

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

**VICTOR LACHANCE and
KIRK ALBERT**

Applicants/Responding Parties

and

**SOLICITOR GENERAL OF ONTARIO and
ATTORNEY GENERAL OF ONTARIO**

Respondents/Moving Parties

MOTION RECORD

(Motion to Dismiss)

Date: February 16, 2023

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Susan Keenan, LSO #50784Q
Email: Susan.Keenan@ontario.ca
Tel: 416 898 1301
Fax: 416 326 4181

Shayna Levine-Poch, LSO #815150
Email: Shayna.Levine-Poch@ontario.ca
Tel: 416 895 9333
Fax: 416 326 4181

Counsel for the Respondents/Moving Parties
The Solicitor General of Ontario and
The Attorney General of Ontario

TO: **SICOTTE GUILBAULT**
4275 ch. Innes Rd, Suite 208
Ottawa, ON K1C 1T1

Stéphane Émard-Chabot, LSO #33909U
semard-chabot@sicotte.ca
Tel: 613 368 4309

Counsel for the Applicants/Responding Parties
Victor Lachance and Kirk Albert

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TAB 1

Court File No. DC-22-2731

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

**VICTOR LACHANCE and
KIRK ALBERT**

Applicants/Responding Parties

and

**SOLICITOR GENERAL OF ONTARIO and
ATTORNEY GENERAL OF ONTARIO**

Respondents/Moving Parties

NOTICE OF MOTION

The Respondents, the Solicitor General of Ontario and the Attorney General of Ontario, will make a motion to the court on a date to be set by the court.

PROPOSED METHOD OF HEARING: The motion is to be heard

- In writing under subrule 37.12.1 (1);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

THE MOTION IS FOR:

- a) An Order dismissing the application; and
- b) Such further and other relief as Counsel may advise and this Honourable Court may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Application was issued almost two years beyond the 30-day time limit for making an application for judicial review prescribed in s.5(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 (*JRPA*) had expired.
2. The Respondents will suffer substantial prejudice and hardship if the application is permitted to proceed, by reason of the delay. As such, no extension should be granted pursuant to s.5(2) of the *JRPA*.
3. Victor Lachance and Kirk Albert (the “Applicants”) issued the Notice of Application on August 16, 2022. The Respondents served their Notice of Appearance on August 22, 2022.
4. The Notice of Application identifies the decision being challenged as having been communicated in a press release on August 27, 2020.
5. The decision at issue is the selection of the former Kemptville Agricultural College in Kemptville, Ontario as the site for the new Eastern Ontario Correctional Complex (“EOCC”). The Applicants are members of unincorporated community associations that oppose the construction of the EOCC on the site.
6. Even if the decision were determined to have occurred earlier than when s.5 of the *JRPA* came into force, the Applicants have unreasonably delayed in bringing this application, to the substantial prejudice of the Respondents and the Court should dismiss the application.

7. The Respondents have expended substantial site-specific funds and resources over the past 2 years to effect the project at the selected site since communicating the decision to the public (including the Applicants) on August 27, 2020.
8. If the application is permitted to proceed and is successful, these investments and resources will be wasted and significant additional resources will need to be expended to secure a new site and alter the project for that new site.
9. The Respondents expended significant funds and resources over the past 2 years in reliance on the absence of any judicial review having been brought within the required 30 days. To now permit this application to proceed would mean that such reliance was entirely to the detriment of the Respondents and would be wholly inconsistent with the purpose of finality that informs both the 30-day deadline and the prior common law framework addressing delay.
10. There was no impediment whatsoever to bringing this application in a timely way. The application came to the notice of the Applicants as of August 27, 2020 and they had formed advocacy organizations by the fall of 2020. They were well aware of the issues at play at the time the decision was announced and yet did not initiate an application until almost two years later.
11. Had the Applicants' sought judicial review in a timely way, the Respondents would have avoided investing significant resources in the site until certainty was achieved through a decision of this Court. As it is, if the application were successful, those public funds and resources will be lost and new funds and resources require to re-do the work completed to

date based on a new site, if a new site can even be secured which will be a challenge. This is substantial prejudice to the Respondents by reason of the delay.

12. Under s.5(2), an extension can only be granted if the Court is satisfied both that (1) there are apparent grounds for relief and (2) no substantial prejudice or hardship will result to any person affected by reason of the delay.
13. The Court should not grant an extension of time given the substantial prejudice the Respondents face by reason of the delay in bringing this extremely late application.
14. For the same reason, if the Court were to determine that the prior common law framework applied, this delayed application should not be permitted to proceed.
15. There is no reasonable explanation for the almost 2 years in bringing an application in respect of a decision that the Applicants were aware of at the time it was publicly communicated.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used in support of the motion:

1. The Affidavit of David Macey sworn October 21, 2021;
2. The Respondents' Motion Record; and
3. Such further and additional materials as the Court may allow.

DATE: November 22, 2022

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Susan Keenan, LSO #50784Q

Email: Susan.Keenan@ontario.ca

Tel: 416 898 1301

Fax: 416 326 4181

Shayna Levine-Poch, LSO #815150

Email: Shayna.Levine-Poch@ontario.ca

Tel: 416 895 9333

Fax: 416 326 4181

Counsel for the Respondents/Moving Parties

The Solicitor General of Ontario and

The Attorney General of Ontario

TO:

SICOTTE GUILBAULT

4275 ch. Innes Rd, suite 208

Ottawa, ON K1C 1T1

Stéphane Émard-Chabot, LSO #33909U

semard-chabot@sicotte.ca

Tel: 613 368 4309

Counsel for the Applicants/Responding Parties

Victor Lachance and Kirk Albert

VICTOR LACHANCE AND ALBERT KIRK

v.

SOLICITOR GENERAL OF ONTARIO AND ATTORNEY GENERAL OF ONTARIO 010

Applicants/Responding Parties

Respondents/Moving Parties

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

MINISTRY OF THE ATTORNEY GENERAL

Crown Law Office – Civil
720 Bay Street – 8th Floor
Toronto, ON M7A 2S9

Susan Keenan, LSO #50784Q

Email: Susan.Keenan@ontario.ca
Tel: 416 898 1301
Fax: 416 326 4181

Shayna Levine-Poch, LSO #81515O

Email: Shayna.Levine-Poch@ontario.ca
Tel: 416 895 9333
Fax: 416 326 4181

Counsel for the Respondents
The Solicitor General of Ontario and
The Attorney General of Ontario

TAB 2

Court File No. DC-22-2731

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

**VICTOR LACHANCE and
KIRK ALBERT**

Applicant/Responding Parties

and

**SOLICITOR GENERAL OF ONTARIO and
ATTORNEY GENERAL OF ONTARIO**

Respondents/Moving Parties

**AFFIDAVIT OF DAVID MACEY
(affirmed October 21, 2022)**

I, David Macey, of the City of Toronto, in the Province of Ontario, SOLEMNLY AFFIRM AS FOLLOWS:

1. I am employed as Vice President, Portfolio Planning and Development, with Ontario Infrastructure and Lands Corporation (“Infrastructure Ontario”). In this role, I lead a team of project managers, realty advisors, and land use planners to deliver realty advice and services, primarily to public sector clients. We provide advice and services relating to pre-construction site selection and preparation, on-going functional and financial review of in-use assets, and repositioning of surplus property for optimal future divestment.

2. In this capacity, I have been directly involved in the events described herein and have personal knowledge of the matters to which I hereinafter depose except where I rely on information provided by others, in which case I so state and verily believe that information to be true.

A. Eastern Ontario Correctional Complex: Site Selection

3. The government of Ontario is committed to modernizing provincial correctional facilities to ensure adequate capacity, programming and services. Based on projected figures, there is a need to increase capacity in the Eastern Ontario region, including in the Ottawa area.

4. The Ministry of the Solicitor General (“Ministry”) anticipated this need and there is a plan in place to build a new 235-bed facility in the region, known as the Eastern Ontario Correctional Complex (“EOCC”). The facility will adopt modern planning principles and design elements, including single cell occupancy, risk-classified housing units, modern programming and cultural space, open visitation spaces and improved professional development space for correctional officers and staff. Infrastructure Ontario is working with the Ministry on the procurement, implementation and the delivery of the project.

5. There are several constraints that affected the selection of a site for the new facility. These include but are not limited to land availability, municipal servicing, adequate size and site configuration, the absence of natural heritage constraints, as well as program needs such as proximity to the highway for the purpose of accessing courts, police, fire and emergency medical services.

6. There was a limited supply of available land in the Eastern Ontario region that could meet the project requirements, in part due to competitive market conditions in the Ottawa area and the constraints for the project. I've been informed by Infrastructure Ontario's real estate service provider CBRE and I believe that, since 2019-2020, market values have generally continued to rise. As a result, were a new site required, it is expected there would be limited availability of land that could satisfy the project requirements, creating challenging conditions in which to secure a suitable alternative site.

7. The Ministry considered a number of available sites that met some of the project requirements in 2019. This included the site of the former Kemptville Agricultural College, in Kemptville, Ontario ("Kemptville site"), which was owned by the Agricultural Research Institute of Ontario ("ARIO"), a provincial Crown corporation.

8. By October 2019, the Ministry determined that the Greater Ottawa area, preferably along Highway 416, was the most suitable location for the new facility. Based on the parameters of the search, and subject to further due diligence, the Ministry determined that the Kemptville site was the best option. On October 23, 2019, the Ministry submitted a formal expression of interest in the Kemptville site to the Ministry of Agriculture, Food and Rural Affairs and requested that it be formally placed on hold and removed from circulation. The expression of interest is attached as **Exhibit "A"**.

9. On June 26, 2020, funds were committed to build a 235-bed facility at the Kemptville site. On August 27, 2020, the Ministry publicly announced the project, including that it will be built at the Kemptville site. The press release is attached to my affidavit as **Exhibit "B"**.

B. Investment in the Kemptville Site

10. Since June 26, 2020, the Ministry has made significant investments in the acquisition and design of the Kemptville site.

11. From June 26, 2020 to date, approximately \$7,079,689.52 has been invested in the project proceeding at the Kemptville site, in four areas:

- (1) Planning, Design and Conformance (“PDC”) work;
- (2) Land acquisition costs;
- (3) Due diligence; and
- (4) Staff time and resources.

1. Planning, Design and Conformance Work

12. In 2018, the Ministry retained NORR Architects & Engineers Limited to complete the PDC work for multiple correctional facility projects (“the PDC consultants”). After funding was committed on June 26, 2020 for the construction of the 235-bed facility in Kemptville, the PDC consultants engaged in work focussed on the project at the Kemptville site.

13. Since November 1, 2020, a significant amount of site-related work has been undertaken by the PDC consultants and billed to the Ministry, including but not limited to:

- (a) Assessment of all existing project background information and site due diligence reports;
- (b) Development of a site-specific Master Plan Report, including detailed analysis of existing site constraints;
- (c) Development of Conceptual Site Layouts and Block Schematics to test that the requirements set out in the Functional Program and Output Specifications can be operationalized in a physical layout;

- (d) Work with the relevant authorities to assess requirements needed to secure approvals and permits, and incorporate them into the project documents;
- (e) Development of the Project Specific Output Specifications (“PSOS”). The PSOS is a framework that sets out the Ministry’s objectives and vision for the project, the fixed minimum technical and functional requirements, and the specifications for the project. This becomes part of the Project Agreement to build the facility. This work has included extensive workshops with various subject matter experts and review for draft output specifications. The PSOS is over 50% complete and progressing toward 75% complete; and
- (f) Conducting and participating in community consultations meetings.

14. From June 26, 2020 to July 31, 2022, the PDC costs expended by the Ministry on site-related issues total approximately \$1,371,853.40.

15. If the Ministry were to proceed with a different site, I am informed by the PDC consultants and believe that much of this work would need to be redone, taking into account the site constraints and specifications for the new site. They have advised, and I believe, that the cost for this work would amount to approximately 30% of the PDC fees spent to date.

16. Were the project required to be located at a different site, in addition to PDC costs, the cost estimate reports for labour, materials, and any other costs, which is produced by the cost consultant, would also need to be redone. The amount spent up to September 2022 on this work is \$13,575.00.

2. Land Acquisition Costs

17. It was challenging to locate a site that met the requirements for the project, as described above. Available real estate that would meet even some of the requirements for the project was limited. It is anticipated that if the Ministry were required to locate a new site, additional costs would need to be incurred for necessary due diligence (order-of-magnitude could be in range

provided in paragraph 19 below) and to secure a new property (cost is currently unknown but would be anticipated to be in the millions of dollars).

18. On March 15, 2022, Ontario acquired the Kemptville site from ARIO for \$2,463,910.02. The invoice for the land purchase is attached to my affidavit as **Exhibit “C”**. This was necessary in order to transfer it into the General Real Estate Portfolio (“GREP”), which consists of the realty assets owned and/or leased by the Ministry of Infrastructure that can be used for projects of this nature.

3. Due Diligence

19. Site-specific real estate due diligence costs incurred by the Ministry for the project to date amount to approximately \$1,040,854.13 and cannot be recouped. This work is required before the tendering process to award a contract to build on the site, which is one of the next major steps for the project. This work has included:

- Stage 1-2 Archaeological Assessment;
- Stage 3 Archaeological Assessment;
- Soil Analytical Results Summary;
- Geotechnical Investigation (including a Geophysical Survey);
- Geomorphic Hazard Assessment;
- Phase 1 Environmental Site Assessment;
- Phase 2 Environmental Site Assessment;
- Preliminary Hydrogeological Assessment;
- Designated Substances and Hazardous Materials Survey;
- Development Feasibility Study;

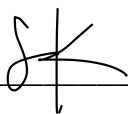
- Functional Servicing Report;
- Traffic Impact Study and Parking Needs Assessment;
- Natural Heritage Assessment;
- Headwater Drainage Features Assessment;
- Topographic Plan of Survey; and
- Subsurface Utility Engineering Services Assessment.

4. Staff Time and Resources

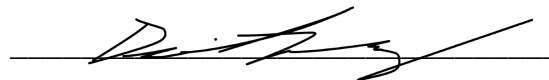
20. Staff at both the Ministry and Infrastructure Ontario devoted substantial work over the past two years to the planning for the project at the Kemptville site. If the site were to change, some of this work would need to be redone based on the new site, meaning significant staff hours over the past two years would have been wasted. On the Infrastructure Ontario side alone, the staff costs from June 26, 2020 to date related to the project are estimated to be in the order of magnitude of \$2,189,496.97.

21. I make this affidavit in respect of this motion, and for no other or improper purpose.

AFFIRMED REMOTELY by David Macey at the City of Toronto in the Province of Ontario before me, this 21st day of October, 2022 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.



Susan Keenan



David Macey

A Commissioner of oaths, etc.

This is Exhibit "A" referred to
in the Affidavit of David Macey,
affirmed this 21st day of
October, 2022.

A handwritten signature in black ink, consisting of a stylized 'S' and 'K'.

Susan Keenan, LSO #50784Q



**BUSINESS CASE FOR MINISTRY HOLDS
AND INTER-MINISTRY TRANSFERS
STAGE 1 INTEREST**

**Holdings for Ministry of Solicitor General
Interested Property – PIN 681.260206, ARIO Lands (Kemptville)**

Summary

The Ministry of Solicitor General (Sol Gen) wish to express interest in the Agriculture Research Institute of Ontario (ARIO) land in Kemptville to construct a new 235 bed Correctional institution to address in part, the necessary capacity needs within the Eastern Region. ARIO has circulated the land for sale to in part fund further capital works on other sites.

The ministry received Stage 2 approval as part of the 2017/2018 Program Review, Renewal Transformation process, to replace the current Ottawa-Carleton Detention Centre (OCDC). Since May 2017, SolGen, along with Infrastructure Ontario (IO), has been actively engaged in a search for a site (approximately 60 to 70 acres) for the proposed Ottawa Correctional Complex (OCC) facility. Over the past 2.5 years, the ministry and IO have explored over 30 properties to meet the ministry's need, however SolGen has been unable to obtain any potential sites due to various reasons: unsuitable land constraints, sale of land, etc. The project is delayed unless suitable land is found.

Based on the Ministry of Infrastructure (MOI) Reality Directive, IO is always required to review the Provincial portfolio for available lands to accommodate Ministry uses: the Ministry has expressed interest in the ARIO property that is currently circulating for sale. On September 26th 2019, SolGen expressed interest to the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) to formally place the property on hold and remove from circulation.

The ARIO property meets most of the criteria the ministry has in place for a new facility: the parcel, at 178 acres, meets the ministry's size constraints with potential future expansion if necessary. The site is accessible and has frontage on Highway 416: close proximity to major highway provides easy access for both staff and members of the public who need to visit the facility. There is access to public transit from Kemptville to Ottawa with the municipality looking to expand this service for the local community.

The distance between the existing OCDC facility and the Kemptville property is 67 km driving distance. Although this exceeds the ministry's criteria of a preferred distance of < 40 kms, the ministry analyzed current staffing home locations and the data provided demonstrates the majority of current OCDC staff live within the 40 km boundary to the proposed Kemptville property.

There are further Ministry criteria which will need investigating that the Kemptville lands only partially meet: municipal servicing, natural heritage constraints and hazards with respect to the watercourse on the east perimeter and the woodlot on the southwest corner, compatibility with adjacent uses with both rural residential uses located to the immediate north and light industrial uses located to the east. IO, along with the ministry, will need to work with the municipality to investigate and determine the feasibility of the extension of services/transit and the ability to rezone/re-designate as required.



**BUSINESS CASE FOR MINISTRY HOLDS
AND INTER-MINISTRY TRANSFERS
STAGE 1 INTEREST**

Proposed Program Use

To ensure that the approved project for Ottawa area is appropriately sized to deliver modern services for the entire region and not just Ottawa, the ministry is re-evaluating the Eastern Region in its entirety. The ministry has analyzed the eastern region needs assessing current inmate populations and characteristics while addressing future capacity with the lens of the approved project and systemic consistent pressures within the institutions in the region. The ministry is requesting approval to utilize the approved capacity for Ottawa (725 beds) and funding envelope to create an infrastructure plan and solution for the region:

- Addressing the need for a facility that meets the functional and service delivery needs of Ottawa and the surrounding area;
- Considering replacement of the Brockville Jail, the oldest jail in the province (1842), with a new a facility addressing current needs and increasing mental health capacity reflective of the need of Brockville and the surrounding area;
- Considering the expansion of the Quinte Detention Centre (QDC) to address the ongoing over-capacity issues.

By adjusting the size of the new site in Ottawa area, the ministry gains capacity flexibility across institutions addressing the pressures within, while maintaining the appropriate services and programming provided to address the needs.

The ministry will work with Infrastructure Ontario to acquire the property through the appropriate approval process. This is expected to take up to 1.5 to 2 years to complete. This property resides outside of the GREP portfolio and requires multiple approvals to bring it into the GREP portfolio (e.g. MGCS).

Funding

Through the Multi-year Planning process, the ministry has Stage 2 (Construction) approval from Treasury Board for the Ottawa project: this includes funding for site acquisition and due diligence activities. Due to the delay in site acquisition, the ministry, through MyP cycles, have asked to reprofile the funding to the following year and will continue this strategy for MyP 2020-2021.

Cost to the ministry to hold the ARIO property are estimated at approximately \$1.48M based on prior year actual costs. The total site acquisition costs for the Kemptville property is estimated by IO to be approximately \$3M. This is within the funding allocation for land acquisition within the project costs.

Timeline

The Ministry of the Solicitor General anticipate going to Treasury Board as part of the MyP 2020-21 to reprofile the funding to acquire the site, pending due diligence and feasibility investigations from IO on the site. The hold of the property will be in-place until the outcome of the feasibility investigations are known.

Estimated timelines:



**BUSINESS CASE FOR MINISTRY HOLDS
AND INTER-MINISTRY TRANSFERS
STAGE 1 INTEREST**

| | |
|---|---------------------------|
| Engage IO to review feasibility of land. Site due diligence completed. Obtain municipal zoning approval. | Spring 2020 - Spring 2022 |
| Functional program completed. P3 Procurement process followed and completed. Project Co Partner selected. | Spring 2020 - Spring 2024 |
| Construction and substantial completion achieved. | Spring 2024 - Fall 2026 |

Ministry Commitment and Implementation Authority

Ministry of the Solicitor General

Sylvia Jones, Solicitor General

Signature: _____

Date: _____

Oct 23/19

Ministry of Agriculture, Food and Rural Affairs

Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs

Signature: _____

Date: _____

Oct. 28 2019

This is Exhibit "B" referred to
in the Affidavit of David Macey,
affirmed this 21st day of
October, 2022.

A handwritten signature in black ink, consisting of a stylized 'S' and 'K'.

Susan Keenan, LSO #50784Q

NEWS RELEASE

Ontario Supporting Frontline Correctional Officers in Eastern Ontario

Upgrades Will Improve Public Safety, Modernize Facilities and Support Economic Recovery

August 27, 2020

[Office of the Premier](#)

BROCKVILLE — Ontario is making strategic investments in public safety and strengthening justice services by modernizing the adult correctional system across Eastern Ontario. New construction and building upgrades will update facilities, address issues of overcrowding, and create new spaces for the delivery of mental health services, inmate programming and staff training.

Details were provided today by Premier Doug Ford, Solicitor General Sylvia Jones, and Steve Clark, MPP for Leeds—Grenville—Thousand Islands and Rideau Lakes.

"Our frontline correctional staff have been absolute champions throughout the pandemic, putting their communities first and keeping all of us safe," said Premier Ford. "By making these important investments in Eastern Ontario, we will upgrade our corrections infrastructure, better protect our correctional officers, and contribute to our economic recovery through these new construction projects."

"The Ontario government is making a substantial investment that will transform the corrections system in Eastern Ontario," said Solicitor General Sylvia Jones.

"Modernizing outdated infrastructure and building new facilities will create a better and safer environment for our hard-working frontline staff and address overcrowding in many of our institutions."

The modernization strategy for Ontario's Eastern Region includes:

- Building a new Greater Ottawa Correctional Complex on an existing government-owned site in Kemptville to improve staff and inmate safety;
- Replacing the Brockville Jail, which was built in 1842 and is currently the oldest in the province, with a new facility that will increase capacity and improve access to services and programming in the area;
- Expanding the St. Lawrence Valley Correctional and Treatment Centre and Quinte Detention Centre to improve mental health services for women who are

incarcerated and add capacity; and

- Renovate the Ottawa-Carleton Detention Centre to better accommodate programming for inmates and other initiatives.

The Eastern Region Strategy builds on the [government's plan to invest \\$500 million over five years to modernize correctional facilities](#) and support frontline corrections officers across the province, including the hiring of more than 500 new correctional staff. The Eastern Region Strategy will provide benefits throughout the area for years to come, including creating jobs and supporting local businesses during construction and providing jobs to local residents once the projects are completed. As a result, these projects will help stimulate the economy over the long term as Ontario moves into the next phase of recovery from COVID-19.

"These critical investments demonstrate our government's ongoing commitment to our incredible frontline corrections workers, while also providing an important boost to our local economy," said MPP Clark. "I am so proud today's announcement includes expanding the St. Lawrence Valley Correctional and Treatment Centre to provide treatment for female inmates with serious mental health needs. This is a project I have worked on for years alongside community leaders to build on the expertise we have now at the facility."

Quick Facts

- Improvements to correctional facilities in Ontario take into account recommendations made by the [Independent Review of Ontario Corrections](#), the Canadian Civil Liberties Association and others.
- The planned expansion of women's facilities at the St. Lawrence Valley Correctional and Treatment Centre will complement the [additional beds at Ontario Shores](#) to treat women with acute mental health needs.
- On any given day in Ontario, there are approximately 6,100 adults in custody in the adult correctional system.

Additional Resources

- [Modernizing Adult Correctional Facilities in Eastern Ontario](#)

Related Topics

Government

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Law and Safety

Ontario's laws and related information about our legal system, emergency services, the Ontario Provincial Police and victim services. [Learn more](#)

Media Contacts

Ivana Yelich

Premier's Office

ivana.yelich@ontario.ca

Stephen Warner

Solicitor General's Office

stephen.warner@ontario.ca

Kristy Denette

Communications Branch

kristy.denette@ontario.ca

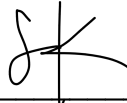
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This is Exhibit "C" referred to
in the Affidavit of David Macey,
affirmed this 21st day of
October, 2022.

A handwritten signature in black ink, consisting of a stylized 'S' and 'K' joined together.

Susan Keenan, LSO #50784Q

Ontario Infrastructure & Lands Corp.
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
Tel.: 416 327-3937
Fax: 416 327-1906

Ontario Infrastructure & Lands Corp.
1, rue Dundas Ouest, 20e étage
Toronto, Ontario M5G 2L5
Tél. : 416 327-3937
Télééc. : 416 327-1906



Date: March 4, 2022

Invoice # 2021-239

INVOICE

HST Number: 124668666 RT0044

Bill To: **Mr. Robert Greene, Director**
Facilities and Capital Planning Branch
Corporate Services Division
Ministry of the Solicitor General
25 Grosvenor Street, 13th Floor
Toronto ON M7A 1Y6

Mr. Greene,

This invoice is for expenditures provided by Infrastructure Ontario pertaining to the Eastern Ontario Correctional Complex for a land purchase/transfer.

A detailed breakdown of costs is provided below.

Total amount due: **\$2,463,910.02**

| Land Capital | Description | Amount |
|--------------------|-----------------|-----------------------|
| Parcel 5, Building | LAND CAPTIAL | \$2,445,623.34 |
| Parcel 5, Land | LAND CAPTIAL | \$18,286.68 |
| | Subtotal | \$2,463,910.02 |
| | TOTAL | \$2,463,910.02 |

Please remit payment to the EFT instructions below or issue all cheques payable to **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION** at the above noted address with the attention to Accounts Receivable. If you have any questions concerning this invoice, please contact **Madeleine Sousa** (647)-264-5438.

Thank you,

Mar. 08, 2022

Angelo Gismondi

SVP, Project Delivery

March 7, 2022

March 07, 2022

Remit Payment To:

Ontario Infrastructure and Lands Corp.
2000 IO CORP - 1 DUNDAS ST W

Electronic Funds Transfer To:

Name of Bank: **CIBC**
Branch Number: **00002**
Institution Number: **010**
Bank Account Number: **9008314**

Remittance Email:

accounts.receivable@infrastructureontario.ca



Agricultural Research Institute
of Ontario
Institutde recherche agricole
de l'Ontario

2nd Floor
1 Stone Road West
Guelph, Ontario N1G 4Y2
Tel: (519) 831-3496
Fax: (519) 826-4211

2^e étage
1, rue Stone ouest
Guelph (Ontario) N1G 4Y2
Tél.: (519) 831-3496
Télec.: (519) 826-4211

INVOICE - ARIO Kemptville, Ontario Parcel 5 Transfer

TO:

Mr. Santhosh Mathew
Vice President, Real Estate Finance, Finance
Infrastructure Ontario
PH: (647) 264-2456

Mr. Debmalya Joardar
Manager, Tangible Capital Assets, Finance
Infrastructure Ontario
(647) 264-2368

2022-INV-Kemptville- Parcel 5

INVOICE DATE: March 3, 2022

LOCATION: Kemptville Campus

Re: Payment of this Invoice to Agricultural Research Institute of Ontario (ARIO) for the Transfer of Parcel 5 in Kemptville, Ontario

ARIO Book Value transfer amount of \$2,463,910.02

Cost breakdown (buildings and land) shown in Appendix 1

Site map delineating subject lands measuring 178.4 acres shown in Appendix 2.

Jen Liptrot, Director of Research
Agricultural Research Institute of Ontario

Please make cheque payable to: **Agricultural Research Institute of Ontario**

EFT Payment to: Agricultural Research Institute of Ontario (ARIO)
1 Stone Road West, 2nd Floor, NW Guelph,
Ontario N1G 4Y2

Appendix 1 – Cost Breakdown

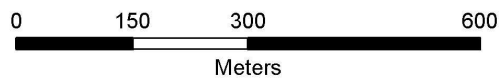
| Building Number | Name / Description | Current RSF | Condition | Original Value | Accum Dep | Net Book Value | Monthly Dep | Remaining Years |
|--|---------------------------------|-------------------------|-----------|---------------------|-----------------------|---------------------|------------------|-----------------|
| Parcel 5 | | | | | | | | |
| B12537 | Beef Barn | 3,272 | F | 23,059.04 | (18,208.77) | 4,850.27 | 100.70 | 5.01 |
| B12541 | Heifer Barn | 2,306 | F | - | - | - | - | - |
| B12542 | Farm Shop | 1,799 | F | 7,226.75 | (7,226.75) | - | 63.96 | - |
| B12543 | Calf Barn | 3,034 | F | 23,148.03 | (18,854.30) | 4,293.73 | 104.27 | 4.43 |
| B12544 | Granary | 306 | F | - | - | - | - | - |
| B12545 | Dairy Barn | 5,309 | F | 68,414.31 | (29,685.53) | 38,728.78 | 164.17 | 20.66 |
| B12547 | Farm Machinery Storage | 2,290 | F | - | - | - | - | - |
| B12562 | Residence - Herdsman | - | F | 14,045.11 | (10,283.34) | 3,761.77 | 56.87 | 6.51 |
| B12564 | Agronomy Building | 5,764 | F | 175,287.33 | (131,519.01) | 43,768.32 | 727.34 | 6.01 |
| B20793 | Silo & Unloader | 258 | F | - | - | - | - | - |
| B23952 | New Beef Barn | 3,162 | F | 29,853.96 | (19,143.62) | 10,710.34 | 105.87 | 9.43 |
| B24083 | Bull Test Station (aka Barn 16) | 14,790 | F | 997,500.01 | (611,424.00) | 386,076.01 | 3,381.36 | 10.51 |
| B24481 | Educational Display Arena | 27,944 | F | 327,849.85 | (196,300.27) | 131,549.58 | 1,085.60 | 11.10 |
| B24512 | Ram Test Station | 4,450 | F | 525,235.76 | (306,368.38) | 218,867.38 | 1,694.31 | 11.76 |
| B25126 | Horse Barn | 9,499 | F | 217,202.85 | (109,097.10) | 108,105.75 | 603.34 | 15.93 |
| B25127 | Pesticide Storage Building | 799 | F | - | - | - | - | - |
| B25128 | Agronomy Machine Storage | 9,654 | F | 43,732.33 | (43,732.33) | - | 590.98 | - |
| B25129 | Hay Storage Building | 2,198 | F | 25,174.23 | (12,644.88) | 12,529.35 | 69.93 | 15.93 |
| Total | | 18 | | 2,477,729.56 | (1,514,488.29) | 963,241.27 | 8,748.70 | 117.30 |
| Major Renovations/Capital Repairs | | | | | | | | |
| B24083 | Bull Test Station (aka Barn 16) | commissioned Q3 2011-12 | | 943,662.85 | (489,431.39) | 454,231.46 | 3,980.30 | |
| Watermain Installation | | | | 1,082,263.89 | (54,113.28) | 1,028,150.61 | 2,254.72 | 39.00 |
| Total | | | | 2,025,926.74 | (543,544.67) | 1,482,382.07 | 6,235.02 | 39.00 |
| Total Parcel 5 | | | | 4,503,656.30 | (2,058,032.96) | 2,445,623.34 | 14,983.72 | 156.30 |

| Fiscal 2020-21 Transactions | | | | |
|--|---|------------------------------|----------------------------------|--|
| SOLGEN | ARIO | GREP | IO-P3 | |
| | DR. TCA - Building 1,082,264 | | | |
| | CR. Cash 1,082,264 | | | |
| | to record watermain investment | | | |
| DR. TP expense* 1,082,264 | DR. Cash 1,082,264 | | | |
| CR. Cash 1,082,264 | CR. Revenue recovery* 1,082,264 | | | |
| | to record reimbursement of watermain investment | | | |
| | DR. Amortization Expense 54,113 | | | |
| | CR. Acc. Amortization 54,113 | | | |
| | to record watermain amortization | | | |
| *On consolidation, both transactions highlighted in green were eliminated in fiscal 2020-21. | | | | |
| Fiscal 2021-22 Transactions | | | | |
| Scenario 1 (SOLGEN): SOLGEN is reimbursed (credit invoice) and Transfer Kemptville parcel at NBV | | | | |
| SOLGEN | ARIO | GREP | IO-P3 | |
| DR. Capital Expense - P3 Land Capital 18,287 | DR. Cash (from GREP) 2,463,910 | DR. TCA - Building 2,445,623 | DR. Cash (from SOLGEN) 2,463,910 | |
| DR. Capital Expense - P3 Building Capital 2,445,623 | CR. TCA - Land 18,287 | DR. TCA - Land 18,287 | CR. Revenue 2,463,910 | |
| CR. Cash 2,463,910 | CR. TCA - Building 2,445,623 | CR. Cash (to ARIO) 2,463,910 | | |
| | to record kemptville transfer | | | |
| DR. Cash (from ARIO) 1,028,151 | DR. Expense/Loss 1,028,151 | | | |
| CR. Revenue - PY recovery 1,028,151 | CR. Cash (to SOLGEN) 1,028,151 | | | |
| | to offset Watermain | | | |
| *On consolidation, highlighted blue cells would be eliminated in fiscal 2021-22. | | | | |

Appendix 2 – Site Map



N00955_Kemptville ARIO_OIC Map.mxd
July 23, 2021 © Queen's Printer for Ontario 2021
For illustrative purposes only!
*Areas and Limits to be confirmed by survey.



TAB 3

Examination No. 23-0100

Court File No. DC-22-2731

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

VICTOR LACHANCE and
KIRK ALBERT

APPLICANTS/RESPONDING PARTIES

- and -

SOLICITOR GENERAL OF ONTARIO and ATTORNEY GENERAL OF ONTARIO

RESPONDENTS/MOVING PARTIES

VIRTUAL CROSS-EXAMINATION FOR DISCOVERY OF DAVID MACEY,
on his Affidavit sworn on October 21, 2022, pursuant to
an appointment made on consent of the parties to be
reported by Catana Reporting Services, on January 27,
2023, commencing at the hour of 9:59 in the forenoon.

APPEARANCES:

Stéphane Emard-Chabot for the Applicants/Responding Parties

Susan Keenan
Shayna Levine-Poch for the Respondents/Moving Parties

This Examination was taken down by sound recording by
Catana Reporting Services Ltd.

INDEX

NAME OF WITNESS: DAVID MACEY

VIRTUAL CROSS-EXAMINATION BY MR. EMARD-CHABOT: Pages 3 - 129

VIRTUAL RE-EXAMINATION BY MS. KEENAN: Pages 129 - 144

NUMBER OF PAGES: 144

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

*A** 50, 53, 117
*O** 10, 128, 139
U 56, 61, 75, 105, 120

NO EXHIBITS ENTERED

DATE TRANSCRIPT ORDERED: January 27, 2023

DATE TRANSCRIPT COMPLETED: February 3, 2023

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DAVID MACEY, AFFIRMED:

VIRTUAL CROSS-EXAMINATION BY MR. EMARD-CHABOT:

1. Q. Good morning, Mr. Macey. My name is Stéphane Emard-Chabot. I'm the lawyer for the Applicants in this issue, Mr. Albert and Mr. Lachance. I'm assuming Ms. Keenan or her colleague has informed you that we're here to ask questions today specifically regarding your Affidavit and the Motion to dismiss the Application because of the timing, and that this relates obviously to the Kemptville Jail project currently known as the Eastern Ontario Correctional Complex. I'll be referring to it as the EOCC as we go along. If at any point my questions are not clear or if you aren't certain what I'm looking for, just let me know, I'll rephrase happily. So, just for the Record, if you could state your name and the spelling, please?

A. Yes. My name is David Macey. D-A-V-I-D, first name. Last name Macey, M-A-C-E-Y.

2. Q. Perfect. Your date of birth, Mr. Macey?

A. It's December 10th, 1977.

3. Q. Thank you. What position do you currently hold, Mr. Macey?

A. I'm the Vice President of Portfolio Planning and Development at Infrastructure Ontario.

4. Q. Okay, perfect. Could I ask you how long

1 you've been in that position?

2 A. Since 2014. So, just over eight years.

3 5. Q. Okay. You're going to see me from time to
4 time looking away; I'm just taking notes. So, I'm not
5 ignoring you. Don't take it as a rude gesture on my
6 part. Now, prior to occupying your current position,
7 were you with Infrastructure Ontario or were you
8 elsewhere?

9 A. I was with Infrastructure Ontario starting in
10 2011.

11 6. Q. Okay. Can you just tell me what positions you
12 occupied with IO from 2011 to your current position,
13 please?

14 A. Sure. In 2011 I was hired as a real estate
15 advisor as part of the Strategic Asset Management team.
16 Do you need a description of the role or just the title?

17 7. Q. Very briefly. I don't think we need to get
18 into it much but just so I understand a little bit what
19 a real estate advisor with a strategy aspect does?

20 A. Sure. Real estate advisor, the role was to
21 provide strategic recommendations on the general real
22 estate portfolio owned by the Minister of -- well,
23 Minister of Infrastructure, different Ministry at the
24 time, for short-term, medium-term, long-term strategies,
25 as well as provide advice and recommendations on

1 projects.

2 8. Q. Perfect. How long were you in that specific
3 role, Mr. Macey?

4 A. That role was about two years and then I
5 moved on to a senior real estate advisor role, which was
6 a similar capacity, just more autonomy and
7 responsibility. And then after that period of time, I
8 was the successful candidate for the Vice President
9 role.

10 9. Q. Okay, perfect. Just for background, can you
11 tell me roughly, or generally, what IO's mission is,
12 what role it fulfills within the government?

13 A. As it pertains to this project or more
14 broadly?

15 10. Q. More broadly. We'll get into the project
16 right after?

17 A. Sure. So, Infrastructure Ontario, at a high
18 level, effectively acts as an advisory and procurement
19 arm to help deliver projects and infrastructure on
20 behalf of the province. And there's generally five lines
21 of business that we work in: project delivery, lending,
22 real estate management, development, as well as
23 commercial advisory and strategy.

24 11. Q. Okay. In your role, do you handle one of
25 those five areas or more than one or how does that work?

1 A. Yeah, with my role it's the real estate
2 management side. In terms of strategy on behalf of, or
3 working with the assets. Part of my team works closely
4 with the project delivery side on the site selection
5 site preparation pre-construction work, the support to
6 some of their projects.

7 12. Q. Okay. I gather IO is sort of a service
8 provider to various government clients, ministries and
9 so on?

10 A. Correct. We'll be engaged ---

11 13. Q. --

12 A. That is correct. Engaged through letters of
13 direction, follow through with memorandums of
14 understanding to solidify and defined -- define our
15 roles and relationships.

16 14. Q. Would you typically have a letter of
17 direction and an M-O-U for each project or each mandate
18 that would be given to you?

19 A. Typically. It can vary but at minimum we look
20 for letters of comfort to ensure that the obligations or
21 costs and certainly time are -- can be recovered through
22 the ministry or agency client, whichever entity we may
23 be working with.

24 15. Q. Okay. In your specific role as VP on a
25 typical project, how closely would you work on a file as

1 opposed to your team members, for example?

2 A. Depending on the nature of the work and the
3 client involved, I can be an act as a project lead. At
4 times I'm a project liaison, working with my team to
5 ensure milestones and deliverables are met. So, it can
6 vary depending on the work, the contract, the client.

7 16. Q. Okay, perfect. In the public engagement
8 sessions that were organized for this project, and we'll
9 get back to those later, but there was a Mr. Angelo
10 Gismondi who was attending on behalf of IO at those
11 meetings. Can you describe roughly what Mr. Gismondi's
12 role is within IO and your relationship to him within
13 the organization, please?

14 A. Yes. Angelo Gismondi was the senior vice
15 president within the project delivery side of the
16 company.

17 17. Q. I gather from the, "Was," that he is no
18 longer?

19 A. That's correct. He is now retired.

20 18. Q. Okay. Do you know roughly when he left?

21 A. I can't give you a specific date but within
22 the last year.

23 19. Q. Okay.

24 A. So, Angelo's role is to effectively provide
25 oversight and senior level management on a portfolio of

1 P-3 projects. His team is responsible for the overall
2 procurement, implementation and delivery side of the
3 project. The relationship with my team is I've a subset
4 of functions that provide pre-construction services and
5 their role is to, in part, assist in the site selection,
6 site preparation to enable a project to be delivered at
7 a given site.

8 20. Q. So, sorry, just to be clear, site selection
9 would be under your team or under Mr. Gismondi's team at
10 the time?

11 A. It's under our team. It's our responsibility
12 as part of the overall project.

13 21. Q. The construction zone, okay?

14 A. Yes.

15 22. Q. Perfect. Just, with respect to the Affidavit
16 that you swore, did you speak to others, have contact
17 with others in order to prepare that contact?

18 A. Yes, and the information provided certainly,
19 I believe, to be true and can -- is why I affirmed it as
20 part of the Affidavit.

21 23. Q. Understood. Can you let me know who you
22 would've spoken to in preparation for that? Again, I
23 don't need a complete list but just to give me an idea
24 of some of the key players who would've provided you
25 with information?

1 A. So, with respect to the Affidavit, it
2 would've been project team members from the Ministry of
3 Solicitor General, colleagues ---

4 24. Q. These would be your clients?

5 A. These would be, in the capacity of this
6 project, clients, correct.

7 25. Q. Okay?

8 A. It would've been colleagues within IO on the
9 project delivery side of the business. It would've been
10 team members from my own team under the portfolio
11 planning development stream, as well as colleagues from
12 IO from our cost and budget management division, as well
13 as finance.

14 26. Q. Perfect. Would those interactions in
15 preparation of the Affidavit have been in person or by
16 email or how would they have typically unfolded?

17 A. Microsoft Teams, for the most part, as well
18 as some interaction in person. Minimal though.

19 27. Q. Our lives are all on Teams now it seems. In
20 preparation for today's Cross-Examination, did you
21 review any of the content with anyone?

22 A. I reviewed the Affidavit again as well as
23 some of the background material I'd had in my possession
24 from those previous engagements in preparation for the
25 Affidavit, as well as with Susan Keenan and Shayna

1 Levine-Poch.

2 28. Q. Okay, perfect. You make reference to the
3 materials that you were provided in preparation of the
4 Affidavit. Susan, is that -- is any material in there
5 subject to some kind of privilege or would we be able to
6 have access to those materials?

7 MS. KEENAN: I don't think we would be producing
8 that because I think being that it's a Motion, we've put
9 forward the evidence that we rely upon and so we
10 wouldn't be providing additional material for the
11 purpose in motion because that's the scope that we say
12 is relevant in this context.

O

13 MR. EMARD-CHABOT: Thank you.

14 BY MR. EMARD-CHABOT:

15 29. Q. So, I'm going to turn to your role with
16 respect to, sort of, focusing now a bit more on the EOCC
17 project. The -- so, for this project, is there a letter
18 of direction in existence from Sol Gen?

19 A. Yes, there would be a letter of direction.

20 30. Q. Is there an M-O-U between you and Sol Gen?

21 A. Sir, just to clarify your last question, the
22 letter of direction actually comes from our ministry to
23 advise IO to undertake the work as requested by the
24 Ministry of Solicitor General.

25 31. Q. Okay ---

1 A. There would be ---

2 32. Q. So, you would've received that from your
3 ministry, directing you to proceed?

4 A. That would've come through IO to initiate the
5 work from the start.

6 33. Q. Okay. Do you know if there is an MOU between
7 ---

8 A. To my knowledge, there is an MOU and/or a
9 project agreement. I don't have that specific detail.
10 That comes through the project delivery team and we work
11 with them from there.

12 34. Q. That MOU would scope out, sort of, cost
13 recovery for IO, I would imagine?

14 A. Correct.

15 35. Q. Okay. Does IO typically charge a fee in
16 addition to the -- or is it straight cost recovery
17 normally?

18 A. The recovery on cost would include third-
19 party fees for consultants, advisors and other work that
20 would be done, as well as IO fees direction for our
21 recoverable cost and time spent on projects.

22 36. Q. Okay. You're not like a general contractor?
23 You don't add a 10 percent on top or something like
24 that?

25 A. Strictly fee recoverable.

1 37. Q. Okay. So, for the EOCC project, can you walk
2 me through generally the key milestones that were
3 established as part of this mandate for IO? Sort of, the
4 key elements of deliverables that you or other sections
5 of IO would be working on?

6 A. I can talk broadly. I don't have the specific
7 dates; that's information that ---

8 38. Q. Yeah, we'll ---

9 A. --- but generally ---

10 39. Q. Just generally -- yeah, and a lot of those
11 milestones are publicly available anywhere on -- or, the
12 dates are on, but I just want to understand from your
13 perspective the mandate that you were given and the key
14 pieces of that mandate?

15 A. Sure. So, from the real estate side, there
16 would be to search and identify a preferred site based
17 on the parameters and requirements of the program and
18 the facility. From the program side, there'd be
19 understanding what the future facility would need to
20 look like and what those output specifications relative
21 to the market to deliver would look like. And then
22 there'd be the actual procurement side of things to get
23 the R-f -- Q-R-F-P and then select your preferred
24 proponent, which ultimately becomes the project company.
25 Then there's through to the delivery side of the

1 agreement. There are construction phases as well as the
2 operating and maintenance phase.

3 40. Q. My understanding is that the project is
4 structured as a design, build, maintain P-3 structure.
5 Is that accurate?

6 A. I believe that is accurate. Just to confirm,
7 I believe it's design, build, finance, maintain, D-B-F-
8 M.

9 41. Q. Yes, thank you. Do you know when Sol Gen
10 first approached either IO or the ministry then coming
11 down to you to find a suitable location for specifically
12 a 235-bed correctional facility somewhere in Ottawa,
13 Eastern Ontario?

14 A. I don't have knowledge of when the first
15 interactions had occurred but we began the site
16 selection work back in 2017. I believe it was May 2017.

17 42. Q. At that time, was that for what became known
18 and what was announced in May 2017 as the Ottawa
19 Correctional Complex, the new OCC, the 700-bed facility?
20 Or was that for a smaller facility?

21 A. I believe it was for the publicly announced
22 facility, but our search and the site selection really
23 is based on the parameters that we're given in terms of
24 the acreage, in terms of general location and a few
25 other factors.

1 43. Q. Okay. So, I'll probably come back to this a
2 bit later but I want to get a bit of an understanding
3 from the outset. On May 4th, 2017, the then Solicitor
4 General announced the construction of a 700 or so bed
5 facility in Ottawa called the Ottawa Correctional
6 Complex and that remained the only announced project
7 until a few years later. So, I'm curious to understand
8 what IO was searching for in May 2017. Was it for a site
9 for a smaller 235-bed facility that we're now
10 considering for Kemptville or was it for this much
11 larger and very different facility for the OCC?

12 A. I can't comment specifically on the program
13 side. What I can say is that we were provided search
14 parameters for minimum acreage at the time, and I don't
15 have that top of mind unfortunately, in a, you know,
16 geographic radius with other site characteristics that
17 were favourable to deliver the site. I'd just add, that
18 aspect of the project is not necessarily our main focus;
19 it's, we need -- where there's a request for a site to
20 accommodate a project of a certain size, we think in
21 terms of acreage, we think in terms of square footage
22 and less about, you know, the program pieces of it
23 specifically.

24 44. Q. I'm not in this business but I would assume
25 you're not looking for the same type of property if

1 you're wanting to build 700 beds as opposed to 235. One
2 is three -- almost three times the size?

3 A. The specific requirements of the program are
4 defined by the program side of things. They ---

5 45. Q. Do they not have influence on the side of the
6 property you'll be searching for and its requirements? I
7 would imagine, again, water, access, roads, all those
8 things would be influenced if you're looking at X or
9 three times X?

10 A. That's correct but those requirements for
11 acreage relative to the building footprint and the other
12 program requirements can vary. So, in terms of
13 understanding the number of beds required, that wasn't
14 the main part of our focus; it was the size of the
15 building, the acreage and the other requirements to
16 enable construction operation of the site.

17 46. Q. Okay, but if you're looking to look at a
18 building that houses 235 people as opposed to 700, are
19 you looking for the same type of property?

20 A. We take direction from Ministry of Solicitor
21 General who runs the program side of things to tell us
22 what is required generally for the facility.

23 47. Q. So, all right. I'll come back to the criteria
24 a bit later but this gives me a bit of an idea. Thank
25 you. Actually, sorry, I'm going to go back to that. So,

1 you say the site selection began in May 2017. You
2 would've been in the current position you hold at that
3 time. So, that would've been you or your team?

4 A. Correct.

5 48. Q. Okay. Were you, sort of, a project lead, a
6 project liaison? How directly involved were you starting
7 in May '17?

8 A. A senior project manager on my team was the
9 project lead. So, our interactions would've been on an
10 as-needed basis.

11 49. Q. So, more of a management direction
12 coordination role?

13 A. Correct.

14 50. Q. Okay. From May '17 to what appears to be a
15 final decision around October 23rd, 2019 for Kemptville,
16 to your knowledge did the -- did Sol Gen's requirements
17 change?

18 A. I don't ---

19 51. Q. I'm referring -- the reason, just so you
20 understand now -- I'm not trying to ask a trick
21 question, but at some point there was a political
22 decision made. So, your client went from a 700-bed
23 facility, close to the core of Ottawa, to this much
24 smaller thing outside, way outside, the city. So, I'm
25 trying to understand, as the process unfolded, did you

1 receive different direction from your client on this?

2 A. I don't have direct knowledge but what my
3 understanding, what I believe is true, is that given the
4 complications in finding a site, starting in May 2017,
5 that could deliver the project, was extremely difficult.
6 And it may be that that complicating factor of not being
7 able to source a site to meet the requirements of the
8 facility may have had the Ministry of Solicitor General,
9 perhaps, reassess what the program would end up looking
10 like. But that would not be something we would have
11 direct knowledge of; that would be the client and the
12 program figuring out what they need and then coming back
13 to us to speak to what the requirements start -- would
14 look like.

15 52. Q. So, it could be that. Could it also be a
16 political decision to change approach? So, go from a one
17 centralized facility to a number of smaller ones?

18 A. Prior to the announcement that happened in
19 August ---

20 53. Q. 2020?

21 A. --- 2020, we're not privy to what happens
22 from the Ministry of Solicitor General side with respect
23 to their decision making and how things change. At least
24 I wasn't.

25 54. Q. You haven't been told information or anything

1 about that?

2 A. No.

3 55. Q. Okay. So, when did you first become involved?
4 You said May 2017 your team became involved in searching
5 for a location for a facility for your client. Did you
6 become personally involved at that point as well?

7 A. Just in consulting with the senior project
8 manager on my team, talking about what the process would
9 look like, at the early start of things. As the search
10 progressed and as we ran into complications in trying to
11 source a site, those discussions picked up. And ~~seso~~, my
12 engagement with more senior level management side of the
13 real estate and the project delivery aspects of IO
14 would've increased to the extent that we needed to
15 ensure that, yes, we are working with our public sector
16 contacts and with our private sector services to find a
17 site that could meet the requirements of the facility.

18 56. Q. Okay. So, again, not to put words in your
19 mouth; if I'm inaccurate

20 57. , let me know, but as the complexity of the
21 search grew, your involvement grew as well?

22 A. The complex -- yes, the complexity based on
23 lack of availability.

24 58. Q. Yes, the difficulty of ---

25 A. Yeah.

1 59. Q. Okay. Yeah, not that the program had become
2 more complex all of a sudden but just finding a location
3 was proving difficult, you said?

4 A. Correct.

5 60. Q. Okay. Did you have any involvement other --
6 and I'm looking at dates and when you, sort of, came
7 into your VP role, would you have had involvement in
8 other, sort of, the more recent correctional facility
9 builds? I'm thinking of southwestern Windsor, the new
10 Toronto, Thunder Bay. What other projects would you have
11 been involved in, either in your senior advisor role or
12 now as VP?

13 A. From a, again, management side of things,
14 working with the senior project management team at the
15 time, it would've been as an oversight an advisory role
16 with the senior project managers.

17 61. Q. So, similar to your role with Kemptville, I
18 guess?

19 A. Correct.

20 62. Q. Okay. So, you say your involvement with
21 looking for a site for this facility began in May 2017.
22 Did you have any involvement -- let me rephrase that.
23 Would IO have worked on a search for a facility prior to
24 May 2017 at all? I'm specifically referring to the fact
25 that the Minister announces this 725-bed OCC in May

1 2017. Was there any work done at IO leading up to that,
2 that you know of prior to the May announcement?

3 A. Not to my knowledge.

4 63. Q. Okay. I should have said it from the outset
5 as well, Mr. Macey, we'll be getting into a fair bit of
6 detail, provided what you can obviously, but if at any
7 point you need a break to go to the bathroom or
8 whatever, just let me know. We'll recess. This is not
9 meant to be an endurance test on your part?

10 A. Thank you.

11 64. Q. Although it may seem like that, but that's
12 not the goal. So, I'm going to turn now specifically to
13 the selection of Kemptville. So, we know -- I now
14 understand that IO was asked back in May '17 to start
15 looking for a location for a facility. So, that would
16 have been the first step, is your client coming to you
17 and saying, "We need this," or going to the Ministry,
18 who would then direct you to start working on that. Is
19 that correct?

20 A. Correct, one of the first steps, as it would
21 relate, at least, to the real estate side.

22 65. Q. Yeah, okay. Would there potentially have been
23 other -- and I don't want to ask you to speculate too
24 much but, would other branches or arms of IO been
25 involved in earlier discussions potentially on what the

1 program could look like or what the needs might be?

