,	10	judicial review plays in
11	it is also passing	11	upholding the rule of
12	strange, to say the	12	law, it also performs an
13	least, that the Cromwell	13	important constitutional
14	report, again with	14	function in maintaining
15	respect, completely	15	legislative supremacy.
16	ignored the basic	16	As noted by Justice
17	judicial mandate of	17	Thomas Cromwell,
18	Canadian administrative	18	legislative supremacy is
19	law that statutes are not	19	affirmed by adopting the
20	to be interpreted in the	20	principle that the
21	abstract, but rather must	21	concept of jurisdiction
22	be interpreted in a	22	should be narrowly
23	contextual and purposeful	23	circumscribed and defined
24	way."[as read]	24	according to the intent
25	The significance of this	25	of the legislature in a

Page 107

1 contextual and purposeful  
2 way."[as read]  
3 Neither did the Cromwell  
4 report consider administrative law cases where a  
5 minister's exercise of discretion was found to be  
6 unfair and unreasonable. In *Dunsmuir and New*  
7 *Brunswick*, the Supreme Court referred to its prior  
8 decisions in *Baker and Canada* and *Mount Sinai*  
9 *Hospital Centre in Quebec*, observing:  
10 "Legislators do not  
11 intend results that  
12 depart from reasonable  
13 standards."[as read]  
14 In the *Mount Sinai* case, the  
15 minister declined to approve a permit he had  
16 previously promised would be issued. The Supreme  
17 Court concluded that the purported denial was  
18 invalid as it was an attempt to reverse an  
19 exercise of discretion that, in effect, had  
20 already been made and relied on. In the  
21 circumstances, the minister's discretion had  
22 already been exhausted, and the only option  
23 available to the minister that was not patently  
24 unreasonable was to issue the permit. The  
25 circumstances are analogous to the way in which

Page 108

1 the Claytons were treated in this case. As the  
2 tribunal has already found, the governmental  
3 actions and overtures gave rise to reasonable  
4 expectations on the part of the Claytons.  
5 Government officials gave the Claytons every  
6 reason to believe that they would receive  
7 regulatory approval of the Whites Point Quarry if  
8 they met the usual conditions and mitigation  
9 requirements that might ordinarily be set.  
10 Having established a process  
11 intended to be objectively based on evidence and  
12 on science and a set of criteria known in advance,  
13 it was simply not open to the ministers to  
14 exercise their discretion in a manner that was  
15 contrary to the objective evidence or on the basis  
16 of undisclosed criteria or by ignoring relevant  
17 considerations and taking into account irrelevant  
18 considerations or for purposes outside the scope  
19 of their statutory authority.  
20 These constraints on the good  
21 faith discretion of ministers lie at the very  
22 heart of regulatory fairness and reasonableness  
23 that is rooted in the rule of law principle.  
24 Indeed, like all of Canada's  
25 witnesses who speak to the regulatory process in

Page 109

1 attempt to convince the tribunal to reverse its  
2 finding of liability, the Cromwell report too  
3 echos the chorus that the tribunal's finding of  
4 liability was wrong because the logical extension  
5 of the idea that there were no statutory  
6 constraints on the Nova Scotia minister's exercise  
7 of discretion and that the minister could do  
8 anything he wanted is that he could decide to deny  
9 a regulatory approach on the basis of community  
10 core values.  
11 The Cromwell report also fails  
12 to assess the actual facts of this case. It  
13 conflates the JRP's recommendations with the  
14 minister's decision and fails to recognize that  
15 the JRP, under its terms of reference, had a dual  
16 federal and provincial mandate, both of which had  
17 to be fulfilled.  
18 Most fundamentally, it fails  
19 to recognize that there was simply no likely  
20 adverse environmental effects after mitigation  
21 that were identified in the JRP report. Neither  
22 did the JRP or, on the evidence, did the ministers  
23 consider Nova Scotia's policy and practice of  
24 promoting quarry development in general and on the  
25 North Mountain in particular.

Page 110

1 The members of the joint  
2 review panel were all highly knowledgeable and  
3 qualified. They had decades of experience in the  
4 conduct of environmental assessments. They  
5 understood their mandate full well. They  
6 fashioned their report exactly as they intended it  
7 to be, stating in their report that, and I quote:  
8 "The panel believes it  
9 has attended to every  
10 requirement expected of  
11 it from the Canadian  
12 Environmental Assessment  
13 Agency and Nova Scotia  
14 Environment and Labour,  
15 as outlined in the joint  
16 panel agreement and its  
17 accompanying terms of  
18 reference. When  
19 determining the nature  
20 and significance of  
21 environmental effects,  
22 the panel analyzed and  
23 evaluated the information  
24 provided along with the  
25 monitoring and mitigation

Page 111

1 proposed."[as read]  
 2 The panel analyzed and  
 3 evaluated the information provided along with the  
 4 monitoring and mitigation proposed:  
 5 "Based on its  
 6 comprehensive synthesis  
 7 and analysis of all the  
 8 information provided, the  
 9 panel's analysis of the  
 10 project has identified  
 11 the adverse and positive  
 12 environmental effects  
 13 expected from the  
 14 project."[as read]  
 15 The JRP's report was as  
 16 complete as they intended it to be. They knew  
 17 exactly what they were doing. The tribunal will  
 18 recall that the panel chairman boasted to the  
 19 media that:  
 20 "What we have built into  
 21 the process is an out and  
 22 out rejection that says  
 23 this is not good for this  
 24 environment under any  
 25 circumstances, and this

Page 112

1 hasn't been done  
 2 before."[as read]  
 3 The tribunal will also recall  
 4 that, before the Nova Scotia minister decided to  
 5 accept the JRP report, his own officials advised  
 6 him that six of the seven recommendations were  
 7 outside the scope of the JRP's terms of reference.  
 8 They were ultra vires, the terms of reference.  
 9 Nonetheless, the minister  
 10 wrote to Mr. Buxton, saying:  
 11 "I have arrived at my  
 12 decision. Following  
 13 careful consideration of  
 14 the panel's report, I  
 15 have determined that the  
 16 proposed project poses  
 17 the threat of  
 18 unacceptable and  
 19 significant adverse  
 20 effects."[as read]  
 21 Community core values.  
 22 This tribunal, however,  
 23 rightly sorted through the whole of the story,  
 24 and, in concluding that Canada had breached  
 25 Articles 1102 and 1105, the tribunal acknowledged

Page 113

1 at paragraph 740:  
 2 "The distinctive and  
 3 exceptional overall set  
 4 of facts that came  
 5 together to produce a  
 6 finding of liability in  
 7 this particular case  
 8 include representations  
 9 from state officials that  
 10 welcomed investors to  
 11 coastal quarry and marine  
 12 terminal projects and to  
 13 these investors in  
 14 particular to do so at  
 15 this particular site and  
 16 reliance by the investors  
 17 on those encouragements  
 18 to devote very  
 19 substantial resources to  
 20 engage in the statutorily  
 21 mandated environmental  
 22 assessments, including  
 23 the attempt to design the  
 24 project to meet all legal  
 25 requirements concerning

Page 114

1 environmental  
 2 protection."[as read]  
 3 At paragraph 738, the tribunal  
 4 also clearly explained that:  
 5 "The trigger for  
 6 international  
 7 responsibility in this  
 8 case was the very  
 9 specific set of facts  
 10 that were presented,  
 11 tested, and established  
 12 through an extensive  
 13 litigation process."[as  
 14 read]  
 15 The representations made to  
 16 the Claytons about the Whites Point Quarry were  
 17 based on and were fully consistent with the  
 18 well-established Nova Scotia government policy of  
 19 encouraging investors to develop a quarry at  
 20 Whites Point. The Claytons' understanding was  
 21 that the environmental approval process would,  
 22 likewise, conform to Nova Scotia's widely  
 23 -publicized goal of promoting economic  
 24 development. It was their understanding that this  
 25 would guide and complement the approval process.

1 They were led to believe and did believe that the  
2 JRP process would be an honest, objective,  
3 scientific, environmental assessment to confirm  
4 that there were no likely significant adverse  
5 effects generated by the Whites Point Quarry which  
6 could not be mitigated. And if that were  
7 confirmed, then regulatory approval of the quarry  
8 would be granted.

9 So, for over three long years,  
10 the Claytons, in good faith, participated fully in  
11 the JRP assessment process. [REDACTED]

12 [REDACTED] They prepared a comprehensive environmental  
13 impact study comprised of 17 volumes containing  
14 thousands of pages of detailed scientific data  
15 commissioned for the JRP, including 35 studies and  
16 48 expert reports, only to have their good faith  
17 expectations betrayed by the ministers and to  
18 learn that the JRP process was not at all about  
19 the honest science, based on environmental  
20 assessments they had expected. It was a motivated  
21 -- politically motivated charade from beginning to  
22 end.

23 The Nova Scotia minister must  
24 also be taken to have known the fundamental  
25

1 are not directed to what might occur in an  
2 environmental assessment in Nova Scotia in the  
3 abstract or that could have occurred in a  
4 hypothetical environmental assessment. Instead,  
5 he addresses what actually did happen, what  
6 actually did occur, and the specific circumstances  
7 of this case and in light of the context and  
8 purposes of the governing legislation.

9 He also takes into account the  
10 consequences of the findings made by the tribunal  
11 in the merits phase of this arbitration.

12 The core conclusion in Dean  
13 Sossin's reply expert report is that, in light of  
14 the actual provisions of the Nova Scotia  
15 Environment Act, interpreted within its context  
16 and in light of its purpose clause, together with  
17 the actual record of evidence before the ministers  
18 provided to them by the JRP, the ministers' clear  
19 decisions to rely on the JRP report and to not  
20 seek any additional information, particularly  
21 information readily available to them within  
22 government, keeping in mind that the DFO had  
23 worked with the proponent in this case for five  
24 years, considering all of the effects of the  
25 project on the oceans, nor to rely on additional

1 policies of his government pertaining to  
2 environmental approval that were actively in place  
3 at the time. The minister was acting to deny  
4 approval of the Claytons' Whites Point Quarry. In  
5 the merits award, this tribunal recognized that  
6 these Nova Scotia government policies and  
7 commitments are also substantive factors in  
8 concluding that the Nova Scotia minister's  
9 exercise of discretion was patently unreasonable.

10 While the general principles  
11 referred to in the Cromwell report are not  
12 controversial, they are akin to the theoretical  
13 abstractions found in all of Canada's reports.  
14 They must be understood in the context of  
15 assumptions made on the instructions of counsel.

16 By contrast, Dean Sossin's  
17 expert reports, like all of the investors'  
18 evidence, are grounded in the actual circumstances  
19 of this case. Dean Sossin examined the specific  
20 terms of the JRP -- sorry, the joint reference  
21 issued by the Nova Scotia and federal ministers to  
22 establish the JRP and to establish its regulatory  
23 mandate and the ministers' specific reliance on  
24 the JRP report in making their decisions to deny  
25 regulatory approval. Dean Sossin's expert reports

1 criteria, which all leads to the inexorable  
2 conclusion that the ministers' discretion was  
3 circumscribed.

4 If the ministers were acting  
5 reasonably in the particular circumstances of the  
6 situation, and for reasons rooted in the record,  
7 they were legally compelled to exercise their  
8 discretion to approve the quarry. And central to  
9 the particular circumstances in this case is that,  
10 other than the invalid criteria of community core  
11 values, which the tribunal has found was outside  
12 the scope of both the CEAA and the NSEA, the JRP  
13 found no likely significant adverse environmental  
14 effects which could not be mitigated. They knew  
15 that was their mandate, and they found none.

16 Regardless of any  
17 uncertainties that may have been in the JR report,  
18 it remains an incontrovertible fact that neither  
19 minister chose to direct the JRP to clarify any  
20 uncertainties nor to explore mitigation of any  
21 potential adverse effects before reaching a  
22 decision, nor to order a new inquiry, nor to  
23 consider if there was any objective scientific  
24 basis for the JRP's recommendation, nor to order  
25 their officials to generate more information for

Page 119

1 their consideration.

2 Each minister simply accepted  
3 the JRP's recommendation that the Whites Point  
4 Quarry be denied regulatory approval. The  
5 decisions of the two ministers must, therefore, be  
6 considered unreasonable. They are based on a  
7 tainted evidentiary record that fail to address  
8 likely significant adverse environmental effects  
9 which could not be mitigated in the federal case  
10 and anything other than the community core values  
11 in the Nova Scotia case.

12 It is common ground that the  
13 ministers had every right to complete the factual  
14 record by reconvening the JRP or calling upon  
15 departmental officials to conduct further  
16 research. However, despite what they could have  
17 done or should have done, this central fact  
18 remains: The only significant adverse  
19 environmental effect that was found to exist was  
20 the issue of community core values. As this  
21 tribunal found in the jurisdiction and liability  
22 award at paragraph 584, the decision-makers in  
23 Nova Scotia and Federal Canada had the authority  
24 and duty to make their own decision about the  
25 future of the Bilcon project. If they had

Page 120

1 considered the methodology report flawed, they  
2 could have sent it back to the JRP for  
3 clarification or further work. They could have  
4 provided for different or additional mitigation  
5 provisions. They could have agreed that the  
6 project likely had significant adverse effects  
7 after mitigation, but still approved it on public  
8 interest considerations in all the circumstances.  
9 But they didn't. In the result, as so clearly  
10 expressed by the Supreme Court of Canada in  
11 Dunsmuir, their decisions were so unreasonable as  
12 to transgress the rule of law:

13 "Administrative Powers  
14 are exercised by  
15 decision-makers according  
16 to statutory regimes that  
17 are themselves confined.  
18 A decision-maker may not  
19 exercise authority not  
20 specifically assigned to  
21 him or her. By acting in  
22 the absence of legal  
23 authority, the  
24 decision-maker  
25 transgresses the

Page 121

1 principle of the rule of  
2 law."[as read]

3 Combined with the reasonable  
4 expectations of the Claytons, based on official  
5 policies, guidelines, and communications that were  
6 known to the ministers and proclaimed to the  
7 Claytons and which were in complete accord with  
8 the express statutory purposes, the only credible  
9 conclusion is that the Nova Scotia minister's only  
10 reasonable course of action in these specific  
11 circumstances was to approve the Whites Point  
12 Quarry.

13 Turning to industrial permits,  
14 the evidence also proves that, in the ordinary  
15 course, there can be no doubt that the Whites  
16 Point Quarry would have received all of the  
17 related industrial permits. During the JRP  
18 hearings, the Government of Nova Scotia gave the  
19 JRP an undertaking that it had, and I quote:

20 "No record of any project  
21 that had received an  
22 environmental assessment  
23 approval, but was  
24 subsequently denied  
25 approval of industrial

Page 122

1 permits under the  
2 Environment Act."[as  
3 read]

4 Not one project that got  
5 environmental approval didn't subsequently receive  
6 the industrial permits approval.

7 In the course of document  
8 production for the damages phase of this  
9 arbitration, Canada also formally stipulated that  
10 it has:

11 "No example where a  
12 proponent of a project  
13 which received  
14 environmental assessment  
15 approval from the  
16 Government of Canada or  
17 Nova Scotia was denied  
18 permits, licences, or  
19 authorizations for the  
20 operation of the  
21 project."[as read]

22 Not one that got environmental  
23 approval didn't receive all industrial permit  
24 approvals from either level of government.  
25 The expert report of Peter

Page 123

1 Oram, a professional geoscientist with over 25  
2 years of experience in the industrial permitting  
3 of quarries in Nova Scotia, confirms that there  
4 can be no doubt that the Claytons would in all the  
5 -- in the ordinary course, they would have  
6 obtained all the industrial permits necessary to  
7 operate the quarry. In his expert report,  
8 Mr. Oram, who has not been called for  
9 cross-examination, explains that it would have  
10 taken approximately 6 to 12 months to obtain  
11 industrial permits, at a cost in the range of  
12 \$170,000 to \$200,000. He also explains that it  
13 would have cost approximately \$100,000 a year to  
14 comply with ordinary environmental approval  
15 conditions and approximately \$80,000 a year to  
16 comply with ordinary industrial approval  
17 conditions.

18 With regard to the marine  
19 terminal, Transport Canada issued an approval  
20 letter in 2006, indicating that the technical  
21 requirements of the Navigable Waters Protection  
22 Act and the Fisheries Act had been satisfied, and  
23 the expert reports of SNC-Lavalin confirmed that,  
24 within six to eight months, the Claytons would  
25 have easily obtained the remaining watercourse

Page 124

1 allocation permits and authorizations under the  
2 Nova Scotia Submerged Crown Lands Act to operate  
3 the marine terminal at a cost of approximately  
4 \$75,000.

5 Contrary to law and contrary  
6 to elementary procedural fairness, Canada now  
7 wants to contort the damages phase of this  
8 arbitration to relitigate findings of fact and to  
9 reopen legal issues and results that the tribunal  
10 has already conclusively determined in its award  
11 on jurisdiction and liability.

12 That is not what procedural  
13 bifurcation of the proceedings into a merits phase  
14 and a damages phase allows. It is precisely what  
15 the international law doctrine of issue estoppel  
16 and res judicata prohibit. The findings of fact  
17 and conclusion of law the tribunal has already  
18 made cannot now be reopened. There are no  
19 do-overs in the damages phase of the arbitration.  
20 Canada cannot rewind the film; they cannot run a  
21 new film. In its recent award in Apotex and US,  
22 the tribunal put it clearly:

23 "The purpose of the res  
24 judicata doctrine under  
25 the international law is

Page 125

1 to put an end to  
2 litigation."[as read]  
3 Canada now also seeks to raise  
4 issue that go directly to jurisdiction, standing,  
5 and liability which were never pleaded and never  
6 raised or argued in the jurisdiction and liability  
7 phase of the arbitration. A prime example is  
8 Canada raising now, for the very first time in the  
9 damages phase of this arbitration, the threshold  
10 jurisdictional question of the investors' standing  
11 under Articles 1116 and 1117 of the NAFTA. Apart  
12 from this contention being legally baseless, it is  
13 a preliminary threshold jurisdictional question  
14 that ought to have been pleaded and argued as such  
15 in the jurisdiction and liability phase of this  
16 arbitration. Canada must surely be estopped from  
17 raising it now at this very late date 10 years  
18 later.

19 Another example is what we  
20 submit is the preposterous notion that the  
21 Claytons are disentitled to damages for their loss  
22 of the Whites Point Quarry merely because they did  
23 not apply for judicial review in order to mitigate  
24 their losses before initiating a NAFTA claim. It  
25 is not only too late, but shamefully wrong. The

Page 126

1 Claytons had no such obligation neither in law or  
2 in fact. This spurious contention also purports  
3 to now impose in the damages phase of this hearing  
4 a jurisdictional requirement to exhaust local  
5 remedies before invoking arbitral relief under the  
6 NAFTA.

7 Professor John McCamus, one of  
8 Canada's leading authorities on the law of  
9 damages, says in his expert report, which is  
10 nowhere contradicted by Canada, that, and I quote:

11 "Although sometimes  
12 described as a duty to  
13 mitigate, the principle  
14 is rather one which  
15 simply precludes the  
16 recovery of losses that  
17 could have been avoided  
18 by conduct that could  
19 reasonably be  
20 required --"

21 Reasonably be required.  
22 "-- on the part of the  
23 victim after the breach  
24 has occurred."[as read]  
25 Mitigation is, therefore,

Page 127

1 governed by the standard of factual  
2 reasonableness, which Canada contends required the  
3 Claytons to initiate litigation. However, the law  
4 does not require parties who have been wronged to  
5 litigate in order to mitigate. As Professor  
6 McCamus observes:  
7 "I'm not aware of any  
8 Canadian authority  
9 suggesting that the duty  
10 to take reasonable steps  
11 in mitigation of loss  
12 extends to the taking of  
13 litigation against the  
14 party in breach in an  
15 attempt to reduce losses  
16 caused by the breach.  
17 More particularly, I am  
18 not aware of any Canadian  
19 authority that suggests  
20 an obligation arises as a  
21 reasonable step in  
22 mitigation to pursue  
23 litigation against the  
24 party in breach where the  
25 litigation is likely to

Page 128

1 be complex and uncertain  
2 in outcome and where that  
3 party is highly resourced  
4 and likely to vigorously  
5 defend such a lawsuit,  
6 including the possibility  
7 of appellate review of  
8 any result favourable to  
9 the plaintiff up to and  
10 including an appeal to  
11 the Supreme Court of  
12 Canada. In my opinion,  
13 it is most unlikely that  
14 a Canadian court would  
15 determine that such a  
16 course of action by the  
17 victim of the breach was  
18 required as a reasonable  
19 step in mitigation."[as  
20 read]  
21 It is obvious why Professor  
22 McCamus knows of no authority that such measures  
23 must be taken. The duty to mitigate is governed  
24 by the standard of reasonableness. And, even in  
25 the abstract, imposing such a requirement is, as a

Page 129

1 practical matter, manifestly unreasonable. That  
2 is especially so since there was no obligation of  
3 any kind on the Claytons to apply for judicial  
4 review, and they had every right to make a claim  
5 for damages under Chapter 11 of the NAFTA for the  
6 losses they incurred as a result of Canada's  
7 breaches. That is precisely what Chapter 11 is  
8 for.  
9 Under the North American Free  
10 Trade Agreement Implementation Act, the NAFTA is  
11 every much part of Canadian law as is the Federal  
12 Court Act. The NAFTA gave the Claytons a remedy  
13 under Canadian law, and it was their lawful and  
14 sensible choice to pursue recovery of their  
15 damages pursuant to the NAFTA.  
16 As the Supreme Court of Canada  
17 made clear in *Attorney General v. TeleZone*:  
18 "People who claim to be  
19 injured by government  
20 action should have  
21 whatever redress the  
22 legal system permits  
23 through procedures that  
24 minimize unnecessary cost  
25 and complexity. The

Page 130

1 Court's approach should  
2 be practical and  
3 pragmatic with that  
4 objective in mind."[as  
5 read]  
6 It is also plain on the face  
7 of Chapter 11 that it contains no prerequisite  
8 that an investor need first apply for judicial  
9 review or pursue any form of domestic remedy  
10 before bringing a claim for damages under the  
11 NAFTA. In his reply expert report, Dean Sossin  
12 points out:  
13 "I'm aware of no duty of  
14 exhaustion in the NAFTA  
15 context that would have  
16 compelled the investors  
17 to pursue remedies  
18 domestically prior to  
19 seeking a remedy through  
20 the NAFTA process,  
21 especially where those  
22 domestic processes  
23 involve different  
24 standards, procedural  
25 hurdles, and

1 remedies."[as read]  
2 Indeed, judicial review would  
3 not provide the Claytons with remedies equivalent  
4 to Chapter 11, particularly with regard to  
5 damages. It would, therefore, not be an effective  
6 remedy. Were it not for this arbitration, the  
7 Claytons would never have known of the parallel  
8 universe that was shockingly revealed in the  
9 merits phase of this arbitration of what the  
10 officials internally knew was the truth and the  
11 lies they told Mr. Buxton. Now Canada is raising  
12 judicial review as part of a false parallel --  
13 false parallel reality that it wants you to  
14 believe in the damages phase.

15 John Evans, the only voice  
16 Canada brings to the tribunal in support of its  
17 judicial review contention, agrees with Dean  
18 Sossin that the likely outcome of a judicial  
19 review would be a remittal back for another  
20 environmental assessment. After years of  
21 litigating in the Federal Courts, possibly up to  
22 the Supreme Court of Canada, the best they would  
23 get would be a remittal back for another  
24 assessment with no assurance that it would be any  
25 less of a sham than the first one. This is not

1 losses they have incurred as a result of their  
2 treatment by the state rising to the level of  
3 breaches of the NAFTA, it was entirely reasonable  
4 for the Claytons to make a conscious decision in  
5 the circumstances to pursue a NAFTA Chapter 11  
6 process rather than a domestic judicial review.

7 The outcome would be absurd of  
8 the alternative theory. The only result of being  
9 successful would be to find themselves back at  
10 square one, facing the same arbitrary, unfair, and  
11 inequitable treatment at the hands of the same  
12 officials, or their successors, who had treated  
13 them so unfairly in the first place. Dean Sossin  
14 observes that:

15 "Judicial review would  
16 not provide any of the  
17 rights for examination  
18 for discovery which apply  
19 to a legal action and  
20 would have led to other  
21 juristic disadvantages  
22 such as deference to  
23 ministerial discretion on  
24 judicial review, et  
25 cetera."[as read]

1 what investors in Canada under the NAFTA can  
2 reasonably expect, that they would have this  
3 merry-go-round of hearing, assessment, litigation,  
4 back for another hearing. This is not what it's  
5 about.

6 The Evans report recognizes  
7 that a judicial review would likely be opposed and  
8 could be appealed all the way up so that the  
9 judicial review could take up to eight years, all,  
10 he says, with an uncertain outcome.

11 As a claimant's duty to  
12 mitigate involves only taking those steps that are  
13 reasonable in all of the circumstances, it is  
14 plain and obvious on the facts that it would not  
15 have been reasonable for the Claytons in the  
16 circumstances to seek judicial review. Requiring  
17 them to pursue judicial review in the  
18 circumstances of this case would be fundamentally  
19 inconsistent with the remedial principles and  
20 objectives of the NAFTA as the tribunal's findings  
21 of Canada's -- as well as the tribunal's finding  
22 of Canada's breaches of the NAFTA.

23 Conversely, with the NAFTA  
24 providing a remedial path specifically designed  
25 for investors to be fully compensated for the

1 He adds that:  
2 "The likeliest result of  
3 such judicial review  
4 would have been to remit  
5 the approval process back  
6 to Federal and Nova  
7 Scotia ministers for a  
8 further discretionary  
9 process in which the  
10 investors reasonably  
11 would have lacked  
12 confidence in light of  
13 their experience that  
14 culminated in the  
15 rejection of the project  
16 in the first place."[as  
17 read]

18 In short, requiring the  
19 Claytons to judicial review would be to condemn  
20 them to endless legal wrongdoing on an unlevel  
21 playing field, costing further millions of  
22 dollars, the very opposite of the promise of the  
23 NAFTA and the streamline, one-window approval  
24 process promised by NAFTA -- promised by Nova  
25 Scotia.

1 The Claytons had a choice to  
2 pursue the remedies available to them under the  
3 NAFTA. By any measure, their choice in the  
4 circumstances was a reasonable one.

5 In any event, it is Canada  
6 that bears the burden of establishing that the  
7 Claytons failed to take reasonable steps to  
8 mitigate their losses. Canada has surely and  
9 utterly failed to meet this burden. In this  
10 regard, it should not be forgotten that, after a  
11 deeply flawed JRP report was issued, the Claytons  
12 still put their confidence in Canada's adherence  
13 to the rule of law. They remained confident that  
14 they would be treated fairly by the ultimate  
15 decision-makers, the ministers. As a measure of  
16 that confidence, they beseeched both the Federal  
17 and Nova Scotia ministers to review the lawless  
18 and discriminatory manner in which the  
19 environmental assessment of the Whites Point  
20 Quarry had been conducted, but to no avail. It  
21 was not to be.

22 Far from the red carpet  
23 treatment accorded to the Claytons when they were  
24 invited to come to Nova Scotia, the ministers and  
25 senior civil servants simply ignored what they had

1 to say. It does not now lie in the mouth of  
2 Canada to suggest that the Claytons acted  
3 unreasonably. It is also, at the very least,  
4 unseemly for Canada, frankly, to not only defend  
5 its wrongful treatment of the Claytons, but to  
6 endeavour to benefit from its own wrongful conduct  
7 by using it as a manoeuvre to avoid full and  
8 proper redress for the Claytons.

9 As I said earlier, a wrongdoer  
10 cannot be allowed to benefit or be advantaged in  
11 any way by his or her own wrongful conduct.  
12 Canada cannot be permitted to take any advantage  
13 of the existence of the state of affairs which it,  
14 itself, produced. Canada should not be allowed to  
15 profit from bad-faith conduct, and the  
16 consequences of that conduct should not be visited  
17 on the Claytons except by way of full reparation  
18 for their substantial losses.

19 The basic condition is met for  
20 Canada to be estopped from rearguing this issue --  
21 these issues in the damages phase of the  
22 arbitration. As the tribunal has found, the  
23 ministers each adopted the JRP's recommendations.  
24 The CEAA required that a likely significant  
25 adverse environmental effect be tied to a

1 biophysical effect, and community core values  
2 falls outside the scope of both the Canadian  
3 Environmental Assessment Act and the NSEA. These  
4 are issues that were comprehensively argued with  
5 extensive fact and expert evidence in the  
6 liability phase of this arbitration. Most  
7 importantly, those issues were not -- went not  
8 only to the root of the tribunal's jurisdiction,  
9 but were fundamental to Canada's responsibility  
10 and the tribunal's disposition of the issue of  
11 Canada's liability, which has been conclusively  
12 decided.

13 The breaches found by the  
14 tribunal also went far beyond a simple breach of  
15 procedure fairness that might be corrected by a  
16 judicial review, in which a reviewing court would  
17 at best direct the breach be rectified by a new  
18 hearing.

19 Canada's breaches of Articles  
20 1102 and 1105, found by the tribunal, are  
21 compounded breaches of discriminatory and  
22 substantively unfair and inequitable treatment of  
23 the Claytons. The procedural unfairness of the  
24 JRP hearing is just one factor in the overall  
25 substantive unfair treatment of the Claytons.

1 Throughout its award on jurisdiction and  
2 liability, the tribunal's findings are much  
3 broader than merely procedural breaches. They  
4 include the Claytons' reasonable expectations, the  
5 entire environmental assessment process to which  
6 they were deliberately subjected that the tribunal  
7 found was arbitrary, inimical to the Claytons, and  
8 unwinnable from the outset.

9 The holistic findings of this  
10 tribunal recognize the substantively unfair  
11 treatment Canada accorded to the Claytons. In  
12 passages throughout the liability award, the  
13 tribunal summarized the patent injustice  
14 perpetrated on the Claytons. And I quote  
15 paragraph 450:

16 "The JRP, by its own  
17 acknowledgement, adopted  
18 an unprecedented  
19 approach. This approach  
20 was inimical to the  
21 proponents having any  
22 real chance of success  
23 based on an assessment of  
24 their individual project  
25 on its merits in

	Page 139	Page 140
<p>1 accordance with the laws 2 in force at the time. 3 "In the result, the 4 investors --" 5 This is at paragraph 453: 6 "-- the investors were 7 encouraged to engage in a 8 regulatory approval 9 process costing millions 10 of dollars and other 11 corporate resources that 12 was, in retrospect, 13 unwinnable from the 14 outset even though the 15 investors were 16 specifically encouraged 17 by government officials 18 and the laws of Federal 19 Canada to believe that 20 they could succeed on the 21 basis of the individual 22 merits of their case."[as 23 read] 24 The keyword of both Articles 25 1102 and 1105 is "treatment". By endorsing the</p>	<p>1 standard of fair and equitable treatment reflected 2 in the waste management case, the tribunal has 3 made it clear that fair treatment under the NAFTA 4 has both procedural and substantive components. 5 Indeed, after carefully and completely reviewing 6 all of its findings, the tribunal concluded, 7 paragraph 589: 8 "The waste management 9 standard calls for a 10 consideration of 11 representations made by 12 the host state which an 13 investor relied on to its 14 detriment. In the 15 present case, there were 16 very clear repeated 17 encouragements by 18 authorities of Nova 19 Scotia that Bilcon was 20 welcome to pursue its 21 coastal quarry and marine 22 terminal project, 23 including at the specific 24 Whites Point location. 25 "All the relevant</p>	
	Page 141	Page 142
<p>1 encouragement was in the 2 context of Bilcon being 3 required to present a 4 project that would comply 5 with federal and 6 provincial laws 7 concerning the 8 environment. The waste 9 management standard calls 10 for a consideration of 11 procedural as well as 12 substantive fairness. 13 Bilcon had no reason to 14 expect the community core 15 values would pre-empt a 16 thorough likely 17 significant adverse 18 effects after mitigation 19 analysis of the whole 20 range of project effects 21 and that this factor 22 would effectively 23 preclude any real 24 possibility that an 25 application could succeed</p>	<p>1 even if Bilcon showed 2 that the project would, 3 after mitigation, likely 4 have no significant 5 adverse effects on 6 environmental, social, 7 and economic conditions. 8 "Viewing the action of 9 Canada as a whole, it was 10 unjust for officials to 11 encourage coastal mining 12 projects in general and 13 specifically encourage 14 the pursuit of the 15 project at the Whites 16 Point site and then, 17 after a massive 18 expenditure of effort and 19 resources by Bilcon on 20 that basis, have other 21 officials effectively 22 determine that the area 23 was a no-go zone for this 24 kind of development 25 rather than carrying out</p>	

Page 143

1 the lawfully prescribed  
2 evaluation of its  
3 individual merits."[as  
4 read]

5 Just as in Canadian law, the  
6 rule of law is the bedrock of international law,  
7 and the principles of fair and equitable treatment  
8 codify the rule of law into the NAFTA. This  
9 principle is echoed in the secession reference  
10 case where the Supreme Court of Canada said:

11 "The rule of law  
12 principle requires that  
13 all government action  
14 must comply with the  
15 law."[as read]

16 In this case, for all of the  
17 reasons found by this tribunal, the decisions of  
18 the ministers to deny regulatory approval of the  
19 Whites Point Quarry were manifestly unreasonable,  
20 and the culmination of the substantive, not merely  
21 procedural, unfair and equitable treatment of the  
22 Claytons. In the result, Canada's treatment of  
23 the Claytons transgressed the rule of law as well  
24 as the NAFTA.  
25 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT

Page 145

1 terminal, the operating costs of the quarry, the  
2 actual freight costs of shipping stone from the  
3 quarry to New York City and New Jersey, the  
4 Claytons' New Jersey and New York markets, and the  
5 careful planning from the outset of the corporate  
6 and tax structure of the investment.

7 The valuation is, therefore,  
8 rooted in reality, the reality that makes the  
9 Claytons' resulting loss simple and self-evident  
10 and adjusted only for tax equity purposes to  
11 satisfy full reparation after the payment of  
12 taxes.

13 Canada provides reports that  
14 are founded on instructions of legal counsel which  
15 are divorced from reality. The flawed assumptions  
16 are then manipulated, with respect, with a flawed  
17 analysis, using unsound methodologies,  
18 unverifiable desk study models, presented in ways  
19 that are designed to mislead and to distort the  
20 real cost, efficiency, and profitability of the  
21 quarry. Canada's witnesses, therefore, create  
22 totally artificial constructs and, in the process,  
23 turn themselves, in my submission, into advocates  
24 making partisan arguments in the guise of  
25 professional opinions.

Page 144

1 12:43 P.M.

2 MR. NASH: Turning to the  
3 valuation date, but for Canada's breaches of the  
4 NAFTA, as found by the tribunal, the Claytons, as  
5 I have said, would be today operating a successful  
6 and profitable quarry. The evidence before you in  
7 this damages phase is exactly what, but for  
8 Canada's breaches, would, in the ordinary course,  
9 have actually happened, what in the real world the  
10 quarry would actually have been, how it would have  
11 actually operated, and how it would have actually  
12 generated [REDACTED]

13 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
14 12:44 P.M.

15 MR. NASH: The best measure of  
16 the Claytons' loss is simply the remaining profit  
17 after properly accounting for applicable taxes and  
18 tax consequences. In addition to using the most  
19 current information available, Mr. Rosen's  
20 valuation is based on the independently verified  
21 real-world evidence of experts and the people with  
22 firsthand knowledge and deep industry experience  
23 who were directly involved in assessing the actual  
24 quantity and quality of stone at the Whites Point  
25 Quarry, the capital costs of the quarry and the

Page 146

1 In this damages phase of the  
2 arbitration, the investors ask the tribunal to  
3 completely disregard the environmental assessment  
4 and quantum reports of Canada's witnesses that are  
5 attempts to reopen and relitigate the issues in  
6 the merits phase of the arbitration that the  
7 tribunal conclusively decided in its award on  
8 jurisdiction and liability and to prefer the  
9 evidence of all of the investors' witnesses and to  
10 award the Claytons the full reparation prescribed  
11 by the law and by NAFTA.

12 These are my opening  
13 submissions of the investors at the damages phase,  
14 and I thank you for your attention.

15 PRESIDING ARBITRATOR: Thank  
16 you very much, Mr. Nash. Does Mr. Little have --

17 MR. SCOTT LITTLE: I do have  
18 one procedural issue.

19 PRESIDING ARBITRATOR: Yes.  
20 Please go ahead.

21 MR. SCOTT LITTLE: And that is  
22 that, pursuant to the procedural order, we were  
23 supposed to receive a copy of the slides. There  
24 is a nice bunny I see on it now, but we were  
25 supposed to receive a copy of the slides of

Page 147

1 Mr. Nash's presentation before the presentation  
2 was delivered, and I'm just wondering if we can  
3 get a copy of it now.  
4 MR. NASH: We will get a copy  
5 forthwith.  
6 PRESIDING ARBITRATOR: Okay.  
7 You are going to get the copy; is that  
8 satisfactory?  
9 MR. SCOTT LITTLE: Pardon me?  
10 PRESIDING ARBITRATOR: You are  
11 going to get the copy.  
12 MR. SCOTT LITTLE: Yes. Well,  
13 we would appreciate copies as soon as possible.  
14 MR. NASH: Forthwith.  
15 MR. SCOTT LITTLE: I'm in your  
16 hands, Judge Simma, as to whether you would like  
17 us to begin, or...  
18 It is, I think, close to the  
19 lunch break, and it might be a convenient time to  
20 stop.  
21 PRESIDING ARBITRATOR: Since  
22 it's -- what is it -- 12 minutes to one, I think  
23 we have our lunch break now, but reconvene at two  
24 sharp, because we got the, more or less,  
25 15 minutes as a present from Mr. Nash. Okay. So

Page 148

1 the lunch break, and we --  
2 MR. NASH: If I can just say  
3 one thing. I have been advised that I made an  
4 error in something I said. When I said there were  
5 only -- I intended to say only eight CEEA panel  
6 reviews conducted between 1995 and 2012.  
7 Apparently I said three. Apologies for that.  
8 There were eight.  
9 PRESIDING ARBITRATOR: Okay.  
10 So this is on the record. Thank you. So we have  
11 the lunch break, and we start again at two.  
12 --- Upon luncheon recess at 12:48 p.m.  
13 --- Upon resuming at 2:01 p.m.  
14 PRESIDING ARBITRATOR: Looks  
15 like we are all set. And so I give the floor to  
16 Mr. Little for the opening statement for Canada.  
17 OPENING STATEMENT BY MR. SCOTT LITTLE:  
18 MR. SCOTT LITTLE: Thank you,  
19 Judge Simma.  
20 Earlier this morning, the  
21 claimants confirmed the damages they say they are  
22 entitled to as a result of the NAFTA breach  
23 following the liability award. Now, to distill it  
24 down to its most basic form, the claimants have  
25 put before you one damages claim and one claim

Page 149

1 only: Canada's NAFTA breach caused the loss of  
2 the Whites Point project. As such, Canada must  
3 compensate the claimants for the lost profits that  
4 would have been earned from a fully operational  
5 project over its 50-year lifespan. But to make  
6 out this claim, the claimants must discharge the  
7 burden first of proving that the NAFTA breach  
8 caused the injury they are alleging.  
9 They have to do so by proving  
10 that, in the absence of the NAFTA breach, their  
11 project would not have been denied but would have,  
12 rather, been approved by two separate levels of  
13 government and then profitably constructed and  
14 operated along the lines that they suggest.  
15 And, second, and only if they  
16 have established the causal link between the NAFTA  
17 breach and the injury they claim, the claimants  
18 have to prove the compensation that they are  
19 asking for isn't based on speculation and that, at  
20 the end of the day, this amount adds up.  
21 In claiming that absent the  
22 NAFTA breach, the Whites Point project would have  
23 been approved, in presenting you with just one  
24 claim for lost profits, the claimants have failed  
25 to discharge their burden on both counts. And

Page 150

1 that leaves you with only one option, and that's  
2 to determine that the claimants aren't entitled to  
3 any damages.  
4 Now, over the course of this  
5 afternoon, I, together with my colleague  
6 Mr. Spelliscy, are going to explain why this is  
7 the only result that can follow in this case.  
8 In doing so, Mr. Spelliscy and  
9 myself are going to highlight the relevant  
10 evidence, opinion, and argument filed in the  
11 written pleadings to date and that you are going  
12 to hear over the course of the coming week. And  
13 we will also answer the thoughtful questions that  
14 the tribunal posed to the parties in its letter of  
15 January 26th, and as we work our way through our  
16 opening, we will provide our response to each one.  
17 And we will be further and fully developing these  
18 responses in our closing submissions with the  
19 benefit of the tribunal having heard the evidence  
20 that it will this week.  
21 We have organized Canada's  
22 opening statement into two main parts, the first  
23 of which is going to take up the majority of our  
24 time today. In the first part, we are going to be  
25 outlining four grounds on which the tribunal must

Page 151

1 dismiss the claimants' claim. I am going to be  
2 addressing the first of these grounds, which is  
3 that the claimants have failed to meet their  
4 burden of proving the losses they claim were  
5 caused by the NAFTA breach that was identified by  
6 the tribunal.

7 In short, given the findings  
8 made in the liability award, the claimants' legal  
9 burden under customary international law in  
10 proving their damages and the flawed approach they  
11 have taken to causation, their claim must be  
12 dismissed. Now, this failure is the primary  
13 ground on which the claim put before you could be  
14 rejected. And in light of it, we don't think the  
15 tribunal needs to go any further.

16 But for the sake of  
17 completeness, I will be turning the floor over to  
18 Mr. Spelliscy, and I propose to do so after our  
19 afternoon break. Mr. Spelliscy will take you  
20 through the deficiencies inherent in the actual  
21 compensation model the claimants have presented  
22 and lay out three additional grounds on which  
23 their claim must be dismissed.

24 Mr. Spelliscy will first  
25 explain why the claimants don't have standing to

Page 152

1 request the damages they seek. This basic fact  
2 also warrants dismissal of their claim.

3 After this, Mr. Spelliscy will  
4 summarize why the speculative discounted cash flow  
5 model the claimants have put before you as a  
6 measure of lost profits has no place in this  
7 arbitration and should accordingly be rejected.

8 And, finally, Mr. Spelliscy  
9 will explain why, even if one were to consider  
10 lost profits as a measure of damages, the  
11 claimants' DCF model is unreliable and suffers  
12 from so many shortcomings that it can't be  
13 considered a realistic measure of lost profits and  
14 should be rejected.

15 Now, at the end of either my  
16 explanation of the flaws inherent in the  
17 claimants' case on causation or of the  
18 deficiencies Mr. Spelliscy highlights in their  
19 compensation model, the result at which the  
20 tribunal must arrive at is the same.

21 Now, as I have noted, we will  
22 spend the majority of our time today explaining  
23 the four grounds on which the case should be  
24 dismissed. But in light of some of the tribunal  
25 questions, we are going to spend a bit of time at

Page 153

1 the end of our opening to address the case that  
2 the claimants should have pled and explain why the  
3 only damages to which the claimants could be  
4 entitled had they pled such a case.

5 Now, here, I am going to take  
6 the floor briefly, again, and I am going to  
7 explain the very limited damages to which the  
8 claimants could possibly be entitled as a result  
9 of the NAFTA breach in this case.

10 In brief, the injury the  
11 claimants suffered was not the loss of the Whites  
12 Point project but rather the loss of an  
13 opportunity to have their project fairly assessed  
14 in accordance with Canadian law. This injury, the  
15 loss of an opportunity, should have been the basis  
16 for the claim, and when we get to this part of our  
17 opening, I am going to explain why it could only  
18 have a very limited value.

19 I will also explain why the  
20 compensation that could be payable for this injury  
21 can only be assessed in the light of the  
22 claimants' duty to take reasonable steps to  
23 mitigate their damages.

24 In this case, the claimants  
25 could have completely restored their lost

Page 154

1 opportunity in a legally compliant EA through an  
2 application for judicial review in Canada's  
3 domestic courts. And what this means is that even  
4 if they had pled a proper case on damages, the  
5 claimants could be awarded no more than the costs  
6 of the mitigation that they should have reasonably  
7 pursued to restore their lost opportunity. Now,  
8 to be clear, Canada's position is that the  
9 tribunal shouldn't even venture into consideration  
10 of this alternative case. Canada's position is  
11 that you're fully justified in dismissing the  
12 claim put before you on any of the four grounds  
13 that you see before you on the screen.

14 And here, I want to address  
15 the questions asked by the tribunal, and  
16 particularly Question Number 12, which notes that  
17 the investors submit their valuation of damages  
18 exclusively on the assumption that the tribunal  
19 will award lost profits, without presenting any  
20 calculation in the alternative.

21 The tribunal then asked:  
22 "Should the tribunal rule  
23 that lost profits are not  
24 recoverable in this case,  
25 what is the approach to

1 be taken by the  
2 tribunal?"[as read]  
3 Now, this was a key question  
4 as it goes -- the answer to it goes to the heart  
5 of the reasonableness of the result at which we  
6 are saying you should arrive.  
7 The approach to be taken has  
8 to be informed by first principles. Now, it's  
9 certainly a principle of customary international  
10 law that full reparation is to be made through  
11 payment of compensation for any injury resulting  
12 from a wrongful act.  
13 And compensation must cover  
14 any financially assessable damage insofar as it  
15 can be established. But a liability award, it's  
16 not a blank cheque to be taken to the bank in any  
17 amount. It's also a principle of customary  
18 international law that the claimant bears the  
19 burden of proving both the fact of the injury that  
20 it says it suffered as a result of a wrongful act,  
21 as well as the compensation to which it thinks  
22 it's entitled.  
23 The tribunal's role is to rule  
24 upon the claim for damages presented by the  
25 claimants. Once in accordance with Article 15 of

1 the UNCITRAL Arbitration Rules, both sides have  
2 been given an equal and full opportunity of  
3 presenting their case regarding this claim.  
4 It's not for the tribunal to  
5 reconfigure the claimants' approach. Doing so  
6 would change the case that the claimants have  
7 presented, the case that the claimants bear the  
8 burden of proving, and the case to which Canada is  
9 now responding.  
10 So in the end, the approach to  
11 be taken is to ask if the claimants have proven  
12 the NAFTA breach caused the damages they claim in  
13 accordance with the principles governing causation  
14 and compensation.  
15 The claimants have not, and  
16 the result that we are saying is that the tribunal  
17 must accordingly arrive at an award of no damages.  
18 This is an outcome that past  
19 tribunals have not hesitated to arrive at under  
20 similar circumstances. And under the rules of  
21 this arbitration, it's an outcome that's neither  
22 unjust nor unreasonable. Now, I want to add one  
23 more point. Question 12 asks the claimants for  
24 their views on the alternative valuation of  
25 mitigation costs, process costs, and investment

1 costs that Canada provided in its pleadings.  
2 Canada provided these  
3 alternative valuations in the face of the  
4 claimants' failure to do so, to be as helpful as  
5 it could be to the tribunal in its consideration  
6 of the case. But regardless of what the  
7 claimants' views are now on these calculations,  
8 they've not pled a case that includes them as  
9 potential heads of damages. In fact, they not  
10 only didn't plead a case on these alternative  
11 valuations, they have expressly disavowed such a  
12 case.  
13 Before you on the screen is an  
14 excerpt from the claimants' reply memorial. What  
15 it shows is that, in the face of the alternative  
16 valuations presented by Canada, the claimants  
17 simply doubled down on their reliance on a  
18 singular damages model. They confirmed that their  
19 claim for full reparation is properly measured by  
20 the loss of demonstrated profits resulting from  
21 Canada's breaches and that they were accordingly  
22 not claiming the costs incurred or sunk costs in  
23 developing the Whites Point Quarry project.  
24 So, in the end, regardless of  
25 what the claimants' views might be on Canada's

1 alternative valuations, they appear to have been  
2 deliberately never a part of the claim, and the  
3 claimants shouldn't get the benefit of pleading  
4 them now.  
5 So keeping in mind the road  
6 map that I have just laid out for you, let's move  
7 to the first ground on which the claimants' claim  
8 must be dismissed, and that's that they have  
9 failed to prove the injury they claim was caused  
10 by the NAFTA breach identified in the award.  
11 And my focus here is going to  
12 be on three main areas. I am going to start by  
13 highlighting the relevant tribunal findings  
14 regarding the basis of NAFTA liability and  
15 resultant injury.  
16 I will then turn to a second  
17 factor that's as important to your task as the  
18 findings, and this is the legal burden that the  
19 claimants have to meet under customary  
20 international law in proving the injury they have  
21 claimed was caused by the NAFTA breach. The  
22 claimants pay lip service to the legal principles  
23 of causation, but they simply have not applied  
24 them.  
25 And, finally, I am going to

Page 159

1 explain why the approach the claimants have taken  
2 to damages is without merit. The claimants'  
3 approach fails to recognize the basis on which the  
4 liability was found and the injury that resulted.  
5 It fails to reconcile with the governing law on  
6 causation, and it's founded on opinion and  
7 argument that so contort the works of the  
8 environmental assessment process in this case that  
9 it doesn't provide you with a reasonable or  
10 realistic foundation for assessing damages.

11 So, the first area I want  
12 turn to is the key findings in the award with  
13 respect to both the acts giving rise to NAFTA  
14 liability and the injury that the claimants say  
15 they suffered.

16 Now, just as a quick backdrop,  
17 we know Canada was found in breach of NAFTA  
18 because of measures taken during the EA of the  
19 Whites Point project. The Whites Point EA was  
20 carried out pursuant to two separate pieces of  
21 legislation, and these were the Canadian  
22 Environmental Assessment Act and the Province of  
23 Nova Scotia's Environment Act.

24 As with all EAs, the Whites  
25 Point EA was carried out in order to gather

Page 160

1 information about the expected effects of the  
2 Whites Point project so a decision could be made  
3 as to whether that project should proceed.

4 Now, the information-gathering  
5 phase of the EA was entrusted to a joint review  
6 panel. The Whites Point JRP was constituted  
7 pursuant to an agreement between the governments  
8 of Canada and Nova Scotia, and that agreement's on  
9 the screen before you.

10 Its legal mandate was to  
11 conduct a review in a manner that discharged the  
12 requirements of the CEAA and the NSEA and to  
13 submit a report and recommendations to  
14 decision-makers in Canada and Nova Scotia so that  
15 each level of government could make its own  
16 determination as to whether the project should be  
17 permitted to proceed.

18 For now, I have provided this  
19 backdrop to simply situate the NAFTA breach and  
20 resultant injury found in the award in the context  
21 of the Whites Point EA process.

22 Now, the acts giving rise to  
23 the NAFTA breach did not result from the referral  
24 of the project to the JRP, nor did they result  
25 from the ultimate decisions on the project. They

Page 161

1 were committed by the JRP during the  
2 information-gathering phase of the EA,  
3 specifically the approach it took in making its  
4 recommendations to decision-makers on the project.  
5 I want to highlight some of the key findings under  
6 Articles 1105 and 1102, but in summing up these  
7 findings, the best place to start is the  
8 concluding paragraphs of the award.

9 The penultimate paragraph  
10 summarized a set of facts that came together to  
11 produce a finding of liability. These included  
12 representations from state officials that welcomed  
13 the claimants, reliance by the claimants on those  
14 encouragements; an approach to the assessment by  
15 the JRP that effectively found the area to be a  
16 no-go zone for projects of this kind rather than  
17 including as at least a major part of its work a  
18 proper assessment of likely significant adverse  
19 effects on the environment and of the means by  
20 which these effects might have been mitigated;  
21 lack of prior notice to the claimants of the  
22 unprecedented approach of the JRP; and, finally,  
23 the fact that the role of the JRP in the overall  
24 system as legislated includes providing in its  
25 report an impartial and thorough assessment of

Page 162

1 facts and of mitigation options that can be used  
2 by the ultimate decision-makers and government and  
3 that can inform public opinion.

4 Now, in light of these facts,  
5 the award concluded that the injury the claimants  
6 suffered was that they were denied an expected and  
7 just opportunity to have their case considered on  
8 its individual merits.

9 Now, as we all know, the  
10 approach to the assessment for the JRP was its  
11 approach of determining the Whites Point project  
12 was inconsistent with the community core values,  
13 what I am going to refer to today as CCV, of the  
14 surrounding communities rather than carrying out  
15 in its report "a likely significant adverse  
16 environmental effects after mitigation" analysis  
17 of the whole range of project effects as it was  
18 required to do under the CEAA. This approach  
19 denied claimants their opportunity. And this is  
20 borne out by the findings in the award under  
21 Articles 1105 and 1102.

22 Let's turn first to the  
23 tribunal's Article 1105 finding. The tribunal  
24 explained that in finding Canada liable under  
25 Article 1105, it has respectfully taken issue with

1 only the distinct, unprecedented and unexpected  
2 approach taken by the JRP to community core values  
3 in this case. It found the JRP's CCV approach was  
4 a fundamental departure from the methodology  
5 required by Canadian and Nova Scotia law.

6 In this regard, the award  
7 provides that the JRP was legally obliged under  
8 Section 16 of the CEAA to report on all factors  
9 mentioned there, including mitigation measures,  
10 and that the JRP could not take a pass on this  
11 part of its mandate.

12 The tribunal summed up its  
13 findings as follows:

14 "The JRP was, regardless  
15 of its community core  
16 values approach, still  
17 required to conduct a  
18 proper 'likely  
19 significant effects after  
20 mitigation' analysis on  
21 the rest of the project  
22 effects and that, by not  
23 doing so, the JRP, to the  
24 prejudice of the  
25 investors, denied the

1 claimants were not afforded a fair opportunity to  
2 have the specifics of their case considered,  
3 assessed and decided in accordance with applicable  
4 laws.

5 So let's turn now to the  
6 specifics of the tribunal's 1102 finding, which  
7 has a similar foundation.

8 The tribunal held the Whites  
9 Point project did not receive the expected and  
10 legally mandated application for the purposes of  
11 federal Canada environmental assessment of the  
12 essential evaluative standard under the CEAA,  
13 whereas other domestic EA proponents did. But,  
14 again, in finding fault with the JRP, the award  
15 made no determination as to what the outcome of  
16 the EA should have been and, again, nor could it  
17 have. In this regard, the tribunal didn't  
18 preclude the possibility that different outcomes  
19 could have been reasonably obtained in Whites  
20 Point and in other comparator projects. In fact,  
21 it specified, it's not the particular outcome on  
22 the facts between the Whites Point EA and other  
23 EAs that's the basis for a finding of less  
24 favourable treatment for Bilcon's project; rather,  
25 it's the fact that in these other EAs, the JRP

1 ultimate decision-makers  
2 in government information  
3 they should have been  
4 provided."[as read]

5 In this regard, the award  
6 provides that the tribunal has not purported to  
7 conduct its own environmental assessment in  
8 substitution for that of the JRP and that it was  
9 not deciding what the actual outcome should have  
10 been, including what mitigation measures should  
11 have been prescribed if the JRP had carried out  
12 the mandate contained in applicable laws, and nor  
13 would it have been appropriate for it to do so as  
14 a JRP's recommendations do not bind government  
15 decision-makers.

16 As the award explains,  
17 decision-makers in Nova Scotia and federal Canada  
18 had the authority and duty to make their own  
19 decision about the future of the Bilcon project.  
20 The actual outcome of the EA was for government  
21 decision-makers to decide after a lawfully  
22 compliant EA was conducted.

23 So, in the end, what the award  
24 found as to the basis for liability under Article  
25 1105 was that, because of the JRP's approach, the

1 followed the legally required standard in carrying  
2 out and reporting its assessment.

3 In sum, two key findings are  
4 apparent from the passages I have cited, and these  
5 were determinative of the case the claimants  
6 should have pled in damages.

7 First, the tribunal found that  
8 the basis of liability was the JRP's CCV approach  
9 and its failure to conduct the "likely significant  
10 adverse environmental effects after mitigation"  
11 analysis of the whole range of project effects as  
12 required by CEAA.

13 And, second, it found that the  
14 injury the claimants suffered is that they weren't  
15 afforded a fair opportunity to have the specifics  
16 of their case considered, assessed, and decided in  
17 accordance with applicable law.

18 The claimants ignore these  
19 findings, and they have made the liability award  
20 something more than it is by saying, in Mr. Nash's  
21 words this morning, that Canada illegally denied  
22 the Whites Point project and that ministers in  
23 both governments contravened the rule of law.

24 Now, we will be turning back  
25 to these key findings in a few minutes when we

1 consider the deficiencies in the claimants'  
2 overall approach, but before doing so, there's a  
3 second factor that must play into your  
4 consideration of the claimants' approach. This is  
5 their burden under customary international law of  
6 proving the NAFTA breach in this case caused the  
7 injury they are claiming. As I said, this basic  
8 principle dictates the damages claim the claimants  
9 should have pled as a result of the liability  
10 finding and the result that must follow given  
11 their failure to have done so.

12 Let me highlight some of the  
13 key governing principles. First, under customary  
14 international law, Canada has to make full  
15 reparation for the injury caused by its wrongful  
16 acts. The principle of causation is an essential  
17 element of the obligation to make full reparation.

18 The principle was articulated  
19 almost 90 years ago in the Factory at Chorzow  
20 case, which is the inevitable starting point for  
21 this discussion, which provides that reparation  
22 must, as far as possible, wipe out all the  
23 consequences of the illegal act and re-establish  
24 the situation which would, in all probability,  
25 have existed if that act had not been committed.

1 obligation to compensate for the damages caused by  
2 the wrongful act. And Mr. Spelliscy is going to  
3 be addressing the Article 36 compensation  
4 obligation later on.

5 Our focus here is on the  
6 obligation to make reparation for the injury  
7 caused by a wrongful act. Now, this obligation is  
8 reflected and contained in NAFTA Chapter 11.  
9 Pursuant to Article 1116, a NAFTA party is liable  
10 for damages incurred by or arising out of a NAFTA  
11 breach. The words "by reason of" and "arising out  
12 of" in Article 1116.1 make clear that the  
13 obligation applies only to the extent that the  
14 wrongful act in issue caused the injury.

15 Now, the second governing  
16 principle to be kept in mind is that the claimants  
17 bear the burden of proving the existence of a  
18 causal link between the breach and the injury.  
19 This principle has been recognized by numerous  
20 past NAFTA tribunals.

21 For example, in S.D. Myers,  
22 the tribunal explained that compensation is  
23 payable only in respect of harm that's proved to  
24 have a sufficient causal link with the specific  
25 NAFTA provision that's been breached.

1 This is, by necessity, a  
2 hypothetical exercise. Now, more recently, the  
3 Chorzow principle was enshrined in the  
4 International Law Commission's draft articles on  
5 State responsibility.

