PCA Case No. 2016-13

UNDER THE RULES OF ARBITRATION OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AND CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT

BETWEEN:

RESOLUTE FOREST PRODUCTS INC., Claimant/Investor

- and -

GOVERNMENT OF CANADA Respondent/Party

TRANSCRIPT OF PROCEEDINGS HEARD BEFORE JUDGE JAMES CRAWFORD, DEAN RONALD CASS, PROFESSOR CÉLINE LÉVESQUE, held via Arbitration Place Virtual on Tuesday, November 10, 2020, at 8:12 a.m. EST

RESTRICTED ACCESS - VOLUME 2

REVISED TRANSCRIPT

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PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA

APPEARANCES: on behalf of the Claimant Elliot Feldman Michael Snarr Paul Levine Analia Gonzalez Martin Valasek Jean-Christophe Martel Jenna Anne de Jong Jacques Vachon Mark Luz on behalf of the Respondent Rodney Neufeld Annie Ouellet Stefan Kuuskne Azeem Manghat Dmytro Galagan Sylvie Tabet Darian Bakelaar Karolin Grzanka Thomas Beline Andrew Lanouette Sara Mahaney ALSO PRESENT: Professor Freya Baetens, Tribunal Assistant Ashwita Ambast, PCA Gaëlle Chevalier, PCA Scott Falls, PCA Emilie de Haas, PCA

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1 Arbitration Place Virtual 2 --- Upon resuming on Tuesday, November 10, 2020, 3 at 8:12 a.m. EST 4 JUDGE CRAWFORD: Respondent, 5 is your team present? 6 MR. LUZ: We are all present, 7 either in person or virtually, mostly virtually. 8 Thank you, Judge Crawford. 9 JUDGE CRAWFORD: This morning, 10 we have the factual witness, the beginning of the presentation of them, starting with Richard 11 12 Garneau, the Claimant's fact witness. 13 Who is going to be doing 14 the -- it's cross-examination only, of course. 15 Who is going to be doing the cross-examination? 16 MR. LUZ: I will be, Judge 17 Crawford. 18 JUDGE CRAWFORD: All right. 19 Judge Crawford, MR. VALASEK: 20 there was one housekeeping matter that was left 21 for me to address this morning relating to 2.2 Mr. Vachon's apparent access to the transcript, 23 the LiveNote transcript yesterday during the 24 restricted access session. And I just propose to 25 address that in a few seconds this morning.

1 JUDGE CRAWFORD: Yes, please. 2 MR. VALASEK: We spoke to 3 Mr. Vachon. The reality is that, as soon as he 4 realized that the live script was continuing 5 during the restricted access session, he closed it 6 down immediately. 7 The reason it was brought up 8 in the first place on his station was that we 9 are -- at our offices, we have three separate 10 conference rooms with access to the Internet and 11 access to Zoom and the transcript, and because we 12 were having great difficulty yesterday, we were 13 playing musical chairs between the three 14 conferences. I was trying to get onto the station 15 that was working best. 16 But the reality is that he 17 affirms that he did not view any restricted access 18 material. 19 JUDGE CRAWFORD: All right. 20 Respondent, any comment? -- sorry. Claimant, any 21 comment on that? MR. LUZ: At this point, we 2.2 23 don't have anything further to say, but we may 24 want to address it later on. But I don't want to 25 delay the cross-examination.

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1	JUDGE CRAWFORD: Okay. We
	_
2	will leave it.
3	MR. VALASEK: Thank you.
4	JUDGE CRAWFORD: We got used
5	to the system of restricted access information,
6	and we hope that the technology works cleanly, as
7	it did for most of yesterday once things got
8	going.
9	You will notice that, in
10	response to comments from the parties, the
11	Tribunal has made a difference to the declarations
12	for fact and expert witnesses. The new
13	declaration involves the witness giving evidence
14	by himself. "There is no one else present in the
15	room where I am testifying. I do not have notes
16	or annotations on any hard copy or electronic
17	documents", and such and such, with the usual
18	statement.
19	So we will be making that
20	declaration for fact witnesses and, suitably, the
21	equivalent amended declaration for expert
22	witnesses.
23	So can we have Mr. Richard
24	Garneau on the screen?
25	MR. GARNEAU: I am here.

1 MR. FELDMAN: You have him, 2 Judge Crawford. 3 JUDGE CRAWFORD: Welcome, sir. 4 My name is James Crawford. I am the president of 5 this Tribunal. And my colleagues are Céline Lévesque and Ronald Cass, respectively from Canada 6 7 and the United States. I am from Australia, 8 although resident in The Hague. You are familiar with the 9 10 procedure for these online hearings. The 11 Arbitration Place will tell me if there's any 12 We hope there won't be. problem. In the last 13 resort, you can simply connect by phone using a 14 dial-in connection provided by Arbitration Place, 15 which you have the meeting invitation that sets 16 that out. 17 Do you have any questions 18 before we start about the process? 19 MR. FELDMAN: Richard, that 20 question is for you. 21 MR. GARNEAU: No, I am fine. 2.2 I am ready. 23 JUDGE CRAWFORD: You have got 24 the statement that you are required to make, 25 declaration for fact witness. Can I ask you to

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1	make that declaration?	
2	MR. GARNEAU: Which	
3	declaration?	
4	MR. FELDMAN: The oath that	
5	you were sent. Do you have that at hand?	
6	MR. GARNEAU: I didn't see it.	
7	I saw that you sent the oath, but I didn't find it	
8	in the information that was sent, so I don't know.	
9	I don't know what happened.	
10	JUDGE CRAWFORD: Let me read	
11	it. If you attend to it and then if you have any	
12	questions, you can ask them.	
13	"I solemnly declare upon	
14	my honour and conscience	
15	that I will speak the	
16	truth, the whole truth	
17	and nothing but the	
18	truth. No one else is	
19	present in the room where	
20	I am testifying. I do	
21	not have any notes or	
22	annotations on any hard	
23	copy or electronic	
24	documents. I confirm	
25	that I am not receiving	

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1	communications of any
2	sort during my testimony
3	other than my
4	participation in the main
5	hearing room in Zoom."[as
6	read]
7	That's straightforward?
8	MR. GARNEAU: Yes. And I
9	agree with that, so
10	JUDGE CRAWFORD: You make that
11	declaration?
12	MR. GARNEAU: Yeah, I made it.
13	JUDGE CRAWFORD: Thank you.
14	FACT WITNESS: RICHARD GARNEAU
15	JUDGE CRAWFORD: The Tribunal
16	has carefully read your witness statements, and so
17	the purpose of today's hearing today is to be
18	cross-examined on those witness statements. One
19	hour has been allocated for that.
20	So Claimant can start the
21	cross-examination. Sorry. Respondent. Yes.
22	Cross-examination is Respondent.
23	MR. LUZ: Thank you, Judge
24	Crawford.
25	CROSS-EXAMINATION BY MR. LUZ:

1 Ο. Good morning, 2 Can you hear me okay? Mr. Garneau. 3 Α. Yes, I can hear you very 4 well. 5 Q. Oh, that's good. My name 6 is Mark Luz. I am counsel for the Government of 7 Nice to meet you virtually. It's a very Canada. 8 strange position to be in, to be doing a 9 cross-examination online, but, hopefully, this will go smoothly. 10 11 Α. Hopefully. I agree. 12 Ο. If you have any problems, 13 if you can't hear me or if you can't find a document or something like that, please let me 14 15 know. We just want to make this as easy as 16 possible for you. 17 Α. Okay, so... 18 Ο. Great. So what I am 19 going to do today is just some preliminary things. 20 I am just going to ask you some questions about 21 the witness statement that you submitted on 2.2 December 6th, 2019. 23 Do you have a copy of it with 24 you? 25 No, I have been told to Α.

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1 have only the exhibit for cross-examination, so 2 it's the only thing that I have on my -- on my 3 desk. 4 Q. Okay. So if you don't 5 have a copy of your witness statement, we can 6 bring it up on the screen for you whenever I ask 7 you questions about what you have written in 8 there; is that okay? 9 Α. Yes, it's okay. 10 Ο. Okay. And speaking of the screen, do you have your computer screen? You 11 12 will be able to see documents if we bring up 13 the --14 Α. Could you bring up a 15 document that I can see if it works, please? 16 Sure, sure. Ο. 17 Chris, do you mind bringing up 18 Mr. Garneau's witness statement? There we go. 19 That's perfect. 20 Α. Yeah, yeah, I see it on 21 my computer. 2.2 Q. Okay. Great. 23 Α. Okay. 24 So we will go to Q. 25 different versions, but this is a public version

1	that has some redactions in it. But when it needs
2	to go to the session that doesn't have the
3	redactions, what I will do is I'll just announce
4	to the Tribunal that we need to go into a
5	restricted access session. We will just wait a
6	minute, and then we will go in.
7	A. Okay.
8	Q. Is that okay? Great.
9	A. It's okay. It's okay.
10	Q. And I appreciate we are
11	already doing a good job of doing a
12	cross-examination online by not speaking over each
13	other. It's difficult because I think you know
14	that there is a court reporter who is transcribing
15	everything for this, so let's do our best I
16	will do my best to not interrupt you, and I hope
17	you will do the same for me.
18	A. I will try.
19	Q. Great.
20	And, again, because we only
21	have about an hour, let's do if you don't mind,
22	I will try and ask my questions clearly and
23	succinctly. And the best you can, if you can be
24	direct and clear and succinct about your answers,
25	that would be great.

1 Α. I will try. So it's not 2 my -- my primary language, but I will do my best. 3 Ο. I understand. And I 4 appreciate you doing this with me because my 5 French is not as good as I would like it to be. But maybe after the hearing, I can practice a 6 7 little bit more. 8 Α. Yeah, well, I am going to 9 practice my English with you. 10 Q. Okay, great. 11 Just one final housekeeping 12 matter, Mr. Garneau. Were you watching the public 13 feed of the arbitration hearing yesterday? 14 Α. No, I was not online 15 yesterday. 16 Ο. Okay. And did you read the transcript from yesterday? 17 No, I didn't. 18 Α. 19 Okay. Great. Ο. 20 So today, I will just talk to 21 you first about the Bowater Mersey mill. And then 2.2 I will talk about Port Hawkesbury, if that's okay. 23 Α. That's okay. 24 Okay. So we are going to Q. 25 start off on page 2 of your witness statement,

1 which we will just bring up and we will start off. 2 At paragraph 6 and 7 -- do you 3 see that there? 4 Α. Yeah, I see it. 5 Ο. You said that -- you refer to an August 26th, 2011, meeting that you 6 7 had with Duff Montgomerie and Paul Black from the 8 Government of Nova Scotia; is that right? 9 Yeah, it's right. Α. 10 And you recall that Ο. 11 Resolute's CFO, Bill Harvey, was there with you as 12 well? 13 Α. Yes, he was. 14 Q. And do you recall if the 15 premier of Nova Scotia was at the meeting as well? 16 Α. No, I don't think that 17 the premier was at the meeting. 18 Q. Okay. So you recall just 19 Duff Montgomerie and Paul Black? 20 Α. Yes. 21 Q. Do you recall meeting 2.2 with the premier about the Bowater Mersey mill 23 closure? 24 Yes, but it was later on. Α. 25 You came to tell -- in Q.

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1 that August 26th meeting, you came to tell the 2 Government of Nova Scotia that Resolute was going 3 to close its Bowater Mersey mill; is that right? 4 Α. Yes, it is. 5 Ο. And you said that the 6 mill's operational costs were too high to be 7 competitive; is that right? And I 8 Α. Yes, I said that. 9 also mentioned the loss that we had in 2009 and 10 2010 of 28 and \$23 million and that the mill 11 was -- was not a going concern. 12 Okay. And you mentioned Q. 13 that costs like labour, electricity and fibre were of concern; is that right? 14 Yes, I mentioned that 15 Α. 16 with some details at the meeting. 17 Q. Okay. And they were too 18 high to be competitive? 19 Well, they were Α. 20 excessively high, and that's the reason why the 21 mill was losing that much money. 2.2 Q. At the meeting, the 23 government asked you to keep the mill open a 24 little bit longer; is that right? 25 Well, they asked for some Α.

1 time to have a better understanding of the reason why the mill was -- was not profitable and was 2 3 losing that much money. And I agree with that, 4 and I said that the -- Brad Pelley, that is --5 that was the general manager of the mill, would be 6 available to share all the details in early 7 September or when they would be available to do 8 so. 9 Okay. So you agreed to Q. give the government a little bit of time to figure 10 11 out what to do next? 12 Α. When I agreed to share 13 the information, I think that the objective was to 14 make sure, because the recourse was to have a 15 better understanding, and I just felt that a 16 better understanding would be to be transparent and show the -- show the information, the 17 financial result and what it would take to be able 18 19 to continue to run this mill. 20 Ο. Okay. And so that was 21 going to take a little bit of time for the 2.2 government to figure out how it could help, if 23 anything? 24 Α. And that would also take 25 a bit of time for us to prepare the information

1	and to put it in a format that would be easy to
2	understand for the bureaucrats that are not
3	specialists in the paper business.
4	Q. Okay. Then you say at
5	paragraph 9, which, actually, I think I think
6	we should bring up yeah, that's right, that's
7	the public version. Restricted access in here
8	so I think we should go into restricted access
9	session so that we can look at the clean version,
10	if that's okay. Heather.
11	MS. D'AMOUR: Yes, just give
12	me one second.
13	MR. LUZ: Thank you.
14	Sorry about this, Mr. Garneau.
15	It's a bit of jumping back and forth, but,
16	hopefully, it won't take too long.
17	MS. D'AMOUR: All right. All
18	people have been removed.
19	Whereupon Restricted Transcript Commences
20	MR. LUZ: I think we actually
21	lost Mr. Garneau, so that's
22	MS. D'AMOUR: Oh, I am sorry.
23	MR. LUZ: Actually, he is
24	permitted that's okay. That's okay.
25	MS. D'AMOUR: Sorry. All

1 people have been removed except for Mr. Garneau. 2 MR. LUZ: We accidently 3 removed you, there, Mr. Garneau. Sorry about 4 that. You're -- you're muted, Mr. Garneau. 5 THE WITNESS: I didn't do 6 anything, so some -- someone else ... 7 MR. LUZ: There is someone 8 controlling everything from up there. 9 Okay. Chris, do you mind putting up the unredacted version of paragraph 9 10 11 of Mr. Garneau's witness statement just to --12 there we go. 13 BY MR. LUZ: 14 Q. So you say in your 15 witness statement that, by the end of 16 September 2011, you were convinced that the province had no serious plans to reduce costs at 17 18 Bowater Mersey; is that right? 19 Α. Yeah. 20 Q. And that was only one 21 month after you had told the government of the 2.2 plan to close the mill; is that right? 23 Α. Can I explain? 24 I'm sorry? Q. 25 Α. Can I explain why --

1 Ο. Sure, you can -- you can 2 answer the question and then go ahead and explain. 3 I am just asking, that was one month after? 4 Α. Yeah, that was one month 5 after. 6 Ο. Okav. Go ahead. You can 7 explain. 8 Α. Okay. The reason why I 9 said that here is that Brad Pelley had quite a few 10 meeting with the bureaucrats and the -- we tried 11 to be very clear on what we would need to continue 12 to operate the mill. And I think that we had 13 three -- three cost components. 14 Power, and we said that on 15 power, we were -- the mill was paying then per 16 megawatt-hour, and we said to be able to continue 17 to operate, we need power to come down to . 18 The second element that the --19 on fibre, we said the fibre is very expensive, and 20 we need to have fibre to go down from **EEE**, if I 21 remember precisely, to about 2.2 And Brad Pelley quantified 23 that for the government and said, "Well, power is 24 about 🔤 million, and fibre is about 🖬, for a 25 total of 📰 million".

1	And the other component was
2	labour. Our labour costs was quite high, close to
3	, and we had an objective to bring it down to
4	But we said it's something that the company,
5	Mersey, will have to do and negotiate with the
6	union. And
7	Q. Right.
8	A by the end of
9	September, basically, based on the feedback that I
10	got on a regular basis from Mr. Pelley, we were
11	looking at different options but said it's not
12	going to be material. It's not going to be
13	helpful. So that's the reason why I said that.
14	Q. Okay. And then at
15	paragraph 10 of your witness statement
16	A. Yes.
17	Q you said that:
18	"Nonetheless, provincial
19	officials pleaded for
20	more time and Resolute
21	acquiesced."[as read]
22	Is that right?
23	A. Yeah, that's right. That
24	is the case.
25	Q. Okay. So the province

1 just needed some more time to help figure out what 2 to do? 3 Α. Yes. 4 Q. Now, one of the high 5 costs for Bowater Mersey you were just talking about was labour; is that right? 6 7 Well, labour is a small Α. 8 component when you look at the three. I mentioned **million** for 9 power that we were looking for to make this mill 10 11 competitive. The other one was fibre at 🔜 And 12 labour was about **million**. If you look at 13 the math, it's about ■ million. So it was the smaller component 14 15 of the three items. 16 Ο. Okay. 17 Sorry. Chris, could you take 18 down the callout. You can just leave the witness 19 statement page up there. That's right. Thank 20 you. 21 But, Mr. Garneau, by the end 2.2 of September 2011, Bowater Mersey hadn't finished 23 negotiations with the union to reduce labour 24 costs; is that right? 25 No, it was not. Α. Ιt

1	was it was progressing, but the union was not
2	really willing to entertain the to make
3	concessions or we had we had a lot of
4	difficulties to get them on board.
5	Q. Okay. And also by the
6	end of September, Bowater Mersey was still waiting
7	on a decision was still sorry. There was a
8	crash behind me.
9	At the end of September 2011,
10	Bowater Mersey was still waiting for a decision on
11	its application for a reduced electricity rate; is
12	that right?
13	A. Yes, but the what I
14	recall from Brad Pelley, the process was ongoing,
15	and he mentioned to me many times it's not going
16	to be significant. I didn't know what it was.
17	And I ask him, "Are we going to get close to the
18	per megawatt-hour?"
19	And he said, "No, but I don't
20	know what it is going to be. So it's a process
21	and it takes time, but not going to be
22	substantial".
23	Q. Okay. Thank you.
24	But the idea for those two
25	items is that, if you can reduce the workforce and

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1	get contract concessions for the remaining
2	employees, that can help reduce the labour costs
3	for the mill?
4	A. Yeah, it was one one
5	component. The smaller one, as I mentioned.
6	Q. But the larger one, as
7	you mention, electricity, if a paper mill can
8	learn to become can become more energy
9	efficient, that can also lower the mill's costs
10	per tonne of paper?
11	A. Our mill, the Mersey
12	mill, was quite efficient on the energy side, and
13	I think that the study were made by independent
14	parties and the we had basically almost all the
15	best practices. So there's and when we compare
16	the consumption with our other mills, this mill
17	was comparing well. It was really the rate that
18	was the issue with Mersey.
19	Q. Right. So the rate
20	the electricity rate in Nova Scotia was just too
21	high to be competitive; is that right?
22	A. Exactly.
23	Q. Now, you say let's go
24	back to paragraph 9. You say that you
25	

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1	
2	?
3	A. Yeah.
4	Q. And that's what you were
5	saying before, that you understood from Brad
6	Pelley that things were still up in the air with
7	the government in September 2011; is that right?
8	A. Yeah, yeah. The only
9	discussion that Brad Pelley was having was with
10	the the Nova Scotia, this board that is looking
11	at the rate and nothing else from the government.
12	So it was, what Mersey's going to have as the load
13	retention rate reduction, it is what we are going
14	to get, so it was Brad Pelley, what he was
15	mentioning to me then. So and he mentioned
16	that it's not going to be significant. I didn't
17	know what it was, but it was my understanding that
18	it was the only initiatives that was discussed
19	with Brad and the bureaucrats.
20	Q. Okay. Okay. I will come
21	back to that document in a little bit. But as you
22	know, I guess, I guess the attitude of the
23	government changed on December 1st, 2011, when a
24	financial assistance package was completed with
25	Bowater Mersey; is that right?

1 Α. Well, but can I explain 2 again? 3 Ο. Sure. You can answer the 4 question and then explain. 5 Α. Yes, the government made 6 an offer at -- on December 1st, if I recall. And this offer, basically what happened between the 7 8 end of September, I had many phone conversation 9 with Paul Black that was -- I don't remember his 10 title, but he was working closely with the 11 premier. And I mentioned to him that what I heard 12 from Brad Pelley, that there was not much that was 13 going to happen on fibre and power, and he raised 14 the five years. And I said, "Well, cannot, 15 16 cannot agree to run for five years. It's not 17 going to be possible without achieving the a 18 megawatt-hour and the reduction on -- the cost 19 reduction on fibre". 20 So, and Paul continued to say, 21 "Well, we are going to -- we are still working on 2.2 it". 23 So, and at the end of October, 24 Paul called me -- and I know it's at the end of 25 October, and he said to me, "We need to set the

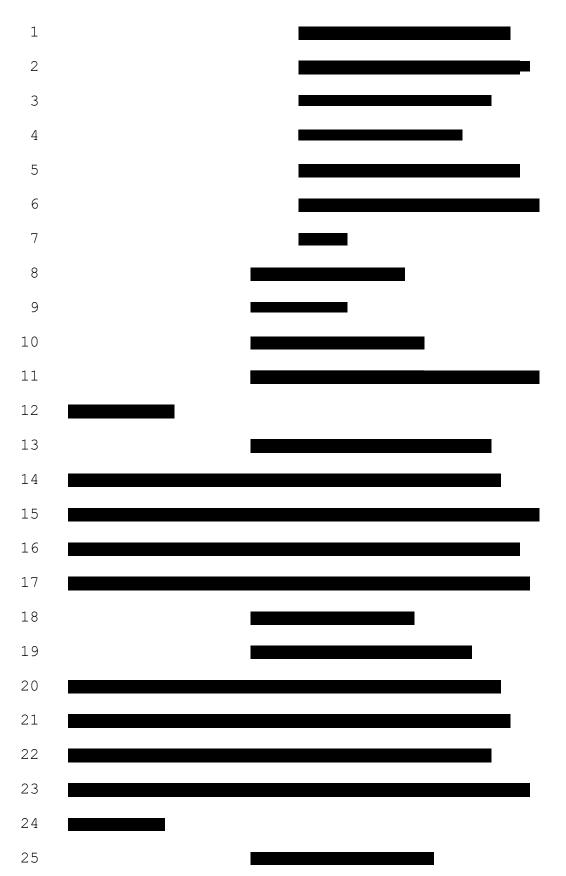
1 context here, that the -- it's difficult for the 2 government to work on an offer if it's not known". 3 So, and I asked him, "What do 4 you mean?" 5 Well, he said that the press, 6 the newspaper and the TV network believed that, 7 well, it's not real. He said that the town 8 believed that it's not serious. He said that the 9 union believed that "you are bluffing". He said 10 that Nova Scotia Power believed that it's not 11 going to happen. 12 And the -- he mentioned that 13 the independent sawmills were not -- were not 14 aware of what was going on really with the mill. 15 And he said that the -- and I was surprised with 16 that. He said that the woodland contractor had a 17 better understanding of what it's going on because 18 of their experience with Port Hawkesbury. 19 And he said, "Well, you need 20 to come to the mill and explain what's wrong 21 with -- with the mill, with the situation, with 2.2 power and fibre and labour". 23 So, and I said, "Well, you 24 already have all the information". 25 But he said, "Well, you need

1 to make it public".

2 So the end of October, the way 3 that I saw it based on the differing conversation 4 that I had with Paul Black is that, well, the 5 government wants to have here us making sure that the -- they are going -- basically, tried to put 6 7 the government in a position to show that they 8 were taking care of or they were trying to save 9 jobs and show their constituents that they are 10 working on it. 11 And it's what we did. Ιn 12 early November, I went to the mill, and it's when 13 we explained to the public. Because our employees 14 were aware that -- but we explained to the -- the 15 people that -- or the parties that Paul Black 16 wanted to make sure that they were aware that, to 17 allow the government, and the way that I describe 18 it to my management team, I said, "Well, to save 19 face in this one", because I still -- I was 20 convinced then at the end of October that the 21 saving on electricity and fibre would not come. 2.2 Ο. Okay. Let's look at the 23 actual agreement that was signed on December 1st. 24 Do you have a copy of it with 25 you, Mr. Garneau?

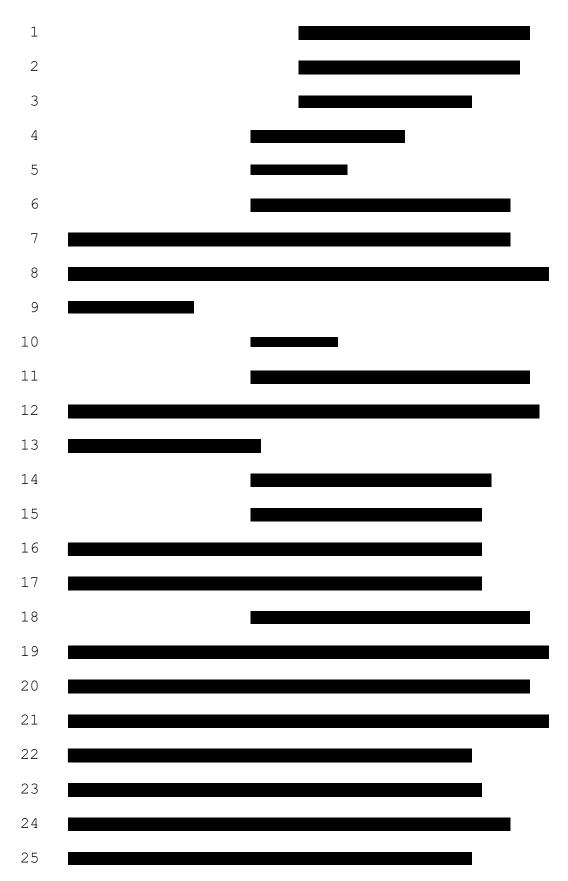
1 Α. Yes, I have it. Yeah. 2 So I have the book here. So what is the section 3 again? 4 Q. It's Exhibit R-149. I 5 don't know if --6 Yeah, yeah, okay. Α. I have 7 it. 8 You have it? Q. 9 Α. Yeah. 10 Q. Okay. We will just put 11 it on the screen as well, but if you have a hard 12 copy, you can read it. If you are like me, I have 13 to probably pull up the pages and hold them up to 14 my face, but they are on the screen, so hopefully 15 we will go along. 16 Α. Yes. 17 Q. So this is 18 19 20 21 22 23 24 25

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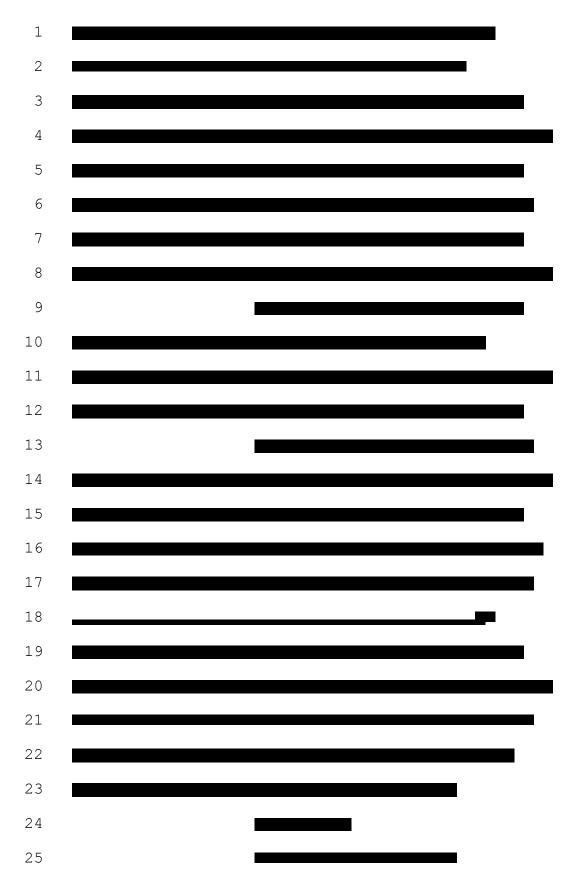


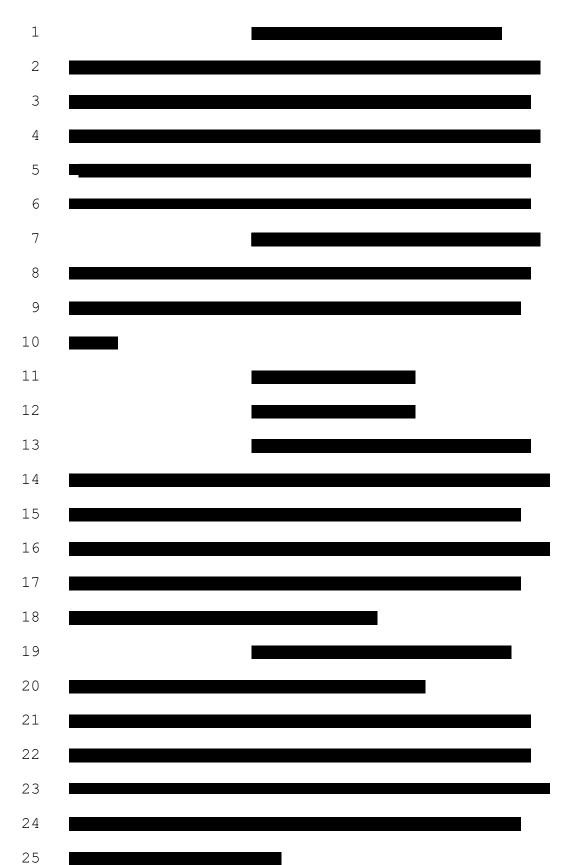




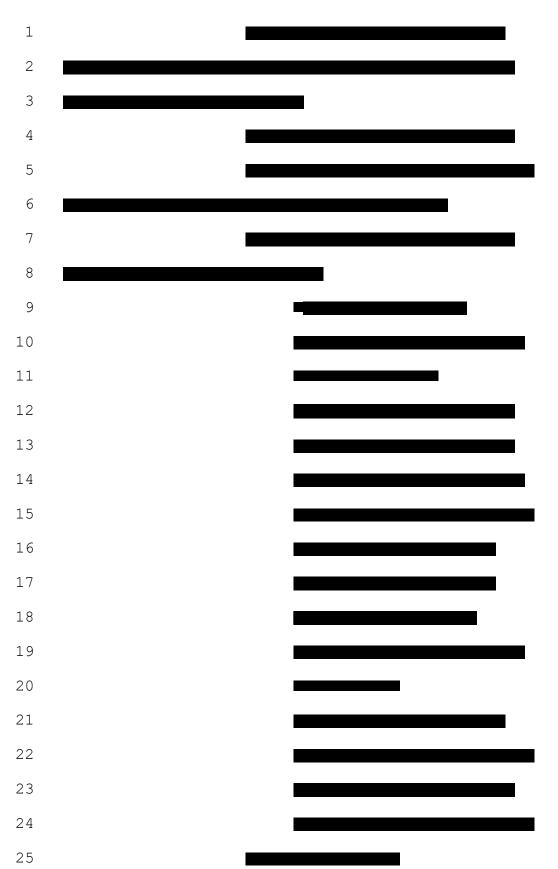


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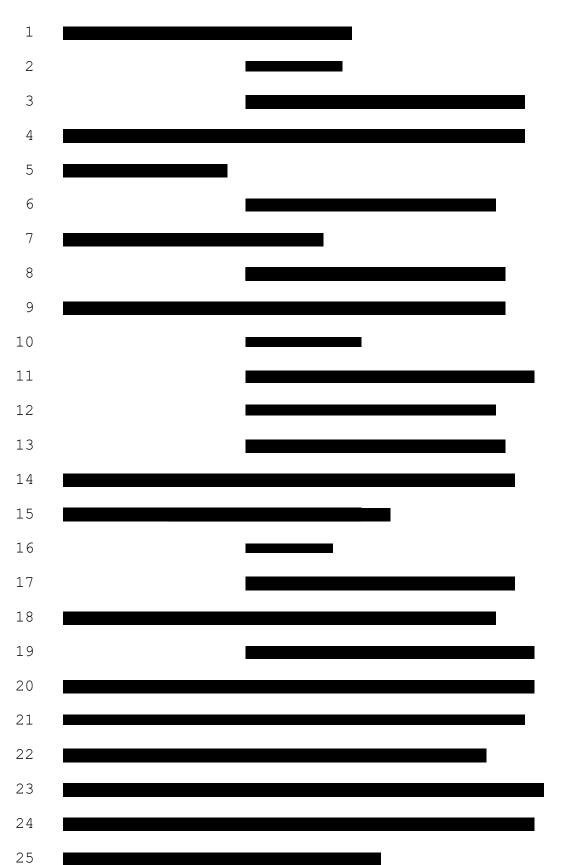




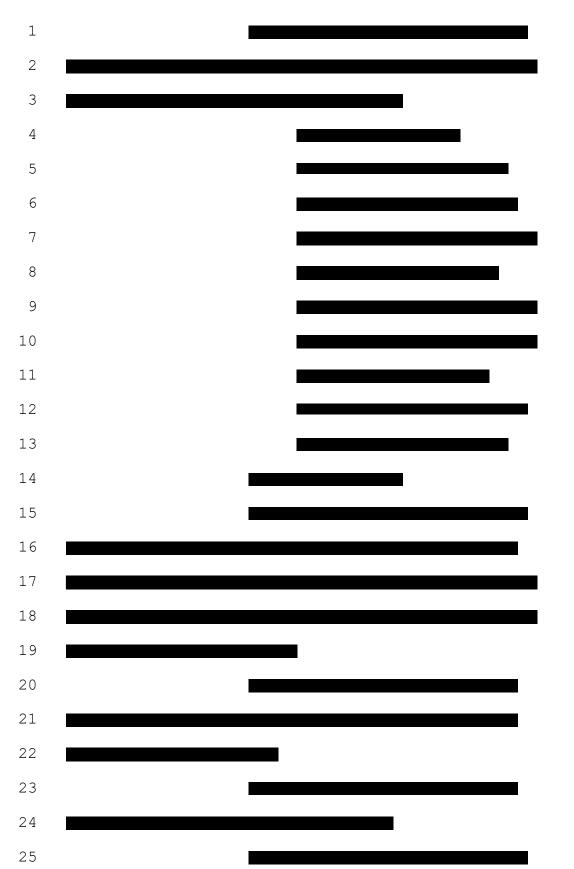
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1	JUDGE CRAWFORD: Can I just
2	interrupt you for a moment. Would you just mind
3	if we take a ten-minute break?
4	MR. LUZ: Yes, of course,
5	Judge Crawford.
6	MS. D'AMOUR: Would you like
7	me to open the breakout rooms for everyone or did
8	everyone just want to yeah, breakout rooms?
9	Okay. I will open those now. Thanks.
10	Upon recess at 8:51 a.m. EST.
11	Upon resuming at 8:58 a.m. EST
12	JUDGE CRAWFORD: On that
13	basis, we can resume cross-examination where we
14	were. Thank you for the brief pause.
15	MR. LUZ: No problem. Thank
16	you, Judge Crawford.
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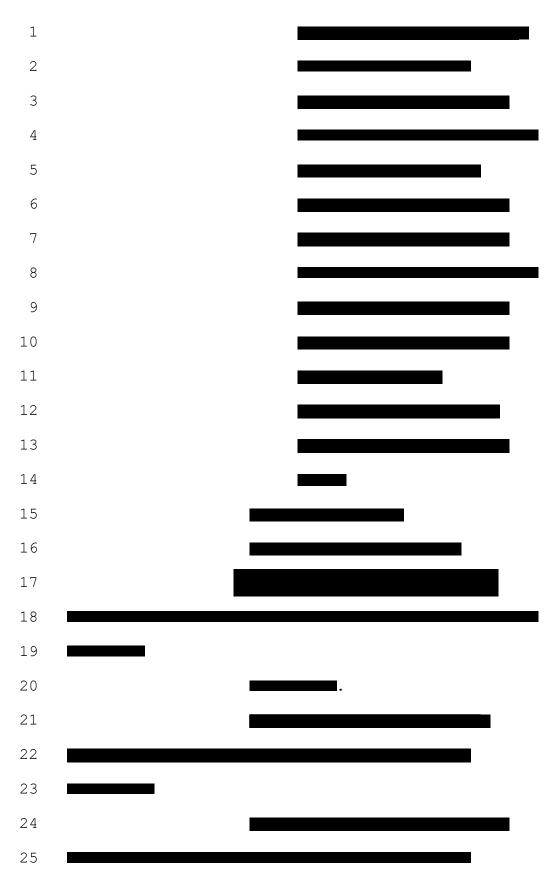