2 A. I don't know specifically but that would be
3 possible.

4 66. Q. It's possible, but you don't have any
5 knowledge specifically to this project?

6 A. I don't.

7 67. Q. Okay. So, again, I'm going to go a little bit
8 more general on this question and that is, when a client
9 reaches out and says, "We need your assistance to find a
10 location and develop infrastructure X," how would a
11 search for a suitable location typically unfold? I'm
12 speaking generally and then we'll talk about Kemptville
13 separately?

14 A. Once we're formally engaged to undertake the
15 work, the process effectively starts with, "Are there
16 any properties within the provincial portfolio that
17 could accommodate the future use?" We then engage,
18 depending on the outcome of that, we then engage with
19 other levels of the public sector to understand if
20 there's opportunities there. And again, depending on how
21 that looks, we'll also go to our private sector
22 brokerage consultant to scan the market for
23 opportunities on market and if they have any knowledge
24 of opportunities off market.

25 68. Q. At what stage are the search parameters

1 established? I would imagine before you start looking
2 with the, you know, provincial portfolio and so on. So,
3 when does that take place?

4 A. That will take place at the earliest
5 opportunity for the reason that exactly that, that we
6 need to understand what are we looking for, where are we
7 looking for it, what are the other site characteristics
8 or surrounding infrastructure requirements that could
9 support the future construction and operation.

10 69. Q. Typically, again, would those search
11 parameters be established by your client and given to
12 you or would you have a discussion with your client or
13 depending on the project how would that unfold normally?

14 A. Depending on the future use and whether --
15 whether or not the client has all of those specific
16 program details, that can be an evolving discussion. But
17 ideally the client is familiar with their program,
18 ideally they've done some similar programs in the past
19 and then can provide those parameters. But every site is
20 different, every project can be a little bit different
21 and those requirements are defined at the beginning but
22 can evolve over time.

23 70. Q. So, I'm assuming that process would typically
24 be followed if you're looking for a site for a
25 correctional facility? Defining the parameters and then

1 looking at the provincial portfolio, other public,
2 private and so on?

3 A. Correct.

4 71. Q. Do you know whether those were the steps that
5 were followed for the southwest facility in Windsor?

6 A. I don't have direct knowledge of that.

7 72. Q. Okay. How about Toronto, the replacement
8 facility there?

9 A. For the southwest detention centre?

10 73. Q. Toronto would've been -- I'm trying ---

11 A. The Toronto South and Etobicoke? Is that ---

12 74. Q. Yes. Thank you, right?

13 A. That project started before my time, so I
14 don't have that knowledge.

15 75. Q. Thunder Bay is more recent. So, would that
16 process, again, have been followed for that facility?

17 A. Yes, it was.

18 76. Q. Brockville as well, or is that different?

19 A. Yeah, I'm ---

20 77. Q. Because I think they're expanding or they're
21 building on an existing site, so it may be different?

22 A. Yeah, I don't have the details and I think it
23 is a different scenario, as you mentioned.

24 78. Q. Okay. So, looking at how the process unfolded
25 for Kemptville, or what became Kemptville as you went

1 through the process, would I be correct in concluding or
2 stating, and if not, correct me, that, again, the
3 initial step would have been to define with your client
4 or to receive from your clients -- so, tell me which one
5 it was -- but the search parameters and the specific
6 criteria you're looking for?

7 A. At a high level, yes.

8 79. Q. What do you mean by at a high level?

9 A. As the engagement with the client evolves --
10 and now I'm going into the project delivery side of the
11 business a bit -- the specific output specifications
12 will also evolve. And as those influence what the
13 characteristics of a good site will be, that can
14 continue to evolve the search criteria and parameters as
15 those change. But, so, we're starting with an estimate
16 of what we think makes sense and it gets a bit further
17 refined through that process.

18 80. Q. You mentioned some challenges in finding a
19 suitable location for this project. I would imagine that
20 the difficulty in finding locations would also influence
21 the search parameters or could also influence the search
22 parameters?

23 A. I think we start with as broad a net as
24 possible and as the realities of a given market or area
25 start to be uncovered and how they influence how the

1 project and certain requirements can be achieved, that
2 starts to influence, I think, the decision making more
3 so than, you know, how we do our process.

4 81. Q. So, to be clear, you're not the one choosing
5 a site, that would be your client? That would be Sol Gen
6 as opposed to you or?

7 A. That is correct. We seek to achieve and
8 satisfy as many of the site requirements that can be
9 found based on the individual properties. Ultimately,
10 the decision to select the site is with the client, in
11 this case, the Ministry of Solicitor General.

12 82. Q. So, for the search that began in May 2017,
13 when was the list of criteria, your search parameters,
14 when was that established?

15 A. I don't have the exact date but it would have
16 been in May 2017 or close to there, May/June.

17 83. Q. So, very early on in the process?

18 A. Ealy on in the process as the starting
19 parameters which would be refined as sites were
20 uncovered.

21 84. Q. Parameters that were developed in May/June
22 2017, do you know whether they were developed by Sol
23 Gen, by IO, jointly? How did that initial list come
24 about?

25 A. It can be an iterative process. I don't

1 recall specifically how the final list came together.
2 Broadly, if you look at what the requirements are, it
3 tends to be more commentary on sites. And as those
4 output specifications evolve, you then can start to
5 match what those, for example, capacity requirements for
6 servicing, start to look like. So, specifically with the
7 starting point in the list, it tends to be broad and
8 then as sites are found through that process, you start
9 to connect them with, "How well do they match? What
10 needs to be achieved for the project?"

11 85. Q. So, can you walk me through what that initial
12 list of criteria you were using starting in May or June
13 2017, what that list was?

14 A. I don't have it in front of me but going by
15 memory, there was minimum size requirement, which I
16 believe was 40 or 50 acres or greater. There was a
17 distance to the existing Ottawa facility. And then we
18 got into basic characteristics. Things like, what are
19 the land entitlements in terms of official plan and
20 zoning, what are the servicing constraints or existing
21 status, what would be the public transportation
22 accessibility, and effectively several criteria that
23 speak to the site relative to what the Ministry of
24 Solicitor General had as their requirements.

25 86. Q. So, I'm going to show you a page from our

1 Motion Record. This is a piece of -- or, a document that
2 was released as part of a freedom of information request
3 filed by community. I'm just going to put that on the
4 screen. For Susan and Shayna, that's page 197 of our
5 full PDF.

6 MS. KEENAN: Thank you. I have it.

7 BY MR. EMARD-CHABOT:

8 87. Q. Is that clearly visible to you, Mr. Macey? I
9 don't know how well it shows on your screen?

10 A. Yeah, that -- yes, I can read it.

11 88. Q. Okay. So, if you could take a moment just to
12 go through the criteria that are listed there and just
13 let me know, as far as your memory can attest, were
14 those criteria part of the original list or were any of
15 those added over time?

16 A. I can't say for certain if they were part of
17 the original list going back to May 2017, but these --
18 these likely would've been something incorporated into
19 the search as things evolved and as the program
20 requirements would've evolved. And I think, for example,
21 when you look at proximity to potential natural or man-
22 made disaster or airport operating influence zones,
23 those are the types of things that typically would not
24 be a starting point when we talk broadly about a
25 facility and really, it's at the level of acreage,

1 general location and some general site characteristics.

2 89. Q. All right. So, this appears to be a list that
3 would've been an iteration or an evolution of the
4 search?

5 A. Yes.

6 90. Q. Okay. Looking at the icons that are placed on
7 that list, a lot of them are, sort of, small magnifying
8 glasses, if I can call them that. The legend indicates
9 that these would be items that require further research.
10 Is that correct?

11 A. That is correct.

12 91. Q. Okay. A check mark would be that that is --
13 that criteria is satisfied? Is that correct?

14 A. Satisfied or we believed could be satisfied.

15 92. Q. Okay. The X would be not satisfied or not
16 potentially satisfied?

17 A. Not within the requirements of the project,
18 correct.

19 93. Q. Perfect. So, I'm going to show you now a
20 different page. I apologize for the scrolling but I
21 think it will be easier. Shayna and Susan, I'm going to
22 page 190. So, again, this is another list that was
23 provided as part of a freedom of information request. It
24 seems to indicate, and I'm going by the, sort of, the
25 results for Kemptville on the original, or on the first

1 sheet I showed you there were a lot of magnifying
2 glasses. Now, these have been replaced by N-A,
3 checkmarks, Xs and so on. So, would it be safe to
4 conclude that this list or this table is -- was produced
5 at a later date?

6 A. I don't have direct knowledge of that but it
7 may be possible.

8 94. Q. There is one change -- yeah, there are two
9 differences between that list and the one I showed you
10 before and I'm just going to show them to you again. The
11 first one is the third criteria from the bottom, whether
12 the land is serviced. This one includes serviceable. If
13 I go back to the other list it only states whether the
14 land is serviced. Is that correct?

15 A. That is correct.

16 95. Q. Okay. Do you know why that criteria changed?

17 A. I don't have specific and direct knowledge,
18 but based on other projects, when you encounter a list
19 of sites and there are limited other options, you then
20 start to try to understand while a site may not
21 currently be serviced, is there an opportunity to
22 actually make it serviceable within the timeframe and
23 the requirements of a project.

24 96. Q. Okay. The other change or difference between
25 these two lists is the third criteria from the top on

1 this current page which is, site meets correctional
2 design criteria. If I go to the second list I showed
3 you, that criteria is no longer there. Is that correct?

4 A. Correct. It doesn't appear to be there.

5 97. Q. Can you tell me what we were to conclude from
6 that change, if anything?

7 A. Without specific knowledge as to why, it
8 appears that between the two it was removed from the
9 second.

10 98. Q. Okay. The, whether the site meets
11 correctional design criteria strikes me as fairly
12 important. It's interesting because there's still the
13 asterisk at the bottom of the list, just the criteria is
14 --. I'm just trying to understand why at some point the
15 program requirements were dropped from the list. If
16 that's an oversight or a conscious choice?

17 A. I don't know.

18 99. Q. Okay. Thank you. Sorry, I'm just looking at
19 my notes quickly. So, when you have a list like this, or
20 two lists like this, I'm just curious about how the site
21 selection process would unfold. Is there, for example,
22 you know, I've seen this myself in other processes, a
23 point system? So, you give one to five or one to 10 on
24 each criteria and you end up with a weighted or a
25 numerical score. Is that something that is typically, or

1 was used in this case, or is it just what we see in
2 these two sheets, those, sort, of more qualitative
3 assessments?

4 A. It's more qualitative, more similar to what
5 you saw in those sheets. In other areas, you might see
6 measures that would show an empty circle, a half-filled
7 circle or a full circle. So, it tends -- it's
8 qualitative, typically, when we do that.

9 100. Q. I'm just going to show you quickly, when you
10 say half-full, half-empty circles -- I'm going to page
11 229 of the PDF -- is this what you would be referring to
12 when you talk about half-empty circles, half-full
13 circles?

14 A. That's correct. We would use this methodology
15 from time to time.

16 101. Q. So, what's the difference between the two
17 methodologies? The icon one with the checkmarks and the
18 Xs, and this, sort of, glass half-empty, glass half-full
19 kind of approach?

20 A. I can tell you that this page is something
21 that our team would've produced. I'm not 100 percent
22 sure who produced the previous two pages.

23 102. Q. Okay. So, the page we're looking at, 229,
24 which is site 35, aerial lands in Kemptville, that is
25 from your office or your team?

1 A. That's an IO report, correct.

2 103. Q. Okay, thank you. So, when you produce that
3 kind of report -- and if you want me to put it back on
4 the screen, let me know but, the -- this assessment of
5 meets, does not meet, or partially meets, is that the
6 only ranking or the main ranking tool you use to assess
7 sites?

8 A. For the purposes of trying to communicate to
9 the project team and the client, it's a tool that we'll
10 often use to convey the status of a property at that
11 point in time.

12 104. Q. For this search, is that the rule or how this
13 tool was used?

14 A. For the purpose of that report that was shown
15 the last slide, yes, that's correct.

16 105. Q. So, this would be part of a report produced
17 by IO to Sol Gen, your client, to say here is our
18 assessment of these properties?

19 A. Correct.

20 106. Q. Okay. From May 2017 to the announcement in
21 2020 or the decision which seems to have been made in
22 ~~October~~October 2019, how many sites were assessed using
23 what we looked at, this sheet with the circles and
24 specifically this site number 35, which became the
25 preferred site?

1 A. Yeah, so at that time, around the time of
2 that report, I believe the number was in and around 38
3 properties. That would've been produced after many more
4 properties were looked at but looked at and disqualified
5 for various reasons.

6 107. Q. So, what's the difference between a property
7 that would make it into this report with this assessment
8 and a property that you would just outright disqualify?

9 A. Specifically at that time ---

10 108. Q. We're talking about what timeframe roughly
11 for this ---

12 A. Yeah, so, there were a number of reports
13 delivered. I don't remember the exact date of that -- if
14 it was 38 properties' report.

15 109. Q. Okay. So, IO produced a number of different
16 assessment reports to its client?

17 A. In the normal course of the project and ---

18 110. Q. I'm not saying there was anything wrong with
19 that but I'm just ---

20 A. ~~Absolutley~~Absolutely. Typically, a reason why
21 a property may not make the cut would be that there may
22 be constraints associated with the site. That may be
23 environmental or cultural heritage that cannot in some
24 way be mitigated or accommodated. It -- you know, a big
25 one for facility, and I'm thinking of this particular

1 project, with capacity requirements, you know,
2 servicing, was one of those things that -- which
3 would've disqualified a number of the sites for various
4 reasons. And ---

5 111. Q. When you say servicing, are we talking about
6 municipal services? Water, waste water, or something
7 else?

8 A. Correct. No, yeah, electricity, water, waste
9 water, communications, I mean, anything which -- at --
10 for -- over a reasonable scheduling period or at a
11 reasonable cost just would not be -- could not
12 accommodate the requirements of the project in terms of
13 cost, budget, scope, all that.

14 112. Q. So, you say it's common to produce a number
15 of these reports back to the client. Do you know for the
16 search that began in 2017, how many of these were
17 produced?

18 A. I don't have the number.

19 113. Q. Okay. So, there would've been different
20 rounds of these reports. You -- so, how does that
21 process unfold, the dialogue with your client? You send
22 those off to Sol Gen, they come back and say, "Oh, we
23 like this, we don't like that"? How does that part of
24 the process unfold, specific for this one? Not
25 generally, but for Kemptville?

1 A. Yes. I'm not directly involved on the day-to-
2 day project side of the business but typically what
3 would happen is there's regular project meetings between
4 IO, between Ministry of Solicitor General and select
5 consultants or advisors as that meeting may be informed.
6 So, from that perspective, the site selection as it
7 related to this project, would've typically been an item
8 that would be reviewed every one to two weeks. And as
9 the project ~~would've~~would've evolved, there would've been
10 more ad hoc engagements between the project staff and
11 the -- our staff, to advise on progress.

12 114. Q. So, this would've been going on as a regular
13 part of the ~~dialogue~~dialogue from the outset, from May
14 2017, to a decision in 2019? I'm not saying ---

15 A. Sure.

16 115. Q. --- you're confirming that they met every
17 other week but it would've been ---

18 A. An iterative and evolving process over that
19 time, yes.

20 116. Q. At paragraph 8 of your Affidavit, you state
21 that, "By October 2019," -- and the materials we have
22 indicate a decision was made on October 23rd of that year
23 and you confirm this in your Affidavit as well. You
24 state that, "By October 2019, the Ministry," I'm
25 assuming that's Sol Gen, "determined that its preference

1 was for something along Highway 416 as the most suitable
2 location." When was the along 416 Highway criteria added
3 as a parameter for the search?

4 A. I don't have the exact date. That ultimately
5 would've been something that the Ministry of Solicitor
6 General would've identified. What I can say is leading
7 up to there, finding suitable sites was problematic. So,
8 ---

9 117. Q. What was the challenge? Sorry to interrupt.

10 A. As mentioned before. Just, number one,
11 availability, number two, finding something that, for
12 the reasons I'd mentioned in the previous response,
13 servicing and other site-specific characteristics that
14 just couldn't be found to accommodate the project.

15 118. Q. That's including in the private sector at
16 that point, I gather from the documents I've seen?

17 A. That's correct, yeah. It would've been --
18 yes, that's correct.

19 119. Q. Okay. So, do you know -- and again, you've
20 said you don't know the exact date; that's fair. Do you
21 know whether the along the Highway 416 corridor was
22 added closer to the beginning or closer to the end of
23 this process?

24 A. I don't have the ---

25 120. Q. If you don't know, that's fine?

1 A. --- date, no. But it would've been likely
2 some time in late 2018/2019. The extent to which that
3 was discussed between the team members versus
4 officially, you know, approved or stated at whatever
5 level the Ministry gains 100 percent direction, I can't
6 comment on that.

7 121. Q. Okay. Do you know why this criteria was
8 added?

9 A. I don't have -- I don't have that specific
10 knowledge.

11 122. Q. We know that there was an expression of
12 interest sent to the Ministry of Agriculture on October
13 23rd, 2019. I'm assuming, and correct me if I'm wrong,
14 that that implies that the selection had taken place by
15 that point?

16 A. You're correct but the selection would not
17 have been 100 percent at that point. ~~There~~There were
18 still some factors related to the site that needed
19 investigation. The reason ---

20 123. Q. Do you remember -- recall what those would've
21 been?

22 A. It would've been similar to what you've seen
23 -- would've seen in one of the attachments showing the
24 qualifications of the site, you know, the meets,
25 partially meets, does not meet. And I think in that

1 document it indicated some of the points that needed
2 further investigation. I believe the Exhibit A shows the
3 business case in the Affidavit which, I think, provides
4 the specific details but ultimately the holds process
5 then to express interest is to ensure that the property
6 does not leave the circulation that allows for
7 ministries to express interest and hold the property.

8 124. Q. Understood. Do you know when the decision
9 became final in the sense that it was clear that this
10 was the preferred site and that you would ---

11 MS. KEENAN: I just want to ---

12 MR. EMARD-CHABOT: Yeah?

13 MS. KEENAN: Sorry, I just want to clarify. So,
14 we have taken the position that that wasn't the decision
15 to go with that site; it was a decision to hold the
16 property. So, I just want to clarify, like, from a legal
17 perspective, that is our position in the litigation.
18 Just because you've described it a few times as the
19 decision to go with that property and our position --
20 our position on that is different.

21 MR. EMARD-CHABOT: Sorry, Susan, I don't know for
22 everybody, but your camera froze a little bit for me.
23 So, if you could repeat that last piece, sorry?

24 MS. KEENAN: Sure. Just to say that our legal
25 position is -- you've described it a couple of times as

1 the decision to go with that site, but our legal
2 position is different than that. It's that that property
3 was held on that date. It was held but not that that was
4 the date when this site was selected for the facility.

5 BY MR. EMARD-CHABOT:

6 125. Q. So, when, then, was this property selected? I
7 understand what the expression of interest involves; no
8 issues there. Was there a moment later in time when it
9 was clear that it was going to be Kemptville and when
10 was that, if you can recall?

11 A. So, after the hold was put in place and
12 further due diligence related things like land use and
13 servicing were further investigated, I don't have the
14 specific date but I believe it was in either November,
15 December 2021, which would've been a few months prior to
16 the closing in March 2022.

17 126. Q. Okay. In March 2022, there is that closing on
18 title. Does IO become owner at that point?

19 A. No. The owner at that point became the
20 Ministry of Infrastructure.

21 127. Q. Okay. Taking it over from ARIO, I would
22 gather?

23 A. I believe ---

24 128. Q. Or --

25 A. I believe that's correct, yes.

1 129. Q. Okay. So, prior -- so, October 23rd, you, not
2 your personally but, IO expresses an interest, says,
3 "Please hold onto this piece of land. We might be
4 acquiring it or interested in acquiring it," and then
5 you begin more site-specific investigation. Is that
6 correct?

7 A. No. Ministry of Solicitor General would have
8 been in the entity that expressed interest ---

9 130. Q. Sorry, yes, okay ---

10 A. --- to ARIO.

11 131. Q. Okay. That is to then give you time to finish
12 those investigations that you need to undertake to make
13 sure that this is, in fact, the site or a site that will
14 work?

15 A. Yes. Continue and finish to the extent we
16 gain confidence that the site can accommodate the
17 facility.

18 132. Q. Yeah, obviously you've done some work before
19 or else it wouldn't be on the list and you wouldn't be
20 retaining it but, yes, understood ---

21 A. And net new work as well, which would only
22 start after that point.

23 133. Q. Okay. Were any other sites subject to an
24 expression of interest of this type?

25 A. No, not that I'm aware of.

1 134. Q. Okay. Were expressions of interest or options
2 retained on privately held sites, that you know of?

3 A. No, not that I'm aware of. And to confirm,
4 that would be private sites would be a different
5 process. That would just be engaging through our broker
6 on the open market or working through them to understand
7 the off-market opportunities which may not be publicly
8 listed.

9 135. Q. Understood, but I imagine if a privately-held
10 site had been of interest at times, I would imagine you
11 would be, or the Ministry would be saying, "Can we have
12 an option on this or Right of First Refusal," or
13 something along those lines?

14 A. Depending on the property owners' perspective
15 and what negotiations to that point would get, there
16 could be different avenues to achieve that.

17 136. Q. None of that happened in this case for this
18 project, that you know of?

19 A. With private sector sites?

20 137. Q. Yeah?

21 A. That's correct. That did not happen.

22 138. Q. Okay. In narrowing down and tagging the ARIO
23 lands as the preferred site in October 2019, do you know
24 which -- or let me go back. Would IO make a
25 recommendation to Sol Gen and say, "We think that site X

1 is the most suited"? Or is it still another report with
2 a number of options and your client makes that final
3 call and says, "You know what? We're going to pick this
4 one as our first choice," knowing that more work has to
5 be done, to make sure that I follow Susan's correction
6 on that?

7 A. Ultimately, we inform our clients as best as
8 possible with site information. If we think there are
9 going to be problematic issues that cannot be resolved,
10 that's the advice we provide. If we think there are
11 favourable conditions, those are the conditions and
12 information we would provide. Ultimately, the decision
13 as to whether the site is the right site or not is with
14 the client.

15 139. Q. So, for this project that began in May 2017,
16 did IO recommend a specific site as the preferred site?

17 A. Starting in 2017?

18 140. Q. Well, throughout this process, did you -- did
19 IO at some point, issue a recommendation or recommend to
20 Sol Gen saying, "We think site X is the best one"?

21 A. I would not put it as direct as that. I think
22 our advice would be effectively what's been shown in
23 some of the slides that have been shown to date. We'll
24 provide our advice based on the findings of the project
25 to inform their decision as to what they think is the

1 preferred site or is the site to be pursued.

2 141. Q. Did any of the sites examined meet all the
3 criteria you had?

4 A. I don't recall any site meeting every point
5 of the criteria, no.

6 142. Q. Do you know whether other sites met a similar
7 number of criteria as the ARIO site?

8 A. Prior to identifying the ARIO site, there was
9 another site that we were pursuing and looked to be a
10 favourable site. Unfortunately, we were not able to
11 conclude a transaction. That was back in 2018.

12 143. Q. Would that have been -- I'll bring you to
13 documents a bit later on today, but would that have been
14 a site within the city of Ottawa?

15 A. I don't know if it's defined specifically
16 within the city limits but it would've been within the
17 search parameters at the time.

18 144. Q. Based on the information communicated to you
19 by your client, can you say whether there was and if so,
20 what was the main factor that led to the selection of
21 Kemptville?

22 A. To my knowledge, there was -- I'm not aware
23 of any one specific factor. I think when you look at the
24 merits of the site across the site requirements and as
25 that connected with the program requirements and the

1 other research or analysis that Ministry of Solicitor
2 General may have completed, it was concluded that
3 Kemptville was the site they wanted to pursue.

4 145. Q. The fact that the site is outside or the
5 longest driving distance from the existing facility,
6 which was one of the criteria on that sheet we looked at
7 with the circles, how much of a role did that play?

8 A. In IO's capacity, it was one factor that we
9 would've provided commentary on. In terms of the
10 Ministry of Solicitor General's decision making on that
11 point, I don't have that information.

12 146. Q. Okay. So, you're not privy to the
13 discussions, the weighing of factors that led Sol Gen to
14 choose this specific location?

15 A. The vast majority of the team's interaction
16 would've been at the staff level and as I understand,
17 but don't have direct knowledge of, the Ministry of
18 Solicitor General would've had their reporting,
19 briefing, communication structure set up to arrive at
20 the decisions and the directions that they do, which
21 we're not a part of.

22 147. Q. Okay. All right. So, we'll be leaving the
23 site selection soon, you'll probably be relieved to
24 know. Now, you're aware -- or, are you aware, I'm
25 assuming, that there was a first public engagement

1 session held in November 2020 with the community and
2 that was attended by Mr. Gismondi?

3 A. I am aware of that, yes.

4 148. Q. You're aware that a second public information
5 session was held a year later, November 2021, and again,
6 Mr. Gismondi was present at that session?

7 A. I seem to recall that, yes.

8 149. Q. Okay. Are you aware that for both meetings,
9 November 2020 and November 2021, Kemptville residents
10 who wanted to attend those sessions were asked to
11 provide questions in advance and that these sessions
12 would serve to answer those questions?

13 A. I don't have ---

14 150. Q. Were you aware that residents were asked
15 specifically to provide written questions in advance?

16 A. I don't have specific knowledge. I believe
17 those sessions were run by the Ministry of Solicitor
18 General and their consultant at the time.

19 151. Q. Okay. So, I would imagine you would not also
20 -- I'm not sure that's proper grammar, but you wouldn't
21 be aware that Mr. Albert, Mr. Lachance, the Applicants
22 in this case, had in writing specifically requested
23 access to the selection criteria in the context of those
24 meetings? So, the question is, were you aware that these
25 two gentlemen had asked for this access to the selection

1 criteria?

2 A. Related to those meetings, yes. I don't know
3 it was specifically those two gentlemen but before or
4 after those two meetings, I recall requests for
5 information related to the site selection that would've
6 happened.

7 152. Q. Are you aware that another resident filed
8 freedom of information requests seeking that specific
9 information back in November of 2020?

10 A. I'm aware of freedom of information requests.
11 Specifically by who or the specific context, I don't
12 have that information.

13 153. Q. Okay. Are you aware of the fact that to this
14 day the formal final list of criteria which at some
15 point included or added the Highway 416 corridor, to
16 this day this information hasn't been made fully public?
17 Are you aware of that?

18 A. I'm not aware of those specific details which
19 have or have not been made public.

20 154. Q. Okay. Do you know if there is any reason why
21 this information was not or should not be provided to
22 the public?

23 A. In -- in IO's capacity, this was something
24 that we were working on with Ministry of Solicitor
25 General. Ultimately, the Ministry of Solicitor General,

1 I think, has that review and say. As to the specifics as
2 to why information has or has not been made available to
3 the public, I don't have that information.

4 155. Q. Is this ~~informa~~information IO would be
5 free to publish or would you need Sol Gen to sign off to
6 some degree or approve the release of that
7 ~~informa~~information?

8 A. I don't ---

9 156. Q. I'm just thinking of how the relationship
10 works, so?

11 A. So, depending on the where the information
12 was requested through, if it was through the Ministry or
13 if it was directly directed to Infrastructure Ontario. I
14 don't know the specific mechanics or if there are any
15 legal relationships to that or our relationship
16 specifically with Ministry of Solicitor General and some
17 of the work and advice we provide which may be
18 commercially confidential or other factors. So,
19 unfortunately, I don't have the specific response on
20 that one.

21 157. Q. A question to Susan: so you've seen the
22 material, Susan, you know some of the materials, some of
23 that information was released through FOI, there are
24 appeals underway. Is there a possibility that the
25 additional information that's been requested could be

1 released or as part of this -- an undertaking in this
2 process or would you defer to the FOI process?

3 MS. KEENAN: So, we don't have ---

4 MR. EMARD-CHABOT: I can guess your answer but I
5 wanted to ask the question.

6 MS. KEENAN: So, we don't have any control or
7 influence over what happens in relation to those
8 requests as the counsel on this file. That's handled
9 through the regular FIPPA process and I understand, as
10 you say, there are appeals ongoing and ultimately, I
11 think there's a review and adjudication function for the
12 Privacy Commissioner and -- Information and Privacy
13 Commissioner. Aside from that, the one thing I guess I
14 would flag from the perspective of process on this
15 application is that we would be producing a record of
16 proceeding if this matter goes past the motion, which
17 would set out the basis for the decision under review.

18 MR. EMARD-CHABOT: Okay, perfect. Thank you.

19 BY MR. EMARD-CHABOT:

20 158. Q. So, Mr. Macey, are you okay to continue for a
21 bit?

22 A. I am, thank you.

23 159. Q. Changing gears a little bit, we're looking at
24 the -- I'm looking now at the budget project and in
25 paragraph 9 of your Affidavit you state that, "Funds

1 were committed to build a 235-bed facility at the
2 Kemptville site on June 26th, 2020." From our discussion
3 so far today, I'm assuming that the committal of funds
4 was a Solicitor General decision and not something IO
5 would be doing?

6 A. That's correct. That ~~would've~~would've been the
7 conclusion of their process to do exactly that, ensure
8 that the funds were there to proceed with the project as
9 scoped and defined at that time.

10 160. Q. So, if I understand the timelines correctly,
11 from the expression of interest in October to this
12 decision to commit funds to this facility at this
13 location in June of 2020, about eight months went by.
14 What -- can you walk me through what steps were taken or
15 what process was followed between those two points in
16 time?

17 A. So, I -- what I believe to be true would've
18 happened is that once the property was put on hold,
19 which then, I think would've helped to further inform
20 Ministry of Solicitor General's approach on the project,
21 much of that time would've been the Ministry doing its
22 internal briefings, communications, and then working
23 through the approvals process to secure and ensure that
24 the funding for the project as scoped at the time would
25 have -- would receive approval, which ultimately, I

1 think, culminated in the approval in June 2020. So, a
2 lot of that work tends to be the program ensuring their
3 process and approvals and communications, all that
4 internal work is completed.

5 161. Q. What was the amount that was committed on
6 June 26th, 2020?

7 A. I don't have that number specifically in
8 front of me or top of mind right now.

9 162. Q. Susan, would you object to supplying what the
10 amount allocated on June 26th, 2020 would've been?

11 MS. KEENAN: I'll take that under advisement and
12 we can get back to you on that request.

13 MR. EMARD-CHABOT: Thank you.

14 BY MR. EMARD-CHABOT:

15 163. Q. On the IO website the project overall budget
16 is pegged at -- so, there's a range from 200 to 499
17 million dollars. I'm correct when I state that?

18 A. I ~~eb~~believe that is correct, yes.

19 164. Q. Has that amount over time become clearer? Are
20 you narrowing down the budget range or when would that
21 occur, typically?

22 A. The determination of what that final budget
23 will be, really is only concluded once the RFQ and the
24 RFP process is completed and financial close is
25 effectively achieved, so that the terms of the future

1 project are known.

2 165. Q. So, the projected cost for this project, the
3 design, build, finance, maintain, right now the best
4 number we have, is that this estimate of 200 to 499?

5 A. I believe that is correct.

6 166. Q. Okay. Do you have a -- or, can you give me a
7 bit of an idea of how much is earmarked for design,
8 build, finance, maintain? Or, is that not yet something
9 that ---

10 A. So, until financial close is achieved, I
11 don't believe we have those breakdowns. Ultimately, when
12 you look at that, you know, range that you provided, up
13 to \$400 million, I mean, that would contemplate the
14 entire scope of the project, the value ---

15 167. Q. The 30-year maintenance ---

16 A. The entire DBFM, correct.

17 168. Q. So, just to get an idea of how accurate that
18 range is, if I look at Thunder Bay, do you know what the
19 initial range was? My understanding is the final number
20 now published is \$1.2 billion. So, can you tell me how
21 that compares to the initial assessment and the initial
22 range?

23 A. For that specific project?

24 169. Q. Yes?

25 A. I don't have those numbers ---

1 170. Q. What I'm trying to get at is, how accurate is
2 this \$200 to \$499 compared to other experiences that
3 you've had building provincial jails?

4 A. What I can speak to is that at various and
5 multiple points throughout the project development, cost
6 consultants are engaged to provide quantity surveying,
7 to identify what they estimate the value of the project
8 to be. And our -- if you look at the Affidavit, I forget
9 exactly which number, but there's reference to about
10 \$13,000. That's an example of where we'd engage a cost
11 consultant along the way. So, that would happen multiple
12 points throughout the project. Based on the best
13 available information at the time.

14 171. Q. So, going back to Thunder Bay, do you have a
15 sense of what your initial range was compared to where
16 you landed?

17 A. I don't know.

18 172. Q. Okay. Is that something that could be
19 provided, Susan? Again, I think you can see where this
20 is going. I'm trying to draw comparisons to how much
21 will Kemptville really cost and inferences will be up to
22 the court to accept or not but we'd like to be able to
23 compare some of the more recent projects?

24 MS. KEENAN: I think I'm going to take that under
25 advisement because I think for us, I personally have

1 difficulty seeing the relevance in terms of the case you
2 put forward about what the overall cost of the project
3 will be, but we'll take it under advisement and consider
4 it. We can also discuss it after the Examination.

A

5 MR. EMARD-CHABOT: Yeah, the rationale, again,
6 quite simply is, there are four other, sort of, recent
7 projects, Windsor, Toronto South, Thunder Bay,
8 Brockville. If in each of those cases the range was X
9 and the final was X plus 25 percent, I'd think we can
10 make an argument that the final cost will likely be
11 higher. Whether that will be accepted or not is a
12 different matter but having the data, which is objective
13 and generally public data, would be helpful.

14 MS. KEENAN: Okay. We'll take it under advisement
15 and ---

16 MR. EMARD-CHABOT: I'm explaining why I'm asking
17 for it.

18 MS. KEENAN: Thank you.

19 BY MR. EMARD-CHABOT:

20 173. Q. All right. So, I'm going to get into the sunk
21 costs that are set out in your Affidavit. So, we're
22 going to get into numbers and specifics and hopefully
23 you'll be able to answer some of this. If not, Susan,
24 I'll definitely be asking you for some data on this
25 because it is all about the money at this stage. I'll go

1 into, as I said, a fair amount of details. So, please
2 bear with me as we do this. So, you list at paragraph 11
3 of your Affidavit, four cost categories under which
4 funds are expended or were expended beginning in June
5 2020. Those are your statements. There's the PDC work,
6 plan acquisition, due diligence and internal staff time
7 and resources. So, is that correct? Would those be the
8 four headings?

9 A. Those are the four headings, yes.

10 174. Q. Okay. So, at paragraph 12 you state, "In
11 2018, the Ministry retained NORR Architects to complete
12 the PDC work for multiple correctional facility
13 projects." Do you know when, roughly, in 2018 NORR
14 would've been retained? Is it early or late, first half,
15 second half?

16 A. I don't have that specific information.

17 175. Q. Okay. Do you know which other job projects
18 NORR would've been working on from the moment they were
19 retained to now?

20 A. I don't know specifically.

21 176. Q. So, at paragraph 14 you state that -- I'm
22 going to round numbers just not to get into pennies and
23 so on -- but just a bit under \$1.4 million has been paid
24 to NORR for work related to the Kemptville project
25 between June 2020 and July 2022. Is that correct?

1 A. That is correct. That is my understanding,
2 yes.

3 177. Q. In paragraph 15 you clarify this a little
4 bit, or you qualify it. You say, "If a different site
5 were chosen, 30 percent of the work done by NORR would
6 have to be redone." So, if my understanding of this and
7 my math is correct, if you're forced to select another
8 site, the sum cost or the lost cost would be about
9 \$411,000 over the last two years? A third of the \$1.4
10 roughly?

11 A. If we were to shift to a new site, then of
12 that \$1.4 million, then PDC, approximately 30 percent of
13 that value, that value or the activities associated with
14 those values, would have to be done because that 30
15 percent effectively equates to responding to specific
16 site conditions and characteristics as it relates to the
17 output specifications to be defined for the project.

18 178. Q. The total \$1.4 million paid to NORR with
19 respect to Kemptville, where does that data come from?

20 A. That is provided through invoices as
21 processed through our -- IO's cost and budget management
22 team.

23 179. Q. Is there a reason, and I don't know if Mr.
24 Macey or Susan, why more backup documents were not
25 provided to support this number? Is there a reason why

1 invoices weren't included or a breakdown or a table?

2 MS. KEENAN: We didn't see it as necessary but if
3 you want to make a request for that, we can certainly
4 consider it.

5 MR. EMARD-CHABOT: Okay. I'll make the request,
6 please.

7 MS. KEENAN: Just to clarify, that's for the
8 invoices that set out the data that we've included in
9 that paragraph?

10 MR. EMARD-CHABOT: Yeah, it's the breakdown of
11 the \$1. -- just a little bit under \$1.4 million that is
12 stated at paragraph 14, correct.

13 MS. KEENAN: Okay, thank you.

U

14 MR. EMARD-CHABOT: If producing all the invoices
15 is going to be labour-intensive and not necessary, I'll
16 be satisfied with a table indicating, sort of, date,
17 amount and the work done, if that's easier.

18 BY MR. EMARD-CHABOT:

19 180. Q. So, you list a number of tasks that were
20 undertaken by NORR. The first one is assessment of all
21 existing project background information and site due
22 diligence reports. What is the purpose or the role of
23 this step in the process?

24 A. So, part of the work that NORR will produce
25 needs to respond to the conditions of the site. So, the

1 due diligence, as an example, if servicing or access is
2 only available at a certain point, if there are natural
3 environmental constraints where a portion of the site
4 cannot be developed. Things that they would need to have
5 to inform preliminary concepts to start to test fit
6 sites and better understand what can or can't happen.

7 181. Q. Thank you. Has this work been completed?

8 A. That work has -- for this specific project at
9 this site, I understand and believe, it's at 75 percent
10 complete and reporting to support that 75 percent
11 completion is currently under review by the IO team.

12 182. Q. Thank you. Can you summarize what the key
13 findings of that conclusion would be?

14 A. For the portion of that work that I'm aware
15 of, which relates more specifically to test fit and
16 understanding some of the requests from the municipality
17 with respect of buffer lands that border the west and
18 south portions of the site, it's really trying to
19 understand, can the size of the facility and the program
20 requirements, parking, outdoor areas, all those things,
21 fit within the site given the considerations for buffer
22 lands and other constraints. For example, there's some
23 natural heritage that we need to work around and cannot
24 develop upon. So, they understand the site in relation
25 to that and then provide recommendations on test fits.

1 They're not the final conclusion -- concluded designs of
2 what will be achieved there but that's -- that goes
3 through the RFP, RFQ process.

4 183. Q. So, I gather a copy of -- or maybe not -- but
5 has a copy of this -- so, you say the 75 complete is
6 being reviewed. Has that been shared with the
7 municipality or does it simply incorporate comments from
8 the municipality?

9 A. The NORR's -- it will incorporate comments
10 from the municipality, perhaps better characterized as
11 considerations. The -- some of the test fit concepts, as
12 I understand ---

13 184. Q. Mr. Macey, I'm going to interrupt. Test fit,
14 can you describe that for me?

15 A. So, effectively, PDC in this case would take
16 what they ~~udnersatnd~~understand to the point of, what
17 does the program need, in terms of, you know, for this
18 example, outdoor space, parking areas, staff space ---

19 185. Q. Recreational space for inmates?

20 A. All of those components of the program, they
21 effectively put together preliminary concepts of, what
22 does that building look like. And then the test fit is
23 to understand on a given site, one, will it physically
24 fit given all those program requirements, and two, what
25 is the optimal way to do that given the site and then

1 surrounding area considerations.

2 186. Q. The optimal way given considerations would
3 include the considerations shared by or expressed by the
4 municipality?

5 A. That would be a consideration, yes.

6 187. Q. Part of the mix of that test fit ---

7 A. Correct. And that can evolve and iterations
8 of that test fit take into account those -- that
9 feedback.

10 188. Q. ~~Obvieu~~Obviously, there will be
11 ~~diaglogue~~dialogue on. Do you know when the municipality
12 was first consulted on this process, roughly?

13 A. Yeah. Again, I don't have direct knowledge of
14 that. I'm going back to when I would have engagements
15 with our senior project manager on the file. It would've
16 been certainly by late 2020, if not earlier. At the
17 point -- and that would've been with respect to the
18 evolution of the materials at that point in time, which
19 of course continued to -- have continued to evolve and
20 still do.

21 189. Q. Has any of this process been made available
22 to the public?

23 A. Not to my knowledge and keeping in mind that
24 this process is iterative and it's by no means
25 finalized. So, it's -- there's no final outcomes of this

1 work. It seeks to inform the further procurement process
2 that RFP, RFQ -- RFQ, RFP respondents know what they
3 need to take into account in their submissions, which at
4 that point can continue to change until the project
5 agreements are signed off.

6 190. Q. Okay. Thank you. Would this first piece, the
7 assessment of existing project background information
8 and the due diligence reports, would that -- and the
9 interactions with the municipality -- would that also
10 take into account land use planning, zoning, building
11 permits, site plan or things like that or is that at a
12 different location in that list of things you've
13 mentioned?

14 A. No, that would be considered at the earliest
15 possible stages. And again, as discussions with the
16 municipality and investigations by our internal team and
17 our third-party consultants evolve, that continues to
18 inform the overall process.

19 191. Q. Okay. Has the need to change zoning or --
20 anything been identified at this point?

21 A. As, you know, we've seen earlier on in some
22 of those slides, that was one of the things that we
23 absolutely need to look into. The work continued, we
24 continued to understand what designations or zoning by-
25 law changes may or may not be needed. Ultimately, it was

1 concluded with the municipality that they provided a
2 letter indicating the use would be permitted under the
3 existing entitlements.

4 192. Q. Do you know when that came through roughly or
5 not?

6 A. I believe ---

7 MS. KEENAN: We have a letter. We can actually
8 provide you with a letter if you'd like.

9 MR. EMARD-CHABOT: Please. Thank you.

10 THE WITNESS: Yeah, I believe it was in and
11 around January 2021.

12 BY MR. EMARD-CHABOT:

13 193. Q. Okay, that's fine. So, turning to point B in
14 your Affidavit, a development of site-specific
15 masterplan report, detailed analysis of site
16 constraints. What does this entail and what's the
17 purpose of that state compared especially to the first
18 one you mentioned, we just covered?

19 A. Yeah, so the masterplan report effectively is
20 the outcome of A, being that they've looked at the site,
21 they understand how it -- better how it fits, what the
22 constraints are related to that from a physical
23 perspective. Then from an operational and servicing and
24 structural perspective, they would start to identify
25 their findings as well.

1 194. Q. Okay. Has this piece been started at all or
2 not? I would imagine sequentially it would come next but
3 I'm not sure if work on this would begin?

4 A. I don't have specific knowledge of that but I
5 believe the work has begun and is an iterative component
6 of that 75 percent completion.

7 195. Q. Okay. Again, I'm assuming there would be some
8 interaction with the municipality as part of that
9 process? A and B seem to be fairly closely intertwined?

10 A. That's -- as part of the overall process,
11 yes, there would be those engagements. So, I think that
12 is correct, broadly.

13 196. Q. I should have asked earlier: so, municipality
14 has confirmed zoning is a go; have they indicated a
15 request for a site plan as part of this process and if
16 so, do you plan on respecting that, seeing as you don't
17 really have to?

18 A. So, typically as these projects proceed,
19 there's actually -- site plan for these projects are
20 typically two-phased, which is not industry standard
21 with the private market. You typically development go
22 forward, you have your site plan application and then
23 you go through all the conditions. With the way we run
24 P-3 projects, because the final design is not known
25 until the outcome of the procurement and the project

1 company is identified, we run two-stage. So, stage one,
2 site plan application, is effectively socializing and
3 the way I put it is, this is the box whereupon we will
4 situate a former project. So, it sets out most of what
5 we intend to have developed at the site. And then the
6 second stage would be with the project company
7 proponent, who then would bring the final design in ---

8 197. Q. The actual, this is what we'll build?

9 A. Correct.

10 198. Q. Okay. Thank you. Point C in that list you
11 mentioned, development of conceptual site layouts, block
12 schematics, to test the requirements. These sound a bit
13 like test fit again if I'm not mistaken. So, can you
14 again describe how C is different from A and B and how
15 it perhaps interacts?

16 A. Yeah, so C -- A and B are more about the
17 physical site, the physical building. C is about how
18 does the program actually physical equate to the future
19 facility. So, one is more concerned with the physical
20 aspects of the future structure and accompanying
21 components. C is more about, how do I then fit in
22 components of a lunchroom within this building here and
23 how does that relate to a staff room and all those types
24 of components. So, you can kind of think of it, A and B,
25 A specifically, is more about the external

1 functionalities, C is more about those internal
2 functionalities.

3 199. Q. Okay. I can understand that; that is nice.
4 So, has that work started or is that a later phase?

5 A. That work has started and would've been part
6 of that 75 percent completion report.

7 200. Q. D, you talk about work with the relevant
8 authorities to assess requirements for permits and
9 approvals and so on. We've already touched on that.
10 Other than the zoning and the site plan that we've
11 already talked about, is there anything else that IO has
12 engaged with North Grenville on?

13 A. Any components of engagement with North
14 Grenville beyond land use, would really be leading with
15 the authorities having jurisdiction over environmental
16 features, over transportation features, over access. So,
17 depending on the authority that would have jurisdiction
18 over that component of the project, that's where we'd
19 look to inform the future procurement process as best as
20 possible.

21 201. Q. Okay. So, the Conservation Authority, for
22 example, would have been consulted at some point?

23 A. That is correct.

24 202. Q. Would their feedback have been part of the
25 considerations for the A and B process?

1 A. That is correct.

2 203. Q. Okay ---

3 A. And just to further qualify, their feedback
4 and/or the specific requirements of any guidelines which
5 would inform what ---

6 204. Q. Setbacks from a waterway, things of that
7 nature, floodplains, I would imagine?

8 A. Exactly. Exactly.

9 205. Q. Okay. Have other public authorities been
10 engaged? Ministry of Transportation for the highway?
11 Anything like that, as part of this process?

12 A. Specifically, I don't have that response, but
13 broadly where we've run into any questions to try and
14 confirm and best understand a certain set of conditions,
15 then, yes.

16 206. Q. Have any requirements, constraints, been
17 added to the mix by other authorities, other than the
18 municipality and the Conservation Authority we've
19 already talked about?

20 A. None to my knowledge. Just those authorities
21 having jurisdiction over various parts of the project,
22 which happens in the normal course of any project.

23 207. Q. Exactly. Whatever you're building, you'll
24 have to go through this?

25 A. Correct.

1 208. Q. So, piece E in your list, development of the
2 P-S-O-S, the Project Specific Output Specific -- that's
3 a mouthful for me, especially as my second language. Can
4 you fill me in on, again, the -- what this is and how it
5 relates to A, B, C, and D we've already talked about,
6 please?

7 A. Yes. So, the PSOS -- I'm with you ---

8 209. Q. That's is easier ---

9 A. Project Specific ---

10 210. Q. --- I like that

11 A. --- Output Specifications, that is the --
12 they're the culmination of all of those investigations.
13 And that is what is provided as part of the RF -- the
14 procurement package to proponents to respond to and, the
15 requirements, at a minimum, they need to address as part
16 of their submission.

17 211. Q. Is this work underway as well or is that
18 something that will wait until later?

19 A. That's part of the 75 percent complete
20 package.

21 212. Q. Thank you. So, these things move forward in
22 lock step and area adjusted as they go along. Is that
23 accurate?

24 A. Yes, that's fair to say. It's not a
25 sequential process. It tends to be iterative.

1 213. Q. Okay. The last piece of this \$1.4 million is
2 conducting and participating in community consultation
3 meetings. I did not see NORR mentioned in any of the
4 materials for the meetings I'm aware of. So, I'm
5 curious, what did NORR do as far as conducting community
6 consultations?

7 A. To my knowledge, they've been at multiple
8 meetings with the municipality from a project
9 perspective. In terms of specific community
10 consultations, I don't have that information.

11 214. Q. Would that be a separate line item in an
12 invoice? I'm curious, because zooming out, you're
13 claiming you spent \$1.4 million on NORR and their work.
14 Part of the work is community consultations. I don't
15 know of any; you can't point to any. So, I want to make
16 sure that in that \$1.4 there isn't some money for
17 meetings that haven't taken place?

18 A. I would have to look at the specific
19 invoices. Again, with their work being, sort of, 75
20 percent complete, I'm not fully aware of what is, you
21 know, contemplated to round out that 25 percent.

22 215. Q. If the work is 75 percent complete, is --
23 would they have billed 75 percent of their fees for the
24 project at this point or how would that work? Is the
25 \$1.4 million 75 percent, or is that the full amount paid

1 upfront and they continue to do work, for example?

2 A. It would be 75 percent of scope. Aspects of
3 the scope would be priced differently.

4 216. Q. Okay. So, the \$1.4 should be an accurate
5 reflection of money spent and progress of the project?

6 A. Based on the percentage of scope and
7 activities that were completed.

8 217. Q. Yeah, okay. Again, just to be clear, you
9 didn't give them 100 percent of the amount upfront and
10 then they're continuing to do work?

11 A. No, progress payment.

12 218. Q. Paragraph 16, you mention the additional
13 \$13,000. You alluded to, or you didn't allude to it; you
14 talked about this specifically earlier. These are
15 consultants that specifically help -- I just want to
16 make sure I understood -- they specifically help
17 determine the costing of the project and whether that
18 \$200 to \$499 million is still a good estimate and
19 narrowing that down. Is that correct?

20 A. Yes. They're cost consultants, quantity
21 surveyors, that look at where the project is at, what is
22 going to be built and those components, and then seek to
23 inform costing and budget for the project. So, that's
24 correct.

25 219. Q. Okay. Thank you. So, I'm turning now to the

1 land acquisition piece, the second of those four
2 headings. So, of the \$7 million that are -- that the
3 amount mentioned in paragraph 11, as being invested in
4 the project, if I look at paragraph 18, \$2.5 million of
5 that amount is the cost of acquiring the Kemptville
6 site. Would that be correct?

7 A. That is correct. For the transaction to
8 acquire the site, yes.

9 220. Q. Okay. Are you aware that my clients and the
10 public in general were told on a few occasions by Mr.
11 Veshkini at sessions where Mr. Gismondi attended, that
12 one of the reasons for selecting the Kemptville site is
13 the fact that it was in the provincial portfolio and the
14 acquisition costs would be zero? Is that something you
15 were aware of?

16 A. I'm not aware of any ~~zero value~~zero-value
17 attached to the potential transaction.

18 221. Q. Or comments to that effect being made by
19 officials?

20 A. Not directly, no.

21 222. Q. Would there be a scenario where you can
22 acquire land for zero from another provincial arm?

23 A. I -- if that was to happen, it would be the
24 conditions of the property, the market, the use, the
25 motivations of the seller, whatever other, you know,

1 conditions of that particular circumstance would inform
2 a nominal or a zero value ---

3 223. Q. But land is not normally transferred from one
4 arm of the province to another for zero dollars. Is that
5 correct?

6 A. Not in my experience with respect to the work
7 Infrastructure Ontario does. That's not the typical
8 process, no.

9 224. Q. Okay. So, I'm turning now to Exhibit C of
10 your Affidavit. That's on page 26, Susan, of the
11 Province's Motion Record. There's an invoice there from
12 IO to Sol Gen. Is that what you would've -- again, not
13 you personally but, IO would've sent to Sol Gen to
14 recover the cost of acquiring the land? Is that correct?

15 A. That is correct.

16 225. Q. So, if I look at that invoice -- and I don't
17 know if you have it, Mr. Macey. I can put it on the
18 screen if you need to, but if you have it, that's even
19 better?

20 A. I have it.

21 226. Q. Okay. There are two lines there under the
22 land capital box of the invoice. Can you tell me what
23 those two lines are, please?

24 A. Yes. The first line would've been the value
25 of the acquisition attributed to the buildings on the

1 property. The second line would've been the value of the
2 ~~transaction~~transaction associated with the land.

3 227. Q. Okay. So, of the \$2.4 or \$2.5 million being -
4 - and this is money being paid by IO to ARIO to purchase
5 the land, or by -- who's making the cheque to who on
6 this one?

7 A. Yeah, so the mechanics of the transaction
8 typically would be that where we would receive in this
9 instance the invoice from ARIO, we then would request
10 those funds from the Ministry of Solicitor General. So,
11 then ---

12 228. Q. The client?

13 A. The client. So, then we then could process
14 that invoice. IO doesn't have funds for these types of
15 activities.

16 229. Q. So, 18,000 is being paid to acquire the 100
17 and some acres. 2.4 is attributed to the value of the
18 buildings on that site?

19 A. To the depreciated book value, yes.

20 230. Q. Okay. As far as the process has evolved
21 through the planning and the A, B, C, D, E that we
22 looked at earlier, are any of these buildings going to
23 be retained?

24 A. For the future project, my understanding is
25 that they'll require the entire site where I believe all

1 the existing buildings are located. So, I do not believe
2 any of the buildings will be retained.

3 231. Q. So, fair to -- or, accurate to say that they
4 will actually be demolished?

5 A. I believe that is the plan. There were
6 discussions with the municipality about having them --
7 they having interest in trying to retain one or two of
8 the buildings. I don't have the current status and
9 latest on that.

10 232. Q. Okay. Thank you. If I look now past the
11 invoicing piece, I'm looking at page 28 of the PDF?

12 A. Okay.

13 233. Q. So, there are some spreadsheets there. I'll
14 zoom in a little bit because they're quite small. So,
15 would you mind just walking me through generally what we
16 see in Appendix 1, which is the cost breakdown?