6 Article 31 of the ILC articles  
7 provides that:

8 "The responsible State is  
9 under an obligation to  
10 make full reparation for  
11 the injury caused by the  
12 internationally wrongful  
13 act."[as read]

14 In the wider context, the  
15 obligation to make full reparation has to be read  
16 in tandem with the obligation to pay compensation  
17 contained in Article 36, which provides that:

18 "The State responsible  
19 for an internationally  
20 wrongful act is under an  
21 obligation to compensate  
22 for the damages caused  
23 thereby."[as read]

24 However, the reparation  
25 obligation is conceptually distinct from the

1 And in UPS, the tribunal held  
2 that a claimant must show that it has persuasive  
3 evidence of damage from the actions alleged to  
4 constitute breaches of NAFTA obligation but also  
5 that the damage occurred as a consequence of the  
6 breaching party's conduct.

7 There should be no debate that  
8 the claimants bear the burden of proving  
9 causation. And, indeed, in past submissions, in  
10 particular in their response to Canada's motion  
11 requesting that the scope of damages be considered  
12 as a preliminary issue, the claimants told you  
13 that proving causation is a burden that the  
14 investors welcome.

15 Now, finally, there are  
16 specific requirements to proving causation. The  
17 claimant can't just rely on the mere fact that a  
18 wrongful act has been found in claiming that it  
19 suffered injury. It has to carry out a separate  
20 exercise of showing how the wrongful act caused  
21 the injury that it claims.

22 And this exercise has to be  
23 carried out in light of the findings made in the  
24 award. The claimants ignored these findings and  
25 have taken this case down a path that really has

1 no grounding in the award.  
 2 Now, again, the ILC articles  
 3 are instructive and, in particular, the  
 4 commentaries. Commentary 10 to Article 31  
 5 explains that:  
 6 "Causality in fact is a  
 7 necessary but not a  
 8 sufficient condition of  
 9 reparation. There is a  
 10 further element to  
 11 causation associated with  
 12 the exclusion of injury  
 13 that is too remote or  
 14 consequential to be the  
 15 subject of reparation.  
 16 In some cases, the  
 17 criterion of directness  
 18 may be used. In others,  
 19 foreseeability or  
 20 proximity."[as read]  
 21 So the claimant has to prove  
 22 not only causality and fact or factual causation  
 23 but also what is often referred to as legal or  
 24 proximate causation.  
 25 And with respect to factual

1 causation, Ripinsky and Williams have the treaties  
 2 Damages in International Investment Law, and on  
 3 factual causation, they write:  
 4 "The issue is whether the  
 5 wrongful conduct played  
 6 some part in bringing  
 7 about the harm or injury  
 8 or was irrelevant to its  
 9 occurrence. In domestic  
 10 legal systems, this is  
 11 also known as the but-for  
 12 test; i.e., would the  
 13 harm have occurred but  
 14 for the unlawful  
 15 conduct."[as read]  
 16 So a wrongful act will have  
 17 been found to have factually caused injury only if  
 18 it's proven the injury would not have occurred in  
 19 the absence of or but for the wrongful act.  
 20 On legal causation, Ripinsky  
 21 and Williams write that the key issue is whether  
 22 the wrongful conduct was sufficient, proximate,  
 23 adequate, foreseeable, or a direct cause of the  
 24 harm or injury. So these notions of proximate,  
 25 adequate or direct cause make clear that customary

1 international law requires a claimant to prove the  
 2 injury it alleges doesn't exist in some far off  
 3 world where it has to be considered too remote a  
 4 consequence for it to be attributed to the  
 5 wrongful act.  
 6 As explained by the ADM NAFTA  
 7 tribunal, there must be a sufficiently clear  
 8 direct link between the wrongful act and the  
 9 alleged injury in order to trigger the obligation  
 10 to compensate for such an injury.  
 11 So, in the end, on governing  
 12 legal principles, Canada does have to make  
 13 reparation for its wrongful acts, but the claimant  
 14 bears the burden of making out a case for such  
 15 reparation, and its case must satisfy the  
 16 requirements of causation under the NAFTA and  
 17 customary international law.  
 18 Let's move to the third area I  
 19 wanted to touch on, and that's that the claimants'  
 20 approach to causation.  
 21 The tribunal will have to  
 22 decide if this approach reconciles with the  
 23 findings in the award that I have summarized and  
 24 with the principles of causation. In our view, it  
 25 doesn't.

1 Now, the claimants say that in  
 2 the absence of the JRP's wrongful acts, there was  
 3 only one possible road the Whites Point EA would  
 4 have followed, and this was a road straight to  
 5 project approval and 50 years of profitable  
 6 operations. A straight, solid black line that  
 7 Mr. Nash described earlier today. Quoting from  
 8 their damages memorial, their loss is the loss of  
 9 the profits they would have earned over the  
 10 50-year life of the Whites Point Quarry. But to  
 11 get to this conclusory outcome, what the claimants  
 12 have to do is basically take a scalpel to just the  
 13 recommendation made in the JRP report that the  
 14 Whites Point project should be rejected on the  
 15 primary basis that it was inconsistent with CCV.  
 16 They also have to ignore the fact that the  
 17 tribunal faulted the JRP because it didn't conduct  
 18 a "likely significant adverse environmental  
 19 effects after mitigation" analysis of the whole  
 20 range of potential project effects as was required  
 21 by CEAA.  
 22 And to quote from the reply  
 23 memorial, they then ask you to accept two very  
 24 extreme propositions that would lead you down  
 25 their one-way road to project approval.

1 First, that there was no  
2 lawful basis for the JRP not to recommend  
3 approval. And, secondly, that the ministers were  
4 legally compelled to approve the quarry.  
5 And, with this, they say the  
6 project would move on to realizing 50 years of  
7 profits.  
8 So to summarize, it appears  
9 that the claimants are saying, if you take away  
10 the NAFTA breach, there's no lawful basis for the  
11 JRP to not recommend approval; the ministers would  
12 be legally compelled to approve the project, and  
13 the project would sail on to 50 years of profits.  
14 So with this in mind, let's  
15 turn to the tribunal's Question 6, which asks:  
16 "Considering the role of  
17 a NAFTA Chapter 11  
18 tribunal, including  
19 vis-à-vis domestic  
20 courts, what's the  
21 appropriate approach of  
22 this tribunal in  
23 assessing the likelihood  
24 that an expert panel  
25 would have recommended

1 approval of the Whites  
2 Point Quarry and  
3 ministers of the Canadian  
4 government would have  
5 approved the project in  
6 the event that the  
7 respondent had acted in  
8 compliance with its  
9 obligations under  
10 NAFTA?"[as read]  
11 The answer to this question is  
12 that it's not appropriate for the tribunal to  
13 assess the likelihood of a positive recommendation  
14 by a review panel or a positive decision by  
15 ministers in the absence of the NAFTA breach.  
16 This isn't the role of a NAFTA  
17 tribunal. And we take this tribunal as having  
18 understood its role given the passages from the  
19 award that I cited earlier. A NAFTA tribunal is  
20 not equipped to assume the role of both the JRP  
21 and government decision-makers. For example, you  
22 are not equipped to assess the effectiveness or  
23 potential cost of mitigation measures that might  
24 have been prescribed to limit the potential  
25 effects of blasting on endangered right whales.

1 You are not equipped to balance the risks posed by  
2 project activities to lobsters and lobster habitat  
3 against the importance of the commercial lobster  
4 fishery to the Digby Neck. And you are not  
5 equipped to determine whether, in light of all of  
6 the potential positive or negative environmental  
7 effects of the project, it should have been  
8 approved or rejected.  
9 And these are just a few of  
10 the tens, if not hundreds, of determinations that  
11 would have to be made in assessing the likelihood  
12 of the outcome of the Whites Point EA in a  
13 NAFTA-compliant scenario.  
14 Question 6 also asks about the  
15 role of NAFTA tribunals including vis-à-vis  
16 domestic courts.  
17 Now, for a detailed study of  
18 this topic, I refer you to paragraphs 30 to 40 of  
19 the first expert report of the Honourable John  
20 Evans, a former justice of Canada's Federal Court  
21 of Appeal and a Canadian expert on administrative  
22 law who is with us today and who I will introduce  
23 a little bit later on.  
24 Now, Judge Evans' report  
25 explains that when an unlawful act committed

1 during the EA process is challenged before  
2 Canada's domestic courts, well, because Parliament  
3 entrusted the recommendation and decision-making  
4 responsibilities to the review panel and ministers  
5 and not to the court, the domestic remedy is  
6 usually for the court to set an unlawful finding  
7 aside and to remit it back to either the review  
8 panel or the Ministers for redetermination in  
9 accordance with instructions designed to ensure  
10 compliance with domestic law.  
11 Now, interestingly, the  
12 domestic court remedy restores the lost  
13 opportunity in a lawful process in actual fact  
14 rather than through an award of compensation.  
15 So, like NAFTA tribunals,  
16 domestic courts are generally restricted from  
17 assessing the likelihood of a certain outcome in a  
18 regulatory review in which an error has been  
19 committed. And this raises an interesting point.  
20 In determining a compensation award in this case,  
21 why should the NAFTA tribunal substitute its view  
22 as to the outcome of the EA process if domestic  
23 courts typically would not?  
24 Now, while we say the tribunal  
25 shouldn't be assessing the likelihoods set out in

1 Question 6, the fact remains, Canada was faced  
2 with a case and is faced with a case alleging  
3 that, absent a NAFTA breach, the Whites Point JRP  
4 had to recommend approval, the Ministers had to  
5 approve the project, and the project would have  
6 realized 50 years of profits. Canada had to  
7 respond to this case. But, to be clear, it would  
8 be simply inappropriate to speculate on the  
9 likelihood of positive recommendations and  
10 positive government decisions in the absence of  
11 the NAFTA breach because the award only found the  
12 claimants were denied an opportunity to have their  
13 project reviewed in accordance with law.

14 Now, I also want to respond to  
15 Question 7, which asks:

16 "What is the consequence  
17 under NAFTA and/or  
18 general international law  
19 of factual uncertainty as  
20 to whether the damage  
21 would have occurred in  
22 the absence of a breach  
23 of international law?"[as  
24 read]

25 And it invites the parties to

1 would have sailed on to profitable operations.

2 When Chorzow Factory's  
3 properly applied, it's not only not probable that  
4 absent the breach, the project would haven  
5 approved, it's highly improbable, and I am going  
6 to explain why a little later on when we get into  
7 the evidence you will be hearing this week.

8 Moving to the Genocide case,  
9 this decision provides equally important guidance  
10 on the requirement of proximate causation that I  
11 described earlier.

12 Again, to put it in the  
13 context of the case pleaded by the claimants, the  
14 Genocide case requires you to ask if there is a  
15 sufficient direct and certain causal nexus between  
16 the JRP's wrongful acts and the denial of profits  
17 from the Whites Point project. In other words,  
18 can it be said with a sufficient degree of  
19 certainty the Whites Point project would have been  
20 approved, constructed and profitably operated for  
21 50 years? Now, this test is not allowed for  
22 speculation. A sufficient degree of certainty is  
23 required. And it's up to the claimants to satisfy  
24 you that this certainty exists.

25 If other steps had to be taken

1 consider the Factory at Chorzow and Bosnian  
2 Genocide cases in doing so.

3 In response, the consequence  
4 of such factual uncertainty is that the tribunal  
5 must use the guidance of authorities like Chorzow  
6 Factory and the Genocide case to test the  
7 claimants' case.

8 Chorzow Factory provides you  
9 with a template for a but-for analysis. It  
10 instructs you to ask, if the JRP prepared a report  
11 that wasn't based on the CCV approach but rather  
12 carried out a "likely significant adverse effects  
13 after mitigation" analysis of the whole range of  
14 potential project effects, then, in all  
15 probability, would the situation that would exist  
16 be one not of the Whites Point project being  
17 denied but rather of the Whites Point project  
18 being approved, constructed, operated, and earning  
19 profits for 50 years? Now, the claimants don't  
20 even try to apply Chorzow Factory. They don't try  
21 to re-establish the situation which would, in all  
22 probability, have existed absent the wrongful act.  
23 All they do is excise the CCV-based recommendation  
24 from the JRP report, and then they claim that with  
25 that, the project would have been approved and

1 or hurdles had to be passed, or if other events  
2 could have transpired in the EA process subsequent  
3 to the JRP's wrongful acts but prior to the  
4 decisions taken on the project or the actual  
5 construction and operation of the project, well,  
6 then, it's far less likely that a loss of 50 years  
7 of profits is sufficiently foreseeable to find  
8 proximate cause.

9 And the fact is that there  
10 were many such steps, hurdles and events in play  
11 here. They render the injury alleged by the  
12 claimants far too remote to serve as the basis for  
13 Canada's reparation obligation, and any one of  
14 them could also break an alleged chain of factual  
15 causation.

16 So in sum, in response to  
17 Question 7, in the face of factual uncertainty,  
18 you have to apply the guidance of the authorities  
19 of Chorzow Factory and the Genocide case. And, in  
20 the context of this case, the guidance they  
21 provide makes the answer to your question obvious.

22 Now, let's move back to what I  
23 have been discussing, and that was the claimants'  
24 approach to causation, as there is another wrinkle  
25 that it appears the tribunal has to address.

Page 183

1 And this is that the claimants  
2 seem to be saying that your questions about the  
3 likelihood of positive recommendations and  
4 decisions in the Whites Point EA in a world where  
5 the NAFTA breach was not committed really need not  
6 be asked, and they are saying that there is no  
7 factual uncertainty about these positive outcomes.  
8 Now, they have done so by claiming, in the award,  
9 the tribunal determined the JRP made one finding  
10 only of a significant adverse environmental effect  
11 that would result from the project, and that's  
12 inconsistency with CCV.

13 They then claim that on the  
14 basis of this alleged finding, the principle of  
15 res judicata precludes the tribunal from now  
16 carrying out the required consideration of the  
17 situation that would, in all probability, have  
18 existed if the JRP did not commit the NAFTA  
19 breach. To use the words of their environmental  
20 law expert, Mr. David Estrin, because of the  
21 alleged res judicata effect of the award, it's a  
22 legal non-starter at this point that there could  
23 be further consideration of the Whites Point  
24 project by a CEAA review panel process.

25 Now, this attempt at

Page 184

1 short-circuiting the required causal analysis  
2 through res judicata is created, to say the least,  
3 but it suffers from its own short circuit, in our  
4 view, as it mischaracterizes both the JRP report  
5 and the liability award.

6 So let's look first at the JRP  
7 report.

8 Now, it's true, the JRP found  
9 the project's inconsistency with CCV to be a  
10 primary consideration influencing its  
11 recommendation that the project should be  
12 rejected. But this is far from a definitive  
13 conclusion by the JRP that all other project  
14 effects were not significant or that, at the very  
15 least, that they were not of concern. In fact,  
16 the JRP's public record shows completely to the  
17 contrary.

18 Let's look at the liability  
19 award. The award didn't determine the JRP  
20 conclusively found every other potential effect of  
21 the project, aside from its inconsistency with  
22 CCV, to not be a likely significant adverse  
23 environmental effect under the CEAA or to not be  
24 an adverse effect that might justify a  
25 recommendation for rejection under the NSEA.

Page 185

1 To the contrary, the award  
2 contains numerous findings that are actually res  
3 judicata between the parties which show that the  
4 essence of the NAFTA breach was not just reliance  
5 on CCV but rather that the JRP neglected to carry  
6 out in its report an assessment of all potential  
7 project effects and the mitigation measures that  
8 might be required for each.

9 To cite one example. In  
10 faulting the JRP for its approach to community  
11 core values, the tribunal concluded that the JRP  
12 did not carry out its mandate to conduct a "likely  
13 significant effects after mitigation" analysis to  
14 the whole range of potential project effects and  
15 that it arrived at its conclusions under both the  
16 laws of federal Canada and Nova Scotia without  
17 having fully discharged a crucial dimension of its  
18 mandated task.

19 Now, in light of such  
20 findings, the tribunal must consider the situation  
21 that would, in all probability, have existed if  
22 the JRP report had not been based on the wrongful  
23 CCV approach but rather on the JRP's legally  
24 mandated consideration of the whole range of  
25 potential project effects.

Page 186

1 Accepting the claimants' res  
2 judicata theory would simply trade the  
3 NAFTA-breaching JRP report with an even more  
4 deficient JRP report which wouldn't take account  
5 of the findings in the award.

6 This version of the JRP report  
7 would be legally incorrect, and it can't serve as  
8 the basis of the tribunal's analysis of causation.

9 Let's turn briefly now to the  
10 result that must follow when the principles of  
11 causation are properly applied to the case  
12 presented by the claimants, and this gets us to  
13 the tribunal's Question 8.

14 Question 8 first asks:  
15 "Assuming a different  
16 hypothetical JRP process  
17 for the Whites Point  
18 project that was  
19 conducted on the basis  
20 which was compliant with  
21 NAFTA, what's the degree  
22 of certainty that such a  
23 JRP would have  
24 recommended the approval  
25 of the project?"[as read]

1 In our view, the answer is  
2 simple. There is no certainty. The JRP's public  
3 record simply doesn't allow you to conclude that  
4 in a NAFTA-compliant scenario, the JRP would have  
5 recommended the approval of the project. And to  
6 illustrate the point, this is where I will be  
7 turning to two of the experts sitting behind me  
8 that I want to introduce to you shortly.

9 Question 8 then asks:  
10 "What hypothetical JRP  
11 recommendations or  
12 government licensing  
13 conditions should the  
14 tribunal assume with  
15 respect to the mitigation  
16 of potential adverse  
17 effects of the  
18 project?"[as read]

19 And in response, and I will  
20 just note that our response here also applies to  
21 the tribunal's Question 13. In Canada's view,  
22 it's not the tribunal's role to assume  
23 hypothetical JRP recommendations or government  
24 licensing conditions with respect to mitigation.  
25 The claimants haven't provided and presented

1 does lead to a different conclusion than the one  
2 pleaded by the claimants on the basis of their  
3 approach. But what must be kept in mind is that  
4 the claimants' approach is as flawed as the  
5 conclusion they are asking you to accept. First,  
6 as I have explained, the approach is legally  
7 incorrect as the existing JRP report was just a  
8 deemed deletion of CCV is not the situation that  
9 would, in all probability, have existed if the  
10 NAFTA breach had not been committed.

11 Moreover, the claimants fail  
12 to tell you what would be left in the existing JRP  
13 report with a deemed deletion of the CCV findings  
14 in terms of whether such a report would discharge  
15 the JRP's mandate and whether it could be used for  
16 the purpose of decision-making. Canada's experts  
17 explain why it could not and that if it had, such  
18 decisions would be vulnerable on judicial review.

19 And, finally, even with the  
20 deemed deletion of the CCV findings, there are  
21 many other JRP findings that would still remain in  
22 the JRP report, and that would be totally  
23 inconsistent with recommendations that would be  
24 supportive of project approval. And I will  
25 explain why in introducing Canada's experts to

1 evidence in this regard. And, as I have  
2 explained, the tribunal isn't equipped to draw  
3 conclusions or assumptions on these factors.

4 But even if you were, given  
5 all the concerns on the face of the Whites Point  
6 EA public record with respect to the feasibility  
7 of many of the mitigation measures that were  
8 proposed, it's safe to say that any hypothetical  
9 recommendations or conditions would have only  
10 added to the cost of the project and could have,  
11 in certain cases, rendered it economically  
12 unviable.

13 Now, what the tribunal is  
14 equipped to do is assess the reliability of the  
15 opinions of Canada's experts on the hypothetical  
16 scenario under which the JRP didn't commit the  
17 NAFTA breach.

18 And, in this regard, Question  
19 8 then asks whether an analysis of a  
20 NAFTA-compliant JRP process leads to a conclusion  
21 that's different from the investors' approach  
22 focussing on the existing JRP report with a deemed  
23 deletion of findings on community core values.

24 In response, an analysis of a  
25 hypothetical NAFTA-compliant JRP process certainly

1 you.

2 But before I do, I want to  
3 comment on Mr. Nash's critique of the witnesses  
4 Canada has brought before you.

5 Canada's experts and witnesses  
6 have been engaged to assist you with the exercise  
7 you have to carry out at this stage, which, as I  
8 have said, is, by necessity, a hypothetical  
9 exercise. The JRP members, the actual JRP members  
10 are not here to provide their views on the but-for  
11 world for a simple reason: the deliberative  
12 privilege that applies to the JRP process, which  
13 was argued by the parties in the liability phase  
14 and which has been upheld by the tribunal.  
15 Mr. Nash may not have been there at the time, but  
16 the issue's been decided, and the same principle  
17 also applies and was upheld by the tribunal to the  
18 deliberations and decision-making of government  
19 Ministers. So, in short, what the JRP members and  
20 Ministers might have to say is privileged, and we  
21 have to rely on experts and a hypothetical  
22 scenario.

23 So, let me introduce Canada's  
24 experts to you. First, what might the Whites  
25 Point JRP's report have provided if the JRP had

Page 191

1 carried out an EA in compliance with NAFTA? To  
2 answer this question, Canada engaged Ms. Lesley  
3 Griffiths and Dr. Tony Blouin, both of whom sit  
4 beside me and who I have introduced earlier and  
5 who have vast experience in chairing review  
6 panels, respectively, under the CEAA and the NSEA.  
7 Ms. Griffiths and Dr. Blouin carried out  
8 independent reviews of the Whites Point JRP's  
9 report and public record, Ms. Griffiths using the  
10 lens of a panel chair under the CEAA and  
11 Dr. Blouin from the perspective of a panel chair  
12 under the NSEA.

13 Ms. Griffiths, for her part,  
14 has noted:

15 "The JRP clearly had  
16 concerns about a number  
17 of potentially  
18 significant adverse  
19 effects of the project  
20 and that, while it did  
21 not expressly conclude  
22 that these other effects  
23 were likely significant  
24 adverse effects under the  
25 CEAA, it did not declare

Page 192

1 these effects to not be  
2 significant."[as read]

3 In her view, the JRP didn't  
4 complete its determination process with regard to  
5 these effects. As such, she concludes, it does  
6 not necessarily follow that, in the absence of the  
7 NAFTA breach, the JRP report would have provided  
8 federal decision-makers with findings and  
9 recommendations that were supportive of project  
10 approval.

11 If the JRP had carried out a  
12 NAFTA-compliant EA, then, based on her review of  
13 the record, Ms. Griffiths is of the opinion that  
14 the JRP could have reasonably concluded that the  
15 project would have likely resulted in significant  
16 adverse environmental effects on the right whale  
17 and the lobster, taking into account proposed  
18 mitigation.

19 Turning to the NSEA,  
20 Dr. Blouin found that although the Whites Point  
21 JRP report only expressly identified the project's  
22 inconsistency with CCV as both a significant and  
23 adverse environmental effect, the JRP found the  
24 project would have an adverse environmental effect  
25 or likely or potential adverse environmental

Page 193

1 effect on a number of valued ecosystem components.  
2 The conclusion Dr. Blouin draws is that all of  
3 these findings were relevant factors that could  
4 have formed the recommendation that the project  
5 should not proceed and that, absent the NAFTA  
6 breach, it was certainly not a foregone conclusion  
7 that the Whites Point project would have been  
8 recommended for approval under Nova Scotia law.

9 Now, in light of these  
10 opinions, and what a proper analysis of causation  
11 requires, the claimants' argument that the JRP had  
12 no legal choice but to recommend project approval  
13 in the absence of the NAFTA breach has to be  
14 rejected. You will be able to engage with  
15 Ms. Griffiths and Dr. Blouin later on this week  
16 with respect to their opinions.

17 Now, putting aside the issue  
18 of JRP recommendations, it's even more important  
19 to consider how decision-making would have  
20 unfolded. You can't just assume an ordinary  
21 course approval by government decision-makers as  
22 Mr. Nash has suggested.

23 Now, here, the question of  
24 causation requires consideration of the discretion  
25 inherent in the decision-making process under the

Page 194

1 CEAA and the NSEA in making an EA decision.

2 And it must account for the  
3 fact that the claimants needed the approval of  
4 both the federal and Nova Scotia governments, not  
5 just one, in order for the project to proceed.

6 Now, in this respect, the  
7 claimants' expert, Dean Lorne Sossin, who we had  
8 introduced earlier today, has opined that:

9 "Without legitimate  
10 grounds to deny approval  
11 to the project and but  
12 for the inappropriate  
13 reliance on the JRP's  
14 findings in relation to  
15 community core values, in  
16 my view, the Ministers  
17 were legally compelled to  
18 exercise their discretion  
19 to approve the  
20 project."[as read]

21 And we want you to keep this  
22 opinion in mind because the tribunal is going to  
23 have to assess whether it holds up. Canada says  
24 that it does not, under whatever hypothetical  
25 scenario you want to use.

1 Now, to lay the groundwork for  
2 your consideration of decision-making under the  
3 CEAA and the NSEA, I want to highlight the  
4 operative provisions of each statute and to  
5 introduce Canada's experts who provided their  
6 opinions on government decision-making.  
7 Let's look first at the  
8 federal decision-making process. Now, this  
9 requires a look at the decision-making provision  
10 of the CEAA, the Canadian Environmental Assessment  
11 Act. And this is CEAA Section 37. Under Section  
12 37, the responsible authority -- and that's the  
13 federal department responsible for ensuring that  
14 an EA is conducted -- together with the Governor  
15 in Council -- they're the federal decision-makers  
16 once a review panel issues its report.  
17 Now, Subsection 37(1) sets out  
18 two decision-making scenarios for the responsible  
19 authority after considering a JRP report. These  
20 are, first, if the project is not likely to cause  
21 significant adverse environmental effects or if  
22 such effects can be justified in the  
23 circumstances, then action may be taken that would  
24 allow the project to be carried out. And, second,  
25 if the project is likely to cause significant

1 Assessment Agency who has extensive experience in  
2 the preparation of memoranda to cabinet leading up  
3 to Section 37 decision-making and the wide range  
4 of considerations that are taken into account by  
5 the Governor in Council.  
6 Mr. Connelly reviewed the CEAA  
7 decision-making documents in the Whites Point  
8 project, and he concludes that, in the  
9 hypothetical situation where the JRP adopted a  
10 NAFTA-compliant approach, the government could  
11 still have reasonably denied approval to the  
12 Whites Point project.  
13 This denial could have been  
14 based upon a response by the responsible  
15 authority, approved by the Governor in Council,  
16 that certain likely significant adverse  
17 environmental effects of the project such as those  
18 that were identified by Ms. Griffiths would not be  
19 justified in the circumstances.  
20 Mr. Connelly also explains a  
21 point that I noted earlier, specifically that the  
22 proposition federal permits had to be issued on  
23 the basis of the existing JRP report with just the  
24 CCV-based recommendation deleted, well, that  
25 proposition is untenable. In this regard,

1 adverse environmental effects that cannot be  
2 justified in the circumstances, an action that  
3 would allow the project to be carried out shall  
4 not be taken. Importantly, both of these  
5 scenarios are subject to Subsection 1(1) of  
6 Section 37, which mandates the involvement of the  
7 Governor in Council in the decision-making  
8 process.  
9 Subsection 1(1) provides, in  
10 part, first, that the responsible authority's  
11 response to the recommendations in the report must  
12 be made with the approval of the Governor in  
13 Council. And, second, that the responsible  
14 authority shall take a course of action under  
15 Subsection 1 that's in conformity with the  
16 approval of the Governor in Council.  
17 So what's clear from these  
18 provisions is that the Governor in Council is the  
19 ultimate approver of an EA decision under the  
20 CEAA.  
21 Now, Canada engaged two  
22 experts to provide their opinions on CEAA  
23 decision-making. First, I will introduce to you  
24 Robert Connelly, a former vice president of policy  
25 and acting president of the Canadian Environmental

1 Mr. Connelly finds that with the references to CCV  
2 struck, the JRP report on the Whites Point project  
3 would not be judged sufficient to satisfy the  
4 requirements of the Act because it would include  
5 no conclusion on the likely significance of the  
6 environmental effects it was mandated to assess.  
7 He adds that:  
8 "To otherwise approve the  
9 project based on the same  
10 JRP report but with  
11 references to CCV  
12 excised, as the claimants  
13 suggest, in the absence  
14 of any recommendation on  
15 how to mitigate the  
16 effects, with a  
17 conclusion that the  
18 project is not  
19 sustainable, and with  
20 clear information about  
21 extensive public concern,  
22 would very likely have  
23 led to judicial  
24 review." [as read]  
25 And he adds that:

Page 199

1 "A judicial review may  
2 also have arisen if the  
3 GIC had denied approval  
4 of the project on the  
5 basis of a flawed report.  
6 This, too, would have led  
7 to considerable delay in  
8 reaching a decision and  
9 with no certainty as to  
10 the outcome." [as read]

11 Now, you'll have the  
12 opportunity to fully consider Mr. Connelly's  
13 opinions when he testifies later this week.

14 Canada also engaged the  
15 Honourable John Evans, who, as I noted already, is  
16 a retired judge of Canada's Federal Court of  
17 Appeal and one of Canada's foremost experts on  
18 Canadian administrative law. Now, in his second  
19 report, Judge Evans carried out an analysis of  
20 CEAA Section 37 in light of the assertions made by  
21 the claimants and their experts. The claimants  
22 chose not to cross-examine Judge Evans, so you  
23 won't be hearing from him, but we ask you to keep  
24 in mind the following of his conclusions:

25 First, neither the responsible

Page 200

1 authorities nor the GIC are legally bound by a  
2 review panel, whose role is to gather information,  
3 make it available to the public and to prepare a  
4 report setting out its rationale, conclusions and  
5 recommendations.

6 Second, that as the GIC must  
7 approve any response by a responsible authority to  
8 a JRP report, and as the GIC has been recognized  
9 as a body of diverse policy perspectives  
10 representing all constituencies within government,  
11 it is unlikely that the power delegated by the  
12 CEAA with respect to projects that have been  
13 referred to a review panel is as minimal as Dean  
14 Sossin appears to suggest.

15 Third, at the very least, it  
16 must be open to the GIC to consider additional  
17 material indicating, contrary to the review  
18 panel's conclusions, that a project may cause  
19 significant adverse environmental effects that  
20 cannot be mitigated.

21 And, finally, that there would  
22 be nothing from preventing the GIC from conducting  
23 an internal examination of material that was not  
24 before the review panel when it made its report  
25 and from concluding that, in light of that

Page 201

1 material, the panel's conclusion and  
2 recommendations were wrong.

3 So, in the end, contrary to  
4 what Mr. Nash stated today, specifically that no  
5 witness engaged by Canada countered Dean Sossin's  
6 opinion from the federal perspective, Judge Evans'  
7 opinion directly contradicts Dean Sossin, but as  
8 he was not called for cross-examination, his  
9 opinion stands uncontroverted.

10 So, to return to the  
11 claimants' assertion that the Ministers were  
12 legally compelled to approve the project under  
13 CEAA, they simply were not.

14 I want to now turn to  
15 decision-making under the NSEA. Under the NSEA,  
16 the Nova Scotia minister of the Environment is the  
17 ultimate decision-maker after a JRP has issued its  
18 report. Section 40 of the NSEA provides that once  
19 in receipt of a panel's recommendations, the Nova  
20 Scotia minister must make one of three decisions.  
21 These are: approve the undertaking, approve the  
22 undertaking subject to any conditions the minister  
23 deems appropriate, or reject the undertaking.

24 Unlike the CEAA, NSEA imposes  
25 no further caveat on the minister's decision. He

Page 202

1 or she does not need to seek a cabinet-level  
2 approval. He or she is the ultimate  
3 decision-maker and, in making a decision, can take  
4 into account a wide range of considerations so  
5 long as they are relevant, having regard to the  
6 purposes of the NSEA.

7 Canada has filed the reports  
8 of two witnesses that shed light on the  
9 decision-making process under the NSEA. First,  
10 Mr. Peter Geddes, also sits behind me, is a past  
11 director of policy, planning and environmental  
12 assessment at the Nova Scotia Department of  
13 Environment. While Mr. Geddes is not a lawyer,  
14 and he doesn't offer an interpretation of the  
15 NSEA, he has extensive experience in providing the  
16 advice and analysis required for the Nova Scotia  
17 minister to make an EA decision.

18 Mr. Geddes filed two reports  
19 detailing the factors considered in the  
20 decision-making process. In his first report,  
21 Mr. Geddes explains that the JRP report is  
22 considered by the minister in his or her  
23 decision-making but that, in practice, the  
24 minister's decision-making process is not limited  
25 to consideration of just the JRP report. The

Page 203

1 Minister considers the relevant information which  
2 is available to him or her, which ordinarily  
3 includes staff assessments and public comments  
4 arising over the history of a file.

5 In other words, the Nova  
6 Scotia minister is not bound by the  
7 recommendations made by a review panel.  
8 Mr. Geddes also responds to the claimants'  
9 assertion that absent a NAFTA breach, the Nova  
10 Scotia minister would have approved the Whites  
11 Point project because of an alleged unequivocal  
12 standard EA practice in Nova Scotia of approving  
13 quarry and marine terminal applications. No such  
14 practice exists. There is no ordinary course, as  
15 Mr. Nash asserted today.

16 Mr. Geddes states in his first  
17 report:

18 "While the review process  
19 is standardized among  
20 projects insofar as the  
21 process set out by the  
22 NSEA, regulations and  
23 operational practices,  
24 there is no policy of  
25 standardized outcomes for

Page 205

1 address one issue and one issue only, whether, in  
2 relation to the Nova Scotia environment minister,  
3 he agreed with Dean Sossin's opinion that without  
4 legitimate grounds to deny approval to the project  
5 and but for the inappropriate reliance on the  
6 JRP's findings in relation to CCV, the minister  
7 was legally compelled to exercise his discretion  
8 to approve the project.

9 Now, Judge Cromwell analyzed  
10 the breadth of the minister's discretion in making  
11 an EA decision. His conclusion is that:

12 "The legislative scheme  
13 confers broad discretion  
14 on the minister and his  
15 delegates at every step  
16 of the process and  
17 provides little express  
18 legislative constraint on  
19 the exercise of that  
20 discretion." [as read]

21 Now, to correct Mr. Nash's  
22 characterization of Judge Cromwell's opinion,  
23 specifically that the minister has unlimited  
24 discretion and that he could do anything he  
25 wanted, Judge Cromwell has added in his report

Page 204

1 projects. Environmental  
2 assessment under the NSEA  
3 is contextual in that it  
4 is intended to respond to  
5 the facts on the ground  
6 of each project." [as  
7 read]

8 He adds that all of this can  
9 vary widely depending on location within the  
10 province and which must be reflected in the  
11 assessments and eventually in an approval or  
12 rejection.

13 Again, you will hear more from  
14 Mr. Geddes in his cross-examination this week.

15 I want to introduce one more  
16 of Canada's experts who provided an opinion on the  
17 claimants' theory that the Nova Scotia minister  
18 had no choice but to approve the Whites Point  
19 project if the NAFTA breach had not been  
20 committed, and this is the Honourable Thomas  
21 Cromwell, who served as a judge of the Nova Scotia  
22 Court of Appeal from 1997 to 2008 and then as a  
23 judge of the Supreme Court of Canada from 2008 to  
24 2016. You met Judge Cromwell earlier today.  
25 Canada asked Judge Cromwell to

Page 206

1 that:

2 "This broad discretion  
3 must be understood in the  
4 context of the  
5 fundamental objects of  
6 the process which are to  
7 predict and evaluate the  
8 environmental effects of  
9 an undertaking and to  
10 decide whether they are  
11 acceptable." [as read]

12 Like Mr. Connelly, Judge  
13 Cromwell also commented on the incomplete nature  
14 of the Whites Point JRP report if one were to  
15 accept the premise on which the claimants' case is  
16 based; namely, a JRP report with just the  
17 CCV-based recommendation for rejection removed.  
18 Judge Cromwell's opinion, faced with a JRP report  
19 that failed to carry out its mandate, it was open  
20 to the Nova Scotia minister to direct the JRP to  
21 fulfil its mandate.

22 Judge Cromwell also observes  
23 that quite apart from its reliance on CCV, the JRP  
24 made numerous findings that the Whites Point  
25 project would result in adverse environmental

Page 207

1 effects. In the end, he concludes that:  
 2 "In sum, Dean Sossin's  
 3 opinion that the Nova  
 4 Scotia minister was  
 5 legally compelled to  
 6 approve this undertaking  
 7 amounts to saying that an  
 8 incomplete JRP report  
 9 that expresses many  
 10 concerns about an  
 11 undertaking's adverse  
 12 effects somehow becomes  
 13 the proponent's ticket to  
 14 a legally compelled  
 15 approval. In my opinion,  
 16 this view has no support  
 17 in the statutory language  
 18 and is deeply  
 19 inconsistent with both  
 20 the purposes of the  
 21 legislation and the broad  
 22 discretion that it  
 23 confers on the  
 24 minister."[as read]  
 25 Now, despite all the problems

Page 208

1 that the claimants clearly have with Judge  
 2 Cromwell's opinion, which you heard today, they  
 3 chose not to cross-examine him on his opinion, and  
 4 it, too, stands uncontroverted. And it also  
 5 rejects the proposition that the Nova Scotia  
 6 minister was legally compelled to approve the  
 7 Whites Point project. Plain and simple, the  
 8 minister is not.  
 9 What all Canada's experts  
 10 demonstrate is that if a NAFTA-compliant JRP  
 11 process had been conducted, the degree of  
 12 certainty that such a process would result in  
 13 positive recommendations and positive decisions is  
 14 nil. A proper approach to causation shows why the  
 15 claimants simply cannot prove that the NAFTA  
 16 breach caused the loss of 50 years of profitable  
 17 quarrying operations at Whites Point.  
 18 First, if the NAFTA breach was  
 19 not committed, the JRP was not legally bound to  
 20 recommend approval.  
 21 Ms. Griffiths and Dr. Blouin  
 22 have explained, the JRP could have reasonably  
 23 found the existence of a likely significant  
 24 adverse environmental effect that could not be  
 25 implemented under the CEEA, or they could have

Page 209

1 recommended rejection under the NSEA in light of  
 2 immitigable adverse effects. The claimants  
 3 haven't conducted a review of the Whites Point  
 4 record that would suggest otherwise; all they have  
 5 done is baldly assert that the JRP would have no  
 6 choice but to recommend approval. This is neither  
 7 correct, and nor is it an answer to Ms. Griffiths'  
 8 and Dr. Blouin's detailed opinions.  
 9 And to be clear, Canada isn't  
 10 saying that a JRP recommendation for approval  
 11 could not be an outcome of a NAFTA-compliant  
 12 process; indeed, there could be several other  
 13 potential outcomes of a NAFTA-compliant JRP  
 14 report, and these include a JRP finding of no  
 15 likely significant adverse environmental effects  
 16 under CEEA but a recommendation for rejection  
 17 under the NSEA. They could also include a JRP  
 18 finding of likely significant adverse  
 19 environmental effects under the CEEA but a  
 20 recommendation for the approval under the NSEA.  
 21 They could also include a JRP finding of no likely  
 22 significant adverse environmental effects under  
 23 CEEA and a recommendation for approval under the  
 24 NSEA.  
 25 But absent the NAFTA breach,

Page 210

1 the JRP would not be put in a situation where it  
 2 had no lawful basis not to recommend approval.  
 3 Now, let's move to government  
 4 decision-making. Given the opinions of  
 5 Mr. Connelly and Judge Evans and Mr. Geddes and  
 6 Judge Cromwell, and given the breadth of  
 7 Ministerial discretion under both statutes, the  
 8 potential paths that could conceivably follow from  
 9 all of the possible permutations of a  
 10 NAFTA-compliant JRP report become even more  
 11 numerous and complex.  
 12 Now, because the Whites Point  
 13 project needed an okay from both the federal  
 14 government and the Government of Nova Scotia, many  
 15 of these paths would end with the project not  
 16 being approved in the end.  
 17 A few of them would.  
 18 But what this shows is that  
 19 the Ministers were simply not legally compelled to  
 20 approve the project.  
 21 And there are additional risk  
 22 factors that need to be kept in mind. First, any  
 23 one of these decisions that you see on the screen  
 24 could be challenged on judicial review by project  
 25 opponents, by Bilcon or by governments, and then

Page 211

1 overturned and remitted for redetermination by the  
2 JRP or government Ministers, adding further delay  
3 and uncertainty as to the outcome. And even if  
4 the project were approved by federal and  
5 provincial decision-makers and avoided judicial  
6 review, there would be multiple risk factors that  
7 could prevent it from moving ahead as a profitable  
8 operation. Mr. Nash said earlier today that this  
9 was not an early-stage startup. It clearly was.  
10 The claimants ignore all the risks that face  
11 startups, just as they do the many potential  
12 outcomes of a lawfully compliant JRP process. And  
13 these risks include whether the project would  
14 obtain all its licenses and permits; the potential  
15 cost of mitigation measures and whether such  
16 measures would render the project economically  
17 infeasible; the potential costs of construction,  
18 production and shipping; whether there would be  
19 adequate market demand for the new volumes of  
20 Whites Point product; and also a poor economic  
21 climate.

22 So, when all of this is  
23 considered, it's simply not possible to find the  
24 NAFTA breach found by the tribunal caused the loss  
25 of 50 years of profitable operations. This is not

Page 213

1 found that absent the treaty breach, it did not  
2 follow the claimant would have acquired the sugar  
3 groups. This is because the state treasury was  
4 free in its decision whether to consent to a sale  
5 or not, even if all other conditions for it were  
6 fulfilled.

7 The tribunal observed that the  
8 claimant seems to assume that once the sales  
9 procedure was launched, Poland was obliged to  
10 conclude it by a sale. This view is not correct,  
11 though.

12 As a result, in this case, the  
13 tribunal awarded no compensation, finding the  
14 damages demonstrated by the claimant therefore  
15 have no causal link with the breach that it found.

16 If you find that the  
17 claimants' alleged damages similarly have no  
18 causal link with the breach, then the same result  
19 must follow here.

20 Now, this concludes Canada's  
21 overview of the primary ground on which the claim  
22 for damages that the claimants have put before you  
23 must be rejected.

24 The claimants have simply  
25 failed to meet their burden to prove the injury

Page 212

1 a straight, solid black line. Now, given all the  
2 uncertainties and question marks that you have  
3 before you, this isn't a result the claimants can  
4 prove to the level of certainty that they must,  
5 given the hundreds of millions of dollars they are  
6 claiming from Canada's public purse.

7 And in the end, given it's the  
8 only result the claimants are pleading, the  
9 tribunal really has no option but to dismiss their  
10 claim.

11 Now, as I noted at the outset,  
12 this is a determination that other tribunals have  
13 made when faced with a claim that fails on  
14 causation. And here, I want to take you briefly  
15 to the Nordzucker damages award.

16 In this case, Poland breached  
17 its treaty obligations given its failure to be  
18 transparent with the claimant in the  
19 pre-contractual phase of a privatization of  
20 certain sugar groups. Just as the claimants are  
21 doing here, the claimant in this case alleged  
22 damages for its lost profits, specifically the  
23 earnings which it expected to realize in Poland  
24 following its acquisition of the sugar groups.  
25 The tribunal in this case

Page 214

1 they claim was caused by the NAFTA breach that was  
2 found by the tribunal. And if the tribunal agrees  
3 with Canada on this point, it need not go any  
4 further.

5 But, as I noted at the outset,  
6 there are three additional grounds that justify a  
7 complete dismissal of the claimants' claim, and we  
8 do want to outline these for you.

9 And in this regard, I want to  
10 turn the floor to Mr. Spelliscy, but I propose  
11 that it's probably a good time to have our  
12 afternoon break.

13 Thank you.

14 PRESIDING ARBITRATOR: Thank  
15 you, Mr. Little. So we are going to have the  
16 short coffee break. It is a break until 3:35.  
17 And then Mr. Spelliscy will continue. Thank you.  
18 --- Upon recess at 3:20 p.m.  
19 --- Upon resuming at 3:38 p.m.

20 PRESIDING ARBITRATOR: I think  
21 we are set. Mr. Spelliscy, you have the floor.  
22 OPENING STATEMENT BY MR. SPELLISCY:  
23 MR. SPELLISCY: Good  
24 afternoon, Judge Simma, Professor Schwartz, and  
25 Professor McRae. As my colleague Mr. Little

Page 215

1 explained before we took our coffee break, there  
2 are four separate and independent reasons why the  
3 claimants' claim for damages in this phase of the  
4 arbitration must be dismissed. Mr. Little has  
5 already explained the first one, which you see on  
6 the screen. The claimants are only permitted to  
7 recover the damages actually caused by the breach  
8 found by the tribunal. However, they have not  
9 made a claim for such damages. Instead, they have  
10 requested that you award the claimants, under  
11 Article 1116, damages they allege to be equivalent  
12 to the present day value of 50 years of the lost  
13 profits of Bilcon of Nova Scotia, their  
14 enterprise. Indeed, one of the claimants,  
15 Mr. Clayton, Sr., continues to ask the tribunal to  
16 award him such damages even though the evidence in  
17 this case is clear: He has no ownership interest  
18 at all in Bilcon in Nova Scotia. The tribunal  
19 asked the claimants a question about this, this  
20 morning. They did not answer it.  
21 Now, on top of those lost  
22 profits, the claimants ask for an enormous tax  
23 gross-up. They have presented no alternative  
24 request for the historical investments made by the  
25 investors in their failed effort to develop the

Page 216

1 project, and they have presented no alternative  
2 request for losses that they allegedly directly  
3 suffered as investors. Indeed, this morning, they  
4 spent their entire opening argument explaining  
5 their hypothetical plan in support of their  
6 discounted cash flow analysis.

7 There can be no question.

8 They have put all of their proverbial eggs in a  
9 basket of a DCF of Bilcon of Nova Scotia's lost  
10 profits. And it is not only the wrong basket,  
11 but, as I will explain, it is a basket riddled  
12 with holes, rendering it completely unreliable.

13 Now, with the problems -- the  
14 problems with their theory that Mr. Little has  
15 discussed already and those that I will discuss  
16 this afternoon are, perhaps, not surprising when  
17 one considers a crucial fact about their claim for  
18 damages here, and that is this: The underlying  
19 basis for the damages claim that they have brought  
20 before you in this phase of the arbitration is  
21 nothing but the legal contrivance. It is a  
22 fabrication with no other apparent purpose than to  
23 inflate the damages claimed to their highest  
24 possible level.

25 The alleged plan that they

Page 217

1 present in front of you has nothing to do with the  
2 actual business plans of Bilcon of Nova Scotia.  
3 And, moreover, it has nothing to do with the claim  
4 that they originally submitted to arbitration many  
5 years ago. As we go through the remainder of  
6 Canada's arguments this afternoon, we will discuss  
7 this further. But, for now, I ask that you keep  
8 this fact in mind because it is crucial to  
9 understanding the reasons why the claim that the  
10 claimants have decided to bring in the damages  
11 phase of this arbitration must be dismissed.

12 Let's turn to Canada's  
13 arguments. This afternoon I will explain to you  
14 in detail the three other reasons why the claim  
15 for damages presented by the claimants here must  
16 be dismissed, and let me summarize them briefly  
17 before we turn to a more detailed examination.  
18 First, I will explain why the claimants lack  
19 standing to pursue the claim that they have  
20 brought for the first time in the damages phase  
21 under Article 1116 of NAFTA. In short, under  
22 Article 1116, the claimants are permitted to claim  
23 the damages that they have suffered directly as  
24 investors. In contrast, as made clear not only by  
25 the language of the provision itself, but also by

Page 218

1 the submissions of the NAFTA parties in this and  
2 in previous cases, they are not permitted to  
3 submit a claim under Article 1116 for damages that  
4 have been suffered by their enterprise. And yet,  
5 in contrast to their initial claims in this  
6 dispute, in the damages phase of this arbitration  
7 the only claims the claimants have presented are  
8 based on the alleged losses of Bilcon of Nova  
9 Scotia. As such, the request for damages suffered  
10 by their enterprise under Article 1116 must be  
11 dismissed.

12 Next, I will explain why their  
13 claim based on the lost profits of Bilcon of Nova  
14 Scotia must be rejected, because it is improper as  
15 a matter of law to value an unpermitted,  
16 undeveloped, and non-operating project using a  
17 discounted cash flow of future lost profits.  
18 Tribunals have been clear that the use of future  
19 lost profits to value what is no more than a  
20 potential and highly speculative project is not  
21 legally appropriate. In this case, the claimants  
22 had a lease on a bit of Nova Scotia coast and an  
23 idea, nothing more. It did not have an operating  
24 quarry marine terminal with a reliable history of  
25 profits. It did not have a shovel-ready project

1 with guaranteed existing long-term contracts with  
2 customers.

3 Since the claimants have, in  
4 this phase of the arbitration, only presented a  
5 claim based on a DCF of the lost profits of Bilcon  
6 of Nova Scotia, their request for damages must be  
7 dismissed.

8 Finally, I will explain why  
9 even if one were to consider the lost profits of  
10 Bilcon of Nova Scotia in assessing the damages  
11 here, the valuation presented by the claimants is  
12 so unreliable that it must be rejected.

13 Now, to be clear, there is no  
14 dispute that quarries can make money. Of course,  
15 they can. But there can also be no dispute that  
16 they are not risk-free licences to print money.  
17 And yet the claimants' DCF valuation ignores all  
18 risks and assumes with certainty that the project  
19 would operate and do so profitably for 50 years.  
20 The claimants' valuation is a Goldilocks scenario,  
21 one where everything is just right and works out  
22 in their favour each time and every time.

23 But reality is not like that.  
24 Unsurprisingly, since this is a damages phase, the  
25 claimants now assert, based on the plan that they

1 have developed here in this phase of the  
2 arbitration, that [REDACTED]

3 [REDACTED]  
4 [REDACTED] The end result, a claim for damages  
5 that skyrockets past the value they ever believed  
6 their project would have during the course of the  
7 project's development and that skyrockets past  
8 their original claims for damages here in this  
9 arbitration.

10 Indeed, in this damages phase,  
11 the claimants now want this tribunal to believe  
12 that Bilcon of Nova Scotia will be able to obtain  
13 a level of profitability unheard of in the  
14 industry even amongst the world's recognized  
15 leaders. This skewed and unreliable valuation  
16 results in a DCF value for the project that is so  
17 out of line with actual market-based indicators  
18 that it is impossible to even graph them on the  
19 same scale.

20 In short, the DCF that they  
21 have presented relies on so many faulty  
22 assumption, so many erroneous inputs, and so many  
23 mistaken legal instructions that the tribunal is  
24 left with no choice but to dismiss it and, hence,  
25 dismiss the claim for damages.

1 Now, before I move on to  
2 discussing each of these points in detail, let me  
3 just pause here, because earlier I mentioned that  
4 the claimants' claim also has two components.  
5 It's a DCF of Bilcon of Nova Scotia's lost profits  
6 plus a tax gross-up. We didn't hear very much  
7 about the tax gross-up from Mr. Nash this morning.

8 Now, the tribunal needs to  
9 understand that the tax gross-up is entirely  
10 linked to and dependent upon the tribunal  
11 accepting the claimants' theory of causation,  
12 concluding that use of the DCF is appropriate in  
13 understanding the potential profits that could be  
14 made by this early stage and highly speculative  
15 project, and the tribunal concluding that the DCF  
16 presented by the claimants is reliable and  
17 accurate. The tribunal should do none of those  
18 things, and, as such, the claimants claim of a tax  
19 gross-up should be dismissed for the same reasons  
20 that its valuation should be dismissed: It's  
21 unreliable. But, in fact, as we expect to hear  
22 this week, it suffers from an additional fatal  
23 flaw. The claimants' calculation is based on now  
24 repealed tax code in the United States. And, of  
25 course, that fact is why tribunals have

1 consistently refused to gross-up awards for tax  
2 consequences in the home state of the investor.  
3 As Canada explained in its written submissions,  
4 the tax laws of the investors' home state are not  
5 within the control of the respondent state. The  
6 home state can decide to change them. That is  
7 exactly what has happened here. The tax laws in  
8 the US have undergone an overhaul with the result  
9 that, as we expect to see, the claimants'  
10 calculation is no longer accurate. And for these  
11 reasons, I'm not going to spend much further time  
12 addressing the tax gross-up today.

13 Now, let me turn to my first  
14 point for this afternoon, which is that the  
15 claimants lack standing to bring a claim for the  
16 damages that they are seeking in this arbitration.  
17 In May of 2008, the claimants filed their Notice  
18 of Arbitration, submitting a claim only under  
19 Article 1116. This is nearly 10 years ago now.  
20 The claim has proceeded since then and has even  
21 been amended by the claimants once in December of  
22 2009, but at no time have the claimants ever  
23 brought a claim under Article 1117. This wasn't  
24 addressed at all by the claimants in their  
25 presentation this morning, so let me take a few

Page 223

1 minutes to explain why that is important, and  
2 let's start at the beginning with the language of  
3 NAFTA.

4 Article 1116 gives an investor  
5 standing to bring a claim that the investor has  
6 incurred loss or damage by reason of or arising  
7 out of a breach of NAFTA by one of the parties.  
8 Article 1116 is to be contrasted with Article  
9 1117. Article 1117 gives an investor standing to  
10 bring a claim on behalf of an enterprise that is a  
11 juridical person, meaning a corporation, where the  
12 enterprise has incurred loss or damage by reason  
13 of or arising out of a breach. The ordinary  
14 meaning of Article 1116, interpreted in the  
15 context of Article 1117, is clear. Article 1116  
16 grants an investor standing to recover losses it  
17 has directly suffered, not losses suffered by its  
18 enterprise. In the recent Article 1128  
19 submission, the United States made exactly this  
20 point, explaining that Article 1116 and 1117 serve  
21 to address discrete and non-overlapping types of  
22 injury. Where the investor seeks to recover loss  
23 or damage that it incurred directly, it may bring  
24 a claim under Article 1117. However, where the  
25 alleged loss or damage is only to an enterprise

Page 224

1 that the investor owns or controls, the investor's  
2 injury is only indirect, and, therefore, the  
3 investor must bring a derivative claim under  
4 Article 1117. Similar to the position of the  
5 United States here and Canada in its submissions,  
6 Mexico has taken the exact same position in  
7 previous filings in other NAFTA cases. For  
8 example, in its Statement of Defence in the Gami  
9 arbitration, Mexico explained that, at  
10 international law, one cannot confuse the  
11 enterprise for the shareholder and vice versa and  
12 that, under NAFTA, a shareholder cannot bring a  
13 claim under Article 1116 for damages or losses  
14 suffered directly by an enterprise.

15 Now, in their written  
16 submissions, the claimants seem to want you to  
17 believe that Canada, the United States, and Mexico  
18 do not understand their own treaty; that the three  
19 parties to NAFTA who negotiated it, who implement  
20 it, and who engage in trilateral discussions  
21 regarding it simply misconstrue what the treaty  
22 allows in Article 1116. But, in fact, it is the  
23 claimants who misrepresent and misunderstand  
24 certain provisions of NAFTA, not the NAFTA parties  
25 themselves.

Page 225

1 The claimants, for example,  
2 point to Article 1121.1, and they suggest that  
3 this article shows, in their own words, that  
4 reflective loss is clearly included within the  
5 scope of damages recovered under Article 1116.  
6 But let's just pause to look at the language,  
7 because it says nothing of the sort.

8 Article 1121.1 sets forth the  
9 conditions precedent for bringing a claim to  
10 arbitration under Article 1116, including a  
11 requirement that the investor waive any rights to  
12 bring claims for damages in domestic courts and  
13 tribunals. And it provides that, for claims under  
14 Article 1116, a waiver is required from the  
15 enterprise where the investors' claim is for  
16 damage to an interest in an enterprise.

17 Now, contrary to what the  
18 claimants would have you believe, damage suffered  
19 by an investor to an interest in an enterprise is  
20 not the same as damage suffered by the enterprise  
21 itself. Read in accordance, both with its  
22 ordinary meaning and particularly in the context  
23 of Article 1139 E and F, which use the exact same  
24 phrase, it is clear that an interest in an  
25 enterprise is the entitlement or right to certain

Page 226

1 benefits, such as a legal right to receive  
2 dividends or the legal right to vote in  
3 decision-making.

4 Far from showing that  
5 reflective loss is permitted under Article 1116,  
6 Article 1121.1 reinforces that the only claims  
7 that can be brought under Article 1116 are those  
8 for direct losses by the investor.

9 Now, the claimants have also  
10 taken a different tack and have argued in their  
11 written submissions, not today, that even if  
12 Canada is right, it doesn't matter in this case.  
13 And the tribunal asked that the parties further  
14 elaborate on this argument, specifically that the  
15 distinction between Articles 1116 and 1117 is  
16 merely a formality in cases where the investment  
17 is wholly owned and controlled by the investors.

18 It is not. First, importing  
19 such a distinction would be expressly reading  
20 language into 1116 that is not there. Article  
21 1116 contains no exception to the limited standing  
22 it confers simply because an investment may be  
23 wholly owned and controlled, and it does not fall  
24 to a NAFTA Chapter 11 tribunal to write in  
25 language that expands its own jurisdiction beyond

1 the consent given by the NAFTA parties.  
 2 Second, the general rule of  
 3 corporate law barring the recovery by shareholders  
 4 for indirect losses, a rule accepted in all  
 5 nations and upheld, without fail, by all domestic  
 6 courts is not just about minority shareholders.  
 7 It is a fundamental legal rule rooted in policy  
 8 and designed to protect numerous stakeholders.  
 9 Let's take one spot in NAFTA  
 10 Chapter 11 where this is clearly evident, and that  
 11 is Article 1135. Article 1135.2 provides that  
 12 awards under Article 1117 are to be paid to the  
 13 enterprise. The effect of this is to ensure that,  
 14 when an investor recovers damages on behalf of its  
 15 enterprise, the interests of others in that  
 16 enterprise are respected. This, of course,  
 17 protects minority shareholders. But it also  
 18 protects others, including, importantly,  
 19 creditors. In every corporate law system,  
 20 creditors receive payment on their obligations  
 21 before shareholders can take their money out.  
 22 However, allowing shareholders  
 23 to directly recover their reflective losses flips  
 24 this on its head. It would allow equity investors  
 25 to jump the priority line and access the

1 enterprise's assets before creditors can recover  
 2 on their loans.  
 3 And, to be clear, it makes no  
 4 difference at all here whether there are creditors  
 5 present or not. The point here is one of  
 6 principle. And it is a principle that lies at the  
 7 very heart of the structure of Chapter 11 and one  
 8 that has been consistently emphasized by the NAFTA  
 9 parties.  
 10 Indeed, as the United States  
 11 has concluded in its submission, in agreement with  
 12 Canada, allowing an investor to claim for any  
 13 indirect loss under Article 1116 would render the  
 14 whole framework negotiated by the NAFTA parties  
 15 ineffective, and Article 1117 would effectively  
 16 become redundant.  
 17 And that is why, in 2002,  
 18 years before this claim was filed, the tribunal in  
 19 *Mondev* appropriately urged future claimants to  
 20 carefully consider whether to bring proceedings  
 21 under Article 1116 and 1117.  
 22 And it is why, as the US has  
 23 noted in its submission, no NAFTA tribunal that  
 24 has considered the distinction between 1116 and  
 25 1117 has ever awarded damages for indirect loss

1 under Article 1116.  
 2 Ultimately, the claimants  
 3 cannot get around either the clear language of  
 4 NAFTA or the fact that, in all of the previous  
 5 cases, the NAFTA parties have consistently agreed  
 6 upon the proper interpretation of Article 1116.  
 7 As Article 31 of the Vienna Convention on the law  
 8 of treaties provides, in interpreting a treaty, a  
 9 tribunal shall take into account, together with  
 10 the context, any subsequent agreement or  
 11 subsequent practice of the treaty parties  
 12 establishing the interpretation of the treaty  
 13 provision.  
 14 The Vienna Convention says  
 15 nothing about the role of arbitral tribunals in  
 16 establishing the proper interpretation of a  
 17 treaty, because contrary to what the claimants  
 18 suggest in their written submissions, previous  
 19 jurisprudence cannot settle the interpretation of  
 20 a treaty provision. There is no precedent in  
 21 international law. So while jurisprudence can be  
 22 helpful to the tribunal if it is convincingly  
 23 reasoned, it can be nothing more than guidance.  
 24 It is the treaty parties  
 25 themselves who have control over the meaning of

1 their treaties, not arbitral tribunals established  
 2 for the purpose of resolving a dispute.  
 3 And in the pleadings of the  
 4 NAFTA parties, in this and in the other cases, on  
 5 the issue of the claims that may be brought under  
 6 Article 1116, we have the clear, subsequent  
 7 agreement and practice of the NAFTA parties on the  
 8 correct interpretation of NAFTA. The clear  
 9 language of a treaty and the consistent  
 10 interpretation of the parties to that treaty  
 11 cannot be written off as a mere formality.  
 12 Under the language and  
 13 structure of NAFTA, it is impermissible for an  
 14 investor to attempt to recover the losses suffered  
 15 by an enterprise under Article 1116.  
 16 Now, before I go on to  
 17 applying this rule to the facts here, let me take  
 18 a chance to answer the tribunal's request that  
 19 Canada clarify what it means by calling the claim  
 20 "impermissible".  
 21 This is an objection that goes  
 22 to the very heart of the tribunal's jurisdiction  
 23 to hear this claim as the claim has been brought  
 24 by the claimants. Let's step back for a moment  
 25 and consider the nature of this whole process.