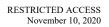
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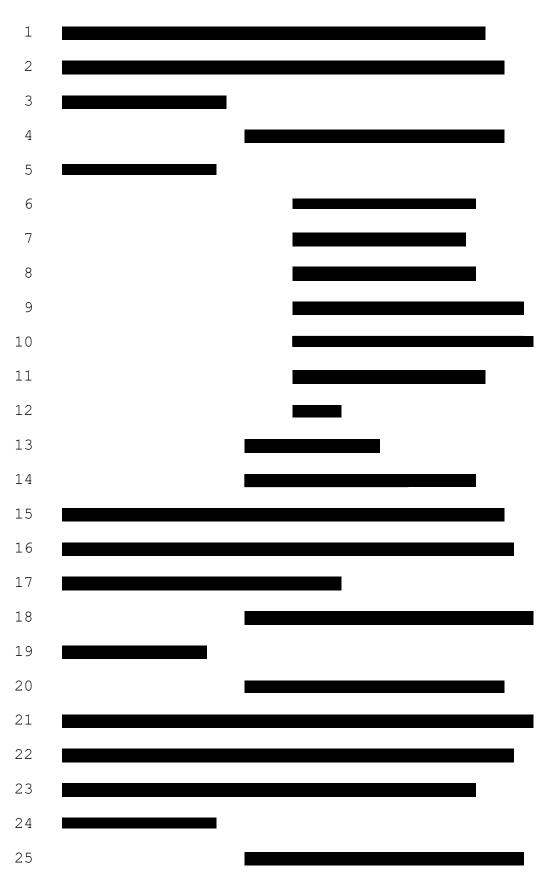


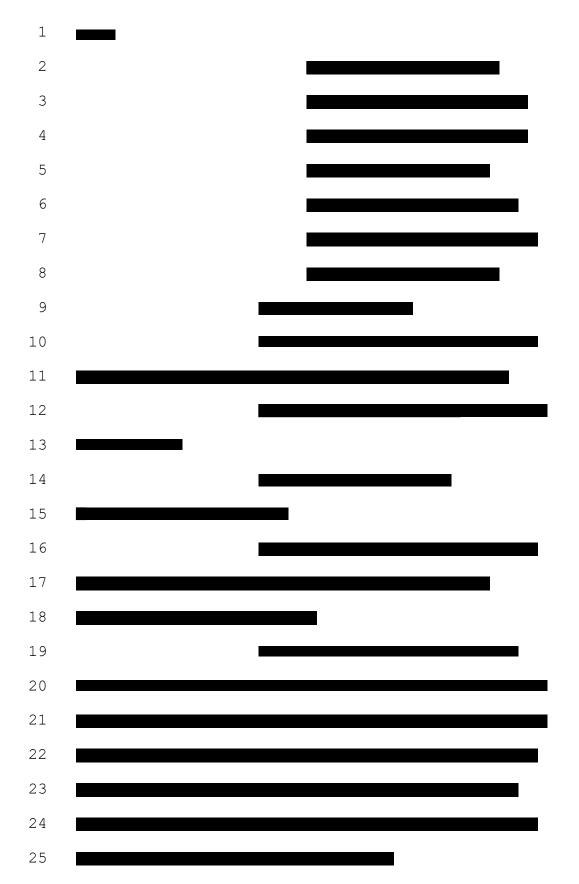


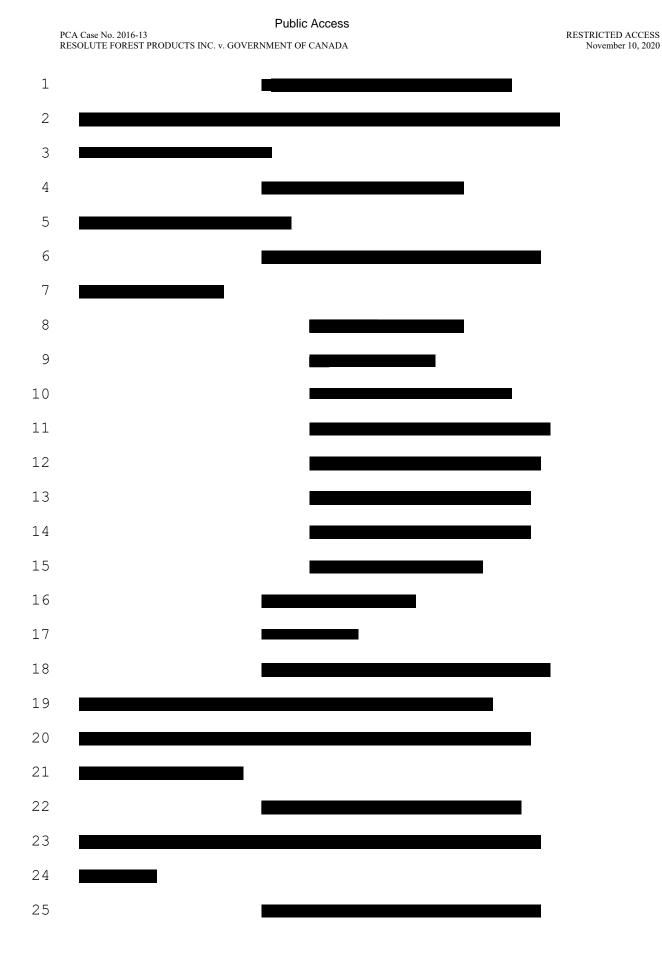




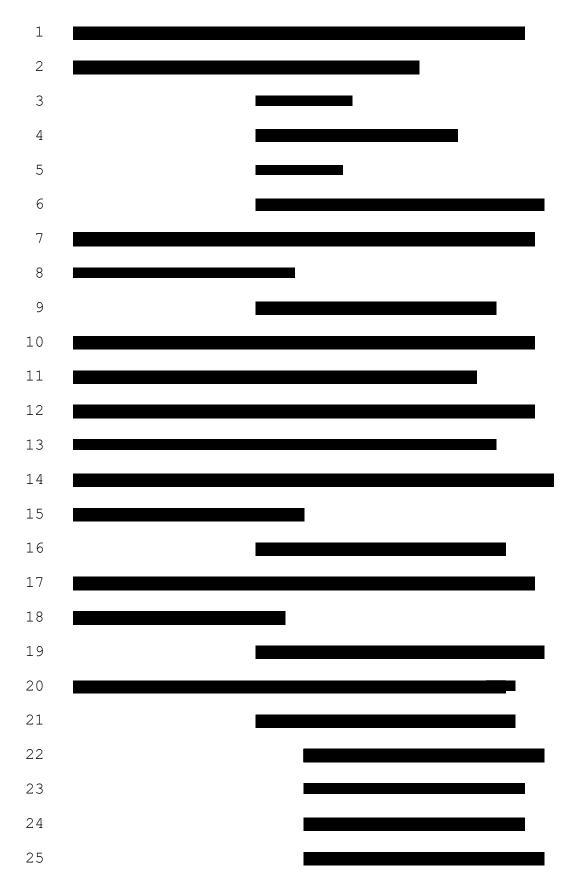
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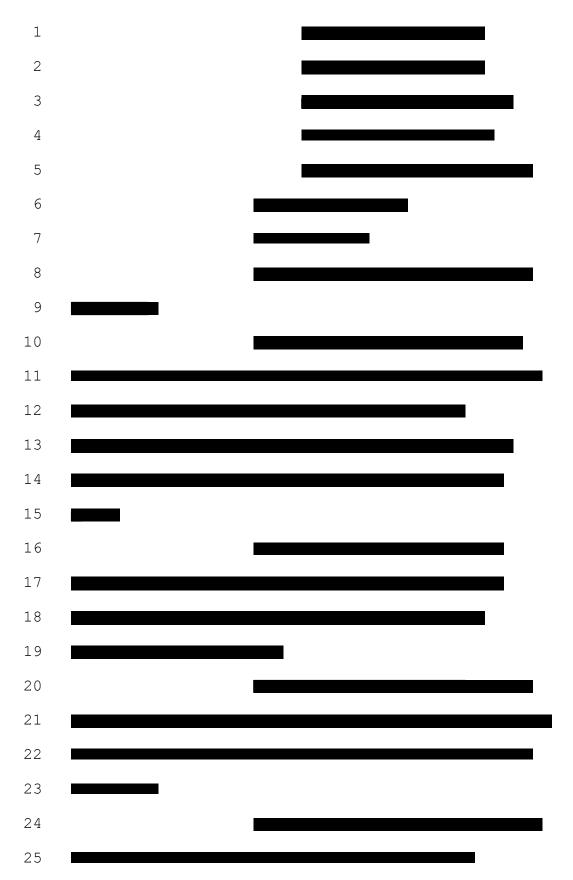






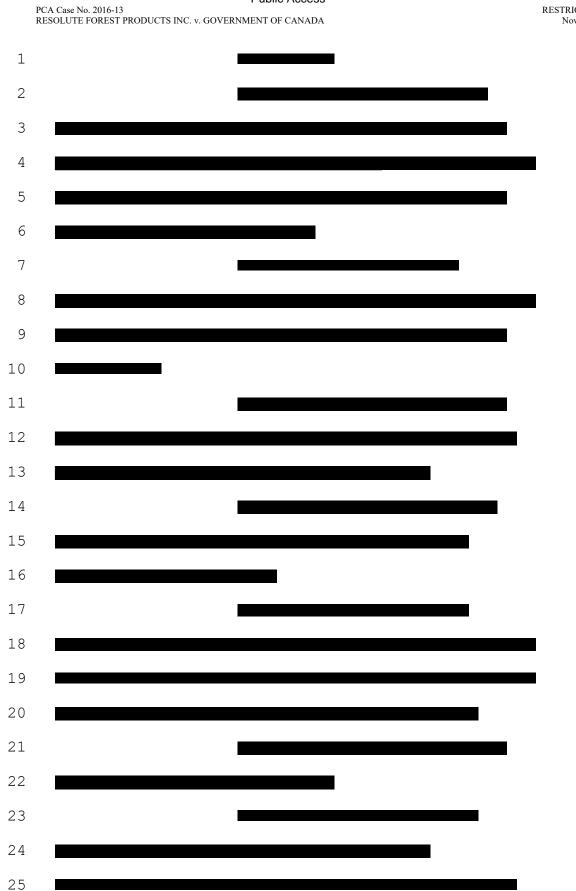
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1 2 3 Q. Okay, okay. So let's 4 look at Exhibit R-316. 5 Α. Yup. 6 Ο. Okay. So it's a nice 7 picture of you under the headline "Resolute boss 8 confident plan will keep Bowater mill running", 9 and it's an article dated December 6th, 2011; do 10 you see that? 11 Α. Yes, I see it. 12 Q. And it says above your 13 picture, "Package all but guarantees five more years"; is that right? 14 15 Well, it's what the Α. 16 province said. 17 Q. The headline suggests 18 that Garneau --19 I repeated what the Α. 20 province said. 21 Q. Okay. Let's look down a 2.2 little bit under the photo where it says -- sorry. 23 Can you just scroll down a 24 little bit more, Chris? 25 Do you need time to look at

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1	this exhibit or you're familiar with it already?
2	A. No, well, I read it.
3	Q. Okay. So it says I
4	will just read it into the record:
5	"'I don't want to run the
6	mill for a year', Garneau
7	said in an interview from
8	Montreal, where the
9	company is headquartered.
10	"'It's structured to
11	basically guarantee that
12	the mill survives for
13	five years. I hope it's
14	going to run longer than
15	that. We're going to do
16	everything in our control
17	to make it a
18	success'."[as read]
19	Do you see that?
20	A. Yeah, but
21	Q. Sorry, go ahead.
22	A. I see that.
23	Q. So you said publicly that
24	it the deal was basically guaranteeing that it
25	was going to survive for five years and you hope

1 it will run for longer than that; is that right? 2 No, I think that I Α. 3 provided coverage to cover for the government to 4 save face. 5 Q. Okay. And businesses are 6 not always able to achieve their goals that you 7 would say in public for some -- or elsewhere; is 8 that right? 9 Α. Yeah, and I knew that I was not able to achieve it already based on the 10 cost savings that were identified that were not 11 12 material. 13 Q. But you can't always 14 achieve your goals unless you achieve cost 15 reductions? 16 Α. Yeah, you need, you --17 Q. And -- right. And market 18 unpredictability is a problem as well -- as well; 19 is that right? 20 Α. For sure this one is 21 declining, the demand was declining. 2.2 Q. Right. So -- yeah, and 23 that's what happened in June 2012 when you decided 24 that Bowater had to close for good; isn't it, the 25 market collapsed, and overseas demand would go

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1	down 25 percent; is that right?	
2	A. Well, it wa	s part of the
3	reason.	
4		
5		
6	Q. Okay. Let'	s look at
7	R-343, an article dated June 15th,	2012.
8	A. Yeah.	
9	Q. And scroll	down to the
10	second page where it says it quo	tes you as
11	saying:	
12	"We've work	ed with the
13	employees a	nd governments
14	to try and	save the mill.
15	The economi	c slowdown
16	around the	world has made
17	the situati	on untenable.
18	We really t	ried hard to
19	find a way	forward for
20	this mill t	o operate, but
21	we never ex	pected
22	overseas de	mand would go
23	down by 25	percent."[as
24	read]	
25	Is that right?	

1 Α. Yeah. 2 And that's consistent Ο. 3 with what you said in your witness statement at 4 paragraph 12, that worldwide currency market 5 fluctuations meant Bowater Mersey could no longer 6 compete with foreign producers and expert markets 7 outside North America; is that right? 8 Α. Yeah, because of our high 9 costs and also because of the where we shipped the 10 product in South America and in Asia. 11 Ο. So Resolute wasn't able 12 to predict what was going to happen in the market 13 six months after it signed the agreement with the government? 14 15 Α. Well, no, no one is able 16 to predict what the market is going to be when you 17 have a declining -- a declining demand for your 18 product. 19 Thanks, Mr. Garneau. Ο. 20 Let's go back to your witness 21 statement. 2.2 Chris, if you could put it 23 back up. Okay. 24 Mr. Garneau, I am going to 25 talk about Port Hawkesbury now. We will move to

1 page 3 of your witness statement. 2 Α. Yeah. 3 Ο. I don't think we have --4 I am at 45 minutes or so. I may need to go a 5 little bit longer than that, but I don't expect it 6 will be much longer than that, if that's okay. 7 So, again, we will try and move along succinctly, 8 and, hopefully, we will keep within our allotted 9 If not, just a little bit over. time. Is that 10 okay? 11 Α. Yeah. 12 Ο. Okay. You say the 13 province of Nova Scotia encouraged you, encouraged Resolute to consider putting in a bid for Port 14 15 Hawkesbury; is that right? 16 Α. Yeah. 17 And you understood that Q. 18 there were certain deadlines that were set by the 19 Monitor for the bidding process for the mill; is 20 that right? 21 Α. Yes. 2.2 Q. Okay. I am just going to 23 confirm some dates. 24 MR. LUZ: Can we pull up 25 Exhibit C-120? It's the second report of the

1	Monitor dated October 3rd, 2011, that was filed in
2	the NewPage Port Hawkesbury CCAA proceedings.
3	BY MR. LUZ:
4	Q. I am not going to ask you
5	substantive questions on this, Mr. Garneau. I
6	just want to use it to confirm some dates from
7	your understanding.
8	Can we look at paragraph 15.
9	A. I never read that, so I
10	don't know why you are asking questions of me on
11	that.
12	Q. Sure. I won't ask you
13	any substance. It's just some dates that I I
14	just want to confirm some dates and some other
15	things that I think you are familiar with. But if
16	you don't know what it is and you don't know,
17	that's fine, you can just say you don't know.
18	So it says here that:
19	"The Monitor and Sanabe
20	contacted the 110
21	interested parties to
22	determine if they had an
23	interest in executing a
24	CA which I think is a
25	confidentiality

1			agreement and
2			obtaining information
3			regarding the sale of the
4			company and its
5			assets."[as read]
6		Do yo	ou see that?
7		A.	Yeah.
8		Q.	And Resolute was one of
9	the companies that	was (contacted by Sanabe; is
10	that right?		
11		A.	We were contacted, yes.
12		Q.	Okay. Let's look at
13	paragraph 16, right	t afte	er that. It says:
14			"27 potential purchasers
15			executed a
16			confidentiality agreement
17			and, as a result,
18			received the CIM "[as
19			read]
20		Whick	n I think is confidential
21	information memorar	ndum:	
22			" and access to the
23			electronic data room."[as
24			read]
25		Do yo	ou see that?

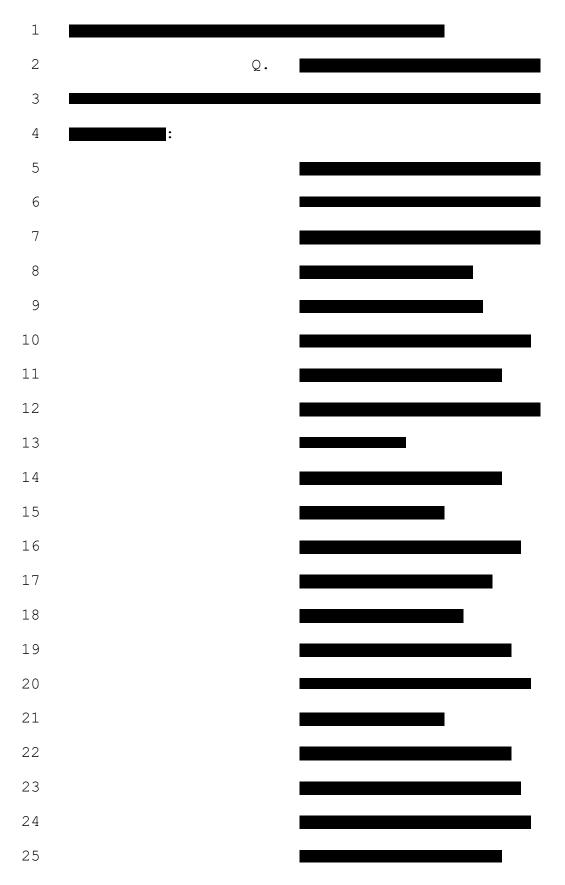
	RESOLUTE FOREST PRODUCTS INC. V. GOVERNMENT OF CANADA
1	A. Yeah.
2	Q. Okay.
3	And then on paragraph 17,
4	says:
5	"The deadline for receipt
6	of non-binding letters of
7	intent was
8	September 28th. The
9	Monitor advises the Court
10	that 21 submissions were
11	received. Furthermore,
12	the Monitor advises that
13	submissions included
14	interested parties who
15	intend to operate the
16	mill as a going concern
17	and other interested
18	parties who intend to
19	liquidate the company's
20	assets."[as read]
21	So, Mr. Garneau, can you
22	confirm that Resolute did not submit a non-binding
23	letter of intent by the 28th of September, 2011?
24	A. I don't recall this.
25	Q. Okay. Do you recall if

1	Resolute executed the confidentiality agreement
2	that was referred to in the previous paragraph,
3	16?
4	A. I remember having seen
5	the confidentiality information memorandum, so I
6	guess that it was signed.
7	Q. Do you remember seeing an
8	earlier version in do you remember seeing the
9	September 2011 information memorandum?
10	A. No, no. I I remember
11	having read something, but I don't I don't
12	remember the date.
13	Q. Okay. Okay. You can
14	take that down, Chris.
15	Let's look at R-360,
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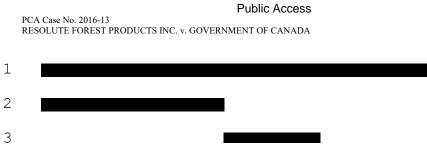


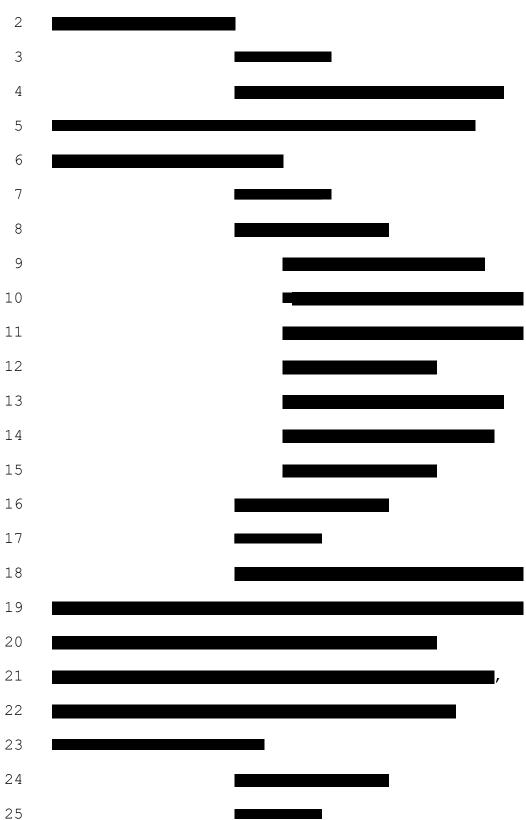




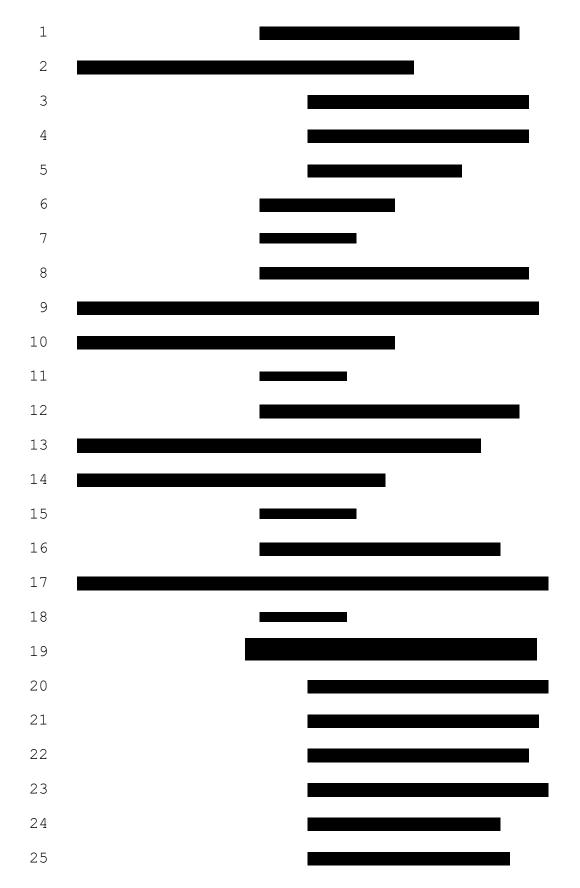
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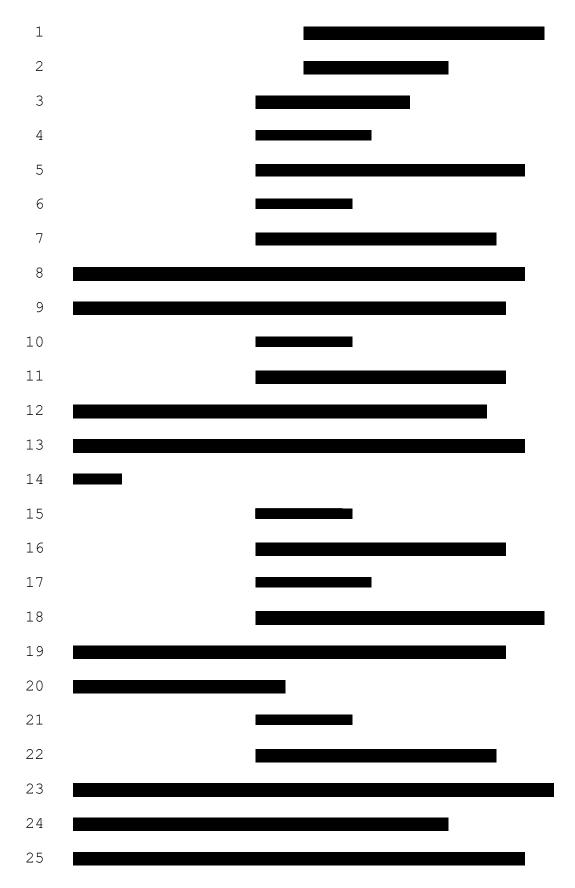
1	Q. Okay.
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8	MR. LUZ: Are we in restricted
9	access session or do we need to move?
10	MS. D'AMOUR: Yes, we are in
11	restricted access session.
12	MR. LUZ: Okay, great. We
13	don't have to switch into something. Okay.
14	BY MR. LUZ:
15	Q. Can we pull up Exhibit
16	C-118?
17	A. 118, okay.
18	Q. Yes.
19	A. Yeah.
20	Q. I am going to look at a
21	hard copy myself as well.
22	Okay. Do you recognize this
23	document?
24	A. Yes.
25	Q. Okay.



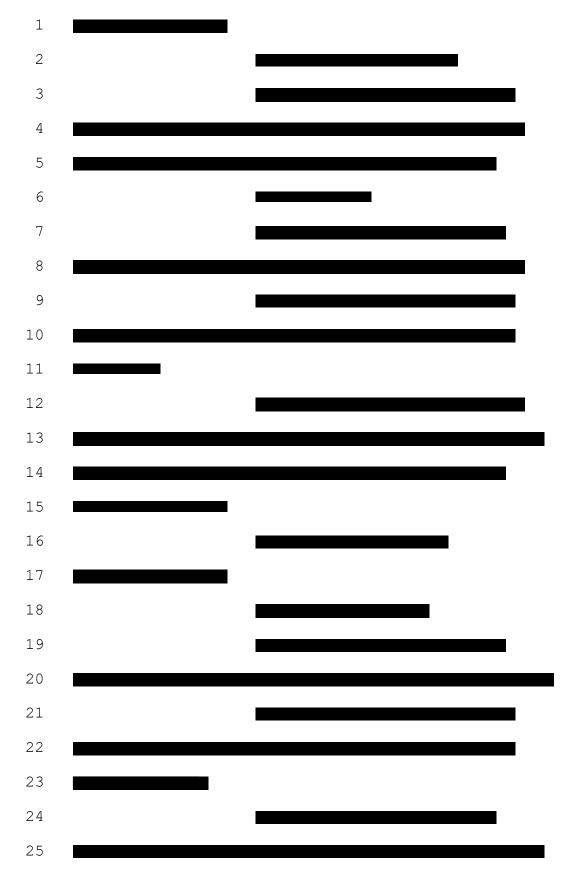


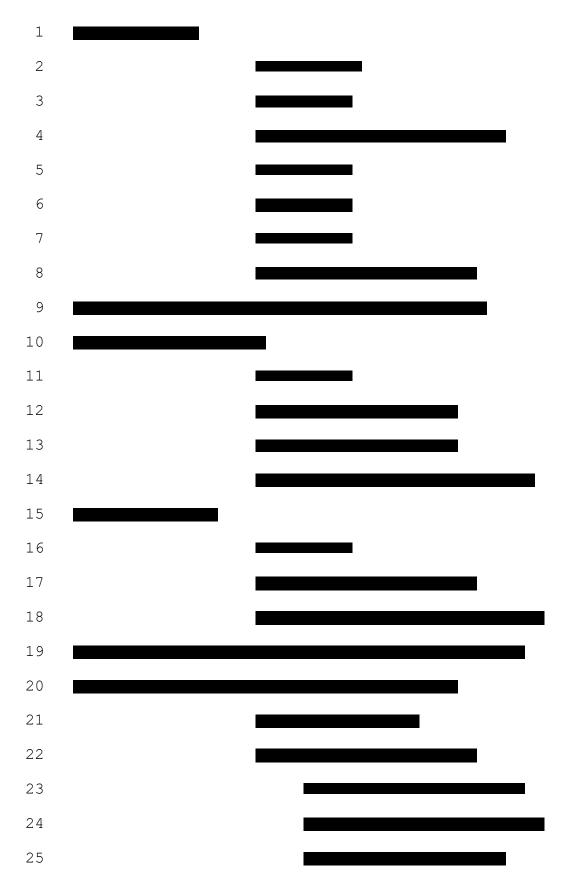


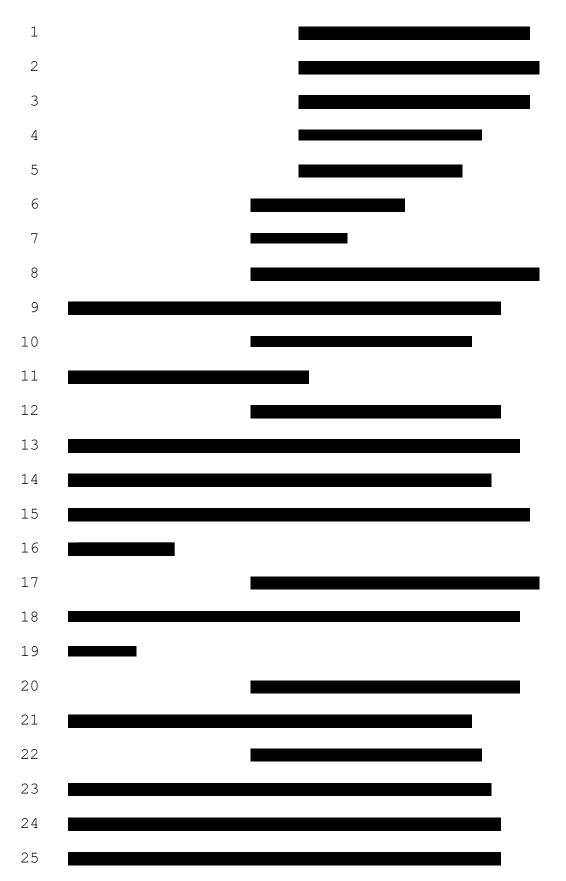




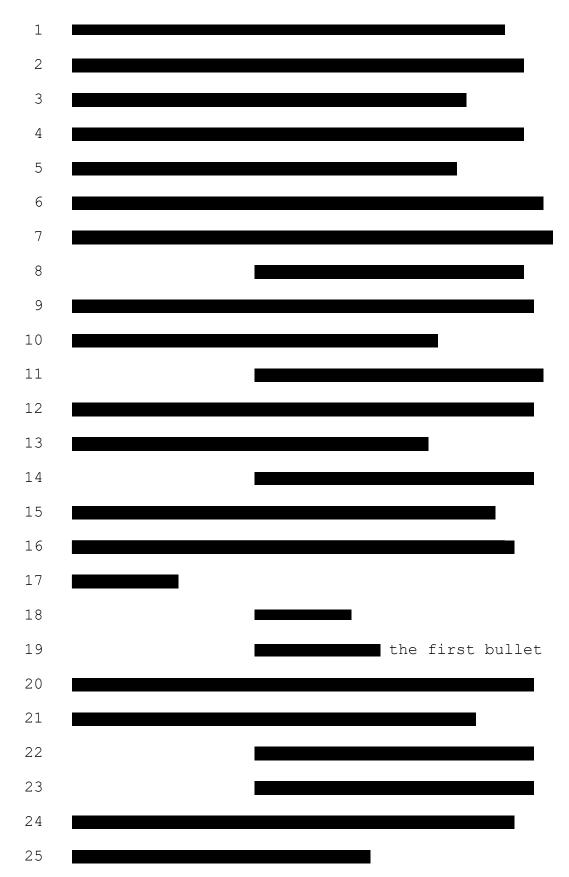


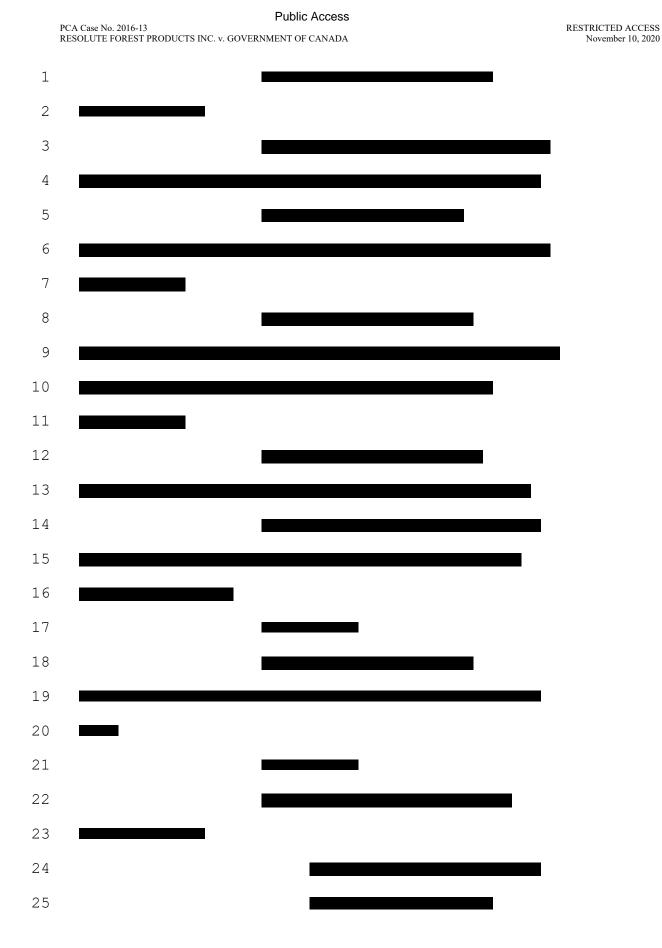


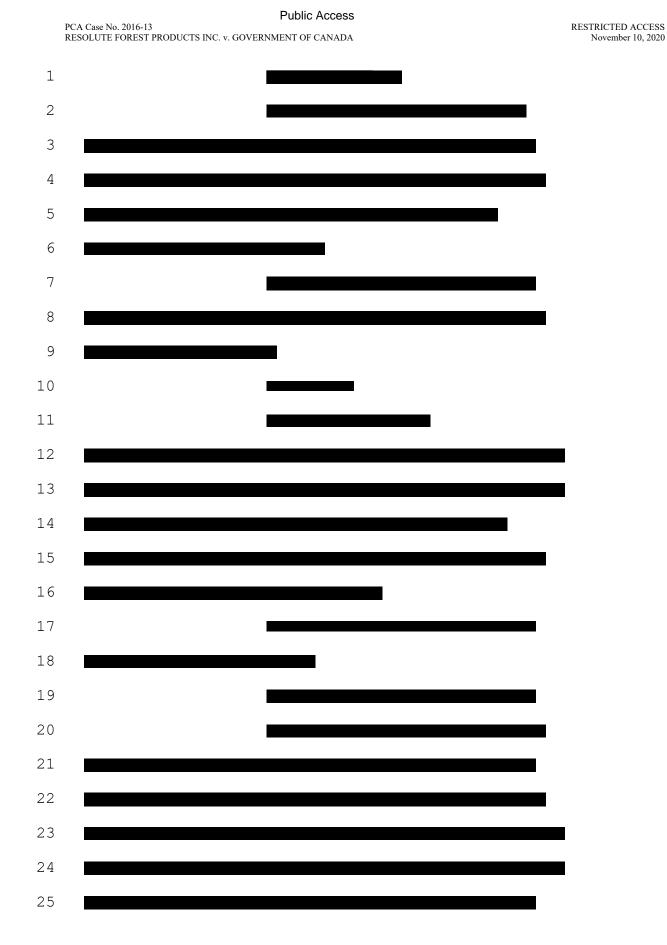


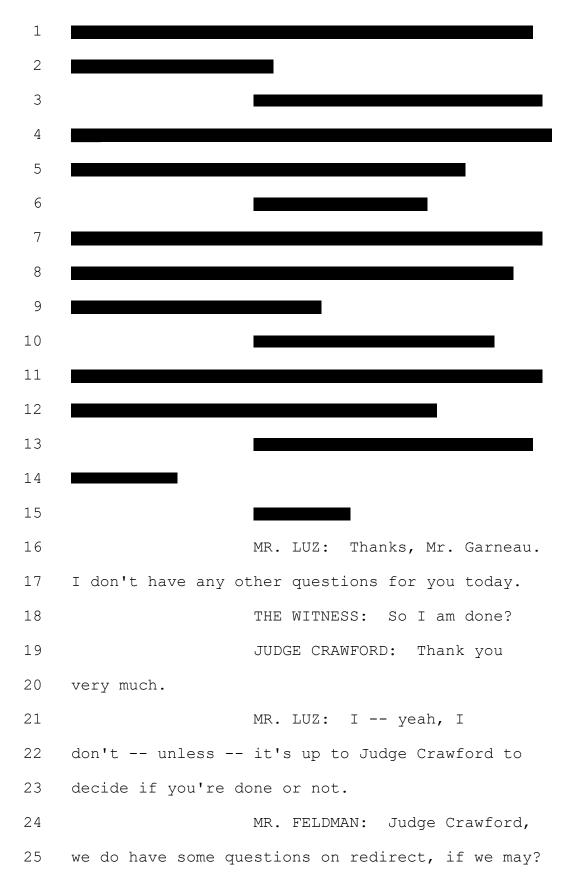




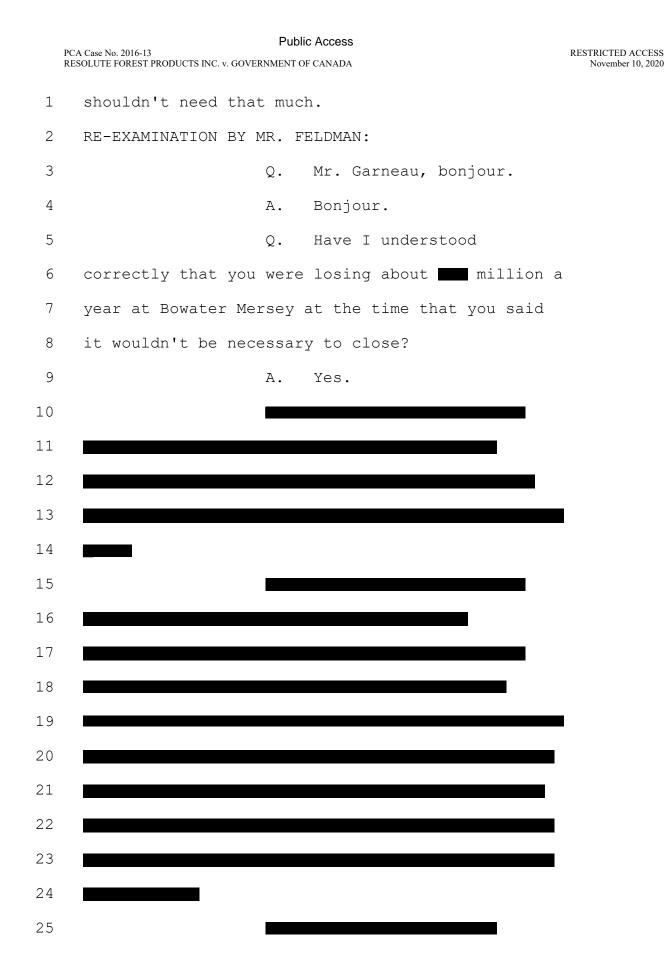








1 JUDGE CRAWFORD: Yes. 2 MS. D'AMOUR: I am sorry to 3 interrupt. I think Professor Lévesque might have 4 dropped from the call. I think we might want to 5 pause, if that's okay, Judge Crawford, so we can 6 make sure she reconnects. 7 MR. LUZ: And I will also 8 close my video. 9 MS. D'AMOUR: Thank you. Just 10 give me a moment. I am going to contact her. 11 --- Brief pause re technical issues. 12 JUDGE CRAWFORD: We can start 13 again. Mr. Feldman, I don't think the Tribunal 14 has questions of this witness at this stage. Can 15 my colleagues confirm that? 16 PROFESSOR LÉVESQUE: I mav 17 have some after the redirect, I guess. 18 JUDGE CRAWFORD: Yes, let's 19 have the redirect now. 20 MR. FELDMAN: Thank you, Judge 21 Crawford. 2.2 JUDGE CRAWFORD: The claimant 23 has 15 minutes redirect, if that gives you 24 guidance. 25 MR. FELDMAN: Thank you. I