17 A. Yeah. So, what this shows is an inventory of
18 the existing buildings on the property as well as any
19 extensive renovations or capital investments that
20 would've been made at a point in time. So, effectively,
21 we're looking at some of the statistics, the name, the
22 size, the condition. And then to the right side, just
23 looks at the depreciation over time of those assets
24 where you see the original value, the accumulative
25 depreciation and then the net book value.

1 234. Q. Which is what the client is paying to
2 ~~acquire~~acquire?

3 A. That is the value for the transaction,
4 correct.

5 235. Q. Okay. There are a few references in all three
6 of these tables, and I'm treating the bottom as two
7 different ones. To watermain installation, is the site
8 currently connected to municipal water and wastewater
9 services?

10 A. It is. In terms of the watermain connection,
11 back on to the holding side of things, when the -- an
12 entity expresses interest and then has a business case
13 submitted and is approved to hold property, at that time
14 they also take on the holding costs to continue to
15 insure the property, while first of all is maintaining
16 the condition that it needs to be, but second of all, by
17 holding property they then do not permit for the direct
18 sale of the property. So, the entity that currently owns
19 the property is made whole through the other entity, in
20 this case Ministry of Solicitor General, taking on the
21 holding costs of the property.

22 236. Q. It would have been from October 23rd, that
23 expression of interest letter we saw?

24 A. That -- so, that business case, the Exhibit,
25 would've been the expression or the business case to

1 formalize the hold on the property. The date the hold
2 was specifically agreed to or approved, I don't have
3 that handy, but that would be the starting point.

4 237. Q. That would have come shortly or at some point
5 after October 23rd, 2019?

6 A. Yeah, and the holding costs usually are set
7 out on an annual basis depending on the nature of how
8 the owner manages the property or incurs those costs.
9 So, to get back to your question, the -- there was some
10 watermain work associated with those holding costs. In
11 total, the holding costs were just under \$1.5 million.
12 About \$1 million of that was attributed to the work
13 required to -- related to the watermain and just under
14 \$500,000 was for operating, taxes, maintenance, that
15 type of thing.

16 238. Q. Now, I, again, if I'm not reading these
17 correctly, please let me know, but what I see here is
18 revenue recovery and payments to Sol Gen for that \$1
19 million you mentioned for the watermain. Is Sol Gen
20 recovering that money from the transaction? I'm just
21 trying to understand the figure here and then ---

22 A. So, my understanding is that as part of the
23 holding costs, there was approximately \$1 million in
24 watermain work that was required and my understanding is
25 that is outside of the \$2.4 million transaction costs

1 which are set out in that table.

2 239. Q. So, who in fact is paying or has paid that
3 \$1.1 million for the watermain work? Did Sol Gen pay
4 that or did ARIO pay that?

5 A. I don't have the specifics. The relationship
6 between on those numbers are between OMAF -- sorry,
7 Solicitor General and ARIO. IO wasn't part of that
8 relationship; we had no ownership, we weren't on the
9 hold.

10 MS. KEENAN: We can clarify. We can give you that
11 information. So, we can undertake ---

12 MR. EMARD-CHABOT: That would be helpful. Again,
13 Susan, just so you understand where I'm coming from, I'm
14 trying to figure out if -- sorry, if the \$2.5 million is
15 the net cost or if there -- if Sol Gen is getting \$1
16 million back from ARIO for watermain work.

17 MS. KEENAN: Right. I understand looking at the
18 cost breakdown that we're talking about the watermain
19 installation line and whether that was included in the
20 \$2.4 or whether it was outside the \$2.4.

21 MR. EMARD-CHABOT: Exactly.

22 MS. KEENAN: Okay. Thanks.

23 BY MR. EMARD-CHABOT:

24 240. Q. There were some fire hydrants installed in
25 2019/2020 along that road. Do you know, Mr. Macey, by

U

1 any chance if that's related to this work?

2 A. I don't know.

3 241. Q. You don't know? Okay. Do you know if there's
4 a contribution agreement of sorts relating to municipal
5 services with North Grenville for water capacity,
6 watermain, wastewater capacity, anything like that?

7 A. I don't know if there's an executed
8 agreement. There were discussions between Solicitor
9 General and the municipality with respect to increased
10 capacity requirements to accommodate the facility at the
11 site, as part of the planned project that the
12 municipality was already looking to undertake.

13 242. Q. IO was not involved in those discussions?

14 A. IO would have been involved in helping to
15 understand what that additional capacity requirement
16 would be, but the final execution and negotiation of the
17 commercial parameters, I'm not aware of our involvement,
18 at least to the extent that, you know, my team was not
19 involved.

20 243. Q. You're not the middle person for this
21 agreement?

22 A. That's correct. I'm not aware of the status
23 of the stakeholder specifically impacting an outcome.

24 244. Q. Okay. If, for some reason, such as a
25 successful prosecution of the Application in this case,

1 if you have to look for another site, what would
2 typically happen to the land ~~acquired~~acquired by -- from
3 ARIIO for this project?

4 A. Is the question that if an alternative site
5 was needed to be source, what would happen to the
6 existing lands currently in Ministry of Infrastructure's
7 ownership?

8 245. Q. Correct?

9 A. So, the process when we have identified
10 surplus property, the starting point is for the ministry
11 having interest in the property, not necessarily on
12 title but more, you know, operational, ---

13 246. Q. So, would that be Sol Gen or Infrastructure?

14 A. In this case it would be Sol Gen.

15 247. Q. Okay?

16 A. Executing a surplus declaration form, that
17 then would trigger a couple of things. First of all, a
18 review of the property and understand the components to
19 understand, you know, the marketability, any
20 constraints, just underwriting a project -- or a
21 property, as you would in the normal course. It would
22 also start the circulation process, whereby the property
23 would be circulated internally to ministries, agencies
24 as part of stage one. Stage two then goes to the broader
25 public sector including municipalities. Stage -- sorry,

1 stage three, goes to broader public sector and
2 municipalities and other qualified entities. So that
3 before it would go to the open market, the public sector
4 would have a chance to express interest. And it's the
5 same process Sol Gen went through at the beginning of
6 this. If it would -- if it's determined that there is no
7 ---

8 248. Q. Sorry, sorry. You say same process Sol Gen
9 went through at the beginning of this ---

10 A. So, when ---

11 249. Q. Which ---

12 A. Sorry.

13 250. Q. --- did they -- surplus?

14 A. Yeah. In October 2019, when ARIO surplussed
15 this site ---

16 251. Q. Okay ---

17 A. --- that's the same circulation process.

18 252. Q. Thank you. Yeah?

19 A. So, in the event that no public entity
20 expresses an interest in the site, we then go to the
21 open market. So, and that ultimately -- if a property is
22 declared surplussed through that process and there's no
23 program need, then there's no need for the property and
24 we look to divest.

25 253. Q. Okay. So, it's accurate to say that some or

1 all of the purchase costs would be recovered?

2 A. Depends on the market conditions at the time.
3 So, depending on how attractive the property is, the
4 market, who the buyers are in the market, various
5 financial considerations as well. I mean, cannot say
6 that ---

7 254. Q. Rates and everything else, right?

8 A. Correct. Correct.

9 255. Q. Okay. How long does this disposal process
10 take, roughly? Generally, is there a range? Three to six
11 months? Six months to a year?

12 A. Yeah, it depends on the property. So, the
13 circulation process typically will take, assuming no
14 interest is expressed, up to about three months. The
15 status of the property depends on how much due diligence
16 is there, is reliable and can be relied on, and then the
17 size of the property. If we're talking one acre site
18 versus 10,000 acres. You know, all the due diligence
19 that we have in place to be able to sell a property and
20 ultimately receive an Order in Council from government
21 with direction to sell the property, it can take a
22 varying period of time.

23 256. Q. How would you characterize -- I'm going to go
24 back. One of the things you said was one of the factors
25 that will influence the, I would imagine, the

1 desirability or the salability of a property is how much
2 due diligence you have and how much is reliable. Given
3 the work you state you have done on this property, is it
4 fair to say that you would be able to provide a
5 purchaser with fairly complete and accurate due
6 diligence information at this point?

7 A. Just to clarify, the market interest in the
8 site would not be based on our due diligence, it would
9 be based on subjective, you know, requirements, demands,
10 interest of a particular buyer. In terms of the process
11 to bring a property to market, we have minimum due
12 diligence requirements to be able to get that Order in
13 Council, so that we know enough about the property that
14 it's a well-informed transaction to the extent that
15 that's, you know, possible.

16 257. Q. That's part of the request for an Order in
17 Council to do this?

18 A. Correct. Before we request the Order in
19 Council, typically, predominantly we will have completed
20 a suite a due diligence to inform various conditions and
21 an understanding of the site.

22 258. Q. So, there are letters indicating that the
23 municipality of North Grenville has expressed and did
24 express interest before the jail project was announced
25 in acquiring this property and it actually acquired a

1 fair chunk of it across the road. As part of the
2 disposal process at stage three, that is where North
3 Grenville could say, we want it. Is that fair?

4 A. That is correct, yes.

5 259. Q. Okay. So, my question relates more to if you
6 can recover all, some, potentially even more depending
7 on market conditions, right? So, it was bought for \$2.5,
8 it could go up higher than that if the market is good.
9 How can this be considered a lost or, you know, wasted
10 cost if you are forced to look for another site? I can
11 understand the \$1.4 that we went through for NORR. I
12 just don't get it for this?

13 A. So, the starting point in terms of the \$2.4,
14 at a point in time, those funds were reserved for the
15 acquisition of the property versus whatever other
16 priorities there may have been, given that there's
17 finite funding in any given fiscal year. So, that \$2.4
18 million was directed towards this project and not
19 whatever other priorities Sol Gen may have had. And
20 associated with that, it's an order of magnitude,
21 potentially low order of magnitude, of what that cost
22 would be if we did need to find a new site. We know that
23 the market continues to be challenging and especially in
24 consideration of this type of facility and we know that
25 market values have continued to increase. So, it is a

1 reflection ---

2 260. Q. What do you base that statement, Mr. Macey?

3 A. The escalating value? Information as provided
4 from our third-party broker with respect to the Ottawa
5 area and for this type of facility and more so the land
6 component.

7 261. Q. That's despite interest rate hikes like we
8 haven't seen in a long time?

9 A. Yeah, so without specifically referencing
10 that as the information from our brokerage, I think, if
11 anything, the trend typically is that if there -- if
12 buyers are not in the market because the cost to borrow
13 is higher than what their financial projections would
14 permit them to do, sellers often can respond by not
15 listing property. So, just finding available
16 opportunities will be limited -- likely will be limited.
17 Again, knowing that there'd be a decreased buyer pool
18 and less competitive tension potentially in the market.
19 And where there are those opportunities, there's --
20 those buyers still in the market, you know, are going to
21 price accordingly given, again, it's a supply/demand
22 argument.

23 262. Q. Without a crystal ball, very hard to predict,
24 I would imagine?

25 A. Correct. Correct. But again, the trending

1 from our brokers that, you know, since the time that
2 some of the values we've seen in some of the documents
3 put together, I mean, they've increased since then, just
4 as a broad general statement.

5 263. Q. That would apply to this property as well, I
6 would imagine?

7 A. I guess objectively from the market
8 perspective. Again, that may be true. We don't know.

9 264. Q. There's no reason this property would escape
10 that trend?

11 A. Yeah, objectively speaking, yeah.

12 265. Q. Okay. So, this is more -- if I go back to
13 your initial answer, there's the opportunity cost, I
14 think is more what this means for Sol Gen of having to
15 earmark that money, pay it out, and leave it there until
16 this is resolved?

17 A. I would believe opportunity cost is a good
18 way to put it without being part of the Sol Gen to
19 qualify that 100 percent.

20 266. Q. Understood. Just, I think, probably my last
21 question on the land acquisition piece. We talked about
22 input from other entities forming part of that evolving
23 test fit process and so on. Have there been discussions
24 with other entities for the use of the site for other
25 developments? So, is there a private developer

1 interested in putting some houses on some of it? Has
2 there been any talk of things of that nature?

3 A. We have not specifically looked at that as
4 part of this project. That would be something that we
5 would look at in the event that we were to have to find
6 a different site as part of that process.

7 267. Q. Okay. So, Susan and Mr. Macey, this finishes
8 my questions with respect to the land acquisition piece
9 and then there's the due diligence and the staff time
10 elements. The due diligence, you list a bunch of reports
11 so I'm going to ask you a lot of specific questions on
12 each which may be tedious and long. So, my question is,
13 is this a good time to take a break or do you have a
14 preference for me continuing a little bit longer?

15 A. You know, I'd be happy to take five minutes.

16 268. Q. Or we can pause for lunch. A meal is not
17 prohibited during these proceedings. Keeping the blood
18 sugar to a reasonable level.

19

20 (OFF RECORD LUNCH BREAK)

21 BY MR. EMARD-CHABOT:

22 269. Q. So, to place us back into context very
23 briefly, we've looked at the PDC cost, the land
24 acquisition cost. I'm now going to turn to the two other
25 categories that you mention in your Affidavit. The first

1 is the due diligence costs. At paragraph 19, you state
2 that just over \$1 million were spent on site-specific
3 real estate due diligence work, work that cannot be
4 recovered. That's correct?

5 A. That's correct.

6 270. Q. Okay. Then you list 16 specific studies or
7 reports that would've been commissioned as part of that
8 work. Is that the complete list of work that has been
9 done for this site?

10 A. As it relates to the preconstruction due
11 diligence, yes.

12 271. Q. Okay. Is this a standard list of work or was
13 there anything unique about this site?

14 A. This represents, for the most part, the
15 standard suite of due diligence we complete when doing
16 that on -- be it to inform P-3 projects. Again, the
17 circumstances of a site may change some of what these
18 due diligence reports need to be depending on those
19 conditions, so, for example, right, if there's water
20 features, environmental features, things like that, can
21 adjust what may be required.

22 272. Q. Okay. So, I'm going to go through each one of
23 these with you and ask you a couple questions on each.
24 The first is the stage one and two archeological
25 assessment. What does this entail and what's the purpose

1 of this work?

2 A. The archeological work seeks to understand
3 whether or not there are potential findings or anomalies
4 that need to be researched underneath, you know, within
5 the ground. Stage one and two typically is a desktop
6 analysis, looking at the history of the property, the
7 location and any known historic -- history that may have
8 impacted the site. Stage three is a bit more practical
9 where they may do some test bits and just confirm or
10 refute assumptions from the stage one, stage two work.

11 273. Q. Okay. Is stage three always undertaken or
12 will that depend on the findings of stage one and two?

13 A. It depends on the findings of stage one and
14 two.

15 274. Q. So, if there is nothing on paper that might
16 indicate the presence of something, you would not
17 normally undertake phase three, or stage three?

18 A. That is correct.

19 275. Q. Okay. When was stage one and two
20 commissioned?

21 A. I -- I don't have the exact dates. Likely,
22 likely in and around August 2020.

23 276. Q. Shortly after the announcement? Would that
24 make sense?

25 A. Once the funding was there to inform that,

1 yes, we could go and procure and make commitments. It
2 likely would've followed that.

3 277. Q. So, sometime after June 2020 when the funding
4 was allocated?

5 A. I believe so, yes. Now, some of this work
6 ~~could've~~could've happened to inform some of the earlier
7 very preliminary assessments, as we saw in some of the
8 slides previously shown. But I can confirm that the \$1
9 million is spent -- those invoices and the spends were
10 received from June 26th to the date or to the point at
11 which we'd submitted the Affidavit.

12 278. Q. Okay. So, some of those invoices pre-date the
13 announcement?

14 A. There could -- there ~~could've~~could've been
15 some activity and some costs incurred prior to the June
16 26th date and, you know, as early as ---

17 279. Q. As part of that iterative ---

18 A. Correct.

19 280. Q. --- process to your client?

20 A. Correct.

21 281. Q. Okay. So, Susan -- can we go off the Record
22 just for a minute, please Jessica, sorry?

23
24 (OFF RECORD DISCUSSION)

25 BY MR. EMARD-CHABOT:

1 282. Q. So, Mr. Macey, we have an understanding that
2 financial information on the 16 studies will be provided
3 in writing and I'll skip those questions. So, going back
4 quickly to the stage one and two archeological
5 assessment, do you know off-hand what the principal
6 conclusions of that work were? Was there anything on
7 site of relevance or significance?

8 A. I don't have the specific outcomes but some
9 outcome would've spoken to the need to do a stage three
10 assessment and ---

11 283. Q. Okay, so you did proceed to stage three on
12 that one?

13 A. Correct.

14 284. Q. Okay. The findings of the archeological work,
15 stage one, two, and three, were they shared with the
16 municipality at all?

17 A. I'm not aware but I don't believe so. That
18 wouldn't be standard practice.

19 285. Q. Okay. Has that report been made available to
20 the public in any way?

21 A. Not to my ---

22 286. Q. That you know of?

23 A. --- knowledge.

24 287. Q. Not to your knowledge?

25 A. Not to my knowledge.

1 288. Q. Okay. So, the soil analytical results
2 summary. Again, very roughly, can you tell me what that
3 work entails and what the purpose of that work is?

4 A. Apologies. It would relate to understanding
5 the nature of the conditions, the subsoil conditions,
6 which would help to inform what the future engineering
7 requirements may be related to the project. And as
8 you'll see, it ties somewhat closely to a couple of the
9 other studies as well.

10 289. Q. Geotechnical, I would imagine, and things of
11 that sort?

12 A. Exactly.

13 290. Q. Do you know when this work would've been done
14 roughly?

15 A. I don't have the date -- the dates on those
16 specifically, no.

17 291. Q. For the soil analytical work, would that have
18 been provided to anybody outside the process?
19 Municipality, public?

20 A. Not out side of the process, no, ---

21 292. Q. Not something you would normally do, either?

22 A. No.

23 293. Q. Okay. Same questions with the geotechnical
24 investigation. What's the difference between that and
25 the soil study and what -- how would that work into the

1 process?

2 A. So, the soil analytical results will really
3 inform things like compaction metrics, to understand the
4 weight-bearing opportunity to the soil. The geotech gets
5 into a bit of that but more specifically tries to
6 understand things like bedrock and more sort of
7 substantive subsoil conditions and not necessarily just
8 soil but also the geophysical rocks and bedrock, all
9 those other things.

10 294. Q. Okay. Again, not something that typically
11 would be shared?

12 A. Not typically ---

13 295. Q. Outside the process?

14 A. No.

15 296. Q. Okay ---

16 A. Now, all of these studies typically would be
17 shared as part of the procurement phase to inform
18 project company proponents, but at this point in time,
19 they would not have been.

20 297. Q. So, proponents would have access to this data
21 so they can determine what they think will be the cost
22 to build and so on?

23 A. Correct.

24 298. Q. Okay. For all of these -- and I don't know if
25 there's a single answer for these 16 listed items but,

1 the consultants retained to do this work, how is that
2 work typically awarded? Is it on a site by site or do
3 you have a standing agreement with some consultants? How
4 does IO normally proceed?

5 A. So, within the different disciplines relating
6 to these activities, IO has internal subject matter
7 experts, as well as rosters of vendors of records who
8 went through competitive procurement processes to get on
9 the list. And then work based on things like geography,
10 things like location, and then the individual expertise
11 and experience of the different companies are selected
12 and awarded work through that process.

13 299. Q. Okay. So, if you need somebody, typically,
14 you have list. You can say, call X and they can do this
15 and there's a process already in place for that?

16 A. Depending on how the master agreements for
17 each of the different ---

18 300. Q. Professionals?

19 A. --- vendors of record are set up, yeah, you'd
20 follow that process.

21 301. Q. Would it be accurate to say that essentially
22 each of these are awarded through a competitive process
23 of some kind?

24 A. To get onto the vendor of record list?

25 302. Q. Yeah?

1 A. That is the competitive process to get there.
2 Individual vendors of records or standing agreement,
3 master agreements, have mechanics whereby you can choose
4 based on the value for money, attributes of that
5 proponent, or you can go competitively within the roster
6 as well.

7 303. Q. Thank you. So, turning now to E, the
8 geomorphic hazard assessment. How is that different from
9 the other two soil investigations?

10 A. I -- I don't have specific or direct
11 knowledge. We rely on our internal colleagues, subject
12 matter experts. But effectively speaks to what the
13 shifting or changing conditions underneath the soil,
14 future settling, other associated outcomes or impacts to
15 the development and what to be aware of and not to be
16 aware of.

17 304. Q. Okay. Again, this is work that would not
18 typically be shared until the procurement process?

19 A. Correct.

20 305. Q. Is there a reason why -- and the reason I ask
21 that question is, there were a number of freedom of
22 information requests filed seeking to have access to
23 some of these, if not all of, these pieces, and those
24 have all been denied and appealed. So, my question is,
25 you know, is there a reason why that information is

1 sensitive or should not be shared at this point?

2 A. So, without having direct knowledge for why
3 some of the information would not have been shared, one
4 thing that broadly ---

5 306. Q. I understand you don't have access to the
6 information -- why isn't -- that's not your role, but
7 just generally speaking?

8 A. Absolutely. So, ~~egenerally~~generally, from a
9 procurement perspective, what you don't want to do is
10 give everyone -- anyone a competitive advantage. So,
11 from that perspective, if these reports are available in
12 what may not be final drafts and ~~evolvein~~evolving
13 drafts, that can introduce risk to the project. And then
14 also, from a procurement perspective create an unfair
15 advantage potentially to certain parties.

16 307. Q. Okay, thank you. Looking now at phase one and
17 phase two of the environmental assessments, what were
18 these trying to, or designed to look at and what
19 generally were the conclusions on that, if you can
20 share, again, just high level?

21 A. Yeah. So, the phase one and phase two
22 environmental site assessment basically looks at the
23 history and past uses of the property to understand
24 whether or not there's any potential for contamination
25 or other conditions ---

1 308. Q. Is that similar to the work for the
2 archeological studies?

3 A. The archeology is looking specifically at
4 historical findings for a site and the potential for
5 those, whereas the phase one environmental is more
6 about, as an example, if there was a former gas station
7 on the site, where was it, how do we delineate where
8 there may be potential contamination, are there
9 underground storage tanks. It looks at the history, you
10 know, from a use perspective and then a bit more
11 intensive from that. Both desktop exercises.

12 309. Q. Would phase two be a desktop or would that
13 be, then, based on phase one, again, moving to a more
14 in-depth look at ---

15 A. Yeah, also a desktop exercise but more
16 intensive in terms of really understanding the history
17 of the site surrounding area.

18 310. Q. Were any environmental hazards or issues
19 identified as part of this process?

20 A. Nothing that warranted moving to a phase
21 three, which would be on-site testing. And again, given
22 the past use of the property, that's not surprising.

23 311. Q. Agreed. The hydrogeological assessment, what
24 is that designed to look at?

25 A. Like, so effectively, understanding, are

1 there water flows above or below the service that you
2 need to be aware of. And that could impact the future
3 engineering requirements of the property.

4 312. Q. Grading and drainage and things of that
5 nature?

6 A. Grading, drainage, subsurface flows,
7 understanding, you know, are there ---

8 313. Q. Aquaifers?

9 A. --- rivers or aquaifers, all that stuff, yeah.

10 314. Q. Okay. Designated substances and hazardous
11 material survey. Similar to the environmental work, I
12 would imagine?

13 A. Similar but different insofar as that
14 typically would look at, as we know with this property,
15 there are existing buildings, they're of a certain age
16 and construction era that you want to make sure you
17 understand the condition, including things like mold and
18 any other ---

19 315. Q. Asbestos?

20 A. --- contaminants. Yeah, hazardous substances
21 that could pose a threat to people on the property.

22 316. Q. Okay. The development feasibility study,
23 different from the others obviously. So, what does that
24 look like? How is that different from the work NORR did,
25 I guess, is really what I'm trying to understand?

1 A. Yeah. So, it's work that would inform NORR's
2 perspective for the output specifications, but more
3 specifically, it's something where a consultant takes in
4 various factors, mostly in terms of site and situation
5 and the conditions of the site and surrounding site, as
6 well as the entitlements, as well as what the projected
7 future use and built area would be. And basically,
8 provides general commentary on the outcomes of what
9 they've found, mitigating measures that you'd need to
10 have in place, again, for things like land use, right? A
11 recommendation could come of being that, you know, you
12 may need to modify entitlements or at least research and
13 conclude that you'd satisfied these things. So, it's an
14 overall report to talk about the development potential
15 of the site and the conditions that could affect future
16 development.

17 317. Q. Okay. Functional servicing report, somewhat
18 complimentary, I imagine?

19 A. Yeah, that speaks really to the existing
20 capacity and then the future capacity requirements, how
21 they're achieved.

22 318. Q. Okay. You mentioned earlier discussions about
23 water, wastewater and so on. I just want to confirm, IO
24 is not involved directly in that? That's happening
25 between Sol Gen and the municipality? Is that correct?

1 A. To my knowledge, it is correct. The capacity
2 requirements that were understood through these studies
3 that we're going through now, would've informed those
4 discussions. I am not aware of the extent to which IO
5 has had direct discussions on the outcomes.

6 319. Q. Okay. If there was some kind of cost-sharing
7 agreement or anything like that, you're not aware of
8 anything like that ---

9 A. I'm aware -- I'm aware that there wasn't a
10 discussion about cost share. The current status or
11 outcomes, I don't have the information.

12 320. Q. Your team would not be directly involved in
13 that?

14 A. We would be informing the process. To date,
15 it's primarily been Solicitor General and the
16 municipality.

17 321. Q. Okay, thank you ---

18 A. For -- as is my understanding.

19 322. Q. Traffic impact study, parking needs, that is,
20 I guess, a more -- a fairly typical projection of what
21 traffic will be generated and how it's accommodated?

22 A. Correct. Correct. It's typical for any
23 development anywhere in the province.

24 323. Q. In one of the FOIs, we received data from
25 Stantec from a survey conducted in February 2021. Would

1 that have been part of this piece of the study?

2 A. Typically, a survey is completed as part of
3 this work, yes.

4 324. Q. Okay ---

5 A. Yeah, there's a topographic plan of survey
6 there. I'm ass -- I don't know exactly what type of
7 survey you're referencing but ---

8 325. Q. Sorry. A traffic survey. We received ---

9 A. Oh, traffic survey, sorry.

10 326. Q. --- transportation data from a traffic survey
11 conducted by Stantec?

12 A. Yeah, that would be part of that work, yes.

13 327. Q. Okay. Natural heritage assessment, what would
14 that be looking at?

15 A. That would look at the -- as it pretty much
16 states, the natural conditions and existing features on
17 the site and what may or may not be accommodated. So,
18 things like woodlots, wetlands, species at risk, all of
19 those natural factors that impact the site and then need
20 to be contemplated or considered as part of the
21 development.

22 328. Q. So, they may -- these may add constraints or
23 conditions on what you can do if certain areas have to
24 be protected and so on?

25 A. That's correct. So, back to the test fit

1 discussion, that would absolutely be a consideration as
2 part of that.

3 329. Q. Would most of these 16 pieces have been
4 completed by now, as far as you know?

5 A. Yeah, where we've got a couple of studies
6 that are still underway, most of the work is completed
7 now, yes.

8 330. Q. Okay. So, headwater drainage, again, I can
9 guess from the name, but ---

10 A. Again, trying to understand if there's any
11 flows impacting the property and how you need to account
12 for them, either in avoiding them, in redirecting them
13 or relocating them.

14 331. Q. The topographic survey would inform ---

15 A. It would inform effectively what conditions
16 you're looking at. So, when you start to look at ---

17 332. Q. Buildable area, grading?

18 A. --- buildable area, yeah. So, you understand
19 the effect of what you have on a site and work needs to
20 be accommodated.

21 333. Q. Okay. Subservice utility, again, fairly
22 clear. I'm assuming there was little under that site,
23 given its history?

24 A. I don't directly know the outcome of it but I
25 would think you're correct.

1 334. Q. Okay. Now, we've touched on this but I'm
2 assuming similar work would've been done for the other
3 jail projects, North Bay, Windsor, and things like that?

4 A. Yeah, this effectively represents the scope
5 of due diligence as part of the preconstruction work for
6 just about any P-3 project, regardless of use.

7 335. Q. Would the cost of these studies vary a lot
8 from project to project or because of the type of work,
9 is it fairly consistent or not?

10 A. It -- there's a few factors that will change
11 the value of the work. Geography, if we're up in a
12 northern community, harder to access. Topography, if
13 we're talking about a site that's constrained with
14 valleys or other complicated -- complicating features.
15 Conditions which may be found. For example, in
16 environmental, if you found that there's significant
17 contamination, you'd then may need to complete other
18 work to address that. And I mean, market availability.
19 Are the consultants and -- are they available to
20 complete the work. And that's both the desktop work as
21 well as the site work. And one point, just which I think
22 is important as well, when you look at the costing and
23 the scope of work that we do, the requirements to inform
24 a P-3 project are a lot more extensive than it would be
25 from a "regular development." So, when you look at the

1 boring and sampling siting, we -- the grid is much
2 closer together so that we know -- we'll have more
3 sampling and more clearly defined sampling to inform
4 those future bid submissions than a regular developer
5 who may do, you know, a few bore holes here and there
6 and then they just want to get construction. We are
7 about identifying any potential risk, mitigating it
8 where best we can.

9 336. Q. The reason for the distinction between a P-3
10 and a more traditional build?

11 A. Because part of the P-3, when you look at
12 that overall project cost, costed into that is risk. And
13 one of the risks are what you come across within the
14 site. So, we want to make sure that from a site
15 perspective, those risks are qualified as best as can be
16 possibly done. So that the constructor, when they've
17 priced their project, they're not surprised by a \$20
18 million miss.

19 337. Q. Right. Does that have something to do with
20 the length of the commitment or the duration of the
21 contract?

22 A. It's simply cost. Whatever risk or liability
23 is not identified, it's a cost if it's not contemplated
24 as part of the project agreement, that then needs to be
25 addressed.

1 338. Q. Okay. So, you've told me and you've told me
2 why these pieces would not normally be released before
3 the procurement process, not to taint it in any way. So,
4 I'm a bit puzzled by something that has been relayed to
5 me by my clients and that is -- and there is a recording
6 of this meeting. This is the November 2020, the first
7 public engagement meeting. Mr. Gismondi, during that
8 meeting, stated that -- and there was a question
9 specifically to the due diligence process that would
10 unfold. He would've referred to a three-step process,
11 and I'll tell you what I heard on the recording but, he
12 says that due diligence normally takes about six months
13 and will follow three steps. Step one is the preparation
14 of reports, and that these reports would be sent to
15 stakeholders for a 30-day comment period. Step two is a
16 revision of the reports internally by IO and as needed.
17 Step three would be the public posting of these reports
18 on the web, apparently, for another 30-day consultation
19 comment period. Do you know what he would've been
20 referring to if this is accurate? Because that
21 commitment doesn't seem to mesh with what you describe
22 as the normal process for these due diligence pieces?

23 A. So, specifically what Angelo was referring to
24 in terms of reports available, I -- I -- I don't know
25 what the response is to that but I think generally, the

1 phase about posting for 30 days, I believe what is being
2 referenced is the Public Works' Class Environmental
3 Assessment that gets posted on provincial website for
4 public consumption. It's open for a 30-day period for
5 the public to view. And that basically seeks to identify
6 the potential environmental impacts of a project on a
7 given site.

8 339. Q. Okay. Sending out to stakeholders, reviewing,
9 publicly posting, that is not something that would
10 normally be done for the due diligence work we described
11 in these 16 items or the previous items under the PDC
12 work?

13 A. The Class EA we do on all of these types of
14 projects and I believe the posting is currently live
15 right now.

16 340. Q. That would be the only piece?

17 A. It may depend on the project but typically,
18 as part of the due diligence work, posting and clearing
19 the Class EA --that's what we refer to it as -- is a
20 component of that work.

21 341. Q. This posting and clearing would not apply to
22 the other elements of the due diligence work we just
23 went through together?

24 A. Yeah, the intent of the class environmental
25 assessment is to understand broadly the potential

1 environmental impacts of the project on the site, at a
2 high level. I mean, you don't have a constructed site
3 yet, you don't have a final design site yet.

4 342. Q. That would not apply to the natural features
5 work, that would not apply to the geological work, that
6 would not apply to the archeological work? Those pieces
7 would not normally be vetted or sent out for review in
8 that way?

9 A. That is correct. They're not a part of the
10 actual posting.

11 343. Q. Okay. So, turning now to the fourth item in
12 your list, which is the staff time and resources. At
13 paragraph 20 you state that IO and Sol Gen staff have
14 spent time working on the Kemptville project for the
15 last two years and that this would be lost if you had to
16 start over. There's an estimate in the order of around
17 2.2 -- just under \$2.2 million. Can you tell me what the
18 source of that estimate is?

19 A. It's from our cost and budget management team
20 and the inputs to inform that value is based on a weekly
21 timesheet effectively, a system we have internally, that
22 people working on the project would report their time
23 on.

24 344. Q. Sort of like a docketing system for lawyers.
25 Okay. That's how I would gather you, IO, can attribute

1 and recover costs from its clients?

2 A. Correct. And that number would be based on
3 the invoice -- invoicing from that period.

4 345. Q. Can you remind me exactly which period
5 would've been covered by this number?

6 A. So, this is from, I'll say approximately
7 because I don't have the exact date, but from June 26th
8 2020 to the dating of the Affidavit.

9 346. Q. Would it be possible to produce the same
10 figure for the window we talked about, Susan?
11 Announcement date to Application date?

12 MS. KEENAN: Yeah, I'll make those -- I'll make
13 that enquiry and see if we can at least provide a
14 percentage of from, I guess we would say probably from
15 September ---

16 MR. EMARD-CHABOT: RDF to ---

17 MS. KEENAN: Or is it September 30th, I guess
18 August 27th, so it would actually probably be September -
19 --

20 MR. EMARD-CHABOT: I don't think we can -- I
21 don't think we need to quibble over the month anyway ---

22 MS. KEENAN: Yeah, whatever ---

23 MR. EMARD-CHABOT: --- because ---

24 MS. KEENAN: Yeah, for sure. Yeah, I can do that.

25 MR. EMARD-CHABOT: And if they have a docketing

1 system, it'll be fairly easy, I think, to just.

2 BY MR. EMARD-CHABOT:

3 347. Q. So, that applies to the IO staff. So, of this
4 \$2.2 million, how much is IO and how much is Sol Gen?

5 A. One hundred percent is IO.

6 348. Q. Okay. How does this cost recovery take place?
7 Like, what's your system internally to attribute? As an
8 employee when you're working on something, is there a --
9 do you go online and you enter -- like, how -- just how
10 does it work physically?

11 A. Yeah. So, it's an online time-tracking
12 system. So, each individual employee goes in and fills
13 out for any given project their percentage of time for
14 that week that they spent on that project. And then the
15 values then are converted towards their billable based
16 on their position.

17 349. Q. The existence of that system has dealt with
18 my question, so that was easy enough. So, just to give
19 you a bit of an idea, there are two topics left that I
20 want to cover with you. The first one, I really need to
21 go back. I looked at this during the break. I really
22 need to go back to the Ottawa Correctional Complex
23 project because I'm still struggling to make some of
24 your answers fit with what I have as documents. So, I'm
25 going to take you to our Motion Record and do you have

1 that handy, Mr. Macey, or is it easier if I go on the
2 screen for you?

3 A. If you could go on screen that would be
4 helpful.

5 350. Q. Okay. So, just so I know which page to send
6 you to -- so, it's page 374 of the full PDF, for our
7 Record. I'll bring that on screen and then I'll zoom in
8 a bit so you can read it better. How visible is that to
9 you, Mr. Macey?

10 A. I can read that, thank you.

11 351. Q. Okay. This document, if I'm not mistaken from
12 the logo at the top, is from Infrastructure Ontario. Is
13 that correct?

14 A. That's correct.

15 352. Q. Okay. This was obtained by Justin Piche, one
16 of the Affiants in our Record, through a freedom of
17 information request, specifically targeted to the Ottawa
18 Correctional Complex. Under, background, if you could
19 have a look at the description and when the planning
20 work began, it indicates, as I mentioned earlier, a
21 fairly large 725-bed facility for both male and female
22 clients and it says that the Ministry and Infrastructure
23 began the planning work and issued the functional
24 program in March 2017. Do you see that?

25 A. I do.

1 353. Q. So, when you read that, what is that
2 functional program work that began in March 2017? Or
3 what would it normally be?

4 A. So, specifically, I wasn't involved, I don't
5 have direct knowledge, but a functional program is when
6 a facility user starts to try and understand their
7 existing operations and functionally how could it be
8 made -- be done in a different way for whatever
9 motivation they have for that, if they were to look at
10 an existing facility or a different facility.

11 354. Q. If I look at -- well, if we look at the last
12 line that's highlighted there, what does that say?

13 A. That the planning and design compliance, or
14 PDC, contract has been awarded on January 26th, 2018.

15 355. Q. Okay. So, what I'm trying to get to, and I'm
16 really not trying to put you on the spot, but the dates
17 don't work in my mind and it might very well be because
18 I'm not understanding it, but you indicated that the
19 work for what ultimately became the Kemptville site
20 began in May 2017 and yet, there's PDC work going on at
21 the same time. So, how do you reconcile those two
22 processes? Were there two different mandates with two
23 different projects?

24 MS. KEENAN: Can I just also ask that the Witness
25 be allowed to see the next page, because ---

1 MR. EMARD-CHABOT: Yes, sorry.

2 MS. KEENAN: --- there is also a highlighted area
3 there that addresses the same thing.

4 THE WITNESS: Okay. So, sorry, what's the
5 question?

6 BY MR. EMARD-CHABOT:

7 356. Q. So, there seems to, if I read this, and
8 again, I'm trying to confirm with you if I'm correct on
9 this but, the Ottawa Correctional Complex project was
10 underway more or less at the same time as you were
11 starting the work on what has become the Kemptville
12 project. Would that make sense? Because if you're doing
13 work in March 2017 on the OCC and yet, a couple months
14 later you're doing work on Kemptville, I'm trying to
15 figure out the relationship between the two?

16 A. So, from my -- what I'm seeing on the paper
17 is that March 2017 is when now Sol Gen initially started
18 discussions with parts of Infrastructure Ontario to
19 understand what might they need if they were to look at
20 a facility in Ottawa. Those early findings then start to
21 indicate, well, what does that equate to in terms of
22 land, in terms of location, in terms of potential site
23 attributes, that then start to inform the site
24 requirements, that in May 2017 start our site selection
25 process. At that time, and leading up to January 26th,

1 2018, procuring the planning and design compliance
2 contract, that's a separate procurement for every
3 project; we don't have standing vendors of records for
4 that. So, that period from March through to January 2018
5 would have been developing the procurement documents to
6 then go to market, to then negotiate with the
7 proponents, to then finally sign the contract which was
8 awarded January 2018. So, those things sequentially, the
9 March '17 activity to define what a site would need,
10 naturally happened before you start to look for sites.
11 And at the same time, getting the PDC contractor on
12 board is also happening.

13 357. Q. Okay. The PDC contractor, is that NORR that -
14 --

15 A. That's correct.

16 358. Q. Okay. Originally, IO is billing all of this
17 work as the Ottawa Correctional Complex, correct?
18 There's no mention of Kemptville, there's no mention of
19 an Eastern Ontario Strategy in this. You're looking at a
20 big build in Ottawa?

21 A. At the beginning of this project, that was --
22 that was the project. And over the period of the next
23 couple of years it evolved.

24 359. Q. Okay. These are different options which are
25 not super relevant. The next page I want to take you to

1 is this one, which is 377 of the main PDF. I'm going to
2 zoom out a bit because -- just so you can have a look at
3 the full sheet and then we can zoom in again. So, there
4 is a mention here of the acquisition of 4-0-5-5 Russell
5 Road. Now, the date of this document is not super clear,
6 so that's not ideal, but I'm assuming there was a
7 selection process to arrive at this location?

8 A. So, earlier on in the project -- and again,
9 we don't have a date on this but I would suspect it's
10 probably early 2018 -- we had identified 4055 Russell
11 Road, owned by the National Capital Commission, as a
12 site that could accommodate the project.

13 360. Q. Okay. It seemed to have been a fairly
14 desirable site, as it's one of your scenarios. So, was
15 this based on the criteria that we explored that you
16 used for the Kemptville selection?

17 A. Yes, the criteria at the time, which was very
18 similar to the point at which Kemptville entered the
19 picture but it might have been slightly different, given
20 the client's requirements for a site at the time.

21 361. Q. Okay. Before arriving at this mention or --
22 and again, I'm not going to say it's a selection but
23 clearly there was some preference indicated for the
24 Russell Road location. Do you know how many sites were
25 examined?

1 A. The specific number escapes me but we
2 would've exhausted all of the provincial portfolio. We
3 would've looked at, at the same time as Russell Road,
4 all of the other public sector portfolios we had access
5 to. And at that point in time -- again, I'm assuming
6 we're in early 2018 -- at that point in time, we may
7 have also -- would have also requested our broker to go
8 to the open market to try and source sites as well.

9 362. Q. Okay. Do you know, at that point -- so, if we
10 are working in the first half of 2018, how big of a
11 radius from the existing Ottawa Carleton Detention
12 Centre were you looking at?

13 A. I believe it was 40 kilometres.

14 363. Q. Okay. That would have changed over time,
15 obviously, or else you wouldn't be in Kemptville?

16 A. Correct.

17 364. Q. Do you know the reasons for that widening of
18 the radius?

19 A. Those are informed by the Ministry of
20 Solicitor General and their program requirements and
21 changes.

22 365. Q. Okay. So, based on Sol Gen's approach, those
23 parameters would have been modified? The search
24 parameters?

25 A. Between -- from the early stages to the later

1 stages?

2 366. Q. Yeah, exactly?

3 A. Yes, they would've evolved over that period.

4 367. Q. Okay. The next page I'd like to take you to
5 is 392. So, I should go back, sorry. I'm going to give
6 you what this document is. So, this is record three that
7 was provided as part of FIPPA and what this is -- so,
8 the cover sheet is at page 378. So, we know that this
9 third record, this other document, is dated April 25th,
10 2018; we see that on the cover. A presentation to now
11 Sol Gen and the transition team. I'm assuming that's
12 because of elections but not sure 100 percent what the
13 transition team would have referred to and I don't know
14 if you know?

15 A. I don't know specifically.

16 368. Q. Okay. So, again, April 25th, 2018, Ottawa
17 Correctional Complex update to the Ministry. So, that
18 notion of a big Ottawa build is still in the cards at
19 that point. Would that make sense?

20 A. Yes, I think so.

21 369. Q. Okay. So, going now to 392, so we're still in
22 the same record three and still in the same document.
23 So, April 2018 update to a transition team of sorts, and
24 the notion of this is where Ottawa is at this point.
25 What does that tell you about where the Ottawa

1 Correctional Complex project was at by April 2018?

2 A. Effectively, we were still working through
3 identifying sites, and the PDC work was still underway.
4 So, that all of that combined package would then inform
5 the future procurements of the RFQ, the RFP, and
6 ultimately, financial close.

7 370. Q. Okay. Now, going to 409. So, we're still in
8 record three, that transition information piece. So, it
9 says the facility programming work would've have
10 complete by March 2017, the first date we looked at. It
11 then says the project was announced May 2017, correct?

12 A. Correct.

13 371. Q. We know when we have this on the Record, that
14 there's an announcement by the then minister on May 4th,
15 2017, announcing the construction of the Ottawa
16 Correctional Complex. The milestone timeline indicates
17 then, the PDC consultant were engaged in January 2018;
18 we've seen that as well. You've confirmed this was NORR
19 at the time and they have continued to work on this
20 throughout until the new iteration of Kemptville?

21 A. Correct.

22 372. Q. So, there was a goal for RFQ, and RFP in
23 fact, for the spring of 2019. When and why was that
24 abandoned? I mean, clearly this project is not going
25 ahead, so what shifted at that point, that we had a

1 location, we had timelines, and we were working on it
2 and all of a sudden, we no longer go through with this
3 massive project?

4 A. So, I don't know that I would characterize it
5 as abandoned or not going through with ---

6 373. Q. Are they still building a 725-bed facility in
7 Ottawa?

8 A. Not today but in 2018, at this point, April,
9 I'm not aware of a plan to have changed that, at this
10 point in time.

11 374. Q. Sorry, I'm having a hard time following that.
12 If, in 2018, the plan was to do a 725-bed facility in
13 Ottawa and the plan no longer is, I would imagine that
14 we can -- I mean, I don't want to play semantics, but
15 the Ottawa Correctional Complex was abandoned as an
16 idea?

17 A. So, I think specifically, the Ottawa -- yeah,
18 Correctional Complex outcome of the project didn't
19 proceed. The reasons for which, I can't speak to; those
20 are Ministry of Solicitor General. But the site
21 selection work continued and really never stopped from
22 May 2017 until we identified the current site.

23 375. Q. So ---

24 A. And ---

25 376. Q. Sorry?

1 A. That's it.

2 377. Q. So, the mandate to IO for a new prison
3 project to address the Ministry's concerns or priorities
4 with respect to the Ottawa-Carleton Detention Centre
5 predates the May 2017 beginning of the search that you
6 mentioned earlier?

7 A. That's my understanding.

8 378. Q. Okay. So, -- because based on the document we
9 have, there was certainly a concept for a program that
10 was completed by March 2017 and then the work started
11 towards that. Would that be accurate?

12 A. The -- so, the functional program and the
13 work that would've been comp -- attached to the March
14 2017 date, would not have been a definitive outcome of
15 where things are at necessarily. It would've been the
16 planning documents to get the project started up.

17 379. Q. The project being this much larger facility
18 closer to Ottawa?

19 A. At the time, yes.

20 380. Q. Okay. Do you know what the total envelope set
21 aside for the Ottawa Correctional Complex would have
22 been? You gave me -- you know, we have a range of \$200
23 to ---

24 A. Yeah.

25 381. Q. --- \$499 for Kemptville. What were we looking

1 at for Ottawa?

2 A. Sorry, you're talking value or size, square
3 footage?

4 382. Q. Sorry, the budget, the value?

5 A. I don't have that information.

6 383. Q. Is that something we can get, please?

7 MS. KEENAN: You want the budget for the Ottawa -
8 - the former -- when it was going to be located in
9 Ottawa?

10 MR. EMARD-CHABOT: Yes, please. At least the
11 range, similar so that the comparator to what we have
12 for Kemptville? So, ---

13 MS. KEENAN: Let me ---

14 MR. EMARD-CHABOT: --- the specific amount, at
15 least for Kemptville there was a range from the very
16 early days of this project. I would assume there would
17 have been a range for Ottawa?

18 MS. KEENAN: Let me take that under advisement. I
19 just want to think about, again, the relevance to the
20 Motion because I don't think we're claiming that there
21 was any prejudicial cost incurred during the period that
22 that was the plan to build in Ottawa. So, I'm just
23 trying to -- I'm struggling with the relevance to what
24 we've claimed as substantial prejudice.

25 MR. EMARD-CHABOT: You're not claiming that, but

1 I think it's quite relevant to Sol Gen's ability to
2 pivot for whatever reasons, they may be legitimate, but
3 they clearly began -- they had a complete facility
4 programming by March 2017, engage IO to begin work on
5 this one idea of a concept for programming, and at some
6 point pivoted from that to the more diffuse Eastern
7 Ontario, which has Kemptville and Brockville and other
8 pieces. So, the next question I'll be getting to is, how
9 much money was spent on that preliminary work that was
10 lost and could not be recovered and getting a sense of
11 how much that is in relation to the project would be
12 helpful because it's the comparator data for the claim
13 that the province is making of hardship because of the
14 money lost. We'd like to be able to show that when it
15 suits the province, they have no issues in blowing money
16 and that they did for this project, and I think that's
17 relevant to the debate of whether or not the province is
18 suffering any hardship as a result of the timing of the
19 Application.

20 MS. KEENAN: So, okay, I think we can disagree
21 about the relevance, obviously, but I think we have
22 different perspectives, theories to the case, I guess.
23 What I'm wondering is that, so, in terms of the request,
24 the request is for a specific timeframe or for the
25 overall expected cost of the facility at a particular

1 point in time? Like, are -- is that ---

2 MR. EMARD-CHABOT: Well, okay, so let me ask Mr.
3 Macey a couple of questions. I'll come back to you and
4 see what I think we need.

5 384. Q. So, Mr. Macey, is it fair to say that your
6 client's programming priorities or parameters at some
7 point shifted from one large facility to something
8 different?

9 A. I think that's fair and I think that, to an
10 extent, at least the outcome of that, was identified in
11 that August 27th announcement, the modernization
12 strategy.

13 385. Q. So, the documents we have indicate that in
14 March 2017, there was a complete facility programming
15 work done and project was announced in May 2017 and the
16 work began. Some of the shifted over to the new concept;
17 we're all good with that. What I'm trying to get at is,
18 leading up to March 2017 and up to the point where the
19 decision is made to change the program, how much money
20 was spent on due diligence, on staff time, on PDC work?
21 Clearly there was no land acquired, although 4055
22 Russell was -- had been earmarked or identified as a
23 desirable location. So, I'm trying to get a sense of how
24 much was spent on this vision before the vision shifted?

25 A. Right. So, I don't have the answer to that

1 right now.

2 386. Q. Okay. So, back to Susan, I realize it's not
3 relevant to what you are saying is your harm but it is
4 relevant to indicating -- and I think this will weigh in
5 the court's assessment -- that when the decision is Sol
6 Gen's, wasting a bit of money is not a problem, but when
7 it comes to citizens coming to exercise their rights to
8 have the decision reviewed, all of a sudden it becomes a
9 problem. So, I think it would be relevant to understand
10 how much was spent on the initial OCC vision before it
11 shifted?

12 MS. KEENAN: So, I think I'm going to take that
13 under advisement. I think the difference that we have is
14 that we haven't put forward the substantial prejudice
15 evidence on the basis of what involvement with citizens
16 there was, but rather based on the timing for the filing
17 of the Application. So, had the Application been filed
18 within the 30 days, what would have been spent or would
19 have been saved. So, that's more the focus of the
20 evidence than what involvement there was with citizens.
21 So, that's sort of our understanding of it, but I'll
22 take it under advisement and consider. So, just to -- I
23 just want to be really clear about what the request is.
24 So, ---

25 MR. EMARD-CHABOT: I can summarize it. There are

1 two things. One is, what were the lost, sunk costs, and
2 I'm looking at the three categories used by Mr. Macey,
3 PDC, due diligence, IO staff time. Come as close as we
4 can to an apples-to-apples comparison. From -- and I
5 don't know which date, but in March 2017 there is a
6 complete vision; there's a facility program that's been
7 developed. So, potentially before March 2017 to -- and I
8 again, I don't know the exact date, but whenever the
9 decision is made by the client to shift its vision from
10 a single, larger, closer to downtown facility to
11 smaller, multiple, regional facilities, if that's the
12 accurate way to refer to it. So, how much money was
13 invested or spent on those three categories during that
14 window, from the moment IO is involved to the moment the
15 mandate of IO shifts to something different.

16 MS. KEENAN: Okay, I think I have that and I will
17 undertake to advise you as soon as possible.

18 MR. EMARD-CHABOT: The second piece would be, so
19 we can do the comparison of how much money has been
20 spent in relations to the project as a whole, whether
21 there was at the time an allocation range or a budget
22 range for the OCC project, or the OCC vision, similar to
23 what is now published on the IO website for Kemptville.
24 So, fairly broad, but gives an order of magnitude. I'm
25 assuming if it was done in that order for Kemptville, it

1 probably was done when this was announced in May 2017.
2 And that is the purpose to allow, again, to compare how
3 much was spent and was sunk in relations to the size of
4 the project.

5 MS. KEENAN: Okay. I think I have both of those,
6 so I will take them under advisement. Thank you.

7 MR. EMARD-CHABOT: Thank you.

8 BY MR. EMARD-CHABOT:

9 387. Q. So, final question, I think, on this. Maybe
10 not, but close. Was there, Mr. Macey, at some point --
11 let me rephrase that. How would you, as the person in
12 your role, have been informed that what you were looking
13 for was no longer a piece of property for a large,
14 closer to Ottawa correctional complex and that that was
15 now shifting to a broader radius, multiple facility
16 vision? You must have been told this at some point or
17 else you wouldn't be able to do your job?

18 A. Yeah. So, that would've come through in one
19 of those project meetings where, attended by our senior
20 project manager and what other project stakeholders from
21 IO. At some point, certainly after we restarted the
22 search after that 4055 Russell Road site was
23 unfortunately unsuccessful, we shifted our direction as
24 to, how do we find the site. And from that period
25 through to the ensuing months, at some point, where

1 those project requirements are, again, further --
2 they've evolved and were further defined and informed by
3 Solicitor General, it would've been over that period
4 that our understanding of what the future project would
5 be that would have to be accommodated at the site.

6 388. Q. Can you tell me why the 4055 Russell property
7 did not come to fruition?

8 A. Yeah, the ---

9 389. Q. I've dealt with the NCC myself in the past so
10 I can imagine, but I'm just curious?

11 A. They sold it out from under -- they sold it
12 prior to us being able to conclude the transaction.

13 390. Q. Do you know to whom, by any chance?

14 A. A private developer.

15 391. Q. Okay. Do you know roughly when this would've
16 been?

17 A. Yeah, it was August 2018. Perhaps July.

18 392. Q. Okay. This shift -- so, you look at this
19 property, you can't get it, you've described project
20 meetings would've followed to try to figure out, okay,
21 what now? Was there also -- or, was there a change, sort
22 of, a deliberate change of strategy from your client,
23 saying never mind the big Ottawa thing, we would prefer
24 this new approach that we are now implementing?