Page 231

1 Claimants do not have an unlimited right to bring  
2 any claim to arbitration under Chapter 11. To the  
3 contrary, their right to do so and the tribunal's  
4 ability to hear claims is based entirely upon the  
5 consent of the NAFTA parties to arbitrate such  
6 claims. That consent is found in Chapter 11,  
7 specifically in Article 1122.  
8 That article provides in  
9 paragraph 1 that each party consents to  
10 arbitration if the claim is submitted in  
11 accordance with the procedures set out in this  
12 agreement. And it's this last phrase that I want  
13 to focus on, because it makes it clear that the  
14 consent of Canada to arbitrate disputes is limited  
15 to claims brought in accordance with the  
16 procedures in Chapter 11. Such procedures include  
17 the limitations on what types of claims can be  
18 brought pursuant to Article 1116 and what types of  
19 claims must be brought pursuant to Article 1117  
20 instead. As the United States explained in its  
21 Statement of Administrative Action, years ago,  
22 implementing the NAFTA, Article 1116 and 17 set  
23 forth the kinds of claims that may be submitted to  
24 arbitration, respectively, allegations of direct  
25 injury to an investor and allegations of indirect

Page 233

1 of the items share something in common. They are  
2 damages associated with the rights and  
3 entitlements of investors. This is to be directly  
4 contrasted with the sort of damages available  
5 under Article 1117. Under Article 1117, a claim  
6 could be brought on behalf of a corporate  
7 enterprise for losses in the value of the  
8 enterprises' assets, lost value of the company's  
9 shares due to measures affecting its overall  
10 viability, or lost profits, if they can be proven  
11 with sufficient certainty.  
12 Perhaps the easiest way to  
13 understand the difference is to look at dividends.  
14 So, for dividends, money comes into the  
15 corporation in the form of revenues. Then some of  
16 that can be distributed to the investors in that  
17 corporation. Now, if a corporation is damaged by  
18 a wrongful measure that prevents it from earning  
19 revenue and, thus, prevents it from having the  
20 funds to distribute to its shareholders as  
21 dividends, this is a claim that is brought on  
22 behalf of the corporation under Article 1117.  
23 However, if the measure does  
24 not impact the ability of the corporation to issue  
25 the dividends, but rather prevents an investor

Page 232

1 injury to an investor caused by injury to an  
2 investor's enterprise.  
3 And it is for this reason that  
4 the United States has also correctly explained in  
5 its non-disputing party submission that, whether a  
6 claim has properly been brought under Article 1116  
7 or Article 1117 goes to the fundamental issue of  
8 consent of the NAFTA parties to arbitration. And,  
9 thus, it goes to the jurisdiction of the tribunal  
10 to hear the claim as brought here.  
11 So, with this law in mind,  
12 what type of damages can be claimed under article  
13 1116?  
14 As explained in the United  
15 States' 1128 submission, what matters in  
16 determining whether an injury is direct or  
17 indirect is whether the right that has been  
18 infringed belongs to the shareholder of the  
19 corporation or to the corporation.  
20 Thus, it could be damages for  
21 under 1116 associated with the loss of a right to  
22 vote, the loss of a right to receive dividends,  
23 the loss of a right to transfer ownership, the  
24 loss of a right of first refusal. Now, this list  
25 is not exhaustive, of course, but I note that all

Page 234

1 from being able to receive those dividends, it is  
2 a claim that is brought by an investor on its own  
3 behalf under Article 1116.  
4 The United States gives the  
5 same example in its submission to you, saying that  
6 a claim that would allow a shareholding investor  
7 to seek direct losses or damage includes whether  
8 it was denied a right to a declared dividend.  
9 So with these distinctions in  
10 mind, let's come to what the claimants have  
11 claimed here in the damages phase of this  
12 arbitration, and we can do no less than use their  
13 own words and the words of their experts.  
14 In the words of Mr. Rosen, who  
15 is the one calculating the losses, he says:  
16 "These cash flows  
17 represent the lost  
18 profits of Bilcon of Nova  
19 Scotia." [as read]  
20 And claimants' counsel  
21 Mr. Nash explained this morning that the investors  
22 seek an award of lost profits to compensate them  
23 for what the Whites Point project would have  
24 earned.  
25 Mr. Rosen then takes it a step

1 further, and he explains that the claim for  
2 damages is based on the fact that the lost profits  
3 of Bilcon of Nova Scotia represent money available  
4 for distribution to the investors.

5 So let's come back to what we  
6 just talked about. What was a permissible claim  
7 under 1116? A claim where a measure blocks an  
8 investor from receiving an issued dividend. That  
9 is not what the investors are claiming here.

10 They have a right to receive  
11 any distribution which may be issued. What they  
12 are seeking compensation for is the fact that  
13 Bilcon of Nova Scotia has no funds to distribute,  
14 but they are doing so only under Article 1116.  
15 And, as shown above, that is wholly inappropriate.

16 This is a claim that could  
17 have been brought under Article 1117, but it was  
18 not. And in their response to the Article 1128  
19 submission of the United States, the claimants  
20 made clear that this was an intentional choice.  
21 In paragraph 9 of that submission, they wrote:

22 "The investors' decision  
23 to bring their claim  
24 under Article 1116 was  
25 not an error as the

1 on the importance to its decision of decisions in  
2 pleadings in previous cases since the issue before  
3 the tribunal is how much compensation may be due  
4 to the investors here, because here is where I  
5 have to draw a crucial distinction.

6 Canada's objection is not  
7 preliminary, as Mr. Nash suggested. It's not to  
8 the tribunal's jurisdiction to hear a claim  
9 brought under Article 1116 for damages suffered by  
10 the claimants as a result of the breach. The  
11 tribunal has jurisdiction to hear a claim for such  
12 damages.

13 It just does not have  
14 jurisdiction to hear this claim for compensation  
15 as brought by the claimants in the damages phase  
16 of the arbitration.

17 Now, as I have mentioned again  
18 and again today, this claim here, in this phase,  
19 is an entirely new theory of damages. It was not  
20 the theory of damages submitted to arbitration.  
21 And, here, the easiest thing to do to explain this  
22 is simply to go back to the actual claim that the  
23 claimants submitted in their Amended Statement of  
24 Claim in this arbitration, the one we had on the  
25 screen earlier. And let's turn to paragraph 39.

1 United States presumes to  
2 characterize it."[as  
3 read]

4 The claimants must now live by  
5 that choice made years ago. It is not for the  
6 tribunal or Canada to redraft their claim. Of  
7 course, while they could have pled a claim for  
8 damages to their enterprise when they started this  
9 dispute, under Article 1117, it is equally true  
10 that, in this phase of the arbitration, they could  
11 have pled a claim for damages, and they could have  
12 continued to plead the claim for damages they  
13 originally made.

14 In exploring this a little  
15 further, this allows me to answer another one of  
16 the tribunal's questions. The tribunal has asked  
17 for a comment on the claimants' argument that  
18 Canada should be estopped from making its  
19 objection because it was not raised in the  
20 jurisdiction and liability phase. And, in fact,  
21 this was the only argument of about two sentences  
22 that the claimant presented to you this morning.

23 I would like to consider this  
24 question and another one at the same time, because  
25 the tribunal's also asked the parties to comment

1 And we can see here how the  
2 claimants themselves characterize their damages.  
3 Under the heading "Damages", they claimed two  
4 aspects, first, that they suffered the loss of  
5 their expenses incurred over five years in trying  
6 to develop their project. Second, in that Amended  
7 Statement of Claim, they asserted they were  
8 deprived of a vital of source of basalt aggregate  
9 to supply their business operations in the United  
10 States and that, as a result, Bilcon, which is  
11 defined in this document as Bilcon of Delaware,  
12 may have to satisfy market demand at much greater  
13 cost.

14 We come to the memorial of the  
15 claimants filed in the liability phase. Even  
16 though we were bifurcated, they had a section  
17 explaining in general what the damages were. And  
18 they said:

19 "The evidence of  
20 Mr. William Richard  
21 Clayton sets out that the  
22 investors sought to  
23 obtain a stable and  
24 secure supply of  
25 aggregates from the

1 Whites Point Quarry to  
 2 supply their business  
 3 operations in the United  
 4 States."[as read]  
 5 And the memorial cites to the  
 6 witness statement of Mr. Clayton, and in that  
 7 witness statement, in the liability phase, he  
 8 says, in paragraph 31, that:  
 9 "The inability of the  
 10 Clayton Group to obtain a  
 11 secure and predictable  
 12 supply of aggregate from  
 13 the Whites Point project  
 14 has caused loss to the  
 15 Clayton Group."[as read]  
 16 So what were these business  
 17 operations to which the claimants were referring  
 18 again and again in the Statement of Claim in their  
 19 initial submissions? And to answer this further,  
 20 I have to go into confidential session for a  
 21 moment.  
 22 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
 23 4:09 P.M.  
 24 MR. SPELLISCY: This morning,  
 25 Mr. Nash said [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 Now, we can come back into public section  
 17 because I'm going to turn back to public  
 18 documents.  
 19 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
 20 4:09 P.M.  
 21 MR. SPELLISCY: In their  
 22 environmental impact statement submitted to  
 23 regulators, Bilcon described its project in a way  
 24 that makes it very clear what they were claiming  
 25 in their Statement of Claim and in their memorial.  
 In their revised project  
 description, they said:  
 "Bilcon of Nova Scotia is  
 a private family-owned  
 business. Its parent

1 company, Clayton  
 2 Concrete, Block & Sand,  
 3 manufactures concrete  
 4 products in New Jersey,  
 5 USA, and Bilcon needs a  
 6 source of raw aggregate  
 7 materials that is not  
 8 subject to market  
 9 fluctuations or market  
 10 disruptions."[as read]  
 11 If you come down to the next  
 12 highlighted bit, they clarify:  
 13 "Clayton Concrete, Block  
 14 & Sand, through Bilcon,  
 15 intends to develop and  
 16 control their own supply  
 17 of aggregate exclusively  
 18 for Clayton Concrete,  
 19 Block & Sand."[as read]  
 20 There is only one meaning of  
 21 the word "exclusively".  
 22 So what were the claimants  
 23 originally claiming in this arbitration? That the  
 24 investors in this case were forced to acquire  
 25 aggregate to supply their operations at market

1 prices that were higher than what it would cost  
 2 them to produce that aggregate and ship it to  
 3 themselves in New Jersey. Their alleged loss in  
 4 their Statement of Claim, their sunk costs as  
 5 investors and the difference between the cost to  
 6 supply their operations of New Jersey from Whites  
 7 Point and the cost to supply their operations from  
 8 purchasing on the open market.  
 9 That is the theory under which  
 10 this claim was brought and the theory under which  
 11 it was brought under Article 1116. In order to  
 12 argue for such damages, the claimants would have  
 13 had to present evidence of sunk costs actually  
 14 paid by the investors and evidence of actual  
 15 purchases of aggregate made by the investors at  
 16 market prices in New Jersey and evidence that  
 17 established with certainty how much it would have  
 18 cost them to quarry and ship the same volume of  
 19 rock from Nova Scotia to their facilities in New  
 20 Jersey. They produced no evidence to support such  
 21 a calculation. None.  
 22 Now, make no mistake, any such  
 23 claims would probably have faced unsurmountable  
 24 difficulties, both legally an factually,  
 25 particularly given the breach identified by the

1 tribunal and the lack of certainty on the costs  
2 side.

3 But instead of pursuing their  
4 the original claim, what they chose to do was  
5 trump up a phony business plan solely for the  
6 damages phase of this arbitration and make a claim  
7 for the lost profits of Bilcon of Nova Scotia.  
8 The first notice of this new claim came in the  
9 memorial that they filed in the damages phase.  
10 Canada brought its objection at the earliest  
11 opportunity it had once it was presented with the  
12 claimants' actual claim for damages and, thus,  
13 knew the case that it had to meet.

14 And now let me turn to  
15 answering another related question posed by the  
16 tribunal, which is whether the parties have  
17 further comments on the appropriateness of  
18 allowing the claimants to amend their claim in  
19 these circumstances.

20 Article 20 of the governing  
21 UNCITRAL arbitration rules provides that a claim  
22 may be amended unless the arbitral tribunal  
23 considers it inappropriate to allow such an  
24 amendment having regard to the delay in making it  
25 or prejudice to the other party or any other

1 circumstances. However, a claim may not be  
2 amended in such a manner that the amended claim  
3 falls outside the scope of the arbitration clause  
4 or the separate arbitration agreement.

5 Let's take these two sentences  
6 one at a time.

7 First, amendments are only  
8 generally allowed if there's been no undue delay  
9 in making them and there's no prejudice to the  
10 other party. Obviously, here, there has been an  
11 undue delay. The distinction between article 1116  
12 and 1117 is one that the claimants knew about,  
13 professed to have understood, and specifically and  
14 intentionally chose to file under Article 1116.  
15 And then they decided to change the entire theory  
16 of damages from the one that formed the basis of  
17 the claim when it was submitted.

18 The consequence of that is  
19 clear. The claim that they have brought for  
20 damages in this phase of the arbitration is  
21 impermissible under Article 1116. And, in these  
22 circumstances, it would be entirely unacceptable  
23 and prejudicial to Canada to allow the claimants  
24 to amend it now and advance a theory of damages  
25 that they never before had.

1 As the United States explained  
2 in its 1128 submission, how an investor pleads a  
3 claim for loss or damage, i.e., under which  
4 article, can have implications on a disputing  
5 party's litigation strategy. For example, whether  
6 a claim for loss or damage has been brought  
7 pursuant to 1116 or 1117 can impact the disputing  
8 NAFTA party's ability to assess the scope of the  
9 damages claims with respect to potentially  
10 settlement or even its defence against such  
11 claims.

12 So, under the first sentence  
13 of Article 20 of the UNCITRAL rules, there are no  
14 grounds to permit an amendment here.

15 In our submission, this would  
16 be amplified by the second sentence. You will  
17 recall that that clause prohibits amendment if the  
18 amendment is outside of the scope of the  
19 arbitration clause. The scope of the arbitration  
20 clause here is Article 1116 and 1117, both of  
21 which include a limitation that claims must be  
22 brought within three years of the alleged measure.  
23 The breaching measure here was in 2007, the JRP  
24 report. Any claim to arbitration would have had  
25 to have been submitted prior to 2010, as a result.

1 Under the second sentence of Article 20 of the  
2 UNCITRAL arbitration rules, the tribunal cannot  
3 allow the claim to be amended to add what is now a  
4 time-barred claim under Article 1117 of NAFTA.  
5 Such an amendment would be outside of Canada's  
6 time-limited consent to arbitrate disputes under  
7 Chapter 11 of NAFTA.

8 So, for these reasons, the  
9 claimants are attempting to bring in this  
10 arbitration a claim that they simply do not have  
11 standing to bring. The tribunal cannot allay the  
12 distinction between Article 1116 and 1117, and nor  
13 can it rewrite the claimants' claim and still  
14 maintain its independence and impartiality in this  
15 dispute. The tribunal is left with really no  
16 choice. It must dismiss the claimants' claim for  
17 the lost profits of Bilcon of Nova Scotia.

18 Now let me turn to my next  
19 point, which is that, even if we leave aside the  
20 standing point and consider the stories that the  
21 claimants have come up with for the purposes of  
22 this phase of the arbitration. The claim here  
23 based on the lost profits of Bilcon of Nova Scotia  
24 must still be dismissed.

25 A claim based on a DCF of

Page 247

1 future lost profits is inappropriate as a matter  
2 of law in this case. Let's start with some of the  
3 most basic principles of calculating damages.  
4 Damages are not a lottery ticket with the  
5 potential to offer huge but unjustified awards  
6 based on a speculative gamble by an investor. And  
7 this is particularly so with respect to the  
8 consideration of lost profits.

9 Let's turn to what the  
10 International Law Commission has written, first.

11 My colleague Mr. Little  
12 mentioned this. Article 36.1 states that the  
13 state is responsible for an internationally  
14 wrongful act. That state is under an obligation  
15 to compensate for the damages caused thereby.

16 Article 36.2 provides that the  
17 compensation shall cover any financially  
18 assessable damages, including loss of profits  
19 insofar as it is established.

20 But it is those last words  
21 that are key: "Insofar as it is established".

22 When we turn to the  
23 commentaries on these articles and, in particular,  
24 Commentary 27, we see that the International Law  
25 Commission clarifies that tribunals have been

Page 248

1 reluctant to provide compensation for claims with  
2 inherently speculative elements. When compared  
3 with tangible assets, profits are relatively  
4 vulnerable to commercial and political risks and,  
5 increasingly so, the further into the future the  
6 projections are made. In cases where lost profits  
7 have been awarded, it has been where an  
8 anticipated income stream has attained sufficient  
9 attributes to be considered a legally protected  
10 interest of sufficient certainty to be  
11 compensable.

12 This has normally been  
13 achieved by virtue of contractual arrangement or,  
14 in some cases, a well-established history of  
15 dealings.

16 Tribunals have consistently  
17 adopted this approach. In Metalclad, the tribunal  
18 ruled where the enterprise has not operated for a  
19 sufficiently long time to establish a performance  
20 record or where it has failed to make a profit,  
21 future profits cannot be used to determine going  
22 concern or fair market value.

23 In PSEG, the tribunal  
24 explained that lost profits could not be awarded,  
25 because such future profits were wholly

Page 249

1 speculative and uncertain given that the terms of  
2 the contract in question had not been finalized.

3 In Copper Mesa, the tribunal  
4 recognized the extreme caution necessary when  
5 assessing the compensation due to early-stage  
6 projects, particularly when projects remain in an  
7 early exploratory stage with no actual mining  
8 activities, still less, any track record as an  
9 actual mining business.

10 Finally, in Caratube, the  
11 tribunal explained that lost profits have to be  
12 sufficiently certain in order to be recovered and  
13 that the standard of certainty is rather high to  
14 be considered sufficient, and reaching that level  
15 of certainty is difficult, if not necessarily  
16 impossible, in the absence of a going concern with  
17 a proven record of profitability.

18 These are just a handful of  
19 the many cases that all adopt the same principle.  
20 A claimant is not entitled to lost profits when  
21 there is no basis for certainty that such profits  
22 would have been earned.

23 The claimants, in their  
24 written submissions and this morning, point to a  
25 number of other cases, such as Gold Reserve,

Page 250

1 Crystallex, and Rusoro, but all of these cases  
2 actually endorse the same principle, because in  
3 each, the projects had a long-term concession or  
4 permits and rights already which the tribunals  
5 found to be sufficient attributes to be a legally  
6 protected interest of sufficient certainty to be  
7 compensable. In fact, the claimants' main  
8 response, the response that we saw in the written  
9 submissions and this morning again and again, is  
10 that their profits were a certainty.

11 Earlier today, Mr. Nash told  
12 you that it was irrefutable -- that it was an  
13 irrefutable fact that claimants would be operating  
14 profitable quarry and marine terminal but for the  
15 NAFTA breach, today. This is an incredible  
16 assertion.

17 The claimants' proposal to  
18 construct and operate a quarry marine terminal at  
19 Whites Point is exactly that, a proposal. And  
20 contrary to what Mr. Nash has said, it was a  
21 proposal that the claimants have acknowledged was  
22 in early stage of development. In response to  
23 Canada's criticisms of the EIS and how they have  
24 abandoned the planning elements of that document  
25 in order to create a new project for the purpose

1 of this damages phase, the claimants stated that  
2 it was only a conceptual document, drafted at a  
3 very early stage of the project. That may indeed  
4 be true, but that is exactly the point, because  
5 that is all that the claimants had at the time in  
6 question. The cases cited by the claimants are at  
7 pains to point out more is needed.

8 If we go to Rusoro, the  
9 tribunal lists a number of factors, and it says  
10 all, or at least a significant part, of the  
11 following criteria must be met before a DCF is  
12 appropriate. The Rusoro tribunal said there  
13 should be a historical record of performance; that  
14 there must be reliable projections of the  
15 enterprise's future cash flows, ideally in the  
16 form of a detailed business plan, adopted in  
17 tempore insuspecto, not at the time of the  
18 arbitration, in tempore insuspecto, prepared by  
19 the company's officers and verified by an  
20 impartial expert. There must be certainty about  
21 the price that can be obtained into the future.  
22 There must be certainty about financing and costs.  
23 There must be certainty about the costs of the  
24 capital for financing. And there must be  
25 certainty that the future impacts of regulation

1 will not be significant.

2 Let's look at reality here.  
3 The claimants earlier today kept coming back to  
4 the fact that Canada was not looking at reality,  
5 but let's look at reality for Bilcon here. Bilcon  
6 of Nova Scotia has no historical record of  
7 performance, none. Again, the claimants had a  
8 lease and an idea. That's it. So recognizing, in  
9 fact, that there are no records of historical  
10 profitable operations, let's go through what the  
11 claimants would need to have an operation that's  
12 profitable at Whites Point. To operate a quarry  
13 marine terminal, you need to have long-term access  
14 to a coastal piece of land. You need to have  
15 certainty about your resource that's there. You  
16 need permits to develop that land into a quarry  
17 marine terminal. You need to finance, construct,  
18 and build the quarry marine terminal and to do so  
19 at a cost that is viable. You need to operate the  
20 quarry marine terminal to actually produce the  
21 rock and load it on ships in an economically  
22 viable manner, using production methods that  
23 result in the mix of sizes of stone you need. You  
24 must arrange to have that material shipped and  
25 delivered to the markets where you intend to sell

1 your products. You must have customers who will  
2 pay sufficient prices for your product so that you  
3 can earn both revenue and profit. And, finally,  
4 you must now be able to repeat this cycle,  
5 delivery of production, delivery and sales at  
6 profitable rates for the entirety of the project  
7 lifespan without running into unforeseen project  
8 killers, whether they be commercial or regulatory  
9 in nature.

10 Now let's look here at what  
11 the claimants had.

12 They had a lease on the land,  
13 that's for sure. However, while it is clear that  
14 there is stone there, lots of it.

15 [REDACTED]  
16 [REDACTED] And we know that because,  
17 in this arbitration, they have submitted a

18 [REDACTED]  
19 [REDACTED]  
20 Next, they did not have any of  
21 the necessary permits to develop either the quarry  
22 or the marine terminals. We have heard already  
23 today from my colleague Mr. Little that there was  
24 no certainty that, absent the breach, such permits  
25 would have been forthcoming.

1 In terms of construction,  
2 nothing at all here had been built, not a single  
3 shovel in the ground to start the construction of  
4 the marine terminal and [REDACTED]

5 [REDACTED]  
6 In terms of production, again,  
7 there is no record of how cost efficiently and  
8 cost effectively the aggregate could have been  
9 produced from Whites Point. In fact, what is  
10 clear from the submission so far, and will become  
11 even more clear this week, is that [REDACTED]

12 [REDACTED]  
13 [REDACTED]

14 [REDACTED]  
15 Now, even if you could build  
16 and produce aggregate at Whites Point, your  
17 customers and markets are not in Nova Scotia, so  
18 you need a way to move your products to market,  
19 and that is shipping. The claimants have said  
20 there was lots of shipping available, [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]

10 As we will see this week, in fact for  
11 this arbitration, they have sought to entirely  
12 redescribe the intended market for this product,  
13 but in so doing, it is the claimants which have  
14 ignored both reality and history.

15 Finally, there is no certainty  
16 that the claimants could have operated the Whites  
17 Point Quarry marine terminal successfully year  
18 after year. As the International Law Commission  
19 noted, future profits are vulnerable to commercial  
20 and political risks and, increasingly so, the  
21 further into the future projections are made.

22 Here, the claimants tried to  
23 make projections on operating costs, prices, and  
24 volumes 50 years into the future. The evidence  
25 that you will hear this week portrays the  
instability of aggregates markets. However, this

1 is an area where government regulations can  
2 change. For example, you have seen evidence that  
3 the government has recently begun to impose speed  
4 regulations on ships in the area where the Whites  
5 Point project would have been located in order to  
6 protect the endangered North Atlantic Right Whale.  
7 Regulatory changes, such as these, in the future  
8 could have severely impacted and affected the  
9 profitability of the claimants' enterprise, and  
10 yet the claimants ignore the possibility, making  
11 any claim for lost profits 50 years into the  
12 future inherently speculative.

13 So where does that leave us?  
14 There is nothing in the circumstances of Bilcon of  
15 Nova Scotia that could possibly lead to the  
16 conclusion that its business had developed to the  
17 point where its anticipated future income stream  
18 could be considered a legally protected interest  
19 of sufficient certainty to be compensable.

20 Arbitrators, unlike  
21 businessmen, cannot reason as risk-taking  
22 investors and include speculative and uncertain  
23 profits in their awards. Yet the claimants have  
24 put all of their eggs into the DCF basket. You  
25 saw today they have offered no alternative

1 calculation of damages. Once the tribunal  
2 appropriately rejects the use of the DCF in this  
3 case, it is left with no other arguments by the  
4 claimants. And, in those circumstances, it has  
5 only one choice, to dismiss the claim for damages  
6 in its entirety.

7 Now, let me turn to my final  
8 point today. And that is: Even if one did want  
9 to consider a DCF, the one presented by the  
10 claimants is so rife with errors, based on such  
11 unrealistic assumptions, and so out of touch with  
12 market realities that the tribunal is left with no  
13 choice but to reject it entirely.

14 The first error that the  
15 claimants made in their valuation -- and I'm going  
16 to spend a few minutes going over the fatal flaws  
17 here.

18 The first error they make is  
19 to value the project as of the date of December  
20 31st, 2016, rather than the date of the breach  
21 itself. You heard Mr. Nash talk about it this  
22 morning.

23 Now, contrary to what Mr. Nash  
24 has said, though, the use of an arbitrary date not  
25 of an award, but when the claimants' expert is

1 assumed to have submitted his first report in  
2 arbitration has no basis in international law  
3 whatsoever.

4 The principle is that  
5 reparation should re-establish the situation which  
6 would, in all probability, have existed if the  
7 illegal act hadn't been committed. We have seen  
8 this quote again and again. But the situation  
9 which would have existed if the breach had not  
10 been committed is that which would have existed  
11 when the JRP released its report. Put simply, the  
12 calculation of damages caused by a breach cannot  
13 depend on the schedule of an arbitration and how  
14 long it takes to resolve. Such a result would be  
15 particularly unjust here.

16 This arbitration -- in this  
17 arbitration, the claimants have engaged in delay  
18 after delay, including with respect to the filing  
19 of their damages submissions. They have missed  
20 deadlines. They have asked for extensions. And  
21 now they ask this tribunal to essentially reward  
22 them for that behaviour by allowing them to  
23 increase the value of their damages claim by  
24 choosing a valuation date of December 31st, 2016.  
25 And when I say "reward them", what do I mean?

1 Because you heard Mr. Nash earlier talk about it  
2 being a question of information that may be  
3 relevant for the tribunal's understanding of the  
4 assumptions and the DCF, but that is not the only  
5 effect of what the claimants have done here.

6 Mr. Rosen's approach, and what  
7 he has done with the calculation of the past lost  
8 profits, means that the claimants are asking the  
9 tribunal to assume that none of their profits were  
10 subject to any risk prior to 2016. In essence,  
11 they are discounting nothing further -- they are  
12 discounting into the past no further than 2016,  
13 eight years at the beginning of profits at 100 per  
14 cent, and that's the real effect of the valuation  
15 date that they have chosen.

16 As Mr. Chodrow explains in his  
17 report, simply adjusting the valuation date  
18 reduces -- and accounting for risk in the first  
19 eight years of operations reduces the amount being  
20 claimed by nearly 40 per cent, down from 308  
21 million to 182 million.

22 Second, the claimants ignore  
23 basic laws of economics in projecting the prices  
24 that they would receive for their products.  
25

And to enter into this

1 discussion and the discussion that follows, we are  
2 going to go into confidential session. With  
3 apologies to anybody who may be in the room, we'll  
4 be here for a while.

5 --- CONFIDENTIAL PORTION OF TRANSCRIPT RESUMES AT  
6 4:32 P.M.

7 MR. SPELLISCY: [REDACTED]

[REDACTED]

1 [REDACTED]

1 [REDACTED]

2 [REDACTED]

2 [REDACTED]

[REDACTED]

[REDACTED]



24 At this point, we can actually  
25 come out of the confidential session.

1 --- CONFIDENTIAL PORTION OF TRANSCRIPT ENDS AT  
2 4:42 P.M.

3 MR. SPELLISCY: Now, before I  
4 go on -- you can take that off the screen maybe --  
5 one must keep in mind that all of this, both of  
6 the valuations I just discussed, assume full  
7 permitting and development. And that leads me to  
8 the final fundamental flaw in an assumption  
9 underlying the discounted cash flow presented by  
10 the claimants, that is, that the project bore no  
11 permitting or development risk. In fact,  
12 astoundingly, they expressly stated in their  
13 written submissions there is no risk. And today  
14 they spent a lot of time arguing that Nova Scotia  
15 promotes its mineral wealth. Of course, they do.  
16 But it is simply not credible in any sense to say  
17 that there was no risk as a result. Every  
18 project, every one, that is neither permitted nor  
19 developed bears permitting and developing risk.

20 And here let me answer another  
21 of the tribunal's questions. The tribunal asked  
22 about the potential effects on the profitability  
23 and viability of the possible mitigation  
24 conditions.

25 As my colleague Mr. Little

1 briefly noted, the claimant has simply not even  
2 considered it. There are certainly mitigation  
3 conditions that can be imposed on projects that  
4 impact profitability. I have mentioned one  
5 already, which is speed restrictions in the Bay of  
6 Fundy. But make no mistake, the permitting risk  
7 that the project faced, even if ultimately  
8 approved, could also have gone to the entire  
9 viability, particular if protections were put  
10 around or conditions were put around the times  
11 that they could blast or ship because of concerns  
12 about whales.

13 And, yet, as I have said, the  
14 claimants need this tribunal to accept the project  
15 bore no risk in relation to its permitting,  
16 development, or operation. And this statement is  
17 astounding because to say there is no risk to  
18 developing a project is to say it's simply a  
19 licence to print money.

20 The assumption here that the  
21 claimants need you to make is simply not credible,  
22 especially since, at the time in question, as  
23 Mr. Chodrow explained in his report, there was a  
24 significant amount of uncertainty in the market  
25 for aggregates.

1 As he explained, shipments to  
2 aggregates had dropped by nearly 20 per cent  
3 between 2006 and 2007, and the last quarter of  
4 2007, when the alleged breach occurred, was the  
5 seventh sequential downturn for aggregates  
6 markets. In fact, it was these exact market  
7 conditions that likely led the proponents of the  
8 Belleoram project in Newfoundland to decide not to  
9 go forward, and that project had its environmental  
10 approval. It faced only development risks. In  
11 fact, it faced the same sort of development and  
12 market risk the claimants faced at exactly the  
13 same time in question. And the Belleoram  
14 proponents said, "Our project is delayed, and you  
15 are right; the financial meltdown was the cause".

16 That project, the Belleoram  
17 project, has still yet to even put a shovel in the  
18 ground. So let's put this into perspective and  
19 talk again about reality. We have two projects,  
20 Whites Point and Belleoram, each looking to quarry  
21 aggregate from coastal locations in Canada's  
22 Maritime region and ship that product and sell it  
23 on the east coast of the United States. Both come  
24 out of the EA process at roughly the same time, in  
25 the autumn of 2007. Now, for all the reasons that

Page 271

1 Mr. Little's explained, there is no reason for us  
2 to do so, but for the sake of argument, let's  
3 assume that the claimants also received their  
4 permits for the Whites Point Quarry.  
5 So what, then, did the  
6 claimants assume? They say they would be in  
7 operation, making money by 2011. And then they  
8 say that they would have gone on making money  
9 without interruption at the same rate for the  
10 50-year life of the project, earning what they  
11 have claimed here in their damages phase, in  
12 excess of 300 million in profits.  
13 What happened for Belleoram?  
14 In fact, nothing happened. Yet to make a single  
15 dime. It turns out that, when we focus on  
16 reality, it's been very different than the dreams  
17 of the claimants, and yet they ask you to believe  
18 that their project bore no risk whatsoever. You  
19 simply cannot do so.  
20 And it is this simple  
21 representation that shows the implausibility of  
22 the claimants' theory. It's not Canada that has  
23 ignored reality; it is the claimants.  
24 So where does this leave us?  
25 The claimants have presented what can best be

Page 272

1 called a fanciful DCF. It goes beyond simply  
2 making optimistic assumptions and, in fact, paints  
3 a completely unrealistic view of the world. It  
4 assumes that the claimants will produce more,  
5 spend less, and earn money like there is no  
6 tomorrow, all in a risk-free environment that  
7 their competitors both did not know about and  
8 would not try themselves to exploit. The  
9 claimants' DCF ignores market and business  
10 realities and pays no heed to risk.  
11 As my colleague Mr. Little  
12 explained earlier, the claimants bear the burden  
13 of proof here, and even if the tribunal were  
14 willing to entertain the possibility of a DCF in  
15 this case, and it should not be so willing, but  
16 even if it did, the DCF presented by the claimants  
17 is faulty and unreliable. It must be rejected.  
18 And, with it, the tribunal should reject the  
19 claimants' claim for damages in its entirety.  
20 And so now, before I conclude  
21 and pass the floor back to Mr. Little, let me just  
22 summarize for a moment where we are.  
23 A majority of the tribunal  
24 found Canada to be in breach of its obligations  
25 under Chapter 11 of NAFTA. Canada may not agree

Page 273

1 with that ruling and believes it to be  
2 fundamentally flawed, but contrary to what the  
3 claimant said this morning, Canada is not  
4 attempting to reargue that case. Canada  
5 recognizes that, in the context of this  
6 arbitration, it has a duty to make reparations for  
7 the harm done. But this does not mean that the  
8 claimant is entitled to the Earth, heaven, and  
9 everything in between. It falls to the claimants,  
10 and the claimants alone, to prove the damages that  
11 they have incurred. And if they do not do so, the  
12 result is simple: Their claim must be dismissed.  
13 And while in a second Mr. Little here is going to  
14 briefly explain in the alternative Canada's  
15 position on what could have been done by the  
16 claimants, I re-emphasize what he said: Let's be  
17 clear. The claimant did not make this claim. In  
18 fact, as I have explained, what they have done in  
19 this phase is really quite something. They  
20 abandoned their claim for investment costs. They  
21 abandoned their claim for losses that may have  
22 been suffered directly as investors. They  
23 abandoned their entire business plan and model for  
24 the Whites Point project, and they invented  
25 something entirely new. They invented something

Page 274

1 that is no less than an arbitration plan, a legal  
2 strategy designed to bring the number calculated  
3 for their damages as high as possible. That is  
4 completely inappropriate in and of itself. But  
5 that legal strategy has other consequences as  
6 well, consequences that I have been talking about  
7 this afternoon and will continue to explore this  
8 week.  
9 In light of the damages claim  
10 brought by the claimants in the damages phase  
11 here, the only four conclusions that you can  
12 possibly come to are those that are on the screen  
13 right now: The claimants have failed to prove  
14 causation. They have failed to prove standing.  
15 They have failed to prove the appropriateness of  
16 their valuation method. And they have failed to  
17 prove quantum even on the basis of their flawed  
18 theory. Their claim must be dismissed in its  
19 entirety. Thank you.  
20 PRESIDING ARBITRATOR:  
21 Mr. Little, I have a question. We have -- since  
22 we had -- we are going to have about 45 minutes  
23 left. Don't you think it would raise the  
24 attention span or positivity of the audience if we  
25 had a very short break of five minutes?

Page 275

1 MR. SCOTT LITTLE: I have no  
2 problem with that. And I can tell you I don't  
3 plan to be much more than 20 minutes, Judge Simma.  
4 PRESIDING ARBITRATOR: Really?  
5 MR. SCOTT LITTLE: Yes.  
6 PRESIDING ARBITRATOR: Okay.  
7 Now, then, that's fine.  
8 MR. SCOTT LITTLE: Well, I  
9 want you to be attentive, though.  
10 (Laughter)  
11 PRESIDING ARBITRATOR: If I  
12 know that it's not going to go on until 5:30, then  
13 I will be all --  
14 MR. SCOTT LITTLE: No, I will  
15 be done well before that.  
16 PRESIDING ARBITRATOR: Super.  
17 Go ahead.  
18 OPENING STATEMENT BY MR. SCOTT LITTLE (Cont'd):  
19 MR. SCOTT LITTLE: So, at the  
20 outset of Canada's opening, I commented that the  
21 claimants should have pled an entirely different  
22 case than the one they have. And to assist the  
23 tribunal, in our remaining time, we want to  
24 explain, first, the approach that they should have  
25 taken and, second, the only damages to which they

Page 276

1 could be entitled had they done so, which, as  
2 noted on the screen, are their costs of  
3 mitigation.  
4 So what should have informed  
5 the approach the claimants should have taken?  
6 First and foremost, their approach should have  
7 taken cognizance of the injury that the award  
8 makes clear was suffered as a result of the NAFTA  
9 breach. Now, as I noted earlier today, the award  
10 found that, because of the NAFTA breach, the  
11 claimants were denied an expected and just  
12 opportunity inherent in a legally compliant EA  
13 process. So the relevant question to be answered  
14 is: What's required to put the claimants back in  
15 the position they were in before their opportunity  
16 was impacted? And this gets us to the tribunal's  
17 Question 11, which asks:  
18 "In the event that the  
19 NAFTA tribunal were to  
20 conclude that the injury  
21 caused by the  
22 respondent's NAFTA  
23 breaches is the loss of  
24 an opportunity, how  
25 should the value of such

Page 277

1 an opportunity be  
2 determined? What case  
3 law under public  
4 international law, if  
5 any, should guide the  
6 tribunal in determining  
7 such value? What  
8 evidentiary standards  
9 should apply?"[as read]  
10 Now, in answering this  
11 question, we have to keep in mind what the loss of  
12 opportunity was in this case and what it was not.  
13 The claimants did not lose an opportunity to build  
14 the project or to blast rock or to make sales of  
15 that rock in New York or to earn profits, because  
16 they never had a legal right to do any of these  
17 things. And this simple fact must impose a heavy  
18 limitation on the value of their lost opportunity.  
19 Now, the slide that's showing  
20 on the screen right now that we have already seen  
21 puts the opportunity that the claimants lost in  
22 its proper context.  
23 And if you're trying to  
24 re-establish the situation that would have existed  
25 had the NAFTA breach not been committed, the

Page 278

1 claimants should be placed right here. That's  
2 where the claimants' opportunity gets restored.  
3 This is a world in which the JRP hasn't committed  
4 the NAFTA breach. It's a world in which the  
5 claimants' opportunity in a lawful EA process has  
6 been restored. It's also, though, a world in  
7 which the project was not guaranteed [REDACTED] of  
8 profitable quarrying operations, because, as we  
9 have noted, a NAFTA compliant JRP process could  
10 have resulted in any number of potential  
11 recommendations. Federal and provincial Ministers  
12 would then have to decide whether the project  
13 should be approved or rejected. The JRP's  
14 recommendations and ministerial decisions could be  
15 challenged and overturned on judicial review. And  
16 even if the project passed these hurdles, there  
17 was a whole host of -- a whole host of risk  
18 factors that could have rendered the project  
19 economically infeasible.  
20 So taking all of these  
21 possibilities into account, the value of the  
22 claimants' lost opportunity cannot be simply  
23 equated with the value of a fully approved,  
24 constructed, operational, and profitable Whites  
25 Point project.

Page 279

1 Now, this gets us into the  
2 guidance provided by the relevant jurisprudence  
3 and evidentiary standards the tribunal's asked  
4 about. And in the interest of time, I'm going to  
5 highlight just one case for you now, as it  
6 informed our approach to considering the value of  
7 the claimants' lost opportunity. We are going to  
8 have more to say about applicable jurisprudence  
9 when we get to closing submissions.

10 The case I will cite to you  
11 now is the 2013 award in *Stati v. Kazakhstan*, a  
12 case in which Kazakhstan breached its fair and  
13 equitable treatment obligation by failing to  
14 extend the claimants' oil exploration contract.  
15 The claimants claimed damages for both lost  
16 profits and what they called their lost  
17 opportunity to find commercially viable oil  
18 deposits. Now, in *Stati*, the tribunal found that  
19 damages claim for lost profits or lost opportunity  
20 provide a much higher threshold for claimants'  
21 burden of proof. This threshold is high both  
22 legally and factually. The tribunal suggested the  
23 threshold might be met through either a track  
24 record of profitability or a binding contractual  
25 revenue obligation that would establish the

Page 280

1 expectation of profit at a certain level for a  
2 given number of years. In short, while the  
3 tribunal acknowledged that no absolute certainty  
4 of proof can be required for such losses in the  
5 future, a high threshold of sufficient probability  
6 must be applied to a claim for lost opportunity,  
7 and it affirmed, as well, that the burden of proof  
8 remains with the claimants. And, in the end, the  
9 *Stati* tribunal refused to award the claimants for  
10 anything more than their proven out-of-pocket  
11 expenses.

12 Now, the proposition that the  
13 Whites Point project would have been approved,  
14 constructed, and profitably operated but for the  
15 NAFTA breach simply does not meet a high threshold  
16 of sufficient probability. As a result, a similar  
17 approach to that applied in *Stati*, in which the  
18 claimants were awarded no more than their proven  
19 sunk costs, is all that could be possibly applied  
20 in this case.

21 Now, this is the approach that  
22 Canada applied in paragraph 101 of its  
23 counter-memorial in providing its views on the  
24 value the claimants should have ascribed to their  
25 lost opportunity had they chosen to properly plead

Page 281

1 such a case. In its counter-memorial, Canada  
2 explained that the value of the claimants' lost  
3 opportunity could only be the value of what *Bilcon*  
4 of Nova Scotia invested into the JRP process and  
5 nothing more. As Canada stated, restoring these  
6 costs would put *Bilcon* of Nova Scotia back into  
7 the position it was prior to the breach, with the  
8 ability to seek an EA of the proposed development  
9 of the land in accordance with applicable laws.

10 Now, I would refer the  
11 tribunal to paragraphs 124 to 125 of Canada's  
12 rejoinder memorial, which provide relevant  
13 calculations and backup data based on the evidence  
14 that the claimants have produced, which could be  
15 used to quantify the costs of the JRP process.

16 So that's how, in Canada's  
17 view, the tribunal should go about determining the  
18 value of the lost opportunity. But it can't just  
19 stop there once it's quantified this value. This  
20 is because there's another principle of customary  
21 international law at play, and this is the duty of  
22 an injured party to take reasonable steps to  
23 mitigate its injury. Mitigation was available to  
24 the claimants through the remedy of judicial  
25 review, and in light of the breach and the injury

Page 282

1 suffered, mitigation would have been completely  
2 effective.

3 Now, Judge Simma, back in the  
4 liability hearing, you characterized the  
5 claimants' decision not to pursue judicial review,  
6 I believe, as the elephant in the room. You  
7 seemed not so sure of the metaphor at the time,  
8 but we agree with it 100 per cent. And like all  
9 elephants in the room, this one cannot be ignored  
10 if you're considering compensation for a lost  
11 opportunity that could have been fully restored  
12 through judicial review.

13 And I want to explain why, and  
14 in so doing, I will respond to the tribunal's  
15 Question 9 and 10 on mitigation.

16 So Question 9, it first asks  
17 whether, as a matter of international law, the  
18 duty to mitigate can extend to the pursuit of  
19 judicial review and renewed administrative  
20 proceedings even if these proceedings gave rise to  
21 a breach of international law.

22 And the answer is: Yes,  
23 absolutely. The ILC articles on state  
24 responsibility are the appropriate starting point.  
25 Commentary 11 to Article 31 provides an element

Page 283

1 affecting the scope of reparation is the question  
2 of mitigation of damage; that even the wholly  
3 innocent victim of wrongful conduct is expected to  
4 act reasonably when confronted by the injury; and  
5 that a failure to mitigate by the injured party  
6 may preclude recovery to that extent.

7 Now, the commentary imposes no  
8 limitation on the kinds of acts that are  
9 considered reasonable in order to mitigate against  
10 the injury suffered as a result of a wrongful act.  
11 So the rule is: Act reasonably in the face of  
12 injury or risk having your compensation limited to  
13 the extent that you do not.

14 When an error is committed by  
15 government actors in the course of an EA,  
16 mitigation against the harm caused is always  
17 reasonably available through recourse to judicial  
18 review. It makes no difference that the remedy  
19 might take you back to the forum in which the  
20 error was committed. And, in this regard, the  
21 workability of judicial review in Canada is  
22 illustrated by the hundreds of domestic judicial  
23 review decisions correcting errors committed in  
24 the EA process, many of which have been filed as  
25 evidence in these proceedings.

Page 284

1 Judge Evans' two reports that  
2 I referred to earlier explain what judicial review  
3 would have provided the claimants. In his first  
4 report, he noted:

5 "Judicial review would  
6 have been an expeditious  
7 and relatively cost  
8 effective remedy for the  
9 unlawful administrative  
10 action on which the  
11 tribunal based its  
12 finding of Canada's  
13 liability. Whether or  
14 not a redetermination  
15 would have resulted in an  
16 ultimately positive  
17 environmental assessment  
18 and the subsequent  
19 issuance of the permits  
20 cannot, of course, be  
21 known. However, a  
22 redetermination by a JRP  
23 would have effectively  
24 remedied any breach of  
25 the claimants' right to

Page 285

1 have their project  
2 assessed in accordance  
3 with Canadian law and  
4 mitigated any loss caused  
5 by the legal flaws that  
6 the tribunal identified  
7 in the original  
8 recommendations to the  
9 JRP."[as read]

10 Now, Mr. Nash mentioned the  
11 rule of law earlier today. Judicial review and  
12 the remedies that it would have provided are the  
13 embodiment of the rule of law.

14 Now, it's worth noting that  
15 the claimants' expert Mr. Sossin agrees. He  
16 explains that the likeliest remedy would be for  
17 the matter to be remitted back either to the  
18 Ministers for a new decision or to the JRP for a  
19 new process. However, Dean Sossin didn't think it  
20 would be reasonable for the claimants to choose  
21 what he calls the uncertain path of judicial  
22 review. Well, this is a strange conclusion. On  
23 the one hand, the Ministers were legally compelled  
24 to approve the project, and, on the other,  
25 judicial review would have been an uncertain path.

Page 286

1 But the concern he expresses  
2 gets us into Question 10, which asks:

3 "Assuming the duty of  
4 mitigation through  
5 judicial review exists,  
6 what is the evidence on  
7 the record of bias on the  
8 part of the political,  
9 administrative, and  
10 bureaucratic environment  
11 which would render  
12 mitigation measures  
13 futile?"[as read]

14 And I note that this is an  
15 allegation the claimants make in their reply  
16 memorial. Now, the tribunal will need to  
17 determine for itself whether it would have been  
18 reasonable for the claimants to have avoided all  
19 the time and expense of this NAFTA arbitration by  
20 commencing judicial review in order to regain  
21 their lost opportunity in a legally compliant EA  
22 with what was the ultimate goal, and that is of  
23 securing project approvals and operating a  
24 project. But, in so doing, the tribunal shouldn't  
25 be diverted by allegations and speculations about

Page 287

1 a biased political, administrative, and  
2 bureaucratic environment in which a judicial  
3 review would have unfolded. There's no evidence  
4 of such bias in the record, and you didn't hear of  
5 any earlier today.

6 Now, even if there was, this  
7 is exactly the type of matter the domestic  
8 judicial review process is designed to address.  
9 As Judge Evans stated in his second report:

10 "There is no basis for  
11 the claimants to believe  
12 that, following a  
13 successful judicial  
14 review, a new JRP process  
15 would have been conducted  
16 unfairly or otherwise  
17 unlawfully. If the  
18 claimants had expressed  
19 to the reviewing Court  
20 concerns about the  
21 fairness of a  
22 redetermination, the  
23 Court would likely have  
24 ordered that the matter  
25 be referred to a

Page 288

1 differently constituted  
2 panel with a direction  
3 that inconsistency with  
4 CCV is not legally  
5 relevant to the  
6 environmental assessment  
7 and any other directions  
8 that it thought  
9 appropriate."[as read]

10 And then, at paragraph 22,  
11 Judge Evans states that:

12 "Of course, it would have  
13 been open to the  
14 claimants to return to  
15 court if they believed  
16 that the second  
17 assessment was not  
18 lawful, because, for  
19 example, the panel's  
20 conduct gave rise to a  
21 reasonable apprehension  
22 of bias. However, in my  
23 experience, as a judge of  
24 the Federal Court of  
25 Appeal, a second judicial

Page 289

1 review is rarely needed  
2 to correct legal errors  
3 in a fresh administrative  
4 process conducted  
5 following a successful  
6 challenge to a first  
7 decision. Nor am I aware  
8 that the administrative  
9 law literature has  
10 questioned the practical  
11 utility of court ordered  
12 redeterminations. The  
13 claimants provide no  
14 evidence to support their  
15 assertion that a second  
16 environmental assessment  
17 in this case would have  
18 been legally flawed."[as  
19 read]

20 Now, in the end, judicial  
21 review would have entailed some costs, but it  
22 would have been a rational, a reasonable, and a  
23 reliable means of re-establishing the situation  
24 that would have existed if the NAFTA breach had  
25 not been committed. Indeed, mitigation would have

Page 290

1 cost the claimants less than a half a per cent of  
2 what they claim the Whites Point project is worth  
3 in this arbitration.

4 To be clear, contrary to what  
5 Mr. Nash suggested today, Canada is not saying  
6 that the claimants were required to exhaust local  
7 remedies before bringing their claim or that the  
8 claimants' failure to exercise their duty to  
9 mitigate through judicial review is a  
10 jurisdictional bar to their claim. What we are  
11 saying is that there is a duty to mitigate at  
12 international law and that, in light of the nature  
13 of the NAFTA breach and the resultant injury in  
14 this case, there was reasonably available  
15 mitigation, and it should have been pursued. The  
16 claimants' failure to pursue judicial review in  
17 furtherance of their duty to mitigate and not as a  
18 prerequisite to or at the expense of their  
19 recourse to Chapter 11 arbitration must not only  
20 be considered unreasonable, but it has to limit  
21 the damages to which they could be entitled had  
22 they pled a proper case.

23 And here we get to the second  
24 question asked by the tribunal in Question Number  
25 9, which is how the duty of reparation, which is

Page 291

1 owed by Canada, relates to the duty of mitigation,  
2 which is to be exercised by the claimants. And  
3 the answer is that the two duties are intimately  
4 related. The latter has a direct impact on the  
5 former. As the commentaries to the ILC articles  
6 provide, a failure to exercise the duty to  
7 mitigate limits the duty of reparation to the  
8 extent of that failure.

9 So in light of this principle,  
10 what must be remembered is that the mitigation  
11 that was available to the claimants, recourse to  
12 judicial review, would have entirely restored  
13 their lost opportunity, however one wishes to  
14 monetize that opportunity.

15 So what this leaves the  
16 claimants with, if the duty to mitigate is to have  
17 any meaning, is a potential damages claim that can  
18 amount to no more the cost they should have  
19 incurred in pursuing judicial review.

20 Now, in the interests of time,  
21 I'm not going get into the details of this  
22 potential claim, but I note for the tribunal's  
23 reference that Canada has provided all the  
24 necessary calculations in this regard in Part 4,  
25 paragraphs 96 to 98 of its counter-memorial and

Page 292

1 part 4, paragraphs 111 to 113 of its rejoinder.

2 In the end, Judge Simma,  
3 Professor McRae, and Professor Schwartz, the  
4 tribunal need not even try to divine the value of  
5 the claimants' lost opportunity, nor the costs of  
6 mitigation, nor how the costs of mitigation might  
7 impact the compensation to which the claimants  
8 might be entitled. This is because the case the  
9 claimants have presented you makes no effort at  
10 doing so. And it's this case, as I said, that  
11 Canada is responding to and that you have been  
12 called to rule upon. All the claimants have done  
13 is equate the denial of an opportunity in a NAFTA  
14 compliant EA with the denial of a fully approved  
15 and operational and profitable Whites Point  
16 project, and all they have presented you with is  
17 one unreasonable and excessive and speculative  
18 claim for 50 years of alleged lost profits. And  
19 if you conclude that the claimants' claim cannot  
20 stand on any of the four grounds that  
21 Mr. Spelliscy and I have outlined for you today,  
22 and that you see before you, well, then, all  
23 that's really left for you to do is to dismiss  
24 this case.

25 So, with that, Canada is now

Page 293

1 at the end of its opening, and we look forward to  
2 moving on with the proceedings, and we thank you  
3 for your time and your attention today.

4 PRESIDING ARBITRATOR: Thank  
5 you, Mr. Little. Before we close, just a question  
6 in respect of a request to the parties: For the  
7 sake of having a complete record also  
8 electronically, the tribunal would like to remind  
9 parties to what was set out in Procedural Order  
10 Number 25 with regard to PowerPoint presentations  
11 and the like, and we would like to ask Canada to  
12 obtain an electronic version of the PowerPoint for  
13 our file, and we would also, of course, request  
14 the claimant to provide us with an electronic  
15 version of this morning's presentation to us of  
16 the couple of maps, et cetera, that were  
17 presented. Okay?