1	approximate your objective, which was to stop the
2	burning of all that cash; is that right?
3	A. Yeah, yes.
4	Q. So why did you sign this
5	agreement on December 1, 2011, if you knew and you
6	could tell that its total value wasn't going to
7	come close to what you needed?
8	A. Well, it was based on
9	this request to set, the call that I had with Paul
10	Black that wanted to make sure that the press, the
11	town, the employees, and Nova Scotia Power, that
12	they were basically as informed as the government
13	on the difficulties that we had with Mersey. So I
14	accepted it because the one of the reason was
15	that I was, I wanted to make sure to keep the good
16	relationship with the government because they were
17	interested in buying the land, but the land was
18	not registered. And the land value was basically
19	needed to make sure that our retirees we had a
20	pension deficit of over \$100 million that we
21	would be able to make these retirees whole and
22	have also the money to pay for the severance of
23	the employees when the mill would close.
24	
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25

1 2 3 Ο. And your intent was to 4 sell that land to the province so that you could 5 fund pensions for the workers at the mill? 6 Α. Yeah, we had -- if I may, 7 we had other interested party, but it would have 8 been difficult to sell to this third party without 9 the land registration that was not done. So it 10 was certainly an easier avenue for the company, 11 for Mersey to sell to the government, and they had 12 very high interest in the timberland. 13 Ο. And then I am 14 understanding you to say that, with that in mind, 15 you accepted the December 1st offer for public 16 relations purposes, knowing that it was not going to ultimately keep the mill open; is that right? 17 18 Α. Yeah, because, as you 19 know, just at the end of November, the board 20 approved the small reduction in the -- the load 21 reduction rate was only ____, so I knew that the 2.2 timing probably was to offset this, well, bad news 23 that the saving would not be realized on the power 24 side that was the most important component. When 25 we shared the cost reduction that we had with the

1 government, was 📰 million, and what we got was 2 only million. 3 You were asked about Ο. 4 predicting the future in product and declining 5 demand, and I think you may have said that you 6 can't make such predictions. But don't you make 7 such predictions all the time? Your paper 8 products are in declining demand. 9 Well, when you deal with Α. a product that is declining, you just don't know 10 11 how much, if the decline is going to accelerate, 12 so, and I think that it's the reason why it's 13 difficult to -- it's difficult to predict. We 14 knew that the demand would continue to go down, 15 but we didn't know by how much. 16 Ο. Is the best way to deal with that uncertainty to reduce costs? 17 18 Α. Well, it's the only 19 avenue that you have. We knew that the mill, the 20 high-cost mill normally, or the one that closed because of the cash burn and it was the case in 21 2.2 Mersey, so, and only Resolute was funding the cash 23 burn because the other partner of The Washington 24 Post decided that they were done. They would not 25 participate into the cash burn anymore.

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1	Q. The document that to
2	which Mr. Luz referred you regarding Port
3	Hawkesbury, the planning, the possible bid the
4	bid proposal for Abitibi Bowater and Resolute, you
5	personally didn't write this document; is that
6	right?
7	A. No, no. It was done by
8	the people that went to the mill and the people in
9	the finance department.
10	
11	
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22	Q. So that document made a
23	reference to coated mechanical paper, but was your
24	concern about all of that additional capacity
25	coming on the market if Port Hawkesbury were to

1 reopen, was your concern directed to 2 supercalendered paper, what you make in Quebec? 3 Α. Well, obviously, in 4 Canada, not only in Quebec, there is no coated 5 mechanical. So I was really concerned that by --6 by the impact that it would have on our mills in 7 It's -- and, so, it's easy to envision, Quebec. 8 if you restart the mill, it's 20 percent of the 9 demand, so it's going to have a significant impact 10 on our mill in Quebec. So I was really concerned 11 about it. 12 And the mills in Quebec Q. 13 are producing supercalendered paper, not coated 14 mechanical paper? 15 Α. No, no, there was no 16 coated mechanical produced in Canada. And Quebec, it's only supercalendered paper. 17 18 MR. FELDMAN: I think that's 19 all. Thank you. 20 JUDGE CRAWFORD: I will ask, 21 do my colleagues have any questions to ask to this 2.2 witness? It seems the answer's no. Do you hear 23 me? 24 DEAN CASS: We hear you. From 25 my standpoint, I think that the questions have

1	been asked sufficiently. I understand Mr. Garneau
2	to have responded to Mr. Feldman, not that you
3	can't make predictions about what's happening in
4	the market but that, in certain settings, those
5	predictions are difficult. And that really
6	answered the question I would have put.
7	QUESTIONS BY THE TRIBUNAL:
8	PROFESSOR LÉVESQUE: I have
9	one on well, let me say hello first. Bonjour,
10	Mr. Garneau.
11	THE WITNESS: Bonjour.
12	PROFESSOR LÉVESQUE: I have
13	learned a lot about paper, supercalendered paper
14	production in this process. I never thought I'd,
15	yeah, I have learned so much, and one thing that
16	struck me is how many variables there are that you
17	have to contend with just in being successful in
18	this business but also planning.
19	And I was reviewing the
20	documents submitted to the U.S. Securities and
21	Exchange Commission where you list all the risks
22	you have to contend with, currency fluctuation,
23	pension plan liability, income tax, access to wood
24	fibre. And in this particular case, that was the
25	year ending in December 30th 31st December,

1 2012, Resolute mentioned the change in the 2 province of Quebec going to an auction system for 3 access to fibre. And it struck me that there's, 4 yeah, many variables. 5 And in the same document, Resolute made a statement: 6 7 "We compete as a leading 8 lower-cost North American 9 producer."[as read] 10 And I wondered how, yeah, how 11 you do manage to reduce costs in that context when 12 there's so many variables. Some you control; some 13 you don't control. 14 So if you could enlighten me a 15 little bit because I know you have a wide -- a 16 long experience in this business, how is it from 17 your perspective? 18 THE WITNESS: Well, from my -based on my experience, the three most important 19 20 component -- power, that's the -- normally, it's 21 the highest cost because when you produce this 2.2 grade, you use a lot of energy. So if you have a 23 high power cost, it's a significant disadvantage. 24 The second one is fibre. And 25 I think that the species are really important. So

1	when you compare, and I worked in BC and I worked
2	in Ontario and Quebec, so I have a good
3	understanding on the species themselves.
4	In Quebec, we have the black
5	spruce, so mostly black spruce. That is a very
6	strong fibre. And when you produce SC paper, if
7	you have black spruce, it costs less because you
8	can basically use less kraft. That is very
9	expensive. So it's something in Nova Scotia that,
10	when you look at even for newsprint, the balsam
11	and white spruce, it's a weaker, weaker fibre, so
12	you need to use more energy to remain
13	cost-competitive. But fibre has a big impact.
14	And the other one is labour.
15	So it's the three most important item. And after
16	that, it's a bucket of small items like
17	maintenance and taxes. And, really, it's, if you
18	control those three, plus some of the chemical
19	that you put in, so you have, you are on a solid
20	ground to compete when the market decline and
21	pricing go down.
22	PROFESSOR LÉVESQUE: Thank you
23	very much.
24	JUDGE CRAWFORD: Thank you. I
25	think that concludes the evidence of this witness.

A.S.A.P. Reporting Services

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1	Thank you very much for sharing your experience
2	with us. It's a pity that we didn't have more
3	time, but we have certainly gained from your
4	understanding.
5	THE WITNESS: Thank you.
6	JUDGE CRAWFORD: We will now
7	have a short coffee break.
8	MS. D'AMOUR: Thank you. I
9	will open the breakout rooms.
10	JUDGE CRAWFORD: Ten minutes.
11	It's scheduled for 30 minutes, but I think we need
12	to make up some time to allow for
13	cross-examination this afternoon. So the time now
14	is 15:53 Hague time. What's the time in Montreal?
15	DEAN CASS: 9:53.
16	PROFESSOR LÉVESQUE: 9:53.
17	MR. VALASEK: 9:54. Could we
18	start I am doing the cross-examination next,
19	and I do need a little break. Could we start at
20	ten past the hour?
21	JUDGE CRAWFORD: Yes, I
22	realize that someone would be in that position.
23	Can we say quarter past the hour?
24	MR. VALASEK: Oh, thank you

25 very much, Judge Crawford. Thank you.

1 JUDGE CRAWFORD: So we adjourn 2 till 15:15, Cambridge -- The Hague time. Quarter 3 past 10, your time. 4 MR. VALASEK: Thank you very 5 much. 6 JUDGE CRAWFORD: Thank you 7 very much. 8 --- Upon recess at 9:55 a.m. EST. 9 --- Upon resuming at 10:21 a.m. EST 10 JUDGE CRAWFORD: Are we ready, 11 Mr. Valasek? 12 MS. D'AMOUR: The breakout 13 rooms are closed. I just also want to remind counsel that the restricted access individuals are 14 15 still outside of the room. Should I leave them 16 there, or would you like me to readmit them? 17 JUDGE CRAWFORD: Mr. Valasek. 18 MR. VALASEK: They can be 19 readmitted at this time. 20 MS. D'AMOUR: Okay. Thank 21 you. 2.2 All right. Everyone's 23 readmitted. Thanks. 24 --- Whereupon Restricted Transcript Ends 25 MR. VALASEK: Ricky, just so

1	that I see what the screen looks like on my
2	computer, can you pull up Mr. Montgomerie's
3	witness statement, 2019-04 witness statement of
4	Duff Montgomerie, RA.3? I am just going to make
5	an adjustment on my screen so that I can see it
6	properly. Apologies. I am just trying to get the
7	right people in the right place.
8	JUDGE CRAWFORD: Can I start?
9	MR. LUZ: Martin, just to note
10	that the version that's up there is the restricted
11	access version. I am sure it will go down
12	eventually, but
13	MR. VALASEK: Okay. Ricky,
14	when we are in the yeah, I am sorry, I called
15	up the restricted access. Call up the regular
16	witness statement, please.
17	Okay, I think I finally have
18	my computer set up here.
19	MR. DYER: Martin, I don't
20	think we have the regular one in the database.
21	MR. VALASEK: You don't think
22	we have the regular. Okay.
23	MR. DYER: All I seem to have
24	is that first one that I brought up, which is
25	MR. VALASEK: You know what,

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1	I'll be able I should be able to check whether
2	the page that we are bringing up has any
3	restricted access information. I know that on
4	in paragraph 2, there is no on that page, there
5	is nothing restricted.
6	JUDGE CRAWFORD:
7	Mr. Montgomerie, welcome to the Tribunal. Thank
8	you for coming. Can I ask you to make the
9	declaration for the fact witness which you should
10	have been given. It's been mildly revised to take
11	account of the fact that you can have access to
12	your witness notes. Have you got the text there?
13	Can you hear me?
14	MR. VALASEK: Mr. Montgomerie,
15	can you hear the chairman of the Tribunal?
16	JUDGE CRAWFORD: We can't hear
17	him.
18	MS. D'AMOUR: Sorry. I think
19	boardroom volume is muted.
20	JUDGE CRAWFORD:
21	Mr. Montgomerie, can you hear me? We can hear
22	you, so that's good.
23	Can you make the declaration
24	for a fact witness which the PCA will have given
25	you?

1	MR. MONTGOMERIE: I solemnly
2	declare upon my honour and conscience that I will
3	speak the truth, the whole truth and nothing but
4	the truth, no one else is present in the room
5	where I am testifying, I do not have any notes or
6	annotations on any hard copy or electronic
7	documents. I confirm that I am not receiving
8	communications of any sort during my testimony
9	other than my participation in the main hearing
10	room in Zoom.
11	FACT WITNESS: DUFF MONTGOMERIE
12	JUDGE CRAWFORD: Thank you
13	very much. In case we have technical
14	difficulties, if you notice that something has
15	gone wrong, please draw it to our attention.
16	THE WITNESS: Thank you.
17	JUDGE CRAWFORD: And someone
18	from the Arbitration Place or the PCA will come
19	immediately, if it's required, in order to get you
20	back online.
21	MR. VALASEK: Judge Crawford,
22	may I proceed?
23	JUDGE CRAWFORD: Yes.
24	CROSS-EXAMINATION BY MR. VALASEK:
25	Q. Good morning,

(416) 861-8720

Public Access PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 Mr. Montgomerie. You can hear me okay? 2 Α. Morning. I can. 3 Ο. Okay, good. 4 My name is Martin Valasek, and 5 I am one of the lawyers representing Resolute, the 6 Claimant in these proceedings. 7 I will be asking you some 8 questions. I designed my questions so that they 9 are very short. They generally refer to 10 documents, and I am asking you to confirm that the 11 documents essentially say what they -- what's 12 written on them. 13 I do have quite a number of 14 questions, so as a general matter, if there is a 15 long explanation that you'd like to give, I'd 16 encourage you to wait for the lawyer for Canada to 17 give you an opportunity to provide an explanation 18 through questions that he can ask at the end. 19 Obviously, if there's something that's difficult 20 about my question in the sense that I have 21 misunderstood something, then the Tribunal will 2.2 want to hear that. But, generally, hopefully, we 23 can get through my questions as quickly as 24 possible. 25 Α. So can I ask, if I am

RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 trying to give context around a yes-or-no answer, 2 that's not what you are looking for? 3 Q. Well, I have an hour, 4 Mr. Montgomerie --5 Α. Okay. -- so I have 12 pages of 6 Ο. 7 questions, so if you give context -- the context 8 is your witness statement. You were given the --Okay. 9 Α. 10 -- opportunity to provide Ο. 11 the context. I am really trying to pick up on 12 facts, not trying to put words in your mouth. 13 Α. Okay. 14 So, again, I think the Q. 15 Tribunal will apply a rule of reason; but if you 16 did apply your own context to each question, we 17 could be here all week. 18 So, Mr. Montgomerie, from 19 January 2011 to April 2014, you were deputy 20 minister of Natural Resources? 21 Α. That's correct. 2.2 Q. And that made you the 23 highest civil servant in that department? 24 Α. That's correct. 25 In that capacity, on any Q.

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1	issue of importance, you would have briefed or
2	you did brief the minister of the department?
3	A. In the context of this
4	file, I was asked by the premier to chair a
5	working committee once the two mills were going
6	down. So, in effect, I was basically reporting to
7	the deputy minister to the premier and to the
8	premier directly in this file.
9	Q. Right.
10	
11	
12	
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17	
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20	
21	It
22	was the the premier actually asked me to lead
23	this group.
24	Q. And at the time of the
25	is it the premier's policy advisor who was Paul

Public Access PCA Case No. 2016-13 RESTRICTED ACCESS RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA November 10, 2020 1 Black? 2 Α. That's correct. And a 3 little context is important. Paul reports 4 directly to the chief of staff on the political 5 side. I report to the deputy to the premier on 6 the public service side. 7 8 9 10 11 12 So you state in your Q. 13 witness statement at paragraph 5 -- and unless you 14 really -- do you have your witness statement in 15 front of you there, Mr. Montgomerie? 16 I do. I am Α. 17 Is it April 17 or March 4? double-checking. 18 Q. It's the April -- it's 19 the first one, the April 17th. 20 Α. Okay. And the number 21 again? Sorry. 2.2 Q. Paragraph 5. 23 I have it, yes. Α. Thank 24 you. 25 Q. This is where you state

RESTRICTED ACCESS
November 10, 2020

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	PCA Case No. 2016-13 F RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA
1	that there were challenges faced by the forestry
2	sector in 2011?
3	A. Yes. In essence, within
4	a week and a half
5	Q. I will ask you the
6	questions
7	A. Okay. I I am sorry.
8	Q. You will have an
9	opportunity. No no problem.
10	So in the next paragraph, you
11	talk about NewPage announcing that, in August of
12	2011, that it would idle its Port Hawkesbury mill.
13	Four days later, you say Resolute informed the
14	Government of Nova Scotia about imminent closure
15	of the Bowater Mersey mill. And then on
16	September 6th, 2011, NewPage sought court
17	protection under the CCAA proceedings. That's all
18	in paragraph 6.
19	A. Right. Correct.
20	Q. And you mention that you
21	struck up you were asked to lead this
22	interdepartmental committee to deal with these
23	urgent situations?
24	A. Right.
25	Q. Also, as you put it,

A.S.A.P. Reporting Services

1	though, you were dealing with the "long-term
2	planning and policy considerations". That's the
3	way you put it in paragraph 5?
4	A. Correct.
5	Q. In other words, you were
6	to see you would see what you could do to avoid
7	the closure of the mills but also what could be
8	done long-term, if possible?
9	A. That is correct, yes.
10	Q. Is that fair? Yeah.
11	A. Yeah.
12	Q. And as the chair of the
13	committee, you were tasked with overseeing the
14	gathering and analysis of information as to the
15	state of the newsprint and SC paper industries?
16	A. That's correct.
17	Q. That's in paragraph 8 of
18	your witness statement.
19	
20	
21	
22	
23	
24	Q. And the future
25	prospects I think we should go into a

Public Access PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 restricted access session at this point. 2 I am not sure what that Α. 3 means. 4 Q. Mr. Montgomerie, this is 5 just to ensure that people who are participating in the hearing who shouldn't have access to 6 7 certain documents cannot see them. 8 Α. Okay. Thank you. 9 MS. D'AMOUR: All right. You 10 may proceed. 11 --- Whereupon Restricted Transcript Commences. 12 BY MR. VALASEK: 13 Ο. And so in one of these industries, for newsprint, you understood that the 14 15 prospects, the long-term prospects were dim? 16 Α. Yes. And keeping in mind 17 we were just getting started and getting our feet 18 on the ground and beginning to interact with 19 Resolute and eventually with Pacific West. 20 21 22

Α.

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23

24

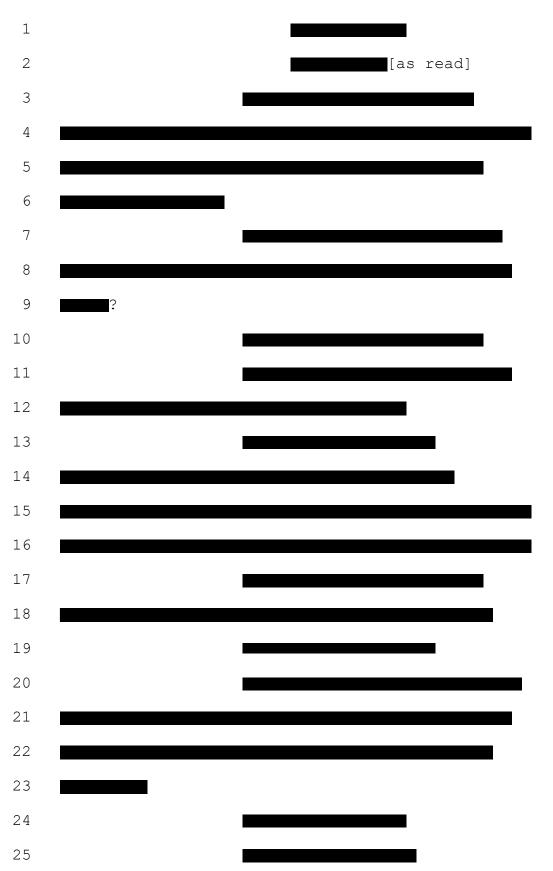
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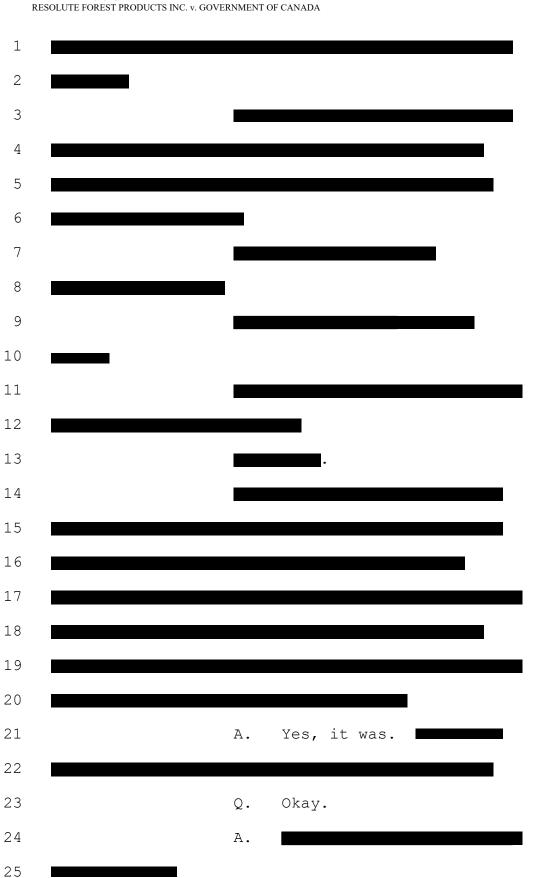
They were much more

1	severe in the newsprint side, no question.
2	Q. Yeah, and so the
3	prospects for supercalendered paper were actually
4	better. Even though there was declining demand,
5	there were better prospects competitively?
6	A. Particularly with the
7	modern machine in Port Hawkesbury, we thought so.
8	Q.
9	
10	
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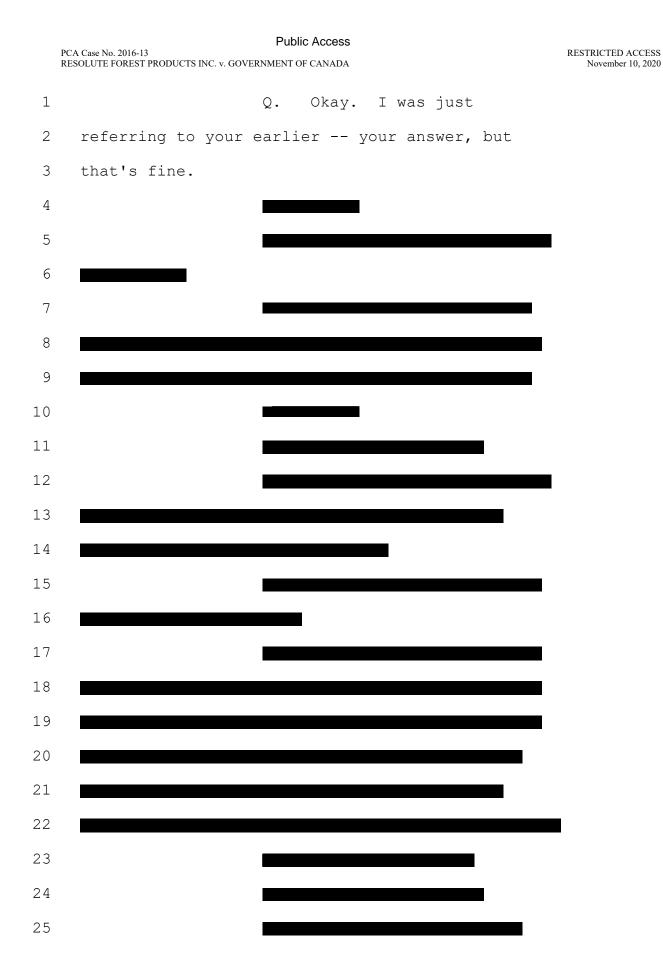






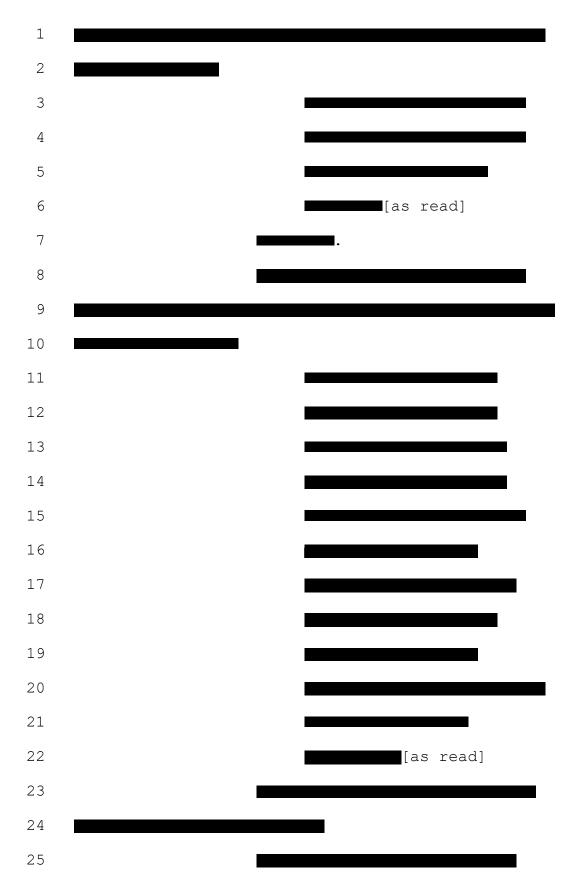
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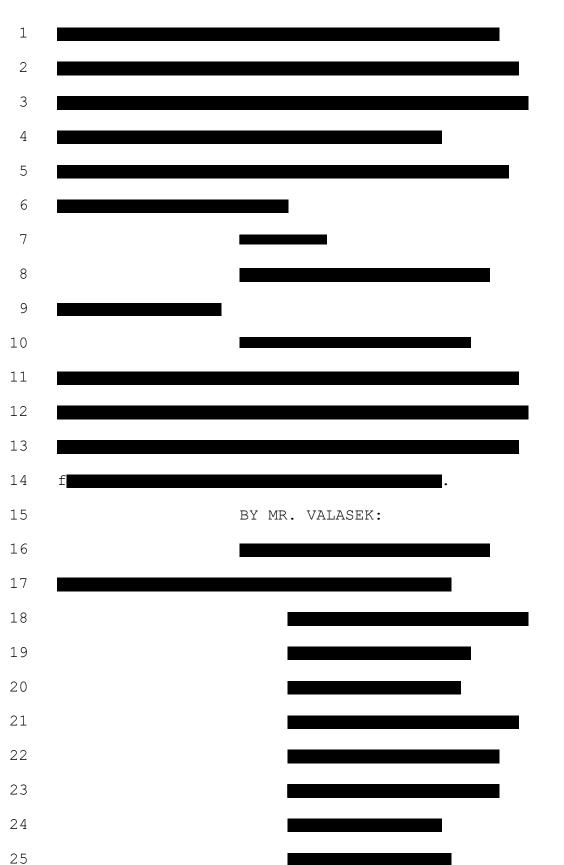
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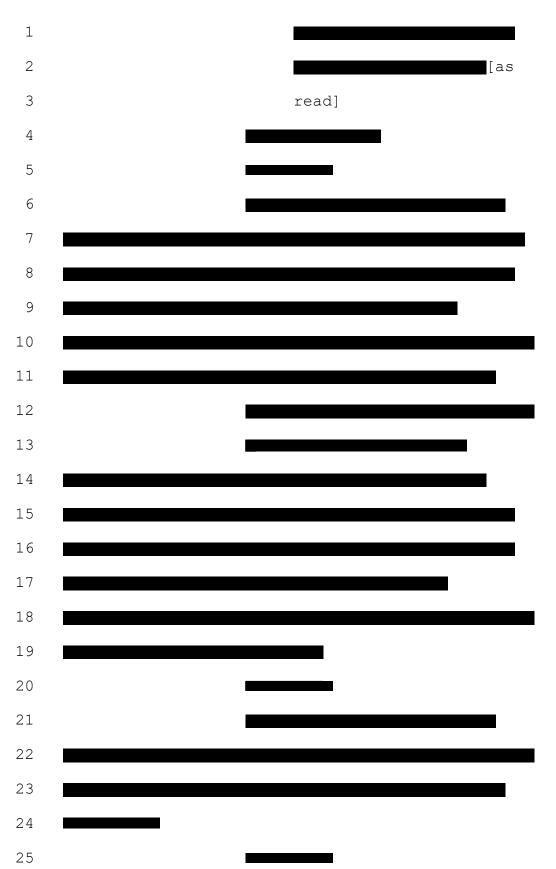
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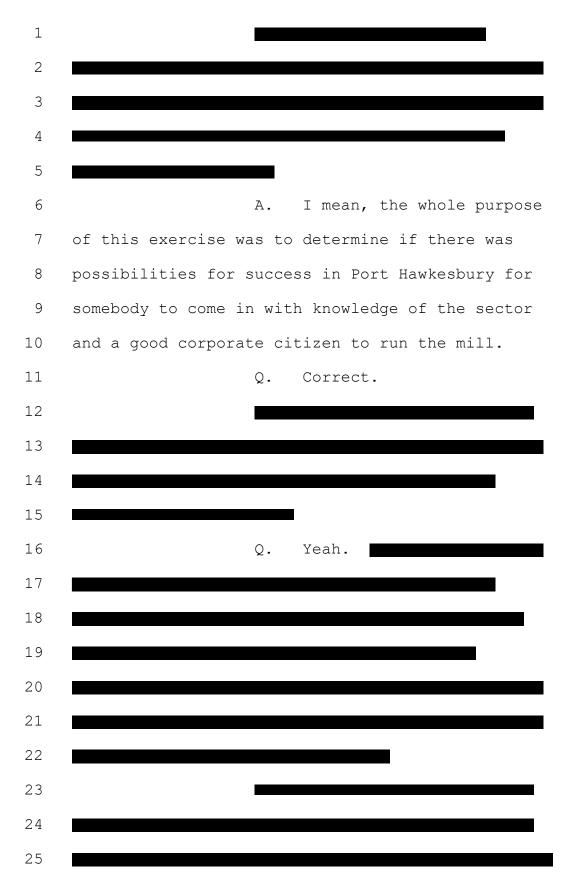


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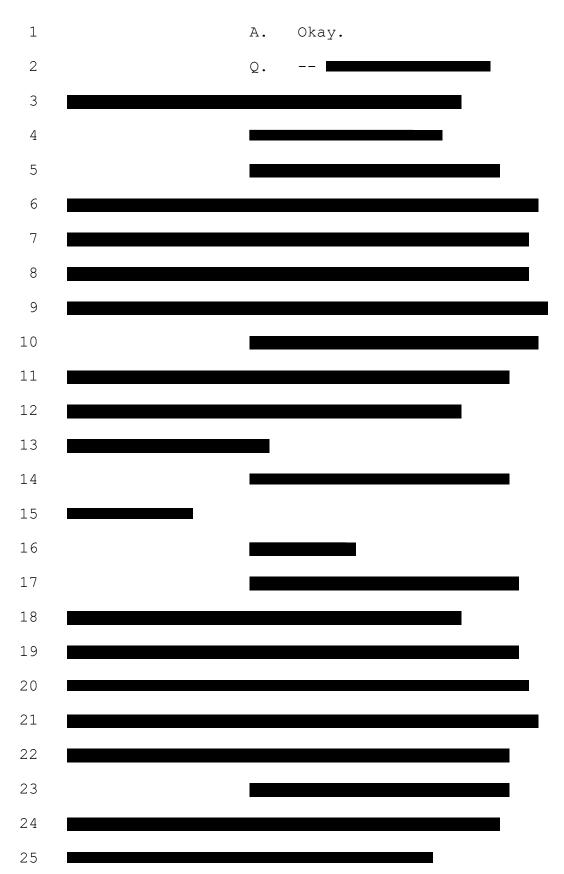


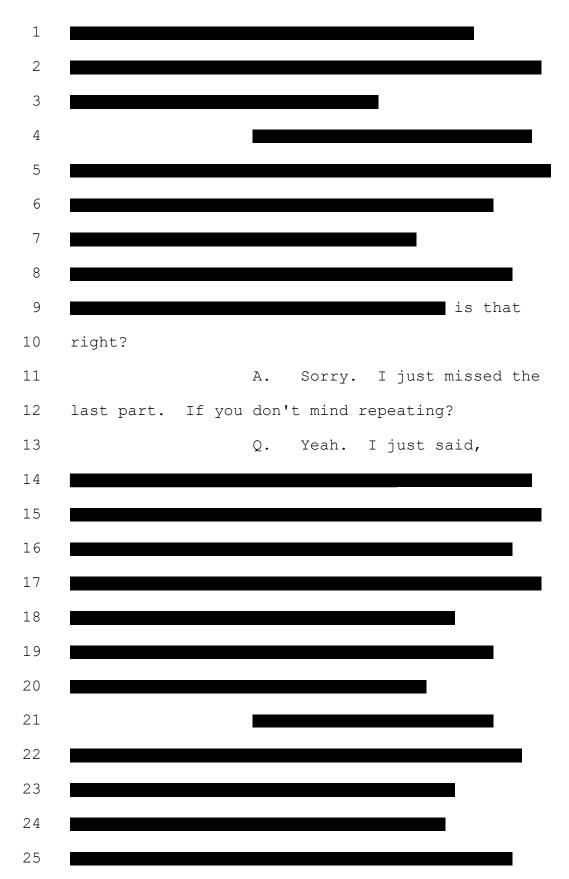
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1	
2	A. Well, and exactly, again,
3	my role was to determine whether there was
4	possibilities for success in Port Hawkesbury and
5	should we proceed based on that in the context of
6	a modern machine and the future of the
7	marketplace.
8	Q. Sure, sure. I am just
9	A. That was where I was
10	working from.
11	Q. Yeah,
12	
13	
14	A. Right.
15	Q
16	
17	
18	
19	
20	Α.
21	
22	
23	
24	Q.
25	







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1	
2	
3	
4	So we can go out of the
5	restricted access session.
6	MR. LUZ: Can you take down
7	the slide too?
8	MS. D'AMOUR: Everyone's been
9	readmitted.
10	Whereupon Restricted Transcript Ends
11	BY MR. VALASEK:
12	Q. Because we aren't in
13	restricted access, I don't think I can pull up
14	your witness statement, but if you have it in
15	front of you, Mr. Montgomerie, if you can go to
16	paragraph 22 of your witness statement.
17	A. Was it 22?
18	Q. Yes. And I will try to
19	find it myself.
20	A. No worries. I am there.
21	Thank you.
22	Q. You are there?
23	A. Yeah, 22.
24	Q. And do the members of the
25	Tribunal well, let me see for those who are

	RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA
1	following at home. Do the members of the Tribunal
2	have paragraph 22? Let me proceed. I am not sure
3	much turns on you actually seeing the text. I
4	will read it.
5	Paragraph 22, Mr. Montgomerie,
6	you say this is right at the top of the
7	paragraph:
8	"Just like with
9	Resolute's Bowater Mersey
10	mill, there was never a
11	direction from the
12	premier or anyone else in
13	the Government of Nova
14	Scotia that the Port
15	Hawkesbury mill needed to
16	be saved at any cost."[as
17	read]
18	You see that statement that
19	you have made there?
20	A. Yeah, that's correct.
21	And, obviously, it was true because it was us that
22	walked from negotiations near the end with Pacific
23	West.
24	Q. Yeah, I am just going to
25	explore this with you. You started exploring it.