25 A. I can't provide a specific date, but sometime

1 between September 2018, leading into, you know,
2 June/July 2019, is when those discussions and
3 adjustments to those requirements would've come into
4 effect.

5 393. Q. Were those mainly motivated because of
6 availability or was there a policy shift from the
7 Ministry?

8 A. I can't speak to the policy side and what
9 motivated the program to make the changes, but from a
10 real estate perspective, the sites were always
11 challenging, regardless of what and where, just based on
12 the acreage and based on those other requirements.

13 394. Q. You're not privy to whether there were
14 discussions within Sol Gen to say, let's take a policy
15 shift, different approach, move forward on something
16 different?

17 A. That's the Ministry and their program.

18 395. Q. Okay. If I look at, you know, the five steps
19 you set out for the Kemptville project, the PD -- or
20 sorry, the PDC work and all that, that was done by NORR,
21 do you know roughly of how much of the equivalent would
22 have been done for this initial vision, the OCC?

23 A. It would not have been as much ---

24 396. Q. You didn't get as far down the road, I would
25 imagine?

1 A. That's correct. That's correct. The -- yeah.
2 I -- I don't have that specific information. That's not
3 directly related to what our team does, but I believe it
4 would have been less than where we got with Kemptville.

5 397. Q. Of the 16 studies that are listed in the due
6 diligence, do you know whether any of those were
7 conducted for 4055 Russell or the OCC generally?

8 A. Yeah, some of that preliminary work, for the
9 most part it's desktop analysis, informed by, you know,
10 what can be gleaned from existing information. You know,
11 we don't spend money on a site until we know that it
12 makes sense to start spending money on a site. So, we
13 may have, to the point that, I mean, we had a term sheet
14 going to potentially acquire Russell. So, some of these
15 reports would've been done but not to the extent that
16 they've been completed at Kemptville.

17 398. Q. Would IO staff have been entering their time
18 for this project as they have for the Kemptville
19 project?

20 A. Yes.

21 399. Q. Okay. I think that will be it for OCC for
22 now. My last series of questions, Mr. Macey, relate to
23 consultations with First Nations. The reason I raise
24 that is, there was a fairly extensive amount of work
25 done with the Pikangikum First Nation with respect to the

1 OCC project and what I'd like to know is, has IO
2 consulted with any First Nations with respect to the
3 Kemptville site?

4 A. Yes, we have, and we're working with a First
5 Nation's consultant, I-7, to assist with portions of
6 that work. And I believe I-7 may have attended one, if
7 not both, of those past consultation meetings.

8 400. Q. They did not. Or if they did, it was not made
9 very clear to the participants. Which First Nation are
10 you consulting with?

11 A. Well, there are multiple Nations that are
12 being consulted in that area. I don't have the specific
13 list in front of me. I know the Algonquins are certainly
14 an active Nation in that area, but I couldn't provide
15 you a list right now.

16 401. Q. Do you know when these consultations began
17 roughly? Again, I don't need the day, but?

18 A. I wasn't directly involved with it, but from
19 the best of my knowledge, it would've been late 2018,
20 going into 2019.

21 402. Q. With respect to Kemptville?

22 A. I -- no, not Kemptville specifically. Just as
23 part of our projects broadly. We are undertaking more
24 pro-active Indigenous consultation and engagement as
25 part of that work.

1 403. Q. There's a document, again, in the same FOI
2 batch that we were looking at earlier, which is
3 specifically a consultation with the Pikangikum First
4 Nation. So, -- but that related to the Ottawa site, 4055
5 Russell. So, specifically for Kemptville, you are
6 undertaking work and that has begun?

7 A. There are discussions ongoing, yes. I don't
8 have the specific Nations or the list of the Nations
9 that have been consulted readily available.

10 404. Q. Okay. Do you know if the municipality of
11 North Grenville has been involved or invited to
12 participate in these consultations with local Indigenous
13 groups or First Nations?

14 A. I don't know.

15 405. Q. Okay. Do you know if any changes are being
16 made or contemplated as a result of consultations with
17 the First Nations?

18 A. Specifically, I'm not aware of any outcomes
19 but I'm aware of various engagements that have happened
20 related to the projects and different aspects of the
21 projects -- project.

22 406. Q. Has any of the feedback from the First
23 Nations consultation work found its way into the PDC
24 work or any of the other steps that are ongoing?

25 A. I don't know.

1 407. Q. As, you know, site considerations or
2 historical requests or things of that nature?

3 A. So, the proactive engagement that's happening
4 now, I don't know what the conclusions or
5 recommendations are from those. I know that there are
6 some ongoing discussions with at least one of the
7 Nations. That is activity that is happening. In addition
8 to that, we also undertake duty to consult. So, as an
9 obligation of the Crown, we are required to consult with
10 the various potentially impacted Nations. So, that would
11 be perhaps connected but not specifically undertaking
12 that work.

13 408. Q. The outcome of this work, will it -- is the
14 idea that it will produce some kind of report or
15 recommendations to be considered or ---

16 MS. KEENAN: I think ---

17 MR. EMARD-CHABOT: Yeah?

18 MS. KEENAN: I think at that point, I'm just
19 going to -- I understand, like, I've been listening to
20 the line of questioning but I'm truly starting to
21 struggle with what the relevance is to the Motion. So, I
22 think I'm going to say that we're going to refuse
23 further questions on First Nations consultation.

24 MR. EMARD-CHABOT: I'm fine with that. If you
25 don't mind, I would like to take maybe 10 minutes. So,

1 Jessica, if we can go off the Record, please?

2

3 (OFF RECORD DISCUSSION)

4 MR. EMARD-CHABOT: All right. So, I can just
5 confirm that those were all my questions and I thank you
6 for your time, Mr. Macey.

7 THE WITNESS: Thank you.

8 MS. KEENAN: Thank you. So, I just have a couple
9 of questions in reply or in re-direct.

10

11 **VIRTUAL RE-EXAMINATION BY MS. KEENAN:**

12 409. Q. So, first I'm going to take you back -- just
13 give me a moment. So, you were shown a document, this
14 was in the FIPPA request material that I can show you.
15 I'll share my screen, pages 197 and 190. So, I'm just
16 going to share my screen here. Hopefully this works.
17 Okay. So, can you see page -- it says page 190 for me
18 here?

19 A. Yes.

20 410. Q. Okay. So, you -- do you recall being shown
21 this page?

22 A. Yes.

23 411. Q. Okay. So, you were asked some questions and
24 specifically you were asked about the presence or
25 absence of the correctional design criteria as one of

1 the criteria in the column along the left. Do you
2 remember that?

3 A. Yes.

4 412. Q. Okay. So, I'll just tell you, I don't know if
5 you can see it, but at the bottom here there's a little
6 asterisk that says, "Correctional design criteria," and
7 actually, maybe I'll just make this really big so you
8 can see what it says. Can you see what it says now?

9 A. I can, yes.

10 413. Q. Okay. Can you just read that to me, what it
11 says, and I'll make sure that you can see the whole
12 things as you go?

13 A. "Correctional design criteria includes two
14 access points to the properties preferred, even
15 if only on one roadway. The property is able to
16 accommodate 100 metre setback and perimeter.
17 Access to the facility shall be that the signage
18 can be observed 100 metres in each direction."

19 414. Q. Okay, thank you. So, is that your
20 understanding of what's being referred to as design --
21 correctional design criteria here?

22 A. To the extent that this is the definition
23 provided, yes.

24 415. Q. Okay. So, I'm just going to scroll up here.
25 So, we're on page 190 of the Record and I notice that

1 there's a little number at the bottom here that says 78.
2 Is that -- I understand that, personally, without giving
3 evidence, I understand that to be the number, the page
4 number of the FIPPA response records. So, like, you get
5 a package of records and they would have page numbers,
6 and here's the page number from that package, 78. Is --
7 does anyone -- is there any concern on that part? Is
8 that your understanding? Do you have knowledge of that
9 even?

10 A. Insofar as I can see it, yes.

11 416. Q. Okay. So, I'm just going to scroll up. So,
12 that says 78. I'm just going to scroll up here to what's
13 above it, and I see in the bottom right, there's 77, 76,
14 and just going to this page two pages earlier, this is
15 page 188 of the Record, the Responding Record, there's a
16 date here. Do you see that? July 16th, 2019?

17 A. Yes.

18 417. Q. Okay. So, it looks like to me, we have this
19 page and then 189 and then 190 appears to be part of
20 this package in chronological order and looks to be part
21 of those earlier pages. Would that be unusual to have
22 something like this at the end of the earlier page that
23 says, "Ottawa land acquisition update"?

24 A. Not necessarily, no.

25 MR. EMARD-CHABOT: Susan? Could I just jump in

1 for a second?

2 MS. KEENAN: Yeah.

3 MR. EMARD-CHABOT: Not that I object necessarily
4 but the two earlier pages you show, indicated page one
5 of two, two of two, indicating the document is complete,
6 those two pages. So, I'm not sure -- I'll concede that
7 they were all lumped in and provided as a single PDF to
8 the Applicant for the freedom of information request. I
9 don't know that the original documents were necessarily
10 in that order. I don't know what the person putting this
11 together would've done with it but -- what is the point
12 that you want to highlight from this sequence?

13 MS. KEENAN: For sure. So, as you can see in the
14 bottom right-hand, it goes 77, 78, and although you're
15 right, it says page two of two, we don't know if this
16 was appended to the back of that two-page document ---

17 MR. EMARD-CHABOT: Correct.

18 MS. KEENAN: If could be appendix, right? So,
19 then if we go to 197, which was the other document the
20 Witness was taken to.

21 BY MS. KEENAN:

22 418. Q. This has the correctional design criteria
23 here, if you can see that, Mr. Macey? Site meets
24 correctional design criteria, and there's a little
25 magnifying glass there?

1 A. Yes.

2 419. Q. Then, do you see the same asterisk at the
3 bottom? Here, I'll make it really big. Correctional
4 design criteria asterisk, see that?

5 A. Yes.

6 420. Q. So, it would appear that that asterisk is in
7 this version as well?

8 A. Yes.

9 421. Q. If we scroll back from this page 197 above,
10 it looks like it's part of a document dated July 29th,
11 2019?

12 A. Yes.

13 422. Q. So, although we can't be sure, it looks like
14 page 190 may have been prepared before page 197 if it
15 was part of this July 16th, 2019 document, right?

16 A. It's possible, yeah.

17 423. Q. So, we don't know if actually correctional
18 design criteria was added rather than taken away as one
19 of the items on the left-hand column. Just to show you,
20 here's 190 and then we go to 197, "Site meets
21 correctional design criteria," is now in that document?

22 A. Correct.

23 424. Q. Okay. As is noted, we don't know, because
24 we're not quite sure when that page 190 was prepared. Is
25 that fair to say? Like, I didn't see a date on that

1 specific page?

2 A. Yes, that's fair.

3 425. Q. Okay. So, I'm going to move to my next -- I'm
4 just going to stop sharing my screen for a second. Okay.
5 So, my next question is, you were asked about the hold
6 that was placed on the property through a request and
7 expression of interest on October 23rd, 2019. Do you
8 recall that?

9 A. Yes.

10 426. Q. I believe that expression of interest is
11 actually attached to your Affidavit as an exhibit,
12 right?

13 A. That's correct.

14 427. Q. Okay. I just wanted to -- because you were
15 asked about, or it was described at times as a decision,
16 can you tell me what is meant by putting a hold on the
17 property?

18 A. The purpose for putting a hold on the
19 property is to ensure that the property does not leave
20 circulation, indicating that it is no longer required
21 from -- for a public use or from the public sector to
22 who the property is circulated to. So, effectively, by
23 putting a hold, you ensure that you don't miss the
24 opportunity to be able to further investigate and
25 further qualify, that in fact the property is what you

1 need for your desired outcome related to the property.

2 428. Q. So, it's basically the opportunity to
3 continue your investigations to potentially acquire that
4 property and use it in the future?

5 A. That's correct.

6 429. Q. Okay, thanks. Okay. Now, you were also asked
7 about some FIPPA requests, so Freedom of Information
8 Protection of Privacy Act requests, and if you knew of
9 reasons why certain information wouldn't have been
10 released. I just wanted to clarify. So, you don't work
11 in the area of addressing what information or documents
12 should be disclosed pursuant to a FIPPA request. Is that
13 right?

14 A. That's correct.

15 430. Q. So, you wouldn't be the person who determines
16 whether certain criteria under the Act is met and that
17 information should be disclosed or not disclosed?

18 A. I am not the person who would determine that,
19 that's correct.

20 431. Q. Okay. Then you were also asked about the PSOS
21 and the completion of the PSOS, which I believe you were
22 saying is approximately 75 percent completion with a
23 current review being undertaken, I think. Is that fair?

24 A. That's correct.

25 432. Q. Okay. So, you also referred to a step that

1 would involve an RFP and an RFQ. Can you tell me, what
2 do RFP and RFQ stand for?

3 A. So, RFQ is Request for Qualifications,
4 whereby request is sent out to the market for them to
5 submit their qualifications to potentially undertake the
6 project. And then after that, there's the Request for
7 Proposals, where qualified bidders will submit proposals
8 to deliver the project and the associated terms upon
9 which they'll deliver the project.

10 433. Q. So, the RFQ would happen before the RFP?

11 A. Correct.

12 434. Q. Okay. So, are you able right now to proceed
13 to an RFQ or an RFP for this project in Kemptville?

14 A. There are projected dates for RFQ and RFP
15 release but a certain level of confidence need to be
16 gained -- needs to be gained in different aspects of the
17 project in order to fully inform potential risk or
18 information to the Respondents. What you want to ensure
19 is that you're providing them with as much certainty as
20 possible to be able to respond with their qualifications
21 and then to provide an actual proposal to deliver the
22 project.

23 435. Q. If you were to enter into contract through an
24 RFP -- RFQ and then an RFP process, and then you got a
25 court order saying you can't use that site, could that

1 contractor come back and say, you owe us damages? Could
2 they try and sue you?

3 A. Yes.

4 436. Q. So, my next question is, you talked -- you
5 were asked about the process of finding a property and
6 the site search. You were also asked about what would
7 happen if you were not able to use the site at issue in
8 this case of the Kemptville site. You were asked
9 questions about potentially disposing of that property
10 and you talked about an order in council. So, if that
11 were the case, if you had to dispose of the Kemptville
12 site, and by you I mean IO and Sol Gen, based on your
13 knowledge and information, how easy do you expect it
14 would be to find another property? Just based on your
15 experience?

16 A. It would be very difficult.

17 437. Q. Why is that?

18 A. Without having gone back over the market
19 recently, the past year or so, there's not a lot of
20 inventory that could accommodate this type of use based
21 on the parameters that we have to achieve a site that
22 could deliver the property. It becomes even more
23 complicated given the use insofar as there's no direct
24 zoning or official plan designations that really speak
25 to what a detention cent -- the detention facility,

1 where it would fall. So, there's an interpretation piece
2 to it as well. Notwithstanding that public use can be
3 accommodated and can be -- accommodate this type of use.
4 Finding those sites in industrial areas versus green
5 fields, it can be find -- difficult to find a site that
6 would accommodate the requirements and then you're out
7 in competing, in a limited-supply market with other
8 investors and users of real estate as well. Based on our
9 past experience, it was a difficult process. Based on
10 information that we've received from our broker in the
11 past year, the experience continues to likely be
12 difficult to find a site.

13 438. Q. Then, you were also asked about some
14 expression of interest from North Grenville and they
15 acquired a large portion -- it was mentioned they
16 acquired a large portion of the original campus for this
17 property. Back in 2019, did anyone else seek to put
18 forward an expression of interest for this property
19 other than Sol Gen, that you're aware of?

20 A. Not that I'm aware of.

21 439. Q. Then, if you were required to dispose of the
22 Kemptville site, for whatever reason, would there be
23 costs associated with doing that and, for example, would
24 you have costs associated in terms of staff resources to
25 obtain the OIC, the order in council, to dispose of it?

1 MR. EMARD-CHABOT: Susan, I'm just going to jump
2 in for a second. The existence of costs to dispose is
3 related to whether or not at the end of the day the JR
4 goes through and whether or not a court order is issued.
5 I don't know that it's relevant to when the Application
6 was brought. Those costs would be the same whether it
7 brought an Application within 10 days or five years out.
8 So, I just want to put that as a caveat, that I'm not
9 sure that affects the analysis of timing.

O

10 MS. KEENAN: Fair enough, but I think there is an
11 element of, had the JR been brought in time, they
12 would've been aware of the need to potentially dispose
13 of the property, whereas reliance on the status quo,
14 following the 30-day period and then having to dispose
15 of it now, plus buy another property, I think those
16 costs are relevant. So, -- and he was also -- the
17 Witness was also asked about the costs of disposing of
18 this property and purchasing another. So, I think it's
19 fair game for a Reply. So, we can always argue about
20 relevance ---

21 MR. EMARD-CHABOT: When the time comes.

22 MS. KEENAN: Yeah. So, my -- and I can be brief
23 about it.

24 BY MS. KEENAN:

25 440. Q. So, is it fair to say there would be costs

1 associated, not to just the disposal of this property,
2 but the costs of the actual transactions involved in
3 disposing of the property if that were needed? Like, for
4 example, real estate broker costs, the types of costs
5 that are usually involved in the purchase or sale of the
6 property?

7 A. So, there would be some due diligence which
8 may be required just to ensure that what exists, if it
9 needs to be supplemented, there may be some costs
10 associated with that. There'd be cost of the brokerage,
11 there'd be the cost of legal, external legal, and other
12 associated costs as well. So, there would be some costs
13 associated with it.

14 441. Q. Then, aside from the purchase price of a new
15 property, assuming you were able to find one, those --
16 you would also have those additional, sort of,
17 transaction costs to acquire that new property?

18 A. You'd have the transaction costs as well as
19 the costs of staff time spent trying to acquire the
20 site.

21 442. Q. Okay. Now, you were asked about holding costs
22 for the property and I think you gave us numbers. I
23 think you said it was about \$1 million and we're going
24 to undertake to advise on that point if that was part of
25 the book value purchase price, but you also mentioned, I

1 think, \$500,000 in holding costs. Is that -- do I have
2 that right?

3 A. Approximately, is my understanding, yes.

4 443. Q. Okay. Those, if you can't proceed on the
5 Kemptville site, you can't recover those, right?

6 A. Those are ---

7 444. Q. Like, you couldn't ---

8 A. --- sunk costs.

9 445. Q. They're sunk costs?

10 A. Correct.

11 446. Q. Okay. Then, you were also asked about the --
12 about what might have been referred to by Mr. Gismondi
13 regarding a process that involved posting -- or sorry, a
14 comment period, and you responded by referring to the
15 environmental assessment process and the need to post as
16 part of that process. Has -- I just wanted to clarify
17 because I think you started to say something about the
18 status of that. So, has that occurred yet?

19 A. It is posted. It's currently open. It's open
20 for a period of 30 days and then once that closes, we
21 see what kind of comments or feedback has been provided
22 and then we action what needs to be actioned and just
23 take into consideration others that don't need to be
24 actioned.

25 447. Q. When you say it's there -- it's happening

1 right now, you mean it's been posted for public comment?

2 Like, it's ---

3 A. Correct.

4 448. Q. --- the public can go and comment on it?

5 A. Yeah, posted on an Ontario provincial
6 website.

7 449. Q. Okay. I guess that would be -- is that the
8 Environmental Registry?

9 A. Correct. Yes. So, it's the Class
10 Environmental, EA, posted there, the Public Works one.

11 450. Q. I see. Then, you talked a lot about the
12 different reports that are listed in your Affidavit, the
13 different, sort of, studies and assessments that were
14 done. Are those -- like, what's the purpose of those?
15 Are those being done to figure out if the project can
16 proceed on the site?

17 A. That's correct.

18 451. Q. Okay. Does that differ from the purpose of
19 posting the environmental assessment for public comment?
20 What's the difference there in terms of the purpose?

21 A. The purpose of completing those due diligence
22 reports are to understand the capacity of the site, to
23 receive a future development. And the associated
24 constraints which you may come across at a given site
25 and then how does that get factored into the engineering

1 and design of it, whereas the Class EA posting is really
2 to provide notice and commentary of an action that's
3 happening on a given site and the potential
4 environmental impact or impact to the environment, I
5 should say.

6 452. Q. Okay, thank you. When you were referring to -
7 - you referred to the Russell Road -- you were asked
8 about the Russell Road site and you were asked about the
9 National Capital Commission site. Forgive my ignorance,
10 are those the same?

11 A. Yes, the Russell -- so the address was 4055
12 Russell Road and the owner was the NCC.

13 453. Q. I see. Thank you. Just for clarity. Okay.
14 Then, you were asked about different work that was
15 completed before it was determined that there would be a
16 facility in Kemptville. Now, you couldn't do any site-
17 specific work before you knew that there was going to be
18 a Kemptville site, right?

19 A. That's correct.

20 MR. EMARD-CHABOT: I just want to be clear,
21 Susan. Mr. Macey did answer that there was some work
22 done on the 4055 Russell. So, there was some site-
23 specific work done and that was the evidence that was
24 give.

25 MS. KEENAN: Right, and that work was specific to

1 that site, but in terms of whatever was dependent on the
2 site. It's sort of tautological.

3 MR. EMARD-CHABOT: Yes. I just want to be clear
4 that there was some site-specific done for another site.

5 MS. KEENAN: Yes. Yes. Understood. Okay. Those
6 are all my questions in Reply.

7 MR. EMARD-CHABOT: Thank you.

8 --- WHEREUPON THE EXAMINATION ADJOURNED AT THE HOUR OF 2:39 IN
9 THE AFTERNOON.

10 THIS IS TO CERTIFY THAT the foregoing is a
11 true and accurate transcription from the
12 Record made by sound recording apparatus
13 to the best of my skill and ability.

14 

15
16

17
18
19 Stephanie Vanderwielen, Catana Reporting Services

20
21
22 Any reproductions of this transcript produced by Catana
23 Reporting Services are in direct violation of O.R., 587/91
24 Administration of Justice Act, January 1, 1990, and are
25 not certified without the original signature.

TAB 4

UNDERTAKINGS

| <u>No.</u> | <u>Transcript</u> | <u>Undertaking</u> | <u>Response</u> |
|-------------------|--|---|---|
| 1. | Questions 177-179 at pages 55 lines 3-25 and page 56 lines 1-17. | To provide invoices or a breakdown or a table specifying the date and amounts of PDC work done by NORR Architects that makes up the approximate \$1.4 million referenced in paragraph 15 of the Affidavit of David Macey. | The breakdown is attached. |
| 2. | Questions 191-192 at page 60 lines 19-25 and page 61 lines 1-11. | To provide the letter dated January 20, 2021 from the municipality of North Grenville indicating a correctional facility is a permitted use. | See attached letter from the municipality of North Grenville dated January 20, 2021 to the consultant retained by IO. |
| 3. | Questions 238-239 at page 74 lines 16-25 and page 75 lines 1-22. | To advise whether the \$2,463,910.02 purchase cost for the Kemptville site included the \$1,028,151 in necessary watermain work. | <p>During the holding period, in fiscal year 2020-2021, the Ministry paid \$1,082,263.89 to ARIO for the necessary watermain work.</p> <p>The depreciated value for that watermain work (\$1,028,151.61) was included as part of the \$2,463,910.02 purchase price that the Ministry paid to ARIO for the property in March 2022.</p> <p>In fiscal year 2021-2022, ARIO reimbursed the Ministry for that depreciated value (\$1,028,151.61) to ensure that the Ministry did not pay twice for the watermain work.</p> |

| | | | |
|----|--|---|--|
| | | | This can be seen in the tables found in Appendix 1 to the land transfer invoice in Exhibit "C" to the Affidavit of David Macey. |
| 4. | Questions 343-347 at page 104 lines 11-25, page 105 lines 1-25 and page 106 lines 1-5. | To produce the figure for IO staff costs for the window from September 26, 2020 (30-day filing deadline) to August 16, 2022 (issuance of application). | \$1,861,924 Should a change in site occur, it's expected additional IO staff costs will be incurred for project management of site related activities such as Background Assessment, Early Works and Due Diligence Reports, Municipal Approvals, PSOS development, and Community Consultations. |
| 5. | Question 282 at page 88 lines 1-3 [given off the record]. | To advise of the cost of due diligence work for the period of September 26, 2020 (30-day filing deadline) to August 16, 2022 (issuance of application). | \$1,056,234 |

REFUSALS

| <u>No.</u> | <u>Transcript</u> | <u>Under-advisement</u> | <u>Grounds for Refusal</u> |
|------------|---|---|---------------------------------------|
| 1. | Questions 160-162 at page 49 lines 10-25 and page 50 lines 1-13. | To advise what amount was allocated to the project on June 26, 2020. | Irrelevant. |
| 2. | Questions 168-172 at page 51 lines 17-25, page 52 lines 1-25 and page 53 lines 1-18. | To advise of the initial DBFM budget range for the Thunder Bay facility. | Irrelevant. |
| 3. | Questions 380-386 at page 116 lines 20-25, page 117 lines 1-25, page 118 lines 1-25, page 119 lines 1-25, page 120 lines 1-13 and page 121 lines 1-7. | <p>i. To advise how much money was spent on due diligence staff time and PDC work on the initial Ottawa Correctional Complex (OCC) vision from March 2017 until the vision shifted.</p> <p>ii. To advise whether there was, in May 2017, an allocation range or budget range for the OCC project, or the OCC vision, similar to what is now published on the IO website for Kemptville.</p> | <p>Irrelevant.</p> <p>Irrelevant.</p> |

TAB 4(A)

EOCC - Kemptville PDC

Cost Breakdown

| Scope | Costs up to Oct. 21, 2022 | Estimated % to be redone based on PDC assessment | Estimated Cost to be redone |
|--|------------------------------|--|--------------------------------|
| - Functional Program | 329,575.00 | 10% | 32,957.50 |
| - Background | 74,989.81 | 66% | 49,493.27 |
| - Master Plan Report | 155,068.50 | 90% | 139,561.65 |
| - Block Schematics | 180,263.45 | 25% | 45,065.86 |
| - Municipal Approvals | 44,834.04 | 90% | 40,350.64 |
| - Project Specific Output Specifications | 374,988.09 | 10% | 37,498.81 |
| - Pre-RFP Release | 103,832.51 | 20% | 20,766.50 |
| - Cash Allowance | 108,302.00 | 78% | 84,192.00 |
| Total | 1,371,853.40 | | 449,886.23 |

TAB 4(B)

Wednesday, 20 January 2021

Attention:
Jaime Posen
Senior Planner
Fotenn

Re: Zoning for a Correctional Facility

Dear Jaime,

The Municipality confirms that a Public Use by a Public Authority is a permitted use on the property legally described as Concession 3, Part of Lots 23 and 24, and Concession 4 Part of Lots 24 to 29, being Parts 2, 3, 5 and 6 on Reference Plan 15R10707.

Section 6.39 of Comprehensive Zoning By-law provides additional zoning provisions for public uses. According to Section 6.39 *the provisions of the Zoning By-law do not apply to the use of any lot or the location or use of any building or structure for the purpose of public use by...any department of the Government of Ontario*. These provisions are attached.

It is understood that the Correctional Facility is required by the department of the Solicitor General. As the proposed facility is related to the activities of this department of the Government of Ontario, the Correctional Facility would be in conformity with Section 6.39 Public Uses of the Comprehensive Zoning By-law.

As per Section 6.39 (a)(iii) *the lot coverage, setback and yard requirements prescribed for the zone in which such land, building or structure is located shall be complied with. The property is zoned Institutional*. The Zoning requirements for the Institutional zone are attached.

Sincerely,

A handwritten signature in black ink that reads "Amy Martin".

Amy Martin
Acting Director of Planning and Development

cc: Gary Dyke, Chief Administrative Office, Municipality of North Grenville
cc: Tate Kelly, Planner, Infrastructure Ontario
cc: John Taglieri, Senior Project Manager, Infrastructure Ontario

contravenes any of the provisions of this By-Law applicable to each individual remaining building, accessory building or lot.

- d) Except where specifically permitted by this By-Law, not more than one dwelling shall be located on a lot.
- e) Notwithstanding anything contained in this By-Law, no person shall use or occupy any building for residential purposes unless such building has received occupancy permission from the Municipality in accordance with the Ontario Building Code.
- f) Notwithstanding anything contained in the By-Law, no person shall use any building, structure or land for any purpose that would potentially have a negative impact on groundwater resources in the Municipality. As part of the building permit, severance or rezoning process, the applicant may be required to obtain Ministry of Environment approval for any use. Specifically, individual development proposals which require 50,000 litres or more of water per day will require a water taking permit from the Ministry of Environment. Notwithstanding the foregoing policy, the watering of livestock shall not require a water taking permit.
- g) Any activity, other than the watering of livestock or a public use, that involves the taking of 50,000 litres or more of water per day shall be defined as the “commercial taking of water” and shall be deemed to be a specific “land use” which must be recognized in a site specific zoning category within this By-Law.
- h) Except as otherwise specifically permitted in this By-law, the following structures are prohibited in any zone:
 - i. Shipping containers

6.39 PUBLIC USES AND UTILITIES

- a) The provisions of this By-Law shall not apply to the use of any lot or the location or use of any building or structure for the purpose of public use by the Corporation or by any local board of the Corporation as defined by *The Municipal Act, R.S.O. 1990*, as amended, any telephone or telecommunication corporation, any natural gas distribution system operated by the Corporation or on its behalf by a company distributing gas to the residents of the Corporation and possessing all the necessary powers, rights, licenses and franchise, any Conservation Authority, the United Counties of Leeds and Grenville, any department of the Government of Ontario or Canada, any use permitted under statutes of Ontario or Canada governing railway operations, including tracks, spurs and other

railway facilities provided that where such lot, building, structure, use or transmission facility is located in any zone:

- i. no goods, materials or equipment shall be stored in the open, except as permitted in such zone;
 - ii. any above ground use carried on under the authority of this paragraph in any residential zone shall be maintained in general harmony with residential buildings in such zone; and
 - iii. the lot coverage, setback and yard requirements prescribed for the zone in which such land, building or structure is located shall be complied with.
- b) Nothing in this By-Law shall prevent the use of any land as a public park, a public street or for the location of a properly authorized traffic sign or signal, any sign or notice of any Municipal, Provincial or Federal government department or authority, or any mail or utility box or for a street or prevent the installation of a watermain, sanitary/waste water sewer main, storm sewer main, water and/or waste water pumping station, gas main, pipeline, lighting fixtures, overhead or underground electrical facility, television, telecommunication, telephone, or other supply line or communication line or tower, or structure clearly accessory to the foregoing, provided that the location of same has been approved by the Municipality.

6.40 SETBACKS

6.40.1 Roads, Railways and TransCanada Pipeline

- a) A permit from the Ministry of Transportation is required for:
- i. the placing of a building, structure or entrance within 45 m (147 feet) of the limit of any provincial highway, 180 m (590 feet) of the centre point of any intersection on a King's Highway and 395 m (1,295 feet) of any intersection or interchange on a controlled-access highway (i.e. 416); and
 - ii. the placing of a sign within 400 m (1,312 feet) of the limit of the highway.
- b) No building or structure shall be erected in any zone closer than the sum of the front yard or exterior side yard requirement for such zone and the following where applicable:
- i. 15 metres (49 ft.) from the centre of the right-of-way of a County road; and
 - ii. 10 metres (32.8 ft.) from the centre of the right-of-way of a Municipal road.
- c) All development shall be set back a minimum of 10 metres (30 ft.) from the centreline of all private lanes.

SECTION 29 – I – INSTITUTIONAL ZONE

Within the Institutional (I) Zone, no person shall use any land, erect, alter, enlarge, use or maintain any building or structure for any use other than as permitted in this section and also such use, building or structure shall be in accordance with the regulations contained or referred to in this section.

29.1 PERMITTED USES

- ambulance station
- arena
- cemetery
- charitable camp
- club - commercial, private or fraternal organization
- community centre
- community facility
- conservation uses, including forestry, reforestation
- crematorium
- curling rink
- day nursery
- fair ground
- fire station
- health centre
- hospital
- library
- mobile canteen under license by the Municipality
- museum or art gallery
- nursing home or extended care facility
- place of assembly
- place of worship
- police station
- post office
- public administration office
- public campground
- public or private hospital
- public or private park, conservation area, playground, roadside park, public boat launch or swimming or picnicking area, playing field, recreational trail, swimming pool, wading pool, beach, picnic area, bandstand, skating rink,

- skateboard park, tennis court, bowling green, golf course or other similar outdoor recreational uses, both passive and active
- public or private school
 - public use
 - public works garage
 - recreation uses
 - senior centre
 - university or college
 - building or structure related to a utility company, such as a natural gas company or telephone company
 - accessory building, structures or use to a permitted use, including accessory retail uses, accessory eating establishments and accessory accommodations

29.2 ZONE REGULATIONS

| <u>Provisions</u> | <u>No Municipal Water or Sewer</u> | <u>Municipal Water and Sewer</u> |
|-------------------------------|--|---|
| Minimum lot area | 2000 m ² (21528 ft ²) | Nil |
| Minimum lot frontage | 30 metres (98.43 feet) | 23 metres (75.9 feet) |
| Minimum front yard | 12 metres (39.4 feet) | 7.5 metres (24.6 feet) |
| Minimum rear yard | 12 metres (39.4 feet) | 7.5 metres (24.6 feet) |
| Minimum side yard | 6 metres (19.7 feet)(a) | 3 metres (9.8 feet)(b) |
| Minimum exterior side yard | 12 metres (39.4 feet) | 7.5 metres (24.6 feet) |
| Maximum building height | 13 metres (42.7 feet) | 13 metres (42.7 feet) |
| Minimum landscaped open space | 10 % (c) | 10 % (c) |
| Maximum lot coverage | 40 % | 40 % |

Footnotes:

- a) Where an interior side yard abuts a residential zone such interior side yard shall be a minimum of 12 metres (39.4 ft.).
- b) Where an interior side yard abuts a residential zone such interior side yard shall be a minimum of 6 metres (19.7 ft.).
- c) Minimum landscaped open space shall include a solid fence a minimum of 1.5 metres (4.9 feet) in height constructed of wood, metal or equivalent material along any lot line that abuts a residential zone.

29.3 GENERAL PROVISIONS

All special provisions of Section 6 "General Provisions" shall apply, where applicable, to any land, lot, building, structure or use within the Institutional (I) Zone.

29.4 SPECIAL PROVISIONS**29.4.1 I Special Exception Zones**

Notwithstanding any other provision of this By-law to the contrary, on those lands delineated as being in a special exception zone the following provisions shall apply:

- a) **I-1-h** (Kemptville District Hospital)
 - i. An 80 unit apartment building, including 36 parking spaces shall be an additional permitted use.
 - ii. Removal of Holding Symbol: Notwithstanding the provisions of Section 29.2 to the contrary, on the lands zoned I-1, only those uses existing at the date of the passing of By-law /74-09 shall be permitted. The holding symbol (h) shall be removed in accordance with the applicable sections of the Planning Act, provided that the following item is addressed for the zone concerned: execution of the site plan control agreement.
- b) **I-2** (285 County Rd /44 – NG Municipal Centre)
 - i. Additional Permitted Uses:
 - Accommodation
 - Clinic

TAB 5

Court File No. DC-22-2731

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

GV/sr

B E T W E E N:

VICTOR LACHANCE and
KIRK ALBERT

Applicants

- and -

SOLICITOR GENERAL OF ONTARIO and
ATTORNEY GENERAL OF ONTARIO

Respondents

This is the Cross-Examination of JUSTIN ROBERT
JOSEPH PICHE, on his Affidavit sworn the 16th day of
December, 2020, taken via videoconference at the offices of
VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay
Street, Toronto-Dominion Centre, Toronto, Ontario, on the
30th day of January, 2023.

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

| | | |
|-----------------------|---|------------------------|
| STEPHANE EMARD-CHABOT | } | -- for the Applicants |
| SUSAN KEENAN | } | -- for the Respondents |
| SHAYNA LEVINE-POCH | } | |

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| Certification | 116 |

1

2 --- upon convening at 10:00 a.m.

3 --- upon commencing at 10:00 a.m.

4

5 JUSTIN ROBERT JOSEPH PICHE, affirmed

6 CROSS-EXAMINATION BY MS. KEENAN:

7 1. Q. Good morning, Professor Piche.

8 A. Good morning.

9 2. Q. Could you please state your full
10 name for the record?

11 A. Justin Robert Joseph Piche.

12 3. Q. Thank you. And do you like to be
13 addressed as "Doctor" or "Professor"?

14 A. Justin.

15 4. Q. Justin? Okay. My husband is an
16 academic, so I know how important names can be. So,
17 you swore an affidavit for this case on December
18 16th, 2022; right?

19 A. Correct.

20 5. Q. And do you have that affidavit with
21 you today?

22 A. I do.

23 6. Q. So, I am going to be...

24 A. It is on my computer screen.

25 7. Q. Great, so I am going to be asking

J.R.J. Piche - 4

1 you some questions about that affidavit. If at any
2 time you don't understand a question that I have
3 asked, just let me know and I can rephrase it. And
4 also if you need a break at any moment, just let us
5 know and we can do that as well.

6 A. Sounds good.

7 8. Q. Great. So, I am starting with
8 questions at paragraph 1 of your affidavit. If you
9 would like to take a look at that.

10 A. Okay.

11 9. Q. Now, is it correct to say that you
12 are the founder of the Criminalization and
13 Punishment Education Project?

14 A. I am one of the co-founders.

15 10. Q. And that is referred to by the
16 acronym CPEP; is that right?

17 A. Yes.

18 11. Q. And when did you found CPEP with the
19 other founders?

20 A. So, myself and Aaron Doyle from the
21 Department of Sociology and Anthropology at Carleton
22 University called the first meeting of CPEP in
23 September, 2012. So, it has been...we are in our
24 tenth year, I guess, now.

25 12. Q. And how many members, approximately,

1 does it have?

2 A. CPEP fluctuates in membership
3 because a significant portion of our membership are
4 undergraduate and graduate students. So, depending
5 on the year, you know, we could have anywhere
6 between half a dozen to at higher points well over
7 two dozen members.

8 13. Q. Okay, and so as people move through
9 their undergraduate or graduate degree, they might
10 join and then they might leave perhaps because they
11 are leaving the university to go somewhere else?

12 A. Correct, and I would say, like, our
13 current membership in terms of people that come to
14 meetings hovers between 10 to 20 at this point.

15 14. Q. Okay, thank you.

16 A. Yes.

17 15. Q. And is it the same founders that are
18 currently running or leading CPEP right now?

19 A. Yes.

20 16. Q. Okay. And is it correct to say that
21 one of CPEP's goals is to reduce the use of jails?

22 A. Yes.

23 17. Q. And you personally also want the
24 government to reduce the use of jails?

25 A. Yes.

1 18. Q. And in that sense, both CPEP and
2 yourself are abolitionists?

3 A. I guess I would ask you to broadly
4 define what you mean by abolition and then I could
5 give you a straight answer.

6 19. Q. Sure, so it might actually help for
7 me to take you to a portion of your affidavit.

8 A. Okay.

9 20. Q. So, I would like to take you to page
10 335 of the record.

11 A. M'hmm.

12 21. Q. Now, if you scroll up to the page
13 above, you will see this is Exhibit A to your
14 affidavit.

15 A. Yes.

16 22. Q. And it appears to be an article with
17 the title "The Struggle Over the Ottawa Carleton
18 Detention Centre"; correct?

19 A. Correct.

20 23. Q. And did you author this article with
21 Aaron Doyle and Kelsey Sutton?

22 A. I did.

23 24. Q. Okay. So, I would like to take you
24 to page 344 of this article. And specifically to
25 the first sentence under the heading "Epilogue and

1 Conclusion".

2 A. M'hmm.

3 25. Q. And there I see a sentence that
4 states:

5 "...CPEP's community organizing to reduce
6 the use and harms of imprisonment in the
7 short-term while working towards abolition
8 in the long-term continues, as does our
9 fight against the new jail..."

10 So, isn't it the case that you have described CPEP's
11 mission as including abolition?

12 A. Yes, and that is how I define it.

13 26. Q. Okay. So, basically, you over the
14 long-term eliminate the use of jails?

15 A. Correct.

16 27. Q. Thank you. So, I would also like to
17 take you to page 350 of the record, which is part of
18 Exhibit B to your affidavit.

19 A. M'hmm.

20 28. Q. Do you see that page there?

21 A. I do.

22 29. Q. Okay. And specifically I am going
23 to be referring to the item with the date 3 May
24 2017.

25 A. M'hmm.

1 30. Q. And there I see...and you can tell
2 me if this is right...it looks like it is NOPE's
3 submission to the Senate Standing Committee on human
4 rights?

5 A. Yes.

6 31. Q. Okay, so, when I click that link, it
7 takes me...I can share my screen if it is easier,
8 but...let me see here. It takes me to this website,
9 which looks to be a blog.

10 A. Yes, my department's blog, yes.

11 32. Q. And then when I go to that blog, I
12 see the words "Download the Report" on the bottom
13 right-hand corner.

14 A. M'hmm.

15 33. Q. So then when I click "Download that
16 Report", this report comes up and is this, looking
17 at it, it looks like NOPE's report to the Senate
18 Standing Committee; is that correct?

19 A. Correct. Yes, so ahead of our
20 testimony we submitted that report. Yes. Senator
21 Pape asked me to do it.

22 34. MS. KEENAN: Okay, and I would like to
23 mark this for identification.

24

25

J.R.J. Piche - 9

1 --- EXHIBIT NO. 1: Submission to Senate Standing
2 Committee on Human Rights dated May
3 3, 2017 (for identification)
4

5 BY MS. KEENAN:

6 35. Q. So, I am going to take you to
7 paragraph...page 7. The page number is in the
8 bottom right-hand corner. So, Exhibit 1 is a
9 submission to the Senate Standing Committee on Human
10 Rights and it is from the 3rd of May, 2017. So, I
11 am taking you to page 7 of that submission and to
12 the very bottom of page 7.

13 A. M'hmm.

14 36. Q. Where it states:
15 "...Given the proven failures of
16 imprisonment and the damage caused by
17 incarceration, we are calling upon
18 governments across the country, including
19 the Government of Canada, to enact a
20 moratorium on penal infrastructure
21 development until the federal review of
22 criminal justice laws, policies and
23 practices is completed. As part of this
24 process, we also call upon the federal
25 government to thoroughly examine the

J.R.J. Piche - 10

1 viability of diminishing the use of
2 incarceration in Canada by enacting prison
3 divestment strategies such as
4 decriminalization and legalization of
5 criminalized substances as well as
6 decarceration measures including
7 transitional housing..."

8 So, was this what you were calling upon the
9 government to do at the time you published this
10 submission or provided the submission to the Senate
11 Standing Committee?

12 A. So, for the federal government to
13 do, yes. I mean, that is what is written on the
14 report, yes.

15 37. Q. And you would also have wanted the
16 same outcome with respect to provincial facilities
17 as well? It is not that you were targeting federal
18 penitentiaries specifically; right?

19 A. No, we were calling for a country-
20 wide penal infrastructure development moratorium,
21 including at the provincial territorial level.

22 38. Q. Right. Because you wanted to see
23 the elimination of the use of all jails over the
24 long-term?

25 A. Yes.

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1 39. Q. And you have been involved in
2 movements that have that goal?

3 A. Yes.

4 40. Q. Okay, and so I am going to stop
5 sharing my screen here because we are going to move
6 away from that. But isn't it the case that building
7 new prisons could make the conditions of
8 imprisonment more humane? It is possible, right?

9 A. I think if we were to look at even
10 the recent history of prison construction, that
11 argument I would say is quite debatable. I mean,
12 the Toronto South Detention Centre within a matter
13 of months of it being open was called the billion
14 dollar hellhole in the media. So, I would say that
15 whether you are imprisoning people in a new building
16 or an old building, you know, the pains of
17 imprisonment that are experienced, you know, are
18 quite similar in nature associated with the
19 deprivation of liberty, the deprivation of autonomy,
20 the deprivation of security, you know, the
21 deprivation of goods and services that give a person
22 one's sense of their identity.

23 So, you know, I guess to answer your
24 question, if we are to look at the damage of
25 imprisonment, that continues even in a new building.

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1 And so the goal of organizing moratorium strategies
2 is to prevent the further expansion of the violence
3 of incarceration.

4 41. Q. Okay, and so if no new prisons are
5 built, won't those who are sentenced to a term of
6 imprisonment be in old jails? They will have to
7 stay in the old jails, right?

8 A. Well, part of what we are advocating
9 for as part of moratorium strategies is also
10 diversion and decarceration strategies to reduce the
11 number of people that are behind bars.

12 42. Q. Right, and...

13 A. But I do suppose that there will
14 be...if the governments decide that they don't want
15 to build new prisons but don't divert and
16 decarcerate people from custody, they will continue
17 to be housed in older prisons. But that is not...it
18 is not one or the other. We are making a several
19 pronged argument. So I would never make an argument
20 around a moratorium without also arguing for
21 diversion and decarceration.

22 43. Q. Absolutely, I understand that those
23 are different aspects of what you are advocating
24 for. But if it is the case that people continue to
25 be sentenced to serve terms of imprisonment and no

J.R.J. Piche - 13

1 new jails are built, they are going to be in the old
2 jails; right?

3 A. I suppose if governments ignore all
4 the other things we called for in the exhibit you
5 just flashed on the screen, which included things
6 like decriminalization, legalization, et cetera,
7 then, yes. But, I mean, that is not what myself or
8 other abolitionists are arguing for. That would be,
9 you know, picking off...cherry-picking things in a
10 way that is not accurate in terms of what we are
11 struggling for.

12 44. Q. Well, it would mean that maybe one
13 of your goals was accomplished but not the other;
14 right?

15 A. Yes, I would suppose that would be
16 an example of governments absorbing what they
17 consider to be tenable and politically advantageous.
18 But, I mean, that is not...that is not my call,
19 right? All I can do is advocate and organize and
20 governments will do what governments do.

21 45. Q. M'hmm. And getting back to CPEP, so
22 you indicate that CPEP has joined the coalition
23 against the proposed prison; is that correct?

24 A. That is correct.

25 46. Q. And that is mentioned in your

J.R.J. Piche - 14

1 affidavit, paragraph 1. You say:

2 "...I have been a member of the Coalition
3 Against the Proposed Prison, CAPP, since
4 CPEP joined it in the fall of 2020..."

5 A. Correct. Yes. I first heard from
6 Kemptville residents in early September, 2020 after
7 I had done some media interventions around the late
8 August, 2020 announcement. They reached out to me I
9 believe it was on Facebook and then we met, I think,
10 for the first time...I don't know if it was called
11 CAPP then or not. But we first met in mid-October
12 and that was like our first...those just turned into
13 weekly meetings up until this point. And then now
14 in the midst of this, we meet once a month because
15 things have slowed down.

16 47. Q. Okay, and so both CPEP and yourself
17 are part of C-A-P-P or CAPP?

18 A. M'hmm. Yes.

19 48. Q. And CAPP opposes the building of the
20 proposed Kemptville jail; right?

21 A. Correct.

22 49. Q. And are you aware of Mr. Victor
23 LaChance, one of the founders of CAPP?

24 A. Yes.

25 50. Q. So, you know him?

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1 A. Yes.

2 51. Q. And you have worked with him as part
3 of CAPP; right?

4 A. Yes.

5 52. Q. And so you also talk in your
6 affidavit about how CPEP launched the NOPE campaign
7 or the #NOPE campaign?

8 A. Yes, so the...well, first, NOPE was
9 essentially created in a graduate class I was
10 teaching where we had filed freedom of information
11 requests, I believe, with all the provinces and
12 territories to find out how many prisons they were
13 building. And then that is what ended up producing
14 that report that you referenced as Exhibit 1.

15 And then from there, on March 4th...so we
16 had NOPE. On March 4th, I was chairing a panel at
17 the Critical Perspectives Conference: Criminology
18 and Social Justice at the University of Ottawa and
19 somebody actually barged into the session and were,
20 like, "You guys aren't going to believe it. The
21 Province has just announced the construction of a
22 new and bigger 725 bed provincial jail in Ottawa".
23 And then everyone...I remember everyone being...and
24 I was definitely upset because in our interactions
25 with the Province at that point, they didn't

J.R.J. Piche - 16

1 indicate they were building a new prison or planning
2 one.

3 53. Q. And is it fair to say that at that
4 point, you shifted your campaign, your #NOPE
5 campaign, from being No On Prison Expansion to being
6 No Ottawa Prison Expansion?

7 A. That is correct. And at lunch time
8 that day at the conference, I remember collecting
9 signatures to stop the Ottawa prison.

10 54. Q. I see.

11 A. Like, it was a very quick switch to
12 say, okay, while we are doing this, calling for a
13 nation-wide prison construction moratorium and the
14 Province decided that it was going to build a new
15 prison in Ottawa and so we are going to fight that,
16 yes.

17 55. Q. And that was...you had mentioned
18 March, 2017 but actually I think in your affidavit
19 you had referenced May, 2017. Is that correct?

20 A. So, to the best of my recollection,
21 I think we presented the...like, that report was
22 submitted in March, 2017 to the committee but we
23 hadn't presented it until later, which is why I
24 think the date for March 3rd is there. I think that
25 is when we presented it but, I mean, perhaps that is

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1 a mistake. But to the best of my recollection when
2 I completed the affidavit I thought we presented
3 that in the Senate on May 3rd but it could have been
4 earlier.

5 56. Q. I think that you say in paragraph 4
6 that the announcement of the new facility was May,
7 2017. So I think it must have been at that point,
8 unless I am mistaken, that you shifted the campaign
9 to focus on the proposed Ottawa facility. Is that
10 right?

11 A. May 4th was when the shift occurred
12 because, as I had just explained previously, in that
13 conference session it was the morning, I remember it
14 well, they said a new prison is being built in
15 Ottawa and then literally I went walking around
16 while people were standing in line for lunch with a
17 petition opposing that prison to try to get people
18 signed up against it. Yes.

19 57. Q. Right. And that is what you mean by
20 in paragraph 5 where you say that you along with
21 colleagues and students immediately...you say
22 immediately began the #NOPE campaign to oppose the
23 construction of the new facility in paragraph 5.

24 A. Yes. Yes, no, like, literally
25 within...it wouldn't have been more than an hour or

1 two, we were on there trying to get folks aware of
2 the situation and to try and drum up some opposition
3 out the gate.

4 58. Q. I see. And then if we go to your
5 affidavit, Exhibit B again...

6 A. What page is that?

7 59. Q. Let me get that for you.

8 A. Sorry, I have clicked through here.

9 Yes, 350?

10 60. Q. Yes. And if we look at the item
11 with the date 7 May 2017.

12 A. M'hmm.

13 61. Q. Now, this says...or this appears to
14 be...it is listed as a campaign op ed.

15 A. M'hmm.

16 62. Q. Now, the title of the op ed is...or
17 opinion column is "The new Ottawa jail will become
18 just another hellhole. Don't build it". Is that
19 right?

20 A. That's right.

21 63. Q. And you wrote that opinion column;
22 right?

23 A. I would have to look to see if there
24 was a co-author on that. Can I just click it for a
25 quick second?

1 64. Q. Yes, absolutely.

2 A. Yes, I guess I wrote this one, yes.

3 65. Q. Okay.

4 A. Sometimes it is me. Sometimes it is
5 me and Aaron Doyle. There is others that have
6 written other stuff too.

7 66. Q. Okay, and then there is another item
8 and it is dated 1 July 2017.

9 A. M'hmm.

10 67. Q. And in brackets it says:

11 "...(Campaign submission of petition for
12 nation-wide prison construction
13 moratorium)..."

14 A. M'hmm.

15 68. Q. So, was this a petition organized by
16 #NOPE, like, as part of the NOPE campaign?

17 A. Yes.

18 69. Q. And you were involved in that?
19 Like, did you lead this petition?

20 A. Yes, myself and the students that
21 were involved in that report you referenced earlier,
22 yes.

23 70. Q. Okay, and then this petition, it is
24 dated July 1st, 2017. So it is within about two
25 months, I guess, of the new facility being

1 announced?

2 A. Correct.

3 71. Q. And it was calling for a nation-wide
4 prison construction moratorium; right?

5 A. Yes, we still maintained that
6 demand, No Ottawa Prison Expansion, No On Prison
7 Expansion. It is...you know, that work continues,
8 yes.

9 72. Q. And then just going a little further
10 down in Exhibit B to the item dated 26 September
11 2017:

12 "...Campaign U Ottawa campus teach-in
13 event..."

14 A. M'hmm.

15 73. Q. And then there is another one under
16 that, 28 September 2017:

17 "...Campaign Carleton University campus
18 teach-in event..."

19 You see those?

20 A. Yes.

21 74. Q. Now, it looks like these are
22 Facebook events based on the link. So I wasn't
23 going to click on that. We don't have access here
24 to that. But is that correct to say they were
25 Facebook events organized over Facebook?

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1 A. So, not as we would understand them
2 today where things happen online. They were
3 Facebook event pages with details for those events
4 which were on campus in seminar rooms.

5 75. Q. I see. And it looks like they were
6 teach-ins at Carleton University; is that right?

7 A. So, the 26 was at the University of
8 Ottawa and the 28th of September was at Carleton
9 University.

10 76. Q. Okay, and...