18 Okay. Thank you. That brings  
19 the proceedings today to an end, we are going to  
20 meet again tomorrow at 9:30. Thank you.  
21 --- Whereupon proceedings adjourned at 5:12 p.m.,  
22 to be resumed on Tuesday, February 20, 2018 at  
23 9:30 a.m.  
24  
25

<b>A</b>				
<b>a.m</b> 1:11 3:3 21:15	<b>accepted</b> 15:12	212:24	70:6 84:19 91:15	<b>adjustment</b> 32:17
23:4 24:14 26:23	69:3 119:2 227:4	<b>acres</b> 92:25	109:12 116:18	262:6 264:17
33:22 35:23 51:15	<b>accepting</b> 186:1	<b>act</b> 16:10 27:12,16	117:14,17 144:23	<b>ADM</b> 173:6
58:23 60:16 66:7	221:11 265:3	27:20 91:20 94:16	145:2 151:20	<b>administrative</b> 47:6
66:19,20 67:25	<b>accepts</b> 19:8 26:25	96:18,24 98:7,19	164:9,20 178:13	47:17 91:12,15
85:6 87:22 88:25	<b>access</b> 22:2 25:15	98:21 99:2,9,10	182:4 190:9 217:2	96:12 105:18
293:23	53:21 227:25	99:20 100:25	220:17 237:22	106:4 107:4
<b>A.S.A.P</b> 1:22	252:13	101:6,8 102:13,15	242:14 243:12	120:13 177:21
<b>abandoned</b> 46:8	<b>accessible</b> 86:2	117:15 122:2	249:7,9 254:24	199:18 231:21
250:24 273:20,21	<b>accompanying</b>	123:22,22 124:2	265:5	282:19 284:9
273:23	110:17	129:10,12 137:3	<b>ADC</b> 15:15 29:11	286:9 287:1 289:3
<b>ability</b> 57:11 231:4	<b>accomplished</b>	155:12,20 159:22	<b>add</b> 39:15 156:22	289:8
233:24 245:8	71:22	159:23 167:23,25	246:3	<b>ado</b> 11:14
281:8 294:11	<b>accord</b> 16:19 121:7	168:13,20 169:2,7	<b>added</b> 95:13 188:10	<b>adopt</b> 249:19 264:3
<b>able</b> 20:6 24:18	<b>accorded</b> 14:2	169:14 170:18,20	205:25	264:5
193:14 220:12	135:23 138:11	172:16,19 173:5,8	<b>adding</b> 211:2	<b>adopted</b> 15:13
234:1 253:4 263:4	<b>account</b> 28:4 31:8	177:25 180:22	<b>addition</b> 25:24 85:7	29:10 136:23
<b>absence</b> 41:9	33:1 84:11 108:17	195:11 198:4	86:7,19 88:11	138:17 197:9
120:22 149:10	117:9 186:4	247:14 258:7	97:7 106:9 144:18	248:17 251:16
172:19 174:2	192:17 194:2	262:1 283:4,10,11	<b>additional</b> 70:2	<b>adopting</b> 106:19
176:15 179:10,22	197:4 202:4 229:9	<b>acted</b> 30:1 97:14	82:2 117:20,25	<b>advance</b> 108:12
192:6 193:13	278:21	136:2 176:7	120:4 151:22	244:24
198:13 249:16	<b>accountability</b>	<b>acting</b> 97:11 116:3	200:16 210:21	<b>advanced</b> 106:5
<b>absent</b> 149:21	95:21	118:4 120:21	214:6 221:22	<b>advantage</b> 30:16
179:3 180:22	<b>accountant</b> 47:5	196:25	263:10	47:21 136:12
181:4 193:5 203:9	<b>accounting</b> 144:17	<b>action</b> 87:20 94:6	<b>additives</b> 52:25	<b>advantaged</b> 136:10
209:25 213:1	259:18	96:8 121:10	<b>address</b> 21:7 119:7	<b>advantageous</b> 88:1
253:24	<b>accurate</b> 28:14	128:16 129:20	153:1 154:14	<b>advantages</b> 67:16
<b>absolute</b> 94:14	221:17 222:10	133:19 142:8	182:25 205:1	<b>adverse</b> 40:3,11,11
280:3	240:6	143:13 195:23	223:21 287:8	41:4 58:18 101:17
<b>absolutely</b> 11:7	<b>accurately</b> 82:1	196:2,14 231:21	<b>addressed</b> 21:7	102:3,21 103:14
282:23	294:11	284:10	222:24	104:3,14,22
<b>absorb</b> 85:22	<b>achieve</b> 66:4 70:3	<b>actions</b> 100:23	<b>addresses</b> 117:5	109:20 111:11
<b>abstract</b> 13:24 37:6	<b>achieved</b> 67:8	108:3 170:3	<b>addressing</b> 151:2	112:19 115:4
105:21 117:3	248:13	<b>active</b> 46:8	169:3 222:12	118:13,21 119:8
128:25	<b>acknowledged</b>	<b>actively</b> 43:5 116:2	<b>adds</b> 134:1 149:20	119:18 120:6
<b>abstractions</b> 116:13	20:19 99:5 112:25	<b>activities</b> 177:2	198:7,25 204:8	136:25 141:17
<b>absurd</b> 133:7	250:21 280:3	249:8	<b>adequate</b> 172:23,25	142:5 161:18
<b>abundantly</b> 13:14	<b>acknowledgement</b>	<b>actors</b> 40:22 283:15	211:19	162:15 166:10
<b>abuse</b> 90:15	138:17	<b>acts</b> 29:23 159:13	<b>adherence</b> 135:12	174:18 180:12
<b>abused</b> 97:3	<b>acknowledges</b>	160:22 167:16	<b>adjacent</b> 76:13	183:10 184:22,24
<b>accept</b> 17:25 112:5	261:20	173:13 174:2	81:18	187:16 191:18,24
174:23 189:5	<b>acquire</b> 241:24	181:16 182:3	<b>adjourned</b> 293:21	192:16,23,24,25
206:15 269:14	<b>acquired</b> 213:2	283:8	<b>adjust</b> 57:13,15	195:21 196:1
<b>acceptable</b> 206:11	<b>acquisition</b> 21:17	<b>actual</b> 24:6 26:11	<b>adjusted</b> 145:10	197:16 200:19
	33:25 86:10	28:17 30:5 37:16	<b>adjusting</b> 259:17	206:25 207:11

208:24 209:2,15 209:18,22 <b>advice</b> 39:18 41:20 202:16 <b>advised</b> 112:5 148:3 <b>advocates</b> 27:25 41:24 145:23 <b>aerial</b> 47:23 <b>affairs</b> 5:25 96:4 136:13 <b>affect</b> 7:21 <b>affirmed</b> 20:24 106:19 280:7 <b>affirms</b> 99:24 <b>afforded</b> 165:1 166:15 <b>affreightment</b> 82:23 83:2,3 <b>afraid</b> 3:12 41:1 <b>afternoon</b> 150:5 151:19 214:12,24 216:16 217:6,13 222:14 274:7 <b>Agency</b> 110:13 197:1 <b>agenda</b> 23:18 <b>AggFlow</b> 68:23 69:2,12,17,21 70:1 80:19,24 <b>aggregate</b> 17:1 21:20,24 22:11,12 25:20 26:20 34:5 34:9 42:25 43:10 45:10,25 48:22 50:9,22 52:24 53:6,7,8,25 54:3,7 55:4,6 56:22 57:4 60:24 62:1 64:3 65:12 66:2 69:14 71:14,19 72:6,9 72:15,16,19 73:4 75:19 77:17 78:9 78:14,23 79:8,14 80:4,8 81:5,13 82:20 83:14,19,21	83:24 84:4,10,18 85:9,22 86:2,6 87:10,18 88:8,9 88:12 238:8 239:12 241:6,17 241:25 242:2,15 254:8,16 267:9,13 270:21 <b>aggregates</b> 31:25 32:5,15 51:12 52:9,11,19 53:14 53:14,21 59:18 60:3 71:2,17 238:25 240:1,3,5 240:10 255:25 260:8,19 267:20 267:22 269:25 270:2,5 <b>aggressively</b> 261:20 <b>ago</b> 13:18 15:10 21:22 167:19 217:5 222:19 231:21 236:5 <b>agree</b> 266:22 272:25 282:8 <b>agreed</b> 120:5 205:3 229:5 <b>agreement</b> 1:2 110:16 129:10 160:7 228:11 229:10 230:7 231:12 244:4 <b>agreement's</b> 160:8 <b>agrees</b> 131:17 214:2 285:15 <b>ahead</b> 146:20 211:7 275:17 <b>akin</b> 116:12 <b>Alex</b> 1:16,16 4:13 4:14,23 <b>Alice</b> 54:5,6,7 82:19 82:24 83:5 <b>Alison</b> 4:16 <b>allay</b> 246:11 <b>allegation</b> 286:15 <b>allegations</b> 231:24	231:25 286:25 <b>allege</b> 215:11 <b>alleged</b> 91:13 170:3 173:9 182:11,14 183:14,21 203:11 212:21 213:17 216:25 218:8 223:25 242:3 245:22 270:4 292:18 <b>allegedly</b> 216:2 <b>alleges</b> 173:2 <b>alleging</b> 149:8 179:2 <b>allocation</b> 124:1 <b>allow</b> 49:8 52:16 104:25 187:3 195:24 196:3 227:24 234:6 243:23 244:23 246:3 <b>allowed</b> 136:10,14 181:21 244:8 <b>allowing</b> 25:10 227:22 228:12 243:18 258:22 <b>allows</b> 9:4 28:3,16 69:23 72:25 124:14 224:22 236:15 <b>alternate</b> 55:10 <b>alternating</b> 55:13 <b>alternative</b> 133:8 154:10,20 156:24 157:3,10,15 158:1 215:23 216:1 256:25 273:14 <b>ambiguity</b> 30:19 <b>Amboy</b> 25:12 52:9 52:11,19 53:2,14 55:11,14 83:17 <b>Ambrose</b> 52:12 53:10 <b>amend</b> 243:18 244:24 <b>amended</b> 222:21	237:23 238:6 243:22 244:2,2 246:3 <b>amendment</b> 243:24 245:14,17,18 246:5 <b>amendments</b> 244:7 <b>America</b> 60:3 <b>American</b> 1:2 129:9 <b>amount</b> 45:12 149:20 155:17 253:15 259:19 266:5 269:24 291:18 <b>amounts</b> 52:17 207:7 <b>ample</b> 24:19 <b>amplified</b> 245:16 <b>analogous</b> 107:25 <b>analysis</b> 28:15 29:8 32:21,25 38:7 83:24 86:4,13 103:13 111:7,9 141:19 145:17 162:16 163:20 166:11 174:19 180:9,13 184:1 185:13 186:8 188:19,24 193:10 199:19 202:16 216:6 <b>Analytics</b> 84:23 <b>analyzed</b> 32:20 110:22 111:2 205:9 <b>anchors</b> 43:2 <b>and/or</b> 179:17 <b>Andrew</b> 6:2 <b>Annie</b> 4:15 <b>announce</b> 60:6 <b>annually</b> 66:3 <b>answer</b> 58:2 150:13 155:4 176:11 182:21 187:1 191:2 209:7	215:20 230:18 236:15 239:19 268:20 282:22 291:3 <b>answered</b> 276:13 <b>answering</b> 243:15 277:10 <b>anticipated</b> 68:15 68:15 248:8 256:17 <b>anybody</b> 260:3 <b>apart</b> 14:19 36:1 93:10 125:11 206:23 <b>apologies</b> 148:7 260:3 <b>Apotex</b> 124:21 <b>apparent</b> 73:17 166:4 216:22 <b>Apparently</b> 148:7 261:15 <b>appeal</b> 106:8 128:10 177:21 199:17 204:22 288:25 <b>appealed</b> 132:8 <b>appear</b> 158:1 <b>APPEARANCES</b> 1:13 <b>appeared</b> 39:17 58:16 <b>appears</b> 78:19 80:22 175:8 182:25 200:14 <b>appellate</b> 128:7 <b>applicable</b> 105:10 144:17 164:12 165:3 166:17 279:8 281:9 <b>application</b> 80:24 91:19 141:25 154:2 165:10 <b>applications</b> 22:20 69:7 91:23 92:1 203:13 <b>applied</b> 93:14
--	--	---	---	---

158:23 181:3 186:11 280:6,17 280:19,22 <b>applies</b> 169:13 187:20 190:12,17 <b>apply</b> 8:10 125:23 129:3 130:8 133:18 180:20 182:18 277:9 <b>applying</b> 230:17 <b>opposite</b> 10:9 <b>Appraiser</b> 86:14 <b>appreciate</b> 147:13 <b>apprehension</b> 288:21 <b>approach</b> 18:1 28:3 29:2,3,9 30:23 48:8 106:5 109:9 130:1 138:19,19 151:10 154:25 155:7 156:5,10 159:1,3 161:3,14 161:22 162:10,11 162:18 163:2,3,16 164:25 166:8 167:2,4 173:20,22 175:21 180:11 182:24 185:10,23 188:21 189:3,4,6 197:10 208:14 248:17 259:6 264:4,5 275:24 276:5,6 279:6 280:17,21 <b>appropriate</b> 15:8 18:14 29:14 66:10 164:13 175:21 176:12 201:23 218:21 221:12 251:12 264:20 282:24 288:9 <b>appropriately</b> 228:19 257:2 265:12 <b>appropriateness</b> 243:17 274:15	<b>approval</b> 12:22 16:18 26:5 48:6 59:14 60:11 61:2 63:10 65:1 68:15 89:18 91:16,24 92:2,4,6,21 93:2,9 93:17,18 97:12 104:9,19 108:7 114:21,25 115:7 116:2,4,25 119:4 121:23,25 122:5,6 122:15,23 123:14 123:16,19 134:5 134:23 139:8 143:18 174:5,25 175:3,11 176:1 179:4 186:24 187:5 189:24 192:10 193:8,12 193:21 194:3,10 196:12,16 197:11 199:3 202:2 204:11 205:4 207:15 208:20 209:6,10,20,23 210:2 270:10 <b>approvals</b> 14:8 48:9 89:19 122:24 286:23 <b>approve</b> 91:6 97:17 103:24 107:15 118:8 121:11 175:4,12 179:5 194:19 198:8 200:7 201:12,21 201:21 204:18 205:8 207:6 208:6 210:20 285:24 <b>approved</b> 13:9,17 60:23 62:23 63:9 91:21 92:1,13,19 97:15 120:7 149:12,23 176:5 177:8 180:18,25 181:5,20 197:15 203:10 210:16	211:4 269:8 278:13,23 280:13 292:14 <b>approver</b> 196:19 <b>approving</b> 203:12 <b>approximately</b> 22:1 61:21 65:11,15 75:11 76:7,18 77:15 78:10,25 81:12 84:3,5 123:10,13,15 124:3 <b>arbitral</b> 126:5 229:15 230:1 243:22 <b>arbitrary</b> 93:18 94:19 96:7 97:7 133:10 138:7 257:24 <b>arbitrate</b> 231:5,14 246:6 <b>arbitration</b> 1:1,2,10 12:1,9 38:2,6 87:13 117:11 122:9 124:8,19 125:7,9,16 131:6 131:9 136:22 137:6 146:2,6 152:7 156:1,21 215:4 216:20 217:4,11 218:6 219:4 220:2,9 222:16,18 224:9 225:10 231:2,10 231:24 232:8 234:12 236:10 237:16,20,24 241:23 243:6,21 244:3,4,20 245:19 245:19,24 246:2 246:10,22 251:18 253:17 255:10 258:2,13,16,17 273:6 274:1 286:19 290:3,19 <b>ARBITRATOR</b>	1:9 3:4,25 4:4 5:1 6:4,14,17 9:15,19 10:1 11:4,9 66:13 66:21 146:15,19 147:6,10,21 148:9 148:14 214:14,20 274:20 275:4,6,11 275:16 293:4 <b>Arbitrators</b> 256:20 <b>area</b> 59:1 73:9,10 73:13,14 74:22 76:22,25 77:12 78:18 142:22 159:11 161:15 173:18 256:1,4 <b>areas</b> 158:12 <b>Argentine</b> 20:23 <b>argue</b> 242:12 261:10 <b>argued</b> 36:16 125:6 125:14 137:4 190:13 226:10 <b>argues</b> 27:3 98:6 <b>arguing</b> 268:14 <b>argument</b> 90:22 150:10 159:7 193:11 216:4 226:14 236:17,21 271:2 <b>arguments</b> 7:8 145:24 217:6,13 257:3 <b>arisen</b> 199:2 <b>arises</b> 127:20 <b>arising</b> 169:10,11 203:4 223:6,13 <b>arm's-length</b> 41:20 <b>arms</b> 50:2 <b>arrange</b> 252:24 <b>arranged</b> 254:5 <b>arrangement</b> 248:13 <b>arrangements</b> 9:10 68:14 <b>arrive</b> 152:20 155:6 156:17,19	<b>arrived</b> 17:23 112:11 185:15 <b>art</b> 67:5 <b>article</b> 15:5 16:2,3 36:10 155:25 162:23,25 164:24 168:6,17 169:3,9 169:12 171:4 215:11 217:21,22 218:3,10 222:19 222:23 223:4,8,8 223:9,14,15,15,18 223:20,24 224:4 224:13,22 225:2,3 225:5,8,10,14,23 226:5,6,7,20 227:11,11,12 228:13,15,21 229:1,6,7 230:6 230:15 231:7,8,18 231:19,22 232:6,7 232:12 233:5,5,22 234:3 235:14,17 235:18,24 236:9 237:9 242:11 243:20 244:11,14 244:21 245:4,13 245:20 246:1,4,12 247:12,16 282:25 <b>articles</b> 12:10 112:25 125:11 137:19 139:24 161:6 162:21 168:4,6 171:2 226:15 247:23 282:23 291:5 <b>articulate</b> 39:11 <b>articulated</b> 15:9 21:21 39:4 167:18 <b>artificial</b> 37:12 145:22 <b>artificially</b> 28:22 <b>ascertained</b> 19:10 <b>ascribed</b> 280:24 <b>aside</b> 178:7 184:21 193:17 246:19
--	--	---	---	--

<b>asked</b> 154:15,21 183:6 204:25 215:19 226:13 236:16,25 258:20 268:21 279:3 290:24	93:7,8,15 94:8 110:12 115:3,11 117:2,4 121:22 122:14 131:20,24 132:3 135:19 137:3 138:5,23 146:3 159:8,22 161:14,18,25 162:10 164:7 165:11 166:2 185:6 195:10 197:1 202:12 204:2 284:17 288:6,17 289:16	188:3 257:11 259:4 262:5 267:18 272:2 <b>assurance</b> 131:24 <b>astounding</b> 269:17 <b>astoundingly</b> 268:12 <b>Atlantic</b> 85:10 256:6 <b>attached</b> 71:11 <b>attained</b> 248:8 <b>attempt</b> 41:25 58:1 107:18 109:1 113:23 127:15 183:25 230:14 <b>attempting</b> 28:21 246:9 273:4 <b>attempts</b> 146:5 <b>attended</b> 110:9 <b>attention</b> 146:14 274:24 293:3 <b>attentive</b> 275:9 <b>attested</b> 15:22 <b>Attorney</b> 129:17 <b>attract</b> 48:4 <b>attracted</b> 59:22 <b>attracting</b> 34:12 59:10 87:17 <b>attractive</b> 45:9 <b>attributed</b> 173:4 <b>attributes</b> 248:9 250:5 <b>audience</b> 274:24 <b>audiovisual</b> 9:2 <b>augment</b> 53:13 <b>Auld's</b> 47:7 54:16 54:21 59:23 60:4 60:7 265:7 <b>authoritative</b> 15:12 <b>authorities</b> 19:18 126:8 140:18 180:5 182:18 200:1 <b>authority</b> 85:2 93:24 94:5 95:22 96:18,20,24 105:2	108:19 119:23 120:19,23 127:8 127:19 128:22 164:18 195:12,19 196:14 197:15 200:7 <b>authority's</b> 196:10 <b>authorizations</b> 122:19 124:1 <b>authorized</b> 102:17 <b>automated</b> 25:6 49:6 67:10 <b>automatic</b> 75:1 <b>autumn</b> 270:25 <b>AV</b> 8:19 9:25 <b>avail</b> 135:20 <b>available</b> 26:12,13 28:18 29:6 45:13 66:15 82:16 86:2 91:18 97:22 107:23 117:21 135:2 144:19 200:3 203:2 233:4 235:3 253:18 254:20 264:6 281:23 283:17 290:14 291:11 <b>avoid</b> 136:7 <b>avoided</b> 126:17 211:5 286:18 <b>avoids</b> 29:4 <b>award</b> 13:13 15:7 17:13 18:17 28:3 29:2,21 35:20 99:3 116:5 119:22 124:10,21 138:1 138:12 146:7,10 148:23 151:8 154:19 155:15 156:17 158:10 159:12 160:20 161:8 162:5,20 163:6 164:5,16,23 165:14 166:19 170:24 171:1 173:23 176:19	178:14,20 179:11 183:8,21 184:5,19 184:19 185:1 186:5 212:15 215:10,16 234:22 257:25 276:7,9 279:11 280:9 <b>awarded</b> 154:5 213:13 228:25 248:7,24 280:18 <b>awards</b> 222:1 227:12 247:5 256:23 <b>aware</b> 15:13 102:9 127:7,18 130:13 289:7
<b>B</b>				
<b>back</b> 5:17 66:11 73:6 77:12,23 87:9 120:2 131:19 131:23 132:4 133:9 134:5 166:24 178:7 182:22 230:24 235:5 237:22 240:11,12 252:3 263:23 266:8 272:21 276:14 281:6 282:3 283:19 285:17 <b>backbone</b> 21:17 33:25 <b>backdrop</b> 159:16 160:19 <b>background</b> 59:23 90:13 <b>backhaul</b> 263:22 <b>backup</b> 281:13 <b>bad</b> 267:22 <b>bad-faith</b> 136:15 <b>Baer</b> 1:16 4:13 9:18 9:21 <b>Baker</b> 107:8 <b>balance</b> 7:12 18:3 18:15 24:16 30:4 35:18 80:23 98:23				

98:25 177:1 260:12,24 <b>baldly</b> 209:5 <b>bank</b> 155:16 <b>bar</b> 290:10 <b>barriers</b> 25:16 <b>barring</b> 227:3 <b>basalt</b> 35:13 45:22 50:21 61:7,8,22 238:8 <b>base</b> 36:4 <b>based</b> 12:5 26:11 37:5,16 41:6 71:1 83:6 84:18 88:17 88:18 89:2,4 108:11 111:5 114:17 115:20 119:6 121:4 138:23 144:20 149:19 180:11 185:22 192:12 197:14 198:9 206:16 218:8,13 219:5,25 221:23 231:4 235:2 246:23,25 247:6 257:10 260:14 267:6 281:13 284:11 <b>baseless</b> 125:12 <b>basic</b> 71:16 88:20 95:23 105:16 136:19 148:24 152:1 167:7 247:3 259:23 260:22 <b>basically</b> 174:12 <b>basis</b> 7:10 23:15 29:13 35:20 36:21 63:3,4,6 88:14 97:10 101:20 102:6 103:4 108:15 109:9 118:24 139:21 142:20 153:15 158:14 159:3 164:24 165:23	166:8 174:15 175:2,10 182:12 183:14 186:8,19 189:2 197:23 199:5 210:2 216:19 244:16 249:21 258:2 274:17 287:10 <b>basket</b> 216:9,10,11 256:24 <b>Bath</b> 4:16 <b>Bay</b> 1:10,23 22:21 55:1 82:12 269:5 <b>Bayside</b> 22:13,15 53:5 54:3,12,25 55:4,22,24 57:6 82:20 83:2,11 <b>bear</b> 156:7 169:17 170:8 272:12 <b>bears</b> 135:6 155:18 173:14 268:19 <b>bedrock</b> 45:25 94:1 143:6 <b>began</b> 53:4 62:14 62:16 <b>beginning</b> 25:6 34:17 49:13 115:22 223:2 259:13 <b>begins</b> 73:9 <b>begun</b> 256:3 <b>behalf</b> 1:14,18 35:3 223:10 227:14 233:6,22 234:3 <b>behaviour</b> 258:22 <b>believe</b> 6:3 9:8 34:13 108:6 115:1 115:1 131:14 139:19 220:11 224:17 225:18 262:13 271:17 282:6 287:11 <b>believed</b> 220:5 288:15 <b>believes</b> 110:8 273:1	<b>Belleoram</b> 270:8,13 270:16,20 271:13 <b>belongs</b> 232:18 <b>beneath</b> 76:9 80:9 <b>benefit</b> 17:12 30:15 136:6,10 150:19 158:3 <b>benefits</b> 23:16 48:11 57:24 226:1 <b>benefitting</b> 30:14 <b>Benjamin</b> 5:14 <b>berth</b> 53:24 <b>beseched</b> 135:16 <b>best</b> 3:17 10:8 17:22 58:6 64:13 64:14,14,22,23 131:22 137:17 144:15 161:7 267:21 271:25 294:10 <b>betrayed</b> 115:18 <b>better</b> 61:8 <b>beyond</b> 4:22 35:18 37:14 137:14 226:25 266:24 272:1 <b>bi-weekly</b> 62:16 <b>bias</b> 286:7 287:4 288:22 <b>biased</b> 287:1 <b>Bickford</b> 31:13 63:24 65:3,8,25 67:8 68:2,9,21 69:25 70:22,24 80:19 <b>Bickford's</b> 67:19 71:11 80:22 <b>bifurcated</b> 238:16 <b>bifurcation</b> 124:13 <b>big</b> 24:8 <b>bigger</b> 75:16 <b>Bilcon</b> 1:5 12:21 39:5 119:25 140:19 141:2,13 142:1,19 164:19 210:25 215:13,18	216:9 217:2 218:8 218:13 219:5,10 220:12 221:5 234:18 235:3,13 238:10,11 240:18 240:23 241:5,14 243:7 246:17,23 252:5,5 254:24 256:14 263:20 281:3,6 <b>Bilcon's</b> 85:13 165:24 <b>Bill</b> 4:21 33:4,6,12 33:23 56:4,4 82:8 <b>bind</b> 164:14 <b>binding</b> 279:24 <b>biophysical</b> 137:1 <b>bit</b> 55:1 152:25 177:23 218:22 241:12 <b>black</b> 13:17 14:16 60:12,20 61:3,9 87:7 88:2 90:12 92:22,24 174:6 212:1 <b>blank</b> 155:16 <b>blast</b> 269:11 277:14 <b>blasting</b> 176:25 <b>Block</b> 241:2,13,19 <b>blocks</b> 235:7 <b>Blouin</b> 5:21 191:3,7 191:11 192:20 193:2,15 208:21 <b>Blouin's</b> 209:8 <b>blow</b> 73:12 <b>blow-out</b> 76:21 78:17 <b>blow-up</b> 73:18,25 <b>board</b> 99:14 <b>boasted</b> 111:18 <b>boats</b> 88:7 <b>body</b> 200:9 <b>Bolduc</b> 6:1 <b>bore</b> 268:10 269:15 271:18 <b>borne</b> 162:20	<b>Borowicz</b> 1:17 4:13 <b>Bosnian</b> 180:1 <b>bottom</b> 7:24 79:12 80:11 <b>bought</b> 54:3 <b>bound</b> 103:24 200:1 203:6 208:19 <b>box</b> 73:11,17 74:5 <b>brand-new</b> 49:7 253:18 <b>Brattle</b> 267:1 <b>breach</b> 12:10 27:5 28:24 29:14 36:3 36:9 91:13 126:23 127:14,16,24 128:17 137:14,17 148:22 149:1,7,10 149:17,22 151:5 153:9 156:12 158:10,21 159:17 160:19,23 167:6 169:11,18 175:10 176:15 179:3,11 179:22 181:4 183:5,19 185:4 188:17 189:10 192:7 193:6,13 203:9 204:19 208:16,18 209:25 211:24 213:1,15 213:18 214:1 215:7 223:7,13 237:10 242:25 250:15 253:24 257:20 258:9,12 270:4 272:24 276:9,10 277:25 278:4 280:15 281:7,25 282:21 284:24 289:24 290:13 <b>breached</b> 28:1 112:24 169:25 212:16 279:12 <b>breaches</b> 14:13
--	---	---	---	---

15:3 17:16,18 28:6 36:20 129:7 132:22 133:3 137:13,19,21 138:3 144:3,8 157:21 170:4 276:23 <b>breaching</b> 170:6 245:23 <b>breadth</b> 205:10 210:6 <b>break</b> 10:9,12,19 10:23 66:11,16 71:23 72:22 147:19,23 148:1 148:11 151:19 182:14 214:12,16 214:16 215:1 274:25 <b>breaks</b> 10:6,6,12 76:17 <b>Brent</b> 1:15 4:11 <b>Breton</b> 48:4 54:18 54:19 60:20 <b>brief</b> 153:10 <b>briefly</b> 3:20 71:12 153:6 186:9 212:14 217:16 269:1 273:14 <b>bring</b> 41:2 53:6 56:22 58:1 217:10 222:15 223:5,10 223:23 224:3,12 225:12 228:20 231:1 235:23 246:9,11 274:2 <b>bringing</b> 40:6 53:9 55:4,22 130:10 172:6 225:9 290:7 <b>brings</b> 131:16 293:18 <b>British</b> 87:2 <b>broad</b> 98:7,8,10 205:13 206:2 207:21 <b>broader</b> 86:4 138:3	<b>brochure</b> 47:20 48:5,25 49:3,4,10 <b>brochures</b> 48:21 <b>Brooklyn</b> 55:8 <b>brought</b> 38:1,5 55:6 190:4 216:19 217:20 222:23 226:7 230:5,23 231:15,18,19 232:6,10 233:6,21 234:2 235:17 237:9,15 242:10 242:11 243:10 244:19 245:6,22 274:10 <b>BRUNO</b> 1:9 <b>Brunswick</b> 22:13 53:5 54:4 106:2 107:7 <b>BRYAN</b> 1:9 <b>bubble</b> 73:11 76:15 <b>budgetary</b> 68:6 <b>build</b> 12:24 24:20 25:4 64:24 68:7 252:18 254:15 277:13 <b>building</b> 24:18 43:24 59:25 84:23 <b>built</b> 52:3 59:24 62:24 64:18,19 65:18 68:18 70:10 70:15 111:20 254:2 <b>bulk</b> 81:13 82:18 <b>bunny</b> 146:24 <b>burden</b> 30:6,13 135:6,9 149:7,25 151:4,9 155:19 156:8 158:18 167:5 169:17 170:8,13 173:14 213:25 272:12 279:21 280:7 <b>Bureau</b> 89:7 <b>bureaucratic</b> 286:10 287:2	<b>Burns</b> 4:16 <b>business</b> 17:9 21:21 22:3,4,6 23:8 33:1 33:7,8,10,19 34:5 34:20,23,25 35:8 42:25 49:1 51:18 52:3,5 83:13 217:2 238:9 239:2 239:16,25 240:2,5 240:7,8,25 243:5 249:9 251:16 256:16 261:21 262:25 267:14,20 267:22 272:9 273:23 <b>businesses</b> 17:1 <b>businessmen</b> 51:21 256:21 267:16 <b>but-for</b> 172:11 180:9 190:10 <b>Buxton</b> 31:10 58:5 58:10 62:14 63:3 112:10 131:11 <b>buy</b> 57:7 <b>buyer</b> 22:24 <b>buying</b> 22:12 25:23 53:4 54:12 57:5 266:4	72:11 93:1 123:8 201:8 272:1 279:16 292:12 <b>calling</b> 119:14 230:19 <b>calls</b> 140:9 141:9 285:21 <b>campaign</b> 20:2 <b>Canada</b> 1:7 3:14 5:25 14:11 16:17 17:11 23:5 26:24 27:1,3,24 28:1 30:12 35:25 36:2 37:1,4,7,10,20 38:1,5 39:1,14 40:6,20 41:1,10 41:25 43:4 47:8 50:24 51:1,4,10 52:5 60:9 70:12 70:14,17 82:13 89:24 90:11 92:8 92:20 94:6,10 97:23 99:3 106:3 107:8 112:24 119:23 120:10 122:9,16 123:19 124:6,20 125:3,8 125:16 126:10 127:2 128:12 129:16 131:11,16 131:22 132:1 135:5,8 136:2,4 136:12,14,20 138:11 139:19 142:9 143:10 145:13 148:16 149:2 156:8 157:1 157:2,16 159:17 160:8,14 162:24 164:17 165:11 166:21 167:14 173:12 179:1,6 185:16 190:4 191:2 194:23 196:21 199:14 201:5 202:7	204:23,25 209:9 214:3 222:3 224:5 224:17 226:12 228:12 230:19 231:14 236:6,18 243:10 244:23 252:4 266:20,23 271:22 272:24,25 273:3,4 280:22 281:1,5 283:21 290:5 291:1,23 292:11,25 293:11 <b>Canada's</b> 14:13,16 15:1,2 16:22 17:5 17:16,18 28:5,6 32:23 36:3,6,20 37:5,13 41:13,23 42:19 88:10,16 89:12 90:22,24 93:23 97:21 108:24 116:13 126:8 129:6 132:21,22 135:12 137:9,11,19 143:22 144:3,8 145:21 146:4 149:1 150:21 154:2,8,10 157:21 157:25 170:10 177:20 178:2 182:13 187:21 188:15 189:16,25 190:5,23 195:5 199:16,17 204:16 208:9 212:6 213:20 217:6,12 237:6 246:5 250:23 270:21 273:14 275:20 281:11,16 284:12 <b>Canadian</b> 22:22 105:18 110:11 127:8,18 128:14 129:11,13 137:2 143:5 153:14 159:21 163:5
---	--	--	---	--

## C

**cabinet** 197:2  
**cabinet-level** 202:1  
**calculated** 27:4  
29:20 83:7 274:2  
**calculating** 17:24  
69:3 234:15 247:3  
**calculation** 154:20  
221:23 222:10  
242:21 257:1  
258:12 259:7  
262:22 265:11  
266:12  
**calculations** 157:7  
263:6 264:8,10  
281:13 291:24  
**called** 46:2 67:18  
68:13 70:11 72:10

176:3 177:21 195:10 196:25 199:18 285:3 <b>Canso</b> 48:3 59:25 <b>capacities</b> 69:12 <b>capacity</b> 31:11,14 65:13 <b>Cape</b> 48:4 54:17,19 60:19 <b>capital</b> 31:14,17 70:3 82:4 144:25 251:24 <b>capricious</b> 94:22 <b>car</b> 42:7 <b>Caratube</b> 249:10 <b>card</b> 9:20,22,23,23 9:24 <b>cards</b> 8:18 9:16 10:2 <b>care</b> 3:14,15 <b>careful</b> 112:13 145:5 <b>carefully</b> 34:22 42:11 140:5 228:20 <b>carpet</b> 135:22 <b>carried</b> 159:20,25 164:11 170:23 180:12 191:1,7 192:11 195:24 196:3 199:19 <b>carrier</b> 81:14 <b>carriers</b> 82:18 <b>carry</b> 54:6 99:13 170:19 185:5,12 190:7 206:19 <b>carrying</b> 142:25 162:14 166:1 183:16 <b>case</b> 13:23 17:22 18:5 20:20 21:9 36:14,15,17,17,18 37:3,14 91:14 95:13 96:23 97:16 107:14 108:1 109:12 113:7	114:8 116:19 117:7,23 118:9 119:9,11 132:18 139:22 140:2,15 143:10,16 150:7 152:17,23 153:1,4 153:9,24 154:4,10 154:24 156:3,6,7 156:8 157:6,8,10 157:12 159:8 162:7 163:3 165:2 166:5,16 167:6,20 170:25 173:14,15 178:20 179:2,2,7 180:6,7 181:8,13 181:14 182:19,20 186:11 206:15 212:16,21,25 213:12 215:17 218:21 226:12 241:24 243:13 247:2 257:3 263:24 272:15 273:4 275:22 277:2,12 279:5,10 279:12 280:20 281:1 289:17 290:14,22 292:8 292:10,24 <b>cases</b> 29:11 107:4 171:16 180:2 188:11 218:2 224:7 226:16 229:5 230:4 237:2 248:6,14 249:19 249:25 250:1 251:6 <b>cash</b> 152:4 216:6 218:17 234:16 251:15 268:9 <b>category</b> 72:17 <b>causal</b> 149:16 169:18,24 181:15 184:1 213:15,18 <b>causality</b> 171:6,22 <b>causation</b> 151:11	152:17 156:13 158:23 159:6 167:16 170:9,13 170:16 171:11,22 171:24 172:1,3,20 173:16,20,24 181:10 182:15,24 186:8,11 193:10 193:24 208:14 212:14 221:11 274:14 <b>cause</b> 172:23,25 182:8 195:20,25 200:18 270:15 <b>caused</b> 16:8 30:10 30:11,15 32:23 90:18 127:16 149:1,8 151:5 156:12 158:9,21 167:6,15 168:11 168:22 169:1,7,14 170:20 172:17 208:16 211:24 214:1 215:7 232:1 239:14 247:15 258:12 276:21 283:16 285:4 <b>Causeway</b> 48:4 59:25 <b>caution</b> 249:4 <b>caveat</b> 201:25 <b>CCV</b> 40:18 41:7 162:13 163:3 166:8 174:15 180:11 183:12 184:9,22 185:5,23 189:8,13,20 192:22 198:1,11 205:6 206:23 288:4 <b>CCV-based</b> 180:23 197:24 206:17 <b>CEAA</b> 90:7 92:9,12 93:13 96:23 99:17 101:12,23 104:25 118:12 136:24	148:5 160:12 162:18 163:8 165:12 166:12 174:21 183:24 184:23 191:6,10 191:25 194:1 195:3,10,11 196:20,22 197:6 199:20 200:12 201:13,24 208:25 209:16,19,23 <b>cement</b> 52:24 84:24 85:2 <b>Census</b> 89:7 <b>cent</b> 67:21,23 70:21 70:23 82:3,3 84:3 88:13 259:14,20 261:2 262:7,23 263:11 264:15 265:9,15 266:14 266:21 270:2 282:8 290:1 <b>central</b> 97:19 118:8 119:17 <b>Centre</b> 107:9 <b>certain</b> 53:2 72:25 178:17 181:15 188:11 197:16 212:20 224:24 225:25 249:12 255:7 280:1 <b>certainly</b> 155:9 188:25 193:6 269:2 <b>certainty</b> 19:7,15 20:8,10 181:19,22 181:24 186:22 187:2 199:9 208:12 212:4 219:18 233:11 242:17 243:1 248:10 249:13,15 249:21 250:6,10 251:20,22,23,25 252:15 253:24 255:2,14 256:19	280:3 <b>Certified</b> 86:14 <b>CERTIFY</b> 294:10 <b>cetera</b> 133:25 293:16 <b>CFO</b> 4:20 33:5 <b>chain</b> 17:20 182:14 <b>chair</b> 191:10,11 <b>chairing</b> 191:5 <b>chairman</b> 8:8 111:18 <b>challenge</b> 51:1 289:6 <b>challenged</b> 178:1 210:24 278:15 <b>championed</b> 45:11 <b>chance</b> 138:22 230:18 <b>change</b> 42:2 156:6 222:6 244:15 256:2 <b>changed</b> 9:7 54:14 <b>changes</b> 256:7 266:13 <b>Changing</b> 266:8 <b>channel</b> 52:12,14 52:17,20 53:10 <b>Chapter</b> 1:1 129:5 129:7 130:7 131:4 133:5 169:8 175:17 226:24 227:10 228:7 231:2,6,16 246:7 272:25 290:19 <b>characteristics</b> 22:4 <b>characterization</b> 205:22 <b>characterize</b> 102:18 236:2 238:2 <b>characterized</b> 282:4 <b>charade</b> 115:22 <b>charge</b> 83:8 264:1 <b>chart</b> 262:9 <b>charter</b> 263:17
--	--	--	--	--

264:5 <b>chartered</b> 47:5 <b>cheaper</b> 220:3 <b>cheerleaders</b> 41:25 <b>Chelsea</b> 4:16 <b>cheque</b> 155:16 <b>child</b> 47:25 <b>Chodorow</b> 5:19 <b>Chodrow</b> 259:16 269:23 <b>choice</b> 61:4 88:3 129:14 135:1,3 193:12 204:18 209:6 220:24 235:20 236:5 246:16 257:5,13 <b>choose</b> 285:20 <b>choosing</b> 258:24 <b>chorus</b> 109:3 <b>Chorzow</b> 15:10,11 15:19 26:25 27:8 167:19 168:3 180:1,5,8,20 181:2 182:19 <b>chose</b> 118:19 199:22 208:3 243:4 244:14 <b>chosen</b> 30:7 259:15 280:25 <b>Chris</b> 1:15 4:11 <b>chronicles</b> 87:14 <b>chunks</b> 73:15 <b>circuit</b> 184:3 <b>circumscribed</b> 106:23 118:3 <b>circumstances</b> 21:2 42:5 90:6 97:16 107:21,25 111:25 116:18 117:6 118:5,9 120:8 121:11 132:13,16 132:18 133:5 135:4 156:20 195:23 196:2 197:19 243:19 244:1,22 256:14	257:4 <b>cite</b> 185:9 279:10 <b>cited</b> 166:4 176:19 251:6 <b>cites</b> 239:5 <b>citizens</b> 95:25 <b>City</b> 21:21 22:14 25:14,16,20,24 26:2 32:1 51:18 53:21,23 54:22 55:2,22 56:13,23 60:21 61:5 82:21 83:16,17 84:3,16 85:21,25 88:5,7 88:12 145:3 240:3 240:6 <b>city's</b> 56:25 <b>civil</b> 135:25 <b>claim</b> 11:23 29:12 37:9 125:24 129:4 129:18 130:10 148:25,25 149:6 149:17,24 151:1,4 151:11,13,23 152:2 153:16 154:12 155:24 156:3,12 157:19 158:2,7,9 167:8 180:24 183:13 212:10,13 213:21 214:1,7 215:3,9 216:17,19 217:3,9 217:14,19,22 218:3,13 219:5 220:4,25 221:4,18 222:15,18,20,23 223:5,10,24 224:3 224:13 225:9,15 228:12,18 230:19 230:23,23 231:2 231:10 232:6,10 233:5,21 234:2,6 235:1,6,7,16,23 236:6,7,11,12 237:8,11,14,18,22 237:24 238:7	239:18 240:20 242:4,10 243:4,6 243:8,12,18,21 244:1,2,17,19 245:3,6,24 246:3 246:4,10,13,16,22 246:25 256:11 257:5 258:23 272:19 273:12,17 273:20,21 274:9 274:18 279:19 280:6 290:2,7,10 291:17,22 292:18 292:19 <b>claimant</b> 3:21 155:18 170:2,17 171:21 173:1,13 212:18,21 213:2,8 213:14 236:22 249:20 253:14 269:1 273:3,8,17 293:14 <b>claimant's</b> 20:24 21:1 30:20 132:11 <b>claimants</b> 1:6,14 4:7 11:15 30:14 148:21,24 149:3,6 149:17,24 150:2 151:3,21,25 152:5 153:2,3,8,11,24 154:5 155:25 156:6,7,11,15,23 157:16 158:3,19 158:22 159:1,14 161:13,13,21 162:5,19 165:1 166:5,14,18 167:8 169:16 170:8,12 170:24 174:1,11 175:9 179:12 180:19 181:13,23 182:12 183:1 186:12 187:25 189:2,11 194:3 198:12 199:21,21 208:1,15 209:2	211:10 212:3,8,20 213:22,24 215:6 215:10,14,19,22 217:10,15,18,22 218:7,21 219:3,11 219:25 220:11 221:16,18 222:15 222:17,21,22,24 224:16,23 225:1 225:18 226:9 228:19 229:2,17 230:24 231:1 234:10 235:19 236:4 237:10,15 237:23 238:2,15 239:17 240:9 241:22 242:12 243:18 244:12,23 246:9,21 249:23 250:13,21 251:1,5 251:6 252:3,7,11 253:11 254:19 255:4,12,15,21 256:10,23 257:4 257:10,15 258:17 259:5,8,22 261:9 261:13,23 262:3 262:11 263:13 264:3,23 265:17 265:20 266:18 267:3,11,15,19 268:10 269:14,21 270:12 271:3,6,17 271:23,25 272:4 272:12,16 273:9 273:10,16 274:10 274:13 275:21 276:5,11,14 277:13,21 278:1 279:15 280:8,9,18 280:24 281:14,24 284:3 285:20 286:15,18 287:11 287:18 288:14 289:13 290:1,6 291:2,11,16 292:7	292:9,12 <b>claimants'</b> 151:1,8 152:11,17 153:22 156:5 157:4,7,14 157:25 158:7 159:2 167:1,4 173:19 180:7 182:23 186:1 189:4 193:11 194:7 201:11 203:8 204:17 206:15 213:17 214:7 215:3 219:17,20 221:4 221:11,23 222:9 234:20 236:17 243:12 246:13,16 250:7,17 256:9 257:25 260:14 264:11 265:8,10 266:23 271:22 272:9,19 278:2,5 278:22 279:7,14 279:20 281:2 282:5 284:25 285:15 290:8,16 292:5,19 <b>claimed</b> 158:21 216:23 232:12 234:11 238:3 259:20 262:8 271:11 279:15 <b>claiming</b> 149:21 157:22 167:7 170:18 183:8 212:6 235:9 240:19 241:23 <b>claims</b> 6:10 170:21 218:5,7 220:8 225:12,13 226:6 230:5 231:4,6,15 231:17,19,23 242:23 245:9,11 245:21 248:1 <b>clarification</b> 120:3 <b>clarifies</b> 247:25
---	--	---	--	--

<b>clarify</b> 118:19 230:19 241:12	<b>Claytons'</b> 12:4,15 14:14,18 21:3,19 22:23 33:7 34:19 35:16,18 36:4,23 37:9 43:3 57:7 62:15 65:10 83:13 92:2 114:20 116:4 138:4 144:16 145:4,9	<b>coarser</b> 53:3 79:1	<b>commentary</b> 171:4 247:24 282:25 283:7	<b>community</b> 39:3 52:1 109:9 112:21 118:10 119:10,20 137:1 141:14 162:12 163:2,15 185:10 188:23 194:15
<b>clause</b> 117:16 244:3 245:17,19,20	<b>Clayton</b> 1:4,4,5,5 4:20,21 33:4,5,12 33:23 34:6 52:8 56:4,4 215:15 238:21 239:6,10 239:15 241:1,13 241:18	<b>coast</b> 54:19 60:18 60:19 64:15 85:10 87:3 218:22 270:23	<b>commented</b> 206:13 275:20	<b>community-mind...</b> 52:2
<b>Clayton's</b> 33:6	<b>clear</b> 13:14 21:21 59:8 91:17 93:25 95:7 117:18 129:17 140:3,16 154:8 169:12 172:25 173:7 179:7 196:17 198:20 209:9 215:17 217:24 218:18 219:13 223:15 225:24 228:3 229:3 230:6 230:8 231:13 235:20 240:19 244:19 253:13 254:10,11 266:5 273:17 276:8 290:4	<b>coastal</b> 85:24 113:11 140:21 142:11 252:14 270:21	<b>comments</b> 203:3 243:17	<b>companies</b> 4:21 32:14,15 33:6 35:1 50:7 85:3 86:11 87:1 254:22 267:7
<b>Claytons</b> 11:21 12:8,11,16,20,25 14:2,7,17,21 15:2 15:4 16:21,23 17:6,11 21:22,24 21:25 22:12 23:7 23:23 24:2,5,10 24:17 25:10,12,18 26:3 32:24 34:7 34:21,24 35:11 36:20 37:16 42:15 42:23 43:5,14 46:12 47:13 48:1 50:7,22 51:6,11 52:18 53:16 54:2 54:8,11 55:3 57:13,25 58:4 61:4 62:3,13 64:11 68:6 81:11 81:17 84:1,7 87:9 87:25 89:13 90:20 93:11 108:1,4,5 114:16 115:10 121:4,7 123:4,24 125:21 126:1 127:3 129:3,12 131:3,7 132:15 133:4 134:19 135:1,7,11,23 136:2,5,8,17 137:23,25 138:7 138:11,14 143:22 143:23 144:4 146:10	<b>clearly</b> 14:13 17:19 21:10 42:21 91:1 93:10 99:9 101:6 114:4 120:9 124:22 191:15 208:1 211:9 225:4 227:10	<b>code</b> 221:24	<b>commercial</b> 84:14 177:3 248:4 253:8 255:18	<b>community-mind...</b> 52:2
	<b>clients</b> 86:25 87:4	<b>codified</b> 16:2	<b>commercially</b> 279:17	<b>company</b> 82:17 241:1 254:25 263:25
	<b>climate</b> 211:21	<b>codify</b> 143:8	<b>Commission</b> 247:10,25 255:17	<b>company's</b> 233:8 251:19
	<b>close</b> 56:24 62:14 147:18 293:5	<b>coffee</b> 10:6,9 214:16 215:1	<b>Commission's</b> 16:3 168:4	<b>comparable</b> 13:11 13:15 92:18
	<b>close-up</b> 73:13	<b>cognizance</b> 276:7	<b>commissioned</b> 64:16 81:17 115:16	<b>comparables</b> 266:24
	<b>closely</b> 65:9 68:2	<b>collaboration</b> 62:14	<b>commit</b> 183:18 188:16	<b>comparator</b> 165:20
	<b>closer</b> 25:8 54:24	<b>colleague</b> 68:24 150:5 214:25 247:11 253:23 268:25 272:11	<b>commitments</b> 116:7	<b>compared</b> 248:2
	<b>closing</b> 150:18 279:9	<b>collection</b> 72:19	<b>committed</b> 24:18 27:17 161:1 167:25 177:25 178:19 183:5 189:10 204:20 208:19 258:7,10 277:25 278:3 283:14,20,23 289:25	<b>comparison</b> 267:2
	<b>clouded</b> 42:13	<b>Collins</b> 82:8	<b>Committee</b> 86:16	<b>compelled</b> 97:17 118:7 130:16 175:4,12 194:17 201:12 205:7 207:5,14 208:6 210:19 285:23
	<b>coarse</b> 25:19 53:7 72:9 78:9 240:9	<b>colour</b> 8:18	<b>commodities</b> 18:25	<b>compelling</b> 35:14 92:22
		<b>combined</b> 39:7 65:4 121:3	<b>commodity</b> 18:19 18:21	<b>compensable</b> 248:11 250:7 256:19
		<b>come</b> 13:1 21:25 23:9 39:9 66:11 68:13 135:24 234:10 235:5 238:14 240:11 241:11 246:21 266:11 267:25 270:23 274:12	<b>common</b> 31:6 89:24 119:12 233:1	<b>compensate</b> 17:14 149:3 168:21 169:1 173:10 234:22 247:15 264:17
		<b>comes</b> 233:14	<b>common-sense</b> 19:19	<b>compensated</b> 132:25
		<b>comfort</b> 9:3	<b>Commonly</b> 46:1	<b>compensation</b> 3:11 20:17 29:19
		<b>coming</b> 41:22 50:18 150:12 252:3	<b>communicate</b> 57:12	
		<b>COMMENCES</b> 21:14	<b>communications</b> 121:5	
		<b>commencing</b> 3:2 286:20	<b>communities</b> 46:18 46:25 162:14	
		<b>comment</b> 190:3 236:17,25		
		<b>commentaries</b> 171:4 247:23 291:5		

149:18 151:21 152:19 153:20 155:11,13,21 156:14 168:16 169:3,22 178:14 178:20 213:13 235:12 237:3,14 247:17 248:1 249:5 282:10 283:12 292:7 <b>compete</b> 261:17 <b>competitive</b> 88:22 <b>competitor</b> 56:22 <b>competitors</b> 25:17 261:18 272:7 <b>complement</b> 114:25 <b>complete</b> 26:7 35:15 68:16 111:16 119:13 121:7 192:4 214:7 293:7 <b>completed</b> 18:20 42:23 91:19,23 <b>completely</b> 67:9 105:15 140:5 146:3 153:25 184:16 216:12 272:3 274:4 282:1 <b>completeness</b> 151:17 <b>completing</b> 86:19 <b>complex</b> 90:5 128:1 210:11 <b>complexity</b> 129:25 <b>compliance</b> 67:7 176:8 178:10 191:1 <b>compliant</b> 154:1 164:22 186:20 211:12 276:12 278:9 286:21 292:14 <b>complicity</b> 90:17 <b>comply</b> 123:14,16 141:4 143:14 <b>component</b> 17:9	45:24 <b>components</b> 140:4 193:1 221:4 <b>compounded</b> 137:21 <b>comprehensive</b> 58:11 61:1 63:5 83:23 90:1 111:6 115:13 <b>comprehensively</b> 137:4 <b>comprised</b> 67:14 115:14 <b>conceivably</b> 210:8 <b>concept</b> 41:7 106:21 <b>conceptual</b> 251:2 <b>conceptually</b> 168:25 <b>concern</b> 184:15 198:21 248:22 249:16 286:1 <b>concerned</b> 9:6 <b>concerning</b> 113:25 141:7 <b>concerns</b> 188:5 191:16 207:10 269:11 287:20 <b>concession</b> 19:23 20:12 250:3 <b>conclude</b> 187:3 191:21 213:10 267:19,23 272:20 276:20 292:19 <b>concluded</b> 46:15 58:18 107:17 140:6 162:5 185:11 192:14 228:11 <b>concludes</b> 104:11 192:5 197:8 207:1 213:20 <b>concluding</b> 112:24 116:8 161:8 200:25 221:12,15 <b>conclusion</b> 18:8	38:20 41:22 117:12 118:2 121:9 124:17 184:13 188:20 189:1,5 193:2,6 198:5,17 201:1 205:11 256:16 285:22 <b>conclusions</b> 185:15 188:3 199:24 200:4,18 274:11 <b>conclusively</b> 14:1 14:13 103:2 124:10 137:11 146:7 184:20 <b>conclusory</b> 174:11 <b>concrete</b> 31:25 33:15,18 52:22,25 53:12 57:10 65:23 72:11,14 79:2 87:5 241:2,3,13 241:18 <b>condemn</b> 134:19 <b>CONDENSED</b> 1:13 <b>condition</b> 52:15 136:19 171:8 <b>conditions</b> 44:20 61:17 84:19 108:8 123:15,17 142:7 187:13,24 188:9 201:22 213:5 225:9 268:24 269:3,10 270:7 <b>conduct</b> 14:17 16:13,15,23 17:6 96:4 110:4 119:15 126:18 136:6,11 136:15,16 160:11 163:17 164:7 166:9 170:6 172:5 172:15,22 174:17 185:12 283:3 288:20 <b>conducted</b> 87:2 90:1,8 135:20	148:6 164:22 186:19 195:14 208:11 209:3 287:15 289:4 <b>conducting</b> 200:22 <b>cone</b> 74:15 75:4,5 <b>cones</b> 72:3 <b>confers</b> 205:13 207:23 226:22 <b>confidence</b> 134:12 135:12,16 <b>confident</b> 135:13 <b>confidential</b> 8:13 8:20,21,25 9:7,14 9:24 21:14 23:3 24:13 26:22 33:21 35:22 51:14 58:22 60:15 66:6 67:24 85:5 87:21 88:24 143:25 144:13 239:20,22 240:14 260:2,5 267:25 268:1 <b>confidentiality</b> 7:1 8:3 <b>confined</b> 101:6 120:17 <b>confirm</b> 115:3 <b>confirmed</b> 61:19 70:2 81:24 83:10 115:7 123:23 148:21 157:18 <b>confirming</b> 81:17 <b>confirms</b> 61:25 123:3 <b>conflates</b> 109:13 <b>conflicts</b> 97:24 <b>conform</b> 114:22 <b>conformity</b> 196:15 <b>conforms</b> 75:12 <b>confronted</b> 283:4 <b>confuse</b> 224:10 <b>Congress</b> 84:23 <b>conjecture</b> 37:11 <b>connect</b> 72:2 <b>Connelly</b> 5:20	196:24 197:6,20 198:1 206:12 210:5 <b>Connelly's</b> 199:12 <b>conscious</b> 133:4 <b>consent</b> 213:4 227:1 231:5,6,14 232:8 246:6 <b>consents</b> 231:9 <b>consequence</b> 16:22 37:8 170:5 173:4 179:16 180:3 244:18 <b>consequences</b> 15:1 16:13 17:18 27:11 58:13 117:10 136:16 144:18 167:23 222:2 274:5,6 <b>consequential</b> 171:14 <b>consider</b> 7:16,22 10:9 97:4 107:4 109:23 118:23 152:9 167:1 180:1 185:20 193:19 199:12 200:16 219:9 228:20 230:25 236:23 246:20 257:9 <b>considerable</b> 199:7 <b>consideration</b> 105:9 112:13 119:1 140:10 141:10 154:9 157:5 167:4 183:16,23 184:10 185:24 193:24 195:2 202:25 247:8 <b>considerations</b> 108:17,18 120:8 197:4 202:4 <b>considered</b> 7:4 13:13,24 50:21 97:3 103:14 119:6
---	---	---	--	---

120:1 152:13 162:7 165:2 166:16 170:11 173:3 202:19,22 211:23 228:24 248:9 249:14 256:18 269:2 283:9 290:20 <b>considering</b> 117:24 175:16 195:19 279:6 282:10 <b>considers</b> 203:1 216:17 243:23 <b>consistent</b> 34:23 43:19 114:17 230:9 <b>consistently</b> 222:1 228:8 229:5 248:16 <b>consists</b> 75:7 <b>consolidation</b> 33:17 <b>constituencies</b> 200:10 <b>constitute</b> 170:4 <b>constituted</b> 55:19 93:20 160:6 288:1 <b>constituting</b> 102:20 <b>constitutional</b> 94:1 106:13 <b>constrained</b> 98:9 98:11 <b>constraint</b> 205:18 <b>constraints</b> 68:6 108:20 109:6 <b>construct</b> 69:15 250:18 252:17 <b>constructed</b> 17:7 149:13 180:18 181:20 278:24 280:14 <b>construction</b> 62:5 63:16,19 65:6 81:21 82:10 84:15 84:24 86:10 182:5 211:17 254:1,3 <b>constructs</b> 145:22	<b>consultancy</b> 58:15 <b>consultant</b> 31:22 <b>consulting</b> 49:21 50:6 <b>consumer</b> 18:24 <b>Cont'd</b> 2:5,9 275:18 <b>contain</b> 98:16 <b>contained</b> 164:12 168:17 169:8 <b>containing</b> 115:14 <b>contains</b> 130:7 185:2 226:21 <b>contemplate</b> 94:18 <b>contemporaneous</b> 83:10 <b>contends</b> 36:2 70:17 127:2 <b>contention</b> 36:6 125:12 126:2 131:17 <b>contest</b> 50:24 51:4 52:5 <b>contested</b> 51:11,22 51:23,25 59:19 <b>context</b> 52:7 90:22 91:8 98:22 116:14 117:7,15 130:15 141:2 160:20 168:14 181:13 182:20 206:4 223:15 225:22 229:10 273:5 277:22 <b>contextual</b> 105:23 107:1 204:3 <b>continually</b> 265:21 <b>continue</b> 33:18 81:2 92:19 214:17 274:7 <b>continued</b> 23:22 46:21 81:4 236:12 <b>continues</b> 13:5 33:15 45:4 215:15 <b>continuing</b> 24:1 <b>contort</b> 124:7 159:7 <b>contract</b> 52:12	82:23 249:2 254:21,24 255:5 279:14 <b>contracts</b> 83:1,3 219:1 <b>contractual</b> 248:13 279:24 <b>contradict</b> 41:11 <b>contradicted</b> 98:2 126:10 <b>contradiction</b> 9:1 <b>contradicts</b> 201:7 <b>contrary</b> 14:10 16:19 42:2 108:15 124:5,5 184:17 185:1 200:17 201:3 225:17 229:17 231:3 250:20 257:23 262:1 273:2 290:4 <b>contrast</b> 37:2 116:16 217:24 218:5 <b>contrasted</b> 223:8 233:4 <b>contravened</b> 166:23 <b>contributing</b> 44:12 <b>contribution</b> 44:6 <b>contributors</b> 43:20 <b>contrivance</b> 216:21 <b>contrived</b> 36:1 <b>control</b> 56:21 222:5 229:25 241:16 261:14,23 267:8 <b>controlled</b> 226:17 226:23 <b>controls</b> 224:1 <b>controversial</b> 116:12 <b>convenient</b> 147:19 <b>Convention</b> 229:7 229:14 <b>Conversely</b> 97:14 132:23 <b>convey</b> 80:9	<b>conveyed</b> 73:22 74:10,13,17,21 76:8,23 77:7,10 79:9 80:6,14 <b>conveyor</b> 77:18 79:20 <b>conveyers</b> 79:11,25 <b>conveyor</b> 63:22 67:10 74:3 76:8 76:11 77:11 <b>conveyors</b> 71:24,25 75:2 <b>conveys</b> 76:11 <b>convince</b> 109:1 <b>convincingly</b> 229:22 <b>copies</b> 147:13 <b>Copper</b> 249:3 <b>copy</b> 146:23,25 147:3,4,7,11 <b>core</b> 109:10 112:21 117:12 118:10 119:10,20 137:1 141:14 162:12 163:2,15 185:11 188:23 194:15 <b>corner</b> 54:24 <b>corporate</b> 35:2 86:20 139:11 145:5 227:3,19 233:6 <b>corporation</b> 223:11 232:19,19 233:15 233:17,17,22,24 <b>correct</b> 6:12 205:21 209:7 213:10 230:8 263:6 289:2 <b>corrected</b> 137:15 <b>correcting</b> 283:23 <b>corrections</b> 266:13 <b>correctly</b> 232:4 <b>correspond</b> 72:14 <b>correspondence</b> 7:5 <b>corruption</b> 95:10 <b>cost</b> 25:11 31:15,17 64:6,8 70:6,11	81:15,25 123:11 123:13 124:3 129:24 145:20 176:23 188:10 211:15 238:13 242:1,5,7,18 252:19 254:7,8 255:1,3 263:16 265:12 284:7 290:1 291:18 <b>costing</b> 64:9 65:5 70:13 134:21 139:9 <b>costs</b> 19:4 31:11,23 61:6 82:4 144:25 145:1,2 154:5 156:25,25 157:1 157:22,22 211:17 242:4,13 243:1 251:22,23 255:22 262:12,21 263:8 263:14,17 264:1 264:20 265:2,4,9 273:20 276:2 280:19 281:6,15 289:21 292:5,6 <b>Council</b> 195:15 196:7,13,16,18 197:5,15 <b>counsel</b> 4:7 5:12 116:15 145:14 234:20 <b>counter</b> 37:9 <b>counter-memorial</b> 280:23 281:1 291:25 <b>countered</b> 201:5 <b>counterpart</b> 99:16 104:6 <b>country</b> 96:1 <b>counts</b> 149:25 <b>couple</b> 6:21 293:16 <b>course</b> 5:6,13 9:12 12:19 14:6 25:18 26:6 33:3 53:17 56:18 63:1,11
--	---	---	--	---