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1 Let's keep going. 2 In reality, Mr. Montgomerie, 3 the most that was ever contemplated for Bowater 4 Mersey was extending the life of that mill by 5 maybe five to eight years; isn't that true? I mean, we had to 6 Α. 7 determine, working with Resolute, whether there was a chance that that mill's life could be 8 9 extended to five years or longer. And, I mean, we 10 had to work together --11 So the answer --Ο. 12 Α. -- it was our best shot, 13 and I believe --14 Sorry, could you let MR. LUZ: 15 him answer the question, please? 16 THE WITNESS: Oh, I thought I 17 was. 18 MR. LUZ: Sorry. Go ahead. 19 Martin, please, he has to answer the question. 20 Go ahead, Deputy. 21 THE WITNESS: The key was, 2.2 with Resolute, working with us together -- quite 23 frankly, it was an incredibly professional and 24 strong relationship, I thought -- could we, 25 together, extend the life of that mill. And I

Public Access PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 think we gave it our best shot; but, 2 unfortunately, the Euro went in the tank and we 3 couldn't do it. But I felt we worked together to 4 try and accomplish that. 5 MR. VALASEK: Just, Mark, I 6 appreciate it, but that went way beyond my very 7 narrow question, which is the most that was ever 8 contemplated was really extending the life of that 9 plant for maybe five to eight years. And we can 10 actually pick up -- Ricky, you can pick up 11 Exhibit 352.4. 12 BY MR. VALASEK: 13 Ο. You can go to the front page -- sorry, 352.1, to just give context for 14 15 what this is. This is an article, a special

report issued by Nova Scotia.

17 And on page 4 is, as I think 18 we will be able to show, Ricky, in -- you have .4. 19 Yeah, if you look at the bottom, bottom right-hand 20 corner -- no, sorry, in what you were just in 21 there, "Black and Montgomerie believed they'd 2.2 bought five to eight years". 23 So this -- in this article, 24 there is a discussion of the efforts that were 25 made with Bowater Mersey and Paul Black. And you

16

PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 explain that it was a five- to eight-year 2 scenario, long enough to plan for a more orderly 3 transition. 4 So that was really the goal, 5 was simply to achieve a more orderly closure; 6 wasn't it? 7 Α. Yes, and we felt Resolute 8 agreed with that. 9 Ο. Yeah. And even five years was perceived, according to your witness 10 11 statement, and now I am referring to paragraph 5, 12 was -- you referred to it as "very challenging 13 given the status of the newsprint market"? 14 Α. Absolutely it was 15 challenging. 16 Ο. Yeah. And so by 17 contrast, Mr. Montgomerie, the government policy 18 with respect to Port Hawkesbury was to put the 19 mill on a path for long-term success; wasn't it? 20 Again, my role was to Α. 21 assess the possibilities of success in Port 2.2 Hawkesbury and make recommendations accordingly, 23 and we felt there was a possibility of success. 24 Right. Let's go to --Q.

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25 A. Longer-term.

1	Q let's go to Exhibit
2	C-183, Ricky. And this is the eventual news
3	release that the premier made. And if you just
4	blow that up a little bit, the first few the
5	first few bullets there.
6	So this is sort of
7	fast-forwarding to what eventually would be
8	announced in respect of Port Hawkesbury, what you
9	had been working on for the year with your
10	committee. And you can see that the news release
11	from the premier the third paragraph, Ricky.
12	"The province, through
13	its jobs fund, is
14	providing a financial
15	package that includes
16	"[as read]
17	And there's a number of items
18	there, but you can see that:
19	"\$24 million loan to
20	support improved
21	productivity and
22	efficiency to make this
23	the most efficient paper
24	producer in the
25	world."[as read]

1	And then the next bullet:
2	"Ultimately, a
3	\$40 million repayable
4	loan for working capital
5	to help the mill become
6	the lowest-cost and most
7	competitive producer of
8	supercalendered
9	paper."[as read]
10	So this was a plan for
11	long-term success; wasn't it?
12	A. Right.
13	
14	
15	How he communicated that and how
16	he, at the end of the day, makes decisions
17	that's the premier's call.
18	Q. And the premier actually
19	had a press conference that very day where he
20	announced that:
21	"We are confident that
22	Pacific West is well
23	positioned to be the most
	-
24	competitive and best

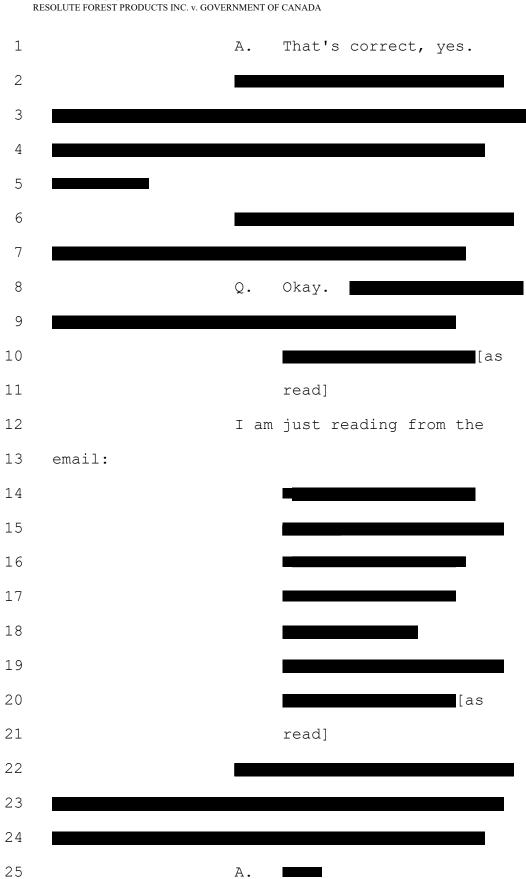
1 mill in the world." [as 2 read] 3 And that's Exhibit C-185.1. 4 Α. I was confident that they 5 had a chance for success. I think the premier, 6 who is above my pay grade, was a little more 7 descriptive. Yeah. And, but he was --8 Q. 9 he was -- he wasn't pulling his conclusions out of 10 thin air; was he? 11 Α. He made decisions based 12 upon our information. How he communicated those 13 decisions, that's on him. 14 Right, but the Q. 15 communication of those -- you're not suggesting that that's an incorrect description of what your 16 17 committee hoped would be the outcome of the 18 support for Port Hawkesbury; are you? 19 Α. I am not -- I am not 20 looking for those kinds of specifics. Overall, 21 looking for an opportunity for success. More 2.2 importantly, the type of company, how they worked 23 with their workers, how they would work with the 24 community. But also to your point, did they have 25 a chance for financial success.

-			
1		Q.	Right.
2		Α.	That was our goal.
3		Q.	In paragraph 21 of your
4	witness statement,	you s	say
5		A.	Okay.
6		Q.	And, again, I think this
7	might be restricted	d acce	ess, so don't bring it up,
8	Ricky.		
9		But y	you say in your witness
10	statement, you say	that	you were not aware of the
11	bid from PWCC until	l Octo	ober 28th, 2011. So now we
12	are going back in t	cime t	to that critical fall
13	period. And in par	ragrap	ph 21, you are quite
14	specific in the lar	nguage	e you used. You say:
15			"I was not aware of
16			PWCC's bid for Port
17			Hawkesbury."[as read]
18		You s	see where you say that?
19		Α.	I do, yeah.
20		Q.	And is that right?
21		Α.	The actual bid itself,
22	yes.		
23		Q.	Okay. But had you heard
24	of PWCC before that	t date	e?
25		A.	Oh, absolutely. We were

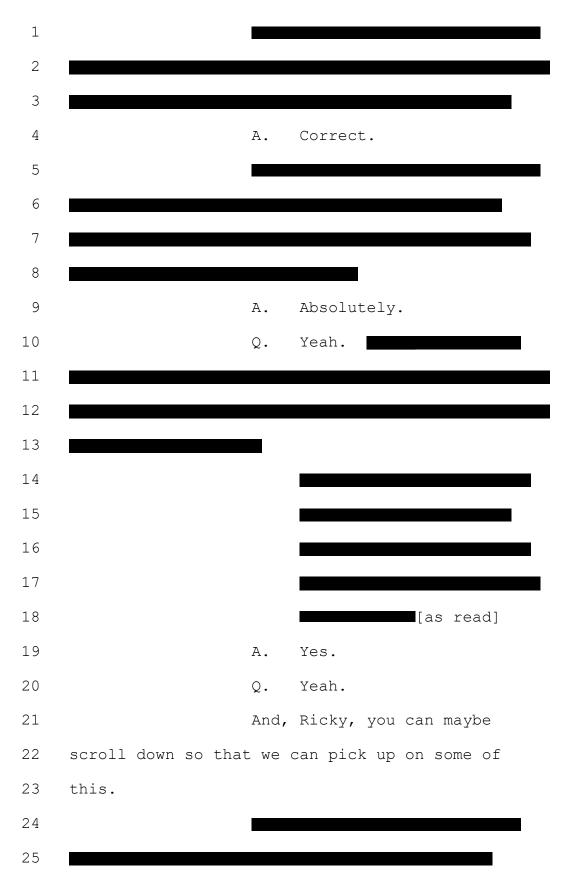
1	governed by the Monitor, and the Monitor would
2	make us aware of people, folks that were
3	interested and would, you know, connect with, have
4	early discussions to see feel each other out, I
5	guess would be the best way to explain it.
6	Q. So you actually
7	notwithstanding your statement here that you were
8	not aware of the bid, you had actually been in
9	contact with PWCC; weren't you?
10	A. Yeah, I would say there's
11	a difference, though. I was not aware of the
12	actual bid, but, yes, I had conversations, at the
13	request of the Monitor, with Mr. Stern.
14	Q. Well, there's no question
15	there is a difference. I am just suggesting that
16	you left one of those aspects out of your
17	statement. You just focused on the awareness of
18	the bid, and I am focussing on the awareness of
19	the bidder.
20	A. I mean, basically, the
21	conversation with Mr. Stern was I think he was
22	trying to understand whether the Government of
23	Nova Scotia understood the marketplace and what
24	the challenges were before he would decide whether
25	he would embark on a potential bid. That was my

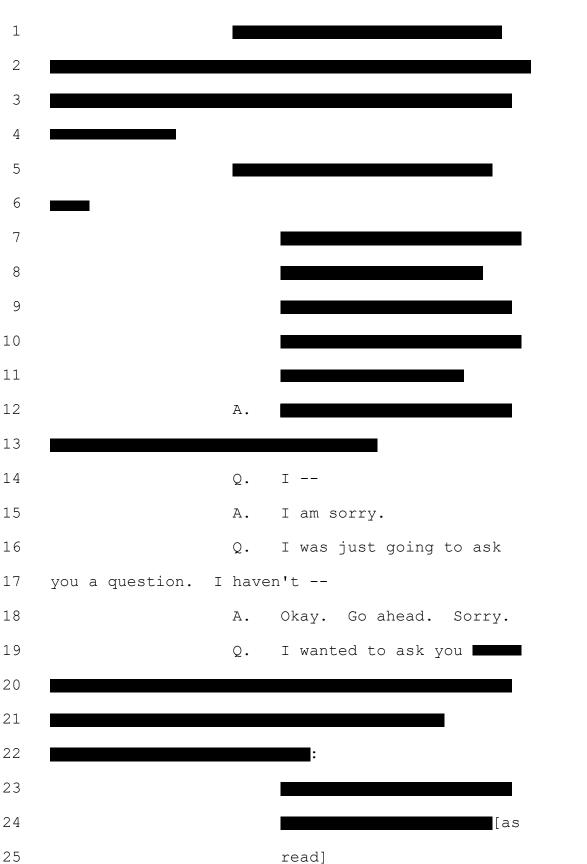
1	sense of the discussions with him.
2	Q. Let's go have a look.
3	You have predicted where I am going to take you,
4	so let's go to restricted access, first of all,
5	please.
6	MS. D'AMOUR: Just one moment.
7	All right. Everyone's been
8	removed.
9	Whereupon Restricted Transcript Commences
10	BY MR. VALASEK:
11	Q. Ricky, if you can pull up
12	C-318.1. And just enlarge it a little bit,
13	please, so that we can see the front.
14	So, first of all, I would like
15	to observe the date.
16	
17	
18	
19	
20	Q. Right, okay.
21	
22	
23	
24	
25	is that right?

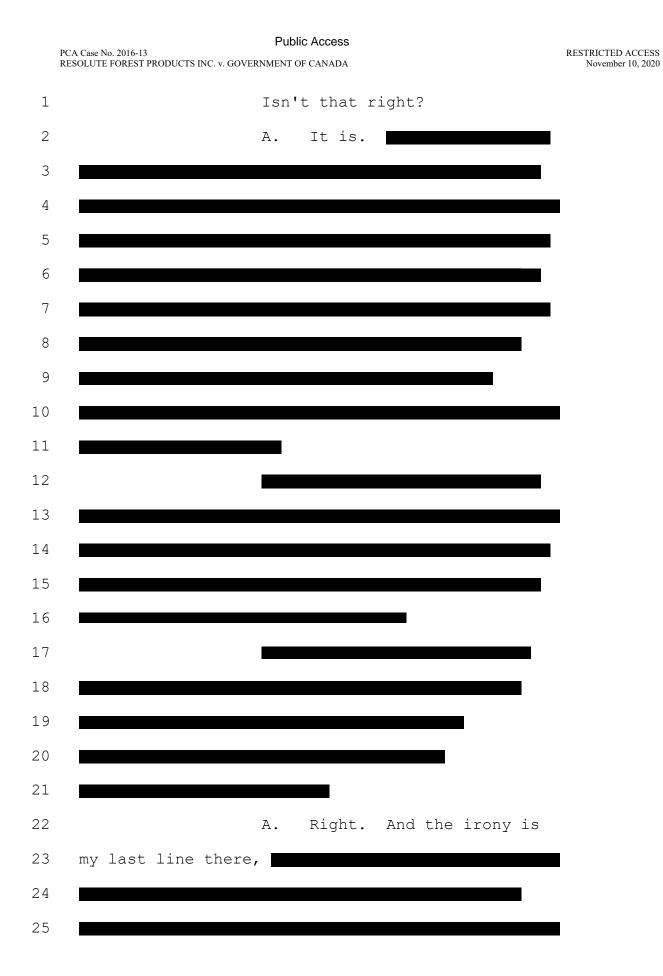


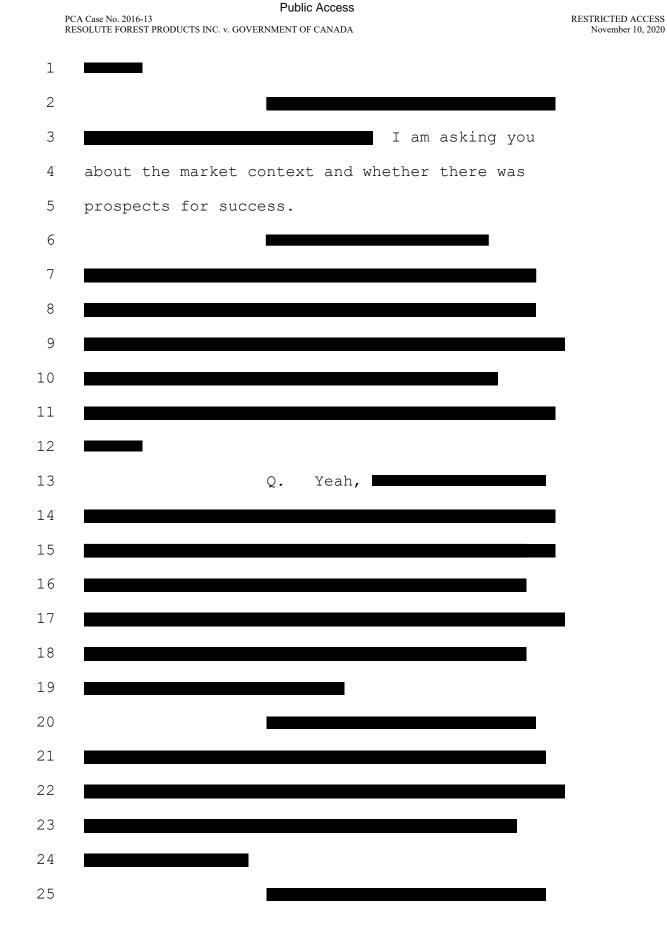


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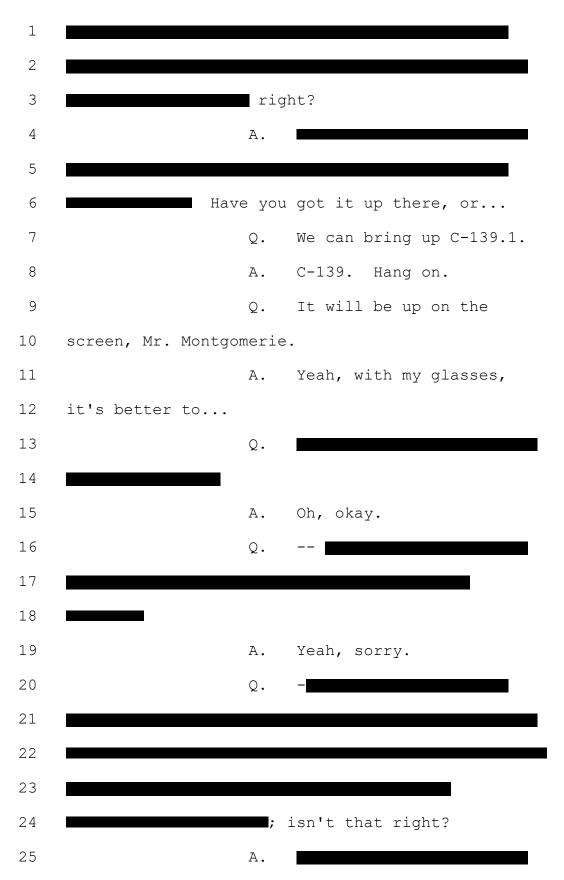


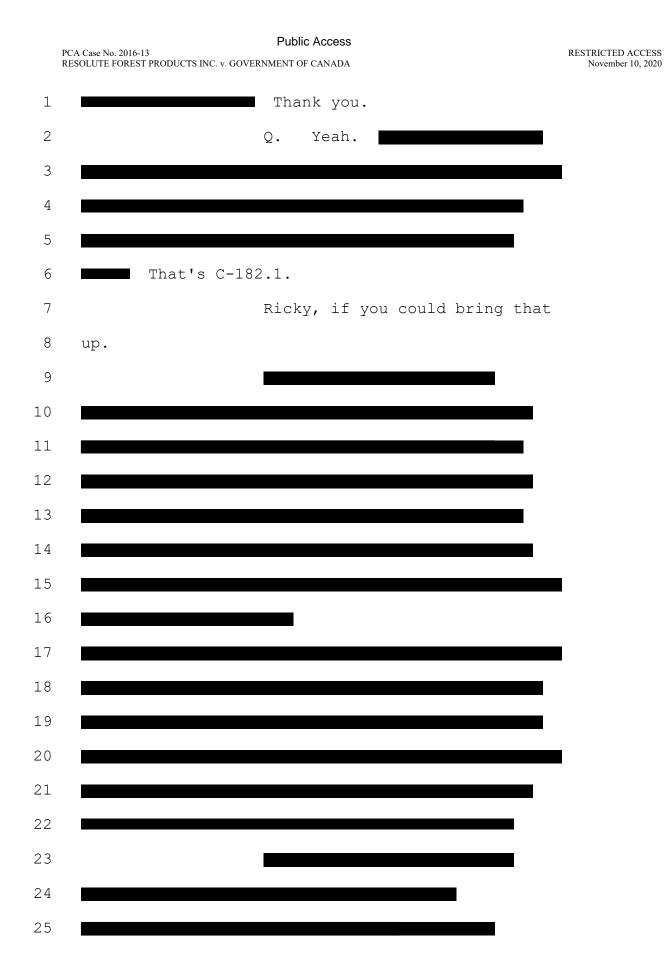


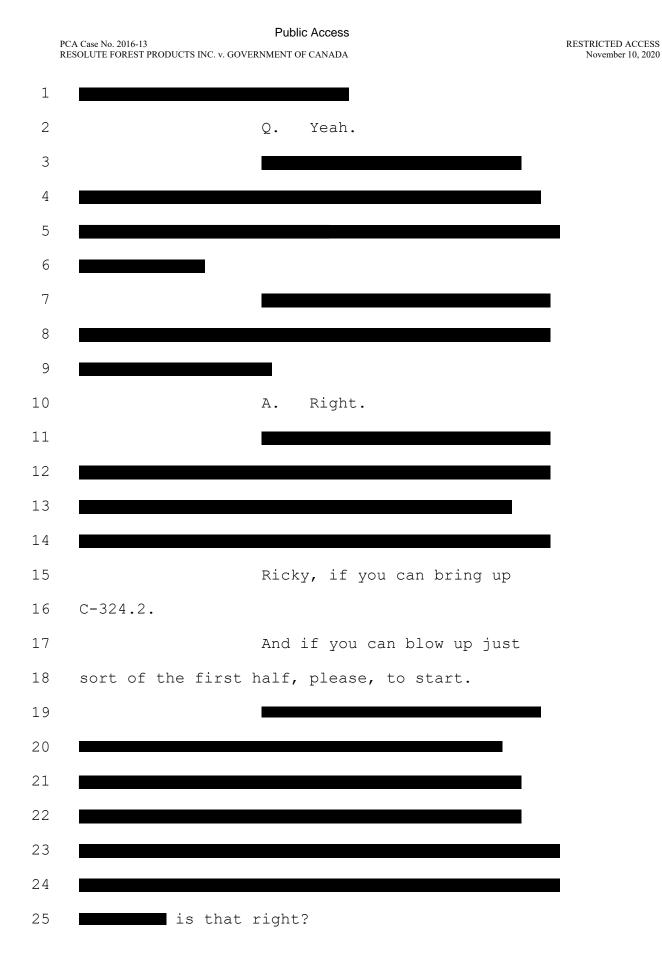




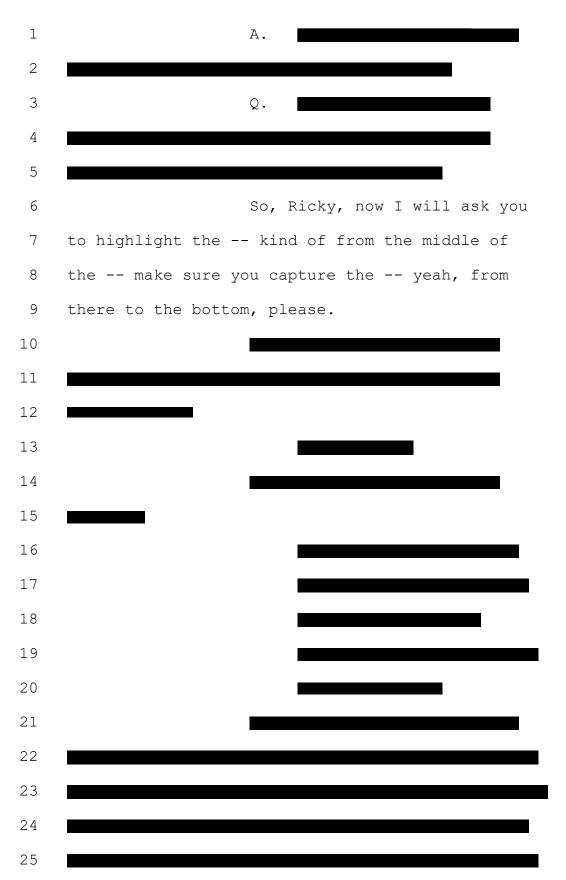
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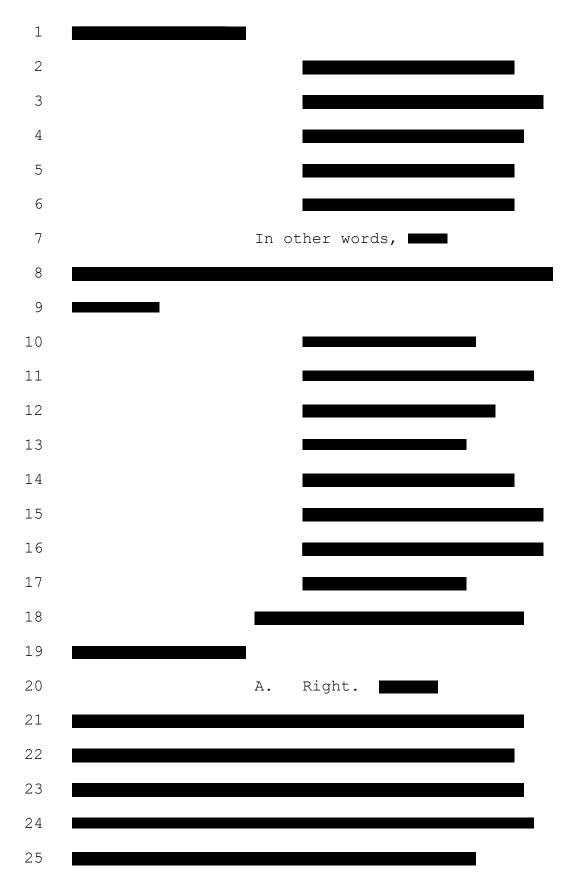


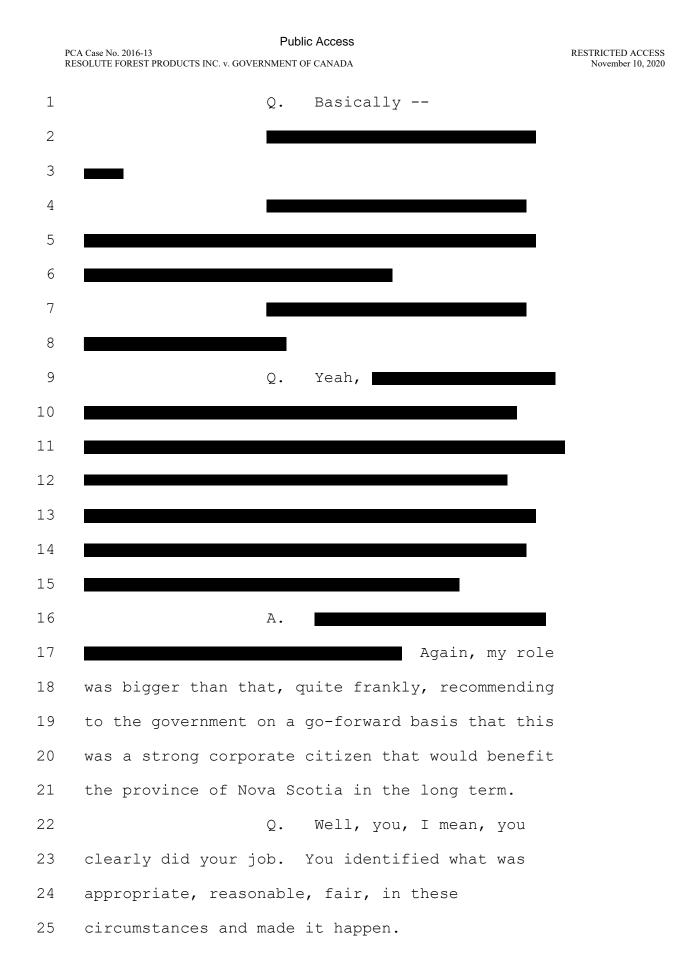




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1	A. There is a good corporate
2	citizen in Port Hawkesbury; you are correct.
3	Q. Yeah, and a successful
4	one?
5	A. Yes.
6	Q. Yeah. And so you
7	forwarded if we go back to the first page of
8	sorry, the first page of this exhibit, this is
9	actually .2, but let's go to .1.
10	
11	
12	
13	
14	A. And that's my style. \blacksquare
15	
16	
17	That's the
18	way I work.
19	Q. Right, absolutely.
20	So we can end the restricted
21	access session. And I am
22	MR. VALASEK: Let me know,
23	Heather, when we are out of restricted access.
24	MS. D'AMOUR: Everyone else
25	has been readmitted.