11 A. So they were two separate teach-ins
12 to reach two separate student bodies to educate them
13 about how we got here, what may come and what we can
14 do to stop the construction of more human cages
15 including the proposed Ottawa Correctional Complex.

16 77. Q. Right. And I see the title is:
17 "...A new jail in Ottawa; how we got here,
18 what may come, and what we can do to stop
19 the construction of more human cages..."

20 A. M'hmm.

21 78. Q. And when you are saying "human
22 cages", you are referring to jails?

23 A. Correct.

24 79. Q. Okay. So, I would like to take you
25 to paragraph 6 of your affidavit. So we are going

1 back to your affidavit for a moment. And
2 specifically to line 2.

3 A. M'hmm.

4 80. Q. And let me just get the right place
5 here. Yes, so, it is the line that says:

6 "...We also held a demonstration in April,
7 2018 demanding consultation on ways in
8 which the budget of up to one billion
9 earmarked for the 30 year OCC public/
10 private partnership could instead be spent
11 in the community to enhance our collective
12 well-being and safety..."

13 A. M'hmm.

14 81. Q. Do you see that?

15 A. I do.

16 82. Q. So, basically, your perspective was
17 that that one billion of the budget should not be
18 spent on building a jail; right?

19 A. Correct.

20 83. Q. Okay, and then in paragraph 7, you
21 refer to a campaign where you encouraged Ontario
22 residents to contact members of government. If you
23 want to take a read of that for a moment.

24 A. No, I remember it well. It is the
25 first 99 days that Premier Ford was in office, we

J.R.J. Piche - 23

1 got on the horn and tried to convince him that the
2 Ottawa Correctional Complex was not a good idea.
3 And so we released a meme every day for his first 99
4 days in office.

5 84. Q. And so this was part of...was this
6 part of the #NOPE campaign?

7 A. Yes.

8 85. Q. Okay. And there is a line, the
9 second sentence of paragraph 7, and it says that:

10 "...In this drive we encouraged Ottawa and
11 Ontario residents to contact Premier Ford
12 and other members of his government to say
13 #YES to education and social services
14 instead of building a larger site of human
15 caging..."

16 Right?

17 A. Correct.

18 86. Q. And, again, when you are referring
19 to "human caging", you are referring to jails?

20 A. Correct.

21 87. Q. And basically you wanted the
22 government to divert money away from that, from the
23 building of jails?

24 A. Yes, I mean, when we know that for
25 every \$1 you spend upstream on prevention you save

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1 \$7 you otherwise spend on policing, courts, prisons
2 and victims services, we think it is a good idea to
3 divest from prison construction and spend that money
4 on community supports instead.

5 88. Q. I understand. So, I want to take
6 you to paragraph 10 of your affidavit.

7 A. Yes.

8 89. Q. And here you refer to a small
9 stakeholder session that was organized by what you
10 have referred to as MCSCS. Now, that is the former
11 Ministry of Community Safety and Correctional
12 Services; right?

13 A. Correct.

14 90. Q. And now that is referred to as the
15 Ministry of the Solicitor General. But at that
16 time, it was going by a different name and you were
17 invited to this session; correct?

18 A. Yes.

19 91. Q. And the session was planned to occur
20 on the 20th of April, 2018?

21 A. Yes, and it did...it did happen. It
22 was at the Ottawa Carleton Detention Centre.
23 Minister Lalonde and one of her senior policy
24 advisors, Abby Deshman, was there as well as, if I
25 recall correctly, different members of a few

1 community groups that...including those with lived
2 experience of criminalization and incarceration.

3 92. Q. Okay, and so you say the Ministry...
4 and this is from your affidavit...tried to convince
5 participants of the merits of the project hoping to
6 neutralize our opposition and silence our voices
7 prior to the election.

8 A. Yes, what I meant by that was
9 basically essentially...

10 93. Q. Well, hold on. Let me ask a
11 question. I haven't asked a question. So, now the
12 facility or complex that is being referred to, it
13 was the same one that the #NOPE campaign opposed;
14 right?

15 A. The Ottawa Correctional Complex, is
16 that what you are talking about?

17 94. Q. Yes.

18 A. Yes.

19 95. Q. And so you and the other
20 participants in the #NOPE campaign had just engaged
21 in these activities we have talked about against
22 that jail; right?

23 A. I need to make a clarification here,
24 so...

25 96. Q. Yes.

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1 A. ...can we go back to...hold on two
2 seconds. Where is the April, 2018 demonstration?
3 So, if we are going to follow the sequence of
4 events, March, 2018 we invited community
5 stakeholders from various sectors like mental
6 health, health, education, criminal justice, a few
7 others. We came to Ottawa U. We had a meeting and
8 literally answered the question if I had a billion
9 dollars to enhance community well-being and safety,
10 what would we spend it on. We came up with...

11 97. Q. Okay, so Mr. Piche I haven't asked
12 you a question so this is my cross-examination of
13 you so you are going to have to wait until I ask you
14 a question; okay? So, we are going to go to
15 paragraph 10. And as I mentioned, there is a
16 reference to an April 20th event; April 20th of
17 2018. And my question to you is, isn't it the case
18 that you attended that session after having engaged
19 in all these activities against that proposed
20 facility; right?

21 A. No, because as I was explaining, the
22 March, 2018, yes, that occurred before the 20 April
23 2018 meeting at OCDC, but on April 20th, 2018, that
24 meeting happened with a few community groups. A few
25 days later, the Province was trying to organize what

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1 they considered to be a larger, broader community
2 stakeholder session and they sent me the list of
3 invites and I said, "You actually need to be
4 inviting several dozens of organizations here who
5 you should invite for this". And they ended up
6 cancelling the session...

7 98. Q. I know, but Mr. Piche...

8 A. They ended up cancelling the
9 session...

10 99. Q. I am not asking you about that. I
11 am not asking you about that. I am trying to...

12 A. But I am telling you the
13 demonstration was on April 28th.

14 100. Q. Okay...

15 A. After the meeting, if you'd let me
16 finish.

17 101. Q. I understand but I am not asking you
18 about that. I am asking you about the session that
19 I just mentioned on April 20th, 2018. So we are not
20 talking about paragraph 11 of your affidavit. We
21 are talking about paragraph 10. And what I am
22 saying to you is, isn't it the case...and I am
23 asking you, isn't it the case that when you were
24 going to that, you had already engaged in all of
25 these activities against the proposed prison? It is

1 a simple question. Had you engaged in those
2 activities or hadn't you by that time?

3 A. Simple answer. March, 2018
4 community stakeholder meeting at Ottawa U, yes.
5 Demonstration in April, 2018, no, that came after
6 the 20 April 2018 meeting.

7 102. Q. I am not talking about...

8 A. Well, what are you talking about?

9 103. Q. I am talking about all of the things
10 we just mentioned that happened in 2017. You said
11 that as soon as the proposed facility was announced,
12 you immediately began efforts to oppose it; right?
13 We just talked about that.

14 A. Okay, I am having some confusion as
15 to what you are saying came before.

16 104. Q. Sure.

17 A. And my understanding of your
18 question was that you were saying the demonstration
19 in April, 2018 came before the April 20th meeting
20 and I was correcting and saying that, no, that
21 wasn't the case. Everything else, yes.

22 105. Q. Okay. I am talking about everything
23 else. So I am not talking about that demonstration
24 because your efforts had actually begun back in May
25 of 2017. We just covered that; right? They didn't

1 start in 2018. Your efforts against the proposed
2 facility go all the way back to when it was first
3 announced; right?

4 A. Yes.

5 106. Q. Okay. So at the time you went to
6 the April 20th session, you had already engaged in
7 these prior activities against the proposed prison;
8 right? And you had said you actually immediately
9 began those efforts as soon as you heard about the
10 proposed...

11 A. Yes, with the exception of the
12 April, 2018 rally that is mentioned in paragraph 6
13 of the affidavit.

14 107. Q. Right, so we are not going to what
15 happened then but I am saying you had engaged in
16 other efforts, making very clear your position on
17 whether that proposed facility should be built;
18 right?

19 A. Yes.

20 108. Q. Before April 20th of 2018?

21 A. M'hmm.

22 109. Q. Okay. And you have indicated, as I
23 mentioned, that:

24 "...The Ministry tried to convince
25 participants of the merits of the project

1 hoping to neutralize our opposition and
2 silence our voices prior to the
3 election..."

4 Right?

5 A. Yes.

6 110. Q. But we know that you were opposed to
7 that project already for a long time. For, like, a
8 year.

9 A. I can't explain why Minister Lalonde
10 and her senior advisor, Abby Deshman, continued to
11 engage CPEP and our NOPE campaign to try to get us
12 on board.

13 111. Q. I wasn't asking that. I am saying
14 you were opposed to it, right, for like a year
15 before you went to that; right?

16 A. Yes.

17 112. Q. Okay, and we also know that you
18 don't want to see any new jails built.

19 A. Yes.

20 113. Q. So, there was no way that that
21 Ministry was going to convince you of the merits of
22 the project because from your perspective, they were
23 just building more human cages. Right?

24 A. Correct.

25 114. Q. Okay, so I am going to turn to

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1 another area. I am going to be asking you about the
2 proposed Kemptville facility at this point.

3 A. Okay.

4 115. Q. So, we are going to go to...we are
5 going to start with just an overview of the
6 Ontario...the Ottawa Correctional Complex or the
7 proposed OCC. So you refer to that in paragraph 8
8 of your affidavit. You say there was an
9 announcement of the construction of a new 725 bed
10 provincial jail; right?

11 A. M'hmm. Yes.

12 116. Q. And then if we go to paragraph 16, I
13 am sorry to jump around, if we go to paragraph 16 of
14 your affidavit...

15 A. M'hmm?

16 117. Q. ...you say:
17 "...It is important to note that there was
18 never a clear press release from the
19 Ministry indicating that the Province was
20 walking away from its OCC plans..."

21 Right?

22 A. Yes, we were kind of left in silence
23 for a long period of time, yes, where we weren't
24 clear what the government direction was, whether or
25 not they had abandoned the Ottawa Correctional

1 strategy occurred..."

2 Do you see that?

3 A. Yes.

4 121. Q. So, FOI here, does that refer to
5 Freedom of Information?

6 A. Correct.

7 122. Q. Okay. So, is it fair to say, based
8 on your statements there, that the reasons why the
9 proposed Ottawa Correctional Complex was not built
10 have not been...they haven't been revealed to you?

11 A. No.

12 123. Q. It is not fair to say that? Or that
13 they...

14 A. Sorry, I was agreeing. I think it
15 is fair to say that we still don't know why we have
16 gone from OCC to eastern region strategy. We don't
17 have the exact answer and I say I still have the
18 same question that is in paragraph 17.

19 124. Q. Okay, and then as we just went over,
20 you kind of posited that it could be for different
21 reasons; right?

22 A. Those are a list of potential
23 reasons and there may be others, yes.

24 125. Q. Okay.

25 A. I don't know. That is why I have a

1 question.

2 126. Q. And so it is interesting because
3 then in paragraph 18, you say that the complex not
4 being built, the OCC not being built, shows that
5 community organizing can help affect prison
6 infrastructure plans.

7 A. M'hmm.

8 127. Q. Okay, and so then you refer to your
9 Exhibit C, page 7 and 13. Right?

10 A. What page is Exhibit C on?

11 128. Q. Yes, so, page 7 of Exhibit C is on
12 page 364 of the record.

13 A. Okay.

14 129. Q. So, that is page 7. And if you want
15 to verify that, you can scroll up until you find the
16 cover page for the exhibit.

17 A. Yes, no, I am...yes, I am there.

18 130. Q. Okay. And so the way I arrived at
19 that page 7 was by counting from where the exhibit
20 began, because I think probably in your original
21 version you had it as the seventh page so there
22 isn't a page 7 per se on the sheet of paper but it
23 is seven pages in from my count.

24 A. Yes.

25 131. Q. So I believe that is what you were

1 referring to. Is that right?

2 A. I believe so, yes.

3 132. Q. Okay. And is this a document that
4 you received or that perhaps someone else received
5 in response to a freedom of information request?

6 A. Yes.

7 133. Q. And the title of this page is "The
8 Project Overview Ottawa".

9 A. Yes.

10 134. Q. And so this, to your understanding,
11 refers to the Ottawa Correctional Complex?

12 A. Correct.

13 135. Q. Now, it doesn't look like this
14 document is dated.

15 A. M'hmm.

16 136. Q. However, if we go to it, there is a
17 highlighted portion on this page. I don't know if
18 perhaps you are the person who applied the
19 highlight.

20 A. I was...if I am looking, like, at
21 the yellow highlight, like, circles and highlights,
22 that would have been me to try and direct the
23 attention of the reader for this particular
24 proceeding to what I was talking about. So, yes, it
25 was me that did that.

1 137. Q. Thank you.

2 A. Yes.

3 138. Q. And so if we go to the first

4 highlighted part, it says:

5 "...Site selection is underway with a
6 preferred site identified but still under
7 negotiation for acquisition/lease..."

8 Right?

9 A. Yes, correct.

10 139. Q. And the next highlighted part, there

11 is another highlighted part a little bit further
12 down on the page, and it is under the heading "Key
13 Considerations/Issues".

14 A. Correct.

15 140. Q. Do you see that?

16 A. Yes.

17 141. Q. And it says:

18 "...Various community groups and
19 organizations have expressed their concern
20 over the size of the new facility..."

21 Right?

22 A. Yes.

23 142. Q. And so I believe that back in your
24 affidavit, paragraph 18, you were referring to this,
25 if I am not mistaken, as showing support for your

1 statement:

2 "...Community organizing can help affect
3 prison infrastructure plans..."

4 Right?

5 A. Yes, no, I think they were well
6 aware of what we were doing and as well as other
7 groups who...like, so, our campaign, we were opposed
8 to the facility. But there were other groups like
9 Moms Offering Mutual Support or the MOMS who had
10 said they would be okay with a new jail as long as
11 it was smaller and this is how I suppose Ministry
12 officials interpreted that...yes.

13 143. Q. Okay. And so, basically, this is
14 the support for your statement, "Community
15 organizing can help affect prison infrastructure
16 plans", right?

17 A. Partly. I would say the other part
18 is that, you know, originally the Province had
19 planned to build a 725 bed Ottawa correctional
20 complex and now there is a new government in power
21 and they have a different plan, which is the eastern
22 region strategy. So...

23 144. Q. Right.

24 A. ...it is not just this FOI that has
25 me saying that. It is also the fact that, you know,

1 the 2018 election has transformed the carceral
2 expansion landscape of Eastern Ontario.

3 145. Q. Right, and we are going to get to
4 that but I want to focus on this aspect of the
5 support for your statement. So, basically, this
6 second highlighted statement is under the heading
7 "Key Considerations/Issues". So, it is fair to say
8 that what was happening here is the Ministry was
9 considering this concern that is listed there;
10 right? From your understanding.

11 A. Among other things, yes.

12 146. Q. Okay. Now, this document doesn't
13 say that a 725 bed facility will not be built. In
14 fact, what it says is that that facility is going
15 ahead because there is a reference above to the
16 acquisition/lease that we just talked about. Right?

17 A. Okay.

18 147. Q. Okay, so, the concern is noted but
19 the facility is not being stopped per this document.
20 Right?

21 A. That is what the FOI document says.
22 I am just going back to the...

23 148. Q. Well, I am going to take you now to
24 paragraph 18...sorry, to page 13 because that
25 is...in your paragraph 18, you refer to two

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1 different pages of Exhibit C. You refer to page 7,
2 which we have just looked at, and now I would like
3 to take you to page 13, which is very similar and it
4 is at page 379 of the record.

5 A. Just two seconds.

6 149. Q. Sorry, I am not sure if I
7 have...yes, 379. I am not sure if I have the right
8 page. Just a second. There we go. Okay, sorry, it
9 is page 370. So, this looks very similar, right?
10 Page 370?

11 A. Okay, I am...I am just trying to
12 understand the last question that you made because I
13 am looking here at paragraph 16, which you were
14 asking me about.

15 150. Q. Paragraph 18 I was asking about.

16 A. Eighteen?

17 151. Q. M'hmm.

18 A. Okay. Just hold on a second.
19 Because in these 110 pages, and we are jumping
20 around, and the timelines...like, this document I
21 produced wasn't in a chronology so we are jumping
22 around all over the place and I am...

23 152. Q. Sure, so, I mean, I am asking about
24 paragraph 18 and you had referenced page 7 and 13 of
25 Exhibit C. So we just went to page 7 and I have

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1 asked you some questions about that. But now I want
2 to go to page 13, the other page that you have
3 referenced.

4 A. Okay.

5 153. Q. And, as mentioned, the way I got
6 there, and you can verify for yourself if you like,
7 it is on page 370 of the document you are looking
8 at, so the full motion record I believe.

9 A. Okay.

10 154. Q. And the way I calculated that or
11 found page 370 to be page 13 is by counting from the
12 exhibit page. So the exhibit page is from Exhibit C
13 and I just counted 13 pages forward, which is I
14 think what you were doing because that is what you
15 said for page 7. And it seems you have highlighted
16 this page, as you noted.

17 A. And just to be clear, I mean, this
18 FOI was obtained, like, after the decision...like,
19 we had to fight to get this document.

20 155. Q. Okay, so...

21 A. It wasn't handed to us in the midst
22 of this, right? So...

23 156. Q. Yes, I haven't asked you a question
24 yet so I am going to take you to that page. So, can
25 you let me know if you have found that page? It is

1 page 370 of the record.

2 A. Is still Project Overview Ottawa?

3 157. Q. Yes.

4 MR. EMARD-CHABOT: Sorry, 370 is the
5 same page we were on two minutes ago.

6

7 BY MS. KEENAN:

8 158. Q. Okay, so it may be that...because
9 there is a reference to page 7 and page 7 is on page
10 364 of the record. So if you go to page 364...

11 A. So, I have...just to let you know
12 where I am at, so on 364...

13 159. Q. Yes?

14 A. ...we have...I have "Project
15 Overview Ottawa".

16 160. Q. Yes?

17 A. And then when I slide over to 370,
18 it is basically the same title of the document. I
19 think it might...is it the same thing?

20 161. Q. And that may be what is causing the
21 confusion, is they basically look exactly the same.
22 So, in your paragraph 18 you refer to page 7 and you
23 refer to page 13 so I am taking you to each one and
24 the first one is page 364 of the record and the
25 second one is page 370 of the record. But you are

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1 right, to my review they look exactly the same.

2 MR. EMARD-CHABOT: There is a small...

3 THE DEPONENT: Yes, there is one bullet
4 point that is left in there.

5 MR. EMARD-CHABOT: Above the "Key
6 Considerations Issues" title, there is an
7 extra bullet on the second...on the page 13
8 version.

9 THE DEPONENT: "Project is currently
10 under review through multi-year planning
11 process reviewing options to address
12 challenges to evaluate regional bed
13 capacity".

14

15 BY MS. KEENAN:

16 162. Q. Right, so thank you for pointing
17 that out. So there is a slight difference. So,
18 looking at that page, page 370, now unlike the last
19 page we were just looking at, if we scroll up from
20 here...so go to page 369, then 368...

21 A. Okay.

22 163. Q. Yes, 367 and you go all the way to
23 366, I think you will find that this appears to be
24 part of a presentation that is dated November, 2018.
25 That is at the bottom of page 366. Do you see that?

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1 Now, we don't know for sure. You are just getting
2 it from an FOI request. But it looks like they are
3 connected.

4 A. It would have been...I think it was
5 a slide deck in response to an FOI request for
6 whatever briefing package Minister Tibollo got I
7 think when he began as Minister in November, 2018.

8 164. Q. So, I think that the only reason I
9 am highlighting that it is part of that presentation
10 is that it appears there may be a date associated to
11 this document, whereas the one we just looked at
12 there was no date on it. So, that is the only
13 reason I am pointing that out.

14 A. Yes, we also...I believe we also
15 asked for the FOIs for the decks that went to
16 Tibollo and then to Jones, so it may just have been
17 a reissue with that additional bullet point there,
18 is my understanding of why these look so similar
19 because Tibollo didn't last very long in his
20 position.

21 165. Q. And regardless, bottom line is the
22 two highlighted statements are in this page 2. So
23 the two highlighted statements:

24 "...Site selection is underway with a
25 preferred site identified but still under

1 negotiation for acquisition/lease..."

2 And the second statement that you highlighted:

3 "...Various community groups and
4 organizations have expressed their concern
5 over the size of the new facility..."

6 Right?

7 A. Yes, and I would also add in that
8 second one it says the project is currently under
9 review, which suggests that it is not...there is a
10 conversation happening as to what to do with this;
11 right?

12 166. Q. Right, and that statement says:
13 "...Reviewing options to address challenges
14 to evaluate regional bed capacity..."

15 Right?

16 A. Right.

17 167. Q. And it says it is under a multi-year
18 planning process in the first of those two items.

19 A. Right.

20 168. Q. Right. So, per the first highlight
21 there, it says:

22 "...Still under negotiation for
23 acquisition/lease..."

24 So, at this point, which looks to be November, 2018,
25 it doesn't appear that the project has been shelved

1 at that point; right?

2 A. In the November, 2018 one and then
3 the one that is undated that we had assumed was
4 going to Minister Jones, you see that it is under
5 review.

6 169. Q. Under review but not shelved. In
7 fact, they reference that they are still under
8 negotiation for acquisition/lease; right?

9 A. Yes, but it also tells us that, you
10 know, the future has yet to be firmly anchored one
11 way or another; right? So, they could go in a
12 different direction and they ultimately did.

13 170. Q. Yes. But, well, you say they have
14 but it wasn't cancelled. There is nothing in this
15 document saying, "Forget it, there is opposition
16 been expressed. We are abandoning the project".
17 Nothing to that effect; right?

18 A. I mean, has the Ministry said that
19 they are going to be building an Ottawa correctional
20 conference after the eastern region strategy is
21 done? My understanding is...and they can correct
22 the record themselves, but I am telling you my
23 interpretation, and it could be wrong, is that
24 essentially when the eastern region strategy went
25 forward, this Ottawa correctional complex, this 725

1 beds, that is...that is done. And maybe later on
2 they will reinitiate something else but they...they
3 have not talked about that.

4 171. Q. Right, and if we go back to
5 paragraph 17 of your affidavit, and we went through
6 this a few minutes ago, you indicate that there
7 was...that the reasons why, you say, the project was
8 shelved was not shared with you. You ponder or
9 propose different reasons why it hasn't gone ahead
10 but you don't actually know for sure; right?

11 A. I don't know and I don't think it
12 would be in the interest of your client to tell us
13 that we were successful.

14 172. Q. Okay. So, it is just interesting
15 because you admit that and then if we go into
16 paragraph 18, you suggest that...and I will take you
17 back to that wording:

18 "...Community organizing can help affect
19 prison infrastructure plans..."

20 But you don't know if NOPE is the reason why that
21 facility didn't go ahead; right? You don't actually
22 know if there are other reasons why that didn't
23 happen? I think you have said that.

24 A. I mean, I guess...I guess we could
25 say we don't definitively know the precise impact

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1 strategy under Premier Ford..."

2 And then you go on:

3 "...had already demonstrated how the
4 outcome of a provincial election could
5 significantly affect prison infrastructure
6 plans..."

7 So, here you are saying it is because of the change
8 in government; right? Aren't you?

9 A. I am saying it is...it is one of the
10 factors that would see the construction of...you
11 know, instead of an Ottawa correctional complex,
12 presumably in the Ottawa area, being shifted over to
13 the ridings of a cabinet minister, Steve Clark, in
14 the case of the Kemptville prison as well as their
15 planned Brockville correctional complex as well as
16 another Conservative safe riding in Napanee, that
17 that is not an accident. You know, that is...that
18 is a result of a new government coming to power,
19 putting something review, and then changing how they
20 were going to do things.

21 And it makes it harder to fight prison
22 expansion when you go from one facility in an urban
23 area to outside of that urban area in several
24 different facilities. Like, you would have to
25 almost mount a campaign not only in Kemptville but

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1 also try and mount one in Brockville and Napanee to
2 try and stop everything and, you know, we have had
3 challenges trying to do that. And we focused on
4 Kemptville because the Kemptville residents, you
5 know, approached me and approached CPEP based on our
6 previous work in Ottawa and the Ottawa correctional
7 complex. So, I mean, there is...I don't think there
8 is, like, a silver bullet but, yes, there is this
9 complements of factors that have obviously changed
10 the carceral expansion landscape of the province and
11 we can't pinpoint [inaudible].

12 175. Q. And, of course, when you have a new
13 government elected, I mean, they are going to
14 establish their own priorities and goals and
15 policies and projects and they can take projects
16 that were being contemplated by a previous
17 government and simply change them; right? I mean,
18 that is their...they have the ability to do that as
19 the new government, don't they?

20 A. They do and they would certainly be
21 considering opposition to previous government
22 projects in doing that.

23 176. Q. Right, they might consider it.

24 A. It would be foolish not to.

25 177. Q. So, let's look at the end of

1 paragraph 18.

2 A. Okay.

3 178. Q. So, this is your paragraph 18. And
4 the very last line, you are referring to various, I
5 suppose, factors. And at the end you say...this is
6 the last portion of the last sentence:

7 "...JOG and CAPP members tried everything
8 they reasonably could to duplicate the
9 outcome in Ottawa before having to resort
10 to costly legal action..."

11 A. M'hmm.

12 179. Q. And so you are suggesting that the
13 outcome in Ottawa came about because of NOPE's
14 efforts; right? They are duplicating NOPE's
15 successful opposition; right?

16 A. My interpretation as an organizer is
17 that if we hadn't had that campaign, that, you know,
18 we would probably be, you know, talking about a soon
19 to be opened Ottawa correctional complex. It was,
20 in fact, the Ministry's plan to have that open by
21 2024 and so...

22 180. Q. Right, and so you really feel
23 that...you really feel that NOPE was a reason why
24 that project didn't go ahead. But you could be
25 wrong, isn't that fair to say? You could be wrong

1 about that.

2 A. I could be wrong but it was
3 also...it would be also the compass that was guiding
4 my way of approaching the Kemptville project, right,
5 and everything in those actions, right, and we
6 didn't...

7 181. Q. Yes.

8 A. We did not engage in legal action
9 against the Ottawa correctional complex as part of
10 the NOPE campaign because we tried various other
11 different things that...whether it is independent of
12 us or not, a different result was produced and so...

13 182. Q. So, given your...you have admitted
14 to having some uncertainty there, to not being sure
15 exactly why that project didn't go ahead. And in
16 the last sentence of paragraph 19, you say...sorry,
17 the second line:

18 "...As someone supporting the activities of
19 JOG and involved in CAPP, it was entirely
20 reasonable to focus on the June, 2022
21 provincial election as an opportunity to
22 have the Kemptville facility revisited and
23 therefore not explore and pursue legal
24 action until after the outcome of the
25 election was determined..."

1 Do you see that statement in your affidavit? The
2 second line of paragraph 19.

3 A. And that is entirely correct, yes.

4 183. Q. Okay. So, here you are
5 assessing...you purport to assess what is reasonable
6 in terms of exploring and pursuing legal action;
7 right? Is that what you...you are doing that;
8 right? You are saying this is what is reasonable.
9 It was entirely reasonable to not explore and pursue
10 legal action; right?

11 A. So, I mean, in the context...

12 184. Q. It is a yes or no question. You can
13 say "no" or you can say "yes". What is the answer?
14 Are you giving an assessment of whether it is
15 entirely reasonable? It is a simple question.

16 A. I believe it was reasonable.

17 185. Q. Right, so that is your view. And we
18 just discussed that you are not certain if NOPE is
19 why that proposed prison in Ottawa didn't go ahead,
20 so your assessment of what would be reasonable in
21 face of that, it is not based on a whole lot. It is
22 just based on your opinion; right?

23 A. It is based on several years of
24 organizing. It is also based on several years
25 researching imprisonment and prison construction

1 specifically, which I have been doing since 2006 and
2 publishing on quite a bit. I could produce my CV
3 for the courts if you'd like.

4 186. Q. No, we don't need that, but what I
5 am saying is you have admitted that...

6 A. I teach in this area too.

7 187. Q. What's that?

8 A. I teach in this area too, courses,
9 including course material on how to stop prisons,
10 so...

11 188. Q. Okay, but what you have suggested in
12 your affidavit is that NOPE was successful, CAPP and
13 JOG were trying to duplicate, as you say, that
14 success and that is why it was reasonable not to
15 pursue legal action. Isn't that fair that that is
16 what you are saying?

17 A. Correct.

18 189. Q. Okay.

19 MR. EMARD-CHABOT: I am just going to
20 jump in for a second. I am not sure the
21 question accurately reflects what is in 19.
22 That is my concern right now. The last
23 piece of 19, which you are quoting to the
24 witness, refers to waiting until after an
25 electoral process, a provincial-wide

1 general election, to see what the outcome
2 of that will be.

3 190. MS. KEENAN: M'hmm.

4 MR. EMARD-CHABOT: And not that I want
5 to quote you back at yourself, but you
6 yourself stated that it is reasonable for
7 governments to establish new priorities and
8 revisit priorities and change their minds
9 if they want to.

10 191. MS. KEENAN: Yes.

11 MR. EMARD-CHABOT: So in that context, I
12 think the fair question relates to the
13 reasonableness of waiting for after a
14 general election when you yourself have
15 stated that that can produce different
16 outcomes. I am not sure the question of 19
17 relates to the reasonableness of assuming
18 NOPE was the out...the causal reason for
19 the change of direction from the provincial
20 government. The end of 19 speaks to
21 waiting after a general election and you
22 yourself have stated that things can change
23 radically after an election.

24 192. MS. KEENAN: Yes, I did say that. I
25 don't think I said that...I don't think at

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1 any point I suggested that this particular
2 campaign had an impact on this facility.
3 And that is...I think I have got the
4 answers there so I can move on from there.

5 MR. EMARD-CHABOT: Okay. I may redirect
6 a little bit on that later, but...

7 193. MS. KEENAN: Sure.

8

9 BY MS. KEENAN:

10 194. Q. So, you refer to in paragraph 19 and
11 in paragraph 18...so, let's go to the last line of
12 18 first. And, again, referring to the portion of
13 the last line that says:

14 "...JOG and CAPP members tried everything
15 they reasonably could to duplicate the
16 outcome in Ottawa before having to resort
17 to costly legal action..."

18 And then in the last line of 19 you say...you refer
19 to pursuing legal action and that it was entirely
20 reasonable to focus on the June, 2022 provincial
21 election as an opportunity to have the Kemptville
22 facility revisited and therefore not explore and
23 pursue legal action until after the outcome of the
24 election was determined, especially given that all
25 opposition parties had expressed their opposition to

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1 the Kemptville project. So I have just read that
2 full statement into the record, which hopefully
3 allays some concerns there.

4 But in that regard, isn't it fair to say
5 that public advocacy and taking legal action, that
6 is not an either/or scenario. It's not like you
7 have to choose one; right? You can do both,
8 couldn't you?

9 A. So, as I said, like, based on my
10 experience with the NOPE campaign, with CPEP, with
11 respect to the Ottawa correctional complex, we had
12 engaged in various kinds of tactics. Legal was not
13 one of them. You know, we...and so in the initial
14 few years of the coalition against the proposed
15 prisons work vis-a-vis the EOCC or the Eastern
16 Ontario Correctional Complex, you know, we tried to
17 organize public forums, rallies and demonstrations.
18 You know, there were op eds, countless media
19 interventions, petitions, e-mail zaps really trying
20 to pressure the government to make a different
21 decision. We tried to do flyers, videos, social
22 media posts. The signs which drew the ire of the
23 local MPP and cabinet minister.

24 195. Q. So, you are kind of listing...

25 A. But just...just wait...

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1 196. Q. You are kind of listing out all the
2 activities and that is not really what I have asked
3 you. What I have asked you is whether if you
4 publicly or politically advocate for something, you
5 can also take legal action. Isn't that the case?
6 It is not an either/or scenario; isn't that right?

7 A. You can but we hadn't contemplated
8 it, like, I...no, but I am just going to quickly
9 say, like, the FOI disclosures we were seeking on
10 due diligence activities, we were hoping that that
11 would...if disclosed, reveal some grounds to oppose
12 the prison perhaps on environmental grounds. We
13 tried...

14 197. Q. I don't think I asked you about this
15 particular facility. It was more of a general
16 question that isn't it the case you can do both,
17 public advocacy and legal action is not an either/or
18 scenario. I haven't asked you about this project or
19 anything. I am saying, isn't that the case?

20 A. It is the case but we didn't have
21 experience doing legal action, which is...

22 198. Q. Okay, and you yourself are not a
23 lawyer, right?

24 A. I am not a lawyer.

25 199. Q. Okay. Now, would you agree with me,

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1 knowing that legal action can be taken, potentially,
2 not that you have...you know, not knowing whether
3 you have a great case or not, it is out there.
4 Wouldn't it be reasonable to talk to a lawyer to
5 find out?

6 A. We did not have a budget for that
7 within our campaign and so when other doors were
8 closed off to us with respect to the land transfer
9 from Ag to Sol Gen, which we also tried to stop
10 because if that would have stopped they don't have
11 land to build on. If the provincial election would
12 have had a different outcome, we wouldn't have that
13 conversation. So we tried other things and it
14 wasn't until after we organized a rally to remind
15 folks after the election that we were still going to
16 oppose the prison, that we had discussions around,
17 okay, we are kind of in the corner here. What do we
18 have left? Let's get a legal consult to see what we
19 could do and that is why we are here.

20 200. Q. So on that point, I want to take you
21 to another document that is in evidence in this
22 case.

23 A. Okay.

24 201. Q. And this document is at Exhibit J to
25 the affidavit of Mr. Kirk Albert.

1 A. Right.

2 202. Q. So, I am just going to take you to
3 that page. It is at page 115 of the record.

4 A. Okay, I haven't looked at this
5 record before so just give me...

6 203. Q. No problem.

7 A. You are going to have to take your
8 time with me here.

9 204. Q. No problem.

10 A. Page 115?

11 205. Q. Yes, it is 115 and it may be that
12 you don't recognize this document. That is
13 perfectly acceptable. I just have some questions
14 arising out of it. I am not asking you to identify
15 it, as it is already in evidence.

16 A. Okay.

17 206. Q. Okay, so this is a document and it
18 is titled "December 3rd JOG Meeting".

19 A. M'hmm.

20 207. Q. And as I mentioned, this is attached
21 to Mr. Albert's affidavit as Exhibit J. It is
22 already in evidence and the way it is described in
23 Mr. Albert's affidavit, which is at page 37 of the
24 record...you can go there if you like just to see
25 how he describes it. He says in paragraph 61:

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1 "...Among the numerous strategies
2 considered by JOG in particular, the
3 thought of pursuing legal action was first
4 discussed in December, 2020 in the wake of
5 the highly inconclusive October and
6 November public sessions held by Sol
7 Gen..."

8 And then he says:

9 "...See Exhibit J..."

10 And then he says:

11 "...We explored the option with members who
12 had access to legal resources and
13 advice..."

14 Okay? So, I am going to take you back to 115 which
15 is the Exhibit J. So, it would appear, without a
16 detailed description of Exhibit J, but nevertheless
17 it would appear that this is...these are, like,
18 minutes or notes from that December, 2020 meeting.
19 I am not asking you to confirm that because I don't
20 think you were in attendance at that meeting. I
21 don't think you were a member of JOG; you were a
22 member of CAPP, right?

23 A. Right, and, yes, I wasn't at that
24 meeting and I am...this is news to me.

25 208. Q. Right. Okay. So, I am not going to

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1 be asking you to verify anything that is in this
2 document, so don't worry about that. But I do want
3 to ask you something about a reference in here and
4 this is on page 116. And next to the number, it
5 says 8A about half way down the page. Do you see
6 that?

7 A. Yes.

8 209. Q. Okay. And next to 8A has a forward
9 slash and then it says:

10 "...Law school access exists through
11 Justin. Law students to volunteer and
12 explore viability and other aspects of the
13 proposed correctional facility, due
14 diligence, permits and zoning, et cetera.
15 We also need to seek local legal support
16 and attempt to get some pro bono help..."

17 Do you see that statement there?

18 A. Yes, I see it.

19 210. Q. So, when it says "law school access
20 exists through Justin", do you think that...is that
21 a reference to you, do you think? Are there other
22 Justins who are members of CAPP or...

23 A. No, this would be a reference to me
24 at the time CPEP had a jail accountability and
25 information line that involved law students at the

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1 University of Ottawa and basically that line took
2 calls from imprisoned people held at OCDC about
3 conditions of confinement. So, you would have to
4 ask Kirk about this but I don't think any of those
5 students who are studying prison law would have
6 expertise around the kinds of things that are listed
7 here like due diligence, permits and zoning, so...

8 211. Q. Okay, but I am just asking you and
9 all I had asked is whether it was likely that you
10 were that Justin. But my next question is, was it
11 the case...like, were you asked by either members of
12 CAPP or JOG to put them in touch with law students
13 that you were speaking with?

14 A. Not to my recollection, no.

15 212. Q. Did you put them in contact with any
16 articling students?

17 A. Not to my recollection.

18 213. Q. Okay. And it looks like there are
19 two copies of these minutes. If we go to page 117,
20 it looks like this is another set of notes or
21 minutes from this meeting. You can see at the top
22 this one says December 3rd, 2020. And if we go to
23 page 120 of the record, so just a little further
24 down, again we see an 8A forward slash. And it
25 says:

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1 "...Law school access exists through
2 Justin. Law students to volunteer and
3 explore viability and other aspects of the
4 proposed correctional facility, due
5 diligence, permits and zoning et cetera.
6 We also need to seek local legal support
7 and attempt to get some pro bono help..."

8 So, are you saying that you didn't put members of
9 CAP or JOG in touch with any law students?

10 A. Not to my recollection but I
11 honestly...I don't recall and it obviously wouldn't
12 have gone anywhere, I don't think, if that did
13 happen. But I would have to check to be honest but
14 I...that is fall 2020?

15 214.

Q. Yes.

16 A. But, no, I...I don't think those
17 students would have had the capacity to look into
18 that...

19 215.

Q. I am not asking you about that. So,
20 what I am wondering here is it looks like...and I am
21 not asking you to confirm this, but it does look
22 like JOG was considering what their legal options
23 were. Different things they could do to get some
24 legal advice. In this time period, do you recall if
25 CAPP was also considering what legal advice they

1 could get?

2 A. Not to my recollection and, again,
3 Kirk may have assumed that because we had law
4 students that this was the case at least but I...
5 that would have been a dead end. They were working
6 on prison stuff, like...

7 216. Q. Okay, and I will be asking Mr.
8 Albert about whether he...whether JOG ended up
9 speaking with any law students. But it appears
10 someone must have told him that you had access to
11 law students; right? I mean, he didn't...you have
12 referenced that you did through a separate program,
13 so he wasn't making it up; right?

14 A. No, no, I don't think he would be
15 making it up. He obviously was drawing that for a
16 reason, so...

17 217. Q. Okay, so, I am going to take you to
18 another area now. Now, you hold a PhD in
19 criminology; correct?

20 A. Sociology.

21 218. Q. Sociology? I apologize. Now, you
22 are not qualified as an accountant; right?

23 A. No.

24 219. Q. You don't work in construction?

25 A. No.

1 resulting from the timing of the
2 application for judicial review..."

3 And then you say:

4 "...While I am not an expert in this
5 field..."

6 So you admit you are not an expert in regard to the
7 costs that have been expended by the Ministry;
8 correct?

9 A. I think the way I use the term
10 "expert" in that case was I cannot be an expert
11 witness in the context of this court case.

12 227. Q. Okay, so you admit that.

13 A. But I have done quite a bit of work
14 on the costs of imprisonment and prison
15 construction.

16 228. Q. Okay, but we have just established
17 that you don't work in any of those areas. You have
18 a different and separate expertise but you don't
19 build correctional facilities; right?

20 A. True.

21 229. Q. So, the information that is
22 available to you that you have actually attached in
23 Exhibit E to your affidavit, you have a chart there.
24 You know the one I am talking about?

25 A. Yes.

1 230. Q. And the other information attached
2 to your affidavit, that is coming from things like
3 freedom of information requests; right?

4 A. Well, which portion? I mean, it is
5 a...it is, like, 110 pages, right? So, what...I
6 think we have to be a bit more precise. What
7 portion are you referring to?

8 231. Q. And that is fair and I am going to
9 take you to Exhibit E so we can go through that in
10 more detail.

11 A. Okay.

12 232. Q. But it is fair to say in paragraph
13 21 of your affidavit you say:

14 "...It is important to point out that no
15 detailed financial information has been
16 provided by the Province regarding the
17 Kemptville proposal..."

18 Right? Do you see that sentence, the first sentence
19 of paragraph 21?

20 A. Other than the range of 200 million
21 to 499 million for DBFM, yes.

22 233. Q. Okay, but you say detailed, so you
23 are saying there is no detailed financial
24 information has been provided by the Province;
25 right?

1 A. Correct.

2 234. Q. That is in your affidavit.

3 A. Yes.

4 235. Q. Okay, and so that is the basis on
5 which you are operating? Like, whatever you are
6 saying about this, you don't have detailed financial
7 information; right?

8 A. Can you be more precise? Whatever I
9 am saying about...what exactly am I saying?

10 236. Q. Well, I will be more precise because
11 in paragraph 21, you say:

12 "...The purpose of [your] analysis is
13 simply to give a reasonable scaled
14 assessment of the funds spent so far on the
15 Kemptville project in comparison to the
16 overall likely budget..."

17 A. Okay.

18 237. Q. So, you are offering...and there
19 will be an element of...I will be discussing with
20 counsel about the nature of the evidence, but you
21 are offering here what you are calling a reasonable
22 scaled assessment of the funds spent so far. So
23 what I am saying to you is that is being provided in
24 the absence of detailed financial information;
25 right? You told us that in paragraph 21.

1 A. Yes, so what I have done is I have
2 simply just provided here is how much you have spent
3 on previous prisons.

4 238. Q. Right, but...

5 A. Some of similar scale, others of
6 not, and, yes...

7 239. Q. So, basically, you are providing
8 what you were describing as a reasonable scaled
9 assessment in the absence of detailed financial
10 information; right?

11 A. Right, because right now all we have
12 is this 200 to 499 million dollar range and I am
13 trying to say, okay, based on past projects and
14 behaviour by Infrastructure Ontario, what could this
15 potentially cost, yes.

16 240. Q. Okay. So, I am going to suggest to
17 you, and I don't think that this is very
18 controversial, that you are not qualified as an
19 expert to provide a reasonable scaled assessment
20 because you don't have that detailed financial
21 information and you don't have the accounting or
22 construction expertise to give an opinion about it.
23 And not only that, as you already mentioned, you are
24 not impartial.

25 A. Are we not supposed to be

1 negotiating changes to these exhibits?

2 241. Q. Well, that is something that is
3 happening off the record but in the current
4 circumstances that we are at right now, that is
5 something I am putting to you, is that you are
6 not...I don't know that it is even controversial,
7 that you are not in a position to give an expert
8 opinion in this case.

9 MR. EMARD-CHABOT: I am just going to
10 jump in for a second. I don't think that
11 statement is controversial so I will let
12 Justin answer. And I just want to ask...I
13 am assuming this line of questioning is to
14 protect the Province's interests should
15 this content remain in the revised
16 affidavit. Would that be accurate?

17 242. MS. KEENAN: Yes, if there continues to
18 be a proposed reasonable scaled assessment
19 of funds spent so far. Which we are of the
20 view is a proposed expert opinion.

21 MR. EMARD-CHABOT: Yes, and off the
22 record we have discussed this and I think
23 we will reach an agreement.

24 243. MS. KEENAN: Okay.

25 MR. EMARD-CHABOT: I am happy to let you

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1 continue to question as long as we have an
2 understanding that this line of questioning
3 may be parked if the content is removed.

4 244. MS. KEENAN: Absolutely.

5 MR. EMARD-CHABOT: Yes. So that...

6 THE DEPONENT: Am I allowed to
7 participate in this side bar for a quick
8 second and then I can answer your question
9 or no?

10 245. MS. KEENAN: I think if we wanted to do
11 that, we would need to go off the record,
12 probably.

13 MR. EMARD-CHABOT: Do you want to do
14 that for a few minutes, Susan, and just see
15 if we can move things forward?

16 246. MS. KEENAN: Sure. So can we go off the
17 record, please.

18

19 --- DISCUSSION OFF THE RECORD

20

21 BY MS. KEENAN:

22 247. Q. So, I am going to take you to
23 Exhibit E of your affidavit.

24 A. Okay.

25 248. Q. And that is at page 422 of the

1 record.

2 A. I have got...just quickly, I have a
3 Word version of this that is properly aligned so I
4 can actually read it. So, I will try my best to
5 follow along as to what page you are pointing to.

6 249. Q. So, I am actually going to look at
7 the Word version too.

8 A. Okay.

9 250. Q. Because the links for this exhibit
10 didn't work for us in PDF but they do work in the
11 Word version. So, that is how I am able to get
12 through the links.

13 A. Okay.

14 251. Q. So I am just going to highlight that
15 in your affidavit at paragraph 16, you have attached
16 this exhibit.

17 A. M'hmm.

18 252. Q. And then you refer to it there and
19 then I think you refer to it again further on. I am
20 just trying to find that second reference here. No,
21 I don't see it. But in any event, so...okay, so, I
22 am looking at the Word version too and just to show
23 you what I am looking at for a moment I will just
24 share my screen. So, hopefully...

25 A. I don't see it. Oh, there it is.

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1 253. Q. So hopefully you can see this and...
2 MR. EMARD-CHABOT: And I can confirm,
3 just so it is clear to everyone, that what
4 I sent you...the Word version I sent you is
5 exactly the document that was included into
6 the PDF just so that is on the record and
7 there is no confusion that there might be
8 another version.

9 254. MS. KEENAN: Thank you.

10

11 BY MS. KEENAN:

12 255. Q. And so this Exhibit E is titled
13 "Ontario Ministry of the Solicitor General, formerly
14 Ministry of Community Safety and Correctional
15 Services, recently completed and ongoing new builds,
16 addition to existing facilities excluded" and I see
17 your name there and your position and involvement in
18 CAPP and it is dated December, 2022.

19 A. M'hmm.

20 256. Q. So, I mean, I think that what I
21 could do here is just maybe keep this up so you can
22 see what I am referring to as I go through.

23 A. Sure.

24 257. Q. Okay. So, I have to refer back to a
25 statement you made in your affidavit where you said

1 in paragraph 25:

2 "...Exhibit E shows that the timelines for
3 the proposed Kemptville facility have
4 already been revised publicly at least
5 three times..."

6 A. M'hmm.

7 258. Q. So, you reference this extension of
8 timelines but you don't know for sure why those
9 timelines have been extended; right?

10 A. Yes, I do not definitively know why
11 those timelines have shifted, no.

12 259. Q. Okay. And then you also say in
13 paragraph 25, second line:

14 "...The last update was on November, 2022
15 and that extended all the key deadlines..."
16 Right?

17 A. Yes, that is the...yes, the
18 November, 2022 market update, yes.

19 260. Q. Now you have mentioned that you
20 can't know for sure and you confirm that and, in
21 fact, this case, this legal case, could be a reason
22 for the extension of those deadlines, couldn't it?
23 You don't really know?

24 MR. EMARD-CHABOT: You are asking him to
25 speculate? I am not sure...

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1 THE DEPONENT: Did I say that?

2 261. MS. KEENAN: I am saying he doesn't
3 know. Right?

4 THE DEPONENT: I don't know. No, I
5 don't know. I don't know why they have
6 extended the timeline for the Eastern
7 Ontario Correctional Complex. We could ask
8 questions as to why, including like what is
9 going on right now that would result in
10 this, but I do not definitively know what
11 is going on in this...

12

13 BY MS. KEENAN:

14 262. Q. Right, and so if you were going to
15 say, like you do in paragraph 27, you know, a
16 realistic objective for the completion date, it
17 would be hard to do that without knowing exactly
18 what factors are at play in the extension of the
19 timelines. Like, there could be these other
20 factors. You don't...you don't know what role they
21 are playing.

22 A. Can I explain how I arrived at the
23 calculation? So, basically, what I did was I looked
24 at completed projects like, say, Toronto South or
25 Southwest Detention Centre and said, okay, when they

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1 arrived at this particular stage, here is how much
2 time it took them to actually finish the
3 construction and do the official opening. And so I
4 added those times to...like, let's say here...sorry,
5 this is like such a huge document and I am kind of
6 having trouble here. Okay, so...sorry, it's the
7 column, "Winning bidder financial close".

8 263. Q. M'hmm?

9 A. So, if it was April to June, 2026 I
10 would look at winning bidder financial close for
11 previously completed projects like Windsor and
12 Toronto, look at the number of days that had elapsed
13 and tack those on to the Eastern Ontario
14 Correctional Complex to venture at...and this is
15 where you see in the last column for Eastern Ontario
16 Correctional Complex it would be three years, three
17 months, three days post contract execution if we
18 looked at Windsor timelines, SWDC, and that being
19 the shortest, right? So I was, like, hey, SWDC did
20 the best. That would be the shortest window in
21 which it could operate and if you add those numbers,
22 we get August, 2029. But it is an estimate. I do
23 not definitively know...I do not have Infrastructure
24 Ontario's plans. It is just an estimate based on
25 past government behaviour on past builds.

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1 264. Q. And without knowing, as I say, what
2 other factors might be contributing that aren't
3 things that influenced previous builds? Like, there
4 might be factors out there that weren't at play in
5 relation to the Southwest Detention Centre or the
6 Toronto South Detention Centre or what have you.
7 There could be factors out there that you have no
8 idea about.

9 A. Yes, that is...that is fair.

10 265. Q. Okay.

11 A. But, again, it is an estimate based
12 on information I have and I can't be criticized for
13 stuff I don't have.

14 266. Q. I certainly wouldn't be criticizing
15 you, but just framing the limits of what you have
16 said.

17 A. Fair enough.

18 267. Q. So, if you look at the left-most
19 column in Exhibit E, there is a link, it is in blue.
20 It is the second item in that column right under the
21 heading "Project P3 Contract Type and Value, Beds,
22 Cost Per Bed". And that link states:

23 "...30-year DBFM at \$336M..."

24 So, I read that as saying 30-year DBFM at
25 \$336,000,000. Is that what you were representing

1 there?

2 A. Yes, and DBFM representing design
3 build finance maintain.

4 268. Q. Right. And design build finance
5 maintain assesses not only the costs of designing
6 and building the facility, but also financing and
7 maintaining it over a 30 year period; correct?

8 A. Yes, so effectively what would be a
9 30-year mortgage.

10 269. Q. A 30-year mortgage and it is
11 incorporating what is the anticipated repair and
12 maintenance for the facility over 30 years. That is
13 what maintain means in that acronym?

14 A. Okay. Yes. I agree.

15 270. Q. Okay. So if we click on that link,
16 this is for Windsor, and I can click on it to make
17 everyone's life hopefully a little easier. And it
18 appears to take us to an Infrastructure Ontario
19 website regarding the winning bidder for the
20 Southwest Detention Centre; right? I don't know if
21 I can make this bigger. I would like to make it
22 bigger but...

23 A. I can read it but if you can...yes.

24 271. Q. Okay. And that page is dated...I
25 see the date April 11th, 2011 right under the main

1 heading. Do you see that? You can also click on
2 the link yourself and see...

3 A. Yes, I think that that should be
4 correct, yes.

5 272. Q. Okay. And if we look about half way
6 down, the figure we just discussed, \$336,000,000, is
7 referenced and the statement there starts:

8 "...The Province has signed..."

9 Do you see that sentence?

10 A. Yes, if you stop scrolling. Yes, I
11 do see that line. Yes.

12 273. Q. So, the sentence says:
13 "...The Province has signed a contract with
14 Forum Social Infrastructure for
15 \$247,000,000 in current 2011 dollars. When
16 adjusted for the anticipated inflation over
17 the 30-year contract term, the contract
18 value is approximately \$336,000,000..."

19 A. M'hmm.

20 274. Q. So, we have just established that
21 that number, \$336,000,000, is covering 30 years and
22 includes all maintenance for the facility; right?

23 A. Yes.

24 275. Q. And it appears, you would agree from
25 this statement, that it has also been adjusted up

1 for predicted inflation; right?

2 A. Yes, it would be curious as to what
3 that looks like now but, yes, that is the case.
4 Yes.

5 276. Q. And so basically what the Province
6 is doing, as far as we know, when they say
7 \$336,000,000 is they are putting a contract value to
8 this. They are putting a value to the contract.
9 But it may not be what is actually expended over
10 that 30-year term; right? How could it be; it has
11 been grossed up.

12 A. Yes, that is their best estimate.

13 277. Q. Right.

14 A. At that time.

15 278. Q. Right. And then if we look...we are
16 going to go back to the...I am going to close this
17 so I don't confuse myself and I will go back to
18 Exhibit E.

19 A. M'hmm.

20 279. Q. And if we look at the link under
21 "Request for Qualifications", same facility, same
22 row dated August 6th, 2009.

23 A. Right.

24 280. Q. And I am going to click that link.
25 Here it is. So, if we look, this appears to be a

1 website...Infrastructure Ontario website. Also
2 lists Southwest Detention Centre, see that?

3 A. M'hmm.

4 281. Q. And on the left side, there is a
5 series of headings. One of those headings is
6 "Contract Price".

7 A. M'hmm.

8 282. Q. And under "Contract Price" they have
9 listed \$247,000,000; right?

10 A. Correct.

11 283. Q. And we just looked at the last link
12 and we saw that same number. That was before the
13 amount was grossed up for the anticipated or
14 estimated inflation; right?