65:2 75:12 79:22 89:10,15,17,19,20 90:13 93:4,7,16 121:10,15 122:7 123:5 128:16 144:8 150:4,12 193:21 196:14 203:14 219:14 220:6 221:25 227:16 232:25 236:7 262:20 268:15 283:15 284:20 288:12 293:13 <b>court</b> 15:10,24 94:10 95:13 106:3 106:5,7,8 107:7 107:17 120:10 128:11,14 129:12 129:16 131:22 137:16 143:10 177:20 178:5,6,12 199:16 204:22,23 287:19,23 288:15 288:24 289:11 <b>Court's</b> 130:1 <b>courts</b> 131:21 154:3 175:20 177:16 178:2,16,23 225:12 227:6 <b>Cove</b> 47:7 54:16,21 59:24 60:4,7 265:7 <b>cover</b> 155:13 247:17 <b>covered</b> 6:3 <b>create</b> 28:22 44:23 145:21 250:25 <b>created</b> 184:2 <b>credentials</b> 86:13 <b>credible</b> 41:11 51:20 121:8 268:16 269:21 <b>creditors</b> 227:19,20 228:1,4 <b>criteria</b> 93:12	108:12,16 118:1 118:10 251:11 <b>criterion</b> 171:17 <b>critical</b> 41:10 <b>criticism</b> 36:2 <b>criticisms</b> 250:23 <b>critique</b> 190:3 <b>Cromwell</b> 5:22 97:20 98:1,5,14 105:13 106:6,6,17 107:3 109:2,11 116:11 204:21,24 204:25 205:9,25 206:13,22 210:6 <b>Cromwell's</b> 205:22 206:18 208:2 <b>cross-examination</b> 70:12 123:9 201:8 204:14 <b>cross-examine</b> 199:22 208:3 <b>crown</b> 67:18 124:2 <b>crucial</b> 185:17 216:17 217:8 237:5 <b>crucially</b> 91:10 <b>crush</b> 70:19 <b>crushed</b> 43:25 46:4 66:2 69:23 73:19 74:20 75:15 77:2 77:22 78:8 85:12 <b>crusher</b> 73:9,14,20 76:12,12,16,19,24 77:3,14,14,21,21 77:25 78:4 <b>crushers</b> 65:16 71:22 75:2 <b>crushes</b> 71:17 77:14 <b>crushing</b> 24:9 63:22,23 64:3 69:6,13 71:13 73:12 74:4 76:15 77:12 <b>Crystallex</b> 18:22 20:16,20 23:9	30:18 250:1 <b>CSL</b> 31:22 54:4 82:18,18,22 83:7 83:8 <b>CSR</b> 294:18 <b>cuisine</b> 10:16 <b>Cullen</b> 31:18 61:25 <b>culminated</b> 134:14 <b>culmination</b> 143:20 <b>culture</b> 52:3 <b>current</b> 15:21 28:13,15 36:5 144:19 <b>currently</b> 72:1 <b>curve</b> 260:9 <b>custom</b> 240:4 <b>custom-made</b> 57:8 <b>customarily</b> 85:2 <b>customary</b> 151:9 155:9,17 158:19 167:5,13 172:25 173:17 281:20 <b>customer</b> 255:5 266:4 <b>customers</b> 57:1,2 57:20 219:2 253:1 254:17 <b>cut</b> 9:5 <b>cycle</b> 253:4 <b>cyclone</b> 79:4 <b>cyclones</b> 78:22	35:20 36:10,12 89:10 122:8 124:7 124:14,19 125:9 125:21 126:3,9 129:5,15 130:10 131:5,14 136:21 144:7 146:1,13 148:21,25 150:3 151:10 152:1,10 153:3,7,23 154:4 154:17 155:24 156:12,17 157:9 157:18 159:2,10 166:6 167:8 168:22 169:1,10 170:11 172:2 174:8 212:15,22 213:14,17,22 215:3,7,9,11,16 216:18,19,23 217:10,15,20,23 218:3,6,9 219:6 219:10,24 220:4,8 220:10,25 222:16 224:13 225:5,12 227:14 228:25 232:12,20 233:2,4 234:11 235:2 236:8,11,12 237:9 237:12,15,19,20 238:2,3,17 242:12 243:6,9,12 244:16 244:20,24 245:9 247:3,4,15,18 251:1 257:1,5 258:12,19,23 266:11,14 267:4 271:11 272:19 273:10 274:3,9,10 275:25 279:15,19 290:21 291:17 <b>Dan</b> 32:4,9 47:4,17 54:15 59:20 83:12 <b>DANIEL</b> 1:5 <b>Darian</b> 5:14 <b>Darrell</b> 5:19	<b>data</b> 28:18 69:10 84:17,20 115:15 281:13 <b>date</b> 27:4,5,6 28:2,2 28:13,15,19,25 29:3,14,15,15 36:3,4,5,8,13 125:17 144:3 150:11 257:19,20 257:24 258:24 259:15,17 266:16 <b>daughters</b> 62:19 <b>Dave</b> 5:20 <b>David</b> 4:24 13:12 89:23 90:23 92:17 183:20 <b>day</b> 9:12 149:20 215:12 <b>days</b> 50:17 57:14 <b>DCF</b> 18:1 152:11 216:9 219:5,17 220:16,20 221:5 221:12,15 246:25 251:11 256:24 257:2,9 259:4 260:14 266:19 272:1,9,14,16 <b>deadlines</b> 258:20 <b>dealings</b> 248:15 <b>dean</b> 93:22 97:9,25 98:4 101:11 103:25 116:16,19 116:25 117:12 130:11 131:17 133:13 194:7 200:13 201:5,7 205:3 207:2 285:19 <b>debate</b> 170:7 <b>decades</b> 13:5 46:6 82:9 110:3 <b>deceit</b> 90:20 <b>December</b> 27:7 222:21 257:19 258:24 <b>deception</b> 90:20
--	---	--	--	---

<b>decide</b> 6:23 109:8 164:21 173:22 206:10 222:6 270:8 278:12	117:19 119:5 120:11 143:17 160:25 179:10 182:4 183:4	<b>delegates</b> 205:15	194:10 205:4	65:19 66:1 67:5
<b>decided</b> 7:25 36:16 59:14 112:4 137:12 146:7 165:3 166:16 190:16 217:10 244:15	189:18 201:20 208:13 210:23 237:1 278:14 283:23	<b>deleted</b> 197:24	<b>depart</b> 107:12	67:13,21 70:5,16 70:22 71:13 132:24 145:19 178:9 227:8 262:17 274:2 287:8
<b>deciding</b> 164:9	<b>declaration</b> 48:25	<b>deletion</b> 188:23 189:8,13,20	<b>department</b> 6:8 50:16 84:22 87:12 195:13 202:12	<b>designing</b> 67:9
<b>decision</b> 18:20 109:14 112:12 118:22 119:24 133:4 160:2 164:19 176:14 181:9 194:1 196:19 199:8 201:25 202:3,17 205:11 213:4 235:22 237:1 282:5 285:18 289:7	<b>declare</b> 191:25	<b>deliberate</b> 90:20	<b>departmental</b> 119:15	<b>desktop</b> 89:3
<b>decision-maker</b> 94:3 120:18,24 201:17 202:3	<b>declared</b> 234:8	<b>deliberately</b> 138:6 158:2	<b>departure</b> 95:7 163:4	<b>despite</b> 119:16 207:25 261:17
<b>decision-makers</b> 119:22 120:15 135:15 160:14 161:4 162:2 164:1 164:15,17,21 176:21 192:8 193:21 195:15 211:5	<b>declined</b> 107:15	<b>deliberation</b> 38:14	<b>depend</b> 91:10 258:13	<b>destinations</b> 85:17
<b>decision-making</b> 106:4 178:3 189:16 190:18 193:19,25 195:2,6 195:8,9,18 196:7 196:23 197:3,7 201:15 202:9,20 202:23,24 210:4 226:3	<b>decrease</b> 261:6	<b>deliver</b> 82:20	<b>dependent</b> 221:10	<b>destroy</b> 92:25
<b>decisions</b> 27:6 33:11 94:7 97:5 107:8 116:24	<b>dedicated</b> 263:21 265:13	<b>delivered</b> 147:2 252:25	<b>depending</b> 204:9	<b>detail</b> 217:14 221:2
	<b>deemed</b> 188:22 189:8,13,20	<b>delivery</b> 253:5,5	<b>depends</b> 100:4,8	<b>detailed</b> 70:7 83:23 115:15 177:17 209:8 217:17 251:16
	<b>deems</b> 201:23	<b>demand</b> 83:18 84:9 86:5 88:20,21 211:19 238:12 260:9,11,13,19,24 261:8 262:6	<b>depicted</b> 68:20 71:25 74:14 80:11	<b>deposited</b> 69:20 75:24 77:18 80:15
	<b>deep</b> 24:10,20 45:15 51:11 52:8 53:24 144:22	<b>demanding</b> 3:8,13	<b>deposits</b> 73:15 279:18	<b>deprived</b> 16:24 238:8
	<b>deep-water</b> 48:14	<b>demonstrably</b> 14:2	<b>deputy</b> 38:2	<b>Derek</b> 5:16
	<b>deeply</b> 135:11 207:18	<b>demonstrate</b> 37:14 208:10	<b>derivative</b> 224:3	<b>derives</b> 263:15
	<b>defence</b> 224:8 245:10	<b>demonstrated</b> 157:20 213:14	<b>derived</b> 7:11 36:20	<b>describe</b> 67:20
	<b>defend</b> 128:5 136:4	<b>demonstrates</b> 83:25	<b>describes</b> 59:20	<b>described</b> 13:12 81:6 126:12 174:7 181:11 240:18
	<b>deference</b> 133:22	<b>demonstrating</b> 35:11	<b>description</b> 240:22	<b>design</b> 25:4 31:10 31:14,17 63:15,18 64:2 65:5,9 67:2 68:11,16,19 69:16 69:22,24 70:1 71:5 73:7 79:18 81:21 82:10 113:23 254:11
	<b>deficiencies</b> 151:20 152:18 167:1	<b>denial</b> 38:4 64:24 65:7 93:17 103:19 107:17 181:16 197:13 292:13,14	<b>designed</b> 22:9 25:5 49:12 64:2,18,19	<b>determinative</b> 166:5
	<b>deficient</b> 186:4	<b>denied</b> 16:17 17:12 26:5 54:13,14 64:6 68:12 92:6 97:8,12 119:4 121:24 122:17 149:11 162:6,19 163:25 166:21 179:12 180:17 197:11 199:3 234:8 276:11	<b>determination</b> 160:16 165:15 192:4 212:12	<b>determinations</b> 177:10
	<b>defined</b> 106:23 238:11	<b>deny</b> 59:14 104:8 104:18 109:8 116:3,24 143:18	<b>detriment</b> 140:14	<b>determinative</b> 166:5
	<b>definitions</b> 101:7		<b>develop</b> 11:22 13:1 23:18 24:3 34:8 35:12 46:14 59:10 59:17 63:14 87:17 114:19 215:25 238:6 241:15	<b>determine</b> 128:15 142:22 150:2 177:5 184:19 248:21 286:17
	<b>definitive</b> 184:12			<b>determined</b> 103:2 112:15 124:10 183:9 277:2
	<b>degree</b> 19:14 181:18,22 186:21 208:11			<b>determining</b> 31:1 110:19 162:11 178:20 232:16 277:6 281:17
	<b>Delaware</b> 1:5 238:11			<b>detriment</b> 140:14
	<b>delay</b> 199:7 211:2 243:24 244:8,11 258:17,18			<b>develop</b> 11:22 13:1 23:18 24:3 34:8 35:12 46:14 59:10 59:17 63:14 87:17 114:19 215:25 238:6 241:15
	<b>delayed</b> 270:14			
	<b>delegated</b> 200:11			

252:16 253:21	<b>dimensions</b> 72:21	116:9 118:2,8	<b>disregard</b> 42:21	163:23 167:2
<b>developed</b> 88:2	<b>direct</b> 37:22 118:19	133:23 193:24	146:3	180:2 212:21
220:1 256:16	137:17 172:23,25	194:18 205:7,10	<b>disruptions</b> 241:10	235:14 255:12
268:19	173:8 181:15	205:13,20,24	<b>disruptive</b> 9:11	263:6 267:17
<b>developing</b> 87:6	206:20 226:8	206:2 207:22	<b>distill</b> 148:23	282:14 286:24
150:17 157:23	231:24 232:16	210:7	<b>distinct</b> 49:10 163:1	292:10
268:19 269:18	234:7 291:4	<b>discretionary</b> 134:8	168:25	<b>dollars</b> 58:2 115:12
<b>development</b> 13:3,4	<b>directed</b> 49:18	<b>discrimination</b>	<b>distinction</b> 226:15	134:22 139:10
43:11 45:9 46:24	117:1	12:21	226:19 228:24	212:5
47:22 49:19 50:8	<b>direction</b> 288:2	<b>discriminatory</b>	237:5 244:11	<b>domestic</b> 130:9,22
50:23 51:3,8	<b>directions</b> 288:7	12:7 93:21 135:18	246:12	133:6 154:3
59:11 86:9 98:24	<b>directly</b> 8:19 14:14	137:21	<b>distinctions</b> 234:9	165:13 172:9
99:1,5,23 100:12	28:7 74:22 125:4	<b>discuss</b> 216:15	<b>distinctive</b> 113:2	175:19 177:16
109:24 114:24	144:23 201:7	217:6 266:14	<b>distort</b> 145:19	178:2,5,10,12,16
142:24 220:7	216:2 217:23	<b>discussed</b> 96:11	<b>distorts</b> 27:1	178:22 225:12
250:22 265:20	223:17,23 224:14	216:15 268:6	<b>distribute</b> 233:20	227:5 283:22
268:7,11 269:16	227:23 233:3	<b>discussing</b> 182:23	235:13	287:7
270:10,11 281:8	273:22	221:2	<b>distributed</b> 233:16	<b>domestically</b>
<b>devoid</b> 37:7	<b>directness</b> 171:17	<b>discussion</b> 167:21	<b>distribution</b> 235:4	130:18
<b>devote</b> 113:18	<b>director</b> 82:21	260:1,1	235:11	<b>dominated</b> 56:12
<b>devoted</b> 3:10	202:11	<b>discussions</b> 224:20	<b>diverse</b> 200:9	84:7
<b>DFO</b> 39:17,20,22	<b>Dirk</b> 6:6 8:4	<b>disentitled</b> 125:21	<b>diverted</b> 286:25	<b>dominating</b> 56:14
117:22	<b>disadvantages</b>	<b>dismiss</b> 151:1 212:9	<b>divestiture</b> 86:10	<b>DONALD</b> 1:9
<b>diagram</b> 74:16	133:21	220:24,25 246:16	<b>dividend</b> 234:8	<b>Dooley</b> 31:24 53:16
<b>dictates</b> 167:8	<b>disavowed</b> 157:11	257:5 292:23	235:8	55:25 56:8,15
<b>difference</b> 228:4	<b>discharge</b> 149:6,25	<b>dismissal</b> 152:2	<b>dividends</b> 226:2	57:2 261:19
233:13 242:5	189:14	214:7	232:22 233:13,14	<b>Dooley's</b> 53:18 57:2
283:18	<b>discharged</b> 160:11	<b>dismissed</b> 151:12	233:21,25 234:1	57:9 240:5
<b>differences</b> 32:14	185:17	151:23 152:24	<b>divine</b> 292:4	<b>double</b> 267:12
49:6	<b>discharging</b> 95:2	158:8 215:4	<b>Division</b> 5:25	<b>doubled</b> 157:17
<b>different</b> 35:3 42:5	<b>discontinue</b> 57:5	217:11,16 218:11	<b>divorced</b> 145:15	<b>doubt</b> 14:7 15:17
52:16 72:6 74:10	<b>discounted</b> 152:4	219:7 221:19,20	<b>do-overs</b> 124:19	21:2 37:15 57:3
98:1 120:4 130:23	216:6 218:17	246:24 273:12	<b>dock</b> 81:8 83:17	121:15 123:4
165:18 186:15	268:9	274:18	<b>docks</b> 25:14 53:22	263:25
188:21 189:1	<b>discounting</b> 259:11	<b>dismissing</b> 154:11	53:23 56:21,23,24	<b>DOUGLAS</b> 1:5
226:10 254:23,23	259:12	<b>display</b> 69:18	83:17 84:12	<b>downturn</b> 270:5
271:16 275:21	<b>discovered</b> 20:1	<b>displayed</b> 72:1	<b>doctrine</b> 124:15,24	<b>Dr</b> 5:21 8:7 39:25
<b>differently</b> 13:8	<b>discovery</b> 133:18	<b>disposition</b> 137:10	<b>document</b> 122:7	49:15 50:10,13,21
288:1	<b>discrete</b> 223:21	<b>dispute</b> 42:22 70:12	238:11 250:24	50:25 191:3,7,11
<b>difficult</b> 249:15	<b>discretion</b> 93:25	70:14 218:6	251:2	192:20 193:2,15
<b>difficulties</b> 242:24	94:2,15,25 96:25	219:14,15 230:2	<b>documents</b> 197:7	208:21 209:8
<b>Digby</b> 54:23 59:2	97:2,3,22 98:7,19	236:9 246:15	240:13	265:5
62:20 82:11 177:4	101:3,4,10,14,25	<b>disputed</b> 82:12	<b>Dodge</b> 84:23	<b>draft</b> 168:4
<b>dime</b> 271:15	102:9,14 104:17	<b>disputes</b> 231:14	<b>doing</b> 6:13 33:8	<b>drafted</b> 251:2
<b>dimension</b> 73:4	107:5,19,21	246:6	40:16 52:3 111:17	<b>draw</b> 188:2 237:5
185:17	108:14,21 109:7	<b>disputing</b> 245:4,7	150:8 156:5	<b>drawing</b> 68:14

<b>drawings</b> 63:15 64:5 68:11	177:12 178:1,22 182:2 183:4 188:6	<b>echoed</b> 143:9	160:1 161:19,20 162:16,17 163:19	250:24
<b>draws</b> 193:2	191:1 192:12	<b>echos</b> 109:3	163:22 166:10,11 174:19,20 176:25	<b>elephant</b> 56:12 282:6
<b>dream</b> 261:15	194:1 195:14	<b>economic</b> 23:6 44:4 58:14 84:16 88:17	177:7 180:12,14 184:14 185:7,13	<b>elephants</b> 282:9
<b>dreams</b> 271:16	196:19 202:17	88:20 98:24,25 99:5,25 100:3,12	185:14,25 187:17 191:19,22,24	<b>elevated</b> 79:21 80:2
<b>dredge</b> 52:14	203:12 205:11	105:6 114:23 142:7 211:20	192:1,5,16 195:21 195:22 196:1	<b>ELEVEN</b> 1:2
<b>dredged</b> 52:11,20 53:4,10	270:24 276:12 278:5 281:8	<b>economically</b> 188:11 211:16	197:17 198:6,16 200:19 206:8	<b>eliminated</b> 260:23
<b>drive</b> 88:13	283:15,24 286:21 292:14	<b>economics</b> 86:21 259:23 260:22	207:1,12 209:2,15 209:19,22 268:22	<b>Elrick</b> 1:15 4:11
<b>driven</b> 260:12	<b>earlier</b> 63:2 136:9 148:20 174:7	<b>economy</b> 23:16 34:12 43:12 100:9 100:20	<b>efficiency</b> 67:6 145:20	<b>embedded</b> 69:10
<b>driver</b> 42:10,11	176:19 181:11 191:4 194:8	<b>ecosystem</b> 193:1	<b>efficient</b> 3:18 25:6 49:7,12,13 68:5	<b>embodied</b> 100:13
<b>driving</b> 42:10	197:21 204:24 211:8 221:3	<b>Edmunds</b> 4:11	<b>efficiently</b> 254:7	<b>embodies</b> 99:22
<b>drop</b> 55:12 88:8 261:1 263:10	237:25 250:11 252:3 253:19	<b>effect</b> 98:5 102:21 104:4 107:19	<b>effort</b> 142:18 215:25 292:9	<b>embodiment</b> 285:13
<b>dropped</b> 55:7 270:2	259:1 272:12 276:9 284:2	119:19 136:25 137:1 183:10,21	<b>efforts</b> 49:18	<b>eminent</b> 39:21 40:13
<b>drops</b> 261:3 266:14	285:11 287:5	184:20,23,24 192:23,24 193:1	<b>eggs</b> 216:8 256:24	<b>eminently</b> 86:11
<b>drove</b> 33:25	<b>earliest</b> 243:10	208:24 227:13 259:5,14	<b>egregious</b> 14:16 15:1 42:15	<b>empanelled</b> 90:18
<b>dual</b> 109:15	<b>early</b> 47:8 63:4,12 221:14 249:7	<b>effecting</b> 103:11	<b>eight</b> 55:25 123:24 132:9 148:5,8	<b>emphasis</b> 7:13
<b>due</b> 53:21 233:9 237:3 249:5	250:22 251:3	<b>effective</b> 28:19 100:7 131:5 282:2 284:8	259:13,19	<b>emphasized</b> 228:8
<b>dump</b> 73:15,17	<b>early-stage</b> 21:12 211:9 249:5	<b>effectiveness</b> 176:22	<b>EIS</b> 38:12 250:23	<b>employee</b> 50:14
<b>dumped</b> 73:18	<b>earn</b> 253:3 272:5 277:15	<b>effects</b> 37:23 39:2 40:4,12 41:4	<b>either</b> 122:24 152:15 178:7	<b>employees</b> 24:24 26:9 33:20 34:21
<b>Dunsmuir</b> 106:2 107:6 120:11	<b>earned</b> 17:15,24 37:17 149:4 174:9	141:22 142:21 161:15 228:15	229:3 253:21 279:23 285:17	<b>employment</b> 23:17 47:1 58:21
<b>Duplessis</b> 94:11	234:24 249:22	254:8 284:23	<b>elaborate</b> 226:14	<b>enacted</b> 45:3
<b>duration</b> 5:8	<b>earning</b> 180:18 233:18 271:10	<b>effectiveness</b> 176:22	<b>elaboration</b> 13:15	<b>encompasses</b> 96:16
<b>duties</b> 291:3	<b>earnings</b> 212:23	<b>effective</b> 28:19 100:7 131:5 282:2 284:8	<b>elected</b> 90:15	<b>encourage</b> 142:11 142:13
<b>duty</b> 95:3 119:24 126:12 127:9	<b>Earth</b> 273:8	141:22 142:21 161:15 228:15	<b>election</b> 90:16	<b>encouraged</b> 13:4 34:7 43:5 46:13
128:23 130:13	<b>EAs</b> 159:24 165:23 165:25	254:8 284:23	<b>electronic</b> 293:12 293:14	139:7,16
132:11 153:22	<b>easiest</b> 233:12 237:21	<b>effectively</b> 42:22 141:22 142:21	<b>electronically</b> 293:8	<b>encouragement</b> 141:1
164:18 273:6	<b>easily</b> 66:1,2 85:23 123:25	161:15 228:15 254:8 284:23	<b>element</b> 17:19 167:17 171:10	<b>encouragements</b> 113:17 140:17 161:14
281:21 282:18	<b>east</b> 60:18 87:3 270:23	<b>effectiveness</b> 176:22	282:25	<b>encouraging</b> 114:19
286:3 290:8,11,17	<b>eat</b> 10:22	176:22	<b>elementary</b> 124:6	<b>endangered</b> 176:25 256:6
290:25 291:1,6,7 291:16		176:22	<b>elements</b> 21:6 69:19 248:2	<b>endeavour</b> 136:6
<b>dwindling</b> 22:15		176:22		<b>endeavouring</b> 24:3 47:13
<b>dynamically</b> 68:20		176:22		<b>endless</b> 134:20
<b>dynamics</b> 19:2		176:22		<b>endorse</b> 250:2
		176:22		<b>endorsing</b> 139:25
<b>E</b>		176:22		
<b>E</b> 225:23		176:22		
<b>EA</b> 89:24 154:1 159:18,19,25		176:22		
160:5,21 161:2 164:20,22 165:13 165:16,22 174:3		176:22		

<p><b>ends</b> 23:3 26:22 35:22 58:22 66:6 75:16 85:5 88:24 144:13 240:14 268:1</p> <p><b>engage</b> 113:20 139:7 193:14 224:20</p> <p><b>engaged</b> 63:24 81:19 87:9 190:6 191:2 196:21 199:14 201:5 258:17</p> <p><b>engages</b> 63:13</p> <p><b>engineer</b> 63:14 64:4 64:5 82:9</p> <p><b>engineered</b> 65:19</p> <p><b>engineering</b> 63:13 63:18 64:1 65:5 83:22</p> <p><b>Engineers</b> 52:13</p> <p><b>enjoy</b> 30:16</p> <p><b>enormous</b> 215:22</p> <p><b>enshrined</b> 168:3</p> <p><b>ensure</b> 78:3 86:23 178:9 227:13</p> <p><b>ensuring</b> 44:19 195:13</p> <p><b>entailed</b> 289:21</p> <p><b>enter</b> 259:25</p> <p><b>entered</b> 8:20</p> <p><b>enterprise</b> 21:20 51:13 215:14 218:4,10 223:10 223:12,18,25 224:11,14 225:15 225:16,19,20,25 227:13,15,16 230:15 232:2 233:7 236:8 248:18 256:9</p> <p><b>enterprise's</b> 228:1 251:15</p> <p><b>enterprises'</b> 233:8</p> <p><b>entertain</b> 272:14</p> <p><b>entire</b> 68:14 89:9</p>	<p>92:4 138:5 216:4 244:15 265:19 269:8 273:23</p> <p><b>entirely</b> 75:1 86:6 101:5,7 133:3 221:9 231:4 237:19 244:22 255:10 257:13 273:25 275:21 291:12</p> <p><b>entirety</b> 253:6 257:6 265:25 272:19 274:19</p> <p><b>entitled</b> 12:17 43:12 47:21 48:21 148:22 150:2 153:4,8 155:22 249:20 273:8 276:1 290:21 292:8</p> <p><b>entitlement</b> 225:25</p> <p><b>entitlements</b> 233:3</p> <p><b>entity</b> 53:15</p> <p><b>entrance</b> 52:21</p> <p><b>entrepreneurial</b> 33:10</p> <p><b>entrusted</b> 160:5 178:3</p> <p><b>entry</b> 25:16</p> <p><b>environment</b> 23:6 91:20 96:24 98:6 99:9 100:19,25 102:12 110:14 111:24 117:15 122:2 141:8 159:23 161:19 201:16 202:13 205:2 272:6 286:10 287:2</p> <p><b>environmental</b> 12:22 13:18 34:14 38:25 39:2,3,8 40:4,12 41:4 47:12 51:24 63:7 65:1 67:6 89:17 91:1,16,24 92:10</p>	<p>93:6,8,15 98:24 98:25 99:6 100:1 100:5,7,11 101:18 102:4 104:3,15,22 109:20 110:4,12 110:21 111:12 113:21 114:1,21 115:3,13,20 116:2 117:2,4 118:13 119:8,19 121:22 122:5,14,22 123:14 131:20 135:19 136:25 137:3 138:5 142:6 146:3 159:8,22 162:16 164:7 165:11 166:10 174:18 177:6 183:10,19 184:23 192:16,23,24,25 195:10,21 196:1 196:25 197:17 198:6 200:19 202:11 204:1 206:8,25 208:24 209:15,19,22 240:17 270:9 284:17 288:6 289:16</p> <p><b>environmental-r...</b> 58:3</p> <p><b>environmentally</b> 25:7 68:5</p> <p><b>envisaged</b> 10:19</p> <p><b>equal</b> 35:20 156:2</p> <p><b>equally</b> 12:15 88:21 181:9 236:9</p> <p><b>equals</b> 262:6</p> <p><b>equate</b> 292:13</p> <p><b>equated</b> 278:23</p> <p><b>equidistant</b> 55:2</p> <p><b>equilibrium</b> 261:7</p> <p><b>equipment</b> 67:11 69:6,11 78:20,21 79:5</p> <p><b>equipped</b> 176:20,22</p>	<p>177:1,5 188:2,14</p> <p><b>equitable</b> 12:20 14:3 16:20 140:1 143:7,21 279:13</p> <p><b>equity</b> 32:17 145:10 227:24</p> <p><b>equivalent</b> 131:3 215:11</p> <p><b>erroneous</b> 220:22 265:11</p> <p><b>error</b> 148:4 178:18 235:25 257:14,18 283:14,20</p> <p><b>errors</b> 257:10 283:23 289:2</p> <p><b>especially</b> 44:5 129:2 130:21 269:22</p> <p><b>essence</b> 185:4 259:10</p> <p><b>essential</b> 43:8,9 165:12 167:16</p> <p><b>essentially</b> 258:21 263:21</p> <p><b>establish</b> 24:5 116:22,22 248:19 279:25</p> <p><b>established</b> 17:1 21:4,19 22:24 42:25 108:10 114:11 149:16 155:15 230:1 242:17 247:19,21</p> <p><b>establishes</b> 17:19 21:10 36:24 62:1</p> <p><b>establishing</b> 135:6 229:12,16</p> <p><b>estimate</b> 30:5 84:9 253:15,18 264:18 264:19</p> <p><b>estimated</b> 19:6 81:25 261:2</p> <p><b>estimates</b> 64:6,8</p> <p><b>estimating</b> 264:13</p> <p><b>estimations</b> 37:13</p> <p><b>estopped</b> 125:16</p>	<p>136:20 236:18</p> <p><b>estoppel</b> 124:15</p> <p><b>Estrin</b> 4:24 13:12 90:23 183:20</p> <p><b>Estrin's</b> 13:14 89:23 91:7 92:17 93:9</p> <p><b>et</b> 133:24 293:16</p> <p><b>evaluate</b> 24:24 206:7</p> <p><b>evaluated</b> 110:23 111:3</p> <p><b>evaluation</b> 35:15 93:12 143:2</p> <p><b>evaluative</b> 165:12</p> <p><b>Evans</b> 5:21 131:15 132:6 177:20 199:15,19,22 210:5 287:9 288:11</p> <p><b>Evans'</b> 177:24 201:6 284:1</p> <p><b>Evelyn</b> 6:1</p> <p><b>event</b> 85:21 135:5 176:6 276:18</p> <p><b>events</b> 17:20 182:1 182:10</p> <p><b>eventually</b> 204:11 261:6</p> <p><b>everybody</b> 3:5,17</p> <p><b>evidence</b> 7:23 12:2 12:3,18 14:1,12 17:4,19 21:8,9 24:15 28:10 31:7 32:19 33:3,6 35:11,14,16 36:24 37:1,4,5,8 39:12 40:6,10 41:11,12 41:14 43:2 49:22 50:25 53:18 56:18 58:4 59:8 64:22 81:9,11,16 82:14 89:11 90:14 104:1 104:13 108:11,15 109:22 116:18 117:17 121:14</p>
--	---	--	--	---

137:5 144:6,21 146:9 150:10,19 170:3 181:7 188:1 215:16 238:19 242:13,14,16,20 254:4 255:23 256:2 262:14 265:1 281:13 283:25 286:6 287:3 289:14 <b>evident</b> 227:10 <b>evidentiary</b> 103:4 119:7 277:8 279:3 <b>exact</b> 45:7 69:8 224:6 225:23 270:6 <b>exactly</b> 31:1 39:10 46:12 48:1,18 68:3 70:15 110:6 111:17 144:7 222:7 223:19 250:19 251:4 270:12 287:7 <b>examination</b> 133:17 200:23 217:17 <b>examined</b> 116:19 <b>example</b> 20:23 72:18 95:17 122:11 125:7,19 169:21 176:21 185:9 224:8 225:1 234:5 245:5 256:2 288:19 <b>excellent</b> 45:21 48:23 57:18 <b>exception</b> 13:21 226:21 <b>exceptional</b> 113:3 <b>excerpt</b> 157:14 <b>excess</b> 271:12 <b>excessive</b> 292:17 <b>excise</b> 180:23 <b>excised</b> 198:12 <b>exclusion</b> 171:12 <b>exclusive</b> 25:14	53:21 <b>exclusively</b> 154:18 241:17,21 <b>execution</b> 24:5 <b>executive</b> 94:3,6,7 95:21 <b>exercisable</b> 94:20 <b>exercise</b> 3:13,18 11:12 93:24 107:5 107:19 108:14 109:6 116:9 118:7 120:19 168:2 170:20,22 190:6,9 194:18 205:7,19 290:8 291:6 <b>exercised</b> 97:1 98:20 120:14 291:2 <b>exercising</b> 96:17 97:2 102:14 <b>exhaust</b> 126:4 290:6 <b>exhausted</b> 107:22 <b>exhaustion</b> 130:14 <b>exhaustive</b> 232:25 <b>Exhibit</b> 71:12 80:22 <b>exhibited</b> 68:21 <b>exist</b> 119:19 173:2 180:15 <b>existed</b> 16:15 27:16 27:23 29:24 61:17 91:13 167:25 180:22 183:18 185:21 189:9 253:19 258:6,9,10 277:24 289:24 <b>existence</b> 136:13 169:17 208:23 254:21 <b>existing</b> 24:23 91:11 188:22 189:7,12 197:23 219:1 261:12,15 267:5 <b>exists</b> 181:24 203:14 286:5	<b>expanding</b> 47:16 <b>expands</b> 226:25 <b>expansion</b> 47:11 65:14 <b>expect</b> 63:3 132:2 141:14 221:21 222:9 <b>expectation</b> 62:21 91:9 92:3 280:1 <b>expectations</b> 93:11 108:4 115:18 121:4 138:4 <b>expected</b> 23:8 110:10 111:13 115:21 160:1 162:6 165:9 212:23 260:18 276:11 283:3 <b>expecting</b> 63:8,9 <b>expediency</b> 105:4 <b>expedited</b> 48:5 <b>expeditious</b> 284:6 <b>expenditure</b> 70:3 82:4 142:18 <b>expense</b> 58:1 286:19 290:18 <b>expenses</b> 238:5 280:11 <b>expensive</b> 54:25 <b>experience</b> 7:11,15 22:25 24:11,21 31:21 51:19 52:4 52:8 62:6,8 64:1 65:5 68:3 82:10 83:7,21 110:3 123:2 134:13 144:22 191:5 197:1 202:15 288:23 <b>experienced</b> 22:5 35:6 39:6,22 51:21 64:10 <b>expert</b> 7:19 24:24 26:8 31:9 41:18 58:4,11 61:24 62:7 65:24 67:19	70:8 81:23 82:8 82:22 83:25 84:17 85:8 91:7 92:17 93:9,25 96:9 115:17 116:17 117:13 122:25 123:7,23 126:9 130:11 137:5 175:24 177:19,21 183:20 194:7 251:20 257:25 285:15 <b>expert's</b> 13:16 <b>expertise</b> 7:10,15 20:24 21:3 24:21 63:21 <b>expertly</b> 22:18 <b>experts</b> 5:18 7:19 24:24 26:8 28:16 34:22 37:13 39:19 39:20 41:19 144:21 187:7 188:15 189:16,25 190:5,21,24 195:5 196:22 199:17,21 204:16 208:9 234:13 260:16 264:12 <b>explain</b> 8:5 38:7,18 39:9 40:19 88:4 150:6 151:25 152:9 153:2,7,17 153:19 159:1 181:6 189:17,25 216:11 217:13,18 218:12 219:8 223:1 237:21 273:14 275:24 282:13 284:2 <b>explained</b> 29:18 82:22 114:4 162:24 169:22 173:6 188:2 189:6 208:22 215:1,5 222:3 224:9 231:20 232:4,14	234:21 245:1 248:24 249:11 260:17 269:23 270:1 271:1 272:12 273:18 281:2 <b>explaining</b> 87:16 103:23 152:22 216:4 223:20 238:17 <b>explains</b> 28:13 33:6 33:9,24 49:17 53:18 65:25 70:24 85:11 97:10 123:9 123:12 164:16 171:5 177:25 197:20 202:21 235:1 259:16 265:5 285:16 <b>explanation</b> 152:16 <b>explicitly</b> 106:5 <b>exploit</b> 272:8 <b>exploration</b> 20:2 43:11 44:11 47:21 86:17 279:14 <b>exploratory</b> 249:7 <b>explore</b> 19:24 43:15 46:13 118:20 274:7 <b>exploring</b> 236:14 <b>export</b> 34:9 44:8 45:10 48:21 50:9 59:19 61:11 87:3 87:18 116:25 <b>exported</b> 85:12 <b>express</b> 94:17 121:8 205:17 <b>expressed</b> 88:6 120:10 287:18 <b>expresses</b> 98:1 207:9 286:1 <b>expression</b> 45:2 95:16 <b>expressly</b> 98:9,11 98:22 99:4 157:11 191:21 192:21
--	--	---	---	---

226:19 268:12	36:25 40:8 41:16	<b>factually</b> 172:17	266:25	<b>feeds</b> 80:8
<b>expropriated</b> 36:14	41:18 42:2,22	242:24 279:22	<b>far</b> 16:12 24:16	<b>fiction</b> 37:11
<b>expropriating</b>	48:22 51:2 98:16	<b>fail</b> 119:7 189:11	27:9 35:18 135:22	<b>field</b> 64:1 134:21
61:13	118:18 119:17	227:5	137:14 167:22	<b>figure</b> 3:6
<b>expropriation</b>	124:8,16 126:2	<b>failed</b> 97:4 135:7,9	173:2 182:6,12	<b>file</b> 203:4 244:14
36:10,12,14,17	137:5 152:1	149:24 151:3	184:12 226:4	293:13
61:12	155:19 157:9	158:9 206:19	254:10 266:24	<b>filed</b> 150:10 202:7
<b>extend</b> 35:7 279:14	161:23 165:20,25	213:25 215:25	<b>fashion</b> 8:15	202:18 222:17
282:18	170:17 171:6,22	248:20 274:13,14	<b>fashioned</b> 110:6	228:18 238:15
<b>extended</b> 10:23	174:16 178:13	274:15,16	<b>fast</b> 48:7,13	243:9 283:24
<b>extends</b> 127:12	179:1 182:9	<b>failing</b> 279:13	<b>faster</b> 81:14	<b>filing</b> 258:18
<b>extension</b> 109:4	184:15 194:3	<b>fails</b> 41:10 98:15	<b>fatal</b> 221:22 257:16	<b>filings</b> 224:7
<b>extensions</b> 258:20	216:17 217:8	109:11,14,18	<b>father</b> 33:11	<b>film</b> 40:9 124:20,21
<b>extensive</b> 38:8,11	221:21,25 224:22	159:3,5 212:13	<b>fault</b> 30:21 165:14	<b>final</b> 15:6 64:5
68:3 69:10 83:7	229:4 235:2,12	<b>failure</b> 151:12	<b>faulted</b> 174:17	68:16 75:18,22,25
86:13 114:12	236:20 250:7,13	157:4 166:9	<b>faulting</b> 185:10	77:17 78:12 80:4
137:5 197:1	252:4,9 254:9	167:11 212:17	<b>faulty</b> 220:21	257:7 268:8
198:21 202:15	255:9 261:5,18	283:5 290:8,16	272:17	<b>finalized</b> 249:2
<b>extensively</b> 20:21	267:20 268:11	291:6,8	<b>favour</b> 30:20	<b>finally</b> 80:17 152:8
<b>extent</b> 97:25 169:13	270:6,11 271:14	<b>fair</b> 12:20 14:2	219:22	158:25 161:22
283:6,13 291:8	272:2 273:18	16:19 36:12 140:1	<b>favourable</b> 56:6,7	170:15 189:19
<b>extracted</b> 19:11	277:17	140:3 143:7 165:1	128:8 165:24	200:21 219:8
<b>extraordinary</b>	<b>factor</b> 137:24	166:15 248:22	<b>feasibility</b> 81:24	249:10 253:3
57:23 90:6	141:21 158:17	279:12	188:6	255:14
<b>extreme</b> 174:24	167:3	<b>fairly</b> 26:4 93:14	<b>featured</b> 47:22 49:3	<b>finance</b> 86:20
249:4	<b>factors</b> 97:4,5 116:7	135:14 153:13	<b>features</b> 50:20	252:17
<b>Exxon</b> 87:1	163:8 188:3 193:3	<b>fairness</b> 97:9	<b>February</b> 1:11 3:2	<b>financial</b> 24:19
	202:19 210:22	108:22 124:6	293:22	47:19 70:18
<b>F</b>	211:6 251:9	137:15 141:12	<b>fed</b> 76:10 78:14	270:15
<b>F</b> 225:23	278:18	287:21	79:17	<b>financially</b> 155:14
<b>fabrication</b> 216:22	<b>Factory</b> 15:10,11	<b>faith</b> 95:2 108:21	<b>federal</b> 84:16 99:20	247:17
<b>face</b> 130:6 157:3,15	15:20 26:25 27:8	115:10,17	101:15,25 109:16	<b>financing</b> 251:22
182:17 188:5	167:19 180:1,6,8	<b>fall</b> 226:23	116:21 119:9,23	251:24 254:5
211:10 283:11	180:20 182:19	<b>falls</b> 137:2 244:3	129:11 131:21	<b>find</b> 46:13 64:14
<b>faced</b> 22:16 179:1,2	<b>Factory's</b> 181:2	262:9 273:9	134:6 135:16	133:9 182:7
206:18 212:13	<b>facts</b> 7:16 21:7	<b>false</b> 37:11 131:12	139:18 141:5	211:23 213:16
242:23 269:7	37:14,14 109:12	131:13	164:17 165:11	279:17
270:10,11,12	113:4 114:9	<b>family</b> 32:15 34:5	177:20 185:16	<b>finding</b> 40:3 109:2
<b>faces</b> 5:10	132:14 161:10	34:25 52:8 60:9	192:8 194:4 195:8	109:3 113:6
<b>facilitate</b> 59:24	162:1,4 165:22	62:18	195:13,15 197:22	132:21 161:11
<b>facilitated</b> 61:13	204:5 230:17	<b>family-owned</b>	199:16 201:6	162:23,24 165:6
<b>facilities</b> 82:11	<b>factual</b> 21:6 119:13	240:24	210:13 211:4	165:14,23 167:10
242:19	127:1 171:22,25	<b>famously</b> 94:11	278:11 288:24	178:6 183:9,14
<b>facility</b> 68:14	172:3 179:19	<b>fanciful</b> 272:1	<b>federal-provincial</b>	209:14,18,21
<b>facing</b> 133:10	180:4 182:14,17	<b>fanfare</b> 45:3	90:4	213:13 284:12
<b>fact</b> 7:10 12:6 14:11	183:7	<b>fantasy</b> 70:25	<b>feed</b> 9:5 79:25 80:7	<b>findings</b> 41:16,18
18:1,2 35:17				

42:2 117:10 124:8 124:16 132:20 138:2,9 140:6 151:7 158:13,18 159:12 161:5,7 162:20 163:13 166:3,19,25 170:23,24 173:23 185:2,20 186:5 188:23 189:13,20 189:21 192:8 193:3 194:14 205:6 206:24 <b>finds</b> 7:13 18:6 198:1 <b>fine</b> 53:6 78:8,23 79:4 275:7 <b>finer</b> 75:9 79:5 <b>finished</b> 79:8,14 <b>firm</b> 58:15 81:20 <b>firmly</b> 98:4 <b>first</b> 4:10 6:23 10:4 43:15 50:12 55:14 74:3,15 125:8 130:8 131:25 133:13 134:16 149:7 150:22,24 151:2,24 155:8 158:7 159:11 162:22 166:7 167:13 175:1 177:19 184:6 186:14 189:5 190:24 195:7,20 196:10,23 199:25 202:9,20 203:16 208:18 210:22 215:5 217:18,20 222:13 226:18 232:24 238:4 243:8 244:7 245:12 247:10 257:14,18 258:1 259:18 265:22 275:24 276:6 282:16 284:3	289:6 <b>firsthand</b> 37:22 144:22 <b>fisheries</b> 39:24 123:22 <b>fishery</b> 177:4 <b>fishing</b> 58:24,25 <b>fit</b> 34:19 57:8 <b>fitting</b> 10:10 <b>five</b> 57:11 64:21 71:14 72:5 73:8 75:18,22,25 77:17 79:12 80:3,6 82:9 117:23 238:5 274:25 <b>five-fold</b> 56:2,16 <b>flaw</b> 221:23 268:8 <b>flawed</b> 88:18,21 120:1 135:11 145:15,16 151:10 189:4 199:5 273:2 274:17 289:18 <b>flaws</b> 152:16 257:16 285:5 <b>flew</b> 64:15 <b>flips</b> 227:23 <b>floor</b> 3:21 11:16 66:23 81:1 92:25 148:15 151:17 153:6 214:10,21 272:21 <b>flow</b> 69:14,23 80:23 152:4 216:6 218:17 268:9 <b>flows</b> 234:16 251:15 <b>fluctuations</b> 19:3 241:9 <b>fly</b> 64:16 <b>focus</b> 42:19 158:11 169:5 231:13 271:15 <b>focuses</b> 97:22 <b>focussed</b> 35:4 <b>focussing</b> 188:22 <b>follow</b> 150:7 167:10	186:10 192:6 210:8 213:2,19 <b>followed</b> 19:19 166:1 174:4 <b>following</b> 112:12 148:23 199:24 212:24 251:11 287:12 289:5 <b>follows</b> 163:13 260:1,9 <b>footprint</b> 92:23 <b>force</b> 139:2 <b>forced</b> 241:24 <b>forecasting</b> 85:2 <b>forecasts</b> 84:14,16 <b>foregoing</b> 294:12 <b>foregone</b> 193:6 <b>foremost</b> 199:17 276:6 <b>foreseeability</b> 171:19 <b>foreseeable</b> 17:2,17 172:23 182:7 <b>Forestieri</b> 4:20 33:5 <b>forget</b> 261:13 <b>forgetting</b> 261:22 <b>forgotten</b> 59:5 135:10 <b>form</b> 53:15 130:9 148:24 233:15 251:16 <b>formal</b> 59:16 <b>formality</b> 226:16 230:11 <b>formally</b> 122:9 <b>formed</b> 193:4 244:16 <b>former</b> 49:16 177:20 196:24 291:5 <b>forsaking</b> 253:19 <b>forth</b> 225:8 231:23 263:23 <b>forth-and-back</b> 9:13 <b>forthcoming</b>	253:25 <b>forthwith</b> 147:5,14 <b>forum</b> 283:19 <b>forward</b> 270:9 293:1 <b>Fougere</b> 32:4 47:5 47:17 48:17 59:20 83:12 <b>Fougere's</b> 54:16 <b>found</b> 11:24 13:25 40:10,17 41:3 93:20 97:7 101:19 102:5 107:5 108:2 116:13 118:11,13 118:15 119:19,21 136:22 137:13,20 138:7 143:17 144:4 159:4,17 160:20 161:15 163:3 164:24 166:7,13 170:18 172:17 179:11 184:8,20 192:20 192:23 208:23 211:24 213:1,15 214:2 215:8 231:6 250:5 272:24 276:10 279:18 <b>foundation</b> 35:15 159:10 165:7 <b>founded</b> 41:14 145:14 159:6 <b>four</b> 38:10,14 60:25 64:21 150:25 152:23 154:12 215:2 274:11 292:20 <b>four-year</b> 63:7 <b>Fournier</b> 39:25 <b>fractional</b> 72:13 73:2 <b>framework</b> 228:14 <b>Frank</b> 1:17 4:12 <b>frankly</b> 136:4 <b>fraud</b> 95:10 <b>free</b> 1:2 49:21 50:6	129:9 213:4 <b>freight</b> 83:8 145:2 264:13 265:2 <b>fresh</b> 289:3 <b>friction</b> 24:25 25:1 25:2,3 34:3 <b>friendly</b> 25:7 68:5 <b>front</b> 49:3 217:1 265:23 <b>fruition</b> 58:1 <b>FTI</b> 31:8 32:20 35:15 36:2 <b>FTI's</b> 32:25 <b>fuel</b> 263:17 264:14 264:15,16,21 <b>fulfil</b> 206:21 <b>fulfilled</b> 109:17 213:6 <b>full</b> 1:12 12:15,17 15:4,11,21 16:1,7 17:10 23:10 29:16 35:14,21 36:21,24 64:12 110:5 136:7 136:17 145:11 146:10 155:10 156:2 157:19 167:14,17 168:10 168:15 266:20 268:6 <b>full-time</b> 59:4 265:13 <b>fully</b> 17:17 21:19 23:7 114:17 115:10 132:25 149:4 150:17 154:11 185:17 199:12 278:23 282:11 292:14 <b>function</b> 9:10 41:17 78:1 106:14 <b>functions</b> 99:14 <b>fundamental</b> 71:1 98:3 103:23 115:25 137:9 163:4 206:5 227:7 232:7 268:8
---	--	---	--	---

<b>fundamentally</b> 35:13 88:18,21 109:18 132:18 273:2	203:16 204:14 210:5	280:2	6:17 11:2,4 23:8 61:8 66:15,17 95:1 108:20 111:23 115:10,17 214:11,23 267:16 267:19	194:4 210:25
<b>funds</b> 233:20 235:13	<b>general</b> 7:15 62:4 68:13 109:24 116:10 129:17 142:12 179:18 227:2 238:17	<b>gives</b> 223:4,9 234:4 <b>giving</b> 159:13 160:22	<b>govern</b> 21:5 <b>governed</b> 23:6 127:1 128:23	<b>Governor</b> 195:14 196:7,12,16,18 197:5,15
<b>Fundy</b> 22:21 55:1 82:12 269:6	<b>generally</b> 20:25 32:11 43:6 51:8 73:1 178:16 244:8	<b>global</b> 5:25 86:18 <b>globally</b> 100:21 <b>go</b> 10:20,24 46:13 52:16,25 54:2 55:9,11 81:7 125:4 146:20 151:15 214:3 217:5 230:16 237:22 239:20 251:8 252:10 260:2,11,22 268:4 270:9 275:12,17 281:17	<b>governing</b> 12:14 117:8 156:13 159:5 167:13 169:15 173:11 243:20	<b>governs</b> 27:1 <b>graduated</b> 62:19 <b>grain</b> 78:9 <b>grains</b> 75:9 <b>granite</b> 61:7,7
<b>fungible</b> 22:21	<b>generate</b> 20:12 61:15 118:25	<b>goal</b> 98:23 114:23 286:22	<b>government</b> 1:7 6:1 7:20 13:2,3,6 20:21,22 23:13,15 23:21 24:1 32:6 34:8 39:16 40:21 43:9,16 44:9,16 45:6 46:15 47:20 48:20 49:17,17 50:4,5,14,15 51:2 51:5 57:25 59:9 59:16 60:5 61:13 87:15 90:17 100:22 108:5 114:18 116:1,6 117:22 121:18 122:16,24 129:19 139:17 143:13 149:13 160:15 162:2 164:2,14,20 176:4,21 179:10 187:12,23 190:18 193:21 195:6 197:10 200:10 210:3,14,14 211:2 256:1,3 283:15	<b>granted</b> 14:7 89:20 96:20 115:8
<b>further</b> 11:14 29:1 54:17,22 55:1,9 60:21 61:5 74:11 75:23,23 77:5,10 100:13 119:15 120:3 134:8,21 150:17 151:15 171:10 183:23 201:25 211:2 214:4 217:7 222:11 226:13 235:1 236:15 239:19 243:17 248:5 255:20 259:11,12 265:17	<b>generated</b> 26:15 115:5 144:12	<b>goals</b> 65:10 <b>goes</b> 4:5 50:16 77:13 78:3 155:4 155:4 230:21 232:7,9 272:1	<b>greater</b> 19:6 238:12	<b>grants</b> 223:16 <b>graph</b> 220:18 <b>graphic</b> 75:5 <b>gravel</b> 43:25 <b>gravity</b> 49:8 76:10 78:22 79:17,23 80:7
<b>furtherance</b> 51:7 290:17	<b>generates</b> 69:17 <b>generating</b> 70:21 <b>generations</b> 21:24 23:9 33:14 34:5 35:9 44:24	<b>going</b> 3:16 8:5 9:16 26:1 47:15 54:19 56:16 57:15 59:3 147:7,11 150:6,9 150:11,23,24 151:1 152:25 153:5,6,17 158:11 158:12,25 162:13 169:2 181:5 194:22 214:15 222:11 240:12 248:21 249:16 257:15,16 260:2 260:20 263:2 265:18 273:13 274:22 275:12 279:4,7 291:21 293:19	<b>government's</b> 23:18 34:11 39:19 48:25 60:11	<b>green</b> 9:23 10:2 <b>greetings</b> 56:6 <b>Greg</b> 4:6 <b>Gregory</b> 1:14 <b>grey</b> 72:2 74:15 79:12
<b>future</b> 18:1,2 19:5,9 20:18 44:24 50:23 84:9 119:25 164:19 218:17,18 228:19 247:1 248:5,21,25 251:15,21,25 255:18,20,23 256:7,12,17 280:5	<b>Genocide</b> 180:2,6 181:8,14 182:19	<b>good</b> 3:4,5,23 5:4	<b>gravel</b> 43:25 <b>gravity</b> 49:8 76:10 78:22 79:17,23 80:7	<b>Griffiths</b> 5:20 191:3,7,9,13 192:13 193:15 197:18 208:21 <b>Griffiths'</b> 209:7 <b>grits</b> 53:3,5,8,9 55:5 55:12 57:11 65:23 72:10,13 78:23,24 78:24 84:7
<hr/> <b>G</b> <hr/>	<b>gentlemen</b> 8:1	<b>gold</b> 18:4,23 20:21 249:25	<b>greater</b> 19:6 238:12	<b>gross-up</b> 215:23 221:6,7,9,19 222:1,12
<b>gamble</b> 247:6	<b>geological</b> 49:21 50:6 62:12 84:21 87:23 89:6	<b>Goldilocks</b> 219:20	<b>green</b> 9:23 10:2 <b>greetings</b> 56:6 <b>Greg</b> 4:6 <b>Gregory</b> 1:14 <b>grey</b> 72:2 74:15 79:12	<b>ground</b> 119:12 151:13 158:7 204:5 213:21 254:3 270:18
<b>Gami</b> 224:8	<b>geologist</b> 31:18 49:17,25 50:15 61:25 86:8		<b>Griffiths</b> 5:20 191:3,7,9,13 192:13 193:15 197:18 208:21 <b>Griffiths'</b> 209:7 <b>grits</b> 53:3,5,8,9 55:5 55:12 57:11 65:23 72:10,13 78:23,24 78:24 84:7	<b>grounded</b> 36:25 98:4 116:18 <b>grounding</b> 171:1 <b>grounds</b> 150:25 151:2,22 152:23
<b>Gardner</b> 58:15	<b>geology</b> 69:11		<b>Greg</b> 4:6 <b>Gregory</b> 1:14 <b>grey</b> 72:2 74:15 79:12	
<b>gatekeeper</b> 78:2	<b>George</b> 31:13 32:13 63:24 65:3,8 67:19 68:1,9 69:25 70:24		<b>Griffiths</b> 5:20 191:3,7,9,13 192:13 193:15 197:18 208:21 <b>Griffiths'</b> 209:7 <b>grits</b> 53:3,5,8,9 55:5 55:12 57:11 65:23 72:10,13 78:23,24 78:24 84:7	
<b>gather</b> 159:25 200:2	<b>geoscientist</b> 123:1		<b>gross-up</b> 215:23 221:6,7,9,19 222:1,12	
<b>Geddes</b> 5:22 6:25 7:6,14 202:10,13 202:18,21 203:8	<b>gesture</b> 11:12 <b>getting</b> 64:22 <b>GIC</b> 105:2 199:3 200:1,6,8,16,22		<b>ground</b> 119:12 151:13 158:7 204:5 213:21 254:3 270:18	