1	Whereupon Restricted Transcript Ends
2	BY MR. VALASEK:
3	Q. So going back to Resolute
4	now we have now seen a little bit of the
5	back-and-forth with Port Hawkesbury. Going back
6	to Resolute, in June 2012, Resolute announced the
7	permanent closure of Bowater Mersey. That was in
8	June 2012; right? That's referenced in your
9	witness statement. We don't have to bring it up,
10	but it's at paragraph 15 of your witness
11	statement.
12	A. I am sure that's correct.
13	Thank you.
14	Q. Okay. In paragraph 16
15	Ricky, you could bring this up
16	because this is there's no restricted access
17	information on this page. So this is Montgomerie
18	RA.7, 2019-04, and it's paragraph 16. So if you
19	can go to RA.7.
20	And so I am going to read
21	paragraph 16. And this essentially is what
22	happens after the announcement of the closure.
23	You say:
24	"At that point, we
25	engaged with Resolute to

1	see how the Government of
2	Nova Scotia could help to
3	minimize the impact of
4	the mill closure. We
5	also met with the local
6	community and other
7	stakeholders to try and
8	work out a transition
9	plan for Liverpool and
10	the affected surrounding
11	area. In December 2012,
12	we reached an agreement
13	with Resolute whereby the
14	government purchased all
15	the shares in Bowater
16	Mersey for nominal
17	consideration. In
18	exchange, the government
19	paid Resolute 18 million
20	for intercompany debt and
21	assumed all of the
22	Bowater Mersey company's
23	pension, severance and
24	environmental
25	liabilities, which were

1	estimated at 127 million,
2	and absorbed all the
3	costs involved in the
4	general winding up of the
5	company. The assets
6	included 224,000 hectares
7	of forest which were
8	transferred to the
9	province, which was in
10	keeping with Nova
11	Scotia's goal of
12	increasing its share of
13	Crown land and protecting
14	forest diversity."[as
15	read]
16	So you see that there; right?
17	A. I do.
18	Q. And what you didn't say
19	in your witness statement, though, is that,
20	ultimately, the province made money on this deal;
21	didn't it? It actually made about \$14 million
22	when it actually completed all the transactions
23	relating to what it acquired and discharged all
24	the liabilities?
25	A. I am actually Jeannie

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1	Chow would be best to answer that
2	Q. Well, let's bring up
3	A quite frankly, I am
4	not sure about that.
5	Q. Let's bring up C-352.6.
6	Okay. And I have to find
7	where the 14 million reference is in this.
8	MS. DE JONG: If I may
9	interject, it's in the third column, third
10	paragraph.
11	MR. VALASEK: Yeah, thank you
12	very much, Jenna.
13	BY MR. VALASEK:
14	Q. If you can look at the
15	third paragraph again, this is the article we
16	looked at before. And after listing all the
17	listing all the various aspects of the transaction
18	in winding everything up and down, if you can look
19	at that, maybe highlight that third paragraph in
20	the last column, Ricky, "when the accountants were
21	done", you see up the the third paragraph in
22	the right-hand column:
23	"When the accountants
24	were done adding and
25	subtracting, the province

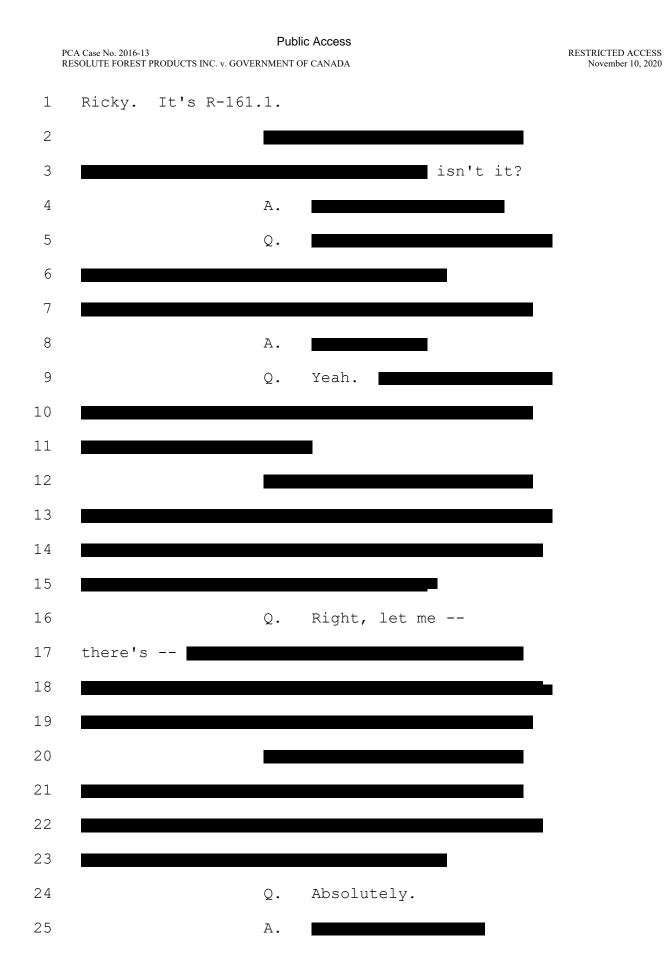
A.S.A.P. Reporting Services

1	claimed a net gain of
2	\$14 million on the deal
3	itself."[as read]
4	Does that refresh your
5	recollection, Mr. Montgomerie?
6	A. That's a comment by a
7	journalist; isn't it?
8	Q. Well, we will let the
9	Tribunal
10	A. I am just saying, you are
11	asking me to comment. That's Stephen Kimber's
12	comment. That's not mine.
13	Q. Okay. Well, I don't want
14	to press the point. I don't have time. So I have
15	shown the Tribunal where that comes up.
16	And that was with the pension
17	liability paid; wasn't it?
18	A. Again, I am not sure
19	about the 14 million. I apologize, I am not.
20	Q. Okay, but do you know
21	you said in your witness statement that the
22	company assumed Bowater Mersey's pension; so that,
23	you do know?
24	A. Yes, I do.
25	Q. Okay. So whatever the

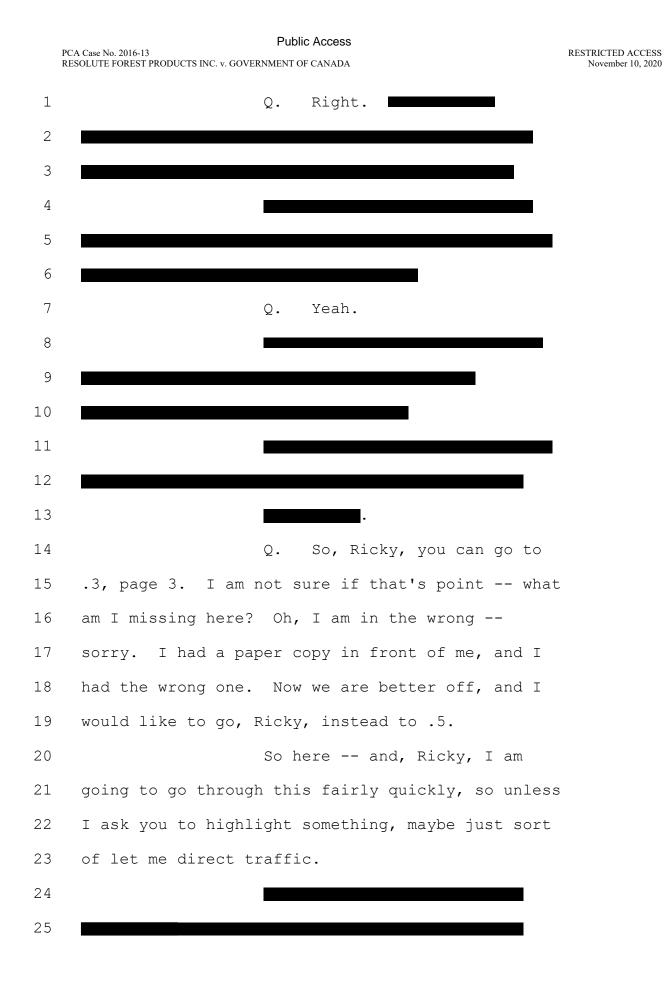
1 number, whether it's 10 million or 16 million, 2 more or less, I expect that the \$14 million is 3 correct, but that's net of the liability, the 4 pension liability; isn't it? 5 Α. I am not sure, to be 6 honest. Jeannie would be better positioned to 7 answer that. 8 Q. Okay. Are you aware that 9 the pension liability was not discharged as part of the restart of Port Hawkesbury? 10 11 Α. Oh, umm, to be honest, I 12 am not totally sure. 13 Ο. Okay. Well, I will refer the Tribunal to Exhibit C-161. We don't need to 14 15 pull it up. I am afraid I am going to run out of 16 time, so I have to keep moving. 17 In your rejoinder witness 18 statement -- and, again, we are not going to pull 19 this up, and I am going to have to start moving 20 more quickly. Paragraphs 4 and 5 say Mr. Garneau 21 confused the assistance provided in December 2011 2.2 with the assistance provided after the closure of 23 Bowater Mersey. But, in fact, at no time was 24 25 the assistance offered to Resolute intended to

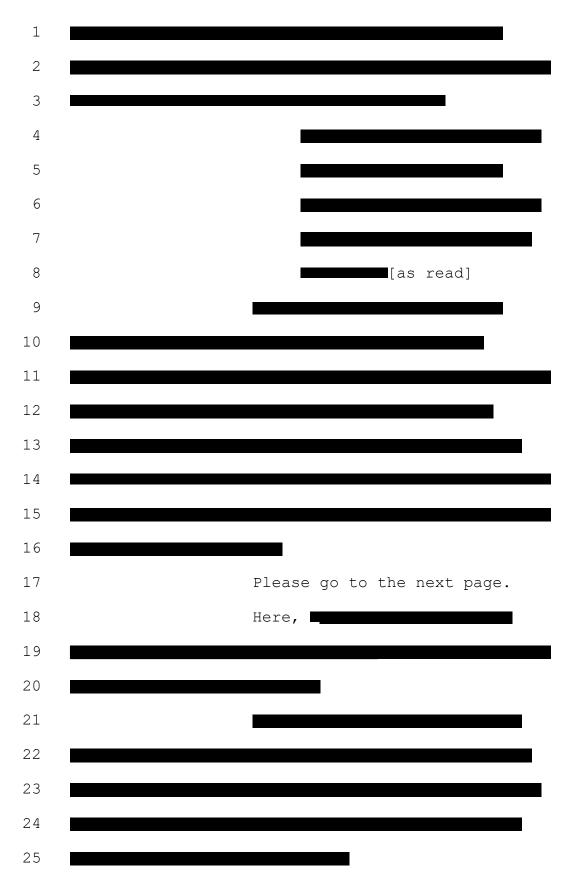
1 make Bowater Mersey the lowest-cost mill in its 2 industry; was it? 3 Again, whether a mill's Α. 4 low cost in the industry, our goal with Resolute 5 was to see if we could get five to eight years operation out of that mill, that's Resolute. 6 7 I guess that's one way of Q. 8 answering it, but you will agree with me that just 9 trying to sustain a mill for a few years is 10 obviously not making it the lowest-cost mill; is 11 it? 12 Α. No. And when the Euro 13 went in the tank, there wasn't an effort by the 14 Government of Nova Scotia to throw more money at 15 the issue. We both realized, Resolute and 16 ourselves, we worked hard, we tried it, it didn't 17 work. The Euro went in the tank. 18 Ο. And it never could have 19 become -- given the forecasts in the newsprint 20 industry, it never could have been the lowest-cost 21 mill. That was just not on the agenda for anyone? 2.2 Α. Intuitively, I would 23 agree with you. 24 Yeah. Q. 25 Okay. So we are going to go

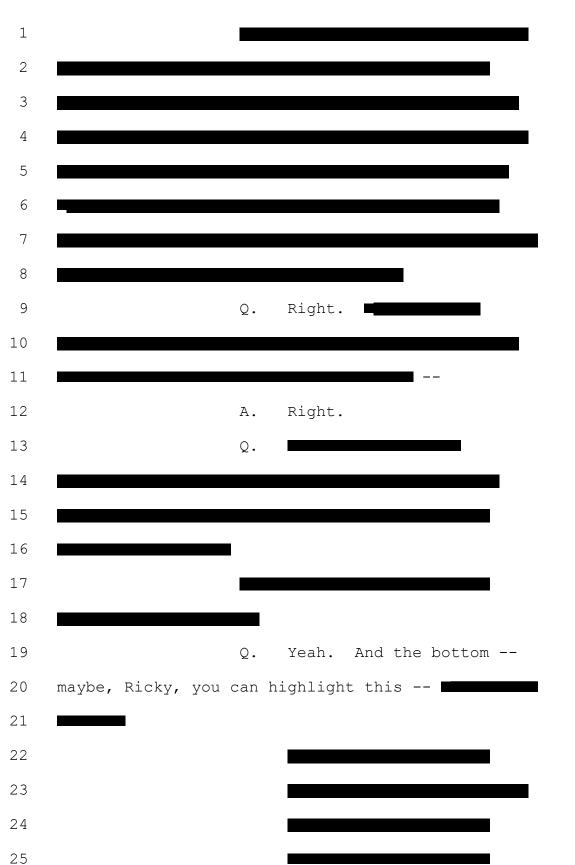
1	into restricted access. We have quite a bit of
2	important information to go over here in
3	And probably, Mr. Montgomerie, you
4	will be happy to know that this is the last kind
5	of topic I am getting into.
6	MS. D'AMOUR: You can proceed.
7	Whereupon Restricted Transcript Commences
8	MR. VALASEK: Heather, how are
9	we doing?
10	MS. D'AMOUR: You can proceed.
11	MR. VALASEK: Okay. Thank
12	you.
13	BY MR. VALASEK:
14	Q.
15	
16	
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22	
23	; isn't that right?
24	A.
25	Q. And we can bring it up,



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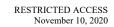




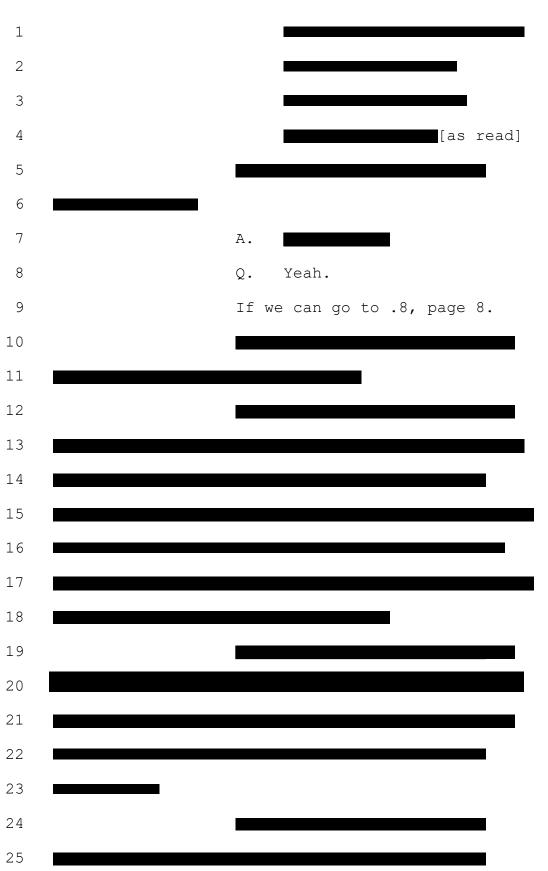
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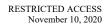
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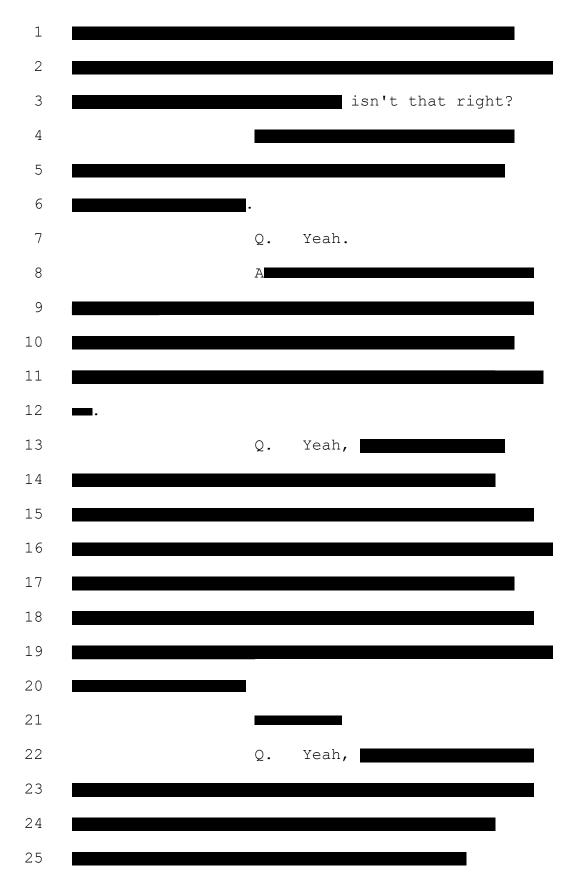
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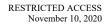


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2	
3	That's what's stated there; isn't
4	it?
5	A. Yes, it is.
6	Q. Yeah, and the next page,
7	page 10 sorry, not the next page but the
8	page yeah, the next page, please, page 9.
9	
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24	read]
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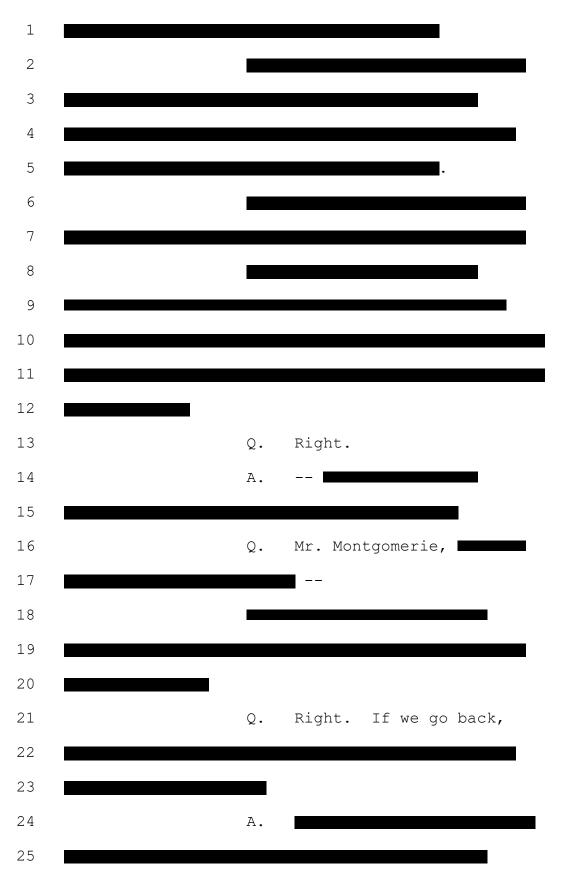


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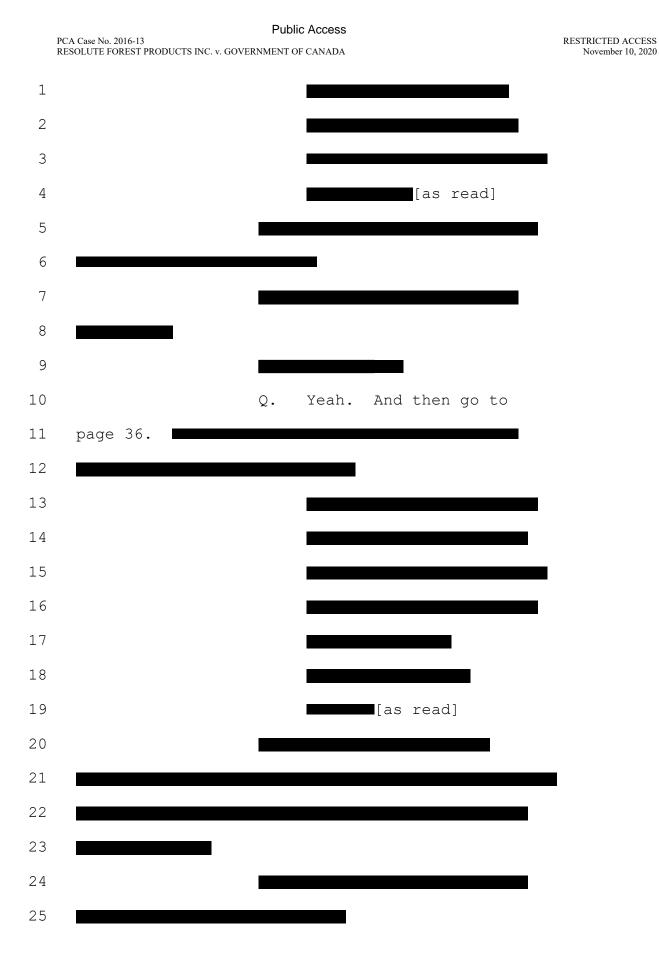






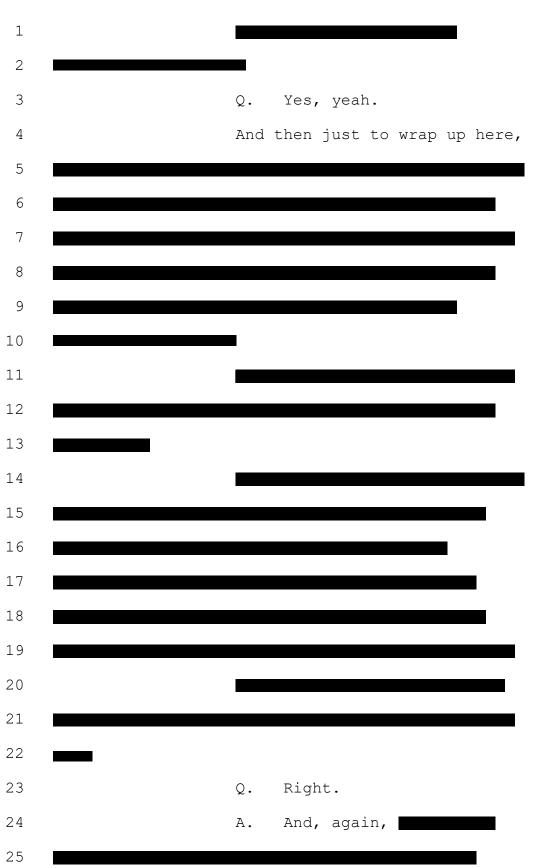


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5	JUDGE CRAWFORD: Counsel, can
6	I interrupt? The time for your cross-examination
7	has passed. How much longer
8	MR. VALASEK: I am on the last
9	page of my questions. Let me see. Let me get
10	to let me fast-forward. About two or three
11	minutes, Judge Crawford.
12	JUDGE CRAWFORD: All right,
13	take that.
14	BY MR. VALASEK:
15	Q. So on page if we go to
16	page 10, Ricky.
17	
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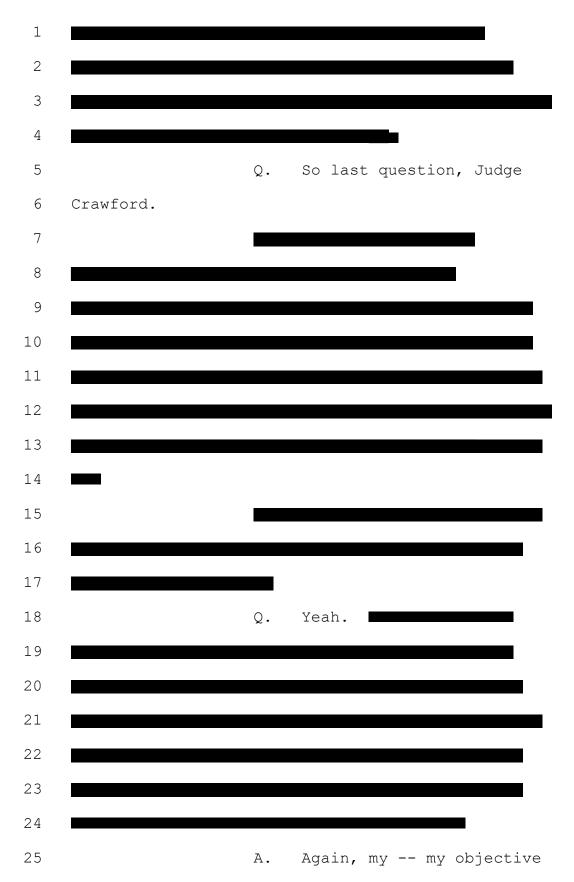


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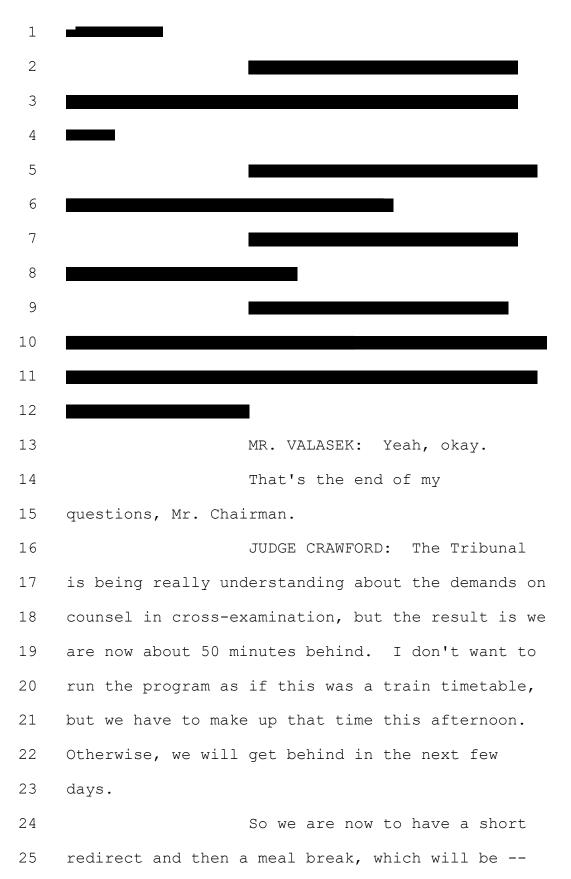




1	was much bigger than that, an exceptional company
2	to be in our province, and that's why we walked
3	away from negotiations with them and re with
4	them, and they have proven to be that, quite
5	frankly.
6	Q. Well, when you say that
7	your objective was larger than that, I mean,
8	arguably, it was it was more focused; wasn't
9	it? It was focused on Nova Scotia?
10	A. It was focused on Nova
11	Scotia, in a rural community that had a modern
12	machine as to whether or not a company could go in
13	there, be a good corporate citizen and make it
14	work with reasonable and prudent support. That
15	was our goal.
16	Q. So you were focused on
17	Nova Scotia, but, actually,
18	
19	
20	
21	
22	
23	isn't that true?
24	
25	

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1	depend on the length of the redirect, which will
2	be an abbreviated meal break.
3	Redirect first of all.
4	MR. LUZ: Judge Crawford, can
5	I have just a couple of minutes before I start the
6	redirect?
7	JUDGE CRAWFORD: Yes.
8	MR. LUZ: Thank you. I won't
9	be long.
10	MS. D'AMOUR: This might be a
11	good time. I see that, Mr. Deputy, your laptop
12	camera disconnected. I am not sure if we can use
13	these few minutes to try to get I noticed that
14	during the exam.
15	THE WITNESS: It is
16	disconnected, you are right.
17	MS. D'AMOUR: Is someone able
18	to pop in there and help you reconnect that?
19	THE WITNESS: Can they hear
20	you right now? Probably not.
21	MS. D'AMOUR: I think Ali is
22	there with you; right?
23	THE WITNESS: Not in the room.
24	He's around here somewhere.

MS. D'AMOUR: Is it okay with

25

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1 the Tribunal -- oh, he is going to go. Okay. 2 JUDGE CRAWFORD: Can we have 3 this problem fixed at the break or do we need it 4 for the redirect? 5 MS. D'AMOUR: It's up to 6 counsel. I thought that while we were waiting for 7 Mr. Luz, we could fix this. But if Mr. Luz is 8 ready to go and if it's okay to proceed with just 9 the boardroom camera? 10 JUDGE CRAWFORD: Mr. Luz will tell us when he is ready to go. The time he is 11 12 spending preparing now is time taken off Mr. Luz's 13 overall allocation. 14 MR. LUZ: We are not muted? 15 MS. D'AMOUR: You are unmuted 16 now. 17 That's fine. You MR. LUZ: 18 can hear me now? 19 MS. D'AMOUR: Yes, I can hear 20 you. 21 MR. LUZ: Okay. Thank you, 2.2 thank you. 23 MS. D'AMOUR: Are you okay to 24 proceed Mr. -- Deputy's up-close camera on his 25 laptop was dropped from the call, so we only have

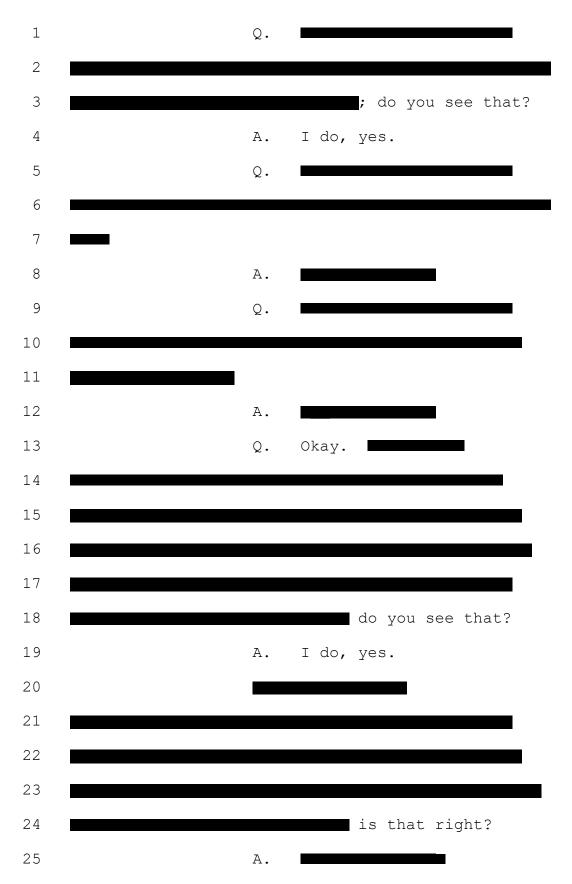
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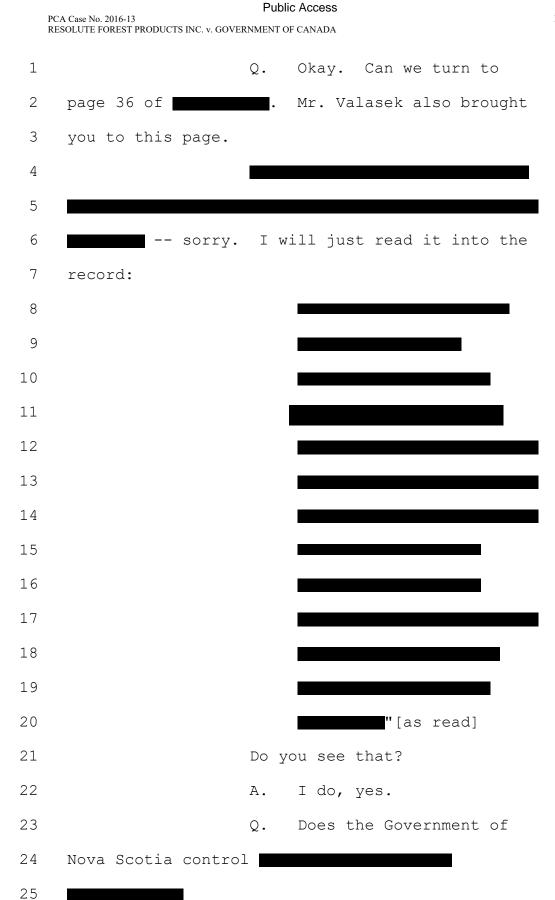
RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 the boardroom camera connected now. Are you 2 to proceed like that? 3 THE WITNESS: We are rejoining 4 now, we think. My apologies. MS. D'AMOUR: Got it. 5 Thank 6 you. 7 JUDGE CRAWFORD: Can you 8 proceed, then? 9 MR. LUZ: Yes. Deputy 10 Montgomerie, are you ready? 11 THE WITNESS: There we go. Ι 12 Thank you. am. 13 RE-EXAMINATION BY MR. LUZ: 14 Q. Okay. Thank you. 15 Counsel left off with the 16 Can you pull that back up on the screen again? 17 It's 18 Exhibit R-161. Thank you. 19 And, Chris, can you go back to 20 Thank you. page 8, ? 21 Deputy Montgomerie, my friend 2.2 Mr. Valasek was asking you questions about 23 do you recall them? 24 Α. 25 Q. And do you recall,

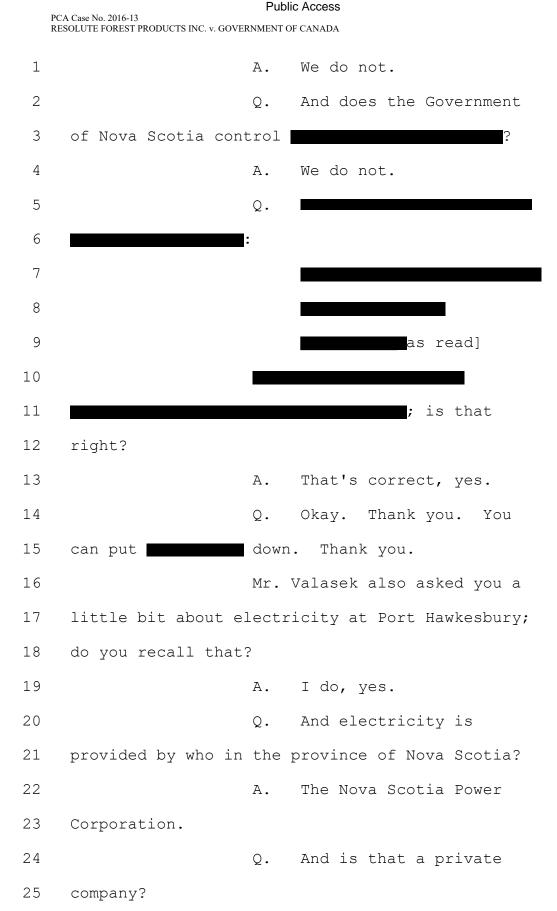
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2	do you recall that?	
3	Α.	
4	Q.	And Mr. Valasek suggested
5	to you that	
6		
7		
8		
9		
10		
11		
12		
13	Α.	I do, yes.
14	Q.	Does the Government of
15	Nova Scotia control	
16		
17	Α.	No, we do not.
18	Q.	Okay.
19		
20	; do you see that?	
21	Α.	I do, yes.
22	Q.	Does the Government of
23	Nova Scotia control	
24	?	
25	A .	We do not.





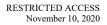


	RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA
1	A. It is, yes.
2	Q. And does the Government
3	of Nova Scotia control the price of electricity?
4	A. We do not. It's
5	regulated.
6	Q. You also mentioned during
7	the cross-examination that there was something
8	else to be done with respect to
9	A. That's correct.
10	
11	
12	
13	Q. And, but the PWCC's goal
14	was to manual states and an analysis ; is that right?
15	A.
16	
17	
18	
19	Q. And that was the
20	company's decision to ??
21	A. It was, yes.
22	MR. LUZ: I think that's all
23	the redirect questions I have. Thank you, Judge
24	Crawford.
25	JUDGE CRAWFORD: That

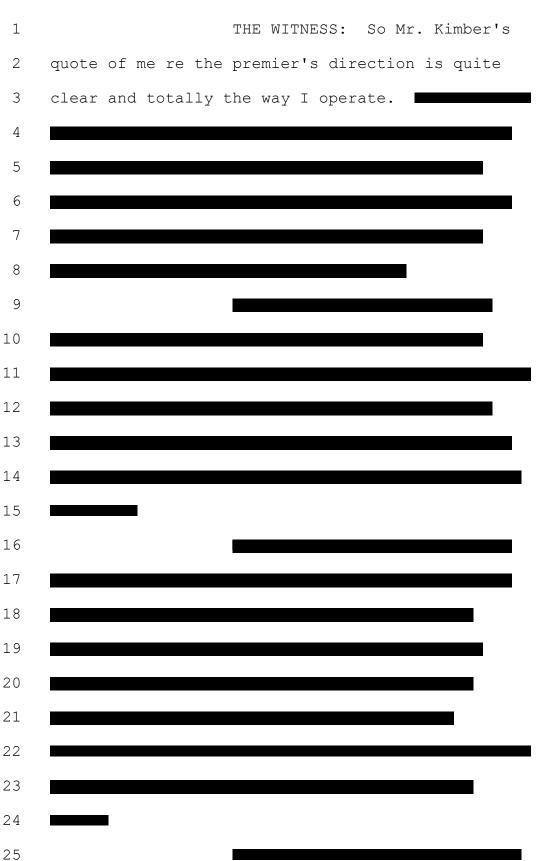
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1	concludes the examination and cross-examination of
2	Mr. Montgomerie. We now have a scheduled meal
3	break of one hour, which is a luxury, and I am
4	going to abrogate the luxury and have that as half
5	an hour only, which will mean that we resume this
6	hearing at 20 past 6 Hague time, which is, I
7	think, 20 past 12 Montreal time, when we start
8	with Jeannie Chow. So unless anyone has any
9	comments, that concludes
10	PROFESSOR LÉVESQUE: May I ask
11	a question?
12	JUDGE CRAWFORD: Yes, of
13	course.
14	PROFESSOR LÉVESQUE: Thank
15	you.
16	QUESTIONS FROM THE TRIBUNAL:
17	PROFESSOR LÉVESQUE:
18	Mr. Montgomerie, I have a question regarding the
19	Atlantic Business article that was already
20	referred to by Mr. Valasek twice, was C-352. So
21	you are familiar with the article. It was written
22	by Stephen Kimber. To get a bit of a background,
23	I thought it was interesting to read this article
24	because Mr. Garneau was interviewed, the premier
25	was interviewed, you were interviewed, so it gave

1 different people's perspective. 2 So on page, I think it was on 3 page 3 of the article, you are quoted as saying: 4 "The premier made it 5 clear from the beginning he wanted the best 6 7 information available."[as read] 8 9 And then at the bottom, it says it could get emotional, and then you give an 10 11 example. And then it said: 12 "Issues they had to 13 tackle were multi-pronged 14 and mega-complicated."[as 15 read] 16 I guess that's the journalist, 17 not quoting you. 18 And I wanted to pick up on 19 So you have all this information this. 20 The issues are complicated and 21 you have to provide advice. And I was wondering 2.2 if you could elaborate just a little bit on 23 what -- I guess what kind of advice you were 24 comfortable providing based on everything that was 25 described.