15 A. Yes, what it will ultimately
16 actually end up costing, their estimate.

17 284. Q. Their best estimate. Their guess as
18 to what it might cost. Okay.

19 A. Yes.

20 285. Q. And this is just for clarification.
21 Let me go into official opening for this facility
22 in the Word document and we look at...it says July
23 14th, 2014.

24 A. Yes.

25 286. Q. This is just for clarity but when I

1 click on that link and open it, it says July 28th,
2 2014. So, it wasn't clear to me where the date July
3 14th, 2014 came from. Maybe you can just clarify.

4 A. That was a...by all appearances, I
5 would say that would be a typo.

6 287. Q. Okay.

7 A. Yes.

8 288. Q. I just wanted to confirm that.

9 Okay. So, then let's go to the Toronto South
10 Detention Centre, the next row in the table.

11 A. M'hmm.

12 289. Q. And you have a link under "Project
13 P3 Contract Type and Value".

14 A. M'hmm.

15 290. Q. And I am just going to click on that
16 link, "30-year DBFM at 1.1 billion".

17 A. M'hmm.

18 291. Q. And what opens up is this website
19 here dated October 28th, 2009. When I go to the
20 second last paragraph, it does quote the 1.1
21 billion, I believe.

22 A. Yes, it is the same paragraph right
23 above. Yes.

24 292. Q. Right. And it says:

25 "...ITS will receive annual payments from

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1 the Province over a 30-year period.
2 Payments cover construction, building
3 maintenance, life cycle repair and renewal
4 and project financing. Life cycle refers
5 to ensuring that heating and cooling
6 systems, windows, floors and roofing
7 structures, for example, are kept in
8 excellent working condition over the 30
9 year period. The payments are like a fixed
10 rate mortgage with maintenance and repair
11 expenses included. The total value of the
12 payments to ITS spread over 30 years is
13 approximately 1.1 billion. In present
14 value dollars, this is equivalent to
15 approximately 593.9 million..."

16 So, again we see isn't it the case that this is
17 incorporating payments for making sure the whole
18 facility is working well over a 30-year period and
19 that it has been grossed up to almost twice its
20 actual value in order to account for estimated
21 inflation. Is that right?

22 A. Yes.

23 293. Q. Okay. So, now if we go to the
24 request for qualifications. Go back to the Word
25 document. And we go to the request for

1 qualifications link for the Toronto South Detention
2 Centre.

3 A. M'hmm.

4 294. Q. We click on that. What comes up
5 here is very similar to what we looked at with the
6 last facility. And on the left-hand side we see the
7 DBFM reference and a series of headings and one of
8 them is "Contract Price" and under "Contract Price",
9 it says \$593.9 million dollars; right?

10 A. Correct.

11 295. Q. Okay. So, if we go back to Exhibit
12 E and we go to the Thunder Bay facility, which is
13 the next one down. And, again, we see the DBFM
14 reference and this time there is a range and it says
15 200M to 499M, which I read as \$200,000,000 to
16 \$499,000,000; right?

17 A. Yes.

18 296. Q. Is that what is meant by "M"?

19 A. Yes. Million, correct.

20 297. Q. Okay. And then when we click on
21 this link, a website opens.

22 A. M'hmm.

23 298. Q. And when I look at the top of
24 this...sorry, not a website but a document opens and
25 it appears to be a 2017 market update from

1 Infrastructure Ontario; right?

2 A. Yes, and you can see Thunder Bay
3 Correctional Complex kind of midway down the
4 document.

5 299. Q. Right, I think it is under "Court
6 Justice and Detention Facilities".

7 A. M'hmm.

8 300. Q. And in the right column, it says...
9 next to that facility it says "C", the letter "C",
10 and if we scroll down and look at the bottom of the
11 document we see that the letter "C" means between
12 200 million and 499 million.

13 A. Correct.

14 301. Q. And reading this document, it is not
15 clear how they came to this number. We don't know
16 how they arrived at that range, right, from reading
17 this document?

18 A. That is their best estimate at the
19 time, I am assuming.

20 302. Q. Right, and we don't know what they
21 were basing it on, like, what estimates they got
22 from whoever about this project; right?

23 A. Correct.

24 303. Q. Okay. But it does say...for
25 clarity, it does say "DBFM" in the second column;

1 right?

2 A. Correct.

3 304. Q. Okay. And then I am going to close
4 this one out and we can go back...close these. Go
5 back to the Exhibit E. And the second link in the
6 same column. This is in the same column, so it is
7 in that column that is titled "Project P3 Contract
8 Type and Value". If we click on that link, it takes
9 us to yet again a market update from Infrastructure
10 Ontario; right?

11 A. Correct.

12 305. Q. And this one is from September,
13 2020.

14 A. Correct.

15 306. Q. Okay, and this is also listing
16 the...

17 A. Thunder Bay is probably down because
18 this is pre-procurement, so it will be further down
19 active procurement...there it is.

20 307. Q. So there it is in the third last
21 line under "Justice Thunder Bay Correctional
22 Complex" and this time it is listing a DBFM of 500
23 million to 1 billion; right?

24 A. Correct, so it has been revised
25 upward.

1 308. Q. Right. And, again, we don't know
2 where...like, on what basis...why was it revised
3 upward, what were the estimates they were looking at
4 that told them they have to revise it upward. We
5 don't know that information; right?

6 A. Correct.

7 309. Q. Okay. So if we go back to Exhibit E
8 and we go to the third link under the same column
9 for Thunder Bay and click on it, this one is a
10 little different because this one is a news release.

11 A. M'hmm.

12 310. Q. And it says:
13 "...Ontario transforming corrections in the
14 north..."

15 This one is dated November 3rd, 2022; right?

16 A. Correct.

17 311. Q. Now, this one is not a market update
18 but it does refer...let me just find the reference.
19 It is in the first line:

20 "...The Ontario government is breaking
21 ground on a new 1.2 billion dollar state of
22 the art correctional complex in Thunder
23 Bay..."

24 So, again, this is the reference to the amount but
25 we don't know where that is coming from now. It is

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1 different from the other two. It is the latest.
2 And we don't know what estimates it is based on;
3 right?

4 A. Correct, and I mean just looking at
5 that in terms of the differences between the two, if
6 we were to go back to the...when we had the numbers
7 for South West Detention Centre which was, I
8 believe, 247 and 336.

9 312. Q. M'hmm.

10 A. And then Toronto South, which I
11 think it is 593.9 to 1.1 billion. We don't have a
12 similar sentence for this one, so it would be
13 unclear as to whether or not that was the present
14 dollars or the, you know, projected costs, inflation
15 included or not.

16 313. Q. Right. Okay, and so then we just
17 have that one reference in the first line. So if we
18 go back to Exhibit E.

19 A. M'hmm.

20 314. Q. And this time we go under "Request
21 for Proposals" for the same facility, so request for
22 proposals is nine columns over. And we go to the
23 one that is dated winter 2021. "Revised timeline as
24 of June 2020". We click on that. We open it up.
25 Now we have this spring 2020 Infrastructure Ontario

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1 market update that pops up. And this one lists...I
2 believe it is down here. Yes, so this one is
3 listing the Thunder Bay Correctional Complex DBFM at
4 200 million to 499 million; right?

5 A. Correct.

6 315. Q. Now, although it says winter 2021,
7 this is actually from the spring of 2020, the market
8 update; right?

9 A. Yes, if you go to Infrastructure
10 Ontario's website, spring 2020, that update I
11 believe would have been released in June...before
12 June 21st would technically still be spring. I am
13 assuming, unless I...unless there is a typo in
14 my...in that spot but I don't think there would be
15 but we could double-check that.

16 316. Q. Okay, well, that is fine. That
17 answers my question. So, if we go to the Ottawa
18 facility that you have in the link...sorry, in the
19 chart at Exhibit E. On the left...in the left-most
20 column, "Ottawa Correctional Complex", and if we
21 click on that first link...and, again, that first
22 link says:

23 "...30-year DBFM at 500 million to 1
24 billion..."

25 A. M'hmm.

1 317. Q. And this is a 2017 market update.

2 And we see that the Ottawa Correctional Complex is
3 about half way down in the first page under "Court
4 Justice and Detention Facilities" and it has the
5 letter B next to it; right?

6 A. Correct. Which is 500 million to a
7 billion.

8 318. Q. Right. As per the table at the very
9 bottom of the document.

10 A. M'hmm.

11 319. Q. Okay. And then if we go back to
12 Exhibit E, the next facility in the list is the
13 Eastern Ontario Correctional Complex, which is the
14 proposed Kemptville facility; right?

15 A. Correct.

16 320. Q. And if we look at...if we click on
17 the link in the left-most column, the 30-year DBFM,
18 what comes up is again an Infrastructure Ontario
19 market update; right?

20 A. M'hmm.

21 321. Q. And this one is from November, 2022.

22 A. Yes, that would be the most recent
23 one.

24 322. Q. Right. And if we scroll down to
25 where we can find the items that are referred to

1 as...I am not sure I found it here actually.

2 A. Yes, that's right.

3 323. Q. There it is. So, "Public Works,
4 Education and Justice" and the fourth item down on
5 that page lists the Eastern Ontario Correctional
6 Complex pre-procurement; right?

7 A. Correct. Yes.

8 324. Q. And that means a contract has not
9 yet been awarded?

10 A. That's right, no shovels in the
11 ground.

12 325. Q. No shovels in the ground but no
13 contract signed?

14 A. Correct.

15 326. Q. And it also lists DBFM.

16 A. M'hmm.

17 327. Q. And in this line at the end, it
18 says:

19 "...200 million to 499 million..."

20 Right?

21 A. Correct.

22 328. Q. So, again, that would be the
23 range...the estimated range at this pre-procurement
24 stage for the entire cost, the 30-year cost of this
25 facility; right?

1 A. Correct.

2 329. Q. Okay. And that is the most recent
3 update that you are aware of, right, from November
4 2022?

5 A. Unless one popped up Sunday morning
6 after I checked it out Saturday night, because that
7 is just what I do, then correct this would be the
8 most recent.

9 330. Q. Okay, and then if we go back to
10 Exhibit E and the link in the column marked "Request
11 For Qualifications", so if we go back up to the top
12 we can see which one that is. Seven columns over.
13 We go back to the Eastern Ontario Correctional
14 Complex.

15 A. M'hmm.

16 331. Q. And the winter 2022 link. You open
17 that up, we see the same thing; right? We have
18 got...oops, let me find it for you. I am not sure
19 if that worked. Hold on.

20 A. That is...that might be the wrong
21 link, to be honest with you.

22 332. Q. Okay, that might be the wrong link?

23 A. Well, because the original timeline
24 would have been a market update from way before
25 then.

1 333. Q. Yes. And this is also referencing
2 the Thunder Bay, so that might be...that might be
3 the wrong link because I don't see...

4 A. It is actually a typo on the
5 document. It should say...no, no, wait a minute.
6 No, that's right. Original timeline as of
7 September, 2020 market update was the request for
8 qualifications was to happen in the winter of 2020.
9 Sorry, I am just getting...there is a lot of dates
10 in this document. I feel bad for all of us.

11 334. Q. I think I see it actually here on
12 the first page when I look back. I see Greater
13 Ottawa Correctional Complex, DBFM, winter 2022 was
14 the anticipated issuance of the RFQ.

15 A. Correct.

16 335. Q. And the DBFM at that time was
17 anticipated to be 200 million to 499 million; right?

18 A. Correct.

19 336. Q. Okay. So, that would suggest
20 because this was the original estimate and then we
21 looked at the most recent estimate that throughout
22 they all have listed a DBFM, pre-procurement, at 200
23 to 499 million; right?

24 A. Yes, for this one I didn't see a
25 change in the price estimate.

1 337. Q. Right.

2 A. But the times did change.

3 338. Q. Right. Exactly. So, then if we go
4 to the Brockville facility.

5 A. Okay.

6 339. Q. Which is the last one.

7 A. M'hmm.

8 340. Q. And the one thing I wanted to note
9 here, and we can do it by clicking on these links,
10 but from what I have seen these are all also a 200
11 million to 499 million range. For example, in the
12 first link the market update from September, 2020 it
13 lists Brockville about half way down and it has the
14 DBF, which is interesting, so it says DBF but not
15 DBFM and it says 200 million to 499 million so I am
16 not sure if that perhaps means maintenance is not
17 included in that contract price.

18 A. Well, part of it...so the Brockville
19 Correctional Complex, part of it is replacing the
20 Brockville jail with a new 66 bed jail on the site
21 of the St. Lawrence Treatment and...sorry, the St.
22 Lawrence Treatment and Correctional Centre. And
23 then they are adding a 26 bed addition to that. So,
24 I mean, it would be to ask to them but my assumption
25 was that essentially they already have that

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1 activity, the maintenance activity, paid for on the
2 site, which is why it is not attached to this
3 infrastructure. It is also a smaller scale project
4 as well, right? But I don't know. I am just
5 speculating.

6 341. Q. Right, and...but we do know that DBF
7 would stand for design build finance and you would
8 expect to see an "M" there for maintain if the
9 maintenance was going to be included in that amount?

10 A. Correct.

11 342. Q. Okay. So, I will just put it to you
12 that my understanding is all of these are listing
13 for that particular facility, that project, a DBF
14 and here we see it again in April, 2021 market
15 update from Infrastructure Ontario, DBF 200 to 499
16 million.

17 A. Yes, and then the last one it is
18 lower. Right?

19 343. Q. Yes, I think it actually got revised
20 downward; right?

21 A. Yes.

22 344. Q. M'hmm.

23 A. Less than 200 million now.

24 345. MS. KEENAN: Right. So, I think this
25 might be a good time, it is also twelve

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1 o'clock, to take a brief break. I may just
2 have a couple of more questions before
3 finishing. Does that work for everyone?

4 THE DEPONENT: How long a break do you
5 need?

6 346. MS. KEENAN: Okay, so, maybe Mr.
7 Reporter we can go off record for a moment.

8

9 --- upon recessing at 12:04 p.m.

10 --- A BRIEF RECESS

11 --- upon resuming at 12:16 p.m.

12

13 JUSTIN ROBERT JOSEPH PICHE, resumed

14 CONTINUED CROSS-EXAMINATION BY MS. KEENAN:

15 347. MS. KEENAN: So, subject to additional
16 questions that may arise out of the
17 revisions that are anticipated to the
18 affidavit and exhibits, those are my
19 questions. Thank you, Professor Piche.

20 THE DEPONENT: Thank you.

21

22 RE-EXAMINATION BY MR. EMARD-CHABOT:

23 348. Q. So, I will have just a couple of
24 areas I'd like to do a short redirect on, Justin, if
25 I may. So, I will probably end up going in reverse

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1 order of what was covered. The first thing I want
2 to talk about or clarify a couple of things with you
3 about is the whole issue of costs and the amounts
4 that you have placed and that you have used in
5 Exhibit E for your affidavit. You were asked about
6 your background and, to be clear, you have no
7 experience in construction project management of
8 this type, infrastructure development or anything
9 like that?

10 A. I have done renovations to my house
11 but, no, I have not been involved in building jails.

12 349. Q. Building jails.

13 A. Yes.

14 350. Q. So, when you...in your initial
15 questions about your background as a professor, you
16 were asked and you answered that one of the things
17 you do with students, and I think you even have a
18 course on this, is prison construction; is that
19 correct?

20 A. So, I would teach about how the
21 prison construction process works and how
22 abolitionist organizers work to oppose it within the
23 context of my undergraduate fourth year course and
24 Masters course with the same title, Sociopolitics of
25 Incarceration. So that is where I would teach about

1 the process and resistance and stuff.

2 351. Q. And when you look at the numbers
3 that Ms. Keenan took you through in Exhibit E, the
4 ranges for the different prison projects and so on,
5 what is it...so, I am assuming that you are not
6 assessing whether the numbers you are looking at are
7 accurate. Would that be...you are relying on the
8 accuracy of those numbers that are provided by the
9 government. You are not...

10 A. Yes, I mean, I...

11 352. Q. Sorry, I interrupted you.

12 A. What was your question? Sorry.

13 353. Q. Okay, so, when you look at those
14 numbers that are provided for the construction of
15 prison projects that are found in Exhibit E, for
16 example, you are not assessing the accuracy of those
17 numbers; correct?

18 A. No, I mean, it is...I am trying to
19 basically accurately capture the dates and the
20 timelines of the Province and Infrastructure Ontario
21 and...

22 354. Q. Speaking to the budget figures
23 themselves, you are not assessing whether, for
24 example, the contract is at an advantageous price or
25 not, whether it is too high or too low or anything

1 like that?

2 A. Correct.

3 355. Q. So, what are you doing when you look
4 at those numbers specifically? What is the process
5 you do? Because if you are not assessing their
6 accuracy, what do you do with that data?

7 A. Well, for the purposes of
8 campaigning, trying to understand how much money is
9 being spent on these projects in order to identify
10 what else we could spend that money on to improve
11 community well-being and safety. So, in the context
12 of the NOPE campaign, for instance, one of the
13 things we did was, you know, the Province had
14 identified spending \$500,000,000 to \$1,000,000,000
15 on the Ottawa Correctional Complex and I think we
16 did a series of infographics that basically asked
17 the question if you had that much money, what would
18 you spend it on. Here is some other things that we
19 put in the window like housing and...

20 356. Q. And that range, that budget range,
21 you just take it at face value; correct?

22 A. It is what they have provided us
23 with. If it ends up being that at the end of 30
24 years, you know, that is out of my hands.

25 357. Q. The next question on this topic is

J.R.J. Piche - 100

1 the letters DBFM that were referred to in several
2 questions, what do they include, your understanding
3 of those terms?

4 A. They include the cost to design the
5 facility based on, you know, the program
6 requirements from the Ministry. So the Solicitor
7 General would say, "Here is what we need this
8 facility to do", which they would call a program,
9 and then they would design a facility that would
10 meet those requirements and then the building of it.
11 So, erecting the facility. Financing is essentially
12 the mortgage or, for lack of a better word,
13 the...the money that it would take over a period of
14 the life of the contract to purchase the facility.
15 It is kind of like rent-to-own, almost, to be
16 honest, but anyways it is...it is a mortgage here.
17 And then maintenance, which we went into depth with
18 counsel earlier.

19 358. Q. So, if I want to operate a new jail
20 using this approach, are there sums of money that
21 are not included in the DBFM figure?

22 A. Yes, the cost to operate it.

23 359. Q. And what would typically be included
24 in that?

25 A. So, like, you mean like the cost to

1 actually run the prison?

2 360. Q. What are the cost elements from what
3 you know that are not included in the DBFM
4 calculation?

5 A. Staffing would be the chief cost
6 behind that. And, you know, other services that are
7 offered as part of operating a prison like the cost
8 to run the food, canteen, and so on.

9 361. Q. And is there a publicly available
10 amount to describe the operating cost of a jail?

11 A. So, yes...well, to operate an
12 average prisoner bed there is. So, for instance, if
13 we go to Statistics Canada, they have this document
14 that they publish every year. I believe it is
15 called Adult Correctional Services Statistics or
16 something like that. I could find it if I am
17 allowed to do a Google search, but if not it is
18 roughly called that and they publish it every year
19 and it includes...

20 362. Q. And you have consulted this document
21 in the past? You are familiar with it?

22 A. Yes. Yes, it is not coming to me
23 immediately to mind, the exact title.

24 363. Q. That's fine.

25 A. But that is what it is and every

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1 year...or they will include for the last five years
2 how much it costs to incarcerate a single person and
3 that is based on data provided to them by each of
4 the provinces, territories and the federal
5 government. And so, you know, the last data that we
6 have available, which I believe was from 2021,
7 had...and this was in the midst of a pandemic where,
8 you know, there were fewer prisoners. In, say,
9 Ontario jails for example the average cost per day
10 was \$402 per day, I believe it was if I am
11 remembering correctly, to incarcerate one person on
12 average in a provincial prison in Ontario. I think
13 that that figure is overblown because, again...

14 364. Q. I am not asking you to speculate on
15 the accuracy of that figure. We don't know that,
16 so...but that is the number you remember seeing?

17 A. That is the number. It is not the
18 number I have used. The number I have used would be
19 from 2019/2020, pre-pandemic when there was a full
20 complement of prisoners for the amount of staff that
21 were there, so that was \$297 a day I believe.

22 365. Q. Okay. And last question on the
23 costs issue, Ms. Keenan took you through, for a lot
24 of the existing or the completed facilities, the
25 difference between the contract amount and the, sort

J.R.J. Piche - 103

1 of, 30-year amortized amount. What is your
2 understanding of the difference between those two
3 figures?

4 A. My understanding is that if current
5 market conditions held, i.e. no inflation, you know,
6 that if they had bought it right off the shelf right
7 there this is what it would cost them. But because
8 they are doing this over the life of a 30-year
9 mortgage, that essentially...it is going to cost
10 more, right, when you factor in inflation and, you
11 know, whatever maintenance fees are actually
12 incurred during that process...

13 366. Q. And those adjusted figures, just to
14 be clear, those are not calculations you made; those
15 are simply numbers you took from the Province's
16 website?

17 A. Yes, that I copy and pasted.

18 367. Q. Thank you. If you recall you were
19 asked about December 3rd, 2020 documents from a JOG
20 meeting that made references to the use of law
21 school students for the purpose of opposing the
22 Kemptville project. To the best of your
23 recollection, were any opinions sought at the time
24 from anyone in the legal world that you know of?

25 A. To my recollection, no, and I think

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1 in terms of what was going on at that point, we were
2 running a jail hotline and we also had...like, I had
3 my courses like Sociopolitics of Incarceration. We
4 would do workshops that CAPP members would show up
5 at, so I don't know if...if that is just like...was
6 going to be a question asked to students or
7 something during the course of that but, yes, I
8 mean, that...to my recollection, like, I don't think
9 that that was something that we explored.

10 368. Q. Okay. I am turning now to the
11 original Ottawa Correctional Complex, the OCC, the
12 725 bed facility that was announced in 2017. You
13 were asked several questions by Ms. Keenan about why
14 or the statements you made about why it was
15 cancelled and I just want to be clear. You don't
16 know that there is a causal relationship between
17 event or factor X and abandoning that project;
18 correct?

19 A. Yes, I mean, I think that it is fair
20 to say that we don't know definitively what led to
21 the change from the Ottawa Correctional Complex to
22 the Eastern Region strategy but, you know, I think
23 we look at as a researcher as well as, like, an
24 organizer, we look at contingencies and trying to
25 understand what is in the context that is happening

J.R.J. Piche - 105

1 that could potentially shape these things, you know?
2 And, yes, I would have a hard time believing that we
3 had no impact on what was going on, but, you know,
4 yes...but the assumptions we had were essentially
5 that organizing gets the goods and if we repeat some
6 of the same things that we repeated during the NOPE
7 campaign that maybe we could convince the
8 government, pressure the government to change their
9 plan or to cancel it altogether and...

10 369. Q. And now we are talking about
11 Kemptville; correct?

12 A. Yes.

13 370. Q. Okay. And other than the NOPE
14 campaign and your assessment that they may have
15 played a role in the change of direction, are there
16 other elements or other factors that led you to
17 believe that community organizing can have an
18 impact?

19 A. I mean, just in the context of
20 advocacy that CPEP has done over the years in terms
21 of working with imprisoned people to try and address
22 human rights abuses at OCDC, at the Ottawa Carleton
23 Detention Centre. Like, we have done campaigns
24 around various different issues, even like
25 advocating for greater access to nail clippers. You

1 know? And so we know, like, organizing can make
2 changes possible that are, like, even really basic
3 things, right? So...

4 371. Q. I am more interested in the
5 construction of prisons.

6 A. Okay.

7 372. Q. So, what would have led you...other
8 than your assumptions on NOPE, is there anything
9 else that would have led you to believe that
10 community organization can have an influence on
11 whether a facility is built or not?

12 A. I mean, with this particular
13 government...

14 373. Q. This government or generally?

15 A. Well, this government specifically,
16 I mean, when they...when they are pressured on
17 certain issues, they do change their minds on some
18 key things and I think we have seen that even, for
19 instance most recently around the CUPE, you know,
20 contracts in education and stuff. So, I mean...

21 374. Q. Well...

22 A. ...this government has walked back
23 several...

24 375. Q. I am not talking about education,
25 Mr. Piche. I am trying to get to the construction

J.R.J. Piche - 107

1 of prison projects. You have studied this for a
2 long time, you say.

3 A. Right.

4 376. Q. Is there anything in your research,
5 for example, that might lead you to believe that
6 community organizing can have an influence on the
7 construction of a facility or not?

8 A. Yes, I mean, like, I am aware of
9 projects that have been stopped, for instance, in
10 California, in other jurisdictions in the United
11 States where jail opposition is a lot more popular
12 as far as movement work goes. In the Canadian
13 context, I would say there is lesser of a history of
14 that kind of organizing. So, you know, part of what
15 we are doing, I think, too is to show that
16 organizing here can be successful or can be
17 possible. So, yes, prisons have been stopped
18 before. Sometimes because of community organizing;
19 other times because of governments changing their
20 mind. For instance, Prime Minister Mulroney
21 uprooted a prison that was being built in Quebec
22 City and stuck it in his riding in Port-Cartier.
23 That was a paused project. Of course, it restarted
24 elsewhere. But, you know, these things are subject
25 to various contingencies and...yes, I don't know if

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1 I am getting at your question but...

2 377. Q. No, I think you have. I think you
3 have, Justin. In the questions you were asked, if
4 you recall, Ms. Keenan stated when you were talking
5 about the change of government when the Ford
6 government came in, there was a statement made that
7 governments will establish priorities, can change
8 them, revise them and so on. And you agreed that
9 that was the fact around...it was a possible factor
10 in the change from the OCC to the Eastern Ontario
11 Strategy; correct?

12 A. Correct.

13 378. Q. So, would that knowledge or that
14 awareness, that a change of government can bring a
15 change of direction, would that have influenced your
16 analysis of where JOG should focus its actions?

17 A. Well, I mean, as far as CAPP goes,
18 we threw a bunch of things at the wall to see if
19 anything would stick and then we focused our
20 attention on the land transfer deal thinking that if
21 we managed to stop that, then Sol Gen would then
22 have to go look for another site if, indeed, it
23 wanted to continue on with this project. So, for
24 us, that was, you know, a key site of contestation
25 and then...

J.R.J. Piche - 109

1 379. Q. And that would have been through
2 political contestation?

3 A. Well, yes, we did an e-mail zap. We
4 did open letters. Other organizations were writing
5 letters. Other folks, individuals were writing op
6 eds and stuff around that and ultimately we did not
7 succeed in stopping that transfer and, you know, at
8 that same time in the spring we were also focused on
9 the upcoming provincial election and had spoken to
10 all the opposition parties and gotten a general
11 impression or understanding and outward statements
12 from the NDP, the Liberals and the Greens that they
13 would not follow through with this project if they
14 formed government.

15 So that is kind of [inaudible] not to be
16 partisan, but to raise awareness saying here is
17 where these parties stand and the governing party
18 didn't even respond to our...we were still trying
19 with them, right? We sent out a note to them
20 saying, "Hey, what is your position on this going
21 into the election?" They didn't respond, you know,
22 and the Kemptville folks trying to get Steve Clark
23 to speak to them and he wasn't speaking to them, so
24 it was...

25 380. Q. Would it be fair to say that just as

J.R.J. Piche - 110

1 much as the 2018 election led to the Eastern or
2 potentially led to the Eastern Ontario Strategy,
3 your objective was that the 2022 election could lead
4 to some other changes as well? Would that be a fair
5 assessment?

6 A. Yes, we thought if there was a
7 change in government that the Kemptville prison
8 wouldn't be built. It doesn't mean that we wouldn't
9 have to fight another battle. Depending on where a
10 new...if a new government decided it wanted to still
11 build a prison but somewhere else, but that was a
12 fight we were willing to have at a later date if
13 that was the case but...I am talking about CPEP
14 specifically CAPP. I don't know what they would
15 have done once the Kemptville question is resolved
16 and I don't know what they will do once it is
17 resolved one way or another, right, if they will
18 continue with this advocacy or not. But CPEP will.
19 We have...feel we have a responsibility.

20 381. Q. That's fair. Last question. At
21 paragraph 10 of your affidavit, you were asked about
22 the 20th of April, 2018 stakeholder meeting
23 regarding the Ottawa Correctional Complex project;
24 correct?

25 A. M'hmm.

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1 382. Q. And you state in the paragraph
2 that...and in answer to Ms. Keenan you said
3 she...she asked you about whether there was anything
4 the stakeholder meeting could have produced to make
5 you change your mind and you indicated that, no. My
6 question is, where does your statement that the
7 meeting tried to convince you to change your
8 position?

9 A. So, you know, I...

10 383. Q. Why was that your assessment of the
11 2018 stakeholder meeting?

12 A. Right. Well, okay, so, the senior
13 advisor to the Minister, Marie-France Lalonde, was
14 Abby Dushman. Abby Dushman used to work...well, at
15 that time she moved to that position from the
16 Canadian Civil Liberties Association. And CPEP, our
17 group, had actually done work with Abby in the past.
18 Abby had come to present to at least one of our
19 events denouncing the fact that we were imprisoning
20 so many pre-trial detainees in prisons like the
21 Ottawa Carleton Detention Centre. And so she was
22 calling, along with us, for reductions in the use of
23 pre-trial detention which constitutes, like, you
24 know, more than 70 percent of people in Ontario's
25 prisons.

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1 And so we had a relationship with Abby. I
2 am not saying that Ms. Deshman was an abolitionist
3 or arguing against the construction of prisons. In
4 fact, she was trying to push a new prison with the
5 Minister. But was trying to bring us to the table
6 to get us onside, right, to at least...because we
7 were out there and we were saying this is a terrible
8 idea and, you know, writing op eds and doing events
9 and they were aware of all that.

10 384. Q. At the 20th of April meeting, 2018
11 what happened to make you say they tried to convince
12 you?

13 A. Well, they tried to explain all the
14 fancy things..."fancy things"? Sorry. They tried
15 to explain all the benefits that would be associated
16 with building this new prison and, for instance,
17 they said, "In the past, CPEP has advocated against
18 the privatization of the food system and the fact
19 that OCDC doesn't have an on-site kitchen. Well,
20 the new prison will have an on-site kitchen and we
21 won't need the contract with Compass Group anymore".

22 385. Q. So that is one example...so that is
23 an example...

24 A. So that is an example of them trying
25 to say, like, "Well, you say this in terms of what

J.R.J. Piche - 113

1 is bad about prisons. Here is how we are going to
2 try and fix it with these prisons". And so they
3 were essentially going back and forth. There was
4 other people at the meeting that brought other
5 concerns around, say, drug treatment and so on and
6 so forth, and they were, you know, essentially...I
7 would call it neutralization of opposition in the
8 sense that they had an argument for every argument
9 that we had and basically...

10 386. Q. Or they were trying to address known
11 concerns? That would be another way to say it.

12 A. Yes, and they were trying to get us
13 onside or at least not actively opposed and vocal
14 ahead of a looming election. That is how it felt
15 like...

16 387. Q. Okay.

17 A. ...in the context of that meeting
18 and...

19 388. Q. Who...thank you. Who was "they"?
20 Who are "they" that were trying to...

21 A. The Minister, Marie-France Lalonde
22 was there.

23 389. Q. Okay. Abby Deshman?

24 A. Abby Deshman was there, the senior
25 policy advisor. And...yes, and that was...it was a

1 small meeting but...

2 390. Q. Do you recall roughly who the other
3 stakeholders who had been invited to that event?

4 A. There was...

5 391. Q. Just roughly. I know it is a long
6 time ago but...

7 A. So, there was definitely folks from
8 E. Fry Ottawa that would have been there. The MOMS
9 who, again, like, the MOMS were opposed to the
10 bigger prison but they were okay with a smaller one,
11 so some of the stuff resonated with them in terms of
12 better treatment of prisoners or the promise of
13 better treatment of prisoners even though...

14 MS. KEENAN: Sorry, I just feel like we
15 are getting off of redirect here and he is
16 basically now supplementing the information
17 in his affidavit.

18 392. MR. EMARD-CHABOT: Okay, we can stop
19 there. Those are all my questions subject
20 to redirect should we do a second round.

21 MS. KEENAN: Thank you. Okay, so I
22 think we are done for today. We can go off
23 the record.

24

25 --- upon adjourning at 12:45 p.m.

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| 9 | | Committee on Human Rights dated May | |
| 10 | | 3, 2017 (for identification) | 9 |
| 11 | | | |

TAB 6

Court File No. DC-22-2731

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

GV/sr

B E T W E E N:

VICTOR LACHANCE and
KIRK ALBERT

Applicants

- and -

SOLICITOR GENERAL OF ONTARIO and
ATTORNEY GENERAL OF ONTARIO

Respondents

This is the Cross-Examination of KIRK STEWART ALBERT, on his Affidavit affirmed the 16th day of December, 2022, taken via videoconference at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, on the 31st day of January, 2023.

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

| | | |
|-----------------------|---|------------------------|
| STEPHANE EMARD-CHABOT | } | -- for the Applicants |
| SUSAN KEENAN | } | -- for the Respondents |
| SHAYNA LEVINE-POCH | } | |

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1

2 --- upon convening at 10:00 a.m.

3 --- upon commencing at 10:00 a.m.

4

5 KIRK STEWART ALBERT, affirmed

6 CROSS-EXAMINATION BY MS. KEENAN:

7 1. Q. Good morning, Mr. Albert.

8 A. Good morning.

9 2. Q. So, I am here today to ask you some
10 questions about an affidavit. Do you recall
11 swearing or, sorry, affirming an affidavit in this
12 matter on December 16th, 2022?

13 A. I do.

14 3. Q. And do you have that affidavit with
15 you today?

16 A. Yes, I do.

17 4. Q. Okay. We are going to be referring
18 to it, so you will want to have it in front of you
19 there. So, can you please state your full name for
20 the record?

21 A. Yes, it is Kirk Stewart Albert.

22 5. Q. Thank you. When I am asking you
23 questions, if there is any point at which you are
24 not clear on what exactly I am asking, please feel
25 free to ask me to rephrase it or repeat it. I am

K.S. Albert - 4

1 happy to do that.

2 A. Okay.

3 6. Q. And also if you need a break at any
4 point, just let us know and we can take a break.

5 A. Okay, that sounds great. Thank you.

6 7. Q. Thank you. So, I am taking you to
7 the first paragraph of your affidavit at this time.
8 So, is it fair to say you live in a rural area of
9 North Grenville?

10 A. Yes, that is fair to say.

11 8. Q. And you have lived in that rural
12 area for your entire life?

13 A. That is correct.

14 9. Q. And one of the things you like about
15 Kemptville, which you mention there in your
16 affidavit, is that there is a high quality of life.
17 I think that is in paragraph 2.

18 A. Yes. Yes. That is correct.

19 10. Q. Now, you grew up in Merrickville,
20 which is a small village nearby; is that right?

21 A. Yes, that is correct.

22 11. Q. And you describe in paragraph 5
23 that:

24 "...The heritage, amenities, activities and
25 vision for the town has always been

1 maintained with a view to preserving the
2 small town charm..."

3 Do you see that?

4 A. I do.

5 12. Q. And here you are referring to
6 Kemptonville; right?

7 A. Correct.

8 13. Q. And then you say:

9 "...As well as preserving the lifestyle
10 that long time residents have come to
11 expect and enjoy..."

12 Right?

13 A. Correct.

14 14. Q. And you say in paragraph 6 that this
15 vision of peaceful, rural living was upended when
16 you learned about a proposed correctional facility
17 in Kemptonville; right?

18 A. Correct.

19 15. Q. And you first learned about that
20 facility from a newspaper article that was dated
21 September 2nd, 2020?

22 A. Yes, that is correct.

23 16. Q. And that article was written by Jim
24 Bertram?

25 A. Yes.

K.S. Albert - 6

1 17. Q. And Jim Bertram is a Kemptville
2 resident; right?

3 A. Was. He is deceased now.

4 18. Q. I'm sorry to hear that. I didn't
5 know that. And so he was a Kemptville resident at
6 the time he wrote the article?

7 A. Correct.

8 19. Q. Thank you. So, you have attached
9 that article at Exhibit A to your affidavit. So I
10 would like to take you to that right now. It is at
11 page 43 of the full motion record. I don't know if
12 you are able to turn to that page. I can also share
13 my screen if you'd like.

14 A. Yes, if you could share that would
15 be helpful. I didn't print off all the exhibits.

16 20. Q. Absolutely, no problem. So,
17 hopefully you can see that up here. It is titled "A
18 Tourist's Delight" and it says September 2nd, 2020
19 here. Do you see that?

20 A. I do see it, yes.

21 21. Q. Okay. And this article was in the
22 North Grenville Times; is that right?

23 A. Yes, that's right.

24 22. Q. And we see "NG Times" in the top
25 left and "North Grenville Times" at the top here.

K.S. Albert - 7

1 So, is that a local newspaper?

2 A. It is, yes. It is a local paper
3 within Kemptville and I think it has got a fairly
4 extensive distribution.

5 23. Q. Okay. And this is the article that
6 referred to a government announcement; right?

7 A. Correct.

8 24. Q. And that announcement included that
9 a proposed correctional facility was going to be
10 built in Kemptville. We can go to that right here:

11 "...The recent announcement that a jail is
12 to be located in the south end of town
13 within easy reach of four schools..."

14 You see that, right?

15 A. I do.

16 25. Q. So, this is what you were reading
17 when you first learned about the proposed facility?

18 A. That is correct.

19 26. Q. So if we go back to your affidavit,
20 and that is at page...I am just going to stop
21 sharing my screen for a moment and we will go back
22 to your affidavit which is at page 20 of the full
23 record.

24 A. Okay.

25 27. Q. And you say that...in paragraph 7

K.S. Albert - 8

1 that when you read this article, you were deeply
2 concerned...sorry, that is in paragraph 8. Right?

3 "...I was deeply concerned by Jim's
4 article..."

5 A. Yes, that is correct.

6 28. Q. Right. And just before that,
7 paragraph 7 line 1, you say:

8 "...The announcement was for a \$500,000,000
9 investment over five years by the province
10 as part of what provincial officials termed
11 the Eastern Region Strategy to modernize
12 and/or build four correctional facilities
13 with one of the new proposed prisons to be
14 built in our small town of Kemptville..."

15 So, you read this on September 2nd, 2020; right?

16 A. The article I did read, yes. I read
17 it when it was published but, yes, it is in
18 reference to that article dated September 2nd.

19 29. Q. Right, and you say in paragraph 6 of
20 your affidavit that when you read it, your vision of
21 peaceful rural living was upended; right?

22 A. Correct.

23 30. Q. And you say in paragraph 8...sorry
24 if I am jumping around here, but you say that you
25 immediately thought about the impacts that such a

K.S. Albert - 9

1 facility would have on your community. That is in
2 the second sentence.

3 A. Yes, that is correct.

4 31. Q. And then you reached out to the
5 author, Jim Bertram, right?

6 A. Yes, I did.

7 32. Q. And you found out that he was
8 organizing a group and that group was called the
9 Jail Opposition Group; is that right?

10 A. Yes, that is correct.

11 33. Q. And that is referenced in paragraph
12 9 of your affidavit?

13 A. It is.

14 34. Q. And you joined that group?

15 A. Correct.

16 35. Q. And you say that...in the second
17 sentence of paragraph 9, you agreed to work with Jim
18 together and develop a recruitment strategy to grow
19 the membership of JOG; right?

20 A. That is correct.

21 36. Q. So the Jail Opposition Group, short
22 form for that would be J-O-G, JOG?

23 A. Yes.

24 37. Q. Thank you. Now, you say in the next
25 paragraph that JOG took up opposition efforts just

K.S. Albert - 10

1 five days following the provincial announcement.

2 Right?

3 A. Correct.

4 38. Q. And when you say "opposition
5 efforts", you mean opposition efforts to the
6 proposed correctional facility?

7 A. Correct.

8 39. Q. And the underlying government
9 announcement, that was on...and I can take you to it
10 if you need but it was on August 27th, 2020; right?

11 A. That is correct.

12 40. Q. So, that would mean that JOG took up
13 opposition efforts on September 1st?

14 A. Yes, if that is the correct...I
15 don't have a calendar in front of me but yes.

16 41. Q. I am just thinking five days after
17 the provincial announcement would be approximately
18 September 1st.

19 A. Sounds correct.

20 42. Q. And that is 2020?

21 A. Yes.

22 43. Q. And who was in JOG at that time? It
23 was yourself and Jim. How many other people were in
24 JOG?

25 A. It was very early days. I don't

K.S. Albert - 11

1 think there was many more, quite frankly, at that
2 point in time. Jim was...you know, he had received
3 that information, put it forward in that article in
4 order to make people aware. But from my
5 recollection, there was really myself and him. It
6 was very early days.

7 44. Q. I understand. And so you had
8 several concerns about the facility at that time;
9 right?

10 A. Correct.

11 45. Q. And if we go to paragraph 8, you
12 mention that right after reading the article you
13 were concerned about the hospital...about the impact
14 on the hospital.

15 A. Correct.

16 46. Q. And that is the local...your local
17 hospital, your small district hospital?

18 A. Yes.

19 47. Q. And in paragraph 10, you mention
20 some other concerns. Towards the end of that
21 paragraph you talk about what JOG exists for; to
22 advocate for certain things. And that includes
23 prioritizing and preserving a quality of life in
24 Kemptville. That is...first you mention that
25 particular concern. That is the first one there;

1 right?

2 A. Correct.

3 48. Q. And then you also reference
4 maintaining its agricultural heritage. That is also
5 in that last line. Do you see that there?

6 A. I do.

7 49. Q. Okay. And so you have indicated
8 that JOG, which was yourself and Jim and...mostly
9 yourself and Jim at the time, you were opposed to
10 the facility as soon as you read Jim's article;
11 right?

12 A. Correct.

13 50. Q. And your vision of peaceful rural
14 living was upended when you read it?

15 A. Correct.

16 51. Q. And then in paragraph 11, you say
17 after you joined the Jail Opposition Group you were
18 researching the effects of such facilities on small
19 towns; right?

20 A. Correct.

21 52. Q. Okay. And so I just want to take
22 you to the actual announcement and that is in our
23 materials and I can put it on the screen. It was a
24 press release from August 27th, 2020. And I will
25 just share my screen here. So, hopefully you can

K.S. Albert - 13

1 see this. So, this is already in evidence from our
2 witness and it is dated August 27th, 2020. It is a
3 press release that says:

4 "...Ontario supporting front line
5 correctional officers in Eastern
6 Ontario..."

7 Do you see that?

8 A. I do.

9 53. Q. Okay, and then if we go down to the
10 second paragraph here, it says:

11 "...Details were provided today by Premier
12 Doug Ford, Solicitor General Sylvia Jones,
13 and Steve Clark, MPP for Leeds-Grenville,
14 Thousand Islands and Rideau Lakes..."

15 And it describes a little further down that...in the
16 first bullet, they will be building a new greater
17 Ottawa correctional complex on an existing
18 government owned site in Kemptville to improve staff
19 and inmate safety. So is this the announcement that
20 Mr. Bertram was talking about, to your knowledge?

21 A. To my knowledge, yes.

22 54. Q. Now, this announcement was made not
23 just by the Premier and the Solicitor General and
24 the MPP, but also by the Mayor of North Grenville,
25 right, Nancy Peckford?

K.S. Albert - 14

1 A. My understanding is she was in
2 attendance, yes.

3 55. Q. Okay. And North Grenville is the
4 municipality in which Kemptville is located; right?

5 A. Yes.

6 56. Q. And so she was there and maybe not
7 participating but she was present when this
8 announcement was made?

9 A. Correct.

10 57. Q. And you talk about in your affidavit
11 about the municipality and Mayor Peckford at
12 paragraph 11. And you say that you shared
13 information with your mayor and members of council
14 on October 1st, 2020 and that was to help them in
15 their deliberations and decision making; right?

16 A. Correct.

17 58. Q. And then you say:
18 "...Over time, the mayor and council
19 members refused to give much weight to the
20 studies and articles we provided..."

21 Right?

22 A. Yes, that is correct.

23 59. Q. And so the indications you had...and
24 you say this in paragraph 12...was that the mayor
25 and the municipal council were taking what you

K.S. Albert - 15

1 describe as a wait-and-see approach; right?

2 A. Yes, that is correct.

3 60. Q. Meaning that at that time, they were
4 not opposing the facility?

5 A. Correct.

6 61. Q. And that is why you concluded that
7 if you were to successfully oppose the project, and
8 you say this in paragraph 12, the last line, you
9 concluded if you are to successfully oppose the
10 prison project,

11 "...we needed to continue to expand our
12 call for assistance as quickly and widely
13 as possible..."

14 Right?

15 A. Correct.

16 62. Q. "...In other words, the municipality
17 is not taking action so we will take
18 action..."

19 A. It became clear to us in that period
20 of time from September 2nd when I read the article
21 and became involved that our mayor and council were
22 as much in the dark about the details of this
23 announcement as we were. And it became clear that
24 we needed to broaden our membership in order to help
25 us try to receive the information that we needed

K.S. Albert - 16

1 because so little had been provided other than that
2 web...web-based announcement that you just showed
3 earlier.

4 63. Q. Okay, and so...but you have just
5 confirmed that the mayor, to your recollection, was
6 at the announcement with the Premier; right?

7 A. Yes, I did. And I also have
8 indicated...

9 64. Q. And the mayor and the municipal
10 council, you provided them with information but they
11 weren't opposing the facility; right?

12 A. They indicated to me on a number of
13 occasions, as they did with others, that they
14 received about 48 hours' notice prior to...

15 65. Q. Right, but they...

16 A. Prior to the announcement and were
17 told to be in Brockville, Ontario to participate.
18 They had no consultation prior to the event...

19 66. Q. Right, and you talk about that. But
20 what I am getting at is that they could have come
21 out and said, "We oppose this" and they did not;
22 right? Isn't that the case? They didn't oppose it.

23 A. I can't speak to...I can't speak to
24 what they were privy to or not. They indicated to
25 me and others that they had 48 hours' notice to be

K.S. Albert - 17

1 in Brockville for an announcement. When they got
2 there...

3 67. Q. Okay, so they...they told you...
4 yes, they told you that. That is what they said to
5 you. But they were at that announcement. They went
6 to that announcement. And not only that, you have
7 said that they took a wait-and-see approach; right?
8 Didn't you say that in paragraph 12?

9 "...They were taking a wait-and-see
10 approach despite the many concerns being
11 voiced in the community..."

12 Isn't that what you said in paragraph 12?

13 A. Yes.

14 68. Q. Okay, so I am going to take you to
15 paragraph 13. Now, you say that you launched the
16 North Grenville Jail Opposition Group Facebook page
17 on October 18th, 2020. So, by that date, you had a
18 Facebook page for JOG; right?

19 A. Correct.

20 69. Q. And you also say in that paragraph
21 that you were holding regular virtual meetings with
22 JOG members; right?

23 A. Yes.

24 70. Q. And so this is October 18th, so it
25 is actually just under two months after the

1 announcement; right?

2 A. Correct.

3 71. Q. And how many members of JOG were
4 there, if you can recall, at that time
5 approximately?

6 A. To be honest, I can't recall exactly
7 but I would say it was in the neighbourhood of 30 to
8 50.

9 72. Q. Okay. And there was another group
10 that formed around the same time. I believe that
11 was called the Coalition Against the Proposed
12 Prison; right?

13 A. Correct.

14 73. Q. Or CAPP for short. So, C-A-P-P?

15 A. Correct.

16 74. Q. And you refer to them in paragraph
17 14 of your affidavit and you say that they also came
18 out in opposition shortly after the provincial
19 announcement; right?

20 A. That is correct.

21 75. Q. So in those early days, they also
22 opposed the facility; right?

23 A. Correct.

24 76. Q. And you say they prioritized a
25 strong web presence. That is in paragraph 14. Do

K.S. Albert - 19

1 you see that?

2 A. Yes, I do.

3 77. Q. Now, you describe in paragraph 15
4 that you contacted the founder of CAPP, CAPP founder
5 Colleen Lynas, in October, 2020. Do you see that?

6 A. I do.

7 78. Q. And you say the discussion was:
8 "...geared towards understanding each
9 other's focus areas and expertise and
10 eventually about where we could help each
11 other as we realized that ultimately we had
12 the same goal..."

13 Now, you indicate that the goal was to obtain
14 information and inform the community. That is what
15 you say in paragraph 15; right?

16 A. That is correct.

17 79. Q. But I would suggest to you, just
18 based on the name of JOG and the name of CAPP, that
19 one of your primary goals was actually to stop the
20 facility from being built. Right?

21 A. You can assert what you want from
22 the name but our mandate with the jail opposition
23 group was first and foremost to collect information
24 and disseminate it to the citizens to make informed
25 decisions. That was our goal right from day one.

K.S. Albert - 20

1 80. Q. So you started a group called the
2 Jail Opposition Group and you partnered with a group
3 called the Coalition Against the Proposed Prison
4 after learning about a prison that would, from your
5 perspective, upend your vision of peaceful rural
6 living and you are telling me the goal was not to
7 stop the facility from being built?

8 A. First of all, I joined a group that
9 was named the Jail Opposition Group. I did not
10 start it. And second of all, the mandate was clear.
11 The way we were promoted was clear in that it was
12 about seeking information that was not provided at
13 the August 27th announcement or subsequent to that.

14 81. Q. Okay, and if we go back to paragraph
15 10 of your affidavit, I will remind you that you
16 said in paragraph 10 that JOG took up opposition
17 efforts just five days following the provincial
18 announcement. You see that in your affidavit;
19 right?

20 A. Right.

21 82. Q. Okay. And in paragraph 31 of your
22 affidavit, if we can switch to that for a moment,
23 that is at page 27 you...

24 A. Which paragraph was that; sorry?

25 83. Q. Sorry, paragraph 31.

K.S. Albert - 22

1 Kemptville could ever be selected as an
2 appropriate location for a 235-bed
3 facility..."

4 Do you see that?

5 A. I do.

6 88. Q. So, here you are referring to the
7 site of the former Kemptville Agricultural College;
8 right?

9 A. Yes, it is actually the land
10 adjacent to the College itself.

11 89. Q. I see. And so that is the class 2
12 agricultural land you are referencing here?

13 A. That is correct.

14 90. Q. And so you knew that the proposed
15 facility was going to be at that site and on that
16 land?

17 A. Yes.

18 91. Q. So, as of October, 2020 you were
19 concerned that what you saw as farm land was going
20 to have this jail on it; right? This was one of
21 your concerns about the project?

22 A. Well, to be quite frank, my ultimate
23 concern was that we didn't have any information
24 about it.

25 92. Q. You mentioned that, but at the same

K.S. Albert - 23

1 time you have just said in your affidavit that you
2 were...one of the questions you were asking is why
3 class 2 agricultural land in the rural town of
4 Kemptville could ever be selected as an appropriate
5 location for a 235-bed facility; right? So that
6 concern about agricultural land, that was...you had
7 that in October, 2020; right?

8 A. The specifics to this? I can say
9 that at that point in time, in October, I did not
10 know it was class 2 agricultural land.

11 93. Q. Did you know it was...did you know
12 it was farmland?

13 A. I knew the location because I have
14 lived in this area the whole time.

15 94. Q. Right. Of course.

16 A. But subsequent information that I
17 have learned is that it was class 2. I did not know
18 that detail at that point in time, roughly, in
19 October.

20 95. Q. Right, but as you say, you knew the
21 location and you knew that was the site of the
22 former Agricultural College; is that fair?

23 A. That is correct.

24 96. Q. I mean, you have lived there your
25 whole life, so you must have known that was the site

K.S. Albert - 24

1 of the former Agricultural College.

2 A. Correct.

3 97. Q. So, in paragraph 13, we have talked
4 about this a little bit. You launched the North
5 Grenville Jail Opposition Group Facebook page. You
6 were holding regular virtual meetings with JOG
7 members. And in paragraph 14, you were talking with
8 CAPP and their founder about how you could
9 potentially, in 15, work together. You had an
10 online presence. You were focused on growing your
11 membership, expanding your call for assistance as
12 you have mentioned, and so by that time you were
13 organizing in your efforts in response to the
14 proposed facility; right?

15 A. That is fair to say.

16 98. Q. And then in paragraph 17, you
17 indicate that as of November, 2020 JOG and CAPP were
18 partnered, mostly behind the scenes but they were
19 partnered in their collective efforts; right?

20 A. That is correct.

21 99. Q. Now, you are on the steering
22 committee for JOG; is that right? That is
23 referenced in paragraph 17.

24 A. It is actually a steering committee
25 that is...it has been initiated under the guise of

K.S. Albert - 25

1 CAPP but, yes, I am a member on that committee.

2 100. Q. I see. And you are also a
3 spokesperson for JOG?

4 A. Correct.

5 101. Q. And so the steering committee, is it
6 a steering committee of members of both CAPP and JOG
7 then?

8 A. Primarily CAPP. There is variable
9 membership with JOG but I am the constant member on
10 that steering committee.

11 102. Q. I see. And if we go to paragraph 25
12 of your affidavit, you reference that JOG and CAPP
13 met on a regular basis. So, that was starting, as I
14 understand it from your affidavit, in November,
15 2020. Is that right? Or was it earlier when you
16 first spoke with Colleen Lynas which was in October,
17 2020?

18 A. Yes, it wouldn't have been prior to
19 that conversation. When we actually started meeting
20 on a regular basis would have been...I would have to
21 go back and check but I would say it was some time
22 in December onward of 2020.