154:12 194:10 205:4 214:6 245:14 292:20 <b>groundwork</b> 195:1 <b>group</b> 4:20 33:5 35:2 239:10,15 <b>groups</b> 212:20,24 213:3 <b>growth</b> 85:14 86:4 88:23 <b>guarantee</b> 19:25 <b>guaranteed</b> 219:1 255:7 278:7 <b>guidance</b> 180:5 181:9 182:18,20 229:23 279:2 <b>guide</b> 114:25 277:5 <b>Guided</b> 28:9 <b>guidelines</b> 121:5 <b>guise</b> 145:24	<b>harbours</b> 45:15 <b>hard</b> 62:9 86:2 <b>harm</b> 169:23 172:7 172:13,24 273:7 283:16 <b>harmonize</b> 86:18 <b>haven</b> 181:4 <b>head</b> 227:24 <b>heading</b> 238:3 <b>heads</b> 157:9 <b>hear</b> 4:2 24:25 41:23 53:16 56:18 63:25 73:3 83:20 150:12 204:13 221:6,21 230:23 231:4 232:10 237:8,11,14 255:24 264:25 287:4 <b>heard</b> 72:5 78:23 150:19 208:2 253:22 257:21 259:1 262:12 267:15 <b>hearing</b> 3:10,12 8:12 11:25 26:9 39:13 53:17 59:12 126:3 132:3,4 137:18,24 181:7 199:23 282:4 <b>hearings</b> 6:13 38:10 38:15 121:18 <b>heart</b> 108:22 155:4 228:7 230:22 <b>heat</b> 90:16 <b>heaven</b> 273:8 <b>heavy</b> 48:24 277:17 <b>hectares</b> 93:2 <b>heed</b> 272:10 <b>Hehn</b> 5:16 <b>held</b> 1:9,10 12:8 30:19 86:25 91:9 165:8 170:1 <b>helicopter</b> 50:2 <b>helpful</b> 157:4 229:22	<b>hesitated</b> 156:19 <b>Hi</b> 6:9 <b>hiding</b> 37:20 <b>high</b> 26:14,18 44:14 62:19,20 249:13 274:3 279:21 280:5,15 <b>high-demand</b> 85:24 <b>high-quality</b> 14:22 16:25 34:3 50:22 61:22 <b>higher</b> 18:10 61:6 242:1 279:20 <b>higher-output</b> 49:14 <b>highest</b> 216:23 264:12 <b>highlight</b> 150:9 161:5 167:12 195:3 279:5 <b>highlighted</b> 48:22 73:11 74:5 241:12 <b>highlighting</b> 46:16 158:13 <b>highlights</b> 152:18 <b>highly</b> 12:11 17:8 22:5 25:6,15 35:6 49:6 51:21 85:20 89:13 95:15 110:2 128:3 181:5 218:20 221:14 <b>hill</b> 49:7 <b>hillside</b> 67:15 <b>hindsight</b> 29:5 <b>hire</b> 64:13 <b>hired</b> 53:16 62:3 <b>historical</b> 215:24 251:13 252:6,9 266:4 <b>history</b> 22:22,25 51:23 92:4 203:4 218:24 248:14 255:13 <b>hit</b> 42:14 <b>hits</b> 42:7 <b>holds</b> 194:23	<b>holes</b> 216:12 <b>holiday</b> 3:14 <b>holidays</b> 3:15 <b>holistic</b> 138:9 <b>Holland</b> 10:15 <b>home</b> 51:24,25 222:2,4,6 <b>honest</b> 34:14 115:2 115:20 <b>honestly</b> 93:14 <b>Honourable</b> 5:21 5:22 177:19 199:15 204:20 <b>hopper</b> 73:16,16,19 <b>Hospital</b> 107:9 <b>host</b> 140:12 278:17 <b>hour</b> 10:19 66:2,12 81:13 <b>hours</b> 262:22 <b>Howard</b> 4:23 <b>huge</b> 247:5 <b>hundreds</b> 177:10 212:5 283:22 <b>Hungary</b> 15:16 29:12 <b>hurdles</b> 26:7 130:25 182:1,10 278:16 <b>hypothetical</b> 13:23 37:6 42:5,20 117:4 168:2 186:16 187:10,23 188:8,15,25 190:8 190:21 194:24 197:9 216:5	109:21 111:10 151:5 158:10 192:21 197:18 242:25 285:6 <b>identifies</b> 69:21 <b>identify</b> 8:11 <b>ignore</b> 37:4,13 166:18 174:16 211:10 256:10 259:22 <b>ignored</b> 59:5 105:16 135:25 170:24 255:13 271:23 282:9 <b>ignores</b> 88:19 219:17 272:9 <b>ignoring</b> 108:16 <b>ILC</b> 168:6 171:2 282:23 291:5 <b>illegal</b> 14:16 16:13 16:15 17:5 27:12 27:20 167:23 258:7 <b>illegally</b> 16:17 166:21 <b>illustrate</b> 187:6 <b>illustrated</b> 283:22 <b>imaginary</b> 14:11 37:3 <b>immediate</b> 9:1 22:2 74:24 <b>immitigable</b> 209:2 <b>impact</b> 115:14 233:24 240:17 245:7 263:9 265:14 269:4 291:4 292:7 <b>impacted</b> 256:8 276:16 <b>impacts</b> 102:22 103:7 251:25 <b>impaired</b> 42:11 <b>impartial</b> 41:15,19 161:25 251:20 <b>impartiality</b> 246:14 <b>impediment</b> 88:23
<b>H</b>				
<b>habitat</b> 177:2 <b>half</b> 10:14 38:8,14 54:13 62:21 66:11 66:15 73:21 290:1 <b>Halifax</b> 54:18 <b>Hall</b> 93:23 <b>hand</b> 285:23 <b>handful</b> 249:18 <b>handle</b> 7:1 8:3 <b>handled</b> 8:5 <b>hands</b> 133:11 147:16 <b>happen</b> 41:3 117:5 260:20 261:11 <b>happened</b> 27:20 31:2 37:25 40:24 40:24,25 42:10 63:11 144:9 222:7 271:13,14 <b>happening</b> 64:25 <b>happens</b> 264:6 <b>Harbor</b> 53:22 55:7 55:9 <b>harbour</b> 25:14 52:21 53:23				
			<b>I</b>	
			<b>i.e</b> 172:12 245:3 <b>ice-free</b> 45:15 48:14 <b>idea</b> 8:22 10:13 11:3,5 96:16 109:5 218:23 252:8 <b>ideal</b> 67:16 <b>ideally</b> 251:15 <b>identical</b> 72:22 <b>identified</b> 45:7	

<b>impermissible</b> 230:13,20 244:21	<b>inappropriate</b> 179:8 194:12	174:15 189:23 207:19	143:3 162:8	<b>infrastructure</b> 84:14
<b>implausibility</b> 271:21	205:5 235:15 243:23 247:1	<b>incontrovertible</b> 118:18	<b>individuals</b> 46:19 58:16 96:6	<b>infringed</b> 232:18
<b>implement</b> 224:19	263:17 274:4	<b>incorporate</b> 28:17	<b>industrial</b> 12:23 43:18 48:24 49:19	<b>inherent</b> 94:5 151:20 152:16
<b>Implementation</b> 129:10	<b>incentive</b> 267:8	<b>incorrect</b> 186:7 189:7	89:21 121:13,17 121:25 122:6,23	193:25 276:12
<b>implemented</b> 208:25	<b>inch</b> 72:7,8,10,18 74:16,17 75:11,17	<b>increase</b> 84:6 88:9 258:23 263:7	123:2,6,11,16	<b>inherently</b> 248:2 256:12
<b>implementing</b> 44:18 231:22	76:4,7,18 77:6,16 78:11	<b>increased</b> 23:17 56:1 84:2 262:20	<b>industries</b> 58:21 59:1,2	<b>inimical</b> 138:7,20
<b>implications</b> 245:4	<b>inches</b> 72:21 73:20 73:21 74:13,19	264:24	<b>industry</b> 20:25 21:3 22:7,25 24:11,21	<b>initial</b> 65:10 82:4 218:5 239:19
<b>implies</b> 95:1	<b>include</b> 43:23 82:8 113:8 138:4 198:4	<b>increases</b> 260:10	31:21,25 32:5,15 33:17 44:1,22	<b>initiate</b> 127:3
<b>import</b> 12:3 87:2	209:14,17,21 211:13 231:16	<b>increasing</b> 55:21 56:15	46:3,18 51:12 68:23 69:3 72:14	<b>initiated</b> 11:23
<b>importance</b> 20:24 25:1 43:10 46:16	245:21 256:22	<b>increasingly</b> 248:5 255:19	84:20 89:5 144:22 220:14	<b>initiating</b> 125:24
97:19 177:3 237:1	<b>included</b> 29:7 73:5 161:11 225:4	<b>incredible</b> 250:15	<b>inequitable</b> 12:7 32:23 93:20	<b>injured</b> 129:19 281:22 283:5
<b>important</b> 30:9 44:2 45:24 52:10	267:7	<b>incremental</b> 88:11	133:11 137:22	<b>injury</b> 16:8 149:8 149:17 153:10,14
56:11,17 59:5 106:13 158:17	<b>includes</b> 31:8 33:4 52:8 78:20 157:8	<b>incurred</b> 129:6 133:1 157:22	<b>inevitable</b> 167:20	153:20 155:11,19
181:9 193:18 223:1	161:24 203:3 234:7	169:10 223:6,12 223:23 238:5	<b>inexorable</b> 17:17 118:1	158:9,15,20 159:4 159:14 160:20
<b>importantly</b> 32:9 55:5 57:19 58:7	<b>including</b> 32:6 49:20 55:5 58:7	273:11 291:19	<b>infeasible</b> 211:17 278:19	162:5 166:14 167:7,15 168:11
61:22 137:7 196:4 227:18	62:9 69:11 82:11 84:13 86:13 87:4	<b>independence</b> 246:14	<b>infected</b> 228:15	169:6,14,18 170:19,21 171:12
<b>importation</b> 56:9	90:11 91:11 113:22 115:16	<b>independent</b> 16:24 21:23 31:22 34:2	<b>inflation</b> 264:25 265:2	172:7,17,18,24 173:2,9,10 182:11
<b>importing</b> 95:16 226:18	128:6,10 140:23 161:17 163:9	61:24 85:1 191:8 215:2	<b>inflated</b> 216:23	213:25 223:22 224:2 231:25
<b>impose</b> 126:3 256:3 277:17	164:10 175:18 177:15 225:10	<b>independently</b> 83:9 144:20	<b>inflation</b> 264:25 265:2	232:1,1,16 276:7 276:20 281:23,25
<b>imposed</b> 269:3	227:18 247:18 258:18	<b>INDEX</b> 1:13 2:1	<b>influenced</b> 7:17 184:10	283:4,10,12 290:13
<b>imposes</b> 201:24 283:7	<b>income</b> 19:9 248:8 256:17	<b>indicated</b> 10:6,7 71:9,17 73:10	<b>inform</b> 162:3 29:6 38:12 62:12	<b>injustice</b> 14:20 138:13
<b>imposing</b> 128:25	<b>incompatible</b> 69:22	79:18 80:18	89:5 90:19 110:23 111:3,8 117:20,21	<b>innocent</b> 283:3
<b>impossible</b> 27:22 220:18 249:16	<b>incomplete</b> 206:13 207:8	<b>indicates</b> 3:7 73:2	118:25 144:19 160:1 164:2	<b>inputs</b> 220:22
<b>improbable</b> 181:5	<b>inconsistent</b> 183:12 184:9,21	<b>indicating</b> 123:20 200:17	<b>informed</b> 87:25 89:3 155:8 276:4	<b>inquiry</b> 118:22
<b>improper</b> 218:14 263:15,17	192:22 288:3	<b>indicators</b> 220:17 227:4 228:13,25	203:1 259:2 198:20 200:2	<b>insofar</b> 155:14 203:20 247:19,21
<b>improve</b> 66:23	<b>inconsistent</b> 101:1 132:19 162:12	231:25 232:17	<b>information-gath...</b> 160:4 161:2	<b>instability</b> 255:25
<b>improvements</b> 68:10		<b>individual</b> 100:22 138:24 139:21	<b>informed</b> 87:25 89:3 155:8 276:4	<b>instance</b> 10:24
<b>inability</b> 239:9			279:6	<b>instructions</b> 116:15 145:14 178:9
<b>inapplicable</b> 36:8				220:23 <b>instructive</b> 171:3

<b>instructs</b> 180:10	168:4 172:2 173:1	<b>investments</b> 34:24	265:6	22:14 25:20,25
<b>insurmountable</b>	173:17 179:18,23	35:3 215:24	<b>invoking</b> 126:5	26:2,18 32:1
30:13	224:10 229:21	<b>investor</b> 18:19 30:6	<b>involve</b> 130:23	33:16,19 51:18
<b>insuspecto</b> 251:17	247:10,24 255:17	91:10 130:8	<b>involved</b> 3:17 38:3	54:23 55:11,23
251:18	258:2 277:4	140:13 222:2	39:8,23 64:12	56:16 61:6 62:16
<b>integral</b> 42:24	281:21 282:17,21	223:4,5,9,16,22	144:23	62:18 82:20 83:15
<b>integrate</b> 21:18	290:12	224:1,3 225:11,19	<b>involvement</b> 38:9	83:17 84:8,23
24:22 83:14 240:1	<b>internationally</b>	226:8 227:14	196:6	85:21,25 86:22
<b>integrated</b> 17:8	16:9 69:2 90:24	228:12 230:14	<b>involves</b> 132:12	145:3,4 241:4
34:4	168:12,19 247:13	231:25 232:1	<b>involving</b> 39:24	242:3,6,16,20
<b>integrity</b> 99:6	<b>interpretation</b>	233:25 234:2,6	<b>Iran-US</b> 6:10	<b>jets</b> 78:15
<b>intend</b> 107:11	202:14 229:6,12	235:8 245:2 247:6	<b>irrefutable</b> 12:6	<b>jewel</b> 67:18
252:25	229:16,19 230:8	<b>investor's</b> 29:11	89:8 250:12,13	<b>job</b> 64:13
<b>intended</b> 21:18	230:10	224:1 232:2	<b>irrelevant</b> 94:22	<b>jobs</b> 44:13 59:4
22:20 34:17 54:8	<b>interpreted</b> 101:9	<b>investors</b> 7:20	97:4 108:17 172:8	263:22
71:15 95:6 101:2	105:20,22 117:15	17:13 21:6 27:25	<b>Island</b> 54:20 60:20	<b>Joe</b> 4:20 33:5
101:5 108:11	223:14	28:7,10 34:12	64:16	<b>John</b> 4:19 5:21
110:6 111:16	<b>interpreting</b> 229:8	35:6 41:12 42:16	<b>issuance</b> 38:16	31:10 32:2 50:11
148:5 204:4	<b>interruption</b> 271:9	48:4 59:10 71:15	284:19	61:3,18 62:4,13
254:13 255:11	<b>intersection</b> 80:13	87:17 97:8 113:10	<b>issue</b> 7:1,3 8:2	62:15 63:7,13,24
<b>intends</b> 241:15	<b>intervention</b> 8:23	113:13,16 114:19	10:11 58:3,7,8	65:9 68:9 81:19
<b>intent</b> 106:24	<b>intimately</b> 291:3	130:16 132:1,25	107:24 119:20	85:8 86:8 126:7
<b>intentional</b> 235:20	<b>introduce</b> 3:20 4:8	134:10 139:4,6,15	124:15 125:4	131:15 177:19
<b>intentionally</b>	177:22 187:8	146:2,13 154:17	136:20 137:10	199:15
244:14	190:23 195:5	163:25 170:14	146:18 162:25	<b>Johnston</b> 1:15 2:4
<b>interest</b> 46:20	196:23 204:15	215:25 216:3	169:14 170:12	4:11 68:24 71:5,7
120:8 215:17	<b>introduced</b> 191:4	217:24 226:17	172:4,21 193:17	71:8 81:6
225:16,19,24	194:8	227:24 233:3,16	205:1,1 230:5	<b>joined</b> 53:14
248:10 250:6	<b>introducing</b> 189:25	234:21 235:4,9	232:7 233:24	<b>joint</b> 52:9,18 60:13
256:18 262:1	260:15	237:4 238:22	237:2	90:3 93:6 110:1
279:4	<b>introduction</b> 88:11	241:24 242:5,14	<b>issue's</b> 190:16	110:15 116:20
<b>interested</b> 65:16	<b>invalid</b> 107:18	242:15 256:22	<b>issued</b> 8:10 89:21	160:5
<b>interesting</b> 178:19	118:10	273:22	107:16 116:21	<b>Jr</b> 4:21 33:4,23
<b>interestingly</b>	<b>invent</b> 42:4	<b>investors'</b> 17:20,23	123:19 135:11	56:4 102:24
178:11	<b>invented</b> 273:24,25	81:2 116:17	197:22 201:17	118:17
<b>interests</b> 227:15	<b>invest</b> 21:25 43:6	125:10 146:9	235:8,11	<b>JRP</b> 23:25 34:13
291:20	43:15,16 47:14	188:21 222:4	<b>issues</b> 10:3 29:5	38:6 39:4,17
<b>internal</b> 39:18	48:2 51:6	225:15 235:22	39:24 59:6 100:1	40:14 41:3,14
200:23	<b>invested</b> 281:4	<b>invitation</b> 60:5	124:9 136:21	42:4 47:16 55:16
<b>internally</b> 131:10	<b>investing</b> 35:7	<b>invite</b> 42:1	137:4,7 146:5	55:17,18,19 58:16
<b>international</b> 12:13	<b>investment</b> 5:24	<b>invited</b> 11:22 12:25	195:16	59:7,12 89:16
15:23 16:2 86:15	18:18 20:5,20	34:7 43:5 51:5	<b>items</b> 233:1	90:10,18 92:16
87:1 114:6 124:15	25:12 28:8 32:11	135:24		99:12 103:5
124:25 143:6	50:8 145:6 156:25	<b>invites</b> 14:11	<b>J</b>	109:15,21,22
151:9 155:9,18	172:2 226:16,22	179:25	<b>J</b> 55:8,14 56:21	112:5 115:2,11,13
158:20 167:5,14	273:20	<b>invoices</b> 83:10	<b>January</b> 150:15	115:16,19 116:20

116:22,24 117:18 117:19 118:12,19 119:14 120:2 121:17,19 135:11 137:24 138:16 160:6,24 161:1,15 161:22,23 162:10 163:2,7,10,14,23 164:8,11 165:14 165:25 174:13,17 175:2,11 176:20 179:3 180:10,24 183:9,18 184:4,6 184:8,13,19 185:5 185:10,11,22 186:3,4,6,16,23 187:4,10,23 188:16,20,22,25 189:7,12,21,22 190:9,9,12,19,25 191:15 192:3,7,11 192:14,21,23 193:11,18 195:19 197:9,23 198:2,10 200:8 201:17 202:21,25 206:14 206:16,18,20,23 207:8 208:10,19 208:22 209:5,10 209:13,14,17,21 210:1,10 211:2,12 245:23 258:11 278:3,9 281:4,15 284:22 285:9,18 287:14 <b>JRP's</b> 42:3 48:18 109:13 111:15 112:7 118:24 119:3 136:23 163:3 164:14,25 166:8 174:2 181:16 182:3 184:16 185:23 187:2 189:15 190:25 191:8 194:13 205:6	278:13 <b>judge</b> 1:9 3:22 5:5 11:8,18,20 66:9 66:25 71:8 106:7 147:16 148:19 177:24 199:16,19 199:22 201:6 204:21,23,24,25 205:9,22,25 206:12,18,22 208:1 210:5,6 214:24 275:3 282:3 284:1 287:9 288:11,23 292:2 <b>judged</b> 198:3 <b>judgment</b> 106:2 <b>judicata</b> 124:16,24 183:15,21 184:2 185:3 186:2 <b>judicial</b> 91:12 105:17 106:10 125:23 129:3 130:8 131:2,12,17 131:18 132:7,9,16 132:17 133:6,15 133:24 134:3,19 137:16 154:2 189:18 198:23 199:1 210:24 211:5 278:15 281:24 282:5,12 282:19 283:17,21 283:22 284:2,5 285:11,21,25 286:5,20 287:2,8 287:13 288:25 289:20 290:9,16 291:12,19 <b>jump</b> 227:25 <b>June</b> 38:15 55:18 <b>juridical</b> 223:11 <b>jurisdiction</b> 90:18 106:21 119:21 124:11 125:4,6,15 137:8 138:1 146:8 226:25 230:22	232:9 236:20 237:8,11,14 <b>jurisdictional</b> 125:10,13 126:4 290:10 <b>jurisprudence</b> 105:10 229:19,21 279:2,8 <b>juristic</b> 133:21 <b>justice</b> 15:24 106:6 106:16 177:20 <b>justified</b> 20:18 61:14 102:11 154:11 195:22 196:2 197:19 <b>justify</b> 103:17 184:24 214:6 <hr/> <b>K</b> <hr/> <b>K1P</b> 1:24 <b>Kam</b> 1:20 5:11 <b>Katie</b> 5:16 <b>Kazakhstan</b> 279:11 279:12 <b>keep</b> 52:15 54:19 194:21 199:23 217:7 268:5 277:11 <b>keeping</b> 117:22 158:5 <b>kept</b> 169:16 189:3 210:22 252:3 <b>key</b> 44:12 101:7 155:3 159:12 161:5 166:3,25 167:13 172:21 247:21 <b>keyword</b> 139:24 <b>kill</b> 40:17 <b>killers</b> 253:8 <b>kind</b> 52:15 92:11 102:10 129:3 142:24 161:16 <b>kinds</b> 231:23 283:8 <b>Klaver</b> 5:12 <b>knew</b> 23:10 39:3,5 40:16,18 68:3	111:16 118:14 131:10 243:13 244:12 <b>know</b> 5:7 41:2 56:11 58:2 62:15 63:11 159:17 162:9 253:16 267:17 272:7 275:12 <b>knowing</b> 65:16 <b>knowledge</b> 24:21 144:22 <b>knowledgeable</b> 110:2 <b>known</b> 34:20 53:3 95:19 108:12 115:25 121:6 131:7 172:11 284:21 <b>knows</b> 128:22 <b>Kontak</b> 32:9 50:10 50:13,21 61:18 <b>Kontak's</b> 49:15 50:25 <b>Krista</b> 1:19 5:11 <hr/> <b>L</b> <hr/> <b>label</b> 75:6 <b>labour</b> 110:14 262:20 263:8 <b>lack</b> 71:1 161:21 217:18 222:15 243:1 <b>lacked</b> 134:11 <b>laid</b> 158:6 <b>Lalande</b> 4:22 <b>Lamberti</b> 294:18 <b>land</b> 61:14 252:14 252:16 253:12,16 281:9 <b>landmark</b> 106:2 <b>Lands</b> 124:2 <b>landscape</b> 91:11,15 <b>Langstaff</b> 4:23 <b>language</b> 94:17 207:17 217:25 223:2 225:6	226:20,25 229:3 230:9,12 <b>large</b> 24:8 25:24 32:14 71:18 73:16 87:1 90:5 <b>larger</b> 60:25 73:19 74:12 76:2,8 79:12 <b>largest</b> 33:14,15,18 47:8 60:9 62:9 72:7 75:13 267:5 <b>late</b> 42:8,9 47:10 63:10 125:17,25 <b>Laughter</b> 275:10 <b>launched</b> 213:9 <b>Lavalin</b> 31:16 <b>law</b> 12:13,17 16:2 23:7 41:8 42:2 91:1 93:23 94:2,3 94:7 95:14,24 96:11,12,15 98:3 105:19 106:12 107:4 108:23 120:12 121:2 124:5,15,17,25 126:1,8 127:3 129:11,13 135:13 143:5,6,6,8,11,15 143:23 146:11 151:9 153:14 155:10,18 158:20 159:5 163:5 166:17,23 167:5 167:14 168:4 172:2 173:1,17 177:22 178:10 179:13,18,23 183:20 193:8 199:18 218:15 224:10 227:3,19 229:7,21 232:11 247:2,10,24 255:17 258:2 277:3,4 281:21 282:17,21 285:3 285:11,13 289:9
---	---	--	--	---

290:12	<b>left</b> 67:2 74:1 78:19 189:12 220:24 246:15 257:3,12 274:23 292:23	<b>legitimate</b> 91:9 194:9 205:4	<b>licenses</b> 211:14	95:8 149:14
<b>lawful</b> 13:20 36:10 40:18,19 93:24 129:13 175:2,10 178:13 210:2 278:5 288:18	<b>legal</b> 36:11 90:25 91:10,14 94:5 95:20,22 97:24 113:24 120:22 124:9 129:22 133:19 134:20 145:14 151:8 158:18,22 160:10 171:23 172:10,20 173:12 183:22 193:12 216:21 220:23 226:1,2 227:7 274:1,5 277:16 285:5 289:2	<b>length</b> 46:10 79:25	<b>licensing</b> 187:12,24	<b>link</b> 149:16 169:18 169:24 173:8 213:15,18
<b>lawfully</b> 97:11 103:18 143:1 164:21 211:12	<b>legally</b> 97:17 118:7 125:12 154:1 163:7 165:10 166:1 175:4,12 185:23 186:7 189:6 194:17 200:1 201:12 205:7 207:5,14 208:6,19 210:19 218:21 242:24 248:9 250:5 256:18 276:12 279:22 285:23 286:21 288:4 289:18	<b>lens</b> 191:10	<b>lie</b> 108:21 136:1	<b>linkage</b> 99:24
<b>lawless</b> 135:17	<b>legions</b> 38:25	<b>Lesley</b> 5:20 191:2	<b>lies</b> 131:11 228:6	<b>linked</b> 221:10
<b>laws</b> 99:3 139:1,18 141:6 164:12 165:4 185:16 222:4,7 259:23 281:9	<b>legislated</b> 161:24	<b>let's</b> 4:4 158:6 162:22 165:5 173:18 175:14 182:22 184:6,18 186:9 195:7 210:3 217:12 223:2 225:6 227:9 230:24 234:10 235:5 237:25 244:5 247:2,9 252:2,5,10 253:10 270:18 271:2 273:16	<b>life</b> 37:17 44:14 174:10 264:24 265:19 271:10	<b>lip</b> 158:22
<b>lawsuit</b> 128:5	<b>legislation</b> 39:1 96:21 98:23 117:8 159:21 207:21	<b>letter</b> 123:20 150:14	<b>lifespan</b> 65:14 149:5 253:7	<b>Lisa</b> 294:18
<b>lawyer</b> 202:13	<b>legislative</b> 94:16 98:10,12,16 103:21 106:15,18 205:12,18	<b>level</b> 26:14 95:23 122:24 133:2 160:15 212:4 216:24 220:13 249:14 261:5 265:25 280:1	<b>lifetime</b> 82:5	<b>list</b> 6:9 232:24
<b>lay</b> 151:22 195:1	<b>legislators</b> 107:10	<b>levels</b> 149:12	<b>lifts</b> 88:7	<b>lists</b> 251:9
<b>LB&amp;W</b> 63:13,17,25 64:4 70:16	<b>legislature</b> 101:1 106:25	<b>liability</b> 11:25 109:2,4 113:6 119:21 124:11 125:5,6,15 137:6 137:11 138:2,12 146:8 148:23 151:8 155:15 158:14 159:4,14 161:11 164:24 166:8,19 167:9 184:5,18 190:13 236:20 238:15 239:7 282:4 284:13	<b>light</b> 117:7,13,16 134:12 151:14 152:24 153:21 162:4 170:23 177:5 185:19 193:9 199:20 200:25 202:8 209:1 274:9 281:25 290:12 291:9	<b>literally</b> 33:12
<b>LB&amp;W's</b> 68:13		<b>liable</b> 162:24 169:9	<b>lighter</b> 55:8	<b>literature</b> 289:9
<b>lead</b> 174:24 189:1 256:15 262:20		<b>licence</b> 269:19	<b>likeliest</b> 134:2 285:16	<b>litigate</b> 127:5
<b>leaders</b> 220:15 267:13		<b>licences</b> 122:18 219:16	<b>likelihood</b> 175:23 176:13 177:11 178:17 179:9 183:3	<b>litigating</b> 131:21
<b>leadership</b> 44:17 86:25		<b>licensed</b> 86:8	<b>likeliest</b> 134:2 285:16	<b>litigation</b> 114:13 125:2 127:3,13,23 127:25 132:3 245:5
<b>leading</b> 17:20 52:1 58:10,14,14 79:11 81:20 93:24 126:8 197:2			<b>likelihood</b> 175:23 176:13 177:11 178:17 179:9 183:3	<b>little</b> 1:16,18 2:6,8 4:14,14 5:3,4,7 11:6,7 55:1 66:14 86:1 146:16,17,21 147:9,12,15 148:16,17,18 177:23 181:6 205:17 214:15,25 215:4 216:14 236:14 247:11 253:23 268:25 272:11,21 273:13 274:21 275:1,5,8 275:14,18,19 293:5
<b>leads</b> 118:1 188:20 263:7 268:7			<b>likelihoods</b> 178:25	<b>Little's</b> 271:1
<b>Leanne</b> 4:23			<b>likewise</b> 5:9 30:7 114:22	<b>live</b> 9:5 236:4
<b>learn</b> 115:19			<b>limit</b> 75:10 176:24 290:20	<b>living</b> 10:13
<b>lease</b> 218:22 252:8 253:12			<b>limitation</b> 98:10,12 245:21 277:18 283:8	<b>Lizak</b> 4:19 6:25 7:7 7:7,7,14 32:2 50:11,16 61:18 62:13 67:17 85:8 85:11 86:8,11,21 87:9
<b>leases</b> 86:23			<b>limitations</b> 231:17	<b>Lizak's</b> 49:22 61:4 86:4 89:2
<b>leave</b> 246:19 256:13 271:24			<b>limited</b> 94:8 153:7 153:18 202:24 226:21 231:14 283:12	<b>load</b> 81:12,14 252:21
<b>leaves</b> 150:1 291:15			<b>limits</b> 291:7	
<b>led</b> 14:14 34:13 63:3 115:1 133:20 198:23 199:6 270:7			<b>line</b> 7:24 14:16 41:24 174:6 212:1 220:17 227:25	
<b>Lee</b> 4:23			<b>lines</b> 22:22 72:2	

<b>loaded</b> 53:25	<b>Looks</b> 148:14	247:1,8 248:6,24	243:24 244:9	81:19,21,25 82:11
<b>loader</b> 80:7,10,12 80:15	<b>Lorinda</b> 4:11	249:11,20 256:11	256:10 271:7,8	91:4,19,25 113:11
<b>loans</b> 228:2	<b>Lorne</b> 4:19 93:22 194:7	259:7 261:21	272:2	123:18 124:3
<b>lobster</b> 39:21,23 58:24 177:2,3 192:17	<b>lose</b> 277:13	277:18,21 278:22	<b>management</b> 35:2	140:21 203:13
<b>lobsters</b> 40:5 177:2	<b>loss</b> 12:17 14:14,18 15:4 17:23 20:17	279:7,15,16,19,19	47:19 62:7 83:22	218:24 250:14,18
<b>local</b> 84:17 126:4 290:6	29:11 30:5 35:16 35:18,21 36:5	280:6,25 281:2,18	100:6 140:2,8	252:13,17,18,20
<b>locally</b> 100:20	43:3 125:21	282:10 286:21	141:9	253:22 254:4
<b>locate</b> 50:12 87:10	127:11 144:16	291:13 292:5,18	<b>manager</b> 47:6,17 62:4,15	255:16
<b>located</b> 48:3 54:21 60:21 74:3 76:8	145:9 149:1	<b>lot</b> 6:15 63:23 268:14	<b>manages</b> 86:23	<b>Maritime</b> 270:22
76:13 79:20,22	153:11,12,15	<b>lots</b> 253:14 254:20	<b>managing</b> 62:8	<b>Mark</b> 5:12
80:9 256:5	157:20 174:8,8	<b>lottery</b> 247:4	<b>mandate</b> 58:5	<b>market</b> 19:3 22:23
<b>location</b> 45:7,9	182:6 208:16	<b>loud</b> 10:16	64:12 99:13	23:1 24:12 25:2
48:12 61:20 67:17	211:24 223:6,12	<b>love</b> 10:12	105:17 109:16	25:16 26:11 28:17
84:11 88:1 140:24 204:9	223:22,25 225:4	<b>low</b> 264:18	110:5 116:23	28:23 32:1,3
<b>locational</b> 87:24	226:5 228:13,25	<b>lower</b> 25:11 36:6 79:22 81:15 261:4	118:15 160:10	35:12 36:13 53:21
<b>locations</b> 270:21	232:21,22,23,24	262:6 263:16	163:11 164:12	56:10,12,13,14
<b>logic</b> 42:3	238:4 239:14	264:15,19	185:12 189:15	57:9 80:16 83:18
<b>logical</b> 17:17 109:4	242:3 245:3,6	<b>lower-cost</b> 49:13	206:19,21	83:24,25 84:2,7
<b>long</b> 3:8,12,15 22:6 22:22,24 24:10	247:18 276:23	<b>lowest</b> 264:14	<b>mandated</b> 86:17	84:11,13,13,19
43:10 51:23 57:20	277:11 285:4	<b>loyal</b> 33:20	113:21 165:10	85:9,12,24 86:5
58:17 64:24 68:7	<b>losses</b> 17:21 125:24	<b>lucrative</b> 25:15	185:18,24 198:6	86:24 88:5,5,12
115:9 202:5	126:16 127:15	<b>lunch</b> 10:11,12,19 10:22 147:19,23	<b>mandates</b> 196:6	88:22 211:19
248:19 258:14	129:6 133:1 135:8	148:1,11	<b>manifestly</b> 97:6	238:12 241:8,9,25
260:19	136:18 151:4	<b>luncheon</b> 148:12	129:1 143:19	242:8,16 248:22
<b>long-standing</b> 13:2 34:11	216:2 218:8		<b>manipulated</b>	254:18 255:11
<b>long-term</b> 16:24	223:16,17 224:13	<b>M</b>	145:16	257:12 260:17,23
21:23 22:3 34:2	226:8 227:4,23	<b>M5H</b> 1:24	<b>manner</b> 108:14	261:4 266:24
50:23 57:17 87:10	230:14 233:7	<b>MacDonald</b> 4:17	135:18 160:11	267:5,13 269:24
100:3 219:1 250:3 252:13	234:7,15 273:21	<b>main</b> 54:5 150:22 158:12 250:7	244:2 252:22	270:6,12 272:9
<b>longer</b> 222:10	280:4	<b>maintain</b> 246:14	<b>manoeuvre</b> 136:7	<b>market-based</b>
<b>look</b> 184:6,18 195:7 195:9 225:6	<b>lost</b> 14:21 17:2,13 17:16 18:18 27:5	<b>maintained</b> 44:21	<b>manufacture</b> 52:21	220:17
233:13 252:2,5	29:13 32:22 36:17	<b>maintaining</b> 106:14	<b>manufactures</b>	<b>marketable</b> 65:12
253:10 293:1	36:19 149:3,24	<b>maintenance</b> 82:4	241:3	70:20 71:19 74:21
<b>looking</b> 27:24 60:17 252:4 261:21 270:20	152:6,10,13	<b>major</b> 20:4 60:2,3 90:2 161:17	<b>manufacturing</b>	75:13 78:5,12
	153:25 154:7,19	<b>majority</b> 150:23	33:19	<b>marketing</b> 32:8 82:22
	154:23 178:12	152:22 272:23	<b>map</b> 60:18 85:16 158:6	<b>markets</b> 14:23
	212:22 215:12,21	<b>make-believe</b> 37:3	<b>mapped</b> 23:14	22:20 23:1 25:9
	216:9 218:13,17	<b>making</b> 62:16	<b>maps</b> 293:16	25:21,25 48:16
	218:19 219:5,9	116:24 145:24	<b>Marietta</b> 47:6,23	57:14 85:22 145:4
	221:5 233:8,10	161:3 173:14	49:2,11 54:15	252:25 254:17
	234:17,22 235:2	194:1 202:3	59:22 60:2,8 83:4	255:25 270:6
	243:7 246:17,23	205:10 236:18	261:19 265:6	<b>marks</b> 212:2
			<b>marine</b> 31:17 60:13 64:17 81:8,10,12	<b>Martin</b> 47:6,23
				49:2,11 54:15
				59:22 60:1,8 83:3

261:18 265:6 <b>mass</b> 80:23 <b>massive</b> 142:17 <b>match</b> 99:19 <b>material</b> 22:17 69:18 78:16 86:11 87:16 200:17,23 201:1 252:24 <b>materials</b> 241:7 <b>matter</b> 1:1 7:2 43:8 43:8 129:1 218:15 226:12 247:1 282:17 285:17 287:7,24 <b>matters</b> 6:22 39:7 232:15 <b>mature</b> 260:17 <b>maxim</b> 88:6 <b>maximize</b> 86:24 <b>maximum</b> 67:21 73:3 76:3,17 78:24,25 79:2,3 <b>McCamus</b> 126:7 127:6 128:22 <b>McInnes</b> 5:16 <b>McRAE</b> 1:9 5:6 214:25 292:3 <b>mean</b> 72:16,20 258:25 273:7 <b>meaning</b> 8:11 27:2 223:11,14 225:22 229:25 241:20 291:17 <b>means</b> 12:16 154:3 161:19 230:19 259:8 289:23 <b>measure</b> 15:8 17:22 35:17 135:3,15 144:15 152:6,10 152:13 233:18,23 235:7 245:22,23 <b>measured</b> 157:19 <b>measures</b> 72:20 128:22 159:18 163:9 164:10 176:23 185:7	188:7 211:15,16 233:9 286:12 <b>mechanical</b> 24:8 <b>media</b> 111:19 <b>medium</b> 72:8 <b>medium-sized</b> 77:9 <b>meet</b> 30:6 65:10 113:24 135:9 151:3 158:19 213:25 243:13 280:15 293:20 <b>meets</b> 73:8 75:17,22 77:5,16 78:4,11 <b>mega</b> 13:16 60:24 87:6 90:5,12 <b>meltdown</b> 270:15 <b>member</b> 86:15 <b>members</b> 3:23 5:15 11:20 38:6 41:21 52:1 71:9 110:1 190:9,9,19 <b>memoranda</b> 197:2 <b>memorial</b> 157:14 174:8,23 238:14 239:5 240:20 243:9 281:12 286:16 <b>mention</b> 4:9 <b>mentioned</b> 60:12 102:23 163:9 221:3 237:17 247:12 269:4 285:10 <b>mere</b> 170:17 230:11 <b>merely</b> 125:22 138:3 143:20 226:16 <b>merit</b> 159:2 <b>meritless</b> 88:15 <b>merits</b> 12:9 13:12 13:13 18:11 37:20 42:1 49:23 87:13 89:23 90:14 96:10 99:3 116:5 117:11 124:13 131:9 138:25 139:22	143:3 146:6 162:8 <b>merry-go-round</b> 132:3 <b>Mesa</b> 249:3 <b>Messrs</b> 6:25 <b>met</b> 4:19 56:5 61:22 87:11 91:3 108:8 136:19 204:24 251:11 279:23 <b>Metalclad</b> 248:17 <b>metaphor</b> 282:7 <b>method</b> 30:7 274:16 <b>methodologies</b> 145:17 <b>methodology</b> 83:9 120:1 163:4 <b>methods</b> 252:22 <b>metrics</b> 84:13 <b>Mexico</b> 224:6,9,17 <b>mic</b> 4:1,1,3 <b>Michael</b> 31:18 61:25 <b>middle</b> 75:4 77:11 <b>Mike</b> 31:13 64:3 70:2,8 83:20 <b>millimetres</b> 79:1,3 <b>million</b> 14:21 22:1 25:19 26:16,19 47:9,11 55:23 56:3 57:4 60:24 61:10,21,21 62:2 64:9 65:11 66:3 70:9,19,20 82:1 259:21,21 262:7,8 262:10,10,13,16 262:18,19,23,24 263:10,11,12 265:15,16,16,21 265:24 266:10,15 266:15,20,21 271:12 <b>millions</b> 58:2 115:11 134:21 139:9 212:5 260:15	<b>mind</b> 10:22 117:22 130:4 158:5 169:16 175:14 189:3 194:22 199:24 210:22 217:8 232:11 234:10 268:5 277:11 <b>mine</b> 18:20 20:21 <b>mineral</b> 43:21 44:1 44:10,22 45:2,17 47:21 86:14,15,18 86:21,22,23 268:15 <b>minerals</b> 43:12,18 49:19 59:17 <b>mines</b> 91:24 <b>minimal</b> 92:24 200:13 <b>minimize</b> 129:24 <b>mining</b> 19:12 44:11 86:17 142:11 249:7,9 <b>minister</b> 56:5,7 59:14 94:4,4 97:23 98:7 101:2 101:9,15 102:1,16 103:10 104:16 107:15,23 109:7 112:4,9 115:24 116:3 118:19 119:2 201:16,20 201:22 202:17,22 203:1,6,10 204:17 205:2,6,14,23 206:20 207:4,24 208:6,8 <b>minister's</b> 102:7 107:5,21 109:6,14 116:8 121:9 201:25 202:24 205:10 <b>ministerial</b> 27:6 63:10 89:19 96:25 98:18 133:23 210:7 278:14	<b>ministers</b> 38:2,2 97:3,11 103:5,24 104:7 108:13,21 109:22 115:18 116:21 117:17 118:4 119:5,13 121:6 134:7 135:15,17,24 136:23 143:18 166:22 175:3,11 176:3,15 178:4,8 179:4 190:19,20 194:16 201:11 210:19 211:2 278:11 285:18,23 <b>ministers'</b> 101:21 116:23 117:18 118:2 <b>minority</b> 227:6,17 <b>minutes</b> 10:23 11:10 147:22,25 166:25 223:1 257:16 274:22,25 275:3 <b>mischaracterizes</b> 184:4 <b>misconstrue</b> 224:21 <b>misinformation</b> 37:11 <b>mislead</b> 145:19 <b>misrepresent</b> 224:23 <b>missed</b> 38:24 40:14 40:16 258:19 <b>mistake</b> 8:4 242:22 269:6 <b>mistaken</b> 220:23 <b>misunderstand</b> 224:23 <b>mitigate</b> 125:23 126:13 127:5 128:23 132:12 135:8 153:23 198:15 281:23 282:18 283:5,9 290:9,11,17 291:7
--	--	--	--	--

291:16	<b>Monday</b> 1:11 3:2	<b>moving</b> 62:17 181:8	228:8,14,23 229:4	79:18 96:13
<b>mitigated</b> 37:24	<b>Mondev</b> 228:19	211:7 293:2	229:5 230:4,7,8	<b>naturally</b> 67:14
40:4,12 41:5	<b>monetary</b> 15:7,9	<b>multinational</b> 87:4	230:13 231:5,22	<b>nature</b> 94:23
58:20 115:6	<b>monetize</b> 291:14	<b>multiple</b> 29:11	232:8 245:8 246:4	110:19 206:13
118:14 119:9	<b>money</b> 219:14,16	211:6	246:7 250:15	230:25 253:9
161:20 200:20	227:21 233:14	<b>multitude</b> 13:9	272:25 276:8,10	290:12
285:4	235:3 269:19	<b>Murray</b> 96:10	276:19,22 277:25	<b>Navigable</b> 123:21
<b>mitigation</b> 39:2	271:7,8 272:5	<b>mutually</b> 99:7	278:4,9 280:15	<b>Navy</b> 52:12
90:22 103:12	<b>monitoring</b> 110:25	<b>Myers</b> 169:21	286:19 289:24	<b>near</b> 52:20
104:4 108:8	111:4		290:13 292:13	<b>nearly</b> 92:25
109:20 110:25	<b>monopolistic</b> 267:7	N	<b>NAFTA-breaching</b>	222:19 259:20
111:4 118:20	<b>monthly</b> 35:5	<b>NAFTA</b> 11:23	186:3	270:2
120:4,7 126:25	<b>months</b> 38:14 57:14	12:10 14:14 15:3	<b>NAFTA-compliant</b>	<b>necessarily</b> 7:21
127:11,22 128:19	123:10,24	15:5,6,13,15	177:13 187:4	95:1 192:6 249:15
141:18 142:3	<b>morning</b> 3:5 5:5	16:19 17:18 28:2	188:20,25 192:12	<b>necessary</b> 8:1 24:20
154:6 156:25	148:20 166:21	36:3,11 93:21	197:10 208:10	35:20 44:20
162:1,16 163:9	215:20 216:3	99:4 125:11,24	209:11,13 210:10	103:12 123:6
164:10 166:10	221:7 222:25	126:6 129:5,10,12	<b>name</b> 4:9	171:7 249:4
174:19 176:23	234:21 236:22	129:15 130:11,14	<b>narrowly</b> 106:22	253:21 254:5
180:13 185:7,13	239:24 249:24	130:20 132:1,20	<b>Nash</b> 1:14 2:3,5	264:1 291:24
187:15,24 188:7	250:9 257:22	132:22,23 133:3,5	3:21,22 4:2,6,6	<b>necessity</b> 168:1
192:18 211:15	261:10 262:13	134:23,24 135:3	9:17,21 11:1,2,15	190:8
268:23 269:2	267:10,16 273:3	140:3 143:8,24	11:17,18 21:16	<b>Neck</b> 54:23 59:3
276:3 281:23	<b>morning's</b> 293:15	144:4 146:11	23:5 24:15 26:24	82:11 177:4
282:1,15 283:2,16	<b>Morrison</b> 31:20	148:22 149:1,7,10	33:23 35:24 51:16	<b>need</b> 30:7 53:1,1
286:4,12 289:25	82:21	149:16,22 151:5	58:24 60:17 66:8	67:11 70:19 77:4
290:15 291:1,10	<b>Morrison's</b> 83:6	153:9 156:12	66:17,23,25 68:1	79:25 130:8 183:5
292:6,6	<b>motion</b> 170:10	158:10,14,21	71:9,17 76:10	202:1 210:22
<b>mitigation'</b> 163:20	<b>motivated</b> 115:21	159:13,17 160:19	79:17 80:18 81:2	214:3 252:11,13
<b>mix</b> 53:3,9 252:23	115:22	160:23 167:6	81:4,5 85:7 87:23	252:14,16,17,19
262:16	<b>motivations</b> 101:22	169:8,9,10,20,25	89:1 144:2,15	252:23 254:18
<b>mobile</b> 67:11	102:8	170:4 173:6,16	146:16 147:4,14	266:13 269:14,21
<b>model</b> 26:10 32:8	<b>mound</b> 93:1	175:10,17 176:10	147:25 148:2	286:16 292:4
32:21,25 49:12	<b>Mount</b> 107:8,14	176:15,16,19	174:7 190:15	<b>needed</b> 57:16,17
88:19 151:21	<b>mountain</b> 23:11,20	177:15 178:15,21	193:22 201:4	64:23 70:3 194:3
152:5,11,19	43:7 45:7,14,22	179:3,11,17 183:5	203:15 211:8	210:13 251:7
157:18 264:4,9,11	45:23 46:10,17,22	183:18 185:4	221:7 234:21	262:22,24 289:1
265:3,8 273:23	49:20 50:20 51:4	186:21 188:17	237:7 239:25	<b>needs</b> 52:15 75:23
<b>models</b> 37:6 69:14	51:9 61:20 109:25	189:10 191:1	250:11,20 257:21	81:7,7 151:15
88:20 145:18	<b>mouth</b> 136:1	192:7 193:5,13	257:23 259:1	221:8 241:5
<b>modern</b> 49:6	<b>move</b> 71:24 158:6	203:9 204:19	285:10 290:5	<b>negative</b> 177:6
<b>modest</b> 144:12	173:18 175:6	208:15,18 209:25	<b>Nash's</b> 147:1	<b>neglected</b> 185:5
267:10	182:22 210:3	211:24 214:1	166:20 190:3	<b>negotiated</b> 224:19
<b>moment</b> 8:24 24:1	221:1 254:18	217:21 218:1	205:21	228:14
230:24 239:21	265:10	223:3,7 224:7,12	<b>nations</b> 227:5	<b>neighbourhood</b>
272:22	<b>moved</b> 63:8	224:19,24,24	<b>natural</b> 17:17 50:15	10:21
		226:24 227:1,9		

<b>neither</b> 70:13 92:14 101:8 107:3 109:21 118:18 126:1 156:21 199:25 209:6 262:4 268:18 <b>Neufeld</b> 5:12 <b>never</b> 36:15 49:24 51:10,16,20,22,23 51:25 59:16 91:3 93:5 125:5,5 131:7 158:2 240:9 244:25 277:16 <b>nevertheless</b> 104:18 <b>new</b> 5:10 13:16 14:23,23 21:20,20 22:13,14,14 25:2 25:13,14,15,20,20 25:24,25 26:1,2 26:17,18 32:1,1 33:16,19 48:23 51:18,18 53:5,15 53:19,20,22,23 54:2,4,22,22 55:2 55:3,6,9,11,20,22 55:22 56:1,8,9,10 56:12,15,15,20,22 57:2,3,7,16 60:12 60:21 61:5,5 62:16,18 82:16,20 82:21 83:15,16,16 83:17 84:2,8,12 84:15,21,22,23 85:21,21,25,25 86:22,22 87:5,11 88:5,7,12 106:2 107:6 118:22 124:21 137:17 145:3,3,4,4 211:19 237:19 240:2,3,5,10,10 241:4 242:3,6,16 242:19 243:8 250:25 260:15,17 261:7,12,14,16,19 261:23,24 265:7	273:25 277:15 285:18,19 287:14 <b>Newfoundland</b> 270:8 <b>nexus</b> 181:15 <b>nice</b> 11:11 146:24 <b>nil</b> 208:14 <b>no-go</b> 142:23 161:16 <b>nominal</b> 88:8 <b>non-confidential</b> 9:14 <b>non-discriminato...</b> 16:20 <b>non-disputing</b> 232:5 <b>non-operating</b> 218:16 <b>non-overlapping</b> 223:21 <b>non-starter</b> 183:22 <b>Nordzucker</b> 212:15 <b>normally</b> 248:12 <b>north</b> 1:2 23:11,19 43:7 45:7,14,21 45:23 46:17,22 49:20 50:20 51:4 51:9 54:17 60:3 61:20 109:25 129:9 256:6 <b>northern</b> 85:25 <b>Notable</b> 35:24 <b>notably</b> 13:16 <b>note</b> 187:20 232:25 286:14 291:22 <b>noted</b> 18:21 19:22 99:2 106:16 152:21 191:14 197:21 199:15 212:11 214:5 228:23 255:18 269:1 276:2,9 278:9 284:4 <b>notes</b> 45:5 47:19 48:17 84:25 103:25 154:16	<b>noteworthy</b> 60:10 <b>notice</b> 161:21 222:17 243:8 <b>noticed</b> 3:13 66:22 <b>noting</b> 96:11 285:14 <b>notion</b> 70:18 101:1 125:20 <b>notions</b> 172:24 <b>notwithstanding</b> 33:16 <b>Nova</b> 6:2 7:20 13:1 13:10,22 23:10,16 23:19 25:9 32:5,6 32:10 34:8 43:6,9 43:11,13,14 44:9 44:15,25 45:5,11 45:16,20 47:7,20 47:22 48:1,11,19 48:22 49:1,16 50:3,8,12 51:2,5,8 54:2,16,18,20,24 56:5 57:24 59:9 59:10,12,13,18,21 59:22 60:11,13,19 61:19 62:17,18 63:8 85:18,19 87:11,15,16,18,19 87:24 88:1 91:3 91:16,20,22 92:5 92:20 93:13 96:24 97:23 98:6 99:3,8 99:15 100:18,25 102:12 103:20 106:7 109:6,23 110:13 112:4 114:18,22 115:24 116:6,8,21 117:2 117:14 119:11,23 121:9,18 122:17 123:3 124:2 134:6 134:24 135:17,24 140:18 159:23 160:8,14 163:5 164:17 185:16 193:8 194:4	201:16,19 202:12 202:16 203:5,9,12 204:17,21 205:2 206:20 207:3 208:5 210:14 215:13,18 216:9 217:2 218:8,13,22 219:6,10 220:12 221:5 234:18 235:3,13 240:23 242:19 243:7 246:17,23 252:6 254:17,25 256:15 263:20 268:14 281:4,6 <b>November</b> 27:6 55:20 <b>NSEA</b> 99:15 118:12 137:3 160:12 184:25 191:6,12 192:19 194:1 195:3 201:15,15 201:18,24 202:6,9 202:15 203:22 204:2 209:1,17,20 209:24 <b>number</b> 8:9 154:16 191:16 193:1 249:25 251:9 262:22 274:2 278:10 280:2 290:24 293:10 <b>numerous</b> 46:7 169:19 185:2 206:24 210:11 227:8 264:8	<b>objectively</b> 93:14 102:25 108:11 <b>objectives</b> 99:17 132:20 <b>objects</b> 95:8 206:5 <b>obligation</b> 16:6,19 126:1 127:20 129:2 167:17 168:9,15,16,21,25 169:1,4,6,7,13 170:4 173:9 182:13 247:14 279:13,25 <b>obligations</b> 176:9 212:17 227:20 272:24 <b>obliged</b> 163:7 213:9 <b>observe</b> 98:15 <b>observed</b> 213:7 <b>observes</b> 101:11 127:6 133:14 206:22 <b>observing</b> 107:9 <b>obtain</b> 123:10 211:14 220:12 238:23 239:10 293:12 <b>obtained</b> 123:6,25 165:19 251:21 <b>obvious</b> 14:19 106:1 128:21 132:14 182:21 <b>Obviously</b> 244:10 <b>occur</b> 117:1,6 <b>occurred</b> 16:16 17:6 28:5,12 42:15,18 117:3 126:24 170:5 172:13,18 179:21 270:4 <b>occurrence</b> 172:9 <b>ocean</b> 92:25 <b>oceangoing</b> 53:24 <b>oceanography</b> 40:1 <b>oceans</b> 39:24 117:25
--	---	--	--	--

**O****o'clock** 66:9**object** 16:11**objection** 230:21

236:19 237:6

243:10

**objectionable** 95:9**objective** 108:15

115:2 118:23

130:4

<b>Oceanside</b> 60:22	55:17 68:10	83:15,22 174:6	<b>opposition</b> 105:8	<b>outcome</b> 26:10
<b>October</b> 27:5 38:16 266:16	<b>Ontario</b> 1:10,24,24 3:1	181:1 208:17	<b>optimistic</b> 272:2	96:14 128:2
<b>offer</b> 41:19 202:14 247:5	<b>open</b> 49:1 50:2 108:13 200:16	211:25 238:9	<b>optimized</b> 69:8	131:18 132:10
<b>offered</b> 256:25	206:19 242:8	239:3,17 241:25	<b>optimizes</b> 79:23	133:7 156:18,21
<b>offers</b> 40:21 85:14 267:6,7	288:13	242:6,7 252:10	<b>option</b> 82:25 107:22 150:1 212:9	164:9,20 165:15
<b>office</b> 90:15	<b>open-ended</b> 101:5	259:19 278:8	<b>options</b> 162:1	165:21 174:11
<b>officers</b> 251:19	<b>opening</b> 2:3,4,5,6,7 2:8 11:17 71:7	<b>operative</b> 195:4	<b>Oram</b> 123:1,8	177:12 178:17,22
<b>offices</b> 1:10	81:2,4 146:12	<b>operator</b> 8:19 9:2 9:25	<b>order</b> 8:9 53:11	199:10 209:11 211:3
<b>official</b> 13:6 38:3 121:4	148:16,17 150:16	<b>operators</b> 86:24	71:12 118:22,24	<b>outcomes</b> 165:18
<b>officials</b> 39:16 61:19 87:15,19,24	150:22 153:1,17	<b>opine</b> 58:6	125:23 127:5	183:7 203:25
90:15,17 108:5	214:22 216:4	<b>opined</b> 194:8	146:22 159:25	209:13 211:12
112:5 113:9	275:18,20 293:1	<b>opinion</b> 58:4 96:9 97:25 98:4 128:12	173:9 194:5	<b>outline</b> 214:8
118:25 119:15	<b>operate</b> 12:24 14:8 24:6 25:4 69:15	150:10 159:6	242:11 249:12	<b>outlined</b> 110:15 292:21
131:10 133:12	95:6 123:7 124:2	162:3 192:13	250:25 256:5	<b>outlining</b> 150:25
139:17 142:10,21 161:12	219:19 250:18	194:22 201:6,7,9	262:15 283:9	<b>outlook</b> 28:24
<b>oh</b> 51:17,18	252:12,19 262:22 262:24	204:16 205:3,22	286:20 293:9	<b>output</b> 69:4 70:1,4 70:10
<b>oil</b> 19:24 279:14,17	<b>operated</b> 17:7,25 42:24 60:1 86:21	206:18 207:3,15 208:2,3	<b>ordered</b> 96:3 287:24 289:11	<b>outright</b> 34:16
<b>okay</b> 10:2 66:23 147:6,25 148:9	144:11 149:14	208:2,3	287:24 289:11	<b>outset</b> 23:25 26:16 33:25 53:19 61:16
210:13 275:6	180:18 181:20	<b>opinions</b> 145:25 188:15 193:10,16	<b>orderliness</b> 95:18	67:4 138:8 139:14
293:17,18	248:18 255:15 280:14	195:6 196:22	<b>ordinarily</b> 108:9 203:2	145:5 212:11
<b>old</b> 84:25	<b>operating</b> 12:11 31:11 59:2 62:24	199:13 209:8 210:4	<b>ordinary</b> 12:19 13:22 14:6 19:1	214:5 275:20
<b>Oldendorff</b> 54:5,6 54:7 82:19,24	62:25 63:2 89:13	<b>opponents</b> 210:25	26:6 33:1 89:10	<b>outside</b> 10:20
83:5	144:5 145:1	<b>opportunities</b> 85:14 86:24	89:15,16,19,20	108:18 112:7
<b>Olmsted</b> 6:8,12,16	218:23 250:13	<b>opportunity</b> 48:21 57:23 87:3 153:13	93:4,7,12,16	118:11 137:2
<b>once</b> 18:1 20:1 30:3 37:20 73:18 78:13	255:1,22 262:12	153:15 154:1,7	121:14 123:5,14	244:3 245:18
80:4 155:25	262:20 263:3,8	156:2 162:7,19	123:16 144:8	246:5
195:16 201:18	266:6 286:23	165:1 166:15	193:20 203:14	<b>overall</b> 22:2 113:3 137:24 161:23
213:8 222:21	<b>operation</b> 24:7 62:7 69:13 79:24 80:20	178:13 179:12	223:13 225:22	167:2 233:9
243:11 257:1	80:25 122:20	199:12 243:11	<b>organization</b> 85:1	<b>overarching</b> 98:22
281:19	182:5 211:8	276:12,15,24	11:14	<b>overhaul</b> 222:8
<b>one-half</b> 57:10	252:11 269:16	277:1,12,13,18,21	<b>organizational</b> 6:22 11:14	<b>overhead</b> 79:13
<b>one-quarter</b> 65:22 72:10	271:7	278:2,5,22 279:7	<b>organizations</b> 85:3	<b>override</b> 101:10
<b>one-way</b> 174:25	<b>operational</b> 149:4 203:23 278:24	279:17,19 280:6	<b>organized</b> 150:21	<b>oversee</b> 62:5
<b>one-window</b> 134:23	292:15	280:25 281:3,18	<b>original</b> 220:8 243:4 262:8 285:7	<b>oversight</b> 63:21
<b>onerous</b> 30:12	<b>operations</b> 20:15 24:23 32:7 69:5	282:11 286:21	<b>originally</b> 217:4	<b>overstate</b> 265:18
<b>ongoing</b> 48:19		291:13,14 292:5 292:13	236:13 241:23	<b>overtures</b> 108:3
		<b>opposed</b> 132:7	<b>Osgoode</b> 93:23	<b>overturned</b> 211:1 278:15
		<b>opposing</b> 9:2	<b>Ottawa</b> 1:24	<b>overview</b> 68:25 73:10 74:15
		<b>opposite</b> 134:22	<b>ought</b> 125:14	213:21
			<b>out-of-pocket</b> 280:10	