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8	PROFESSOR LÉVESQUE: Thank you
9	for this.
10	THE WITNESS: Thank you.
11	JUDGE CRAWFORD: Thank you.
12	Any other questions?
13	That being so, we will have an
14	abbreviated lunch break of half an hour. Thank
15	you very much.
16	Upon luncheon recess at 11:52 a.m. EST.
17	Upon resuming at 12:31 p.m.
18	MR. LEVINE: Judge Crawford,
19	with your permission, may I proceed?
20	JUDGE CRAWFORD: Let me just
21	swear the witness.
22	MR. LEVINE: Absolutely.
23	JUDGE CRAWFORD: Ms. Chow, my
24	name is James Crawford. You are welcome to the
25	Tribunal. My colleagues are visible on the

1	screen, Céline Lévesque and Ron Cass.
2	I would like you to make the
3	declaration you are a fact witness. I would
4	like you to make a declaration for fact witness
5	which you should have been given by the PCA.
6	Could you make that declaration, please?
7	MS. CHOW: Yes, I can, sir.
8	I solemnly declare upon my
9	honour and conscience that I will speak the truth,
10	the whole truth and nothing but the truth. No one
11	else is present in the room where I am testifying.
12	I do not have any notes or annotations on any hard
13	copy or electronic documents. I confirm that I am
14	not receiving communications of any sort during my
15	testimony other than my participation in the main
16	hearing room in Zoom.
17	FACT WITNESS: JEANNIE CHOW
18	JUDGE CRAWFORD: Thank you
19	very much.
20	CROSS-EXAMINATION BY MR. LEVINE:
21	Q. Good afternoon, Ms. Chow.
22	My name is Paul Levine. I am an attorney with
23	Resolute. I am going to ask you some questions
24	about your witness statements and your testimony.
25	I am going to make two asks of

1	you before I get going. If you don't understand
2	one of my questions, can you please clarify it on
3	the record so we will understand that you
4	understand my questions and I can reformulate and
5	phrase a better question for you.
6	And the second ask is I am
7	going to ask questions and you are going to give
8	answers, and there is a court reporter out there
9	somewhere in the ether who is going to be taking
10	this all down. And so she can only take down one
11	at a time, so let's try to avoid talking over each
12	other. Sometimes it's hard to do, but if that
13	happens, we will try to slow down and make sure
14	it's one at a time.
15	Do you understand those two
16	things?
17	A. Yes, I understand.
18	Q. Excellent. Thank you.
19	Ricky, if you could bring
20	up are we in restricted access?
21	MS. D'AMOUR: Yes, we are in
22	restricted access.
23	MR. LEVINE: Excellent.
24	BY MR. LEVINE:
25	Q. Ricky, if you can bring

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1	up Ms. Chow's rejoinder witness statement at
2	page 3 and zoom in on paragraph 6.
3	Okay, and what you say here is
4	in the last sentence:
5	"Whether the company
6	would be profitable, let
7	alone achieve its 'lowest
8	cost' goal, depended on
9	many factors that were
10	not in the control of the
11	Government of Nova
12	Scotia."[as read]
13	The company there you are
14	talking about is Pacific West or Port Hawkesbury
15	Paper; is that correct?
16	A. Yes, that is the company
17	I am referring to.
18	Q. And your role on the Port
19	Hawkesbury transaction was to carry out due
20	diligence and communicate your analysis to senior
21	management and implement the contractual documents
22	necessary to authorize any potential financial
23	assistance to the company; is that correct?
24	A. Yes, that was my role, as
25	well as to document any of the contracts and

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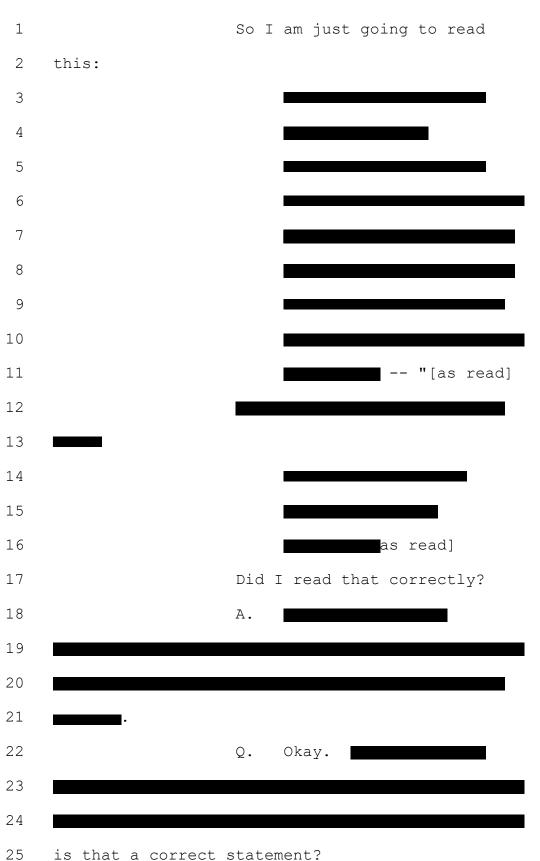
1 evidence that was provided to us. So I was 2 responsible to ensure that we had all that 3 information. 4 Q. And you and the province 5 took this responsibility to conduct this type of due diligence seriously; is that a fair statement? 6 7 That's a fair statement. Α. 8 We -- any project that we look at, there's a lot 9 of due diligence involved, especially on a project of this size and this complexity. There was a lot 10 11 of other parties and information that we had to 12 gather, so it was part of my job to ensure that we 13 had all that information. 14 Ο. Because in this project, 15 there was \$100 million in provincial funds that 16 could go to waste if the project failed; is that 17 correct? Well, this project and 18 Α. 19 any other project I'd be looking at, it's the same 20 kind of due diligence that I would have to 21 conduct, whether it's, you know, \$100,000 2.2 investment or, you know, millions of dollars, it's 23 We recognize that it is public really important. 24 money that we are spending and that we are subject 25 to audit by various organizations, including the

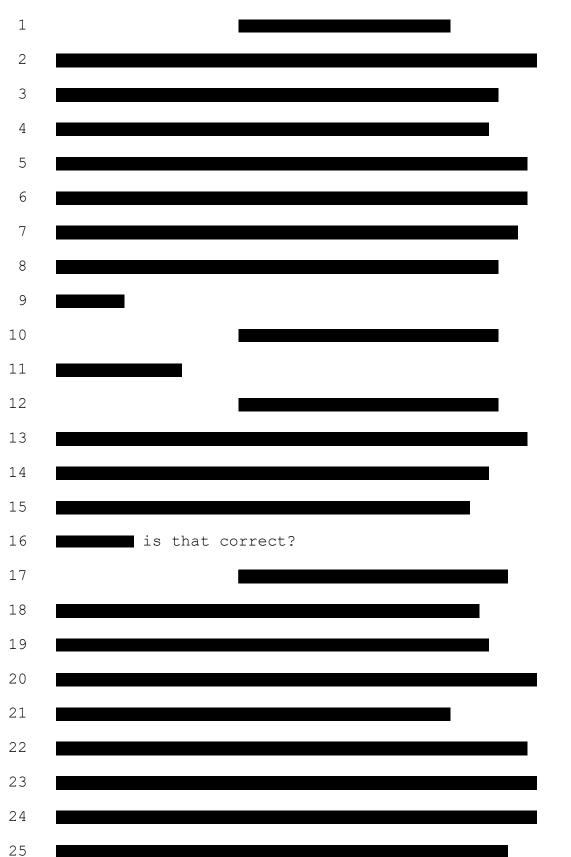
1	Auditor General, so it's really important,
2	especially based on my background, that we my
3	files are very complete. I try to ensure that
4	anything that was of significance, whether it's a
5	risk or a benefit, is going to be documented.
6	Q. Okay. And out of that
7	\$100 million, \$64 million were in loans;
8	is that correct?
9	A. There was about 64
10	million or \$66 million in loans that some of them
11	were loans, and some of them were like
12	reimbursement of expenses for the company.
13	Q. And 64 million of those
14	were ?
15	A. Yes, of the two loans
16	sorry.
17	Q. Go ahead.
18	A. Of the two loans that we
19	provided to the company, they were considered
20	loans.
21	Q. Okay. And you had
22	understood that the Port Hawkesbury mill had
23	suffered millions in losses and was forced to go
24	into CCAA administration in 2011; is that fair to
25	say?

1	A. That is my understanding.
2	I really wasn't on the file at that point whenever
3	it occurred. I had not yet started with the
4	Department of Economic and Rural Development and
5	Tourism. By the time I came on the file, the
6	Monitor had already looked at proposals to
7	purchase the mill operations, so I wasn't party to
8	the CCAA proceedings at that time.
9	Q. That's fine. But by
10	being an Example loan, it meant that, if the
11	Port Hawkesbury mill was not profitable and it
12	went bankrupt again, those funds might not be
13	recovered for the province; is that correct?
14	A. Well, when the province
15	looks at investing in companies, I mean, it's
16	really important for us. It's not just a
17	simple we are not just a bank. There are other
18	ways that we receive repayment as a province. So
19	in terms of being each set of the set of th
20	are still ways, like, I guess I just want the
21	Court to understand that not as a banking
22	institution we get repayments from other means.
23	For example, employee payroll, taxes that come to
24	the province, company profits that they pay taxes
25	on, you know, the employees have money that they

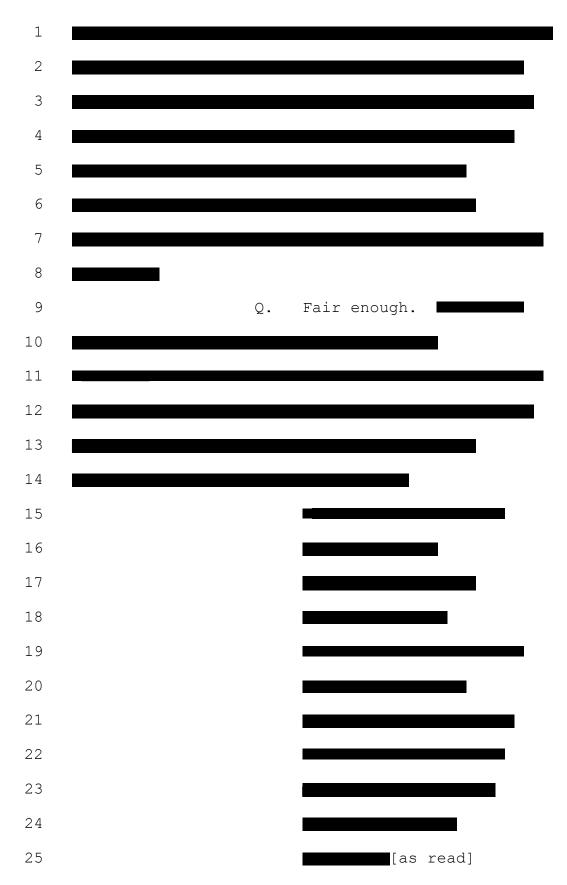
PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 spend in the province. So we would get revenue as a province from other sources other than just 2 3 repayment of loans. 4 Q. Sure. But on these two 5 loans, 6 7 I mean, separate and apart 8 from all the other revenue you are just talking 9 about here right now -- which is --10 Well --Α. 11 Q. That's what it means to 12 be 13 Α. So, yes, that is what it 14 means to be but as part of the 15 analysis, we don't separate it like that. Because 16 there are other revenue streams, not just loan 17 repayment specifically on that loan. There are 18 other ways that we, I guess, refer to loan 19 repayment or benefits to the province. 20 Well, if we could bring Q. 21 here. It's C-338. And if up 22 we could turn to page 2, and if we could look at 23 24 And, Ricky, if you could zoom 25 in on that for me, please.

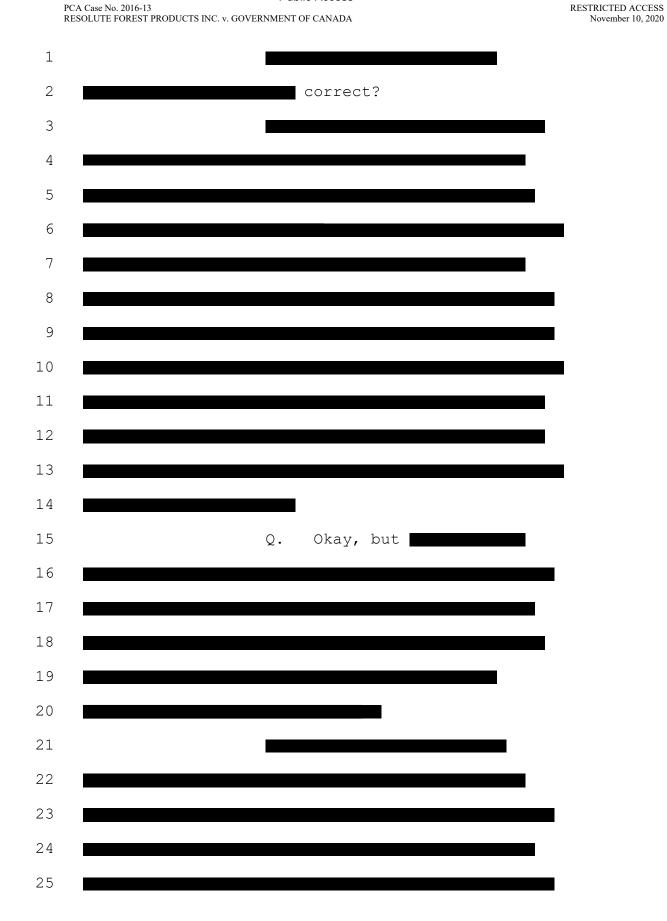




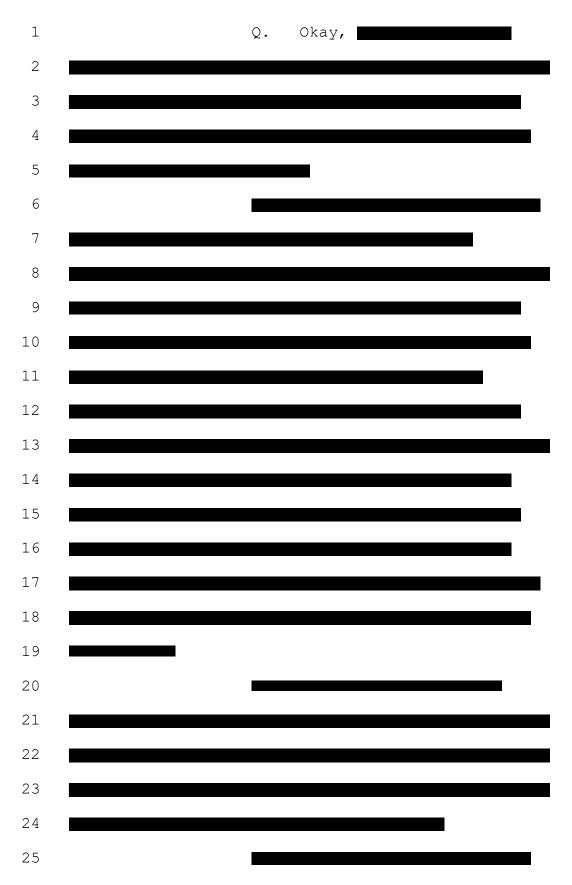


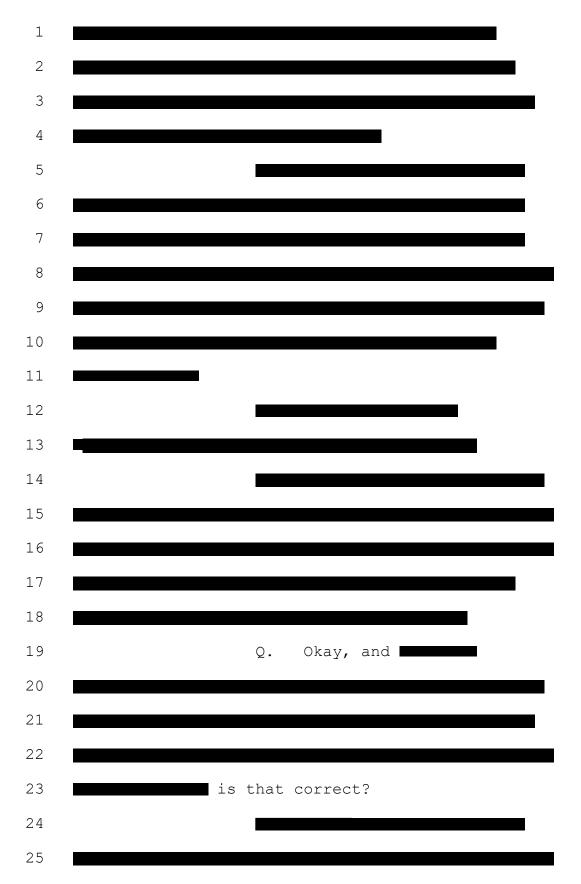
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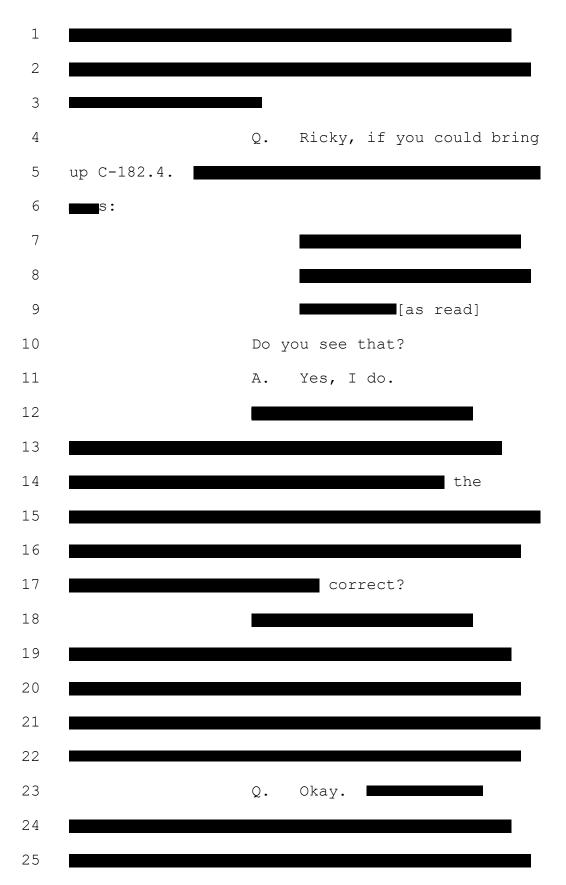


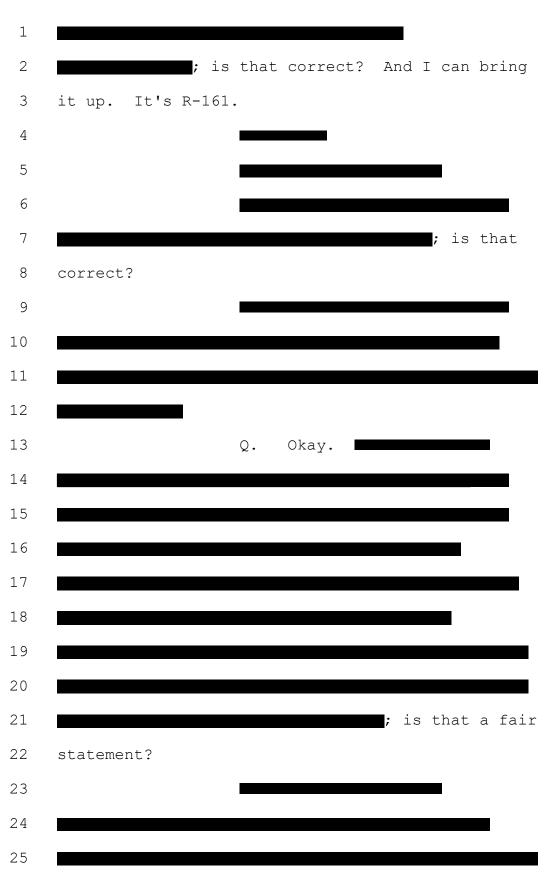


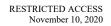


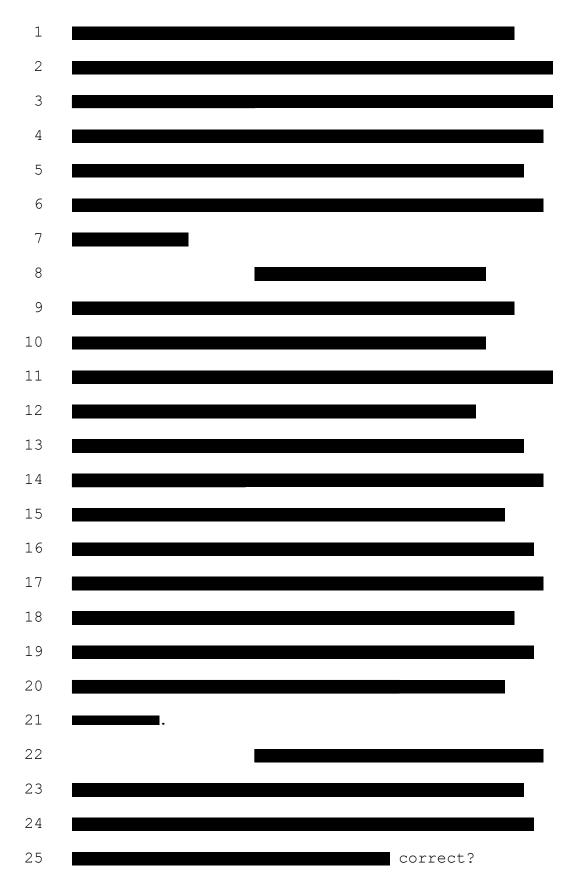


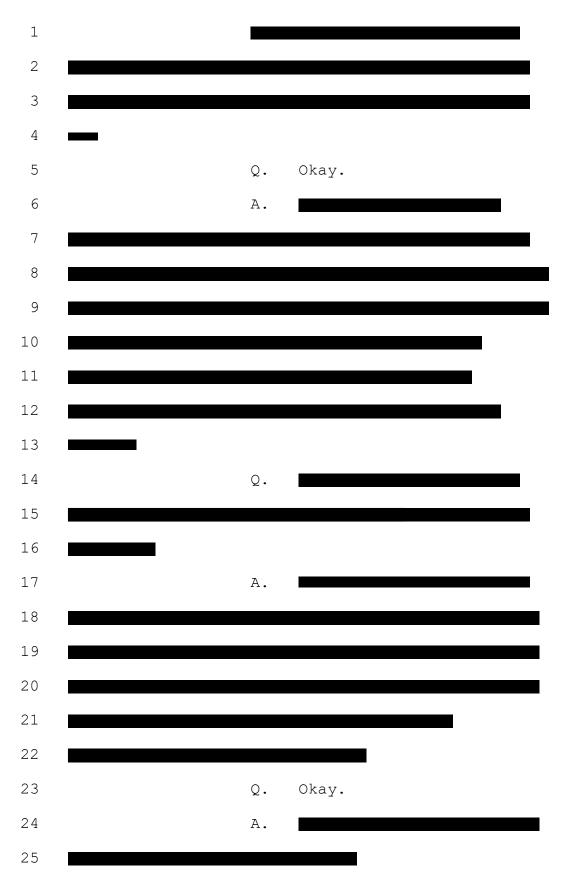
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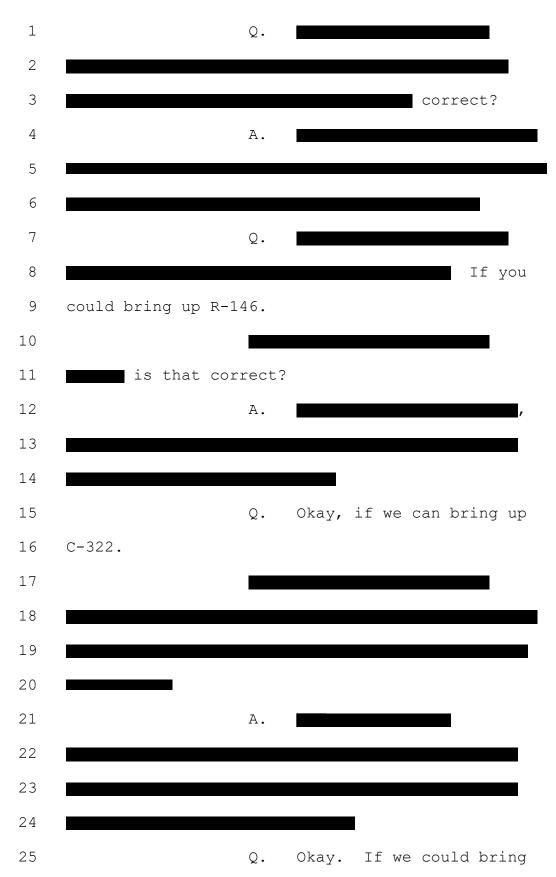


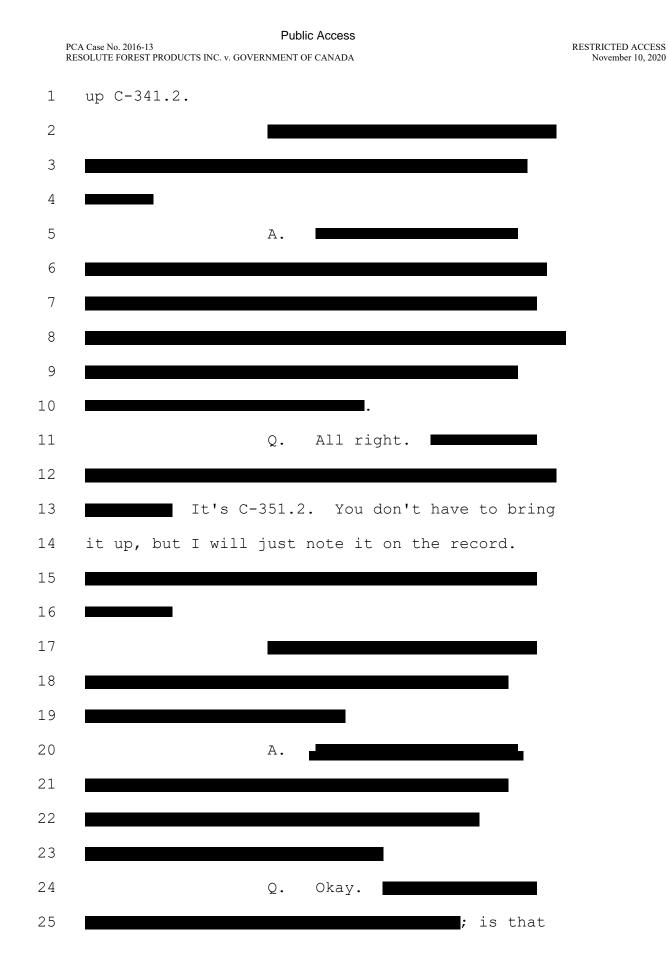






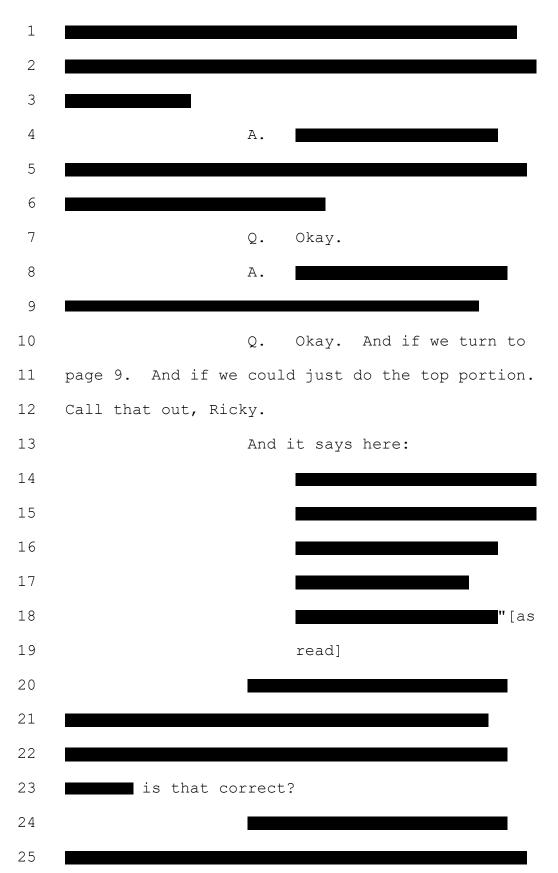


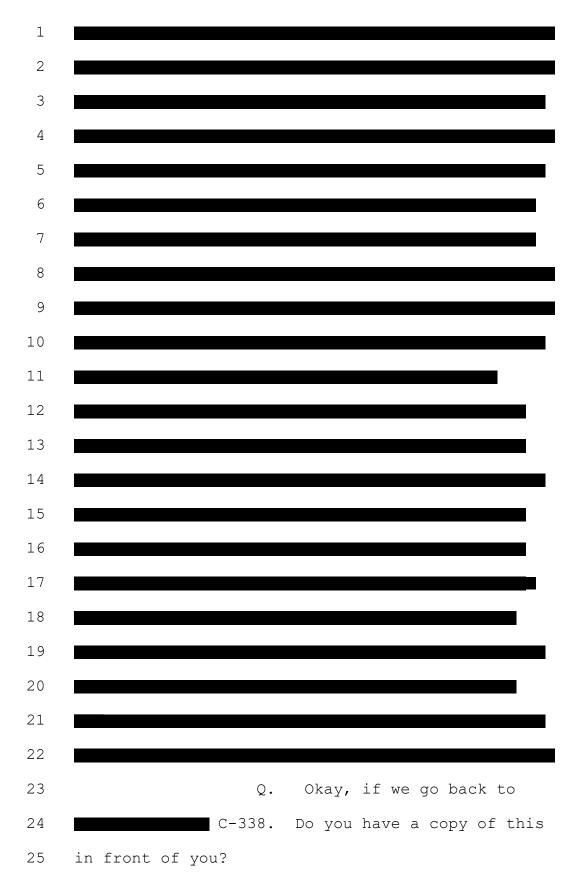


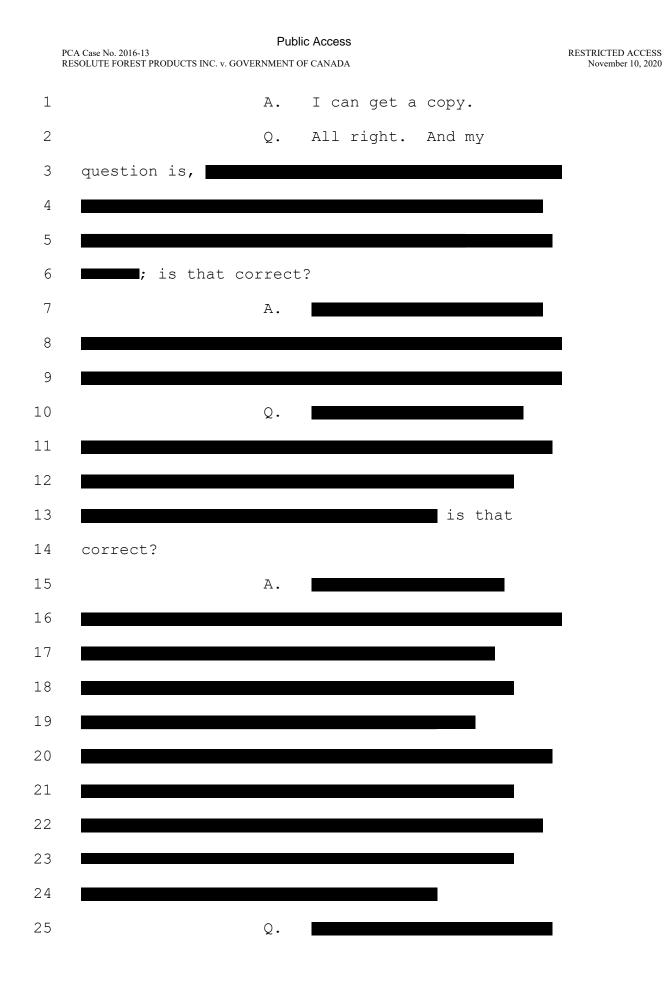


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1	correct?
2	A. I am not sure. I can't
3	answer that.
4	Q. You are not sure. Okay.
5	Let's go back to
6	It was R-161. And look at
7	page 37 of it. And if we could just zoom in on
8	
9	
10	All the way at the top, Ricky,
11	the top big paragraph there. Perfect.
12	And this says:
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	."[as
23	read]
24	
25	

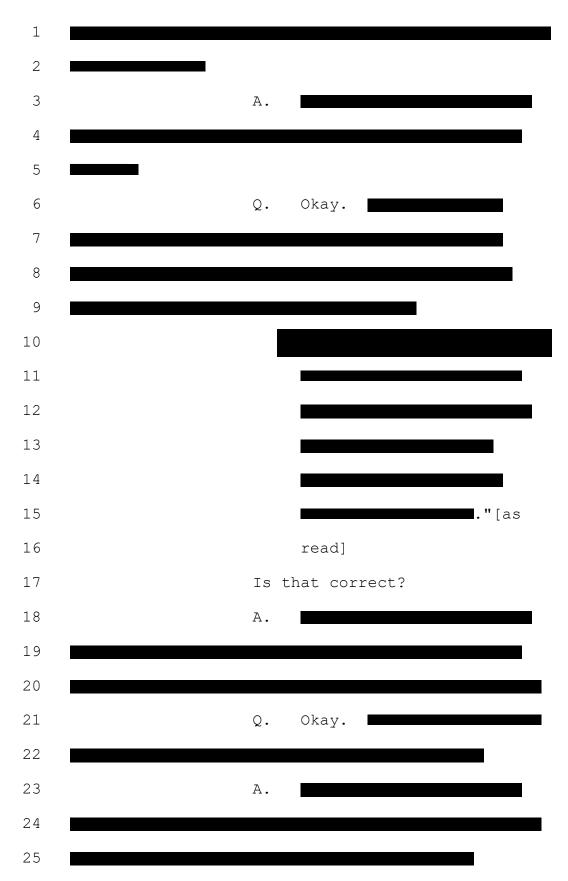


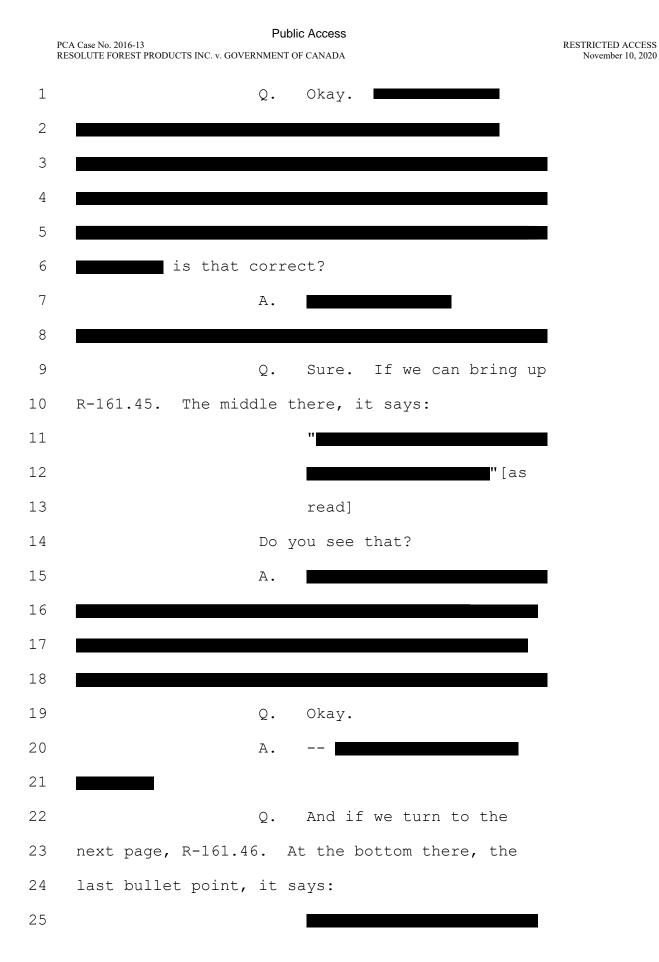




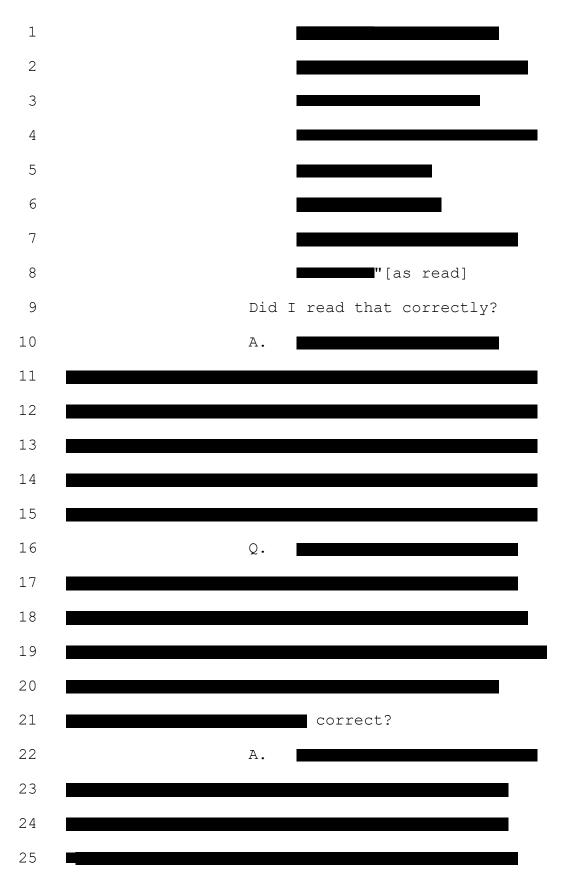
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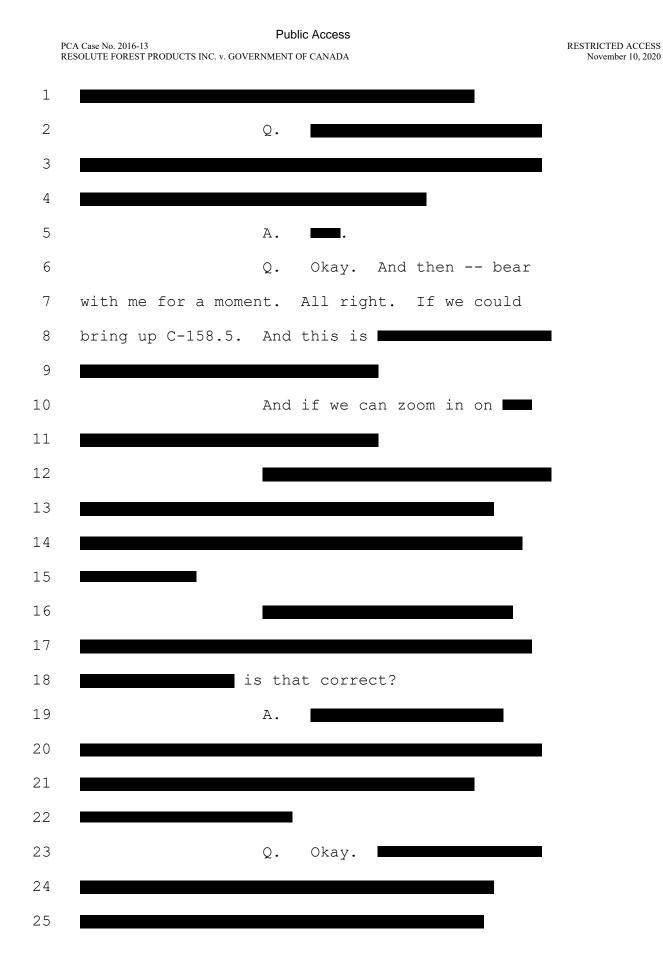