23 103. Q. Okay, but you had spoken to her by
24 October, 2020 per paragraph 15 of your affidavit.
25 And then you say in 17:

K.S. Albert - 26

1 "...From that point onward, approximately
2 in November, 2020 JOG and CAPP were
3 partnered..."

4 Right?

5 A. Yes, but I also have...you would
6 have seen in my exhibits a meeting from December of
7 2020 where we talk about inviting Colleen to come to
8 a JOG meeting.

9 104. Q. Yes.

10 A. And some discussions. There
11 was...Jim Bertram and Colleen Lynas had different
12 opinions on certain things, so there was some
13 resistance to partnering with the two organizations
14 up front. It took some time from my initial
15 discussion with Colleen for that partnership to
16 develop.

17 105. Q. Okay. And in paragraph 25 you say:
18 "...JOG and CAPP met on a regular basis and
19 developed strategies as to how and where we
20 could locate information that might explain
21 the Province's decision to place a 235-bed
22 correctional facility built to maximum
23 security standards on class 2 designated
24 farmland in a town of roughly 4,000
25 residents..."

K.S. Albert - 27

1 So, this is what you were thinking, right, in
2 December, 2020?

3 A. Well, I don't think that particular
4 clause is date stamped so, you know, what I was
5 thinking in November and December of 2020 I don't
6 think is articulated in that clause. We knew...we
7 had not...as you already know, the first
8 correspondence ever with the Solicitor General was
9 two months after the announcement. So aside from
10 that webpage that you just provided and showed me,
11 we knew virtually nothing before that two month
12 period.

13 106. Q. Okay, but I am asking you about
14 December, 2020 and I am suggesting to you that those
15 were your concerns at that time. I mean, it is in
16 your affidavit at paragraph 25.

17 A. It is in the affidavit but I...
18 MR. EMARD-CHABOT: In fairness, that
19 paragraph states a general sense of the
20 relationship between the two organizations.
21 That does not refer to a specific moment in
22 time and what was known at a specific
23 moment in time.

24 107. MS. KEENAN: Well, it indicates...we
25 know that JOG and CAPP were meeting on a

K.S. Albert - 28

1 regular basis because the earlier paragraph
2 indicates they were partnered behind the
3 scenes and then this paragraph says they
4 are meeting him on a regular basis and that
5 one of the concerns was how it could have
6 been selected. And I am not suggesting you
7 knew at that time that it was class 2
8 designated farmland, but certainly you knew
9 the land on which this facility was going
10 to be built and what it had previously been
11 used for; right?

12 THE DEPONENT: I did know the land in
13 question and I did know what it had been
14 used by...used for previously, yes.
15 What...

16
17 BY MS. KEENAN:

18 108. Q. So, I am going to take you to
19 paragraph 30 of your affidavit at this point. So,
20 in paragraph 30, it is referenced:

21 "...We held our first of several public
22 demonstrations to express our opposition
23 and increase the exposure of this
24 announcement within the Kemptville
25 community on November 7th, 2020..."

1 Do you see that?

2 A. I do.

3 109. Q. Okay, so you had held that
4 demonstration and then in paragraph 31, you
5 reference a petition that was started on October
6 8th, 2020; right?

7 A. Correct.

8 110. Q. And I just actually looked up this
9 petition. I am going to show you something and you
10 can tell me if it is correct. I will share my
11 screen here. I don't know if you are able to tell
12 me whether this is the petition. It says it is by
13 Sarah Ciliberto and it is called "Cancel the
14 Proposed Construction of the Kemptville Prison". Do
15 you know if that is the one you are talking about?

16 A. That is the one I am talking about,
17 yes.

18 111. Q. Okay, and it says:

19 "...1,835 people have signed it..."

20 And it mentions:

21 "...The location of the jail would be close
22 to our old downtown Kemptville, which we
23 have worked so hard at building up..."

24 So this is the petition, so I am going to...I am
25 going to ask to mark this as an exhibit because I

K.S. Albert - 30

1 believe the witness has identified it and I can
2 provide a copy...a screen capture of this petition
3 for that purpose.

4 MR. EMARD-CHABOT: I have no objection
5 to the idea. The only caveat is that my
6 understanding of websites like this is that
7 the description of the petition can be
8 amended by the person who holds the account
9 over time. So, I don't know that we can be
10 certain that what is posted there is what
11 was written or when it was written or
12 whether it was amended. So as long as we
13 have that understanding that we cannot peg
14 in time when these words were specifically
15 written, I have no issue with the document
16 being entered.

17 112. MS. KEENAN: Okay, and I...

18 MR. EMARD-CHABOT: I am just making
19 myself clear on this.

20 113. MS. KEENAN: Yes, and I understand. And
21 I would just ask a question to clarify.

22

23

24

25 --- EXHIBIT NO. 1: Petition by Sarah Ciliberto entitled

K.S. Albert - 31

1 "Cancel the Proposed Construction of
2 the Kemptville Prison" dated October
3 8, 2020
4

5 BY MS. KEENAN:

6 114. Q. You don't have anything, Mr. Albert,
7 to suggest that this wasn't the title of the
8 petition at the time it was posted; right? Like,
9 presumably you were aware it was being posted. You
10 don't have anything suggesting that this has been
11 changed from its original title; do you?

12 A. As I said in my affidavit, the work
13 that we were doing in spreading the word by trying
14 to gain information allowed other local residents to
15 also do things on their own...under their own
16 recognisance. This is one example of that.

17 115. Q. Right, and...

18 A. I am referring to it but I do not
19 know Sarah Ciliberto.

20 116. Q. You don't know her?

21 A. No.

22 117. Q. Have you signed this petition?

23 A. I have not.

24 118. Q. Okay.

25 A. To my knowledge, I do not remember

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1 signing that.

2 119. Q. Okay. I couldn't tell you. I mean,
3 I could find out, I suppose, if we had a break
4 whether you have signed it but I will take you at
5 your word that you don't recall signing it. But you
6 do describe in your affidavit, you do describe this
7 change.org petition and you actually say in
8 paragraph 31 that it is now approaching 1,850
9 signatures; right?

10 A. Right. Because I was trying to
11 provide an example where some of the effort that we
12 were putting forth was motivating other residents
13 that also felt the same as us to get involved.

14 120. Q. I see. And you do mention Sarah
15 Ciliberto, so you don't know her personally but do
16 you know...I assume you know of her, then. Is she
17 involved in either CAPP or JOG?

18 A. Not officially, no. She may be a
19 member of CAPP but I don't believe so.

20 121. Q. Okay, have you ever spoken with her?

21 A. I have corresponded on e-mail, yes.

22 122. Q. Okay. Now, you mention in your
23 affidavit...and I am taking you to paragraph 37 of
24 your affidavit. And you say there that you
25 consistently asked, as did others, our mayor and

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1 council privately and publicly to simply request
2 that the project be held in abeyance until these
3 fundamental questions were answered to the
4 satisfaction of all stakeholders. Now, that didn't
5 happen, right? They didn't make an effort to hold
6 the project in abeyance; right? The municipality?

7 A. Over time and through the
8 progression of our meetings with them, they took
9 a...they started to appreciate some of the concerns
10 we were putting forward with respect to economic
11 benefits to the municipality, job creation, some of
12 the fundamental comments that were made from the
13 initial announcement onward. Their concern, first
14 and foremost, was that it would be inappropriate for
15 the municipality to take on any costs. The taxpayer
16 should not bear the burden of the facility.

17 123. Q. Okay, you are giving me a lot of
18 detail here but my question is very straightforward.
19 They didn't hold it in abeyance; right? That is
20 what you asked them to do and they did not make
21 efforts to do that; right?

22 A. I don't know if they made efforts to
23 hold it in abeyance.

24 124. Q. Okay. And so you talk about or you
25 list several meetings you had with the municipality

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1 and you list them out. So, you indicate that CAPP
2 met with the mayor and deputy mayor on October 9th,
3 2020; right?

4 A. Yes.

5 125. Q. And then JOG met with the mayor and
6 deputy mayor and a senior staffer on October 29th,
7 2020?

8 A. Yes.

9 126. Q. And CAPP again met with the mayor
10 and the deputy mayor and the chief administration
11 officer, I believe it is, on November 11th, 2020?

12 A. Yes.

13 127. Q. And the chief administration officer
14 for North Grenville, that person is part of...that
15 is a position that is part of the municipal council?

16 A. Yes. No, I believe he is an
17 employee.

18 128. Q. He is an employee? I see. But he
19 is...yes, I guess...

20 A. He is not...yes, he is not a
21 councillor.

22 129. Q. No, but has a decision making role
23 for North Grenville; right? Like, he is in a role
24 where he is making decisions about the municipality?

25 A. I believe so, yes.

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1 130. Q. As you refer to him elsewhere as
2 well. And then CAPP met with the mayor on December
3 1st, 2020; right?

4 A. Yes.

5 131. Q. And then JOG and CAPP met with the
6 mayor and deputy mayor on January 22nd, 2021; right?

7 A. Yes.

8 132. Q. And then you met with a municipal
9 councillor on January 26th, 2021; right?

10 A. Yes. Yes.

11 133. Q. And then JOG and CAPP together made
12 a delegation at the June 22nd, 2021 council meeting;
13 right?

14 A. Correct.

15 134. Q. So, you have all of these meetings
16 and you say in paragraph 41 of your affidavit that
17 the foundational question...this is in the first
18 line:

19 "...The foundational question that those in
20 opposition to the proposed prison kept
21 raising was and continues to be related to
22 the site selection process..."

23 Right? So your opposition related...

24 A. Which paragraph was that? Sorry.

25 135. Q. Sure, it is paragraph 41.

1 A. M'hmm?

2 136. Q. And it starts:

3 "...In addition to the concerns regarding
4 the future impacts of the proposed
5 correctional facility on our community and
6 its resources, the foundational question
7 that those in opposition to the proposed
8 prison kept raising was and continues to be
9 related to the site selection process
10 itself..."

11 Right?

12 A. Yes.

13 137. Q. Right. And in paragraph 40, you say
14 that the local government did not oppose publicly
15 the decision to build the facility on this site.
16 You say they neither opposed nor supported the
17 decision publicly; right?

18 A. Yes. For the first six months, that
19 is correct.

20 138. Q. But JOG and CAPP did. They publicly
21 opposed it; right? You mention in 41, you say
22 "those in opposition". You publicly opposed the
23 prison. That is not controversial.

24 A. Yes.

25 139. Q. Now, the land we are talking about,

1 the site or land we are talking about where the
2 facility is to be built, it used to house the
3 Kemptville Agricultural College; right?

4 A. No, the land is, as I mentioned
5 earlier, adjacent to what would be considered the
6 Kemptville College.

7 140. Q. Right.

8 A. The infrastructure is essentially
9 west of the property.

10 141. Q. So, there is a package of land, it
11 is one lot, one package of land, and there are a
12 series of buildings in one...at one end of that lot
13 that were the Agricultural College but the property
14 as a whole was used by that College; right?

15 A. Correct.

16 142. Q. And at one point, that College was
17 being run by the University of Guelph; right?

18 A. Correct.

19 143. Q. And then the facility shut down, the
20 College closed; right?

21 A. Correct.

22 144. Q. And was that about 2014?

23 A. I am not sure. I knew the date at
24 one point but I can't recall.

25 145. Q. Okay. And do you know that it was

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1 because of financial reasons?

2 A. I believe...my understanding is that
3 there was some funding that had been pulled from the
4 facility, yes.

5 146. Q. Okay. And so you have indicated
6 that...in your affidavit that there were information
7 sessions that were held by the Ministry of the
8 Solicitor General on October 30th, 2020 and November
9 26th, 2020. And we can see that at page...well, it
10 is in your affidavit if we go to...let me get you
11 the actual reference. Sorry about that, I should
12 have put down the page number here.

13 A. Okay.

14 147. Q. Okay, so, I see a reference to it in
15 paragraph 28 of your affidavit, "Request For
16 Answers", and you have the October and November
17 sessions. So, do you recall those...and, actually,
18 it is referenced above as well at paragraph 22 and
19 that is referencing the October 30th, 2020 session.
20 Do you see that?

21 A. Yes, I do. Paragraph 22? The
22 October 30th, 2020 stakeholder session?

23 148. Q. That's right.

24 A. M'hmm.

25 149. Q. So we will start with that one.

1 Now, you have attached at Exhibit C to your
2 affidavit some information, I guess, that was shared
3 at that session; is that right?

4 A. Correct.

5 150. Q. Okay. And this was on...this
6 session took place on October 30th, 2020.

7 A. Yes.

8 151. Q. Right?

9 A. Yes.

10 152. Q. So, if we can go to page 48 of the
11 entire record. That is Exhibit C, that is the
12 information we are talking about. Do you see that?

13 A. Are you able to...

14 153. Q. Share my screen?

15 A. Yes, if you don't mind.

16 154. Q. Yes, no problem. Okay, so, I will
17 just show you that this is Exhibit C. So if I go
18 up, I see the cover page here on page 48 and on page
19 49 we have this information here. It looks like a
20 PowerPoint presentation with the title "New
21 Kemptville Facility" and above that, "Ministry of
22 the Solicitor General". So was this the
23 presentation that was given on October 30th, 2020?

24 A. Yes, it was.

25 155. Q. Okay. And so if we go to page...the

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1 next page, this is page...I believe it is page 50...
2 yes, there we go, page 50 of the presentation...of
3 the entire record here. We see a list of names.
4 So, are these the people that attended the session
5 on behalf of the government?

6 A. Yes.

7 156. Q. Okay. And if we go to the next
8 page, we see an agenda. So this was the agenda for
9 the meeting; is that right?

10 A. That is correct.

11 157. Q. Okay, and the first agenda item is
12 "Site Selection", right?

13 A. Yes.

14 158. Q. Okay, and so if we go to that area,
15 we have "Site Selection" as a cover page on the next
16 page and then after that on page 53, there are a
17 series of things listed here and it says "Site
18 Selection":

19 "...Already in government portfolio,
20 government policy, value for money, private
21 land purchase costs range from \$10,000,000
22 to \$40,000,000. Appropriate size to
23 accommodate new facility within catchment
24 area of existing facility in Ottawa.
25 Adjacent to the Highway 417 or 416. No

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1 development impediments, i.e. liens, third
2 party rights. Staff home locations in
3 proximity to new location. Build smaller,
4 more efficient and manageable sized
5 facility..."

6 And that is followed by what looks like a map. It
7 is called "Test Fit" on the next page. And that is
8 followed on the next page by a staff heat map. And
9 then at page 63, if we keep going, we have a profile
10 of different attributes of the proposed new
11 facility. And then there are some photographs of
12 what...I don't know, but it looks like they were
13 suggesting this is what it could look like, "future
14 state versus present state" or "current state". And
15 this was all the...this was the information that was
16 shared with you on October 30th, 2020; right?

17 A. Yes, it is.

18 159. Q. Okay. And then you went to the
19 November 26th, 2020 session which was a public
20 session. The first session was with stakeholders.
21 The second session was public; right?

22 A. Yes, the first session, both CAPP
23 and JOG worked very diligently to be invited because
24 it was an invite-only session. And so, you know...
25 and the other thing I will say is that what they

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1 provided to us at that meeting, which was two months
2 after the announcement, created a number of
3 questions. One in particular when they showed the
4 site map, it had previously been conveyed that
5 bringing that facility to Kemptville would create
6 500 new local jobs and so questions were posed as to
7 why they would show us the heat map showing where
8 their staff lived in proximity to the new proposed
9 site if there was to be 500 new local jobs. That
10 was a question...

11 160. Q. And so basically they were sharing
12 information with you about where the staff are
13 located that might work at that facility; right?

14 A. Correct.

15 161. Q. Okay. So I am going to take you to
16 Exhibit D. And first we can go to the reference to
17 that in paragraph 24 of your affidavit. So I will
18 stop sharing for a moment and we can look at...I
19 think you have paragraph 24 of your affidavit there,
20 if I am not mistaken...

21 A. Yes.

22 162. Q. And I can give you the page number.
23 So, this is on page 25 of the record. And you
24 say...you are referring to the November 26th, 2020
25 session and you say:

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1 "...For this event, participants were
2 specifically asked to submit questions in
3 advance..."

4 And you submitted 28 questions which are found at
5 Exhibit D. And you say you fully expected, based on
6 comments from Ali Veshkini, Associate Deputy
7 Minister of Sol Gen, that they would be collected
8 and responded to appropriately in the context of the
9 meeting and you say this did not occur; right?

10 A. That is correct.

11 163. Q. Okay. So, if we look at Exhibit D,
12 and I can pull it up, it is page 82 of the record.
13 Now, here is the list of questions that you asked at
14 that meeting; right?

15 A. These are the list of questions that
16 we put forward in advance of the November 26th, 2020
17 meeting.

18 164. Q. Right.

19 A. As was requested.

20 165. Q. Right. And there are a total of 28;
21 right?

22 A. Correct.

23 166. Q. And some of these questions are
24 quite in depth. For example, if we go to question
25 12, it says:

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1 "...Over 100 properties were reviewed by
2 the Ministry of the Solicitor General and
3 Kemptville was selected. Why can the
4 Ministry not provide residents and
5 municipal council details about why all
6 other properties were deemed ineligible for
7 the prison location?..."

8 That would be a pretty in depth question to answer
9 in the context of a particular meeting, wouldn't it?
10 To review why all 100 properties were not found
11 eligible?

12 A. We were asked to provide questions.
13 They...Ali Veshkini on multiple locations in the
14 October 30th meeting and again in the November 26th
15 meeting talked about full transparency. They talked
16 about partnering with the community. They talked
17 about question and answer documents to be provided
18 to us. So, with the opportunity to provide
19 questions, I wasn't looking at whether they were
20 simple or not. I was posing questions that had been
21 posed to me by other residents of Kemptville that
22 were of interest to them and of interest to me.

23 167. Q. And so did you expect that all 28 of
24 these questions would be answered at that meeting?

25 A. Mr. Veshkini is an Associate Deputy

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1 Minister of the Solicitor General of Ontario. I
2 work in the Federal government. When someone is in
3 a position as a senior executive in an associate
4 deputy minister or deputy minister position and they
5 make a statement that they are going to follow
6 through on something, they do. So from my
7 perspective, the multiple times he told us he would
8 be transparent and respond to our questions, I did
9 feel that my questions would be answered.

10 168. Q. Okay, and so let's go to question 27
11 because in reading these questions, it seems like
12 some of them are not really questions; they are more
13 like statements and I will give you an example. So,
14 question 27 says:

15 "...If Mr. Doug Ford, Ms. Sylvia Jones and
16 Mr. Steve Clark are truly listening to the
17 community and are willing to quickly make
18 the change to the name based on dissent
19 from a very small number of residents, it
20 should be willing to make a change to the
21 location of the facility when a significant
22 statistical majority of taxpaying residents
23 completely oppose the decision in its
24 entirety to locate it in Kemptville should
25 it not. It is a bad decision for the town,

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1 the residents, the displaced inmates and
2 their families..."

3 So that is really...that is not really a question.
4 That is, like, your statement of opposition to this
5 project; right? Isn't that fair to say? Like, how
6 would...that is not a question that could b answered
7 at this meeting; right?

8 A. I think the question to be asked
9 here is why none of them were responded to, not
10 necessarily 1 out of 28.

11 169. Q. Okay, and we have just gone through
12 the information that was presented at the October
13 30th meeting and you indicate in your affidavit...I
14 am going to go back to your affidavit here because
15 right now we are talking about the November meeting.
16 And I will just take you to a paragraph of your
17 affidavit here dealing with the November meeting.
18 And it says in paragraph 24 that:

19 "...The amount of new information compiled
20 and shared since the October stakeholder
21 meeting was negligible..."

22 So, basically...and in the last paragraph of...the
23 last sentence of paragraph 23 you say:

24 "...The content was primarily a repeat of
25 the slides and explanations made on October

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1 30th, 2020..."

2 So, they shared the information about their factors
3 for the site selection that we saw in their
4 presentation in Exhibit C on October 30th. Then
5 they have another meeting, they share basically the
6 same information and that is what they share with
7 you at those sessions; is that right?

8 A. Yes. I will say that we have now
9 gone through the October 30th meeting where they
10 took...a number of questions were posed and they
11 took those back to find the answers to the
12 questions. And then moved forward to the November
13 26th. So those first bunch of questions weren't
14 comprehensively responded to and now another whole
15 set of questions are solicited prior to the November
16 26th meeting and they are not responded to.

17 170. Q. Okay, and so you talk about
18 questions that were raised at the October 30th
19 meeting but you submitted those 28 questions and you
20 expected them to be answered at the November
21 meeting; right?

22 A. That is...they solicited the
23 questions, so we fulfilled their request and
24 submitted questions.

25 171. Q. Okay. And so if we go to Exhibit F

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1 of your affidavit, this is a...it appears to
2 be...you can tell me...I can share my screen. You
3 can tell me if this is correct. It is a CBC
4 article, it looks like. Is that right?

5 A. It is.

6 172. Q. Okay. And this is on page 90 of the
7 motion record. And the article is called
8 "Kemptville residents protest against proposed new
9 jail". And it appears to have...the copy you have
10 attached appears to have last been updated on
11 November 9th, 2020. I am going to take you to
12 paragraph...sorry, to page 92 of the record where
13 there is a quote from you. It looks like we have a
14 photo here of Mayor Peckford and just under this
15 photo there is a quote from you and I just want to
16 confirm that this is the case. So, the writer of
17 this article that you have attached says:

18 "...Albert, who was part of that 3-hour
19 meeting, said he felt he was given time to
20 voice his concerns but he is still
21 skeptical about how much they were taken
22 into account..."

23 And then it says:

24 "...They certainly listen to us..."

25 And this is in quotes.

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1 "...They certainly listen to us but they
2 also had many examples of how they
3 'partnered with other urban centres and
4 [still put correctional facilities in
5 place]'"...

6 Did you say that?

7 A. I did.

8 173. Q. Okay. And was it, indeed, a 3-hour
9 meeting?

10 A. To be quite honest, I don't recall.

11 174. Q. Was it approximately three hours?

12 Would that be a reasonable...was it a full day
13 meeting, was it a half day meeting?

14 A. It certainly wasn't a full day
15 meeting, no.

16 175. Q. Okay. So, I am just going to stop
17 sharing my screen there and...so, by December, 2020
18 you had worked with JOG to expand your membership;
19 right?

20 A. Yes.

21 176. Q. And to create a Facebook page?

22 A. Yes.

23 177. Q. A local resident who you know of but
24 don't know well had created a petition against the
25 proposed facility?

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1 A. Correct.

2 178. Q. You had held a demonstration?

3 A. Yes.

4 179. Q. You had lobbied or advocated to your
5 municipality. You had that big long list of
6 meetings that you were having and some of them were
7 in that period leading up to December, 2020; right?
8 I can take you back to that.

9 A. Yes, I just wanted to be clear on
10 the dates when those started.

11 180. Q. Sure. So, paragraph 37.

12 A. Thirty-seven? Okay.

13 181. Q. M'hmm. So, you have a meeting on
14 October 29th. And CAPP is having meetings during
15 that period too; right?

16 A. Yes, you're right. Yes.

17 182. Q. And then you had attended two
18 government information sessions or government
19 sessions about the project; right?

20 A. Yes.

21 183. Q. You had held regular virtual
22 meetings of JOG; right?

23 A. Yes.

24 184. Q. And you had partnered by that time
25 with CAPP, this is by December, 2020.

1 A. Yes.

2 185. Q. And we have established that you had
3 all the information that is in Exhibit C, that
4 presentation. You were dissatisfied with it but you
5 have confirmed that information was shared by that
6 time; right?

7 A. That information was presented, yes.

8 186. Q. And you knew it was a 235-bed
9 facility; right?

10 A. I did.

11 187. Q. You knew the land where it was going
12 to be located?

13 A. I did.

14 188. Q. And you have referred in paragraph
15 10...if we go back to paragraph 10, we talked about
16 this already but you say in that paragraph that one
17 of the things you were concerned about was
18 maintaining agricultural heritage; right?

19 A. Yes.

20 189. Q. And in your conversation with CAPP
21 founder Pauline Lynas in October, 2020 you had
22 talked about why this land was selected and that was
23 a priority, to find out why this had been selected
24 as an appropriate location; right?

25 A. Yes.

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1 190. Q. Now, in that context at paragraph 61
2 of your affidavit, you say:

3 "...Among the numerous strategies
4 considered by JOG in particular the thought
5 of pursuing legal action was first
6 discussed in December, 2020..."

7 Do you see that?

8 A. I do.

9 191. Q. And you say in this next sentence:

10 "...JOG explored the option with members
11 who had access to legal resources and
12 advice..."

13 You said that in paragraph 61; right?

14 A. I did.

15 192. Q. So if we go to Exhibit J, because
16 you have attached an exhibit here, so if we go to
17 that Exhibit J that is at page 115 of the record and
18 I can share my screen if you like. Actually, I will
19 because it is probably easier. So, this is Exhibit
20 J. I will just show you because if we scroll up, we
21 can see the cover page. So, are these...and I will
22 just show you a few pages of this. There is 115,
23 116 and then 117, 118, 119 and 120 and it goes up to
24 121. So, if we go...that is the part I want to ask
25 you about. So if we go back to 115...actually, let

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1 me show you 117 first. So it says:

2 "...JOG meeting minutes here December 3rd,
3 2020..."

4 Then we go back up and this one just says "December
5 3rd JOG meeting". So, are these minutes of the
6 December 3rd, 2020 JOG meeting?

7 A. Yes.

8 193. Q. And who took these minutes?

9 A. I did.

10 194. Q. Okay. And if we go to page 117 for
11 a moment, you will see a list of attendees it looks
12 like attending Kirk, Jess, Mairead, Erika, Jim, John
13 Gagnon, Manny Giles. So, are those the people that
14 attended the meeting?

15 A. Yes.

16 195. Q. And where it says "Kirk", is that
17 you?

18 A. It is.

19 196. Q. Okay, and so there seem to be two
20 sets. So, this one has the date and it says "JOG
21 meeting minutes". This one has just December 3rd
22 and says "JOG meeting". Do you know why there is
23 two versions?

24 A. I don't recall. I think it is a
25 continuation.

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1 197. Q. A continuation? Okay. So, we will
2 get into that. So there is a line part way down on
3 page 115 that I am sharing here and I will show you
4 where it is. It says here...right here:

5 "...Action: Seek legal counsel pro bono
6 assistance municipal process environmental
7 land claims..."

8 Do you see that?

9 A. I do.

10 198. Q. Okay, and then if we go to...there
11 is a series of numbers; 1, 2, 3, 4, 5 and if we go
12 to number 5, it says:

13 "...Securing expertise within our group..."
14 And then it has a list, a bulleted list, and the
15 first item is "LEGAL" in capital letters. Do you
16 see that?

17 A. I do.

18 199. Q. So, at this point, JOG was looking
19 into potentially getting some legal help; right?

20 A. It was something that I had brought
21 up, actually, at the time as a consideration.

22 200. Q. Okay, and so you were aware...you
23 brought that up because you were aware there could
24 be legal issues. You might not know for sure but
25 that is what sort of made you think about it; right?

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1 A. We were in a position at that point
2 that, you know, a number of months had gone by and
3 we weren't receiving any information. So, yes, it
4 was put on the table because we really...you know,
5 we were trying to seek opportunities to see if we
6 could tease out additional information in some form
7 or fashion.

8 201. Q. Okay, and so if we go to page 116,
9 which is the next page, we have in 8a there is
10 continuation of the numbers and in 8a it says about
11 half way down the page:

12 "...Law school access exists through
13 Justin. Law students to volunteer and
14 explore viability and other aspects of the
15 proposed correctional facility, due
16 diligence, permits, zoning, et cetera. We
17 also need to seek local legal support and
18 attempt to get some pro bono help..."

19 Do you see that?

20 A. I do.

21 202. Q. And did you write that down?

22 A. Yes.

23 203. Q. And so the reference to Justin, is
24 that Justin Piche?

25 A. It is.

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1 independent research..."

2 So, suggesting that you may require legal
3 consultation; right?

4 A. Correct.

5 207. Q. Okay, and then if we go to the next
6 set of minutes here that is on page 117, now, again,
7 we see the reference part way down...it starts on
8 page 117 but we will go to page 118, which appears
9 to continue. And we see again this reference
10 "ACTION" in capital letters:

11 "...Seek local legal counsel, pro bono
12 assistance, municipal process,
13 environmental, land claims..."

14 And it has a series of names here: Connie Lamble,
15 Tom Byrne, Jansen, Ottawa courthouse, free legal
16 clinics. So, Connie Lamble is a local lawyer in
17 Kemptville; right?

18 A. Correct.

19 208. Q. And Tom Byrne is also a local lawyer
20 in Kemptville; right?

21 A. Correct.

22 209. Q. And Jansen, there is a law firm
23 called Jansen Law in Kemptville; right?

24 A. Correct.

25 210. Q. So, this is basically a list of some

1 local lawyers in Kemptville?

2 A. Correct.

3 211. Q. And then there is a reference to the
4 courthouse and to free legal clinics; right?

5 A. Yes.

6 212. Q. And then there is a slightly
7 different note. It says...this is a little further
8 down:

9 "...Justin Piche has access to law grad
10 students who need volunteer hours, pro
11 bono. Jess says students are the best
12 route. Kirk asks Jim to find local
13 help..."

14 So, this is a little bit different than the last
15 reference we saw to Justin and the law students
16 because this one says...it refers to law grad
17 students. So, were they law grad students?

18 A. Yes, I am not sure if...it is...they
19 are meant to be the same thing. Whether they
20 are...one says one, one says the other, the intent
21 was the same.

22 213. Q. Okay. And so when it references
23 Justin Piche, now, he is a member of CAPP; right?

24 A. Correct.

25 214. Q. And Kirk is you; right?

1 A. Yes.

2 215. Q. And Jim, who is referenced where it
3 says "Kirk asked Jim to find local help", Jim is Jim
4 Bertram, the person who wrote the article at Exhibit
5 A?

6 A. Yes.

7 216. Q. And when it says "Kirk asked Jim to
8 find local help", that is you asking Jim to find a
9 local lawyer?

10 A. Yes, to reach out to see if there is
11 an opportunity there, yes.

12 217. Q. Okay. And then further down beside
13 the name "Erika"...who is Erika, if I can ask?

14 A. Erika is a member of the Jail
15 Opposition Group.

16 218. Q. Okay. And next to her name it says:
17 "...Students versus lawyers. Ask lawyers
18 first what we should get students to do..."
19 Do you see that?

20 A. I do.

21 219. Q. And so that is what she was
22 suggesting? That is the approach she was suggesting
23 at the meeting?

24 A. Correct.

25 220. Q. Okay, and so on page 118 in the last

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1 paragraph here, which is listed as number 5, it says
2 again...and we saw this on, I think, page 116:

3 "...Securing expertise within our group..."

4 And it goes on to say:

5 "...You have to be strategic and run a
6 parallel path..."

7 Do you see that?

8 A. Number 5?

9 221. Q. Yes, right here. So,

10 "...Securing expertise within our group..."

11 Next to 5, and then it goes on about leveraging that
12 and it says:

13 "...That absolutely is necessary but we
14 have to be strategic and run a parallel
15 path..."

16 Do you see that?

17 A. I do.

18 222. Q. And then right after that, there is
19 a list, a bulleted list. Kind of like the one we
20 saw on page 117, I think. And the top of the list
21 in block letters is the word "LEGAL"; right?

22 A. Yes.

23 223. Q. So, it looks like JOG was saying or
24 you were recording that there was...it was
25 absolutely necessary that you engage in these other

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1 activities but you have to be strategic and run a
2 parallel path and that includes seeking out legal
3 help; right?

4 MR. EMARD-CHABOT: Just the "absolutely
5 necessary", I am not sure...I think that is
6 your words, not his.

7 224. MS. KEENAN: Yes, that is referring to
8 something else. So,
9 "...We are doing our best but it can't just
10 be about local buzz and outcry. That
11 absolutely is necessary but we have to be
12 strategic and run a parallel path..."
13 So there was a need to run a parallel path
14 and that included getting legal help;
15 right?

16 THE DEPONENT: It was all under
17 consideration at that time. Jim Bertram
18 and I had very different opinions about
19 where we were to focus our efforts. He was
20 a former councillor in the Municipality of
21 North Grenville and he very much was
22 focused on the mayor and the current
23 council as to why they weren't, you know...

24

25 BY MS. KEENAN:

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1 225. Q. Objecting?

2 A. Yes, asking more questions, really.
3 Trying to substantiate some of the claims that had
4 been made about economic benefits, job creation;
5 things like that. He was very much focused on them
6 and I was trying to take a...I guess a broader swath
7 and consider other things of where this could go
8 once we received information. The reality was...

9 226. Q. So I just want to take you to page
10 120 of the record here because I have some more
11 questions here about a couple of references here.
12 Because, remember, we were looking at the previous
13 minutes and there was reference at 8a and here again
14 we see a reference at 8a, "Law school access exists
15 through Justin".

16 A. M'hmm.

17 227. Q. And then it says:
18 "...Law students to volunteer and explore
19 viability and other aspects of the proposed
20 correctional facility, due diligence,
21 permits and zoning, et cetera. We also
22 need to seek local legal support and
23 attempt to get some pro bono help..."

24 So...

25 A. You keep coming back to the same

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1 references in the same meeting. The reality was I
2 was trying to convince Jim Bertram that he needed to
3 think more broadly. So that is...in these minutes
4 and in our discussion, it was like...it was like
5 don't...don't focused directly on that because this
6 is a decision that may be outside of their purview
7 or outside of their authority to influence. So I
8 was...it was really trying to...it was almost
9 strategic on my part that in order to show him that
10 there was other options out there, the reality is,
11 Susan, that, you know, from so many different
12 perspectives, even between the announcement and this
13 December 3rd meeting, we simply didn't have any
14 information.

15 228. Q. Okay, so I don't think I have asked
16 a question so we are sort of off the rails here a
17 little bit because I haven't actually asked a
18 question so I am going to ask you to wait until I
19 ask a question. And so the next question I have for
20 you is about this case. So, this case was commenced
21 on August 16th, 2022; right?

22 A. This case was commenced?

23 229. Q. This case. This legal case that we
24 are here for today.

25 A. August 16th of 2022, yes.

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1 230. Q. Okay. And you indicate...and you
2 can refer, if you like, to paragraph 61 of your
3 affidavit. Your affidavit says in paragraph 61 that
4 you had no idea what you would be asking lawyers to
5 advise you on; right?

6 A. Yes.

7 231. Q. But in these notes, when we look at
8 page 118 here, there is a reference...just give me
9 one moment...where you are talking about legal.
10 Sorry, I have lost my reference here. Here we go.
11 Where it says "ACTION". The words "municipal
12 process", "environmental" and "land claims" all
13 appear; right? You see that there?

14 A. I do.

15 232. Q. Okay. And then if we go to page
16 120, we see the words in 8a "due diligence, permits
17 and zoning". Do you see those words?

18 A. I do.

19 233. Q. Okay. And we have already
20 established you had the information that is at
21 Exhibit C. We have talked about that, right?

22 A. What was Exhibit C again?

23 234. Q. That was the presentation from
24 October 30th.

25 A. Okay, yes.

K.S. Albert - 65

1 235. Q. Okay. Wouldn't it have been
2 reasonable to talk to a lawyer based on your own
3 notes to find out if there was a time limit to bring
4 this case?

5 A. Like, a time limit wasn't even on
6 our radar, to be quite honest, because from our
7 perspective in December...December 3rd of 2020, we
8 had already done all we could in order to elicit
9 more information. We had gone...

10 236. Q. I mean...

11 A. We had gone to the October 30
12 meeting. We had gone to the November 26th meeting.
13 We had submitted questions, as had many residents in
14 the community. The initial stakeholders that were
15 at that first engagement two months after the
16 announcement, they had also put forth a number of
17 questions that they put in a parking lot, quote-
18 unquote. So we were waiting for that information.
19 We had every reason to believe that they were going
20 to send us answers in order for us to determine, if
21 we are going to go seek legal counsel, this is where
22 we need to direct it. We had no idea...

23 237. Q. And if you go to paragraph 61 of
24 your affidavit, you say in the last line:

25 "...It seemed logical to wait. Receive the

K.S. Albert - 66

1 information promised to us by provincial
2 officials and then consider legal
3 options..."

4 Right? That is the approach you chose to take.

5 A. Yes, that is correct.

6 238. Q. Okay. So, I am going to take you to
7 paragraph 54 of your affidavit. And in this
8 paragraph, you describe how you enlisted the support
9 of other organizations to selectively put political
10 pressure on different individuals; right?

11 A. Susan, could you let me know which
12 paragraph that is?

13 239. Q. Sure, sorry, it is paragraph 54...

14 A. Fifty-four? Okay.

15 240. Q. And the first sentence says:
16 "...We enlisted the support of other
17 organizations to selectively put political
18 pressure on different individuals..."

19 Do you see that?

20 A. I do.

21 241. Q. Okay, and the individual...the next
22 individual you mention that the letters went to is
23 the Minister of Agriculture, Food and Rural Affairs,
24 Lisa Thompson; right?

25 A. Correct.

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1 242. Q. And you describe letters that went
2 to her on December 13th, 2021, January 24th,
3 2022...that was by the Farmer's Union...then
4 February 18th, 2022 and April 8th, 2022. Do you see
5 those references there in that paragraph?

6 A. I do.

7 243. Q. Okay, and this was to try and
8 stop...you say slow down or stop the transfer of the
9 land in question here from the Agricultural Research
10 Institute of Ontario to the Ministry of the
11 Solicitor General; right? That is in paragraph 54.

12 A. Yes.

13 244. Q. Okay, and you have attached some of
14 this material in Exhibit I. We can see that in
15 paragraph 55. You say:

16 "...See Exhibit I for copies of the
17 correspondence..."

18 Do you see that?

19 A. At 55?

20 245. Q. The end of 55. It is in bold.

21 A. Yes. Yes, I do see that.

22 246. Q. Okay, so I am going to take you to
23 that Exhibit I. It is at page 107 of the record.
24 This is the one I am going to ask you about. So, do
25 you have that or do you need me to share?

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1 A. Yes, if you could share it. If you
2 could share it, please.

3 247. Q. Sure. So, this...I am not sure if
4 it is a letter or an e-mail. It says an open letter
5 to The Honourable Lisa Thompson, Minister of
6 Agriculture, Food and Rural Affairs,
7 "...please stop the transfer and
8 destruction of landmark heritage farmland
9 to build a prison..."

10 And it is signed at the bottom, Marie-Therese
11 Voutsinos, and it says "on behalf of the Coalition
12 Against the Proposed Prison". So do you know who
13 Marie-Therese Voutsinos is?

14 A. I do.

15 248. Q. And is she a member of CAPP?

16 A. She is.

17 249. Q. Okay. And is she one of the people
18 that JOG was also working with in the partnership?

19 A. Yes.

20 250. Q. Okay. And this letter appears to be
21 dated December 31st, 2021. Do you see that?

22 A. Yes, December 13th, yes.

23 251. Q. Sorry, December 13th, 2021. So, Ms.
24 Voutsinos says in her...do you know if it was an e-
25 mail or a letter?

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1 A. I have referenced it as...

2 252. Q. It looks like an e-mail maybe
3 because I think it was a...she is saying it is an
4 open letter but it says underneath the date "via e-
5 mail" and then it has the Minister's e-mail, I
6 think. Is that...does that seem right to you?

7 A. It does, yes.

8 253. Q. Okay. So, in the first paragraph
9 she says:

10 "...I am writing on behalf of the
11 Kemptville Coalition Against the Proposed
12 Prison. It has come to our attention that
13 the Agricultural Research Institute of
14 Ontario (ARIO) is considering the transfer
15 of the former Kemptville College farm
16 property from the Ministry of Agriculture,
17 Food and Rural Affairs to the Ministry of
18 the Solicitor General (Sol Gen), a move
19 that will result in the destruction of
20 heritage farmland in order to build the
21 proposed 235-bed Eastern Ontario
22 Correctional Complex..."

23 Do you see that first sentence there?

24 A. I do.

25 254. Q. Okay, and then if we go to paragraph

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1 2 in the...she has kind of a history of this
2 property described in the first sentence. And then
3 she says in the second sentence:

4 "...The land still in ARIO's possession is
5 a stone's throw from the campus and
6 includes prime agricultural land comprising
7 mainly class 2 and 3 soils..."

8 Do you see that reference there?

9 A. I do.

10 255. Q. Okay. So, this is as of December
11 13th, 2021. So, as of that time period, CAPP and
12 presumably JOG were aware of their view that this
13 was prime agricultural land; right?

14 A. As I mentioned before and as you
15 read, we tried to make sure we brought expertise to
16 our two organizations. Marie-Therese is an
17 agrologist, so, you know, I trust what she has put
18 in there. She was able to find and can substantiate
19 that, yes.

20 256. Q. Right, and so as an agrologist and
21 her qualifications are mentioned in her signature,
22 she has BSc, so a Bachelor of Science. I don't know
23 what Biol is. We have (Agr.), which I assume is the
24 agriculture designation here. She has got a Masters
25 of Science, it looks like, in agriculture. And she,

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1 as a member of CAPP, which is partnered with JOG, is
2 saying this is prime agricultural land. She has
3 described this as prime agricultural land in this e-
4 mail; right?

5 A. Yes.

6 257. Q. Okay.

7 MR. EMARD-CHABOT: Susan, I just want to
8 be clear so there is no misunderstanding
9 that this is a year and some out; right?

10 This is not...

11 258. MS. KEENAN: Yes.

12 MR. EMARD-CHABOT: Okay.

13 259. MS. KEENAN: This is being written on
14 December 13th, 2021.

15 MR. EMARD-CHABOT: 2021. Yes, I just
16 wanted to make sure there was no confusion
17 that it might have been in that initial
18 December period.

19 260. MS. KEENAN: No.

20 MR. EMARD-CHABOT: Okay.

21

22 BY MS. KEENAN:

23 261. Q. And then we know the land was
24 transferred on March 15th, 2022; right?

25 A. That is my understanding, yes.

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1 262. Q. Okay. And then there is an election
2 held, a provincial election, and that election takes
3 place...well, actually, first you talk about in your
4 affidavit in paragraph...I will just stop sharing
5 this for a moment. So, in paragraph 56 of your
6 affidavit...I will just get you the page here.

7 A. The pages actually don't help me
8 much because...if you can refer to the paragraph
9 number, that's great. Just because I don't have the
10 same...

11 263. Q. I can do that. I can even share my
12 screen if that is...

13 A. A paragraph number is great.

14 264. Q. Okay, paragraph. So, paragraph 56.

15 A. Okay.

16 265. Q. Okay? And you refer to meetings and
17 phone calls and letters and e-mails that you have
18 with opposition parties, provincial opposition
19 parties at that point; right?

20 A. Yes.

21 266. Q. And that is...just to give you the
22 proper time period, that is leading up to the
23 provincial election so it is in 2022, right?

24 A. I believe so, yes.

25 267. Q. Okay. And then the election

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1 actually occurs and that occurs on June 2nd, 2022;
2 right?

3 A. Correct.

4 268. Q. And in the election, the result was
5 a re-election of the existing government, right?
6 Like, Premier Ford was re-elected.

7 A. Correct.

8 269. Q. So the opposition groups you mention
9 in 56, they were not...they didn't form a
10 government?

11 A. There is a number of different
12 political allegiances there, so I am not clear on
13 who did what.

14 270. Q. Okay, I can make that simpler.
15 Basically, the Conservative government was re-
16 elected; right?

17 A. Provincially, yes.

18 271. Q. Okay. And so that was June 2nd.
19 And then this legal case was started on August 16th,
20 2022; right?

21 A. Correct.

22 272. Q. So I just want to take you to
23 paragraph 35 of your affidavit.

24 A. Thirty-five?

25 273. Q. Yes.

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1 A. Yes.

2 274. Q. And you reference the land where
3 this project is proposed to occur. And you say:

4 "...All the while this project, in keeping
5 with the farmland's history and class 2
6 agricultural land designation, was being
7 explored. Our MPP and provincial cabinet
8 minister never disclosed that the province
9 had already earmarked the land, nor did he
10 explain why the municipality was not
11 permitted to purchase the land as it had
12 with the rest of the former Kemptville
13 Agricultural College in 2018..."

14 So, this land that we are talking about, it used to
15 be part of a campus; right?

16 A. Yes.

17 275. Q. And that campus, that was the campus
18 for the former Kemptville Agricultural College;
19 right?

20 A. Yes, it is difficult to describe
21 other than to say it is agricultural land adjacent
22 to the Kemptville Campus, the Kemptville College
23 Campus, that used to exist. It is where the
24 agricultural research buildings were and that sort
25 of activity took place.

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1 276. Q. Right, and the whole thing, though,
2 the part where the proposed prison...where the
3 prison is proposed to go and the part that was
4 purchased by the municipality, that used to be one
5 big campus, right, all together?

6 A. I am not clear on the history of it
7 all but I can say that the municipality did purchase
8 600 plus acres that was part of the Kemptville
9 campus and this additional area of about 187 acres
10 was being sought by the municipality but it was...it
11 was never disclosed by our MPP as to why they could
12 not purchase that portion of the land.

13 277. Q. Okay. And I don't know if you are
14 aware, are you aware that the provincial request to
15 hold this land, that request was made on October
16 23rd, 2019?

17 A. Yes, that was disclosed in the 10
18 pages of 145 that we received in the Freedom of
19 Information request.

20 278. Q. Okay, and so the municipality's
21 purchase of the rest of the campus, that was you say
22 in 2018; right? That is what you say in paragraph
23 35?

24 A. Yes.

25 279. Q. And so at that time in 2018, for

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1 Municipality has to create a community
2 based hub focused education and training,
3 health and wellness and economic
4 development will enrich Kemptville and the
5 entire municipality for generations to
6 come..."

7 Do you see that?

8 A. I do.

9 282. Q. So, I would suggest to you, then,
10 that the vast majority of the former Kemptville
11 campus was actually purchased by the municipality.
12 Isn't it? Wasn't it?

13 A. I guess, yes.

14 283. Q. And that has...it is either becoming
15 or it has actually become a community hub; right?

16 A. It is intended to be that with
17 the...the strategies that were put in place for the
18 Kemptville campus. It is intended to be the
19 community hub, yes.

20 284. Q. So, if we go to paragraph 35 of your
21 affidavit, there is a reference here in the last
22 line. It says:

23 "...The Kemptville campus owned by the
24 municipality now houses, schools, pre-
25 school programs, businesses and was

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1 selected in the recent tourism strategy for
2 the municipality to be the community
3 hub..."

4 Do you see that?

5 A. I do.

6 285. Q. Okay, so, I...I just wanted to
7 confirm some details about that. So if we go to
8 that...I am just going to actually...I did a bit of
9 research, I guess, and I just looked up the
10 Kemptville campus online and I just want to show you
11 this and maybe you can't identify it, I don't know,
12 maybe you can. But this is what came up. It says
13 "Kemptville Campus" and this website is
14 www.kemptvillecampus.ca and it has forward slash
15 /on-campus. So, I don't know if you have ever seen
16 this website before or not.

17 A. Could you share your screen?

18 286. Q. I'm sorry.

19 A. It's okay.

20 287. Q. It's my mistake. So, yes, I don't
21 know if you can see that here. It says
22 kemptvillecampus.ca/on-campus up here. It has got a
23 picture of, sort of, a historic building and then it
24 has tenants and a directory map. Have you ever been
25 to this website before?

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1 A. Yes, I have.

2 288. Q. Have you ever seen the directory map
3 here? It has got a list of tenants.

4 A. Yes, I believe I have seen it.

5 289. Q. Okay. And I think I will just...we
6 talked about marketing websites before. I can
7 capture this as a PDF and, you know...I mean, maybe
8 I will just mark it for identification.

9

10 --- EXHIBIT NO. A: Website [www.kemptvillecampus.ca/on-](http://www.kemptvillecampus.ca/on-campus)
11 campus (for identification)

12

13 MR. EMARD-CHABOT: What is the relevance
14 for the argument about the motion to
15 dismiss? I am just not clear, Susan.

16 290. MS. KEENAN: So, you know, it is
17 relevant in terms of the status of the land
18 that we are talking about and what is
19 surrounding it and adjacent to it. So,
20 that is sort of a larger context that I
21 think is important for the court to know in
22 understanding the nature of the case.

23 MR. EMARD-CHABOT: Okay.

24 291. MS. KEENAN: And it is not really
25 controversial. I just have some general

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1 questions about this, so we already talked
2 about that the Minister said in that letter
3 that there were 36 buildings and 600 acres.
4 I don't think that is in dispute. That is
5 the adjacent campus. It is not the land
6 where the proposed prison is going. I am
7 not suggesting that. It is the adjacent
8 campus that is becoming the community hub.
9 So, what I am asking you about is you have
10 indicated you have recognized this website.
11 It refers to the Kemptville campus. And
12 here it has a list of tenants for that
13 campus. So I don't think this is really
14 controversial. The Minister referenced it
15 in the letter. But the series of tenants
16 here includes things like...the first one
17 is l'Academie catholique Notre-Dame a
18 Kemptville, and when I click on that I see
19 that it is a school. It says kindergarten
20 to grade 9. You don't have anything to
21 dispute that there is a school on that
22 campus; right?

23 THE DEPONENT: No. Just to be clear,
24 though, Susan, the shot that you are
25 showing, that schematic, that is intended

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1 to be the hub; okay? Not an adjacent
2 property. Just so you are clear. Like,
3 you were saying there is an adjacent piece
4 that is the 600 acres and it is going to be
5 the community hub? No, it is what you are
6 seeing there is intended to be the hub.

7

8 BY MS. KEENAN:

9 292. Q. Right, this whole piece of land is
10 the hub; right?

11 A. That I don't know how far it
12 extends.

13 293. Q. Okay, fair enough. Well, they have
14 a white square here or a white rectangle here and it
15 has an arrow to this map, so it looks like they are
16 saying this part is where all of these items are
17 located or these businesses and so on.

18 A. For the businesses, yes, but if you
19 follow that orange perimeter line in that small
20 schematic, it includes, if I am seeing this
21 appropriately...

22 294. Q. Yes, I think you are. It includes
23 other lands; right? Like, there is a part that is
24 these businesses...

25 A. Yes.

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1 295. Q. ...and then there is the part that
2 is other lands.

3 A. Yes.

4 296. Q. Okay. And so some of the businesses
5 here, we have a school and then we have...there is
6 also it looks like a catering business here, Catered
7 Affairs. It is a banquet hall and it talks about
8 small and large groups. Do you have anything to
9 suggest...to dispute that there is a banquet hall
10 there?

11 A. I am not familiar with the
12 businesses that are there currently.

13 297. Q. Okay, that's fair. That's fair.
14 So, there is also a...

15 MR. EMARD-CHABOT: Susan, just one small
16 point and I think it is...if we are going
17 to provide context, if it is going to be
18 accurate, I can do this in redirect but I
19 think it would be fair if it were coming in
20 the questions but the proportion of the 600
21 acres that are highlighted as the
22 Kemptville campus, if we could at least get
23 an estimate of how much that small white
24 rectangle represents of the larger property
25 because without that full context, it gives

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1 the impression that the 600 acres are all
2 used for businesses. I am looking at the
3 image and, in fact, it is probably about an
4 eighth. So, I could address that in
5 redirect or if we can clarify that now I
6 think it would be fair to indicate that all
7 these businesses you are referring to are,
8 in fact, on a relatively small portion that
9 is well below a quarter of the site.

10 298. MS. KEENAN: Yes, I think that there is
11 no dispute that the white rectangle which
12 has the arrow pointing out of it to this
13 map, that is where these listed businesses
14 and centres are located. And there is a
15 reference here, which may be too small for
16 people to see, and it says "Campus lands
17 633 acres". So there is no question that,
18 you know, this is a portion and definitely
19 it even looks like less than a quarter of a
20 portion of the full 633 acres. There is no
21 dispute...

22 MR. EMARD-CHABOT: As long as we are
23 clear on that. And as long as at this
24 point in time, and I don't know where your
25 questions are going to go, but at this

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1 point in time we do not know from this
2 website what the rest of that land is used
3 for; correct?

4 299. MS. KEENAN: No, we do not. And I am
5 not suggesting that that is in evidence
6 anywhere.

7 MR. EMARD-CHABOT: Okay.

8 300. MS. KEENAN: In fact, what I wanted to
9 just do is give a general sense of where
10 this is located, where it is located and
11 its context. So, I mean, I think it might
12 actually be easier, rather than looking at
13 this...I mean, I would like to mark this
14 for identification but I think we can also
15 go...it sounds silly, but right to Google
16 Maps. I actually did a capture from Google
17 Maps that you can look at and it may be
18 that you say, "I can't confirm that" or
19 whatever but I would like to show it to you
20 just to see if you can. So, this is...

21 MR. EMARD-CHABOT: I want to be clear,
22 on the website I have no issues.

23 301. MS. KEENAN: Okay.

24 MR. EMARD-CHABOT: And then we will talk
25 about Google.

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1 302. MS. KEENAN: Sure. Thank you. So, for
2 the Google thing, so first I will show you
3 the Google website that comes up when I
4 search for Kemptville Campus. So, this is
5 what comes up and I want to ask you
6 questions about it but in order to make it
7 an exhibit, that is why I wanted to...to
8 have it in PDF form so I have PDF here and
9 I basically just captured what I saw. So
10 from what I can see, and you can tell me if
11 I am wrong, it looks like the land that is
12 the subject of this case is over here on
13 the right-hand side. If I am not mistaken.