<b>overwhelming</b> 89:11	291:25 292:1	228:9,14 229:5,11	129:18 144:21	<b>Petroleum</b> 87:2
<b>owed</b> 291:1	<b>paralegals</b> 5:14	229:24 230:4,7,10	<b>perfectly</b> 21:18	<b>Pezold</b> 29:17
<b>owned</b> 57:12	<b>parallel</b> 131:7,12	231:5 232:8	34:4	<b>phase</b> 12:1,9 13:12
226:17,23	131:13	236:25 243:16	<b>performance</b> 69:9	17:5 37:20 42:1
<b>owners</b> 262:2	<b>Pardon</b> 147:9	293:6,9	248:19 251:13	52:7 87:13 89:23
<b>ownership</b> 215:17	<b>parent</b> 240:25	<b>partisan</b> 145:24	252:7	90:14 96:10
232:23	<b>Parliament</b> 178:2	<b>partner</b> 52:19	<b>performs</b> 106:12	117:11 122:8
<b>owns</b> 86:22 224:1	<b>Parsons</b> 5:14	<b>parts</b> 85:18 150:22	<b>period</b> 55:20 56:8	124:7,13,14,19
	<b>part</b> 11:12 22:2	<b>party</b> 5:24 9:2,6	56:13	125:7,9,15 126:3
	42:25 52:10 59:6	30:14 41:24	<b>Permanent</b> 15:9	131:9,14 136:21
<b>P</b>	103:8 108:4	127:14,24 128:3	<b>permanently</b> 62:17	137:6 144:7 146:1
<b>p.m</b> 144:1,14	126:22 129:11	169:9 231:9 232:5	<b>permissible</b> 235:6	146:6,13 160:5
148:12,13 214:18	131:12 150:24	243:25 244:10	<b>permit</b> 12:23	161:2 190:13
214:19 239:23	153:16 158:2	281:22 283:5	101:24 107:15,24	212:19 215:3
240:15 260:6	161:17 163:11	<b>party's</b> 31:4 170:6	122:23 245:14	216:20 217:11,20
268:2 293:21	172:6 191:13	245:5,8	<b>permits</b> 14:8 18:20	218:6 219:4,24
<b>Pacific</b> 64:17	196:10 251:10	<b>pass</b> 69:19 74:8	48:10 89:21	220:1,10 234:11
<b>page</b> 2:2 49:3	286:8 291:24	163:10 272:21	121:13,17 122:1,6	236:10,20 237:15
<b>pages</b> 115:15	292:1	<b>passages</b> 138:12	122:18 123:6,11	237:18 238:15
<b>paid</b> 35:2 227:12	<b>participant</b> 44:2	166:4 176:18	124:1 129:22	239:7 243:6,9
242:14 254:22	<b>participants</b> 6:20	<b>passed</b> 182:1	197:22 211:14	244:20 246:22
265:6	<b>participate</b> 40:8	278:16	250:4 252:16	251:1 267:4
<b>pains</b> 251:7 261:10	<b>participated</b> 115:10	<b>passes</b> 77:20	253:21,24 271:4	271:11 273:19
<b>paints</b> 272:2	<b>particular</b> 8:23	<b>passing</b> 105:11	284:19	274:10
<b>panel</b> 60:14 90:4,7	23:19 32:12 39:19	<b>patent</b> 138:13	<b>permitted</b> 136:12	<b>philosophy</b> 33:7
92:9,12 93:6	51:9 59:17 69:17	<b>patently</b> 107:23	160:17 215:6	52:3
110:2,8,16,22	109:25 113:7,14	116:9	217:22 218:2	<b>phony</b> 243:5
111:2,18 148:5	113:15 118:5,9	<b>path</b> 132:24 170:25	226:5 268:18	<b>photo</b> 47:23,24
160:6 175:24	165:21 170:10	285:21,25	<b>permitting</b> 48:23	<b>photograph</b> 49:2,4
176:14 178:4,8	171:3 247:23	<b>paths</b> 210:8,15	123:2 266:20	49:5
183:24 191:10,11	269:9	<b>Paul</b> 31:9 58:5	267:3 268:7,11,19	<b>phrase</b> 3:7 225:24
195:16 200:2,13	<b>particularly</b> 3:8	62:14	269:6,15	231:12
200:24 203:7	30:8,24 45:8	<b>pause</b> 221:3 225:6	<b>permutations</b> 210:9	<b>pick</b> 9:23
288:2	82:19 92:22	266:17	<b>perpetrated</b> 138:14	<b>picture</b> 28:11
<b>panel's</b> 111:9	117:20 127:17	<b>pay</b> 158:22 168:16	<b>person</b> 223:11	<b>piece</b> 40:22 52:10
112:14 200:18	131:4 154:16	253:2 262:2 267:8	<b>personally</b> 50:10	72:16,20 78:9
201:1,19 288:19	225:22 242:25	<b>payable</b> 153:20	<b>personified</b> 87:19	252:14
<b>panels</b> 90:9 191:6	247:7 249:6	169:23	<b>perspective</b> 28:9	<b>pieces</b> 72:23 74:8
<b>paragraph</b> 99:11	258:15	<b>payment</b> 145:11	92:23 95:4 191:11	75:8 76:3 159:20
113:1 114:3	<b>parties</b> 3:19 7:5	155:11 227:20	201:6 270:18	<b>pier</b> 55:8,10,13
119:22 138:15	8:11,16 10:18	<b>pays</b> 272:10	<b>perspectives</b> 86:12	56:21
139:5 140:7 161:9	127:4 150:14	<b>pedestrian</b> 42:8,14	200:9	<b>pile</b> 74:14,18,23
231:9 235:21	179:25 185:3	<b>penultimate</b> 161:9	<b>persuasive</b> 170:2	75:3,7,7,14,21
237:25 239:8	190:13 218:1	<b>people</b> 6:7 22:6	<b>pertaining</b> 116:1	76:6,9,14 77:4,7,9
280:22 288:10	223:7 224:19,24	39:6 41:1,2 52:5	<b>Peter</b> 5:22 122:25	77:19,24 78:7,14
<b>paragraphs</b> 161:8	226:13 227:1	59:3 64:10,13,14	202:10	<b>piles</b> 49:9 67:12
177:18 281:11				

72:3 79:12,13,20 <b>Pinfold</b> 58:15 <b>place</b> 1:10 30:13 59:12,13,15 91:13 116:2 133:13 134:16 152:6 161:7 255:5 <b>placed</b> 278:1 <b>places</b> 74:11 83:19 <b>plain</b> 14:19 130:6 132:14 208:7 <b>plainly</b> 100:25 <b>plaintiff</b> 128:9 <b>plan</b> 32:8 57:20 83:13 216:5,25 219:25 239:25 240:7,8 243:5 251:16 263:20 264:7 266:3,6 273:23 274:1 275:3 <b>planned</b> 21:17 34:22 63:1 69:22 81:11 <b>planning</b> 23:2 63:21 145:5 202:11 250:24 <b>plans</b> 217:2 254:23 <b>plant</b> 22:8 25:5 31:15 32:7 56:25 63:23 65:14,19 68:25 69:15,17,20 69:21 70:1,22 71:13,17,25 72:5 73:23 74:11 76:2 78:18 79:9,11,24 80:25 81:11 <b>plant's</b> 69:13 <b>plants</b> 57:1 64:3 <b>plateau</b> 79:21,22 <b>play</b> 167:3 182:10 281:21 <b>played</b> 172:5 <b>playing</b> 134:21 <b>plays</b> 106:10 <b>plead</b> 157:10	236:12 280:25 <b>pleaded</b> 36:15 125:5,14 181:13 189:2 <b>pleading</b> 158:3 212:8 <b>pleadings</b> 7:18 150:11 157:1 230:3 237:2 <b>pleads</b> 245:2 <b>pleasant</b> 10:4,14 <b>please</b> 4:5 146:20 <b>pled</b> 153:2,4 154:4 157:8 166:6 167:9 236:7,11 275:21 290:22 <b>plus</b> 65:23 221:6 264:2 <b>podium</b> 71:4 <b>point</b> 9:6 11:22 12:12 13:8,17,21 14:5,18 16:18 17:7,15 21:10,16 22:16 23:11,20,23 24:6 25:4,10,21 25:25 26:7,11,15 31:11 32:7,8,12 32:22 34:1,9,18 35:13 36:21 37:15 42:24 45:8 46:14 47:14 48:19 50:17 51:6 54:10 55:2 57:5,8,22 59:15 60:12,20 61:1,3,9 61:17 62:11 63:14 65:8,25 66:4 67:5 67:16,20 68:4,7 68:17,20 70:4,9 70:13,14,15,18 71:3,13 72:4 73:7 79:15 80:18,20 81:18 82:5,15,25 83:15,19 84:4,10 85:10,13,23 86:5 87:7 88:2,10 89:9 89:14,15 90:10,12	92:5,8,11,15,22 92:24,24 93:5,15 97:1,12 102:19 108:7 114:16,20 115:5 116:4 119:3 121:11,16 125:22 135:19 140:24 142:16 143:19 144:24 149:2,22 153:12 156:23 157:23 159:19,19 159:25 160:2,6,21 162:11 165:9,20 165:22 166:22 167:20 174:3,10 174:14 176:2 177:12 178:19 179:3 180:16,17 181:17,19 183:4 183:22,23 186:17 187:6 188:5 190:25 191:8 192:20 193:7 197:7,12,21 198:2 203:11 204:18 206:14,24 208:7 208:17 209:3 210:12 211:20 214:3 222:14 223:20 225:2 228:5 234:23 239:1,13 240:1,4 242:7 246:19,20 249:24 250:19 251:4,7 252:12 254:9,16 255:6,16 256:5,17 257:8 261:3 263:24 264:7 265:20 266:23 267:24 270:20 271:4 273:24 278:25 280:13 282:24 290:2 292:15 <b>points</b> 130:12 221:2 <b>Poland</b> 212:16,23	213:9 <b>policies</b> 13:2 116:1 116:6 121:5 <b>policy</b> 5:25 32:10 34:11 43:8,9,13 44:18 45:2 51:7 59:9,16,21 60:6 87:16,19 105:5 109:23 114:18 196:24 200:9 202:11 203:24 227:7 <b>political</b> 23:6 101:10,22 102:8 105:4 248:4 255:19 286:8 287:1 <b>politically</b> 115:22 <b>poor</b> 59:1 211:20 <b>population</b> 84:15 86:3 88:19 <b>port</b> 52:15 <b>PORTION</b> 21:14 23:3 24:13 26:22 33:21 35:22 51:14 58:22 60:15 66:6 67:24 85:5 87:21 88:24 143:25 144:13 239:22 240:14 260:5 268:1 <b>portions</b> 8:12 <b>Portland</b> 84:24 <b>portrays</b> 255:24 <b>posed</b> 150:14 177:1 243:15 <b>poses</b> 112:16 <b>position</b> 28:1 42:17 154:8,10 224:4,6 273:15 276:15 281:7 <b>positioned</b> 53:20 <b>positions</b> 86:25 <b>positive</b> 111:11 176:13,14 177:6 179:9,10 183:3,7	208:13,13 284:16 <b>positivity</b> 274:24 <b>possibilities</b> 278:21 <b>possibility</b> 6:24 128:6 141:24 165:18 256:10 272:14 <b>possible</b> 8:16 16:12 27:10 40:15 85:17 102:22 147:13 167:22 174:3 210:9 211:23 216:24 264:12,14 268:23 274:3 <b>possibly</b> 38:23,24 38:24 40:25 42:9 101:2 131:21 153:8 256:15 274:12 280:19 <b>poster</b> 47:25 <b>postgraduate</b> 86:20 <b>potential</b> 23:22 25:17 29:4 49:19 118:21 157:9 174:20 176:23,24 177:6 180:14 184:20 185:6,14 185:25 187:16 192:25 209:13 210:8 211:11,14 211:17 218:20 221:13 247:5 268:22 278:10 291:17,22 <b>potentially</b> 191:17 245:9 <b>power</b> 94:20 200:11 <b>PowerPoint</b> 68:20 69:1 71:10 293:10 293:12 <b>Powers</b> 120:13 <b>practical</b> 89:3 129:1 130:2 289:10 <b>practice</b> 8:6 32:10 93:12 109:23
--	---	--	--	---

202:23 203:12,14 229:11 230:7 <b>practices</b> 35:1 203:23 <b>practitioner</b> 90:25 <b>pragmatic</b> 130:3 <b>pre-contractual</b> 212:19 <b>pre-empt</b> 141:15 <b>precedent</b> 93:18 225:9 229:20 <b>precedents</b> 91:12 91:15 <b>precise</b> 72:17 101:5 <b>precisely</b> 22:19 30:8 70:7 124:14 129:7 <b>preclude</b> 141:23 165:18 283:6 <b>precludes</b> 126:15 183:15 <b>predetermined</b> 24:11 <b>predict</b> 20:7 206:7 <b>predictable</b> 17:2 96:2 239:11 <b>predicting</b> 19:9 <b>preminent</b> 90:24 <b>prefer</b> 146:8 <b>preference</b> 101:21 102:7 105:5 <b>preferred</b> 82:25 <b>prejudice</b> 163:24 243:25 244:9 <b>prejudicial</b> 244:23 <b>preliminary</b> 125:13 170:12 237:7 <b>premier</b> 94:4 <b>premise</b> 206:15 <b>preparation</b> 83:23 197:2 <b>preparations</b> 8:17 <b>prepare</b> 63:15 200:3 <b>prepared</b> 64:6,8 115:13 180:10	251:18 <b>preposterous</b> 125:20 <b>prerequisite</b> 130:7 290:18 <b>prescribed</b> 30:6 143:1 146:10 164:11 176:24 <b>prescribes</b> 15:6 <b>presence</b> 46:7 <b>present</b> 15:18 41:10 41:14 44:23 97:23 140:15 141:3 147:25 215:12 217:1 228:5 242:13 <b>presentation</b> 58:17 80:19 147:1,1 222:25 293:15 <b>presentations</b> 293:10 <b>presented</b> 28:11 35:25 114:10 145:18 151:21 155:24 156:7 157:16 186:12 187:25 215:23 216:1 217:15 218:7 219:4,11 220:21 221:16 236:22 243:11 257:9 268:9 271:25 272:16 292:9,16 293:17 <b>presenting</b> 149:23 154:19 156:3 <b>presents</b> 37:7 <b>president</b> 63:25 196:24,25 <b>PRESIDING</b> 1:9 3:4,25 4:4 5:1 6:4 6:14,17 9:15,19 10:1 11:4,9 66:13 66:21 146:15,19 147:6,10,21 148:9 148:14 214:14,20	274:20 275:4,6,11 275:16 293:4 <b>presumes</b> 236:1 <b>pretext</b> 42:4 <b>pretty</b> 8:6 <b>prevent</b> 211:7 <b>preventing</b> 200:22 <b>prevents</b> 233:18,19 233:25 <b>previous</b> 218:2 224:7 229:4,18 237:2 <b>previously</b> 26:18 107:16 <b>price</b> 251:21 261:5 <b>prices</b> 35:5 56:16 85:15 88:8,13 242:1,16 253:2 255:9,22 259:23 260:11,22 261:1,4 262:6 <b>pricing</b> 84:18 88:19 260:7 <b>primary</b> 73:9,12,14 73:20,22,24 74:1 74:2,4,5,7,14,22 76:6 151:12 174:15 184:10 213:21 255:1 <b>prime</b> 94:4 125:7 <b>principle</b> 12:14 15:20 26:25 94:1 99:22 100:16 106:20 108:23 121:1 126:13 143:9,12 155:9,17 167:8,16,18 168:3 169:16,19 183:14 190:16 228:6,6 249:19 250:2 258:4 281:20 291:9 <b>principles</b> 21:4 98:3 116:10 132:19 143:7 155:8 156:13	158:22 167:13 173:12,24 186:10 247:3 260:22 <b>print</b> 219:16 269:19 <b>printing</b> 8:18 <b>prior</b> 20:13 107:7 130:18 161:21 182:3 245:25 259:10 281:7 <b>priority</b> 227:25 <b>private</b> 34:25 50:6 61:14 240:24 <b>privatization</b> 212:19 <b>privilege</b> 190:12 <b>privileged</b> 190:20 <b>probabilities</b> 18:3 18:16 24:17 30:4 35:19 <b>probability</b> 16:14 16:15 27:15,21 89:11 167:24 180:15,22 183:17 185:21 189:9 258:6 280:5,16 <b>probable</b> 181:3 <b>probably</b> 214:11 242:23 <b>problem</b> 10:18,25 11:8,10 263:14 275:2 <b>problems</b> 51:24 207:25 216:13,14 264:8 <b>procedural</b> 6:22 8:9 97:8 124:6,12 130:24 137:23 138:3 140:4 141:11 143:21 146:18,22 293:9 <b>procedure</b> 137:15 213:9 <b>procedures</b> 129:23 231:11,16,16 <b>proceed</b> 8:15,24 160:3,17 193:5	194:5 <b>proceeded</b> 222:20 <b>proceeding</b> 3:8 22:10 47:16 294:12 <b>proceedings</b> 1:8 5:8 124:13 228:20 282:20,20 283:25 293:2,19,21 <b>process</b> 24:8 35:12 49:14 55:16 59:7 59:13 61:2 65:1 71:21 73:7 108:10 108:25 111:21 114:13,21,25 115:2,11,19 130:20 133:6 134:5,9,24 138:5 139:9 145:22 156:25 159:8 160:21 178:1,13 178:22 182:2 183:24 186:16 188:20,25 190:12 192:4 193:25 195:8 196:8 202:9 202:20,24 203:18 203:21 205:16 206:6 208:11,12 209:12 211:12 230:25 262:19 263:2 270:24 276:13 278:5,9 281:4,15 283:24 285:19 287:8,14 289:4 <b>processes</b> 130:22 <b>processing</b> 63:19 74:11 263:1 <b>proclaimed</b> 43:16 45:21 121:6 <b>produce</b> 46:4 61:10 65:21 66:1,2 67:21 70:5,20 71:14 72:5 113:5 161:11 220:2
--	--	---	--	--

242:2 252:20 254:12,16 262:15 262:18 266:6 272:4 <b>produced</b> 18:21 22:11 79:14 81:6 85:23 136:14 242:20 254:9 281:14 <b>producers</b> 60:3 <b>produces</b> 32:21 52:17 <b>producing</b> 47:9,10 60:23 73:8 <b>product</b> 53:3 67:23 69:7 70:23 71:20 72:6,10,11,15,17 73:1,4,8 74:21 75:13,21,22 78:3 78:4,5,12 79:1,4,7 79:9,14,16 80:10 80:14,24 211:20 253:2 255:8,11 260:10 262:16 270:22 <b>production</b> 19:17 43:22 44:7 68:22 69:5 70:1,4,10 71:2 122:8 211:18 252:22 253:5 254:6 <b>products</b> 18:24 45:17 57:11 65:24 71:14 75:19 77:17 241:4 253:1 254:13,18 259:24 260:8 262:2,3 <b>profess</b> 267:16 <b>professed</b> 244:13 <b>professional</b> 64:4 65:4 123:1 145:25 <b>professionally</b> 22:9 <b>professor</b> 1:9,9 4:18 5:5,6 39:25 93:22 96:10 126:7 127:5 128:21	214:24,25 292:3,3 <b>professors</b> 40:13 <b>profit</b> 26:20 136:15 144:12,16 248:20 253:3 280:1 <b>profitability</b> 20:19 21:1 22:7 145:20 220:13 249:17 256:9 268:22 269:4 279:24 <b>profitable</b> 12:12 17:8 20:14 21:11 21:19 60:8 144:6 174:5 181:1 208:16 211:7,25 250:14 252:10,12 253:6 278:8,24 292:15 <b>profitably</b> 19:20 42:23 149:13 181:20 219:19 280:14 <b>profits</b> 17:3,14,16 17:24 18:2,2,18 19:5 20:18 29:13 32:22 35:18,21 36:17,19 37:16 85:15 149:3,24 152:6,10,13 154:19,23 157:20 174:9 175:7,13 179:6 180:19 181:16 182:7 212:22 215:13,22 216:10 218:13,17 218:19,25 219:5,9 221:5,13 233:10 234:18,22 235:2 243:7 246:17,23 247:1,8,18 248:3 248:6,21,24,25 249:11,20,21 250:10 255:18 256:11,23 259:8,9 259:13 267:10 271:12 277:15	279:16,19 292:18 <b>prohibit</b> 124:16 <b>prohibits</b> 245:17 <b>project</b> 21:12 37:23 38:9 40:17 58:13 58:19 62:15 71:6 90:2 91:5 92:11 103:25 104:9,19 104:20 111:10,14 112:16 113:24 117:25 119:25 120:6 121:20 122:4,12,21 134:15 138:24 140:22 141:4,20 142:2,15 149:2,5 149:11,22 153:12 153:13 157:23 159:19 160:2,3,16 160:24,25 161:4 162:11,17 163:21 164:19 165:9,24 166:11,22 174:5 174:14,20,25 175:6,12,13 176:5 177:2,7 179:5,5 179:13 180:14,16 180:17,25 181:4 181:17,19 182:4,5 183:11,24 184:11 184:13,21 185:7 185:14,25 186:18 186:25 187:5,18 188:10 189:24 191:19 192:9,15 192:24 193:4,7,12 194:5,11,20 195:20,24,25 196:3 197:8,12,17 198:2,9,18 199:4 200:18 201:12 203:11 204:6,19 205:4,8 206:25 208:7 210:13,15 210:20,24 211:4 211:13,16 216:1	218:16,20,25 219:18 220:6,16 221:15 234:23 238:6 239:13 240:4,18,21 250:25 251:3 253:6,7 255:2 256:5 257:19 263:9 264:23,24 265:13 266:1,19 267:3 268:10,18 269:7,14,18 270:8 270:9,14,16,17 271:10,18 273:24 277:14 278:7,12 278:16,18,25 280:13 285:1,24 286:23,24 290:2 292:16 <b>project's</b> 184:9 192:21 220:7 <b>projected</b> 66:4 82:1 84:5,14 <b>projecting</b> 259:23 <b>projection</b> 62:22 <b>projections</b> 37:12 248:6 251:14 255:20,22 <b>projects</b> 13:11,15 48:24 64:8 90:5,9 92:18 113:12 142:12 161:16 165:20 200:12 203:20 204:1 249:6,6 250:3 269:3 270:19 <b>promise</b> 134:22 <b>promised</b> 48:5 107:16 134:24,24 <b>promote</b> 23:22 24:2 32:11 34:11 50:7 51:7 59:11 <b>promoted</b> 13:2 20:21 23:15 51:3 <b>promotes</b> 268:15 <b>promoting</b> 109:24	114:23 <b>promotion</b> 32:5 <b>promotional</b> 48:20 <b>proof</b> 18:9,15 272:13 279:21 280:4,7 <b>proper</b> 136:8 154:4 161:18 163:18 193:10 208:14 229:6,16 277:22 290:22 <b>properly</b> 17:23 101:8 103:11 144:17 157:19 181:3 186:11 232:6 280:25 <b>properties</b> 34:20 <b>proponent</b> 117:23 122:12 <b>proponent's</b> 207:13 <b>proponents</b> 138:21 165:13 270:7,14 <b>proposal</b> 64:20 81:22 101:16 102:2 250:17,19 250:21 <b>propose</b> 151:18 214:10 <b>proposed</b> 111:1,4 112:16 188:8 192:17 281:8 <b>proposition</b> 197:22 197:25 208:5 280:12 <b>propositions</b> 174:24 <b>prosperity</b> 100:4 <b>protect</b> 227:8 256:6 <b>protected</b> 248:9 250:6 256:18 <b>protection</b> 98:24,25 100:8,11 114:2 123:21 <b>protections</b> 269:9 <b>protects</b> 227:17,18 <b>prove</b> 9:11 93:10
--	--	---	---	--

149:18 158:9	229:8 231:8	<b>publicized</b> 114:23	<b>pursuit</b> 142:14	13:16,21 14:5,9
171:21 173:1	243:21 247:16	<b>publicly</b> 91:18	282:18	14:18 16:18 17:7
208:15 212:4	282:25	267:13	<b>put</b> 4:1 18:5 27:25	17:12,15,25 21:10
213:25 273:10	<b>providing</b> 50:5	<b>published</b> 47:20	42:16 49:9 91:7	21:17 22:8,11,13
274:13,14,15,17	132:24 161:24	48:20	101:9 124:22	22:16 23:11,22
<b>proved</b> 18:2 169:23	202:15 280:23	<b>Pulkowski</b> 5:6 8:7	125:1 135:12	24:6,7,19,20,22
<b>proven</b> 30:4 51:12	<b>province</b> 49:20	<b>purchase</b> 53:13	148:25 151:13	25:5,5,8,9,11,22
70:10 156:11	159:22 204:10	<b>purchased</b> 87:5	152:5 154:12	26:8,11,15 27:4
172:18 233:10	<b>province's</b> 43:21	<b>purchases</b> 242:15	181:12 210:1	31:12 32:8,22
249:17 280:10,18	44:3	<b>purchasing</b> 242:8	213:22 216:8	33:2 34:1,8,10,19
<b>proverbial</b> 216:8	<b>provincial</b> 99:18,21	<b>purple</b> 73:17	256:24 258:11	36:21 37:15,18
<b>proves</b> 20:3 24:16	104:5 109:16	<b>purported</b> 107:17	269:9,10 270:17	38:4 42:24 43:15
35:17 43:2 82:15	141:6 211:5	164:6	270:18 276:14	45:8,10 46:14
121:14	278:11	<b>purports</b> 126:2	281:6	47:7,14,18,23,24
<b>provide</b> 15:3 16:4	<b>proving</b> 18:11	<b>purpose</b> 21:21	<b>puts</b> 91:1 277:21	48:19 49:2,7,11
21:22 37:22 44:16	149:7,9 151:4,10	22:10 59:18 64:22	<b>putting</b> 193:17	50:12 51:3,6,19
45:16 53:11 57:16	155:19 156:8	94:9,21,24 99:1		53:5 54:10,12,13
59:4 68:24 81:22	158:20 167:6	99:10 100:24	<b>Q</b>	54:14,16,21 55:3
86:12 101:13	169:17 170:8,13	101:6 117:16	<b>QC</b> 1:17 4:13	57:5,8,22 59:15
131:3 133:16	170:16	124:23 189:16	<b>qualified</b> 86:12	59:24 60:1,7,9,12
150:16 159:9	<b>provision</b> 104:24	216:22 230:2	110:3	60:20,22,25 61:3
182:21 190:10	169:25 195:9	250:25 266:11	<b>quality</b> 22:18 24:25	61:9,17,20 62:4,7
196:22 248:1	217:25 229:13,20	<b>purposeful</b> 105:23	25:3 31:19 34:3	62:9,23 63:9,15
279:20 281:12	<b>provisions</b> 117:14	107:1	44:14 45:21 50:19	64:6,24 65:8,9,25
289:13 291:6	120:5 195:4	<b>purposes</b> 98:17	53:2,11 144:24	66:4 67:3,5,9,17
293:14	196:18 224:24	108:18 117:8	<b>quantified</b> 281:19	67:20 68:4,7,10
<b>provided</b> 25:16	<b>proximate</b> 171:24	121:8 145:10	<b>quantify</b> 30:8	68:12,16,17,22
49:21 50:11 57:24	172:22,24 181:10	165:10 202:6	281:15	70:4,6,9,13,14,18
87:15 96:24	182:8	207:20 246:21	<b>quantity</b> 22:18	71:3,13 72:4 73:7
110:24 111:3,8	<b>proximity</b> 7:19	267:4	31:19 50:19 62:1	73:15 79:15 80:20
117:18 120:4	171:20	<b>purse</b> 212:6	62:2 69:7,18	82:6 83:1,2,4,11
157:1,2 160:18	<b>proxy</b> 28:23	<b>pursuance</b> 60:5	144:24	83:15 84:4,10
164:4 187:25	<b>PSEG</b> 248:23	<b>pursuant</b> 129:15	<b>quantum</b> 3:11	85:10,13,18 86:5
190:25 192:7	<b>public</b> 32:14 35:1	146:22 159:20	30:10,11 32:17	87:6 88:10 89:14
195:5 204:16	38:10,10,15 90:15	160:7 169:9	146:4 274:17	89:15,18,25 90:3
279:2 284:3	94:12 95:3 96:17	231:18,19 245:7	<b>quarried</b> 73:16	90:10,11,12 91:4
285:12 291:23	105:7 120:7 162:3	<b>pursue</b> 50:22	<b>quarries</b> 13:4,9,22	91:19 92:6,8,8,11
<b>provider</b> 57:13	184:16 187:2	127:22 129:14	23:18 32:11 46:9	92:14,15,22,24,24
<b>provides</b> 27:8 35:14	188:6 191:9	130:9,17 132:17	47:8,25 48:24	93:5,9,16 97:1,13
35:19 36:11 96:5	198:21 200:3	133:5 135:2	50:9 51:8 59:10	97:15,18 102:20
145:13 163:7	203:3 212:6	140:20 217:19	59:11 60:8 62:8	103:19 108:7
164:6 167:21	240:11,12 277:3	282:5 290:16	63:19 64:2 65:6	109:24 113:11
168:7,17 180:8	<b>publication</b> 43:12	<b>pursued</b> 154:7	86:21 87:17 91:24	114:16,19 115:5,7
181:9 196:9	45:11,20	290:15	92:5 123:3 219:14	116:4 118:8 119:4
201:18 205:17	<b>publications</b> 20:22	<b>pursuing</b> 243:3	254:23	121:12,16 123:7
225:13 227:11	45:6 47:25	291:19	<b>quarry</b> 11:22 12:12	125:22 135:20
			12:23 13:1,3,7,8	

140:21 143:19 144:6,10,25,25 145:1,3,21 157:23 174:10 175:4 176:2 203:13 218:24 239:1 242:18 250:14,18 252:12,16,18,20 253:21 254:12 255:16 262:14,17 262:23,24 270:20 271:4 <b>quarry's</b> 69:4 <b>quarrying</b> 46:16,21 208:17 278:8 <b>quarter</b> 270:3 <b>quarterly</b> 35:4 <b>Quebec</b> 107:9 <b>Queen</b> 1:23 <b>question</b> 6:24 9:9 76:1 125:10,13 154:16 155:3 156:23 175:15 176:11 177:14 179:1,15 182:17 182:21 186:13,14 187:9,21 188:18 191:2 193:23 212:2 215:19 216:7 236:24 243:15 249:2 251:6 259:2 269:22 270:13 274:21 276:13,17 277:11 282:15,16 283:1 286:2 290:24,24 293:5 <b>questioned</b> 289:10 <b>questions</b> 3:11 7:10 150:13 152:25 154:15 183:2 236:16 268:21 <b>quick</b> 60:11 159:16 <b>quicker</b> 49:14 <b>quite</b> 206:23 266:18 273:19	<b>quotations</b> 83:11 <b>quote</b> 18:5 30:21 43:17 96:11 99:11 101:11 106:8 110:7 121:19 126:10 138:14 174:22 258:8 267:9,10 <b>quotes</b> 101:10 <b>quoting</b> 15:16 28:14 174:7 <hr/> <b>R</b> <hr/> <b>raining</b> 42:13 <b>raise</b> 125:3 274:23 <b>raised</b> 125:6 236:19 <b>raises</b> 178:19 <b>raising</b> 125:8,17 131:11 <b>RALPH</b> 1:4 <b>Raman</b> 4:16 <b>ramping</b> 56:9 <b>Randy</b> 1:17 4:13 <b>range</b> 20:10 75:8 123:11 141:20 162:17 166:11 174:20 180:13 185:14,24 197:3 202:4 <b>ranges</b> 74:10,16,25 77:3 <b>Rankin</b> 96:10 <b>rapidly</b> 86:3 <b>rare</b> 90:6 <b>rarely</b> 289:1 <b>rate</b> 264:2,25 271:9 <b>rates</b> 83:8 253:6 263:18 264:13,15 264:15,16,21,23 <b>rational</b> 289:22 <b>rationale</b> 19:19 200:4 <b>raw</b> 241:6 <b>re-emphasize</b> 273:16 <b>re-establish</b> 27:13 27:23 167:23	180:21 258:5 277:24 <b>re-established</b> 260:13,25 <b>re-establishing</b> 289:23 <b>reached</b> 66:14 <b>reaches</b> 78:7 <b>reaching</b> 118:21 199:8 249:14 <b>read</b> 15:25 16:10 18:16 19:17 20:15 27:18 28:25 29:8 30:2 31:5 44:25 45:19 46:11 47:3 48:16 91:6 95:11 96:8,22 100:23 103:22 104:10 105:24 107:2,13 111:1,14 112:2,20 114:2,14 121:2 122:3,21 125:2 126:24 128:20 130:5 131:1 133:25 134:17 139:23 143:4,15 155:2 164:4 168:13,15,23 171:20 172:15 176:10 179:24 186:25 187:18 192:2 194:20 198:24 199:10 204:7 205:20 206:11 207:24 225:21 234:19 236:3 239:4,15 241:10,19 277:9 285:9 286:13 288:9 289:19 <b>readily</b> 82:15 117:21 <b>reading</b> 8:4 226:19 <b>reads</b> 74:5 <b>ready</b> 24:17 68:17 70:10	<b>ready-mix</b> 56:25 <b>real</b> 14:4 21:7,8 40:22 89:4 91:14 138:22 141:23 144:9 145:20 259:14 265:12 <b>real-world</b> 31:7 35:10 37:4 43:2 69:4 71:2 81:9,10 82:14 86:12 144:21 <b>realistic</b> 35:13 152:13 159:10 262:5 <b>realities</b> 257:12 272:10 <b>reality</b> 28:6 37:1,7 42:21 89:4 131:13 145:8,8,15 219:23 252:2,4,5 255:13 270:19 271:16,23 <b>realize</b> 212:23 <b>realized</b> 179:6 <b>realizing</b> 175:6 <b>really</b> 8:22 10:20 51:17 72:2 75:5,9 77:9 78:2 80:24 170:25 183:5 212:9 246:15 267:22,22 273:19 275:4 292:23 <b>realm</b> 266:25 <b>reap</b> 23:16 <b>reargue</b> 273:4 <b>rearguing</b> 136:20 <b>reason</b> 13:7,20 23:8 86:1 103:24 108:6 141:13 169:11 190:11 223:6,12 232:3 256:21 262:1 267:23 271:1 <b>reasonable</b> 10:22 20:7,9 62:22 93:11 107:12 108:3 121:3,10	127:10,21 128:18 132:13,15 133:3 135:4,7 138:4 153:22 159:9 264:2 281:22 283:9 285:20 286:18 288:21 289:22 <b>reasonableness</b> 108:22 127:2 128:24 155:5 <b>reasonably</b> 97:11 97:15 98:19 104:8 118:5 126:19,21 132:2 134:10 154:6 165:19 192:14 197:11 208:22 283:4,11 283:17 290:14 <b>reasoned</b> 229:23 <b>reasons</b> 105:3,6 118:6 143:17 215:2 217:9,14 221:19 222:11 246:8 270:25 <b>recall</b> 49:22 56:3 87:8 89:22 111:18 112:3 245:17 <b>recalled</b> 58:9 <b>receipt</b> 201:19 <b>receive</b> 108:6 122:5 122:23 146:23,25 165:9 226:1 227:20 232:22 234:1 235:10 259:24 <b>received</b> 12:8,20,22 18:20 26:6 62:13 64:20 91:23 93:2 93:17 121:16,21 122:13 271:3 <b>receiving</b> 235:8 <b>recess</b> 66:19 148:12 214:18 <b>recipe</b> 53:1 <b>recirculation</b> 77:24
--	---	--	---	--

<b>reclaim</b> 80:8,13	<b>reconfigure</b> 156:5	265:14	214:9 243:24	<b>rejection</b> 111:22
<b>reclamation</b> 67:22	<b>reconvene</b> 147:23	<b>reduced</b> 67:11	283:20 291:24	134:15 184:25
<b>recognize</b> 56:17	<b>reconvening</b> 119:14	75:16 77:5 78:8	293:10	204:12 206:17
109:14,19 138:10	<b>record</b> 19:16,20	<b>reduces</b> 71:18	<b>regarding</b> 30:9,11	209:1,16
159:3	20:14 21:1 22:6	76:17 79:24	31:10,14,16,19,22	<b>rejects</b> 208:5 257:2
<b>recognized</b> 20:17	40:2 45:4 48:23	259:18,19 262:7	31:25 32:2,4,10	<b>rejoinder</b> 97:21
43:10 98:18 103:6	51:13 93:3 103:9	<b>reducing</b> 71:21	32:13,16 41:14	281:12 292:1
116:5 169:19	117:17 118:6	<b>reduction</b> 77:10	91:16 156:3	<b>related</b> 32:7 121:17
200:8 220:14	119:7,14 121:20	<b>redundant</b> 228:16	158:14 224:21	243:15 291:4
249:4 267:21	148:10 184:16	<b>reevaluated</b> 9:11	<b>regardless</b> 94:23	<b>relates</b> 291:1
<b>recognizes</b> 44:10	187:3 188:6 191:9	<b>refer</b> 162:13 177:18	118:16 157:6,24	<b>relating</b> 265:1
132:6 273:5	192:13 209:4	281:10	163:14	<b>relation</b> 194:14
<b>recognizing</b> 100:2	248:20 249:8,17	<b>reference</b> 73:2,3	<b>regards</b> 6:20 97:1	205:2,6 269:15
252:8	251:13 252:6	80:12 95:12	<b>regimes</b> 120:16	<b>relationship</b> 82:17
<b>recommend</b> 175:2	254:7 255:6 266:4	109:15 110:18	<b>region</b> 25:12 47:3	<b>relationships</b> 33:9
175:11 179:4	267:6 279:24	112:7,8 116:20	51:25 270:22	52:4
193:12 208:20	286:7 287:4 293:7	143:9 291:23	<b>regional</b> 32:3 85:9	<b>relatively</b> 248:3
209:6 210:2	<b>records</b> 91:18	<b>referenced</b> 99:8	85:12 86:5	260:8 284:7
<b>recommendation</b>	252:9 254:22	106:5	<b>regulation</b> 48:6	<b>released</b> 258:11
41:7 42:4 87:25	<b>recounts</b> 34:6	<b>references</b> 72:12	94:12 251:25	<b>relevant</b> 36:9 97:4
118:24 119:3	<b>recourse</b> 283:17	198:1,11	<b>regulations</b> 203:22	108:16 140:25
174:13 176:13	290:19 291:11	<b>referral</b> 55:18	256:1,4	150:9 158:13
178:3 180:23	<b>recover</b> 215:7	160:23	<b>regulators</b> 240:18	193:3 202:5 203:1
184:11,25 193:4	223:16,22 227:23	<b>referred</b> 89:16 92:9	<b>regulatory</b> 14:8	259:3 276:13
197:24 198:14	228:1 230:14	92:15 93:5 103:15	16:18 26:5 48:9	279:2 281:12
206:17 209:10,16	264:1	107:7 116:11	59:14 92:4 93:17	288:5
209:20,23	<b>recoverable</b> 154:24	171:23 200:13	97:12 100:24	<b>reliability</b> 52:4
<b>recommendations</b>	<b>recovered</b> 225:5	284:2 287:25	103:18 108:7,22	188:14
109:13 112:6	249:12	<b>referring</b> 239:17	108:25 109:9	<b>reliable</b> 21:23 34:2
136:23 160:13	<b>recovers</b> 227:14	<b>reflect</b> 16:14	115:7 116:22,25	57:18 218:24
161:4 164:14	<b>recovery</b> 67:13	<b>reflected</b> 68:11	119:4 139:8	221:16 251:14
179:9 183:3	126:16 129:14	70:7,16 140:1	143:18 178:18	253:15 289:23
187:11,23 188:9	227:3 283:6	169:8 204:10	253:8 256:7	<b>reliance</b> 113:16
189:23 192:9	<b>recrushing</b> 77:25	<b>reflective</b> 225:4	<b>reinforces</b> 226:6	116:23 157:17
193:18 196:11	<b>rectified</b> 137:17	226:5 227:23	<b>reinforcing</b> 99:7	161:13 185:4
200:5 201:2,19	<b>red</b> 9:22,24 135:22	<b>reflects</b> 265:12	<b>reiterated</b> 48:25	194:13 205:5
203:7 208:13	<b>redescribe</b> 255:11	<b>refusal</b> 232:24	<b>reject</b> 101:16 102:1	206:23
278:11,14 285:8	<b>redetermination</b>	<b>refused</b> 222:1 280:9	201:23 257:13	<b>relied</b> 107:20
<b>recommended</b>	178:8 211:1	<b>regain</b> 286:20	272:18	140:13
89:18 93:8 175:25	284:14,22 287:22	<b>regard</b> 7:3 8:17	<b>rejected</b> 29:14	<b>relief</b> 15:6 126:5
186:24 187:5	<b>redeterminations</b>	12:18 88:5 98:18	151:14 152:7,14	<b>relies</b> 37:10 220:21
193:8 209:1	289:12	123:18 131:4	174:14 177:8	<b>relitigate</b> 124:8
<b>reconcile</b> 159:5	<b>redraft</b> 236:6	135:10 163:6	184:12 193:14	146:5
<b>reconciled</b> 99:6	<b>redress</b> 129:21	164:5 165:17	213:23 218:14	<b>reluctant</b> 248:1
<b>reconciles</b> 173:22	136:8	188:1,18 192:4	219:12 272:17	<b>rely</b> 117:19,25
<b>reconciling</b> 100:10	<b>reduce</b> 76:2 127:15	197:25 202:5	278:13	170:17 190:21

<b>remain</b> 8:13 34:24 189:21 249:6	<b>repair</b> 82:2	185:6,22 186:3,4	215:24 216:2	253:18
<b>remainder</b> 217:5	<b>reparation</b> 12:16	186:6 188:22	218:9 219:6	<b>residents</b> 96:1
<b>remained</b> 135:13	12:17 15:4,11	189:7,13,14,22	230:18 293:6,13	<b>resides</b> 266:25
<b>remaining</b> 123:25	16:1,7 17:10 27:9	190:25 191:9	<b>requested</b> 9:3	<b>residual</b> 101:14,24
144:16 262:9	29:16 35:21 36:22	192:7,21 195:16	215:10	<b>resolve</b> 258:14
275:23	36:25 136:17	195:19 196:11	<b>requesting</b> 170:11	<b>resolved</b> 30:20
<b>remains</b> 59:15 84:1	145:11 146:10	197:23 198:2,10	<b>require</b> 127:4	<b>resolving</b> 230:2
90:10 118:18	155:10 157:19	199:5,19 200:4,8	263:20 267:18	<b>resource</b> 46:1
119:18 179:1	167:15,17,21	200:24 201:18	<b>required</b> 12:23	252:15 253:16
280:8	168:10,15,24	202:20,21,25	21:25 24:22 53:3	<b>resourced</b> 128:3
<b>remedial</b> 132:19,24	169:6 171:9,15	203:17 205:25	53:11 61:12 78:5	<b>resources</b> 24:19
<b>remedied</b> 284:24	173:13,15 182:13	206:14,16,18	126:20,21 127:2	25:3 35:7 46:23
<b>remedies</b> 126:5	258:5 283:1	207:8 209:14	128:18 136:24	50:15 113:19
130:17 131:1,3	290:25 291:7	210:10 245:24	141:3 162:18	139:11 142:19
135:2 285:12	<b>reparations</b> 273:6	258:1,11 259:17	163:5,17 166:1,12	<b>respect</b> 40:5 49:11
290:7	<b>repealed</b> 221:24	267:1 269:23	174:20 181:23	98:2,15 105:15
<b>remedy</b> 15:2	<b>repeat</b> 20:9 253:4	284:4 287:9	183:16 184:1	145:16 159:13
129:12 130:9,19	<b>repeated</b> 140:16	<b>Reporter</b> 84:24	185:8 202:16	169:23 171:25
131:6 178:5,12	<b>repeatedly</b> 15:22	<b>reporting</b> 1:22	225:14 263:8	187:15,24 188:6
281:24 283:18	29:10	166:2	276:14 280:4	193:16 194:6
284:8 285:16	<b>replace</b> 22:11 25:22	<b>reports</b> 7:6 13:16	290:6	200:12 245:9
<b>remember</b> 56:17	261:11,21	31:9 65:24 67:20	<b>requirement</b>	247:7 258:18
<b>remembered</b>	<b>replacement</b> 82:2	81:23 82:7 83:12	110:10 126:4	293:6
291:10	<b>replicates</b> 69:13	85:8 88:4 89:1,2	128:25 181:10	<b>respected</b> 227:16
<b>remind</b> 293:8	<b>reply</b> 71:11 80:22	89:23 91:8 92:18	225:11	<b>respectfully</b> 27:1
<b>remit</b> 134:4 178:7	117:13 130:11	93:10,25 115:17	<b>requirements</b> 35:1	34:15 162:25
<b>remittal</b> 131:19,23	157:14 174:22	116:13,17,25	108:9 113:25	<b>respectively</b> 191:6
<b>remitted</b> 211:1	286:15	123:23 145:13	123:21 160:12	231:24
285:17	<b>report</b> 28:20 38:16	146:4 202:7,18	170:16 173:16	<b>respond</b> 179:7,14
<b>remote</b> 171:13	61:24 68:21 70:8	284:1	198:4	204:4 282:14
173:3 182:12	82:8,23 83:25	<b>represent</b> 79:13	<b>requires</b> 17:11	<b>respondent</b> 1:7,18
<b>remotely</b> 21:13	84:17 87:13 97:20	234:17 235:3	77:10 143:12	29:25 176:7 222:5
<b>removed</b> 206:17	98:1,5,14 102:24	<b>representation</b>	173:1 181:14	<b>respondent's</b>
<b>render</b> 182:11	105:14 106:6	271:21	193:11,24 195:9	276:22
211:16 228:13	107:4 109:2,11,21	<b>representations</b>	<b>requiring</b> 132:16	<b>responding</b> 156:9
264:10 286:11	110:6,7 111:15	113:8 114:15	134:18	292:11
<b>rendered</b> 188:11	112:5,14 116:11	140:11 161:12	<b>requisite</b> 19:21	<b>responds</b> 203:8
278:18	116:24 117:13,19	<b>representative</b>	<b>res</b> 124:16,23	<b>response</b> 105:7
<b>rendering</b> 216:12	118:17 120:1	11:15	183:15,21 184:2	150:16 170:10
<b>renewed</b> 282:19	122:25 123:7	<b>representatives</b>	185:2 186:1	180:3 182:16
<b>renowned</b> 63:20	126:9 130:11	5:24 50:3	<b>research</b> 64:14	187:19,20 188:24
90:24	132:6 135:11	<b>representing</b>	119:16	196:11 197:14
<b>reopen</b> 42:1 124:9	160:13 161:25	200:10	<b>reserve</b> 18:5 19:21	200:7 235:18
146:5	162:15 163:8	<b>Republic</b> 20:23	249:25	250:8,8,22
<b>reopened</b> 124:18	174:13 177:19,24	<b>request</b> 38:13	<b>reserved</b> 90:4,5	<b>responses</b> 38:13
	180:10,24 184:4,7	115:12 152:1	<b>reserves</b> 19:10	150:18

<b>responsibilities</b> 178:4	<b>resulting</b> 61:6 145:9 155:11	137:16 154:2	<b>rightly</b> 112:23	263:1,1,4 277:14
<b>responsibility</b> 16:3 100:17 114:7	157:20 263:9	160:5,11 176:14	<b>rights</b> 133:17	277:15
137:9 168:5	<b>results</b> 35:5 69:5	178:4,7,18 183:24	225:11 233:2	<b>rocks</b> 24:8,9,9
282:24	107:11 124:9	189:18 191:5	250:4	<b>Rodney</b> 5:12
<b>responsible</b> 16:5	220:16 266:19	192:12 195:16	<b>rinse</b> 78:15	<b>role</b> 100:9 106:9
47:18 105:1 168:8	267:18	198:24 199:1	<b>rinsed</b> 65:24	155:23 161:23
168:18 195:12,13	<b>resumed</b> 293:22	200:2,13,17,24	<b>Ripinsky</b> 19:21	175:16 176:16,18
195:18 196:10,13	<b>RESUMES</b> 24:13	203:7,18 209:3	172:1,20	176:20 177:15
197:14 199:25	33:21 51:14 60:15	210:24 211:6	<b>rise</b> 104:21 108:3	187:22 200:2
200:7 247:13	67:24 87:21	278:15 281:25	159:13 160:22	229:15
<b>rest</b> 163:21	143:25 239:22	282:5,12,19	282:20 288:20	<b>Roncarelli</b> 94:11
<b>restore</b> 17:11 154:7	260:5	283:18,21,23	<b>rising</b> 86:3 88:7	<b>Ronen</b> 4:16
<b>restored</b> 153:25	<b>resuming</b> 66:20	284:2,5 285:11,22	133:2	<b>room</b> 6:7 260:3
278:2,6 282:11	148:13 214:19	285:25 286:5,20	<b>risk</b> 20:4 22:17 24:5	282:6,9
291:12	248:13 214:19	287:3,8,14 289:1	210:21 211:6	<b>root</b> 137:8
<b>restores</b> 178:12	<b>retain</b> 58:5 104:16	289:21 290:9,16	259:10,18 268:11	<b>rooted</b> 36:25
<b>restoring</b> 281:5	<b>retained</b> 58:10,13	291:12,19	268:13,17,19	108:23 118:6
<b>restricted</b> 178:16	<b>retired</b> 199:16	<b>reviewed</b> 7:6 32:20	269:6,15,17	145:8 227:7
<b>restrictions</b> 269:5	<b>retrospect</b> 139:12	64:4 179:13 197:6	270:12 271:18	<b>roots</b> 51:11
<b>result</b> 14:20 17:2	<b>return</b> 81:1 90:21	<b>reviewing</b> 62:12	272:10 278:17,17	<b>Rosen</b> 4:23 28:12
29:15 31:3 40:20	201:10 264:2	137:16 140:5	283:12	234:14,25
67:9 102:13 120:9	288:14	287:19	<b>risk-free</b> 219:16	<b>Rosen's</b> 144:19
128:8 129:6 133:1	<b>rev</b> 68:12,13,19	<b>reviews</b> 90:8 148:6	272:6	259:6
133:8 134:2 139:3	70:16	191:8	<b>risk-taking</b> 256:21	<b>roughly</b> 263:7,11
143:22 148:22	<b>revealed</b> 90:14	<b>revised</b> 1:12 240:21	<b>risks</b> 33:2 177:1	265:15,16 266:15
150:7 152:19	131:8	<b>revision</b> 70:7	211:10,13 219:18	267:4 270:24
153:8 155:5,20	<b>reveals</b> 98:14	<b>revisions</b> 69:24	248:4 255:19	<b>round</b> 49:23
156:16 160:23,24	<b>revenue</b> 23:17 44:8	<b>reward</b> 258:21,25	270:10	<b>routinely</b> 18:17
167:9,10 183:11	47:2 61:15 233:19	<b>rewind</b> 40:9 124:20	<b>road</b> 158:5 174:3,4	85:3 92:19
186:10 206:25	253:3 279:25	<b>rewrite</b> 246:13	174:25	<b>royalty</b> 49:24 50:3
208:12 212:3,8	<b>revenues</b> 20:11	<b>Richard</b> 1:4 238:20	<b>Robert</b> 5:20 196:24	61:15
213:12,18 220:4	233:15	<b>riddled</b> 216:11	<b>robust</b> 83:18 84:1	<b>RPR</b> 294:18
222:8 237:10	<b>reverse</b> 78:21	<b>rife</b> 257:10	<b>rock</b> 22:21 43:25	<b>rubble</b> 93:1
238:10 245:25	107:18 109:1	<b>right</b> 5:23 6:7 30:3	45:13 46:2 49:8	<b>rule</b> 23:7 94:2,2
252:23 258:14	<b>reversed</b> 59:17	39:21,23 40:5	50:20 61:11 62:9	95:14,24 96:11,14
263:16 264:19	<b>review</b> 38:11,12,25	47:12,14 56:7	67:15 69:11 71:18	98:3 106:11
268:17 273:12	43:1 60:14 63:7	119:13 129:4	71:18,19,22,23,24	108:23 120:12
276:8 280:16	71:10,12 90:4,9	176:25 192:16	71:24 72:21 73:16	121:1 135:13
283:10	92:12 93:6 98:13	219:21 225:25	73:19,21 74:8,9	143:6,8,11,23
<b>resultant</b> 158:15	106:4,10 110:2	226:1,2,12 231:1	74:12,16,18,19	154:22 155:23
160:20 290:13	125:23 128:7	231:3 232:17,21	75:8,10,15 76:2,3	166:23 227:2,4,7
<b>resulted</b> 67:23	129:4 130:9 131:2	232:22,23,24	76:5,6,17,19,23	230:17 283:11
159:4 192:15	131:12,17,19	234:8 235:10	77:2,5,8,9,13,15	285:11,13 292:12
278:10 284:15	132:7,9,16,17	256:6 270:15	77:20,22 78:6	<b>ruled</b> 248:18
	133:6,15,24 134:3	274:13 277:16,20	86:2 220:2 242:19	<b>rules</b> 1:2 95:20
	134:19 135:17	278:1 284:25	252:21 262:16,19	156:1,20 243:21

245:13 246:2 <b>ruling</b> 273:1 <b>run</b> 51:19 124:20 <b>running</b> 65:1 253:7 <b>Rusoro</b> 250:1 251:8 251:12	<b>Saturday</b> 3:16 <b>saw</b> 250:8 256:25 <b>saying</b> 40:2 45:22 46:17 112:10 155:6 156:16 166:20 175:9 183:2,6 207:7 209:10 234:5 290:5,11 <b>says</b> 28:14 29:1 73:12 75:6 76:14 111:22 126:9 132:10 155:20 194:23 225:7 229:14 234:15 239:8 251:9 266:20 <b>scale</b> 220:19 <b>scalpel</b> 174:12 <b>scenario</b> 177:13 187:4 188:16 190:22 194:25 219:20 <b>scenarios</b> 195:18 196:5 <b>schedule</b> 10:5,10 258:13 <b>scheme</b> 98:16 103:21 205:12 <b>scholar</b> 90:25 <b>school</b> 62:20,20 93:23 <b>Schwartz</b> 1:9 5:5 214:24 292:3 <b>science</b> 108:12 115:20 <b>scientific</b> 34:14 58:3 115:3,15 118:23 <b>scientifically</b> 103:1 <b>scientists</b> 39:22 58:6 <b>SCMA</b> 260:16 261:2 262:21 <b>scope</b> 94:9 96:19 108:18 112:7	118:12 137:2 170:11 225:5 244:3 245:8,18,19 283:1 <b>scoping</b> 38:11 <b>Scotia</b> 6:2 7:20 13:1 13:10,23 23:10,16 23:19 25:9 32:5,6 32:10 34:8 43:6,9 43:13,14 44:9,15 45:6,11,21 47:7 47:20,22 48:1,20 48:23 49:1,16 50:4,8,12 51:2,5,8 54:2,16,18,20,24 56:5 57:24 59:9 59:11,12,13,18,21 59:22 60:11,13,19 61:19 62:17,18 63:8 85:18,19 87:11,15,16,18,19 87:24 88:1 91:3 91:16,20,23 92:5 92:20 93:13 96:24 97:23 98:6 99:3,9 99:16 100:25 102:12 103:20 106:7 109:6 110:13 112:4 114:18 115:24 116:6,8,21 117:2 117:14 119:11,23 121:9,18 122:17 123:3 124:2 134:7 134:25 135:17,24 140:19 160:8,14 163:5 164:17 185:16 193:8 194:4 201:16,20 202:12,16 203:6 203:10,12 204:17 204:21 205:2 206:20 207:4 208:5 210:14 215:13,18 217:2 218:9,14,22 219:6	219:10 220:12 234:19 235:3,13 240:23 242:19 243:7 246:17,23 252:6 254:17,25 256:15 263:20 268:14 281:4,6 <b>Scotia's</b> 43:11 45:17 48:11 109:23 114:22 159:23 216:9 221:5 <b>Scotians</b> 44:25 100:18 <b>Scott</b> 1:18 2:6,8 5:4 5:7 11:7 146:17 146:21 147:9,12 147:15 148:17,18 275:1,5,8,14,18 275:19 <b>screen</b> 9:4 69:12,17 74:9 76:21 77:1 78:15,18,18,19 80:21 85:16 154:13 157:13 160:9 210:23 215:6 237:25 268:4 274:12 276:2 277:20 <b>screened</b> 75:24 76:20 77:23 <b>screening</b> 73:22,24 74:1,2,6,7,22 76:22,25 89:25 <b>screens</b> 71:23 74:8 78:2,2,15,22 <b>seabed</b> 81:18 <b>Seabulk</b> 64:19 <b>sealed</b> 64:5 <b>Seamen</b> 32:13 <b>seaports</b> 48:15 <b>secession</b> 95:12 143:9 <b>Sechelt</b> 64:17 <b>second</b> 4:12 61:4 88:3 149:15	158:16 166:13 167:3 169:15 195:24 196:13 199:18 200:6 227:2 238:6 245:16 246:1 259:22 273:13 275:25 287:9 288:16,25 289:15 290:23 <b>secondary</b> 74:18 76:12,12,14,16,19 76:20,22,24,24 77:2,4,8,12,24 <b>secondly</b> 6:25 175:3 <b>section</b> 73:22,25 74:2,2,4,8 99:1,8 163:8 195:11,11 196:6 197:3 199:20 201:18 238:16 240:11 <b>sector</b> 44:12 <b>secure</b> 16:24 34:1 57:18 238:24 239:11 <b>securing</b> 286:23 <b>see</b> 3:5,24 4:5 9:4 10:4,8 11:11 49:4 54:18,19,21 60:18 66:8 73:11,25 74:4 75:6 76:14 76:21 79:10,19 80:11 85:16 146:24 154:13 210:23 215:5 222:9 238:1 247:24 255:9 262:14 263:19 266:2 292:22 <b>seek</b> 17:13 117:20 132:16 152:1 202:1 234:7,22 281:8 <b>seeking</b> 130:19 222:16 235:12 <b>seeks</b> 125:3 223:22
<b>S</b>				
<b>S.D</b> 169:21 <b>safe</b> 188:8 <b>safety</b> 67:6 <b>sail</b> 175:13 263:23 <b>sailed</b> 181:1 <b>sailings</b> 55:10 <b>sake</b> 151:16 271:2 293:7 <b>salable</b> 67:23 <b>sale</b> 52:18 56:10 213:4,10 267:11 <b>sales</b> 56:1,15 85:15 213:8 253:5 261:21 267:14 277:14 <b>sand</b> 25:13 43:24 52:17,20,23 53:1 53:1,4,7,10,11,15 53:19 54:3 55:3 55:20 56:1,8,9,20 57:3,7,10 65:23 65:24 72:11,14 75:9 78:9 79:2 82:16 84:12 87:5 240:2,10 241:2,14 241:19 261:12,14 261:16,19,23,24 265:7 <b>sandpits</b> 91:25 <b>sandwiches</b> 10:13 10:15 <b>sat</b> 40:13 <b>satisfactory</b> 147:8 <b>satisfied</b> 18:13 123:22 <b>satisfy</b> 115:12 145:11 173:15 181:23 198:3 238:12				