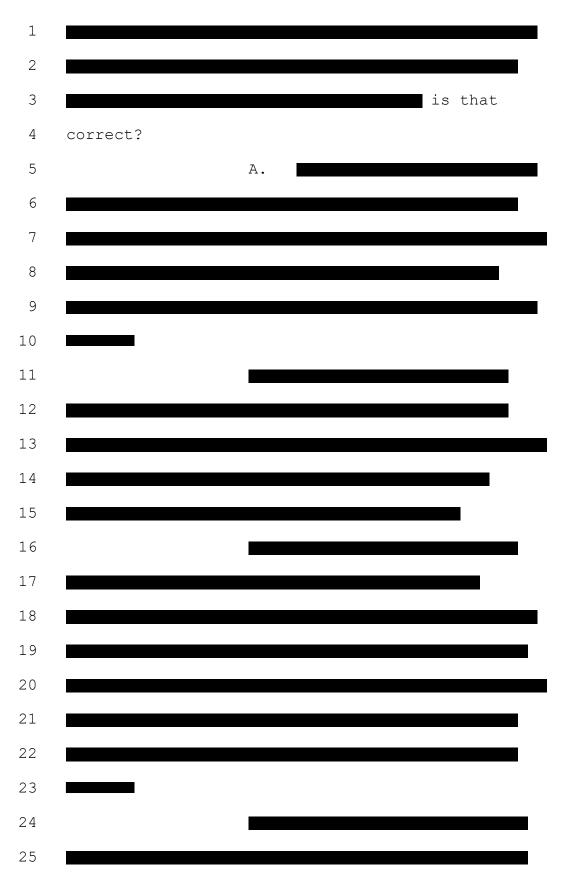


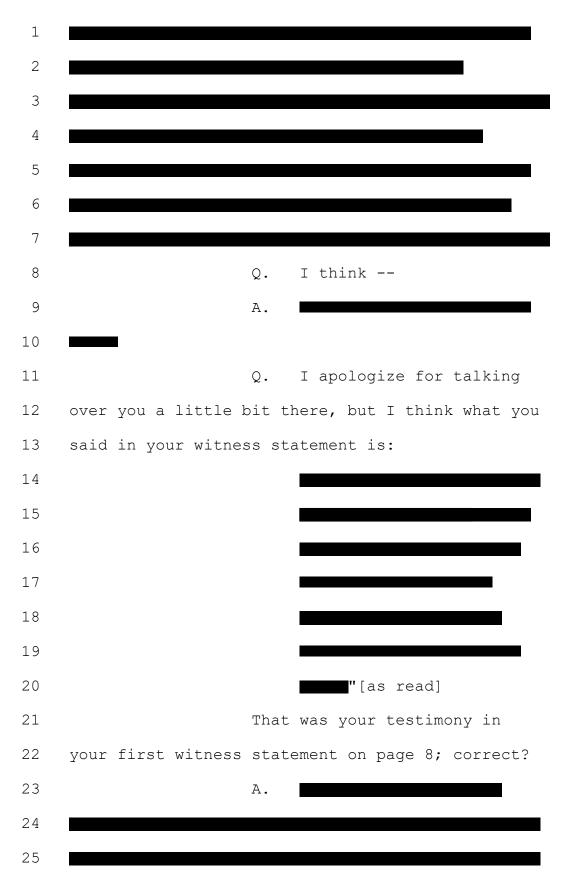
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1	
2	
3	Q. Okay. And if let's
4	just take a look at the rate that the mill wanted
5	to get.
6	Ricky, if you could bring up
7	C-174.25.
8	And if you could just zoom in
9	on the first paragraph there, Ricky, and call that
10	up.
11	And it states there:
12	"However, it is important
13	that the board and all
14	parties understand that
15	PWCC does not consider it
16	appropriate to make an
17	investment in the Port
18	Hawkesbury mill unless it
19	has confidence that there
20	is a solid long-term
21	foundation for success,
22	and it is nowhere near
23	sufficient to obtain an
24	electricity costing
25	structure that would

1	allow it to 'merely'
2	operate
3	competitively."[as read]
4	Did I read that correctly?
5	A. Yes, you did. But I am
6	not sure who that individual is, the testimony of
7	John Athas, I was not party to wherever he
8	testified. And that's his interpretation. I
9	don't know where he is getting that. I don't know
10	who this person is.
11	Q. This is PWCC's evidence
12	in the case. If we can just bring it up, the
13	first page of this, Ricky.
14	This is the rebuttal evidence
15	of Pacific West Commercial Corporation. They are
16	saying they need a rate that's more than that
17	enables them to operate more than merely
18	competitively. Like, they need a better rate than
19	to just be merely competitively.
20	
21	I
22	mean, that's the rate that they wanted, and that's
23	the rate that got approved in PWCC's eyes;
24	correct?
25	A. That was never said to me

1	was that they had to have a rate that was more
2	than competitive.
3	
4	So I really can't say that that's what
5	they said. What we were looking at was whether or
6	not they could get a rate that would help them be
7	sustainable as a company moving forward.
8	Q. You understand the
9	province participated in the negotiations and at
10	the hearing for this rate setting; correct?
11	A. That, I honestly I
12	can't I don't feel comfortable speaking to the
13	utility review board. I was not involved in that
14	part of the project. I did not participate in any
15	of those meetings or hearings, and I and once
16	again, Utility and Review Board is an independent
17	body. We don't influence how they run their
18	review. We don't influence their decision. I was
19	not party to that. So I really am not comfortable
20	commenting on those areas. It was never said I
21	had never heard anything that we were, you know,
22	interfering or part of it. If we were called to
23	testify, I assume that we would have testified.
24	Q. So the the original
25	electricity rate, though, that got approved, it

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1 had to be revised because of this -- this -- this 2 tax structure was denied by Canada Revenue Agency; 3 you're familiar with that generally? 4 Α. Yes, generally, that is 5 my understanding was that there was a structure 6 that the company negotiated with Nova Scotia 7 Power --8 Q. Okay. 9 -- in terms of a specific Α. 10 cost structure that helped them get a rate that 11 they thought would work in the business plan; that 12 when that did not happen, that CRA did not -- they 13 provided some indication that they were not going 14 to give a positive advance ruling on that tax 15 structure that was being implemented or requested. 16 That -- then, obviously, that rate could not -- or 17 that business structure could not happen. And 18 because of that, the business plan would have to 19 change. 20 Q. Okay, and it changed, and 21 one of the changes that the province made was they 2.2 made an 23 the \$40 million credit facility; is 24 that one of the changes? 25 Well, actually, when they Α.

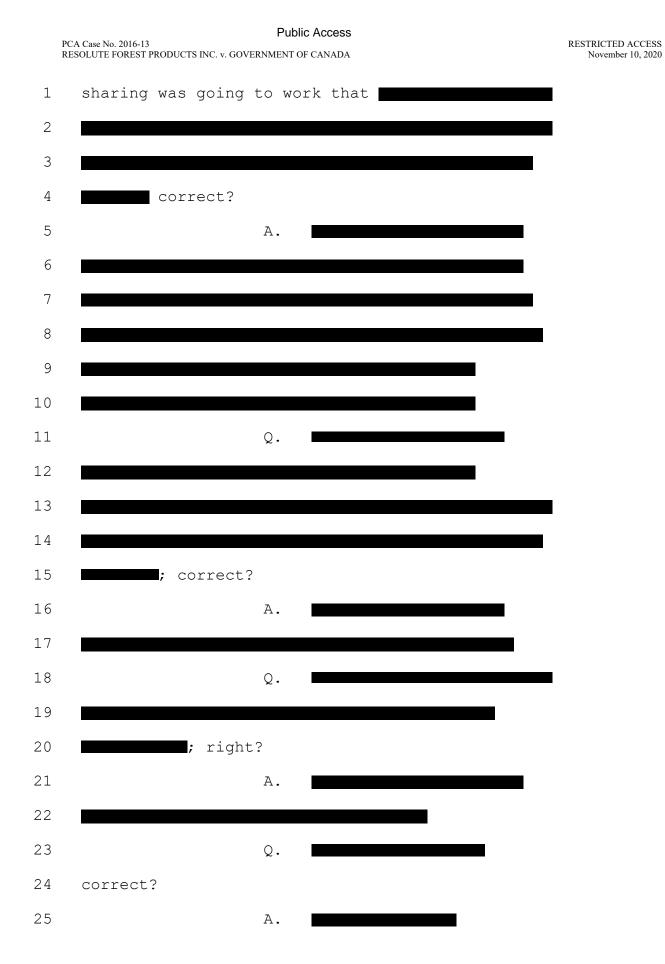
1	actually didn't get the advance tax ruling in a
2	positive way, my understanding at that time was
3	there was no deal. So it I was told that we
4	weren't moving forward. That personally, that's
5	what I was told, and I think that was made public
6	that we weren't moving forward.
7	Q. Okay, and
8	A. And then several days or
9	a week later which I was not involved in I
10	understand that the company and the province of
11	Nova Scotia got back together to have discussions
12	on what changes or what business structure could
13	be acceptable that would still potentially make
14	the mill viable as a business.
15	Q. And one of those changes
16	was to change a \$40 million credit facility that
17	for
18	the mill as a result of the denial of the
19	electricity rate, the original electricity rate
20	through CRA; correct?
21	A. Yes, that was one of the
22	changes, was that the \$40 million loan could
23	. But there were other
24	changes that really were to the benefit of the
25	province. So you can't pull out one piece of an

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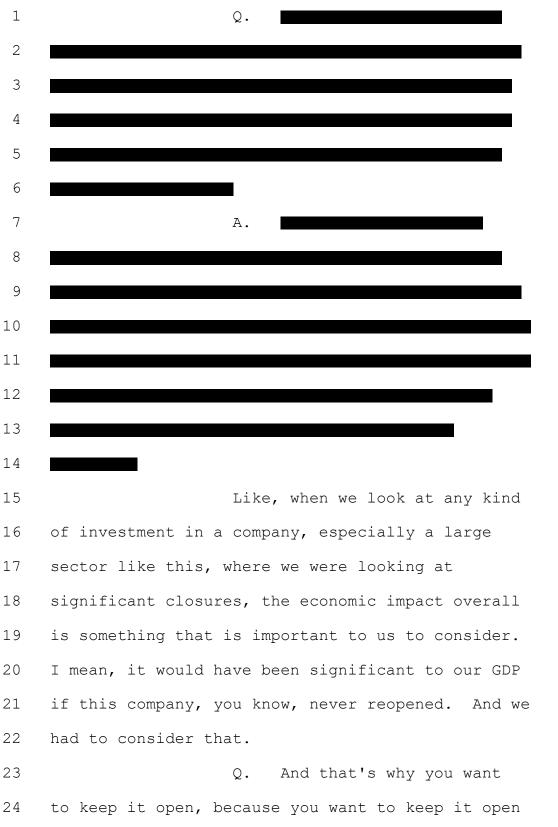
1 amendment without looking at all the items that 2 were amended at that time. 3 Ο. Okay, and then there was 4 also changes to incorporate, like, a larger set 5 of -- to how to deal with the billion-dollar pool 6 of tax losses, that change was also made at the 7 time; correct? 8 Α. There was a change that 9 we had looked at the potential that the company 10 could use tax losses, that we would share in some 11 of the savings that they would receive. But you 12 didn't mention the change that we had to the 13 profit share section where, originally, we were 14 only looking at a \$9 million profit share, which 15 is viewed as a repayment of a loan, that was 16 changed to 24 million. So there was the potential 17 that we could receive more money back from the 18 company, up to \$24 million. 19 Ο. And so that --20 And so there's --Α. 21 Q. That profit share was 2.2 like an investment that you guys thought you were 23 going to have in the mill; correct? Well, I don't know if I 24 Α. 25 would call it investment. It's just one of the

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1	other changes that as a package. So I don't
2	feel comfortable looking at one amendment because
3	there was so many, that some looked like it might
4	be in favour of the company, some looked like it
5	might be in favour of the province. You can't
6	take them in isolation. I think you really have
7	to view it as a package.
8	Q. That profit sharing, that
9	was something good that the province got out of
10	this?
11	A. The profit share, yes.
12	It would be viewed as, for us, as partly it
13	could be viewed as repayment of the loans that we
14	would have been putting out to the company.
15	Q. Okay. And so that profit
16	sharing, what happened is
17	
18	; correct?
19	A. The
20	
21	
22	
23	
24	
25	Q. Okay. And the profit



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25 because it's the lowest-cost producer, and then it

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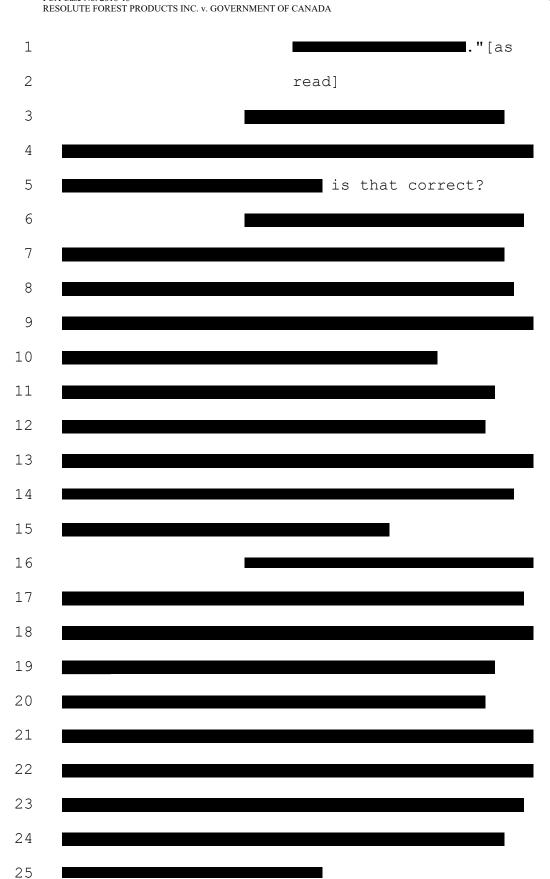
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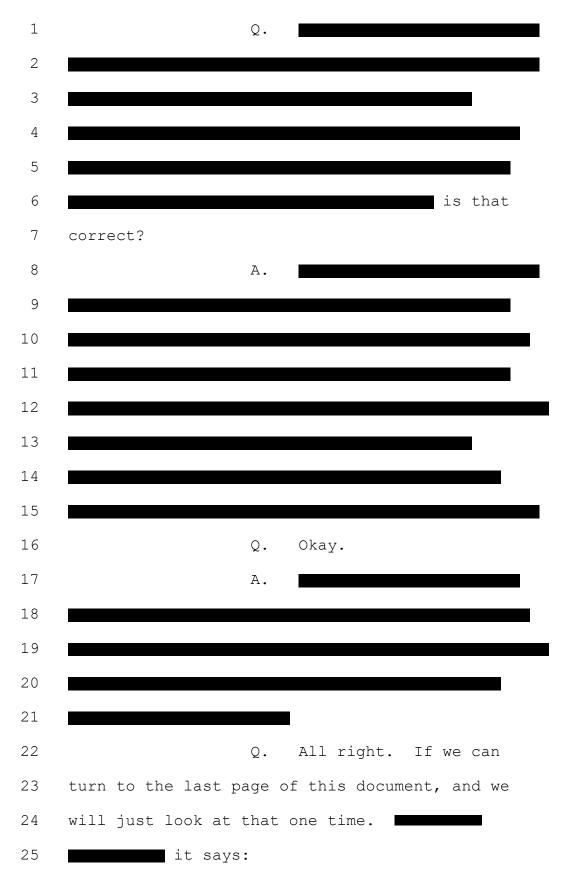
1	can keep making paper, and it keep supplying all
2	these other things for the province. The
3	province, you know, was essentially invested in
4	ensuring that the mill could stay open as the
5	lowest-cost producer so it could remit all these
6	other benefits to the province?
7	A. You don't have to be the
8	lowest-cost producer to gain benefit as the
9	province; right? I mean, as long as the company
10	continues to be viable, there are benefits to the
11	province. Without a mill I mean, it's not the
12	only reason, but, certainly, it is one of the
13	balancing factors or one of the risks and the
14	benefits that we would look at.
15	Q. Okay,
16	
17	?
18	A.
19	
20	
21	Q. Okay.
22	A. And we recognize that.
23	You know, I have invested in companies that were
24	unable or unable to survive, and they didn't
25	they couldn't pay back all of their loans or the

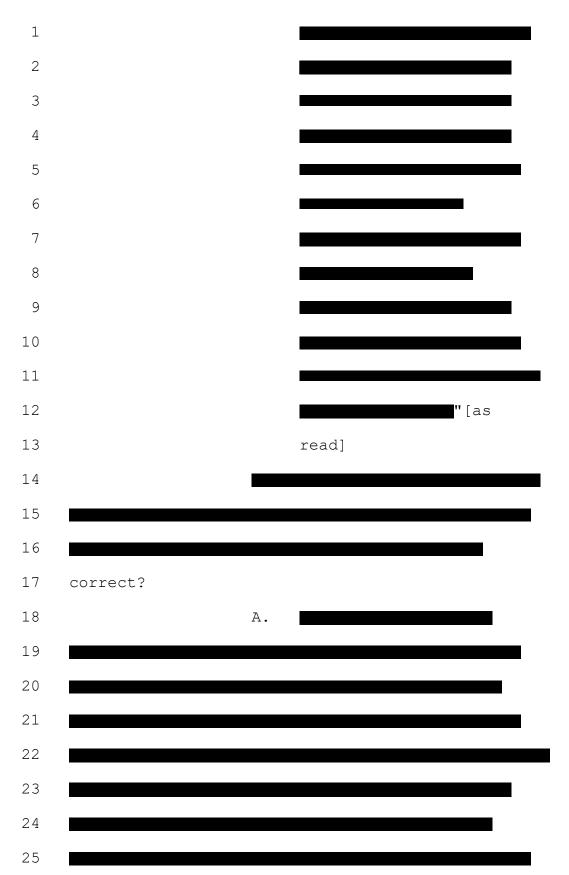
PCA Case No. 2016-13 RESOLUTE FOREST PRODUCTS INC. v. GOVERNMENT OF CANADA 1 company ceased operations. So, you know, I 2 can't -- it's just one piece of information. Ι 3 can't guarantee or control whether or not a 4 company actually is viable. 5 Q. Okay. If we could look at one more document. Again, it's C-158.2. 6 This 7 . And if we can just is 8 look at the first full paragraph there. 9 One down, Ricky, the first 10 Thank you, sir. full one. 11 Again, this is -- this 12 paragraph says: 13 14 -- "[as read] 15 : 16 17 18 19 20 21 2.2 23 24 25



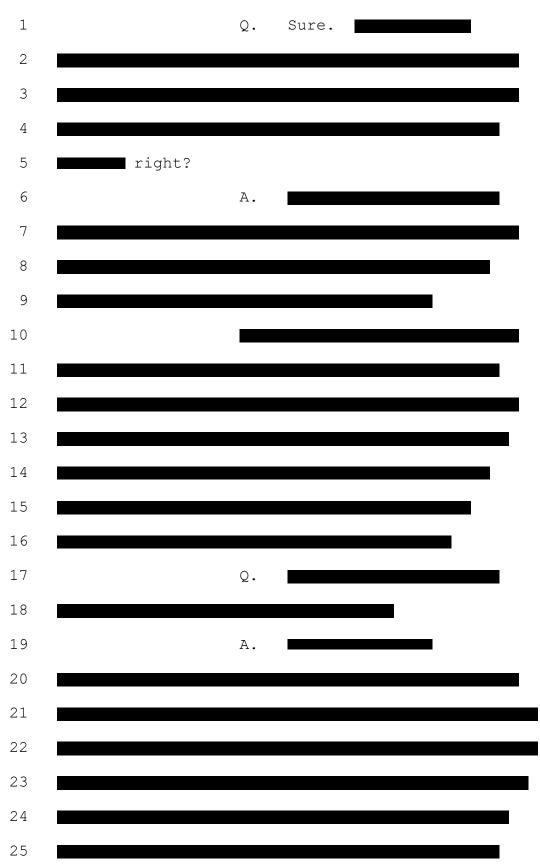
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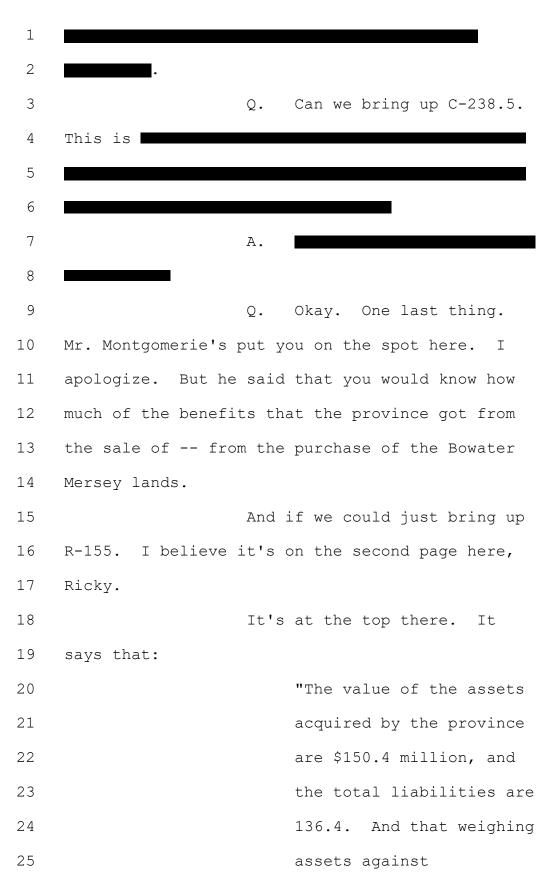








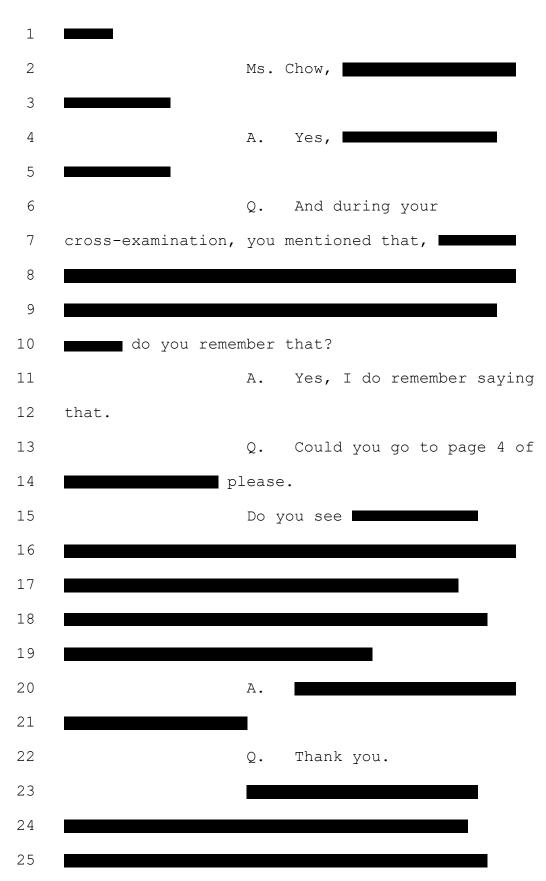
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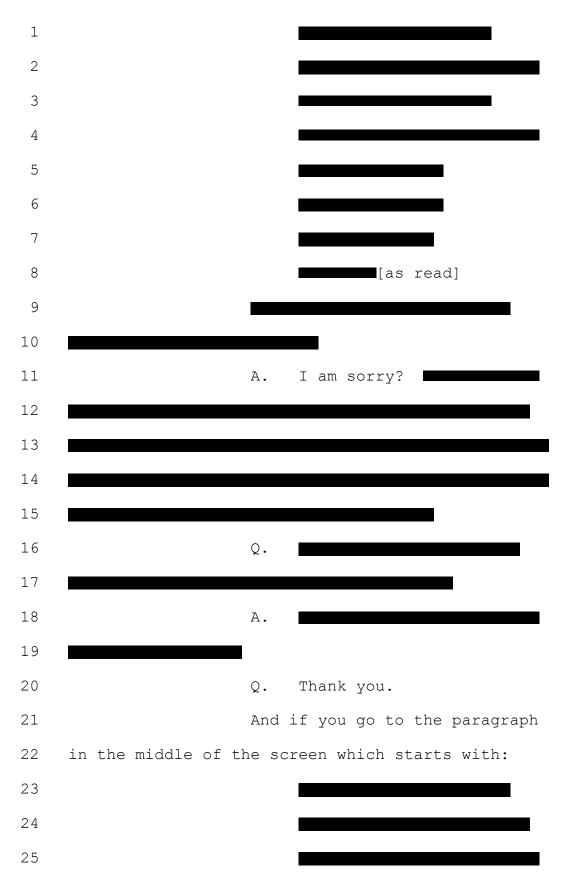


1	liabilities, the net gain
2	to the province is
3	\$14 million."[as read]
4	Were you aware of that?
5	A. I can't speak into detail
6	about that. I didn't look at specifically to
7	prepare. It was a long time ago. And in terms of
8	that transaction, there was a lot of complexities.
9	There potentially could have been a gain, there
10	may not have been a gain. There was a lot of
11	costs, so I don't think that was reported how much
12	cost it took for us to actually buy that facility.
13	And there were a lot of unknown factors because in
14	that case, we bought the company, not just
15	specific assets. So there is always risk when you
16	are buying companies and not knowing any of the
17	unknown liabilities that may be present there.
18	Q. Do you have any
19	A. So I can't say
20	specifically if 14 million is accurate or not
21	accurate. Sorry.
22	Q. This is a provincial
23	press release. Do you have any reason to doubt
24	what was published in a provincial press release?
25	A. I am not saying I doubt

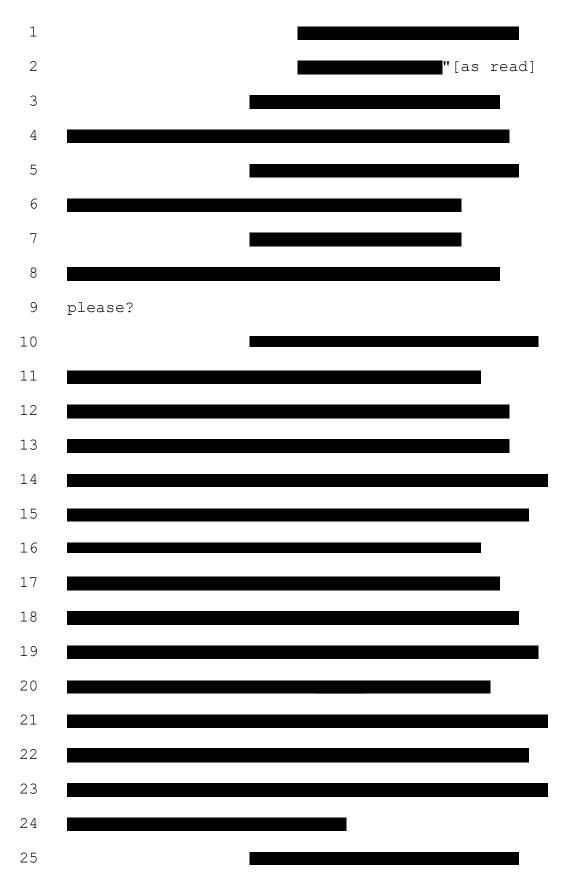
1 I just -- I can't validate it. I don't have it. 2 the numbers with me to be able to prove that it 3 was 14 million. 4 What I can tell you they 5 didn't include, because as I look at it now, you 6 know, for us, there was the significant portion of 7 cost related to that transaction that would not --8 that was not put in the press release itself. 9 JUDGE CRAWFORD: Counsel, I 10 think your time has expired. 11 MR. LEVINE: Yes, Judge 12 Crawford, I was about to just ask if I could have 13 one moment to review my notes and confer with my 14 colleagues, and then I think I am -- I am done, 15 but I appreciate --16 JUDGE CRAWFORD: I hope your moment of conferral is not going to lead to 17 18 another ten minutes of cross-examination. 19 MR. LEVINE: I don't think so. 20 I have been paying attention to the clock above 21 Ms. Chow, and I think I have taken about 2.2 50 minutes or so. So let me check really quickly. 23 Judge Crawford, I am pleased 24 to inform the Tribunal that I have no further 25 questions of this witness.

1	JUDGE CRAWFORD: Thank you for
2	your evidence and thank you, witness, for your
3	evidence and for attending the Tribunal.
4	The next cross-examination is
5	of Murray Coolican.
6	MR. GALAGAN: Judge Crawford,
7	members of the Tribunal, may we have a short
8	redirect examination, or would you like to have a
9	pause?
10	JUDGE CRAWFORD: No, I am
11	sorry, you can have a redirect.
12	MR. GALAGAN: We only have two
13	documents to bring. It should not take long.
14	JUDGE CRAWFORD: Right. I do
15	apologize.
16	MR. GALAGAN: Or if you
17	prefer, we can have a short break now and then do
18	redirect. Whatever pleases the Tribunal.
19	JUDGE CRAWFORD: Let's do the
20	redirect. If it's a brief redirect, it can happen
21	now.
22	RE-EXAMINATION BY MR. GALAGAN:
23	Q. Yes, can we put Exhibit
24	R-431 on the screen, please. Okay, so we have on
25	page 1, this is

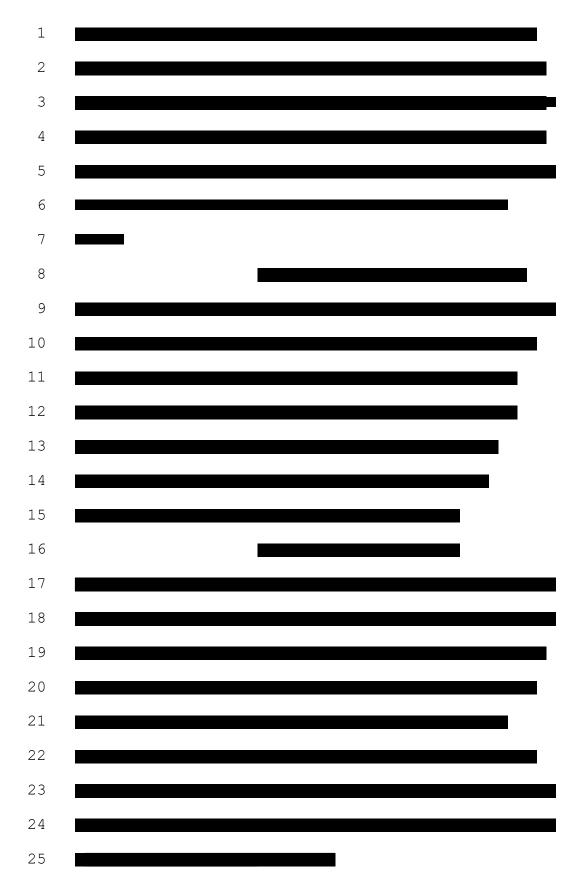












1	Q. Thank you, Ms. Chow.
2	The other question was with
3	respect to a document that Resolute's counsel
4	brought to your attention. That is C-158. If we
5	could go to the second page of that document.
6	Do you see in the middle of
7	the screen, there is
8	"? Ms. Chow, do you see
9	?
10	A. Yes, I do.
11	Q. Thank you.
12	During your cross-examination,
13	you mentioned that
14	
15	
16	?
17	A. So just like
18	, is one piece of information, we have
19	a group within our Department of Finance that
20	actually looks at economic impact, and they ran
21	modelling for us based on the permanent shutdown
22	of that mill, and it was significant. And so we
23	could be looking at a decrease of
24	significant loss of
25	employment, a loss of revenue to the government as

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1	well, and we recognized that even though PWCC was
2	looking to buy the mill at that time and to have
3	operations,
4	And so we were reducing any
5	loss. If that mill or that company can stay in
6	business, the impact of a permanent shutdown was
7	certainly reduced significantly, and it was a huge
8	impact to our consideration as to what reasonable
9	funding would be to help the mill restart.
10	We recognized that it's still
11	based on the expertise of that management team,
12	and nowhere did we ever say we would want to
13	reopen a mill at all costs because, obviously,
14	though it's significant, the cost to the province
15	in terms of GDP, in terms of lost tax revenue,
16	it's not endless. So, you know, we did have
17	parameters that would be considered reasonable
18	based on what the business model would dictate for
19	that company.
20	MR. GALAGAN: Thank you,
21	Ms. Chow. That concludes my redirect examination,
22	and I leave it to the Tribunal to ask any further
23	questions if they wish.
24	JUDGE CRAWFORD: Do my
25	colleagues have any questions of this witness? It

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1 appears not. 2 Thank you very much for your 3 evidence, for coming today. 4 THE WITNESS: Thank you. 5 JUDGE CRAWFORD: Next 6 presentation and the last for the day is a 7 cross-examination of Mr. Murray Coolican. 8 MR. LEVINE: Judge Crawford, does the Tribunal mind if we have a short two- to 9 three-minute break to just get organized for the 10 11 next witness? 12 JUDGE CRAWFORD: We will have 13 a ten-minute break now because the witness will 14 have a break at the end of the testimony as well. 15 MR. LEVINE: Thank you, Judge 16 Crawford. 17 --- Upon recess at 1:36 p.m. EST. 18 --- Upon resuming at 1:43 p.m. 19 --- Whereupon Restricted Transcript Ends 20 JUDGE CRAWFORD: Mr. Coolican, 21 welcome to the Tribunal. I have with me Ron Cass 2.2 and Céline Lévesque --23 MR. COOLICAN: How do you do? 24 JUDGE CRAWFORD: -- my 25 associates in the arbitration.

1	You're a fact witness. You
2	have a statement in front of you which is your
3	oath. It's been slightly modified to take into
4	account comments made by counsel.
5	Can I ask you to make that
6	statement?
7	MR. COOLICAN: Yes.
8	I solemnly declare upon my
9	honour and conscience that I will speak the truth,
10	the whole truth and nothing but the truth. No one
11	else is present in the room where I am testifying.
12	I do not have any notes or annotations on any hard
13	copy or electronic documents. I confirm that I am
14	not receiving communications of any sort during my
15	testimony other than my participation in the main
16	hearing room in Zoom.
17	JUDGE CRAWFORD: Thank you
18	very much.
19	FACT WITNESS: MURRAY COOLICAN:
20	MR. LEVINE: Judge Crawford,
21	with your permission, may I proceed?
22	JUDGE CRAWFORD: Yes.
23	MR. LEVINE: Thank you very
24	much.
25	CROSS-EXAMINATION BY MR. LEVINE:

1	Q. Good afternoon,
2	Mr. Coolican. My name is Paul Levine. I am an
3	attorney with Resolute. I am going to ask you
4	some questions regarding your testimony.
5	Just two conditions I ask of
6	you. The first is you try to let me ask a
7	complete question, and I will try to let you give
8	a complete answer. There is a court reporter out
9	there somewhere who is typing this all down, and
10	if we talk over each other, she can't do it, and
11	she will eventually get mad at us and tell us "one
12	at a time".
13	And the second thing is, is if
14	you don't understand one of my questions, can you
15	tell me now so I can try to reformulate that
16	question for you on the record and we can make a
17	clear record? I don't want to have any confusing
18	questions made to you.
19	Do you understand?
20	A. Yes.
21	Q. Thank you very much.
22	MR. MANGHAT: Sorry to
23	interrupt. It looks like we have lost the feed
24	for the boardroom for the respondent. Heather,
25	are we able to take a look and see?

1 MS. D'AMOUR: It does look 2 like that has dropped again. We have to get Ali 3 back in there to reconnect it. I am just not 4 sure -- I don't want to give instructions for how 5 to reconnect because I am not sure what happened 6 on the computer. 7 MR. LEVINE: Are you talking 8 about the boardroom in Nova Scotia or the 9 boardroom somewhere else? Because I still see a 10 video of the boardroom in Nova Scotia. MR. MANGHAT: Heather, it's 11 12 ours in Arbitration Place. 13 --- Off-the-record discussion re technical issues. BY MR. LEVINE: 14 15 Ο. Good afternoon, 16 Mr. Coolican. I won't go over the preliminary notes again because that probably wasn't too much. 17 18 But is it fair to say that the 19 electricity rate hearing concerning Port 20 Hawkesbury was a fairly important rate hearing to 21 the province? 2.2 Α. Which rate hearing are 23 you referring to? The -- are you referring to 24 the, umm, the --25 The 2012 one. Q.

1 The load retention rate Α. 2 hearing? 3 Ο. Yeah. 4 Α. Yeah. Yeah, that one and 5 also the one for Bowater and NewPage --6 Ο. Okav. 7 Α. -- about a year earlier 8 were very important. 9 Q. Okay. And I can bring up the document if you want, and you might be 10 11 familiar with it already, but I think the opening 12 statement from the Nova Scotia attorney who 13 appeared before the Nova Scotia Utility and Review Board, which I will try to call "the board" from 14 15 here on out, stated that the stakes were high; do 16 you remember that opening statement? 17 Yeah, I don't remember Α. 18 the detail of the opening statement, but that 19 wouldn't -- that wouldn't surprise me. It was an 20 important hearing for the province for the 21 electricity system and the way it operated. 2.2 Ο. All right. Just for the 23 Tribunal's record, that can be found on C-178.3. We don't need to call it up now. 24 25 The board, I think you say in

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1	your witness statement, is a quasi-judicial
2	tribunal that is independent from the Government
3	of Nova Scotia executive and legislative branches
4	and that it just doesn't defer to the government's
5	positions; is that correct?
6	A. Yeah, that's right, and
7	there are a number of examples of that where the
8	Government of Nova Scotia has taken a position in
9	front of the tribunal and has the decision has
10	come out against the position taken by the
11	Government of Nova Scotia. So it's, it's not just
12	in theory, but it's in fact, and there are
13	examples of that.
14	Q. Okay. In this rate
15	hearing, there were two issues involving renewable
16	energy that the board needed to consider, and I am
17	just going to lay them out just from a broad
18	overview perspective.
19	One was involving renewable
20	energy standards, and the other one considered the
21	biomass plant. Is that an accurate statement of
22	the broad renewable energy issues that were going
23	on at the Port Hawkesbury 2012 rate hearing?
24	A. Yeah, I have never
25	divided it in terms of those sorts of separations.

1 The significant issue that was under consideration 2 was whether the Port Hawkesbury Paper would be 3 eligible for a load retention rate which had been 4 opened up to economic distress through the NewPage 5 and Bowater hearing that had been held about a 6 year previously. 7 All right. I just want Q. 8 to call up the board decision. 9 And, Ricky, this is the board 10 decision. 11 And unless I tell you 12 otherwise, I am talking about the 2012 Port 13 Hawkesbury case. If I switch over to Bowater Mersey and that one, I will let you know. 14 15 Α. Okay. 16 But this is on C-184.57 Ο. 17 in paragraph 172. He will bring it up on the 18 screen for you so you can look at it there. 19 Otherwise, you can dig through that large stack of 20 paper which --21 Α. I would rather not tackle 2.2 that stack of paper. 23 Me neither. Ο. You got it there, Ricky? 24 25 There we go. Ricky, are you still on the line?

1 MS. D'AMOUR: It looks like 2 Ricky just dropped from the call. I just heard 3 him. Yeah, I think he dropped from the call. 4 MR. LEVINE: I apologize. Ιf 5 you give us one moment, he will return to the 6 line. 7 MS. D'AMOUR: Yeah, no 8 problem. 9 MR. LEVINE: Yeah, all right. Thank you, Ricky. 10 Perfect. 11 BY MR. LEVINE: 12 So this is C-184.57, Q. 13 paragraph 172. And this is the board decision. 14 Α. Right. 15 Ο. And so this incremental 16 RES issue that's being highlighted here. 17 Α. Yes. 18 And you can read it here, Q. 19 but the basic thrust of the issue is PHP's going 20 to come back to the grid, it's going to use a lot 21 of electricity, and would there need to be 2.2 additional renewable energy added to the 23 electricity system as a result of PHP's return to 24 the grid so that the provincial renewable energy 25 regulations were satisfied; is that correct?

1 Α. That's correct. 2 And what's going on here Ο. 3 is that NSPI and PWCC argued that the province 4 would have enough renewable energy to meet the 5 provincial regulations regardless whether the Port 6 Hawkesbury mill operated or not. That was their 7 position during this rate hearing; correct? 8 Α. Yeah, it also was the 9 position put forward by the -- by myself in a 10 letter to the board because the plans that Nova 11 Scotia Power had drawn up for and projects that 12 they were -- that were underway were such that 13 they would have met the load that the province -the electricity load that the province had with 14 15 the Bowater mill still operating, with the Port 16 Hawkesbury mill operating, with the newsprint mill 17 as well as the coated paper and the pulping mill. 18 So because Bowater had closed, 19 because Port Hawkesbury Paper was going to be 20 closing the newsprint line, there was going to be 21 less demand on the province than there would have 2.2 been when Nova Scotia Power drew up the projects 23 and plans to meet the renewable energy 24 requirements. 25 Q. And that's in your

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1 letter, and that letter's at C-179. And I think 2 you even put that letter into your witness 3 statement, your first witness statement at 4 paragraph 25. So you kind of summarized it, so we 5 don't -- I am not going to spend time going over 6 it. 7 The board was aware at the 8 time of the hearing that the newsprint facility at 9 Port Hawkesbury was going to be closing; correct? 10 Yeah, I think Port Α. 11 Hawkesbury Paper made it clear, and it was part of 12 the construction of the load retention rate that, 13 because it was closing the newsprint mill and was 14 able to use the pulping facility as a form of 15 energy storage, that gave the system some -- some 16 savings that were reflected in the load retention 17 rate. 18 Ο. All right. And this 19 renewable energy issue -- if, Ricky, you could 20 bring up C-147.88. 21 And if you could -- there's 2.2 going to be a line there that says "Stern can't 23 handle any RES cost increase average or 24 incremental", and do you see that? 25 Α. Yes.

1	Q. Okay. And then I think,
2	I think if you go down farther, it says:
3	"Ron, also cannot leave
4	door open by regulator
5	that RES will/may apply
6	in the future. It has to
7	be never."[as read]
8	Correct?
9	A. Yes, I see that.
10	Q. All right. So it's fair
11	to say, throughout this whole process, PWCC was
12	fairly adamant that it did not want to incur any
13	additional cost to comply with this RES standard.
14	That was their position; correct?
15	A. Well, that these are
16	the notes from Mr. Stern. But I would say that
17	regardless of how adamant they were or were not,
18	it was clear to us from the plans that Nova Scotia
19	Power put in place and from the reduction in load
20	to the province that were not that there were
21	not going to be any additional RES requirements.
22	Q. Okay. And this issue
23	came up at the hearing too; didn't it, the rate
24	hearing?
25	A. Yes, I believe it did.

1	Q. All right.
2	If we could look at R-397.165,
3	and just go to the bottom of that page and then,
4	Ricky, to the top of the next page. R-397.165.
5	And I want to read the whole
6	thing here. But Mr. Stern's being questioned by
7	the chair of the board; correct?
8	A. Yes.
9	Q. Okay.
10	And just a little bit higher
11	up on that second one, Ricky.
12	He says:
13	"I am coming back to the
14	risk to the other
15	ratepayers with respect
16	to the RES requirements,
17	and I understand it's
18	your position that
19	there's enough renewables
20	on the system to
21	accommodate this load.
22	But it seems to me that
23	risk could be eliminated
24	completely by an action
25	of the province of Nova

1		Scotia, and has the
2		province of Nova Scotia
3		been approached to solve
4		that problem?"[as read]
5		Mr. Stern says:
6		"Yes, we have had some
7		discussions."[as read]
8		And the chair said:
9		"Are they prepared to
10		solve it?"[as read]
11		And Mr. Stern says:
12		"No, they've sent us
13		here."[as read]
14		And then the chair goes on and
15	says:	
16		"You agree with me that
17		if indeed the renewable
18		targets changed as a
19		result of government
20		action or if certain of
21		the renewables that are
22		currently being
23		contemplated couldn't be
24		built, that there is a
25		risk with respect to

1	other ratepayers having
2	to pick up the cost of
3	the renewables serving
4	your load?"[as read]
5	And he keeps going farther
6	down. I think he goes on to the next page, and
7	the chair comments on the next page at the top:
8	"Based on what we know
9	today, but seven years is
10	a long time in the life
11	of an electric system;
12	isn't it?"[as read]
13	And then the chair goes on and
14	he says:
15	"Would you agree with me
16	that a government that
17	wants this transaction to
18	happen should seriously
19	consider taking away this
20	risk?"[as read]
21	Mr. Stern says:
22	"I agree, sir, it would
23	make things easier for
24	all of us."[as read]
25	So did I get all that

1 correctly? 2 Α. Yeah. 3 Ο. All right. And so let's 4 go back to the board decision again, and it's 5 C-184.58. And look at paragraph 177. All right. 6 And the board says: 7 "It became clear that, 8 during the course of the 9 proceeding, that without 10 some resolution to these 11 two RES issues, the LRT 12 would not likely recover 13 all its incremental 14 costs."[as read] 15 Did I get that? 16 Α. Yeah. 17 Q. All right. So the board 18 wasn't satisfied with the explanations that were 19 provided by PWCC and the province and NSPI about 20 the renewables; is that correct? 21 Α. Well, the board asked for 2.2 some more assurance, and I issued a letter back to 23 the board that gave them the assurance that the 24 RES targets would be met by existing plans of Nova 25 Scotia Power. And so, in our view, there was --

1 there was no risk, and we were happy to indicate 2 that. 3 And your letter also Ο. 4 committed that if there was a risk and it did go 5 up, the province would take care of the cost and 6 that the other ratepayers and PWCC would not have 7 to incur the risk of those renewable energy 8 standards; is that right? 9 Yes, that's what the Α. 10 letter said. And I was guite comfortable giving 11 that letter because without any changes, as some 12 of your documents suggested, no changes were made 13 to the RES requirements, and even with the fact 14 that no changes were made to the RES requirements, 15 we were very confident that there would be no 16 additional charges. And, in fact, looking back in 17 history, which we can do now because the time 18 period for this is up, there were no additional 19 charges during that period. So it was -- it was a 20 commitment that was made that was guite easy to 21 make because there was no -- we could see that 2.2 there was no cost, and, in fact, there was no 23 cost. 24 Okay. Well, let's go to Q. 25 paragraph 183 of this decision on page 160 -- on

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1	page 60, excuse me.
2	And then it says:
3	"Having regard to the
4	stated position of the
5	province, approval of the
6	board will be subject to
7	two conditions.
8	(A) if the mill load does
9	trigger additional RES
10	costs during the term,
11	those costs may not be
12	passed along to the
13	ratepayers."[as read]
14	Is that correct?
15	A. Yeah, that's what it
16	says.
17	Q. Okay, so the board wasn't
18	going to approve the rate unless the province made
19	that commitment that no RES costs would be passed
20	along to the other ratepayers; correct?
21	A. That's correct. And our
22	decision was based on the fact that the mill load
23	had already been taken into account in the plans
24	and projects that Nova Scotia Power put forward,
25	and we were completely confident that there would

1 be no additional costs. And, in fact, it's turned 2 out that there have been no additional costs. So 3 we were accurate in our confidence, and we were 4 happy to make that commitment. 5 Q. Okay. And then if we 6 turn to -- let's go take a look at the biomass 7 If we can look at page 57, paragraph 173. issue. 8 And the NSUARB says here that 9 the biomass plant would not need to run unless it needed to provide steam for the mill. 10 That's a 11 fair reading of paragraph 173, a summarization of 12 it? 13 Α. Yeah, I am missing part of the page, but I think that's --14 15 Ο. That's fine --16 Α. Yes. 17 Q. And if we go to the next 18 paragraph, and it kind of runs over on this page 19 and carries on to the next. 20 Do you know who Mr. Bennett 21 is? 2.2 Α. Yes. 23 Q. He was the CEO of NSPI at 24 that time; correct? 25 That's right. Α.

1 Ο. All right. And this is a 2 summarization of his testimony from the rate 3 hearing, and it says that the biomass plant may 4 not need to run to meet renewable energy 5 compliance standards. 6 That's the issue that we just 7 discussed; correct? That's correct. 8 Α. 9 Ο. And then in the next 10 paragraphs, paragraphs 175 and 176 on page 58 11 there of C-184, it says that there would be an 12 analysis that was produced that running that 13 biomass plant would cost an extra \$7 million a 14 year or so, approximately; correct? 15 Α. Sorry. I am missing part 16 of this. I am not sure -- I am not sure I would necessarily agree with that analysis. 17 18 Q. Okay. But that's just 19 what was going on at the hearing --20 Α. Yeah. 21 Q. I know you disagree with 2.2 the number --23 Α. Yeah, yeah, no, I understand that, yeah. 24 25 Q. The analysis someone

1	presented said that this cost would add an extra
2	<pre>\$7 million to run this biomass plant, and everyone</pre>
3	kind of disputed that at the time; correct?
4	A. Correct.
5	Q. And I think if we can
6	just bring up the public version of Mr. Coolican's
7	rejoinder witness statement, make sure it's the
8	public one. It's on page 5. There it is. And
9	paragraph 8, actually.
10	There you go.
11	Is this the rejoinder one,
12	Ricky? I apologize.
13	Let's just see if I can do
14	this without going through your statement and make
15	this easier.
16	I think you say in your
17	witness statements that there were regulations
18	proposed in 2011 that would have made the biomass
19	<pre>plant "must run"; correct?</pre>
20	A. Yes, yes, so one of
21	one of the things that is important in dealing
22	with renewable electricity and the transition from
23	being a primarily coal-based system to having
24	considerable renewables was that it takes a while
25	in an electricity system to make the changes. And

1 a lot of these changes were in areas that were new 2 to electric utilities.

3 And, in fact, Nova Scotia, in 4 those early years, was further ahead than most 5 utilities in North America in terms of the 6 percentage of wind electricity that it was 7 producing on the system. And so it was, it was 8 important that the government set out signals of 9 the directions it was going in. It was important 10 that we -- we had some plans that the targets that 11 we created for renewable were, in fact, doable and 12 that we had to retain some consistency over the 13 years of the direction that we were headed in to 14 make it possible for Nova Scotia Power and its 15 customers to respond.

16 You may have noted watching 17 other jurisdictions, not just Nova Scotia, where 18 this kind of -- where governments were attempting 19 to make this kind of transition, and I would say 20 that many of them have not been as successful as 21 Nova Scotia in making this transition and had 2.2 considerable rate increases that were primarily as 23 a result of this transition. Nova Scotia managed 24 to do it in a much more phased way without --25 while we have always had higher electricity rates,

1	we didn't have the significant ups and downs that
2	you would have seen, for example, in Ontario as a
3	result of renewable. Because in many cases, the
4	renewable resources are more expensive.
5	So there were times when we
6	brought wind on the system when it was more
7	expensive than the coal alternative. That is
8	probably not the case today, although I am not
9	100 percent up to date on where things have gone.
10	Q. Mr. Coolican
11	A. At the same time
12	Q. Go ahead.
13	A. At the same time, there
14	were there were aspects of using biomass that
15	at the time would have been more expensive than
16	the coal and natural gas opportunities for
17	producing electricity.
18	So we had to put in place some
19	decisions that resulted in higher costs at the
20	time, but over time, given the transition that we
21	were trying to make, we managed to do it in a way
22	that was relatively gradual. And I think in the
23	end result, will mean that we have a system that
24	is less expensive as well as renewable.
25	Q. All right, Mr. Coolican,

1	I really appreciate that explanation, and I have
2	some questions I want to go through pretty
3	efficiently, so I am just trying to ask you, you
4	said in your rejoinder witness statement, there
5	were regulations that you guys had proposed in
6	2011; is that an accurate statement?
7	A. Yes, we proposed we
8	had gone through public consultation on the
9	direction that we intended to take, and so the
10	regulations that we came up with, we had delayed
11	introducing the regulations because of the
12	uncertainty in the forest sector, both with the
13	issue with the Bowater mill as well as Port
14	Hawkesbury, and we wanted to see those resolved or
15	the general direction resolved before we brought
16	the actual wording of the regulations forward.
17	Q. All right. And so in
18	2012, those regulations were still pending at the
19	time of the rate hearing?
20	A. Yes, that's right.
21	Q. And Todd Williams, he was
22	an expert, and he was, you know, he was retained
23	by the province. And I am not trying to get into
24	a whole side offside about that, but he
25	testified at the hearing too; right?

1 Α. Yes. 2 All right. And if we can Q. 3 bring up R-401.41 and .42. 4 And Mr. Williams, at the top 5 of the 42nd page, page 774 of that transcript, said that: 6 7 "I participated in some of the discussions on the 8 9 biomass."[as read] 10 He was asked was the cost of 11 running the Port Hawkesbury biomass plant, when it 12 wasn't necessary to meet RES compliance, was that 13 discussed during the negotiations? 14 And he says, "We never brought 15 that issue up"; correct? 16 Α. Yeah, I can't see the 17 entire part of that page. 18 Ο. Which one? 19 I am looking at myself Α. 20 rather than some of what he said. 21 Q. Sure. 2.2 Can you zoom in on the top of 23 page 42 there, Ricky? 24 Α. Yeah, now what's the 25 next --

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1 Ο. That was kind of the end 2 of the questioning on that point. 3 Α. All right. 4 Q. He said basically, "I 5 didn't participate in these discussions regarding the biomass plant running full-time"? 6 7 Α. He said he didn't participate in all of those discussions. 8 9 Q. Okay. And if we look at 10 the regulations that were pending at the time, if we look at C-313.8. C-313, there you go, .8. 11 12 This talks about the firm 13 supply; is that correct? 14 Α. Yeah, do you want to go 15 back to the heading as to what exactly we are 16 looking at? 17 Q. Sure. 18 I think page 1, Ricky. 19 These are the 2011 renewable 20 energy regulations? 21 Α. Right. 2.2 Q. All right. And on the 23 eighth page there, it talks about a firm supply; 24 is that correct? We will blow it up for you. 25 Α. Yeah.

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1 Q. And it says starting in 2 the calendar year 2015, that's when the firm 3 supply has to be there; right? 4 Α. That's what that draft 5 says, yes. 6 Ο. Okav. And if we could 7 bring up C-217.2. This is the actual renewable 8 9 energy regulations that were amended in 2013; is 10 that correct? 11 Α. Yes. 12 Q. Okay. And if you could 13 just scroll down to 2A. And this was the change 14 that made the Port Hawkesbury biomass power 15 generation plant have to run full-time; is that 16 correct? 17 That is correct. Α. 18 Q. Starting in the calendar 19 year of 2013? 20 Α. Yes. 21 Q. Okay. Let's just go back to the board decision for one more second and look 2.2 23 at C-184.60, paragraph 183 again. And part (b) 24 says: 25 "Having regard to the

1	stated position of the
2	province, approval of the
3	board will be subject to
4	two conditions."[as read]
5	And part (b) says:
6	"No costs related to
7	operating the biomass
8	plant out of the normal
9	economic dispatch order
10	may be passed along to
11	ratepayers unless and
12	until, as a result of
13	legislation or
14	regulations imposed by
15	the province, it becomes
16	a must-run facility."[as
17	read]
18	Correct?
19	A. That's correct, that's
20	the way it reads. And that's not that's not
21	unusual. When dealing with renewable electricity,
22	the way the board has consistently worked and its
23	mandate is the lowest cost for electricity. So
24	there wouldn't have been a kilowatt of renewable
25	electricity brought into Nova Scotia if there

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1 hadn't been regulations put in place by the 2 government in order to require certain levels of 3 renewable electricity because, especially in the 4 early days, renewable electricity was always more 5 expensive than the alternatives, being coal or oil 6 or natural gas. 7 And so when you were trying to 8 get in place renewable, there had to be, you know, 9 in every instance, regulations imposed by the province so that Nova Scotia Power was required to 10 11 bring in certain kinds of electricity that 12 otherwise would never have happened. And it was, 13 it was clear, the government passed the environmental legislation in 2007 that set the 14 15 province on this course, and then there were 16 regulations that came out from that over the years 17 heading in that direction. And there were --18 there were always additional costs that went along 19 with, went along with that. They were passed 20 along to ratepayers. 21 Q. Okay. And so later on, 2.2 it was determined that making the biomass run pursuant to regulation as mandated by the 2013 23 24 regulations cost the ratepayers between 6 to 25 \$8 million per year; is that right?

1	A. Yeah, I, I don't believe
2	that was tested. I have seen some references to
3	that, but certainly the government didn't go
4	through an analysis to ensure that it was or
5	wasn't. That wasn't in the grander scheme of
6	things, in terms of moving from a coal-based
7	system to one with strong renewable energy, it was
8	not out of line with where we were headed. And it
9	was not, as I said earlier, the additional
10	costs Nova Scotia did quite a good job, in my
11	view, in making that transition to a much stronger
12	level of renewable electricity without incurring
13	some of the major costs that happened in other
14	jurisdictions.
15	Q. Can we just bring up
16	C-051, Ricky?
17	And at the top here, it says:
18	"Nova Scotia Power
19	ratepayers foot 7 million
20	bill for Port Hawkesbury
21	Paper."[as read]
22	And then it says:
23	"A question from the
24	consumer advocate at a
25	Utility and Review Board

1	public hearing on fuel
2	costs Monday revealed
3	another benefit or
4	possible subsidy to Port
5	Hawkesbury Paper, as well
6	as the added cost to Nova
7	Scotians."[as read]
8	So that came this
9	\$7 million disclosure came out at a 2015 rate
10	hearing; is that correct?
11	A. Yeah, so there I have
12	seen this. I have seen this report, and it's,
13	it's there has been a benefit to Nova Scotia
14	ratepayers through the changeover from coal to
15	renewable which is playing our part in the world
16	in terms of the reduction of greenhouse gas
17	emissions and also reducing the impact of
18	regulations from the federal government and also
19	reducing potential trade regulations from other
20	countries given the GHGs that we used to produce
21	electricity. And I think over time, the end
22	result will be a reduction in the cost compared
23	to, compared to coal and other sources of
24	electricity.
25	So it's a, it's a long-term

1 game, and there are some puts and takes along the 2 way, and so this, this was not hugely significant 3 in the scheme of things. 4 Q. All right. So now I just 5 want to talk a little bit about the Bowater 6 experience versus the Port Hawkesbury experience. 7 I think we talked about 8 earlier the province hired Todd Williams, and he 9 ultimately presented evidence at the rate hearing 10 as we saw; is that correct? 11 Α. Yes, he did. The 12 province felt that given the role that he had 13 played to bring, if you will, two different 14 regulatory cultures together and to help them 15 understand each other and the benefits each 16 brought to the table, that it would be important 17 to be transparent and to make Mr. Williams 18 available to the board to give testimony and to be 19 questioned on his experience. 20 Did the province present Ο. 21 any witness or, you know, provide an expert in the 2.2 Bowater hearing for Resolute? 23 No, we didn't feel that Α. 24 it was necessary. The Resolute, the Resolute 25 proposal was quite standard in terms -- I mean, it

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1	wasn't standard because it was unique. It was the
2	first load retention hearing in response to
3	economic distress in the province, and the UARB
4	allowed their load retention tariff for the first
5	time to apply to economic distress. And it was
6	the first time, and they did it both for NewPage
7	and for Bowater, that they had a hearing on what a
8	load retention rate should be under that, under
9	that tariff. So that was important.
10	But as a load retention rate,
11	there was nothing really out of the ordinary in
12	terms of the way it was, it was put together. So
13	there would not have been a role for a consultant
14	from the Nova Scotia government. Bowater had been
15	in the province for many years. The mill was
16	originally built in 1929, long before the Utility
17	and Review Board was ever created. So the mill
18	and its managers were quite familiar with the
19	regulatory process in Nova Scotia. Their proposal
20	was not out of the ordinary. They weren't
21	significantly reducing their load. They weren't
22	supplying energy storage services as Port
23	Hawkesbury eventually proposed. So it was, it was
24	relatively straightforward.
25	Bowater also had access to

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1 consultants that they used at the hearing that 2 were familiar with them and familiar with the 3 regulatory process in Nova Scotia. So the, the 4 position that I took when I was the deputy with 5 respect to the Utility and Review Board was that 6 unless there was a specific role or a specific 7 point of view that the government could add 8 something to a hearing, if -- if -- in the case of 9 Bowater, I got a strong sense that Bowater and 10 NewPage were managing things guite well and that 11 there was no significant controversy with the 12 board, and so it's sometimes counterproductive in 13 those situations for the government to feel that 14 it has to intervene in some way. 15 Ο. Is it fair to say --16 Α. In the end, in the end, 17 that was, that was the way it turned out. The 18 board approved Bowater's -- first, they approved 19 the change in the load retention tariff. And then 20 they approved the rate that Bowater and NewPage 21 had applied for. It applied only to Bowater since 2.2 NewPage had then gone into creditor protection. 23 So Bowater got the load 24 retention rate that it had requested. 25 So let me just see if I Q.

1 can summarize a whole bunch of stuff there because 2 I am trying to finish this cross-examination 3 expeditiously. 4 It seems like the province 5 didn't submit a witness or assist in the negotiations for Bowater or present any evidence 6 7 or make an opening statement at the hearing in the 8 Bowater Mersey case or answer information requests 9 or do anything. The province kind of stayed out 10 of the way of the Bowater Mersey hearing, 11 completely; is that right? 12 Α. We didn't, we didn't 13 intervene. We didn't, we didn't offer a consultant to the parties because the parties 14 15 seemed to come to an agreement fairly 16 expeditiously on their own. 17 Q. All right. So let's say 18 this will be my last two documents here. 19 Ricky, if you can bring up 20 C-314, page 2, which is the Mersey Bowater power 21 application on one side of the screen. And then 2.2 C-138.98 and paragraph 287 on the other side of 23 the screen, and this is the Mersey Bowater rate 24 decision. 25 One second, please. Back two

1	pages, Ricky, 138.96, please. My apologies.
2	Okay. So on the left is the
3	application, and on the right is the rate that
4	actually happened. And on the left, you can see
5	Bowater wanted a five-year rate. In the first
6	year, for example, it wanted a total energy charge
7	of \$55.60. And on the right, they only got a
8	three-year rate. In the first year, for example,
9	was a \$60.24 charge per hour; correct?
10	A. I can't see that part.
11	Q. Can you blow up the right
12	one, Ricky, on the right there?
13	A. Yeah.
14	MR. LEVINE: Okay.
15	Mr. Coolican, thank you very
16	much for your attendance today, we appreciate it,
17	coming down. And so I think I am about done
18	speaking.
19	I would like to thank the
20	Tribunal for its indulgence today in allowing us
21	to run a little on the late side.
22	JUDGE CRAWFORD: Any redirect?
23	Sorry, is there any redirect.
24	MR. LUZ: Sorry, here we go.
25	Can you hear me now, Judge Crawford?

1 JUDGE CRAWFORD: Yes. 2 MR. LUZ: I am sorry. Could 3 we ask for five minutes of the Tribunal's 4 indulgence? My colleague who is doing the 5 redirect is not actually in our room, and so I need to confer with him virtually, if that's okay. 6 7 JUDGE CRAWFORD: You can have 8 four minutes. 9 Yes, sir, thank you. MR. LUZ: --- Upon recess at 2:30 p.m. EST. 10 11 --- Upon resuming at 2:36 a.m. EST 12 MR. MANGHAT: Thank you for 13 your patience, Judge Crawford. We just have two 14 quick questions for you, for the witness here on 15 redirect. Sorry, I think you are on mute. 16 MS. D'AMOUR: Sorry, 17 Mr. Coolican, you will have to use the remote in 18 that room to unmute boardroom. I am not sure if 19 you're able. 20 MR. MANGHAT: Judge Crawford, 21 may I proceed? 2.2 JUDGE CRAWFORD: Yes, please. 23 MR. MANGHAT: Thank you. RE-EXAMINATION BY MR. MANGHAT: 24 25 Mr. Coolican, I am just Q.

1	going to ask you a couple of questions now to give
2	you an opportunity to elaborate on two quick
3	issues that were raised in your cross-examination.
4	Earlier, Mr. Levine asked you
5	about the renewable energy standard costs, and he
6	took you to the UARB decision. It's Exhibit
7	C-184. We are looking at paragraph 158.
8	Chris, are we able to pull up
9	Exhibit C-184, paragraph 158? Thank you.
10	Mr. Coolican, you can see
11	there the finding where the UARB concluded that
12	the pricing with respect to the steam is
13	reasonable and not subsidized by ratepayers; was
14	that your understanding?
15	A. Yes, it is.
16	Q. Okay. And, Mr. Coolican,
17	you had indicated that it was the province's
18	understanding that there would be no additional
19	incremental costs for the RES and biomass plant.
20	Has the province paid any
21	additional RES costs or any additional costs for
22	the biomass to the benefit of PHP?
23	A. No, there have been no
24	additional RES costs, and there have been no
25	additional biomass costs. I mean, there are,

1	
1	there are costs associated with biomass generally,
2	and what the province got in return were was
3	renewable electricity that served ratepayers and
4	was not out of line with not only was it
5	renewable, but it was firm, so it helped the
6	province to stabilize the electricity system
7	during the early years as more and more wind was
8	coming on.
9	MR. MANGHAT: Thank you,
10	Mr. Coolican.
11	We don't have any more
12	questions at this time, so I would like to ask the
13	Tribunal if they have any more additional
14	questions for Mr. Coolican.
15	JUDGE CRAWFORD: Do either of
16	my colleagues have any questions?
17	PROFESSOR LÉVESQUE: I have a
18	quick one, please.
19	JUDGE CRAWFORD: Yes.
20	QUESTIONS BY THE TRIBUNAL:
21	PROFESSOR LÉVESQUE: Hi.
22	THE WITNESS: Hi.
23	PROFESSOR LÉVESQUE: I have a
24	quick question regarding the possibility of the
25	government to be co-applicant in a proceeding in

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1	front of the UARB. So Respondent has argued in
2	its I believe it was a counter-memorial that
3	Government of Nova Scotia did not want to be a
4	co-applicant, and I would like you, if you could
5	explain a little bit in which circumstances the
6	government would be a co-applicant?
7	THE WITNESS: I am not sure
8	there would there certainly were never during
9	my eight years as deputy minister, and I can't
10	think of other examples where the Nova Scotia
11	government would be a co-applicant before the
12	Utility and Review Board.
13	The applicants were usually
14	companies or organizations that were subject to
15	regulation by the Utility and Review Board. The
16	Nova Scotia government was not subject to
17	regulation by the Utility and Review Board, so I
18	couldn't see any circumstance in which we would be
19	a co-applicant.
20	PROFESSOR LÉVESQUE: All
21	right. Thank you for this.
22	JUDGE CRAWFORD: That's the
23	question. We have no further questions for you.
24	Thank you very much for your evidence. It was
25	very forthright and very illuminating.

1 That concludes the evidence in 2 the proceedings for today. 3 We start tomorrow morning at, 4 I think, 10 o'clock -- 2 o'clock. I am sorry -we start tomorrow at 2 o'clock in the afternoon to 5 6 hear... 7 PROFESSOR LÉVESQUE: For us, 8 that's 8 a.m. 9 JUDGE CRAWFORD: Yes, that's 10 the witness in exile, so to speak. Presentation 11 by Mr. Hausman. 12 So we start tomorrow at 8 13 o'clock for 15 minutes -- let me sure that's 14 right. That's on Thursday. 15 We start tomorrow at 8 o'clock 16 EST, 9 o'clock ADT, 2 o'clock Cambridge time, the 17 Hague time, the testimony of Alex Morrison and 18 Seth Kaplan. Only two witnesses. And then -- so 19 tomorrow will be a rather short day. And 20 Thursday, we move to Hausman. 21 MR. FELDMAN: Judge Crawford, 2.2 there was a change, I think, but my calendar may 23 be wrong. I think we begin with Mr. Morrison and then continue with Professor Hausman tomorrow. 24 We 25 made that adjustment because you quite rightly

1	identified him in exile. He is in California.
2	And rather than rouse him at 5 in the morning, we
3	are going to rouse him for 8 in the morning. So
4	Professor Hausman will be tomorrow after
5	Mr. Morrison, and he swapped places with
6	Dr. Kaplan because of the time zones.
7	JUDGE CRAWFORD: All right, we
8	will proceed on that basis. Thank you very much.
9	Have a pleasant evening.
10	Whereupon matter adjourned at 2:43 p.m. EST,
11	to be resumed Wednesday, November 11, 2020, at
12	8:00 a.m. EST
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