<p><b>seen</b> 6:15 47:24 49:10 256:2 258:7 277:20 <b>selected</b> 63:17 <b>selectively</b> 28:11 <b>self-evident</b> 145:9 <b>sell</b> 35:12 57:3 71:15 220:3 240:9 252:25 254:14 263:4 265:19 270:22 <b>selling</b> 25:19 26:17 57:9 240:2,5 265:21 <b>sends</b> 77:3 <b>senior</b> 39:15 50:14 135:25 <b>sense</b> 31:6 95:18 268:16 <b>sensible</b> 129:14 <b>sent</b> 77:23 120:2 <b>sentence</b> 245:12,16 246:1 <b>sentences</b> 236:21 244:5 <b>separate</b> 71:23 74:9 78:16,22 79:5,6 149:12 159:20 170:19 215:2 244:4 <b>separated</b> 75:23,24 <b>separates</b> 71:18 77:1 <b>separating</b> 71:22 <b>separation</b> 74:25 <b>sequential</b> 270:5 <b>sequestration</b> 6:24 7:4,25 <b>servants</b> 135:25 <b>serve</b> 182:12 186:7 223:20 <b>served</b> 204:21 <b>service</b> 84:21 158:22 <b>services</b> 1:22 49:21 50:6</p>	<p><b>servicing</b> 263:24 <b>session</b> 8:20,21,24 8:25 9:7,14,24 239:20 260:2 267:25 <b>sessions</b> 38:11 <b>set</b> 43:4 50:25 108:9 108:12 113:3 114:9 148:15 161:10 178:6,25 203:21 214:21 231:11,22 293:9 <b>sets</b> 99:9 195:17 225:8 238:21 <b>setting</b> 200:4 <b>settle</b> 229:19 <b>settlement</b> 245:10 <b>seven</b> 112:6 <b>seventh</b> 270:5 <b>severely</b> 256:8 <b>sham</b> 34:16 131:25 <b>shamefully</b> 23:21 125:25 <b>Shane</b> 1:19 5:9 <b>shape</b> 72:17 <b>share</b> 35:5 84:2 88:22 233:1 <b>shared</b> 46:20 100:16 <b>shareholder</b> 224:11 224:12 232:18 <b>shareholders</b> 35:3 227:3,6,17,21,22 233:20 <b>shareholding</b> 234:6 <b>shares</b> 233:9 <b>sharp</b> 37:2 66:16,22 147:24 <b>Shay</b> 32:16 <b>shed</b> 202:8 <b>Sherk</b> 58:11,16 <b>shield</b> 96:5 <b>ship</b> 23:2 25:10 53:24 54:7,25 55:8 56:22 61:11 80:7,10,12,15,16</p>	<p>81:7,7,15 83:4 242:2,18 263:21 263:23 264:2,5 265:13 269:11 270:22 <b>shipments</b> 270:1 <b>shipped</b> 54:4 252:24 <b>shipping</b> 22:13,21 31:21,23 39:20 55:6 61:6 82:15 82:25 83:16 145:2 211:18 254:19,20 254:25,25 263:14 263:15,25 264:13 264:20 265:4,6,9 <b>ships</b> 22:22 52:16 54:5 252:21 256:4 <b>shockingly</b> 131:8 <b>short</b> 10:5,6,9 42:19 134:18 151:7 184:3 190:19 214:16 217:21 220:20 265:22,24 274:25 280:2 <b>short-circuiting</b> 184:1 <b>shortcomings</b> 152:12 <b>shortly</b> 68:24 187:8 <b>shovel</b> 33:13 254:3 270:17 <b>shovel-ready</b> 218:25 <b>show</b> 92:18 170:2 185:3 262:15 265:7 <b>showed</b> 142:1 <b>showing</b> 50:20 170:20 226:4 277:19 <b>shown</b> 235:15 <b>shows</b> 14:1,12 17:5 42:21 69:18 89:11 157:15 184:16</p>	<p>208:14 210:18 225:3 262:21 271:21 <b>side</b> 10:4 49:7 88:20 243:2 <b>sides</b> 7:8 156:1 <b>sight</b> 3:9 <b>signal</b> 8:22 9:6,25 <b>signalling</b> 8:19 <b>significance</b> 105:25 110:20 198:5 <b>significant</b> 17:3 19:14 33:17 39:1 40:3,11,11 41:4 49:18 58:18 85:14 101:17 102:3 104:2,14,21 112:19 115:4 118:13 119:8,18 120:6 136:24 141:17 142:4 161:18 162:15 163:19 166:9 174:18 180:12 183:10 184:14,22 185:13 191:18,23 192:2,15,22 195:21,25 197:16 200:19 208:23 209:15,18,22 251:10 252:1 260:19 269:24 <b>similar</b> 21:1 54:9 82:24 156:20 165:7 224:4 280:16 <b>similarly</b> 19:21 29:17 51:10 213:17 <b>Simma</b> 1:9 3:23 5:5 11:8,19,20 66:9 67:1 71:8 147:16 148:19 214:24 275:3 282:3 292:2 <b>simple</b> 12:5,15 24:7 86:1 98:13 137:14</p>	<p>145:9 187:2 190:11 208:7 260:9 262:21 267:2 271:20 273:12 277:17 <b>simply</b> 9:3,6 25:22 26:16 27:22 36:6 37:13 72:22 101:19 102:5 103:13 108:13 109:19 119:2 126:15 135:25 144:16 157:17 158:23 160:19 179:8 186:2 187:3 201:13 208:15 210:19 211:23 213:24 224:21 226:22 237:22 246:10 258:11 259:17 261:11,16 262:2 263:23 268:16 269:1,18 269:21 271:19 272:1 278:22 280:15 <b>simulates</b> 69:4 <b>Sinai</b> 107:8,14 <b>single</b> 254:2 255:5 271:14 <b>singular</b> 13:21 33:24 57:23 157:18 <b>sir</b> 3:21 <b>sit</b> 191:3 <b>site</b> 24:2 32:7,12 50:13,17,18 67:14 79:19 113:15 142:16 <b>site-specific</b> 67:15 <b>sits</b> 202:10 <b>sitting</b> 187:7 <b>situate</b> 160:19 <b>situation</b> 27:14 118:6 167:24 180:15,21 183:17</p>
--	---	--	---	--

185:20 189:8 197:9 210:1 258:5 258:8 277:24 289:23 <b>six</b> 43:14 112:6 123:24 267:5 <b>Sixteen</b> 11:21 <b>size</b> 54:9 69:7 71:24 72:17,25 73:2,3,4 73:20 74:9,19,25 75:8,10,17 76:17 77:3 78:10,24,25 79:2,3 <b>sized</b> 72:8,23 <b>sizes</b> 52:16 72:13 75:22 252:23 255:8 <b>skewed</b> 220:15 <b>skill</b> 294:11 <b>skyrockets</b> 220:5,7 <b>slide</b> 72:1 73:13,18 74:1 79:13 80:18 80:21 277:19 <b>slides</b> 68:21 69:1 71:10 73:6 146:23 146:25 <b>slightly</b> 79:1 261:6 <b>slope</b> 78:21 <b>slower</b> 42:10 <b>small</b> 24:9 32:15 75:9 78:8 266:12 <b>smaller</b> 71:18,19 72:9 77:6,16 79:4 <b>smooth</b> 8:15 <b>snapshot</b> 27:24 <b>SNC</b> 31:16 <b>SNC-Lavalin</b> 81:24 82:7 123:23 <b>so-called</b> 10:5 41:16 <b>social</b> 142:6 <b>society</b> 86:16 89:6 96:3 <b>socioeconomic</b> 58:7 58:10,12,19 59:6 <b>software</b> 68:23	<b>sold</b> 52:20 79:6 84:4 85:24 255:7 <b>sole-source</b> 57:12 <b>solely</b> 97:22 243:5 <b>solid</b> 14:15 174:6 212:1 <b>soon</b> 147:13 <b>sophisticated</b> 22:5 <b>sorry</b> 116:20 <b>sort</b> 225:7 233:4 270:11 <b>sorted</b> 80:5 112:23 <b>Sossin</b> 4:19 93:22 97:9 101:11 103:25 116:19 130:11 131:18 133:13 194:7 200:14 201:7 285:15,19 <b>Sossin's</b> 97:25 98:4 116:16,25 117:13 201:5 205:3 207:2 <b>sought</b> 238:22 255:10 <b>sound</b> 52:5 100:5 <b>soundings</b> 56:7 <b>source</b> 94:6 238:8 241:6 <b>sources</b> 25:23 84:20 89:5 <b>south</b> 85:25 86:3 <b>southeast</b> 60:19 <b>southwest</b> 54:24 <b>span</b> 274:24 <b>spared</b> 57:25 <b>speak</b> 71:5 108:25 <b>speaker</b> 9:16 <b>speakers</b> 9:20 <b>specialists</b> 39:20 <b>specialized</b> 63:18 78:21 <b>specializing</b> 81:20 86:9 <b>specific</b> 7:16 8:12 19:20 69:6,6 98:16,21 114:9	116:19,23 117:6 121:10 140:23 169:24 170:16 255:8 <b>specifically</b> 29:13 36:11 43:7 45:6 66:1 87:11 99:8 120:20 132:24 139:16 142:13 161:3 197:21 201:4 205:23 212:22 226:14 231:7 244:13 <b>specification</b> 72:7,8 72:9,19,24 73:5 74:21 75:12,18 76:4 77:6,16,23 80:5 <b>specifications</b> 61:23 69:8,11 72:6,15 73:9 78:5,12 87:12 <b>specifics</b> 165:2,6 166:15 <b>specified</b> 165:21 255:8 <b>speculate</b> 14:12 38:21 40:23 42:9 179:8 <b>speculation</b> 37:6 41:15 149:19 181:22 <b>speculations</b> 286:25 <b>speculative</b> 21:13 37:12 152:4 218:20 221:14 247:6 248:2 249:1 256:12,22 292:17 <b>speech</b> 3:6 <b>speed</b> 256:3 269:5 <b>Spelliscy</b> 1:19 2:7 5:10 150:6,8 151:18,19,24 152:3,8,18 169:2 214:10,17,21,22 214:23 239:24	240:16 260:7 268:3 292:21 <b>spend</b> 152:22,25 222:11 257:16 263:3 272:5 <b>spending</b> 84:15 <b>spends</b> 50:17 <b>spent</b> 50:13 58:2 115:11 216:4 268:14 <b>spokesmen</b> 40:21 <b>spot</b> 227:9 <b>spread</b> 266:18 <b>spurious</b> 126:2 <b>square</b> 133:10 <b>Sr</b> 33:12 56:4 215:15 <b>stable</b> 22:23 23:6 96:2 238:23 <b>staff</b> 203:3 <b>stage</b> 63:4,10 190:7 221:14 249:7 250:22 251:3 <b>stakeholders</b> 35:4 227:8 <b>stand</b> 4:9 292:20 <b>standard</b> 15:8,11 15:12 16:1,11 17:10 18:9,14 30:12 36:12 68:23 69:3 127:1 128:24 140:1,9 141:9 165:12 166:1 203:12 249:13 <b>standardized</b> 203:19,25 <b>standards</b> 86:16,18 93:13 107:13 130:24 277:8 279:3 <b>standing</b> 125:4,10 151:25 217:19 222:15 223:5,9,16 226:21 246:11,20 274:14 <b>standpoint</b> 58:20	66:11 <b>stands</b> 201:9 208:4 <b>start</b> 3:20 11:12 62:24,24,25 148:11 158:12 161:7 223:2 247:2 254:3 <b>started</b> 53:9 236:8 <b>starting</b> 33:12 54:1 167:20 282:24 <b>startup</b> 21:12 211:9 <b>startups</b> 211:11 <b>state</b> 6:8 16:3,5 20:19 33:16,19 51:24 67:5 84:17 84:22 87:11 96:7 113:9 133:2 136:13 140:12 161:12 168:5,8,18 213:3 222:2,4,5,6 247:13,14 282:23 <b>State's</b> 16:13 30:21 <b>stated</b> 15:15 94:11 201:4 251:1 268:12 281:5 287:9 <b>statement</b> 2:3,4,5,6 2:7,8 11:17 47:4 49:16 51:1 59:21 71:7,11 80:23 81:3,4 100:15 148:16,17 150:22 214:22 224:8 231:21 237:23 238:7 239:6,7,18 240:17,20 242:4 269:16 275:18 <b>statements</b> 31:9 240:6 <b>states</b> 34:10 50:10 89:6 98:22 203:16 221:24 223:19 224:5,17 228:10 231:20 232:4 234:4 235:19 236:1 238:10
---	--	---	--	---

239:4 245:1 247:12 270:23 288:11 <b>States'</b> 232:15 <b>Stati</b> 279:11,18 280:9,17 <b>stating</b> 110:7 <b>station</b> 76:13 <b>statistics</b> 89:4 <b>statue</b> 100:14 <b>status</b> 7:21 <b>statute</b> 94:9,25 95:5 98:14 99:18,21 103:16 195:4 <b>statutes</b> 91:11 97:2 105:19 210:7 <b>statutorily</b> 113:20 <b>statutory</b> 94:7 108:19 109:5 120:16 121:8 207:17 <b>stay</b> 261:4 <b>Steamship</b> 22:22 <b>step</b> 127:21 128:19 205:15 230:24 234:25 <b>Stephen</b> 32:16 <b>steps</b> 127:10 132:12 135:7 153:22 181:25 182:10 281:22 <b>Sterling</b> 265:5 <b>stipulated</b> 122:9 <b>stockpile</b> 69:20 80:1 <b>stockpiled</b> 79:16 <b>stockpiles</b> 75:25 79:10,14,21 80:4 80:6,9 <b>stone</b> 14:22 16:25 22:17,23 23:10 24:12,25 25:1,2,3 25:10,13,22,23,25 26:1 31:19 34:3 43:24 46:5,23 47:9 49:8 53:8,15	53:19 54:3 55:4 55:21 56:8,10 57:3,7,10,19 65:23 69:23 70:19 70:20 82:17 84:12 85:12 87:5 144:24 145:2 240:2,10 252:23 253:14 261:12,14,16,20 261:23,25 265:7 265:22,24 266:5 267:12 <b>Stone's</b> 56:1,20 <b>stop</b> 147:20 281:19 <b>stopped</b> 54:11 <b>storage</b> 67:12 <b>storied</b> 61:13 <b>stories</b> 246:20 <b>story</b> 112:23 <b>straight</b> 14:15 174:4,6 212:1 <b>straightforward</b> 12:5 83:9 <b>strange</b> 105:12 285:22 <b>strategic</b> 48:12 <b>strategically</b> 34:19 <b>strategy</b> 22:3 44:4 245:5 274:2,5 <b>stream</b> 248:8 256:17 <b>streamline</b> 134:23 <b>streamlined</b> 13:18 61:2 <b>street</b> 1:10,23,23 42:12 55:10,14 56:21 <b>strong</b> 52:2 100:9 <b>struck</b> 198:2 <b>structural</b> 82:9 <b>structure</b> 145:6 228:7 230:13 <b>studied</b> 59:6 <b>studies</b> 81:17 83:24 86:20 87:3 88:17 115:16	<b>study</b> 39:7 58:6,12 61:1 63:5 90:2 115:14 145:18 177:17 <b>studying</b> 39:23 <b>stunning</b> 14:20 <b>sturdy</b> 65:18 <b>style</b> 83:4 <b>subject</b> 19:1 20:25 34:25 171:15 196:5 201:22 241:8 259:10 <b>subjected</b> 23:24 138:6 <b>subjection</b> 95:19 <b>Submerged</b> 124:2 <b>submission</b> 106:1 145:23 223:19 228:11,23 232:5 232:15 234:5 235:19,21 245:2 245:15 254:10 <b>submissions</b> 146:13 150:18 170:9 218:1 222:3 224:5 224:16 226:11 229:18 239:19 249:24 250:9 258:19 268:13 279:9 <b>submit</b> 125:20 154:17 160:13 218:3 <b>submitted</b> 97:21 217:4 231:10,23 237:20,23 240:17 244:17 245:25 253:17 258:1 <b>submitting</b> 222:18 <b>Subsection</b> 195:17 196:5,9,15 <b>subsequent</b> 65:13 182:2 229:10,11 230:6 284:18 <b>subsequently</b> 121:24 122:5	<b>substance</b> 37:8 97:6 <b>substantial</b> 113:19 136:18 <b>substantially</b> 54:8 <b>substantive</b> 106:3 116:7 137:25 140:4 141:12 143:20 <b>substantively</b> 137:22 138:10 <b>substitute</b> 26:1 178:21 <b>substitutes</b> 38:21 40:22 <b>substitution</b> 164:8 <b>succeed</b> 53:20 139:20 141:25 <b>succeeded</b> 35:8 <b>success</b> 22:7,25 138:22 <b>successful</b> 12:12 20:3 22:4 35:6 51:13,17 89:14 133:9 144:5 287:13 289:5 <b>successfully</b> 255:16 <b>successors</b> 133:12 <b>suffered</b> 153:11 155:20 159:15 162:6 166:14 170:19 216:3 217:23 218:4,9 223:17,17 224:14 225:18,20 230:14 237:9 238:4 273:22 276:8 282:1 283:10 <b>suffers</b> 152:11 184:3 221:22 <b>sufficient</b> 103:17 169:24 171:8 172:22 181:15,18 181:22 198:3 233:11 248:8,10 249:14 250:5,6 253:2 256:19	280:5,16 <b>sufficiently</b> 173:7 182:7 248:19 249:12 <b>sugar</b> 212:20,24 213:2 <b>suggest</b> 136:2 149:14 198:13 200:14 209:4 225:2 229:18 <b>suggested</b> 193:22 237:7 279:22 290:5 <b>suggesting</b> 127:9 <b>suggestion</b> 88:16 <b>suggests</b> 127:19 <b>suitable</b> 16:25 57:18 <b>Suite</b> 1:10 <b>suited</b> 22:19 <b>Sujay</b> 5:19 <b>sum</b> 166:3 182:16 207:2 <b>summarize</b> 152:4 175:8 217:16 272:22 <b>summarized</b> 138:13 161:10 173:23 <b>summary</b> 34:18 <b>summed</b> 163:12 <b>summing</b> 161:6 <b>sunk</b> 157:22 242:4 242:13 280:19 <b>Super</b> 275:16 <b>Superpave</b> 34:3 57:19 61:23 <b>supplier</b> 33:15,18 <b>suppliers</b> 54:15 261:12,16 262:4 <b>supply</b> 14:22 16:25 21:24 22:15 34:2 57:13,16,18 87:10 88:9,12,20 238:9 238:24 239:2,12 241:16,25 242:6,7
---	--	---	---	---

260:9,10,11,12,15 260:23,24 261:3,8 262:5 267:9	<b>systems</b> 63:19,22 63:22 172:10	221:6,7,9,18,24 222:1,4,7,12	78:13	<b>third-party</b> 41:20
<b>supply-demand</b> 19:2	<b>T</b>	<b>taxes</b> 144:17 145:12	<b>test</b> 10:17 27:19 39:4,5,6 172:12 180:6 181:21	<b>Thomas</b> 5:22 97:20 106:17 204:20
<b>support</b> 5:15 18:7 40:2 81:18 131:16 207:16 216:5 242:20 289:14	<b>table</b> 4:10,12,15 43:4	<b>teacher</b> 90:25	<b>tested</b> 69:8 114:11	<b>thorough</b> 141:16 161:25
<b>supportive</b> 189:24 192:9	<b>tack</b> 226:10	<b>team</b> 4:8 5:10,15 9:17,22	<b>testifies</b> 199:13	<b>thought</b> 288:8
<b>supposed</b> 146:23,25	<b>tainted</b> 119:7	<b>teams</b> 3:20	<b>testify</b> 7:9	<b>thoughtful</b> 150:13
<b>supremacy</b> 106:15 106:18	<b>Tait</b> 5:15	<b>technical</b> 5:15 123:20	<b>testimonies</b> 7:14	<b>thousand</b> 59:3
<b>Supreme</b> 94:10 95:13 106:3,8 107:7,16 120:10 128:11 129:16 131:22 143:10 204:23	<b>take</b> 11:15 47:21 60:6 127:10 132:9 135:7 136:12 150:23 151:19 153:5,22 163:10 174:12 175:9 176:17 186:4 196:14 202:3 212:14 222:25 227:9,21 229:9 230:17 244:5 268:4 281:22 283:19	<b>technique</b> 93:1	<b>testimony</b> 7:17,18 33:4 37:23	<b>thousands</b> 115:15
<b>sure</b> 3:16 253:13 282:7	<b>taken</b> 8:9 33:11 35:16 50:2 94:18 115:25 123:10 128:23 151:11 155:1,7,16 156:11 159:1,18 162:25 163:2 170:25 181:25 182:4 195:23 196:4 197:4 224:6 226:10 275:25 276:5,7	<b>techniques</b> 19:13	<b>text</b> 73:11 74:5	<b>threat</b> 112:17
<b>surely</b> 125:16 135:8	<b>take</b> 8:9 33:11 35:16 50:2 94:18 115:25 123:10 128:23 151:11 155:1,7,16 156:11 159:1,18 162:25 163:2 170:25 181:25 182:4 195:23 196:4 197:4 224:6 226:10 275:25 276:5,7	<b>TeleZone</b> 129:17	<b>textured</b> 95:15	<b>three</b> 11:24 33:14 38:8,14 40:13 54:1 60:25 64:21 74:9 90:7 115:9 148:7 151:22 158:12 201:20 214:6 217:14 224:18 245:22
<b>surge</b> 49:9 67:12 74:14,18,23 75:3 75:6,7,14,21 76:6 76:13 77:4,7,8,18 77:24 78:7,14 79:20	<b>term</b> 57:21 68:8 260:20	<b>tell</b> 189:12 275:2	<b>thank</b> 3:22 4:25 5:1 5:2 6:4 8:7 11:11 11:18 66:17,25 146:14,15 148:10 148:18 214:13,14 214:17 274:19 293:2,4,18,20	<b>three-eighths</b> 57:10 65:22 72:8
<b>surplus</b> 70:23	<b>terminal</b> 31:17 60:13 81:8,10,12 81:15,19,25 91:4 91:20 113:12 123:19 124:3 140:22 145:1 203:13 218:24 250:14,18 252:13 252:17,18,20 254:4 255:16	<b>template</b> 180:9	<b>theoretical</b> 14:10 37:2 42:20 70:25 88:18 116:12	<b>three-quarter</b> 57:9 72:7,18,21 74:13 74:16,17,19 75:17 76:3 77:6
<b>surprising</b> 216:16 262:25	<b>terminals</b> 64:18 81:21 91:25 253:22	<b>tempore</b> 251:17,18	<b>theory</b> 37:7 39:11 88:10,14 89:3 133:8 186:2 204:17 216:14 221:11 237:19,20 242:9,10 244:15 244:24 271:22 274:18	<b>three-quarters</b> 65:22 75:11 76:7 76:18 77:15 78:10
<b>surrounding</b> 162:14	<b>terms</b> 5:18 71:16 72:13 101:7 109:15 110:17 112:7,8 116:20 189:14 249:1 254:1,6	<b>tens</b> 177:10	<b>thereabouts</b> 74:13	<b>threshold</b> 125:9,13 279:20,21,23 280:5,15
<b>Susan</b> 58:11,16	<b>ten</b> 11:22	<b>tenth</b> 62:9	<b>thing</b> 10:8 94:13 148:3 237:21	<b>throughput</b> 69:12
<b>Susanna</b> 1:20 5:11	<b>tenders</b> 37:1	<b>term</b> 57:21 68:8 260:20	<b>things</b> 95:17 221:18 277:17	<b>ticket</b> 207:13 247:4
<b>sustain</b> 100:18	<b>tens</b> 177:10	<b>terminal</b> 31:17 60:13 81:8,10,12 81:15,19,25 91:4 91:20 113:12 123:19 124:3 140:22 145:1 203:13 218:24 250:14,18 252:13 252:17,18,20 254:4 255:16	<b>think</b> 3:25 6:19 7:8 8:6 10:7 11:1,2 60:4 66:8,14 147:18,22 151:14 214:20 274:23 285:19	<b>tide</b> 88:7
<b>sustainable</b> 99:23 198:19	<b>ten</b> 11:22	<b>tempore</b> 251:17,18	<b>thinking</b> 38:23	<b>tied</b> 136:25
<b>Sutton</b> 1:17 4:13	<b>tenth</b> 62:9	<b>ten</b> 11:22	<b>third</b> 4:15 75:5 77:21 173:18 200:15 262:11	<b>tight</b> 10:20
<b>synthesis</b> 111:6	<b>term</b> 57:21 68:8 260:20	<b>tenders</b> 37:1	<b>thereabouts</b> 74:13	<b>Tilcon</b> 56:11,14
<b>synthesized</b> 32:20	<b>terminal</b> 31:17 60:13 81:8,10,12 81:15,19,25 91:4 91:20 113:12 123:19 124:3 140:22 145:1 203:13 218:24 250:14,18 252:13 252:17,18,20 254:4 255:16	<b>tens</b> 177:10	<b>theory</b> 37:7 39:11 88:10,14 89:3 133:8 186:2 204:17 216:14 221:11 237:19,20 242:9,10 244:15 244:24 271:22 274:18	<b>time</b> 10:7 22:9,10 24:23 27:24 29:20 29:22 42:16 45:3 47:13,15,16 48:18 50:13 55:16 56:11 56:13 60:2 62:5 66:9,10,15,15 78:6 81:14 83:10 93:3 106:7 116:3 125:8 139:2
<b>system</b> 48:6 67:10 67:12 79:10,20 80:7 129:22 161:24 227:19	<b>take</b> 11:15 47:21 60:6 127:10 132:9 135:7 136:12 150:23 151:19 153:5,22 163:10 174:12 175:9 176:17 186:4 196:14 202:3 212:14 222:25 227:9,21 229:9 230:17 244:5 268:4 281:22 283:19	<b>term</b> 57:21 68:8 260:20	<b>theoretical</b> 14:10 37:2 42:20 70:25 88:18 116:12	
	<b>taken</b> 8:9 33:11 35:16 50:2 94:18 115:25 123:10 128:23 151:11 155:1,7,16 156:11 159:1,18 162:25 163:2 170:25 181:25 182:4 195:23 196:4 197:4 224:6 226:10 275:25 276:5,7	<b>terminal</b> 31:17 60:13 81:8,10,12 81:15,19,25 91:4 91:20 113:12 123:19 124:3 140:22 145:1 203:13 218:24 250:14,18 252:13 252:17,18,20 254:4 255:16	<b>theory</b> 37:7 39:11 88:10,14 89:3 133:8 186:2 204:17 216:14 221:11 237:19,20 242:9,10 244:15 244:24 271:22 274:18	
	<b>takes</b> 31:8 33:1 117:9 234:25 258:14	<b>terminals</b> 64:18 81:21 91:25 253:22	<b>thereabouts</b> 74:13	
	<b>talk</b> 257:21 259:1 270:19	<b>terms</b> 5:18 71:16 72:13 101:7 109:15 110:17 112:7,8 116:20 189:14 249:1 254:1,6	<b>thing</b> 10:8 94:13 148:3 237:21	
	<b>talked</b> 235:6	<b>ten</b> 11:22	<b>things</b> 95:17 221:18 277:17	
	<b>talking</b> 274:6	<b>tenders</b> 37:1	<b>think</b> 3:25 6:19 7:8 8:6 10:7 11:1,2 60:4 66:8,14 147:18,22 151:14 214:20 274:23 285:19	
	<b>tandem</b> 168:16	<b>tens</b> 177:10	<b>thinking</b> 38:23	
	<b>tangible</b> 248:3	<b>tenth</b> 62:9	<b>third</b> 4:15 75:5 77:21 173:18 200:15 262:11	
	<b>task</b> 158:17 185:18	<b>term</b> 57:21 68:8 260:20	<b>theoretical</b> 14:10 37:2 42:20 70:25 88:18 116:12	
	<b>tax</b> 23:17 32:17 47:1 144:18 145:6 145:10 215:22	<b>terminal</b> 31:17 60:13 81:8,10,12 81:15,19,25 91:4 91:20 113:12 123:19 124:3 140:22 145:1 203:13 218:24 250:14,18 252:13 252:17,18,20 254:4 255:16	<b>theory</b> 37:7 39:11 88:10,14 89:3 133:8 186:2 204:17 216:14 221:11 237:19,20 242:9,10 244:15 244:24 271:22 274:18	

147:19 150:24 152:22,25 190:15 214:11 217:20 219:22,22 222:11 222:22 236:24 244:6 248:19 251:5,17 263:2,21 263:22 264:14 265:22 266:6 268:14 269:22 270:13,24 275:23 279:4 282:7 286:19 291:20 293:3 <b>time-barred</b> 246:4 <b>time-limited</b> 246:6 <b>times</b> 56:6 60:25 64:21 267:5 269:10 <b>today</b> 12:11 59:16 89:13 144:5 150:24 152:22 162:13 174:7 177:22 194:8 201:4 203:15 204:24 208:2 211:8 222:12 226:11 237:18 250:11,15 252:3 253:23 256:25 257:8 268:13 276:9 285:11 287:5 290:5 292:21 293:3,19 <b>told</b> 39:5 131:11 170:12 250:11 <b>Tom</b> 31:24 53:16 <b>tomorrow</b> 272:6 293:20 <b>ton</b> 26:20,21 84:5,6 144:12 262:14,23 262:24 263:7,16 <b>tons</b> 14:21 25:19 26:16,19,19 47:9 47:11 54:6 55:7 55:12,23 56:2,3	57:4 60:24 61:10 61:21 62:2 65:11 66:1,3 70:19,20 81:13 260:15 262:16,18,19 265:22,24 266:10 <b>Tony</b> 5:21 191:3 <b>top</b> 54:20 73:4,20 74:15 75:5,10,17 78:10,24 79:2 215:21 264:22 <b>topic</b> 177:18 <b>topography</b> 67:13 79:18 <b>Toronto</b> 1:10,24 3:1 <b>total</b> 31:6 63:6 <b>totally</b> 145:22 189:22 <b>touch</b> 173:19 257:11 <b>tour</b> 50:2 <b>touring</b> 58:25 <b>touted</b> 48:10 <b>track</b> 19:20 22:6 48:8 51:12 249:8 279:23 <b>trade</b> 1:2 5:25 129:10 186:2 <b>traded</b> 267:13 <b>traditional</b> 19:12 <b>transcendent</b> 96:15 <b>transcribed</b> 294:12 <b>TRANSCRIPT</b> 1:8 1:12,13 21:14 23:3 24:13 26:22 33:21 35:22 51:14 58:22 60:15 66:6 67:24 85:5 87:21 88:24 143:25 144:13 239:22 240:14 260:5 268:1 <b>transfer</b> 232:23 <b>transgress</b> 120:12 <b>transgressed</b>	143:23 <b>transgresses</b> 120:25 <b>transparent</b> 32:21 212:18 <b>transpired</b> 182:2 <b>transport</b> 35:12 84:22 87:12 123:19 220:3 <b>transportation</b> 48:13 <b>transported</b> 80:16 <b>trap</b> 45:12 46:2 <b>treasury</b> 213:3 <b>treat</b> 13:7 <b>treated</b> 14:5 26:4 28:10 49:23,24 50:2 79:6 108:1 133:12 135:14 <b>treaties</b> 172:1 229:8 230:1 <b>treatment</b> 12:7,20 13:22 14:1,17 15:2 16:20 32:24 42:15 89:12 93:21 133:2,11 135:23 136:5 137:22,25 138:11 139:25 140:1,3 143:7,21 143:22 165:24 279:13 <b>treaty</b> 212:17 213:1 224:18,21 229:8 229:11,12,17,20 229:24 230:9,10 <b>trends</b> 84:15 <b>tribunal</b> 3:23 6:11 6:23 7:4,9,13,16 7:22,25 8:8,10,14 8:23 9:1,8 10:8 11:21,24 13:13,25 14:12 18:4,6,21 19:7 20:16 28:3 29:12,18 30:5,18 35:19,25 37:2,21 37:22 39:9 41:2 41:11,17,21,21	42:1 45:5 71:9 87:8 89:22 91:8,8 93:19 97:7,24 98:17 99:2,7 108:2 109:1 111:17 112:3,22 112:25 114:3 116:5 117:10 118:11 119:21 124:9,17,22 131:16 136:22 137:14,20 138:6 138:10,13 140:2,6 143:17 144:4 146:2,7 150:14,19 150:25 151:6,15 152:20,24 154:9 154:15,18,21,22 155:2 156:4,16 157:5 158:13 162:23 163:12 164:6 165:8,17 166:7 169:22 170:1 173:7,21 174:17 175:18,22 176:12,17,17,19 178:21,24 180:4 182:25 183:9,15 185:11,20 187:14 188:2,13 190:14 190:17 194:22 211:24 212:9,25 213:7,13 214:2,2 215:8,15,18 220:11,23 221:8 221:10,15,17 226:13,24 228:18 228:23 229:9,22 232:9 236:6,16 237:3,11 243:1,16 243:22 246:2,11 246:15 248:17,23 249:3,11 251:9,12 257:1,12 258:21 259:9 268:21 269:14 272:13,18	272:23 275:23 276:19 277:6 279:18,22 280:3,9 281:11,17 284:11 285:6 286:16,24 290:24 292:4 293:8 <b>tribunal's</b> 15:6 21:5 30:22 109:3 132:20,21 137:8 137:10 138:2 155:23 162:23 165:6 175:15 186:8,13 187:21 187:22 230:18,22 231:3 236:16,25 237:8 259:3 268:21 276:16 279:3 282:14 291:22 <b>tribunals</b> 15:14 17:25 18:17 20:22 29:10 156:19 169:20 177:15 178:15 212:12 218:18 221:25 225:13 229:15 230:1 247:25 248:16 250:4 <b>tried</b> 255:21 <b>trigger</b> 114:5 173:9 <b>trilateral</b> 224:20 <b>trip</b> 55:13 <b>trips</b> 55:13 62:16 <b>truck</b> 73:15,15,18 <b>true</b> 37:15,23 90:19 92:7 103:6 184:8 236:9 251:4 263:3 <b>trump</b> 243:5 <b>trusted</b> 84:20 89:5 <b>trusts</b> 86:23 <b>truth</b> 131:10 <b>try</b> 8:22 11:10 180:20,20 272:8 292:4 <b>trying</b> 238:5 277:23
--	--	---	---	--

<b>Tuesday</b> 293:22	<b>ultimate</b> 135:14	114:24 217:9	<b>United</b> 34:10 50:9	221:21 264:10
<b>tumble</b> 49:9	160:25 162:2	221:13 259:3	89:6 221:24	265:11 272:17
<b>tunnel</b> 76:9,10	164:1 196:19	<b>understate</b> 262:12	223:19 224:5,17	<b>unseemly</b> 136:4
<b>tunnels</b> 79:17 80:8	201:17 202:2	263:13	228:10 231:20	<b>unsound</b> 145:17
80:13	286:22	<b>understood</b> 34:21	232:4,14 234:4	<b>unsuccessful</b> 51:21
<b>turn</b> 71:4 105:3	<b>ultimately</b> 57:6	40:1 94:8 110:5	235:19 236:1	<b>unsurmountable</b>
145:23 158:16	64:20 75:15 92:13	116:14 176:18	238:9 239:3 245:1	242:23
159:12 162:22	229:2 269:7	206:3 244:13	270:23	<b>Unsurprisingly</b>
165:5 175:15	284:16	<b>undertake</b> 58:11	<b>universally</b> 15:12	219:24
186:9 201:14	<b>ultra</b> 112:8	<b>undertaking</b>	<b>universe</b> 131:8	<b>untenable</b> 197:25
214:10 217:12,17	<b>unacceptable</b>	121:19 201:21,22	<b>unjust</b> 142:10	<b>untrammelled</b>
222:13 237:25	112:18 244:22	201:23 206:9	156:22 258:15	94:14
240:12 243:14	<b>unaccompanied</b>	207:6	<b>unjustified</b> 247:5	<b>unverifiable</b> 145:18
246:18 247:9,22	98:9,11	<b>undertaking's</b>	<b>unknown</b> 41:7	<b>unviable</b> 188:12
257:7	<b>unassailable</b> 12:19	207:11	261:25	<b>unwinnable</b> 23:25
<b>turned</b> 34:16 63:6	<b>unbiased</b> 41:19	<b>undertakings</b> 38:13	<b>unlawful</b> 16:23	138:8 139:13
<b>turning</b> 73:6	<b>uncertain</b> 128:1	<b>undeveloped</b>	23:24 29:22 42:3	<b>upcoming</b> 90:16
121:13 144:2	132:10 249:1	218:16	172:14 177:25	<b>updated</b> 26:9 68:11
151:17 166:24	256:22 285:21,25	<b>undisclosed</b> 108:16	178:6 284:9	<b>upheld</b> 190:14,17
187:7 192:19	<b>uncertainties</b>	<b>undisputed</b> 85:1	<b>unlawfully</b> 287:17	227:5
<b>turns</b> 271:15	118:17,20 212:2	86:6	<b>unlawfully'</b> 30:1	<b>upholding</b> 106:11
<b>twice</b> 47:17	<b>uncertainty</b> 30:9,11	<b>undoubtedly</b> 12:21	<b>unlevel</b> 134:20	<b>upper</b> 75:10
<b>two</b> 5:11,24 6:10	30:19,21,25	90:23	<b>unlimited</b> 45:12	<b>UPS</b> 170:1
7:25 10:3 13:17	179:19 180:4	<b>undue</b> 244:8,11	94:5,19 101:3	<b>upward</b> 264:17
35:9 38:9 48:20	182:17 183:7	<b>unequivocal</b> 203:11	205:23 231:1	<b>upwards</b> 64:9
53:22 54:12 56:23	211:3 269:24	<b>unexpected</b> 163:1	<b>unnecessary</b> 101:8	<b>urged</b> 228:19
62:19,21 74:17	<b>UNCITRAL</b> 1:2	<b>unfair</b> 12:7 32:23	129:24	<b>USA</b> 241:5
76:7 77:3 80:13	156:1 243:21	93:20 107:6	<b>unpermitted</b>	<b>use</b> 16:25 19:12
119:5 147:23	245:13 246:2	133:10 137:22,25	218:15	22:19 42:3 52:21
148:11 149:12	<b>uncommon</b> 90:2	138:10 143:21	<b>unprecedented</b>	53:12 54:9 57:19
150:22 159:20	<b>unconstrained</b> 58:5	<b>unfairly</b> 26:4	23:24 47:15	67:11 78:22 79:23
166:3 174:23	<b>uncontested</b> 32:18	133:13 287:16	138:18 161:22	180:5 183:19
187:7 195:18	43:7	<b>unfairness</b> 137:23	163:1	194:25 218:18
196:21 202:8,18	<b>uncontroverted</b>	<b>unfathomable</b>	<b>unrealistic</b> 257:11	221:12 225:23
221:4 236:21	201:9 208:4	261:25	272:3	234:12 257:2,24
238:3 244:5	<b>underestimated</b>	<b>unfold</b> 56:18	<b>unreasonable</b> 93:19	263:15 264:12
270:19 284:1	265:9	<b>unfolded</b> 193:20	97:6 107:6,24	<b>uses</b> 78:15 79:18
291:3	<b>undergone</b> 222:8	287:3	116:9 119:6	<b>usual</b> 108:8
<b>Tyler</b> 4:22	<b>underlies</b> 89:9	<b>unfolding</b> 57:14	120:11 129:1	<b>usually</b> 10:14 178:6
<b>type</b> 69:7 89:24	<b>underlying</b> 94:1	<b>unforeseen</b> 253:7	143:19 156:22	<b>usurp</b> 41:16
232:12 287:7	216:18 268:9	<b>unheard</b> 90:10	290:20 292:17	<b>utility</b> 289:11
<b>types</b> 223:21	<b>understand</b> 8:8,16	220:13	<b>unreasonably</b>	<b>utilize</b> 67:13
231:17,18	49:5 221:9 224:18	<b>uniformly</b> 72:22	136:3	<b>utilizing</b> 19:20
<b>typical</b> 89:24	233:13	<b>unique</b> 25:15 67:15	<b>unreliable</b> 22:16	<b>utterly</b> 135:9
<b>typically</b> 178:23	<b>understanding</b>	84:11	152:11 216:12	
	50:19 71:1 114:20	<b>uniquely</b> 53:20	219:12 220:15	
				<b>V</b>
<b>U</b>				v 94:11 129:17

279:11	<b>vast</b> 52:17 191:5	<b>virtue</b> 75:1 80:1	257:8 262:17	<b>weekends</b> 3:15
<b>valid</b> 13:20	<b>vastly</b> 67:10	248:13	275:9,23 282:13	<b>weeks</b> 6:10 10:14
<b>valuable</b> 5:14 23:12	<b>venture</b> 22:4 34:23	<b>vis-à-vis</b> 175:19	<b>wanted</b> 40:17 48:1	38:10
<b>valuation</b> 18:1 28:2	52:9,19 154:9	177:15	68:4 90:16 109:8	<b>weight</b> 7:23
28:13 29:15 30:7	<b>ventures</b> 34:20	<b>visibility</b> 42:13	173:19 205:25	<b>welcome</b> 6:18
31:8 35:17 36:1,4	<b>verifiable</b> 84:20	<b>visible</b> 22:17	<b>wants</b> 124:7 131:13	140:20 170:14
36:5 86:9,16,18	103:3	<b>vision</b> 33:24 34:1	<b>war</b> 261:5	<b>welcomed</b> 50:1
144:3,20 145:7	<b>verified</b> 22:19	<b>visited</b> 136:16	<b>warranted</b> 30:24	87:14 113:10
154:17 156:24	68:22 69:25 70:11	<b>visiting</b> 62:11	<b>warrants</b> 152:2	161:12
219:11,17,20	144:20 251:19	<b>vital</b> 46:24 238:8	<b>wash</b> 78:14,18,18	<b>well-established</b>
220:15 221:20	<b>verifies</b> 80:25	<b>vitality</b> 15:19	79:9,11	14:23 82:17
257:15 258:24	<b>verify</b> 80:20	<b>Vivendi</b> 20:23	<b>washed</b> 65:23 80:5	114:18 248:14
259:14,17 263:9	<b>verifying</b> 69:16	<b>voice</b> 97:24 131:15	<b>Washer</b> 31:14 64:3	<b>well-founded</b> 92:3
265:14 266:16,24	<b>versa</b> 224:11	<b>volume</b> 1:12 25:21	64:7 65:4 70:2,11	<b>well-known</b> 88:6
267:1 274:16	<b>version</b> 186:6	56:1 69:23 73:1	<b>Washer's</b> 70:8	<b>well-paying</b> 59:4
<b>valuations</b> 157:3,11	293:12,15	84:18 85:15	<b>wasn't</b> 40:18	<b>went</b> 54:15 58:20
157:16 158:1	<b>vessel</b> 82:24	242:18 255:8	180:11 222:23	64:15,21 137:7,14
268:6	<b>veteran</b> 31:24	<b>volumes</b> 55:21	<b>waste</b> 67:21 70:23	<b>weren't</b> 51:20
<b>value</b> 14:21 29:23	82:21	115:14 211:19	140:2,8 141:8	166:14
36:13 37:15 57:23	<b>vetted</b> 32:20	254:24 255:23	<b>Watch</b> 10:1	<b>west</b> 64:15
153:18 215:12	<b>viability</b> 233:10	263:15 264:13,20	<b>watching</b> 58:25	<b>wet</b> 42:12
218:15,19 220:5	268:23 269:9	265:18 266:7,8,10	<b>water</b> 52:24 53:24	<b>wetland</b> 93:2
220:16 233:7,8	<b>viable</b> 85:9 252:19	<b>voluminous</b> 12:2	78:15	<b>whale</b> 40:5 58:25
248:22 257:19	252:22 279:17	<b>von</b> 29:17	<b>watercourse</b> 123:25	58:25 192:16
258:23 262:7	<b>vibrant</b> 85:13	<b>vote</b> 226:2 232:22	<b>Waters</b> 123:21	256:6
263:10 266:19	<b>vice</b> 196:24 224:11	<b>vouchsafes</b> 95:24	<b>way</b> 14:25 33:7	<b>whales</b> 39:21,23
276:25 277:7,18	<b>victim</b> 126:23	<b>Vulcan</b> 87:6 88:2	59:23 74:23	176:25 269:12
278:21,23 279:6	128:17 283:3	<b>vulnerable</b> 189:18	105:24 107:2,25	<b>wharf</b> 90:3
280:24 281:2,3,18	<b>Vienna</b> 229:7,14	248:4 255:18	132:8 136:11,17	<b>whatsoever</b> 88:14
281:19 292:4	<b>view</b> 8:9 9:9 30:22		150:15 233:12	258:3 271:18
<b>value-added</b> 44:7	64:17 98:1 101:12	<b>W</b>	240:18 254:18	<b>wheelbarrow</b> 33:13
<b>valued</b> 29:12 193:1	173:24 178:21	<b>waive</b> 225:11	<b>Wayne</b> 31:20 82:21	<b>whimsically</b> 102:17
<b>values</b> 33:8 109:10	184:4 187:1,21	<b>waiver</b> 225:14	<b>ways</b> 42:4 99:19	<b>Whites</b> 11:22 12:12
112:21 118:11	192:3 194:16	<b>Wall</b> 31:10 62:4,6	145:18	13:8,21 14:5,18
119:10,20 137:1	207:16 213:10	62:13,16 63:13,24	<b>we'll</b> 260:3	16:18 17:7,14
141:15 162:12	272:3 281:17	64:15 65:9 68:2	<b>wealth</b> 44:13,23	21:10,16 22:16
163:2,16 185:11	<b>Viewing</b> 142:8	68:10 81:19	268:15	23:11,20,23 24:6
188:23 194:15	<b>views</b> 7:5 156:24	<b>Wall's</b> 63:8	<b>Weatherbee</b> 6:2	25:3,10,21,25
<b>valuing</b> 267:3	157:7,25 190:10	<b>want</b> 10:20 40:8	<b>Wednesday</b> 9:12	26:7,11,14 31:11
<b>Vancouver</b> 64:16	280:23	154:14 156:22	<b>week</b> 56:19 150:12	32:7,8,12,22 34:1
<b>variation</b> 72:25	<b>vigor</b> 15:21	159:11 161:5	150:20 181:7	34:9,18 35:13
<b>variety</b> 84:16	<b>vigorously</b> 51:3	179:14 187:8	193:15 199:13	36:21 37:15 42:24
<b>various</b> 19:18 39:7	128:4	190:2 194:21,25	204:14 221:22	45:8 46:14 47:14
72:2 79:12,25	<b>vires</b> 112:8	195:3 201:14	254:11 255:9,24	48:19 50:17 51:6
84:12	<b>virtually</b> 24:4 69:14	204:15 212:14	262:15 263:19	54:10 55:2 57:5,8
<b>vary</b> 204:9	69:24 75:1	214:8,9 220:11	265:1 266:2 274:8	57:22 59:15 61:1
		224:16 231:12		

61:17 62:11 63:14 65:8,25 66:4 67:4 67:16,20 68:4,7 68:17,19 70:4,9 70:13,14,15,18 71:3,13 72:4 73:7 79:15 80:20 81:18 82:5,15,25 83:14 83:18 84:3,10 85:10,13,23 86:5 88:10 89:14,15 90:10 92:5,8,10 92:15,23 93:5,15 97:1,12 102:19 108:7 114:16,20 115:5 116:4 119:3 121:11,15 125:22 135:19 140:24 142:15 143:19 144:24 149:2,22 153:11 157:23 159:19,19,24 160:2,6,21 162:11 165:8,19,22 166:22 174:3,10 174:14 176:1 177:12 179:3 180:16,17 181:17 181:19 183:4,23 186:17 188:5 190:24 191:8 192:20 193:7 197:7,12 198:2 203:10 204:18 206:14,24 208:7 208:17 209:3 210:12 211:20 234:23 239:1,13 240:1,4 242:6 250:19 252:12 254:9,16 255:15 256:4 263:24 265:20 270:20 271:4 273:24 278:24 280:13 290:2 292:15	<b>wholly</b> 226:17,23 235:15 248:25 261:22 283:2 <b>wholly-reasonable</b> 92:3 <b>Wick</b> 83:20 84:10 89:2 <b>wide</b> 197:3 202:4 <b>widely</b> 114:22 204:9 <b>wider</b> 168:14 <b>William</b> 1:4,4 238:20 <b>Williams</b> 19:22 172:1,21 <b>willing</b> 24:18 272:14,15 <b>win-win</b> 52:14 <b>window</b> 45:18 48:5 <b>window'</b> 48:7 <b>wipe</b> 14:25 16:12 27:10 167:22 <b>wishes</b> 291:13 <b>withheld</b> 90:19 <b>witness</b> 31:9 47:4 49:15 51:1 59:21 71:11 201:5 239:6 239:7 <b>witnessed</b> 46:6 <b>witnesses</b> 5:19 7:18 37:21 40:7 41:10 41:13,15,18,24 108:25 145:21 146:4,9 190:3,5 202:8 <b>wondering</b> 147:2 <b>word</b> 1:13 98:8 241:21 <b>words</b> 97:9 104:23 166:21 169:11 181:17 183:19 203:5 225:3 234:13,13,14 247:20 <b>work</b> 3:16 10:14 26:10 63:13 90:2	120:3 150:15 161:17 254:12 264:7 <b>workability</b> 283:21 <b>worked</b> 65:9 68:2 117:23 <b>working</b> 31:21 49:25 <b>works</b> 159:7 219:21 <b>world</b> 14:4,11 45:19 49:25 50:1 144:9 173:3 183:4 190:11 261:15 272:3 278:3,4,6 <b>world's</b> 220:14 <b>worldwide</b> 85:4 <b>worth</b> 285:14 290:2 <b>wouldn't</b> 186:4 <b>wrinkle</b> 182:24 <b>write</b> 172:3,21 226:24 <b>written</b> 23:14 150:11 222:3 224:15 226:11 229:18 230:11 247:10 249:24 250:8 268:13 <b>wrong</b> 36:7 109:4 125:25 201:2 216:10 <b>wrongdoer</b> 30:10 30:12,15 136:9 <b>wrongdoing</b> 28:5 30:17 31:4 134:20 <b>wronged</b> 127:4 <b>wrongful</b> 16:9 89:12 136:5,6,11 155:12,20 167:15 168:12,20 169:2,7 169:14 170:18,20 172:5,16,19,22 173:5,8,13 174:2 180:22 181:16 182:3 185:22 233:18 247:14 283:3,10	<b>wrongfully</b> 17:12 <b>wrote</b> 112:10 235:21 <hr/> <b>X</b> <hr/> <b>Y</b> <hr/> <b>year</b> 26:20 47:10,11 57:4 60:24 61:11 65:11 82:3 123:13 123:15 255:16,17 <b>years</b> 3:24 11:21,23 11:24 13:17 15:10 21:22 26:19 31:20 38:9 39:7 43:14 43:23 47:5 51:13 52:13 54:2,13 55:25 57:15 62:8 62:21 64:7 65:4 65:15,17,20 86:8 91:17 115:9 117:24 123:2 125:17 131:20 132:9 167:19 174:5 175:6,13 179:6 180:19 181:21 182:6 208:16 211:25 215:12 217:5 219:19 222:19 228:18 231:21 236:5 238:5 245:22 255:23 256:11 259:13,19 264:16 278:7 280:2 292:18 <b>years'</b> 62:6 64:1 83:21 <b>York</b> 14:24 21:21 22:14 25:2,13,14 25:16,20,24 26:2 26:17 32:1 51:18 53:15,19,20,22,23 54:3,22 55:2,3,7,9 55:20,22 56:1,8,9 56:10,12,15,20,23 57:2,3,7,16 60:21	61:5 82:16,21 83:16,16 84:2,12 84:15,21,22 85:21 85:25 86:22 87:5 87:11 88:5,7,12 145:3,4 240:2,3,6 240:10,11 260:16 260:17 261:12,14 261:16,19,23,24 265:7 277:15 <b>youngest</b> 62:19 <hr/> <b>Z</b> <hr/> <b>Zeman</b> 1:19 5:11 <b>Zimbabwe</b> 29:18 <b>zone</b> 142:23 161:16 <hr/> <b>0</b> <hr/> <b>1</b> <hr/> <b>1</b> 1:12 71:12 196:15 231:9 <b>1(1)</b> 196:5,9 <b>1.4</b> 26:16 <b>1.5</b> 25:19 55:23 56:3 <b>1.8</b> 47:9 <b>10</b> 125:17 171:4 222:19 264:16 266:14 282:15 286:2 <b>10:01</b> 23:4 <b>10:03</b> 24:14 <b>10:07</b> 26:23 <b>10:15</b> 33:22 <b>10:17</b> 35:23 <b>10:36</b> 51:15 <b>10:48</b> 58:23 <b>10:50</b> 60:16 <b>10:57</b> 66:7 <b>10:58</b> 66:19 <b>100</b> 1:23 39:7 61:21 65:17 259:13 282:8 <b>100-year</b> 84:25 <b>100,000</b> 123:13 <b>101</b> 280:22
---	---	---	--	---

<b>11</b> 2:3 39:16 66:9 129:5,7 130:7 131:4 133:5 169:8 175:17 226:24 227:10 228:7 231:2,6,16 246:7 272:25 276:17 282:25 290:19	232:7 233:5,5 235:17 236:9 244:12 245:7,20 246:4,12 <b>1121.1</b> 225:2,8 226:6 <b>1122</b> 231:7 <b>1128</b> 223:18 232:15 235:18 245:2 <b>113</b> 292:1 <b>1135</b> 15:5 227:11 <b>1135.2</b> 227:11 <b>1139</b> 225:23 <b>117</b> 262:10 263:11 <b>12</b> 123:10 147:22 154:16 156:23 263:11 <b>12:43</b> 144:1 <b>12:44</b> 144:14 <b>12:48</b> 148:12 <b>124</b> 281:11 <b>125</b> 281:11 <b>13</b> 47:5 187:21 <b>14</b> 265:14 <b>14-month</b> 13:18 <b>148</b> 2:6 <b>15</b> 10:23 11:10 21:22 26:19 88:13 147:25 155:25 261:2 262:23 <b>16</b> 21:22 163:8 <b>160</b> 14:21 62:2 <b>17</b> 91:17 115:14 231:22 <b>170,000</b> 123:12 <b>182</b> 259:21 262:9 <b>19</b> 1:11 3:2 <b>19.1</b> 82:1 <b>1990s</b> 53:2 59:23 <b>1995</b> 60:4 90:1,7,8 148:6 <b>1996</b> 43:13 45:1,2 47:19 60:6 <b>1997</b> 204:22 <b>1998</b> 53:14 <b>1999</b> 54:1	<b>1J9</b> 1:24 <hr/> <b>2</b> <hr/> <b>2</b> 57:4 65:11 70:20 74:12 76:18 78:25 79:3 99:8 260:15 262:13,15,24 263:7 265:21 266:10,20 <b>2.4</b> 26:19 66:3 265:23 <b>2:01</b> 148:13 <b>20</b> 64:3 84:3 88:13 243:20 245:13 246:1 270:2 275:3 293:22 <b>20,000</b> 55:12 <b>200</b> 43:22 61:21 <b>200,000</b> 123:12 <b>2000</b> 84:19 91:2,17 91:22 <b>2000s</b> 47:8,10 55:16 56:3,14 <b>2002</b> 27:5 61:18 62:3,12 87:10 228:17 <b>2003</b> 55:19 63:12 63:12 65:7 90:1,7 <b>2004</b> 55:20 64:25 <b>2005</b> 64:25 <b>2006</b> 23:23 48:18 55:23 62:19 63:7 64:25 123:20 270:3 <b>2007</b> 26:13 27:7 38:15,17 39:3 63:10 65:8 245:23 266:16 270:3,4,25 <b>2008</b> 62:25 204:22 204:23 222:17 <b>2009</b> 222:22 <b>2010</b> 54:12 57:6 62:25 245:25 <b>2011</b> 271:7 <b>2012</b> 90:8 148:6 <b>2013</b> 279:11 <b>2015</b> 84:5,19	<b>2016</b> 13:17 60:11 204:24 257:20 258:24 259:10,12 <b>2017</b> 91:17,22 <b>2018</b> 1:11,22 3:2 293:22 <b>2020</b> 84:6 <b>2026</b> 26:19 66:5 <b>21</b> 262:7 <b>214</b> 2:7 <b>22</b> 288:10 <b>22.2</b> 70:8 <b>22nd</b> 27:5 38:16 266:16 <b>25</b> 8:9 62:6,8 64:7 86:8 123:1 293:10 <b>25th</b> 55:10,14 56:21 <b>26</b> 84:5 <b>26th</b> 150:15 <b>27</b> 90:8 247:24 <b>275</b> 2:8 <b>29.79</b> 84:6 <b>2R2</b> 1:24 <hr/> <b>3</b> <hr/> <b>3</b> 70:19 92:25 262:18,19,23 <b>3.8</b> 47:11 <b>3:20</b> 214:18 <b>3:35</b> 214:16 <b>3:38</b> 214:19 <b>30</b> 10:23 31:20 56:25 64:1,9 83:21 177:18 <b>30,000</b> 55:7 <b>300</b> 271:12 <b>300,000</b> 56:2 <b>308</b> 259:20 262:8 266:19 <b>30th</b> 38:15 <b>31</b> 16:2 168:6 171:4 229:7 239:8 266:15 282:25 <b>31st</b> 257:20 258:24 <b>33</b> 70:22 <b>333</b> 1:10 <b>34</b> 59:4	<b>35</b> 115:16 <b>36</b> 168:17 169:3 <b>36.1</b> 247:12 <b>36.2</b> 247:16 <b>37</b> 195:11,12 196:6 197:3 199:20 263:10 <b>37(1)</b> 195:17 <b>38</b> 265:16 <b>39</b> 237:25 <hr/> <b>4</b> <hr/> <b>4</b> 67:21 70:21 80:22 291:24 292:1 <b>4:09</b> 239:23 240:15 <b>4:32</b> 260:6 <b>4:42</b> 268:2 <b>40</b> 177:18 201:18 259:20 265:9 <b>40-year</b> 39:25 <b>416</b> 1:25 <b>42</b> 265:15 <b>45</b> 274:22 <b>450</b> 138:15 <b>453</b> 139:5 <b>48</b> 115:17 <b>485</b> 99:11 <b>49</b> 91:23,25 <b>49,500</b> 54:6 <hr/> <b>5</b> <hr/> <b>5</b> 73:20 78:25 <b>5,000</b> 81:13 <b>5:12</b> 293:21 <b>5:15</b> 10:24 <b>5:30</b> 275:12 <b>50</b> 65:15,17,20 174:5 175:6,13 179:6 180:19 181:21 182:6 208:16 211:25 215:12 219:19 255:23 256:11 278:7 292:18 <b>50-year</b> 37:17 82:5 149:5 174:10 264:24 271:10
---	--	--	---	---

**50s** 33:13 59:25**56** 38:13**564-2727** 1:25**57** 93:1**584** 119:22**589** 140:7

---

**6**

---

**6** 26:20,21 60:23

61:10 123:10

144:12 175:15

177:14 179:1

266:15,21

**60** 22:1 51:13**60,000** 89:25**600** 33:20**613** 1:25**65** 262:7**650,000** 82:2

---

**7**

---

**7** 73:21 179:15

182:17

**71** 2:4**738** 114:3**740** 113:1**75** 64:8 82:3**75,000** 124:4

---

**8**

---

**8** 26:20,21 60:23

61:10 144:12

186:13,14 187:9

188:19

**80** 15:10 65:4

263:11 265:15

**80,000** 123:15**800** 66:1**81** 2:5**85** 82:3**861-8720** 1:25

---

**9**

---

**9** 235:21 282:15,16

290:25

**9:30** 293:20,23**9:35** 1:11 3:3**9:59** 21:15**90** 167:19**900** 1:10**900-333** 1:23**940** 1:23**96** 67:23 291:25**97** 264:15**98** 291:25