14

15 --- EXHIBIT NO. 2: PDF created from Google Maps showing
16 Kemptville Campus

17 BY MS. KEENAN:

18 303. Q. Is that correct, Mr. Albert?

19 A. It is.

20 304. Q. And this long line that kind of
21 comes down from the top of the map through this
22 photograph, that is...is it Highway 44 or what...do
23 you know what that is? Or is that a trail?

24 A. It is a trail.

25 305. Q. It is a trail?

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1 A. Yes.

2 306. Q. Okay. And then we have...is this
3 Highway 44 coming up here diagonally across that?

4 A. Yes. It is a county road.

5 307. Q. Okay. County Road 44. And then if
6 I am not mistaken, what we were just talking about,
7 that campus is in this top corner here between
8 Concession Road and County Road 44 in the bottom
9 left-hand corner or I guess it is really in the
10 centre of the map but I see, for example, Ecole
11 elementaire publique Riviere-Rideau and Kemptville
12 Campus, there is a little red mark here to signal
13 Kemptville Campus. Is that the area where those
14 businesses are that we were just talking about?

15 A. Yes, it is the general area, yes.

16 308. Q. And then up here, further towards
17 the top of the map, is that Kemptville right there?
18 Like, the Town of Kemptville?

19 A. I'm sorry, where are you indicating?

20 309. Q. Right here where I see Mary Street,
21 Joseph Street, Victoria Avenue, Ferguson Street,
22 Joseph Street; would that be...

23 A. Yes. Yes.

24 310. Q. Okay. And then I see over here
25 Kemptville District Hospital. Is that where the

1 hospital is?

2 A. Yes.

3 311. Q. Okay, and then so I guess what I am
4 just trying to understand is that this on the right-
5 hand side here, on the right side of the trail, that
6 is the land we are talking about. And I see at the
7 bottom here it says University of Guelph Research
8 Station, so those would be some of the buildings on
9 that land; right?

10 A. Yes.

11 312. Q. Okay.

12 MR. EMARD-CHABOT: Susan? Again, I am
13 not objecting to the context notion that
14 you are putting forward. But, again, I
15 think it is important that the context be
16 perhaps a bit more complete in that two
17 things; one, the Google Maps shot that you
18 have right now selectively...and I am not
19 saying you did this on purpose, but does
20 not show, in fact, that we are after that
21 property entirely in rural area. And I
22 don't know that it shows the full size of
23 what the Solicitor General has earmarked as
24 the site. So, if you want to enter
25 something like this, I am not going to

K.S. Albert - 88

1 object as long as we can have, perhaps, a
2 slightly wider view that would be able to
3 allow both sides to point to what is, in
4 fact, the 600 acres and what is, in fact,
5 the 100-some acres on the other side that
6 the Ministry wants to...or plans to use as
7 the prison.

8 313. MS. KEENAN: That's fair. That's fair,
9 and what I can do is I can...if we take a
10 break in a little bit, I can get a larger
11 capture because this is just simply me
12 saving what I saw in Google so I can get a
13 larger capture that...and I can show it to
14 you and you can then let me know if that is
15 acceptable.

16 MR. EMARD-CHABOT: Sure. So if we are
17 going to do that, my suggestion is perhaps
18 we have two. I am fine with this closer up
19 which reflects, I think, better the
20 granular aspect of the site. If we could
21 have a broader one and, again, go through
22 very quickly what it reveals, I think that
23 would be fine.

24 314. MS. KEENAN: Okay. Definitely we can do
25 that...I can do that at the break and

1 provide that to you. Thank you.

2

3 BY MS. KEENAN:

4 315. Q. So, at this point I actually would
5 like to go back to Exhibit A to your affidavit. And
6 that is the article that we talked about at the
7 beginning by Mr. Bertram. And do you have that in
8 front of you?

9 A. I do not, no.

10 316. Q. I can share my screen. I have it
11 up. Now, as we discussed, this was the article that
12 first sparked your concern and you joined JOG after
13 you saw it; right?

14 A. Correct.

15 317. Q. And it was in the North Grenville
16 Times and published on September 2nd, 2020.

17 A. Correct.

18 318. Q. So, he says in the second paragraph:
19 "...The recent announcement that a jail is
20 to be located in the south end of town
21 within easy reach of four schools was made
22 two days ago..."

23 Do you see that line right here?

24 A. I do.

25 319. Q. Okay. And he then says...he also

K.S. Albert - 90

1 says that, in the paragraph just above:

2 "...Now under Conservative auspices the
3 town is to become a jail town..."

4 Do you see that?

5 A. I do.

6 320. Q. Okay. And in the third paragraph,
7 he says:

8 "...I wonder if this project was floated
9 elsewhere closer to the large centres that
10 produce the potential inmates of this
11 jail..."

12 So there he is saying that Kemptville is getting
13 inmates that are being produced in large centres;
14 right?

15 A. I can't comment on what his intent
16 was when he wrote this.

17 321. Q. Okay. And then in the fifth
18 paragraph of this article, five...he talks about
19 jobs. So he says:

20 "...The jail will be said to be a rich
21 provider of jobs..."

22 And he asks:

23 "...To whom? To local people or to
24 specialized people from other areas?..."

25 So he is citing a concern that jobs created by this

1 project will not go to local people; right?

2 A. Seems to be. He seems to be, yes.

3 322. Q. And then he also says:

4 "...Even as it drives economic development
5 away from Kemptville and causes..."

6 MR. EMARD-CHABOT: I'm sorry to
7 interrupt, I have a bit of a concern. You
8 are asking the witness to comment on what
9 might have been meant by someone else on a
10 text that he had nothing to do with. So,
11 again, I am just not sure, (a), that is
12 appropriate, but (b), the value of Mr.
13 Albert's understanding of what Mr. Bertram
14 wrote.

15 323. MS. KEENAN: Well, I think a big part
16 of...

17 MR. EMARD-CHABOT: The article is there
18 and the words can speak for themselves.
19 Having somebody else try to interpret
20 those, I am not sure is appropriate.

21 324. MS. KEENAN: Well, I take your point
22 certainly about Mr. Bertram. But with
23 respect to this witness, I think knowledge
24 at particular points in time is very
25 relevant. And so this article we have

K.S. Albert - 92

1 confirmed is the information he had when he
2 first learned about the facility, so I am
3 just exploring what that knowledge was at
4 that time.

5 MR. EMARD-CHABOT: Okay.

6 325. MS. KEENAN: And I don't have a lot more
7 on this, I will tell you...

8 MR. EMARD-CHABOT: And the point is
9 taken. It is more the formulation of the
10 question which seems to ask for an opinion
11 on what was meant.

12 326. MS. KEENAN: Okay, and I can rephrase my
13 question so they are more aimed at the
14 witness and not Mr. Bertram.

15 MR. EMARD-CHABOT: And aimed at...the
16 objective being set out I think is
17 legitimate. I can't argue with that. So
18 if we could focus on that, that would be
19 great.

20 327. MS. KEENAN: Okay.

21

22 BY MS. KEENAN:

23 328. Q. And so if we look back at that same
24 paragraph, there is a reference here to:

25 "...Even as it drives economic development

K.S. Albert - 93

1 away from Kemptville and causes home values
2 to rise more slowly than in surrounding
3 areas not saddled with a nice shiny new
4 prison..."

5 So this is one of the things that you read before
6 you joined JOG; right?

7 A. The thing, Susan, I don't know if
8 you are trying to elicit that I had...I agree with
9 his opinion. That is certainly not the case. Me
10 reading this article and submitting it was more or
11 less to put a stake in the ground of at what point
12 was I notified that an announcement had been made in
13 the midst of a pandemic. This was not on the radar
14 whatsoever. His content has little or no relevance
15 to how I responded. We joined at that time. Once I
16 met with him after reading this, it became clear to
17 me that he and I did not have similar opinions on
18 certain things. Which was fine. We had...our goal
19 was to identify information from the province in
20 order to share that with the community.

21 329. Q. Okay, and so I just want to...

22 A. We were of like mind on that point.
23 His content here is his content.

24 330. Q. And I just want to pick up on that.
25 And maybe we have already talked about it, but at

K.S. Albert - 95

1 through that and I confirm I have no
2 further questions for you today. Subject
3 to your counsel's redirect, that is the
4 end. Thank you.

5

6 RE-EXAMINATION BY MR. EMARD-CHABOT:

7 333. Q. Thank you, I do have just a few
8 questions on a couple of topics I want to go back
9 to. You were asked, Mr. Albert, a number of
10 questions regarding the list of 28 questions you had
11 submitted for the November, 2020 information
12 session. Is that correct?

13 A. That is correct.

14 334. Q. So, going back to those questions,
15 what was your understanding of when the answers to
16 those questions might be provided to you?

17 A. Well, I don't recall specifics but
18 it was my understanding that both from the October
19 30th meeting and November 20th...pardon me, November
20 26th meeting with the Ministry of the Solicitor
21 General, that they were actively receiving and
22 working on responses to the questions that they
23 requested. With respect to a timeline, I don't
24 believe I had a timeline but when they had their
25 follow-up engagement session a year-and-a-half

K.S. Albert - 96

1 later, November 17th of 2021, we still had not
2 received any responses from the Ministry.

3 335. Q. So, to this day have you received
4 any formal responses to the 28 questions you
5 submitted?

6 A. I have not.

7 336. Q. Okay. One of the things that was
8 brought up was in the deck...the presentation deck
9 for the Ministry in the November, 2020 session. The
10 Ministry indicated they had looked at or considered
11 100 sites or so; is that correct?

12 A. Yes, that is correct.

13 337. Q. And how does that figure match the
14 information that residents were able to obtain
15 through Freedom of Information requests?

16 A. Both Ali Veshkini, the Associate
17 Deputy Minister, and Mr. Gismondi, who was a senior
18 vice-president of Infrastructure Ontario, both
19 indicated that there was 100 to 130 properties that
20 had been assessed prior to selecting the Kemptville
21 location. When we received...Ms. Gallant...Ms. Lisa
22 Gallant as a resident of Kemptville, she put forward
23 a Freedom of Information request, the first of
24 several that were put forward. She received 10
25 pages of 145 from her request. And in those 10

K.S. Albert - 97

1 pages, it indicated that only 38 properties had been
2 assessed. We are still...

3 338. Q. That's fine.

4 A. Okay, thank you.

5 339. Q. That's fine. And in the information
6 provided in the two information sessions, so
7 October, 2020, November, 2020 or even November,
8 2021, was any information provided to you with
9 respect to how the Kemptville site scored or ranked
10 compared to the 38 or 100-and-some other sites that
11 apparently been considered?

12 A. Not to my recollection, no.

13 340. Q. Okay. It was clear from your
14 answers, and correct me if I am wrong, but I believe
15 it is clear from your answers that you had some idea
16 at least as of December 3rd, 2020 that exploring
17 legal avenues might be an option. Would that be
18 fair?

19 A. At some point in time, yes, it was
20 on our radar. My radar.

21 341. Q. And can you tell me why you didn't
22 begin a formal process at that time or in the months
23 following?

24 A. It was...it was...it was a sequence
25 whereby we never felt we had enough information in

K.S. Albert - 98

1 order to seek legal counsel with any sort of a
2 definitive ask. Right since the October 30th
3 session, there was, you know, questions posed. We
4 awaited answers. The November 26th session,
5 questions were solicited in advance and asked during
6 the session. We awaited answers. We had reached
7 out to local government, to our MPP, provided them
8 with our questions. We were seeking answers. We
9 had academics involved that were part of some of our
10 discussions. We had senior executives from
11 establishments like the Elizabeth Fry Society. None
12 of them were indicating that there was sufficient
13 information to move forward with legal action at
14 that time. We just didn't have enough questions
15 answered.

16 342. Q. That's fine.

17 A. It flowed onward from there. Every
18 time we felt there was information that was coming
19 back to us, we felt it was reasonable to wait to
20 receive that information in order to determine was
21 there a process in place that was followed for the
22 site selection and was the due diligence completed
23 such that it met all the requirements.

24 343. Q. Okay. Thank you. In your
25 affidavit, you were...well, in your questioning you

K.S. Albert - 99

1 were asked about a passage in your affidavit where
2 you describe at least at the outset the initial
3 position or the initial attitude of municipal
4 officials as taking on a wait-and-see attitude. Is
5 that correct?

6 A. That is correct.

7 344. Q. And Ms. Keenan took you through a
8 series of meetings that you participated in or CAPP
9 and JOG in the months following the announcement.
10 Is that correct as well?

11 A. That is correct.

12 345. Q. To the best of your knowledge, what
13 advice had Mayor Peckford received with respect to
14 the prison project?

15 A. She...

16 MS. KEENAN: Sorry, this is...this is
17 hearsay. I think the witness actually said
18 he couldn't attribute...like, I think at
19 one point...

20 346. MR. EMARD-CHABOT: I will rephrase.
21 What I am getting at is the wait-and-see
22 attitude and if there was a...a clear
23 factor that Mr. Albert knew of, not
24 hearsay. That might explain it. So let me
25 rephrase that.

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1 BY MR. EMARD-CHABOT:

2 347. Q. In any of those meetings where you
3 were present, was advice given or did any of the
4 municipal officials indicate they had received
5 advice regarding their ability to contest the jail
6 proposal?

7 A. Yes.

8 348. Q. And what was...what did you hear,
9 what were you told personally during those meetings
10 with respect to the advice municipal officials were
11 working with?

12 A. It was no secret and it was said to
13 me face to face a number of times from council
14 members and the mayor that they sought their advice
15 from the chief administrative officer of North
16 Grenville and...

17 349. Q. Is that Gary Dyke who is referred to
18 in your affidavit?

19 A. Yes, it is.

20 350. Q. Okay, thank you. Sorry, I
21 interrupted you. You were saying?

22 A. I was saying that he...

23 351. Q. Officials told you that they were
24 receiving advice from Gary Dyke?

25 A. That they respected his advice

K.S. Albert - 102

1 bringing one.

2 355. MR. EMARD-CHABOT: It is not a
3 prerequisite, but it would certainly
4 indicate if you do this, as some litigators
5 do, on a regular basis you would be
6 expected to know more than somebody who has
7 never done this.

8 MS. KEENAN: Okay.

9

10 BY MR. EMARD-CHABOT:

11 356. Q. So, the follow-up question to that
12 is have you ever been a named defendant in any
13 proceedings?

14 A. No, never.

15 357. Q. Okay. My very last question relates
16 to the formal...sorry, former Kemptville Campus.
17 So, originally when this was a University of Guelph
18 facility, my understanding is that the facility
19 encompassed the entire site, the current campus, the
20 600-and-some acres and the subject lands for the
21 jail project. Is that correct?

22 A. That is my understanding as well,
23 yes.

24 358. Q. And we have established through your
25 questions that at some point the municipality

K.S. Albert - 103

1 acquired, let's say, the western piece of that land.

2 Is that correct?

3 A. Yes.

4 359. Q. Do you have direct knowledge of
5 whether or not the municipality expressed an
6 interest in acquiring the other piece, the subject
7 lands?

8 A. Yes, I do.

9 360. Q. Okay, and how do you know that?

10 A. It was...it is listed in my
11 affidavit but I also have had direct contact with a
12 gentleman named Paul Cormier who was part of a group
13 that had approached our mayor and council with
14 partners to attempt to put in a private-public
15 partnership on that piece of land. The MPP was
16 present in those meetings. And they had put a
17 proposal on the table on how they could put an eco-
18 agricultural operation, for lack of another word to
19 describe it, on those lands using those...the
20 existing buildings.

21 361. Q. And do you know generally the
22 timeline for when those discussions would have taken
23 place?

24 A. I don't. I would be guessing.

25 362. Q. Okay, that's fine. And as a long-

K.S. Albert - 104

1 term resident, when the campus was operating as part
2 of Guelph University, is it fair to say that the
3 subject site that has been retained for the jail
4 proposal was used exclusively for agricultural
5 research or were there other uses that you knew of
6 as a long-term resident for that piece of land?

7 A. My recollection of it is that it was
8 specifically for agricultural research and education
9 as part of the...you know, the students that
10 attended the Kemptville College.

11 363. Q. And from what we have seen of the
12 map and so on, the campus administration, the
13 student facilities, that infrastructure would have
14 been located on the piece that is now owned by the
15 municipality; correct?

16 A. Correct.

17 364. MR. EMARD-CHABOT: Those are all my
18 questions. Thank you.

19 MS. KEENAN: I think we can go off the
20 record.

21

22 --- upon adjourning at 12:40 p.m.

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objections, under
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Reporter
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REPORTER'S NOTE:

Please be advised that any undertakings, advisements and refusals are provided as a service to their guidance only, and do not purport to be necessarily accurate and are not binding upon Reporting Services Inc.

I hereby certify the foregoing to be a true transcription of the above-noted proceedings held 31ST DAY OF JANUARY, 2023, and taken to the best of ability and understanding.

}
} Certified

}
}
}
}
}
}
}

} Greg Vaughan
} Verbatim

TAB 6(A)

This is
Exhibit No. 1
on the examination of:
Kirk Stewart Albert in
Lachance v Solicitor General
held on January 31, 2023

VICTORY VERBATIM
Reporting Services
Toronto, Ont.

Cancel the Proposed Construction of the Kemptville Prison



1,835 have signed. Let's get to 2,500!



At 2,500 signatures, this petition is more likely to get picked up by local news!

- Natasha Niznik signed this petition
- Carmel Collins signed this petition

Sign this petition

First name

Last name

Sarah Ciliberto started this petition to Doug Ford and 2 others



Sarah Ciliberto started this petition to Doug Ford and [2 others](#)

In August 2020, the Ford Government and MPP Steve Clark suddenly announced plans to build a 235-bed prison in Kemptville. There was no consultation with local residents or North Grenville council.

The location of the jail would be close to our Old Downtown Kemptville which we have worked so hard at building up and getting as much traffic in as possible to help our small businesses. This is also close to residential and school areas which is very concerning for much of our community.

Kemptville is a town that we are proud to live in, it's a place where we feel safe and a great place to invest and grow our families... or so we thought. By allowing this construction to begin, the investment in our town will very likely decrease. People may decide to leave this town and move somewhere else where they don't have to worry about living in a town with this kind of facility. Businesses may suffer due to a reduction in people wanting to visit the area and most importantly, the parents of our up-and-coming youth may live with an increase in anxiety at the thought of a prison being so close to home. Our mayor wants to increase tourism in Kemptville but this new image will definitely affect that plan.


We're asking Doug Ford's government to find a real solution to our deeply troubled incarceration system and recognize that tearing down an old jail and

Last name

Email

Toronto, M4M
Canada 

Display my name and comment on this petition

 **Sign this petition**

By signing, you accept Change.org's [Terms of Service](#) and [Privacy Policy](#), and agree to receive occasional emails about campaigns on Change.org. You can unsubscribe at any time.

Petition · Cancel the Proposed Co x

https://www.change.org/p/doug-ford-cancel-the-proposed-construction-of-the-kemptville-prison

ProView Westlaw Canada EWRS Elite Webview CanLii IFIS login OPS SCJ filing Rules of Civil Proce... Caselines

We're asking Doug Ford's government to find a real solution to our deeply troubled incarceration system and recognize that tearing down an old jail and building a new one is simply a façade that will negatively affect the businesses and people of Kemptville, Ontario.

Two grassroots organizations, the Coalition Against the Proposed Prison (CAPP) and the Jail Opposition Group (JOG), formed shortly after the announcement. Visit the CAPP website to learn more about this issue: <https://www.coalitionagainstproposedprison.ca/>

The Ontario government plans to pave over farmland, part of the former Kemptville Agricultural College, to build the prison. On August 15, 2022, two Kemptville residents (members of CAPP and JOG) filed a Notice of Application with the Divisional Court of Ontario for a Judicial Review of the Ontario government's proposed prison plan. The primary ground for this Judicial Review is that the provincial government broke the law by not abiding by its own Provincial Policy Statement and the local Official Plan, as it is obliged to do under the Planning Act. The applicants are challenging the legality of the decision to build a prison in Kemptville and seeking a Prohibition Order which will save the farmland and stop the build. Like any legal proceeding, the Judicial Review will cost money. A GoFundMe has been established by CAPP to raise money toward the legal costs of this important initiative. Please help achieve this goal by clicking the link below to donate: gofund.me/13601323

Please add your name to [CAPP's NEW email zap](#) to stop the transfer of this business farmland to the Ministry of the Solicitor General. The legal costs...

1:10 PM
02/01/2023

Petition · Cancel the Proposed Co x +


https://www.change.org/p/doug-ford-cancel-the-proposed-construction-of-the-kemptville-prison

ProView Westlaw Canada EWRS Elite Webview CanLii IFIS login OPS SCJ filing Rules of Civil Proce... Caselines

Please add your name to [CAPP's NEW email zap](#) to stop the transfer of this heritage farmland to the Ministry of the Solicitor General. The land was transferred earlier this year to the government's Real Estate Portfolio under the Ministry of Public and Business Service Delivery, despite repeated requests to the Minister of Agriculture, Food and Rural Affairs to meet her obligation to protect farmland and stop the transfer from her own ministry.

The fight to stop the destruction of this land is far from over. Please click the link below to complete the email zap:
coalitionagainstoproposedprison.ca/email-your-mpp

[Report a policy violation](#)



Start a petition of your own
This petition starter stood up and took action. Will you do the same?

[Start a petition](#)

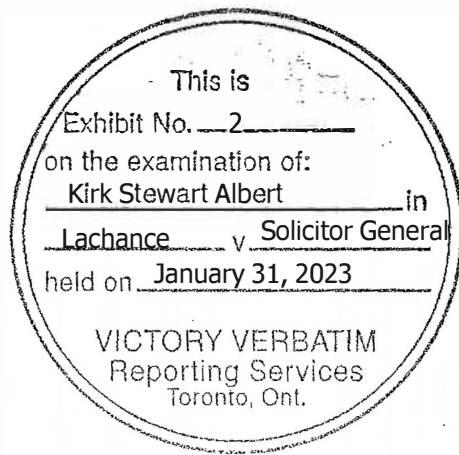
Updates

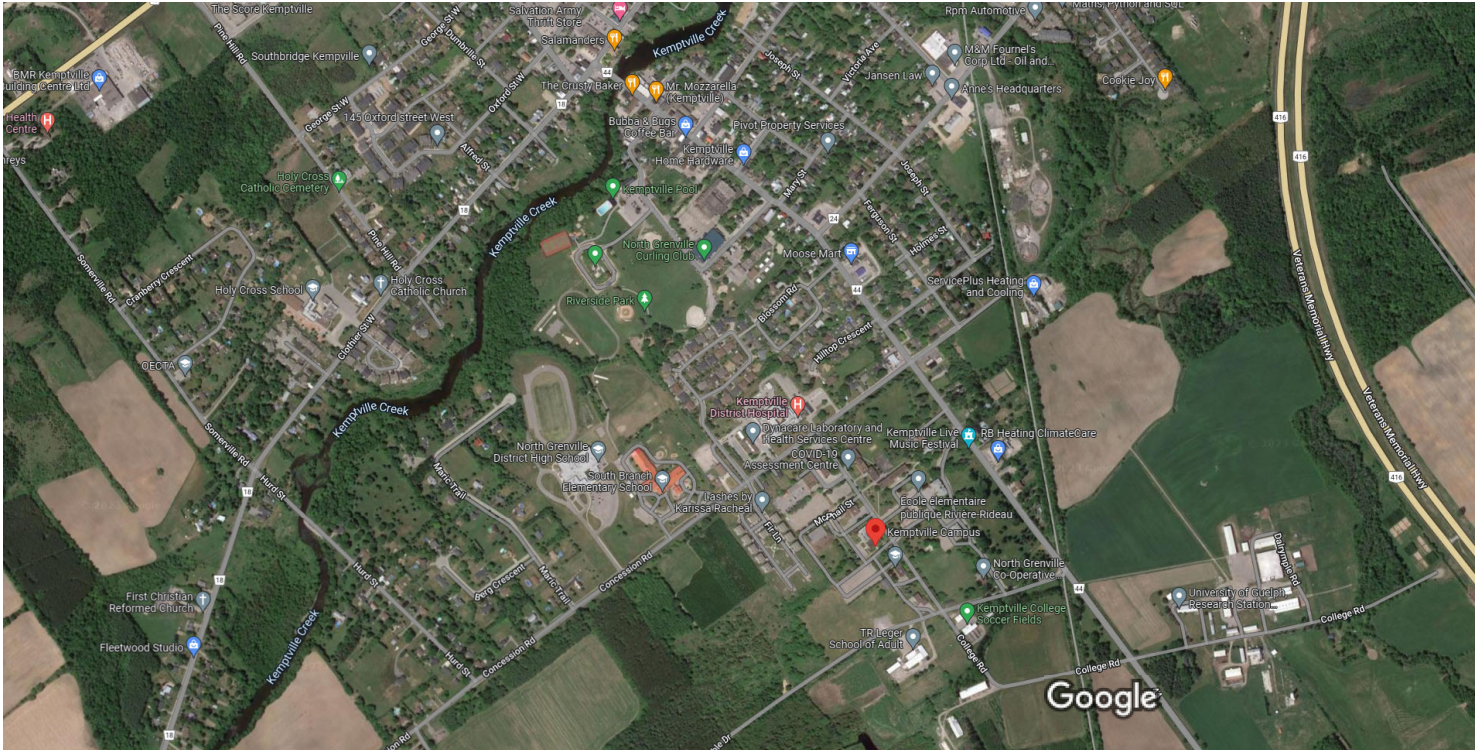
Thank you and Update!

On behalf of the CAPP team and myself, we wanted to share a big THANK YOU for all of your support so far in the fight to stop the construction of

1:11 PM
02/01/2023

TAB 6(B)





Imagery ©2023 CNES / Airbus, Maxar Technologies, USDA/FPAC/GEO, Map data ©2023 100 m



Kemptville Campus

5.0 ★★★★★ 1 review

School



Directions



Save



Nearby



Send to phone

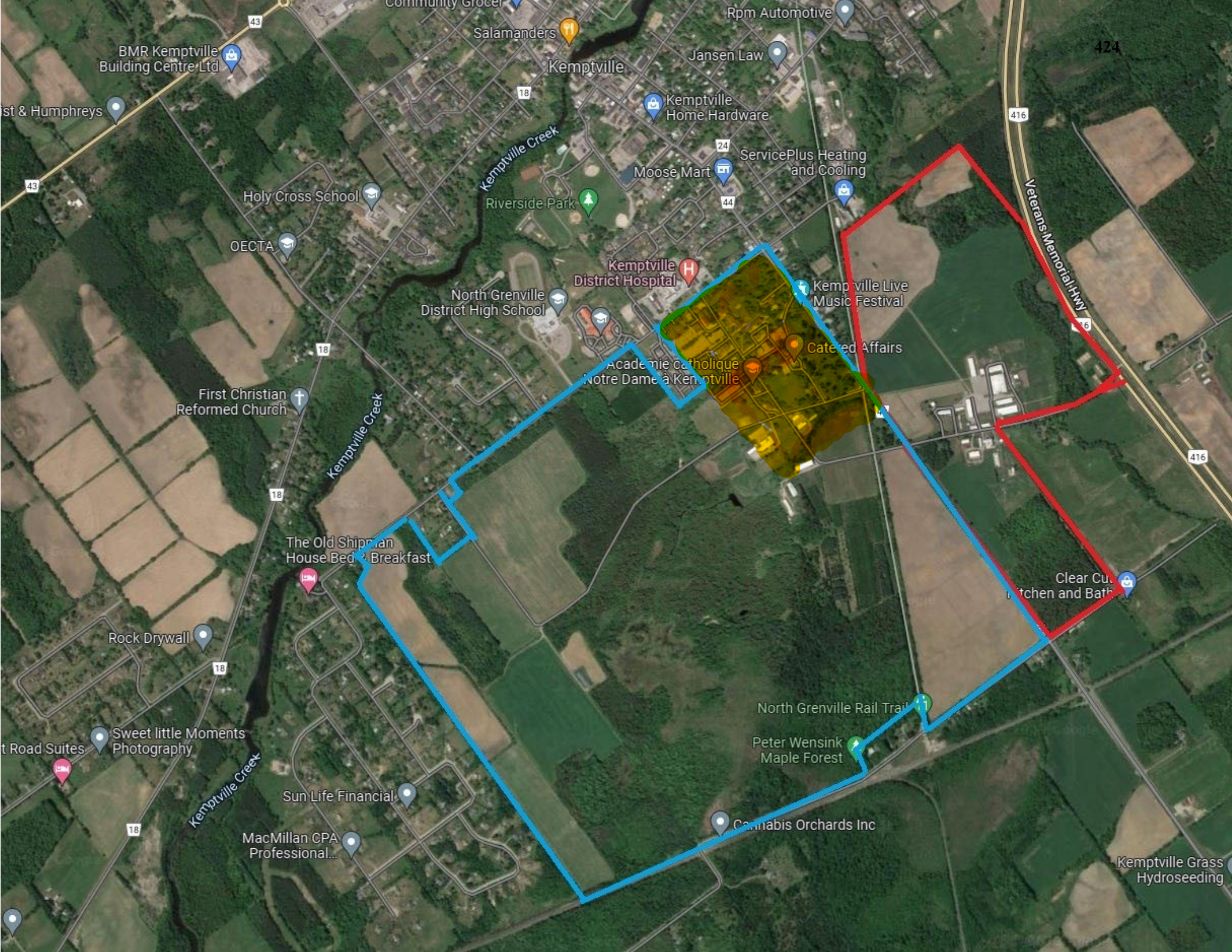


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424

416

416

Veterans Memorial Hwy

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44

43

43

Kemptville Creek

Kemptville Creek

BMR Kemptville Building Centre Ltd

Community Grocer

Rpm Automotive

Jansen Law

Kemptville

Kemptville Home Hardware

Moose Mart

ServicePlus Heating and Cooling

Holy Cross School

Riverside Park

North Grenville District High School

Kemptville District Hospital

Kemptville Live Music Festival

Catered Affairs

Academie catholique Notre Dame à Kemptville

First Christian Reformed Church

The Old Shipman House Bed & Breakfast

Clear Cut Kitchen and Bath

Rock Drywall

North Road Suites

Sweet little Moments Photography

Sun Life Financial

MacMillan CPA Professional...

North Grenville Rail Trail

Peter Wensink Maple Forest

Cannabis Orchards Inc

Kemptville Grass Hydroseeding

TAB 7

Court File No. DC-2-2731

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

GV/jk

B E T W E E N:

VICTOR LACHANCE and KIRK ALBERT

Applicants

- and -

SOLICITOR GENERAL OF ONTARIO and ATTORNEY GENERAL OF
ONTARIO

Respondents

- - - - -

This is the Cross-Examination of VICTOR LACHANCE, based on his Affidavit sworn the 15th day of December, 2022, herein, taken via video conference at the offices of VICTORY VERBATIM REPORTING SERVICES INC., Suite 900, Toronto-Dominion Centre, 222 Bay Street, Toronto, Ontario, on the 1st day of February, 2023.

- - - - -

APPEARANCES:

STEPHANE EMARD-CHABOT
SHAYNA LEVINE-POCH }
SUSAN KEENAN }

-- for the Applicants
-- for the Respondents

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1 --- upon convening at 9:15 a.m.

2 --- upon commencing at 9:20 a.m.

3

4 VICTOR LACHANCE, affirmed

5 CROSS-EXAMINATION BY MS. LEVINE-POCH:

6 1. Q. Good afternoon for you, Mr.

7 Lachance. So, as we said, I'm Shayna and I'm here

8 today to ask you some questions about an affidavit

9 that you affirmed for this proceeding. Do you

10 recall affirming an affidavit on December 15, 2022?

11 A. Yes, that must be the date. Yes.

12 2. Q. And do you have a copy of that

13 affidavit with you today?

14 A. I do.

15 3. Q. That's great. We'll be referring to

16 that today and I'll be taking you to parts of that

17 affidavit and like I said, if there's something you

18 do not have in front of you, I will be able to share

19 my screen to make sure that we are looking at the

20 same thing.

21 And, Mr. Lachance, when I am asking you

22 questions, if at any point you're not clear on what

23 I'm asking, please feel free to ask me to restate

24 the question or rephrase the question and likewise,

25 if you need a break, just please let me know. And

1 same thing, if the internet does cut out on your
2 end, I'm happy to restate a question.

3 A. Thank you.

4 4. Q. Okay. So, just to get started, we
5 know that you are a member of an organization known
6 as the Coalition Against the Proposed Prison,
7 correct?

8 A. Yes.

9 5. Q. And that organization goes by the
10 acronym, CAPP, C-A-P-P?

11 A. Yes, it does.

12 6. Q. You've been a member of CAPP since
13 November, 2020, correct?

14 A. Yes, that's correct.

15 7. Q. And, Mr. Lachance, do you know when
16 CAPP was founded?

17 A. Well, it was a fluid process. So,
18 let's see, sometime in October...

19 8. Q. That's all right. That's okay,
20 thank you. And you say that you joined CAPP, and
21 I'm looking at your paragraph 3, you joined CAPP to
22 help provide an online platform and database where
23 residents of North Grenville could obtain
24 information, pertinent research, expert opinions and
25 answers to their various questions regarding the

V. Lachance - 5

1 proposed prison; correct?

2 A. Yes, that's correct.

3 9. Q. And you say that the ultimate goal
4 was to empower community members to develop informed
5 opinions about the Province's proposed jail project?

6 A. Yes. At the time that the coalition
7 formed, especially...yes, so at the time that the
8 coalition was formed, that was...

9 10. Q. That was the ultimate goal?

10 A. ...the ultimate goal.

11 11. Q. And, Mr. Lachance, I would suggest
12 to you that CAPP, which is the Coalition Against the
13 Proposed Prison, also had the goal of stopping the
14 proposed prison from being built; would you agree?

15 A. Well, not quite. No. The...

16 12. Q. So, I have...

17 A. Okay, so not quite.

18 13. Q. Okay. I'm going to take you to
19 paragraph 62 of your affidavit and that's on page
20 142 of the motion record. And you can let me know
21 when you're there.

22 A. I'm there.

23 14. Q. Great. And on that page in that
24 paragraph, you say that you spent the last two years
25 on an ongoing and extensive number of activities and

V. Lachance - 6

1 then you describe those activities in Exhibit D to
2 your affidavit; do you see that? That's the first
3 sentence.

4 A. Yes, I do see that. And I just want
5 to look at...

6 15. Q. We're going to go to Exhibit D, so
7 not a problem. That's at page 158 of the records.
8 I'm going to take you there now. Just let me know
9 when you are at Exhibit D.

10 A. Yes, I will. Yes, I'm there now.

11 16. Q. Okay, great. So, we're looking at
12 your Exhibit D. And is Exhibit D the list of
13 activities that you refer to in paragraph 62 of your
14 affidavit which we just read from?

15 A. Sorry, if you could say that again?

16 17. Q. I'm just asking you to confirm that
17 Exhibit D is what you refer to in paragraph 62,
18 which is where you spent the last two years on an
19 ongoing and extensive number of activities?

20 A. Yes, it is.

21 18. Q. Okay, great. And these are the
22 activities that you say you organized, carried out,
23 contributed to or attended since the announcement of
24 the proposed jail?

25 A. That's correct.

V. Lachance - 7

1 19. Q. So, I'm going to ask that you look
2 at number 2 of Exhibit D. It says that you signed a
3 change.org petition against the proposed jail
4 organized by North Grenville resident Sarah
5 Ciliberto; do you see that?

6 A. Yes, I do.

7 20. Q. So, I'm going to share my screen
8 right now. Just give me one moment. Do you see my
9 screen being shared?

10 A. Yes, I do.

11 21. Q. So, I am showing you a web page on
12 change.org and it appears to be a petition on that
13 domain, so on change.org. And it appears that this
14 petition is called "Cancel the proposed construction
15 of the Kemptville Prison"; do you see that?

16 A. Yes, I do.

17 22. Q. And if you scroll down, you can see
18 that the petition is organized or it appears to have
19 been started by Sarah Ciliberto; do you see that?

20 A. Yes, I do.

21 23. Q. Mr. Lachance, do you know Sarah
22 Ciliberto?

23 A. I don't know her personally. I
24 don't think I've ever met her.

25 24. Q. But she must be aware of CAPP, as

1 she does reference CAPP in paragraph 5 of the
2 description; would you agree with that?

3 A. Yes, she's aware of CAPP.

4 25. Q. And in Exhibit D, you said you
5 signed a petition against the proposed jail
6 organized by the North Grenville resident Sarah
7 Ciliberto. To the best of your recollection, is
8 this the petition that you signed?

9 A. Yes.

10 26. Q. Okay. And the petition's title is
11 called, "Cancel the proposed construction of the
12 Kemptville Prison", correct?

13 A. Yes, that's correct.

14 27. MS. LEVINE-POCH: All right. And I
15 would like to mark this as an exhibit,
16 please.

17

18 --- EXHIBIT NO. 1: Web page of change.org with a petition
19 entitled, "Cancel the Proposed
20 Construction of the Kemptville Prison"
21 by Sarah Ciliberto

22

23 BY MS. LEVINE-POCH:

24 28. Q. Would you agree that it's fair to
25 say that you supported that the proposed prison

V. Lachance - 9

1 should be cancelled?

2 A. As an individual, yes.

3 29. Q. Thank you. I'm going to stop
4 sharing my screen. So, going back to your Exhibit
5 D, and I'm going to ask that you look at number 9.
6 So again, this is page 158 of the record. Number 9
7 on this list says that you wrote many letters to the
8 editor of the North Grenville Times between
9 November, 2020 and July, 202; do you see that?

10 A. Yes, I do.

11 30. Q. And I am going to share my screen
12 again, just give me one second. So, I'm sharing my
13 screen here with a website with the URL
14 www.coalitionagainstproposedprison.ca. Is this
15 CAPP's website?

16 A. Yes, it is.

17 31. Q. And on the website, if you click
18 "News and events", just right at the top here, I'm
19 going to click that. And if I scroll down all the
20 way to the bottom, there are numerous links under a
21 heading called, "Editorials and letters to the
22 editor"; do you see that?

23 A. Yes, I do.

24 32. Q. And so again, if we go to the bottom
25 and I'm going to count up five, we see what looks to

V. Lachance - 10

1 be a link to a letter titled, "A better vision for
2 Kemptville", and it's authored by Victor Lachance
3 and it's dated December 9, 2020; do you see that?

4 A. I do.

5 33. Q. So, I am now going to just click
6 that link, and Mr. Lachance, this is that letter
7 that was just referenced on the CAPP website. And
8 it does say that it's authored by Victor Lachance
9 and it has the title, "A better vision for
10 Kemptville", and it's on the North Grenville Times
11 website. Did you write this article? And I can
12 scroll through this if you would like.

13 A. Yes, I did.

14 34. MS. LEVINE-POCH: So, I would also like
15 to mark this as an exhibit, please.

16

17 --- EXHIBIT NO. 2: Article in North Grenville Times,
18 titled "A Better Vision for
19 Kemptville" by Victor Lachance

20

21 BY MS. LEVINE-POCH:

22 35. Q. And I'm going to take you to the
23 second sentence of the third paragraph. So, this is
24 Exhibit 2 and I'm going to scroll down to the third
25 paragraph, and let me know if you would like me to

1 zoom in or anything. But at the third paragraph,
2 the second sentence, it reads:

3 "...It seems to me as if council has
4 decided to be cheerleaders for the
5 Province's plan which in my view then
6 requires countervailing measures to have a
7 balanced public debate..."

8 Those are your words, correct?

9 A. Yes, they are.

10 36. Q. And, I'm going to just take you down
11 a little bit further to paragraph 6. In the first
12 and second line...let me just...so, over here you
13 say:

14 "...For our small community to accommodate
15 a prison, Kemptville would have to change.
16 We would have to become a prison town.
17 Call it whatever you like, it will simply
18 be known as the Kemptville Prison..."

19 You wrote that, correct?

20 A. Yes, I did.

21 37. Q. And if I scroll down to the
22 paragraph below, so paragraph 7. If I'm looking at
23 the fourth sentence, it says:

24 "...Meanwhile, our municipal council has
25 chosen to say that the prison is being

V. Lachance - 12

1 built within North Grenville's taxpayer
2 population of 17,000. You might as well
3 say that it's being placed on 40 acres
4 within the Province's 12 million acres of
5 farmland..."

6 You wrote that, correct?

7 A. Yes, I did.

8 38. Q. And when you refer to farmland, you
9 mean the land where the proposed prison is set to be
10 built, correct?

11 A. Correct.

12 39. Q. Okay. I'm just going to stop
13 sharing my screen. And I'm going to take you back
14 to your affidavit, so on page 126 of the record, so
15 that's paragraph 3 of the affidavit. So, you've
16 just told us that you joined CAPP in November, 2020,
17 correct?

18 A. That's correct.

19 40. Q. And in paragraph 5, you say that you
20 requested and had a meeting with the mayor of North
21 Grenville, Ms. Nancy Peckford, right?

22 A. Yes. May I mention that I don't
23 have the full record. I only made a copy of my
24 affidavit to bring.

25 41. Q. Okay, no problem. If there's a

V. Lachance - 13

1 reference to something outside of your affidavit,
2 again, I can share my screen.

3 A. Well, it's more that you refer to
4 page numbers of the full record and I don't have
5 numbers on my affidavit.

6 42. Q. Okay. I'm going to continue giving
7 the page numbers for ease of the record, but I'll
8 also refer to the paragraph numbers and I'll just
9 give you some time just to make sure that you can
10 find where we are situated.

11 A. Thank you.

12 43. Q. So, that meeting that you requested
13 with the mayor of North Grenville, it took place by
14 telephone on October 9, 2020, correct?

15 A. Correct.

16 44. Q. And the deputy mayor, Mr. Jim
17 McManaman, was also in attendance, right?

18 A. Yes, he was.

19 45. Q. And the meeting was less than two
20 weeks after the press release was issued, would you
21 agree? We know that the press release was issued on
22 August 27 and the meeting was October 9, so I just
23 counted days starting from August 27.

24 A. I agree.

25 46. Q. And was there anybody else...

V. Lachance - 14

1 MR. EMARD-CHABOT: I'm going to jump in.
2 The question was whether this took place
3 two weeks...empirically, that's not
4 possible, this was a month and a half
5 after.

6 47. MS. LEVINE-POCH: I believe the question
7 was that the meeting took place less than
8 two weeks after the press release was
9 issued. And if we look at...

10 MR. EMARD-CHABOT: We're in October, two
11 weeks would be September. I don't want to
12 get picky about this, but that's not
13 accurate.

14 48. MS. LEVINE-POCH: I note Stephane...you
15 are right, that is absolutely my bad, my
16 apologies, so it took place...

17 MR. EMARD-CHABOT: If we can agree on
18 six weeks, we can move on quickly.

19 49. MS. LEVINE-POCH: No, you're absolutely
20 right. It took place within the six weeks.
21 My apologies there.

22

23 BY MS. LEVINE-POCH:

24 50. Q. So, the meeting took place...we can
25 ignore the number of weeks, it took place on October

1 9, 2020?

2 A. Yes, it did.

3 51. Q. And was there anybody else at the
4 meeting other than you, the mayor and the deputy
5 mayor?

6 A. No, there was not.

7 52. Q. So, there was nobody in attendance
8 on behalf of CAPP or JOG at that time?

9 A. No, there was no one other than
10 myself and I was not calling on behalf of CAPP, I
11 was calling actually as president of the Country
12 Walk Community Association.

13 53. Q. Right, because we know that you were
14 not a member of CAPP at that time?

15 A. That's correct.

16 54. Q. And you have a sentence at the end
17 of paragraph 7 of your affidavit, which says:

18 "...At the moment in time, you had no
19 reason to doubt their statements..."

20 And I assume that "their" is in reference to the
21 mayor and the deputy mayor? Can you confirm that
22 that's...

23 A. That's correct.

24 55. Q. Okay. So, you say:

25 "...At that moment in time, you had no

V. Lachance - 16

1 reason to doubt their statements regarding
2 the Province's ability to do as it planned
3 and relied on this information in your
4 subsequent communications with community
5 members and in making your own decisions
6 regarding your involvement with the
7 issue..."

8 Is that correct?

9 A. That's correct to the extent that I
10 was relaying that information back to members of the
11 community association.

12 56. Q. So, that's...yes, and that's what
13 you have at paragraph 7 of your affidavit, that you
14 had no reason to doubt the statements of the mayor
15 and the deputy mayor? I'm just reading directly
16 from...

17 A. No, no, that's correct.

18 57. Q. Okay. And so, you're not suggesting
19 that the mayor or the deputy mayor were providing
20 you with legal advice, correct?

21 A. No, that never came up.

22 58. Q. Okay. And you say that you had no
23 reason to doubt their statements. When you say
24 "their statements", you mean their statements that
25 they would make the best of the situation; is that

V. Lachance - 17

1 correct? I'm looking here at line 3. And so, in
2 lines 2 and 3 of paragraph 7, you say that:

3 "...the mayor and deputy mayor's stated
4 position was that as local representatives,
5 they would therefore try to make the best
6 of the situation..."

7 A. Yes.

8 59. Q. Okay. And you relied on that
9 statement when making your own decisions, so you
10 relied on their statement that they were going to
11 make the best of the situation and that they were
12 not going to oppose the prison, correct?

13 A. They were going to make the best of
14 the situation. They were not going to oppose the
15 proposed prison and that there was nothing that they
16 would be able to do to prevent the Province from
17 carrying out their plan.

18 60. Q. Okay, thank you. And lower down in
19 paragraph 8, you say that following the August 27,
20 2020 press release, you learned of a group called
21 the "Jail Opposition Group" being formed, right?

22 A. Yes.

23 61. Q. And you learned about this group
24 immediately following the date that the press
25 release was issued, correct?

V. Lachance - 18

1 A. I think that would be incorrect. I
2 don't think they were formed immediately after...

3 62. Q. Okay, I'm just looking at your
4 paragraph 8, the first sentence reads:

5 "...Immediately following the August 27,
6 2020 announcement, I learned that a group
7 of North Grenville residents headed by the
8 former municipal councillor Jim Bertram,
9 had formed the Jail Opposition Group..."

10 So, the question was whether you or that you learned
11 about this group, being JOG, immediately following
12 August 27, 2020?

13 A. Well, it seems the question is about
14 how soon I learned about...

15 63. Q. Understood...what you said in the
16 affidavit, can you confirm that you said that you
17 learned about JOG immediately following the date of
18 the press release?

19 A. That's what I wrote in my affidavit,
20 yes.

21 64. Q. Thank you. And so, around that
22 time, JOG was holding public protests, correct?

23 A. I can't...

24 65. Q. I'm looking here. No problem. I'm
25 looking at paragraph 8...

V. Lachance - 19

1 A. Yes.

2 66. Q. ...and it says:

3 "...that JOG began to hold public protests
4 about the lack of consultation concerning
5 the proposed prison..."

6 A. Yes, they did.

7 67. Q. And you...they held a protest on
8 November 7, 2020?

9 A. Yes, they did I believe.

10 68. Q. And you attended that protest,
11 correct?

12 A. Yes, I did.

13 69. Q. Were you a member of JOG at that
14 time?

15 A. No, I was not.

16 70. Q. Is there a reason why having joined
17 a protest for JOG in November, 2020, you joined CAPP
18 that month instead of JOG?

19 A. Yes.

20 71. Q. Okay. And do you mind sharing what
21 that reason was just broadly?

22 A. When I went to the protest November
23 7th, I primarily went to see what they were saying
24 and in particular, what Jim Bertram was saying...

25 72. Q. Okay, and then based on that, you

V. Lachance - 21

1 were others. So...

2 76. MS. LEVINE-POCH: Okay, so you can
3 finish your answer...

4 MR. EMARD-CHABOT: ...if we're going to
5 put an answer and the witness is now...I
6 prefer the witness be able to give the full
7 answer.

8

9 BY MS. LEVINE-POCH:

10 77. Q. No problem, Mr. Lachance, please go
11 ahead.

12 A. I'm not quite sure I remember what
13 my answer was, but I can say that I went to see the
14 protest on November 7. I wanted to listen to what
15 Jim Bertram was saying. And I thought one of the
16 things that was missing was the need for more
17 information for residents to be able to understand
18 what was going on and therefore, I had an interest
19 in that more than what...in combination I suppose or
20 in addition to what I saw, what JOG was doing at
21 that time.

22 78. Q. Okay. Thank you. And in paragraph
23 9 of your affidavit, you reference a stakeholder
24 information session that was held on October 30,
25 2020; do you see that?

V. Lachance - 22

1 A. Yes, I do.

2 79. Q. You were not at that session, right?

3 A. I was not.

4 80. Q. And you indicate that you listened
5 to an audio recording of that session?

6 A. Yes, I did.

7 81. Q. Where did you get that recording?

8 A. I didn't get it myself and I don't
9 necessarily remember, but I know that it was
10 available because I wasn't the only one that was
11 able to listen to the audio. But I'm not sure
12 exactly where the source of the audio was...

13 82. Q. Okay.

14 A. ...probably was the Province's.

15 83. Q. And do you know who recorded it?

16 A. I don't. Probably...

17 84. Q. Okay.

18 A. ...the Province, yes.

19 85. Q. But you don't know who recorded the
20 audio?

21 A. I do not.

22 86. Q. And so, to clarify, you were not
23 watching a video of the session, correct? It was
24 the audio?

25 A. It was solely audio.

V. Lachance - 23

1 87. Q. And if visual information was shared
2 during the session, you may have seen that
3 information afterwards, but you did not see the
4 video as part of listening to audio, correct?

5 A. That's correct.

6 88. Q. And you have not attached that audio
7 recording or transcript of the audio recording to
8 your affidavit, have you?

9 A. I have not.

10 89. Q. However, you have selected some
11 quotes of statements you say were made during that
12 recording and you attach those quotes as Exhibit A
13 to your affidavit, correct?

14 A. That's correct.

15 90. Q. So, I'm going to take you now to
16 your Exhibit A and that's at page 145 of the record
17 and I'll just give you a moment to get there, Mr.
18 Lachance.

19 A. Yes, I have Exhibit A.

20 91. Q. And so, Exhibit A here, you describe
21 in paragraph 13 as being a:

22 "...Compilation of relevant quotes form the
23 October, 2020 session and subsequent public
24 sessions..."

25 Correct?

V. Lachance - 24

1 A. This is 13 of my affidavit, is that
2 correct?

3 92. Q. Yes.

4 A. And I apologize, the question was?

5 93. Q. I'm just restating. At paragraph
6 13, you describe Exhibit A as being a:

7 "...Compilation of relevant quotes from the
8 October, 2020 session and subsequent public
9 sessions..."

10 A. Yes, that's correct.

11 94. Q. And, Mr. Lachance, did you write the
12 list at Exhibit A?

13 A. I did.

14 95. Q. And this is a list...it's notes that
15 were written while you listened to the audio
16 recording that you received, though we're not sure
17 who you received it from, correct?

18 A. Yes.

19 96. Q. And you were not at the meeting, so
20 these quotes, they were selected from the audio
21 recording, correct?

22 A. Yes. I may have...yes, I might have
23 originally recorded them and so, I relied on my
24 notes that I had. But they originally came from the
25 audio. They might have come from other people. The

V. Lachance - 25

1 thing is, Colleen Lynas and Kirk Albert, did attend
2 the October 30th session. They may...

3 97. Q. But...

4 A. Yes, so I don't know if they were
5 given a recording or whether they took notes, but
6 some of these might have come from others, but I'm
7 pretty sure that...yes, a number of them for sure
8 were from the audio recording.

9 98. Q. Okay, but it's possible that some of
10 these quotes listed in Exhibit A were written by
11 other people other than yourself?

12 A. No, I would say that I wrote these
13 and I would have done so listening to the recording.

14 99. Q. Okay.

15 A. Because I have the dates and the
16 people and all of that, so I would have had to
17 listen to the recording to produce this affidavit,
18 yes.

19 100. Q. Okay. And we don't have the audio
20 here to see what else was said outside of these
21 quotes, correct?

22 A. Well, I don't have the audio, no.

23 101. Q. And so, we don't know the context of
24 what was being said when these quotations
25 were...when you wrote down these quotations, so when

V. Lachance - 26

1 they were said, correct?

2 A. Well, I can't speak for yourself or
3 anyone else, but no, I cannot provide the recording
4 to look at the context.

5 102. Q. Right. So, anybody looking at
6 Exhibit A, just to be clear, doesn't have the
7 context of what was being said because we don't have
8 the recording, right?

9 A. Well, okay, today yes, that's the
10 case

11 103. Q. And so, looking at the list on page
12 145, so I see that some of the quotes have three
13 dots or ellipses. And so, for example, if we look
14 at under the heading on page 145, "on holding
15 engagement or consultation sessions", and if we look
16 at question 4 in lines 2 and 3 in the middle of the
17 quote, we see two ellipses; do you see that? At the
18 beginning of line 2 of the number 4 and in the
19 middle of line 3, and again, just as another
20 example, number 5, we also see the three dots.

21 A. Yes, I see that.

22 104. Q. Do the dots signify where other
23 things were said that are not in this document?

24 A. Yes. It means...yes.

25 105. Q. Okay. And there are quotes on this

V. Lachance - 27

1 list from not only October 30, 2020, but as you
2 said, also from November 17th and November 26, 2020;
3 would you agree?

4 A. Yes.

5 106. Q. So, in this one list, there are
6 quotes included from different time periods and from
7 different meetings without the context of those
8 meetings, correct?

9 A. Yes.

10 107. Q. And you would agree with me that
11 this list is not a transcript of any of those
12 meetings, right?

13 A. Well, there's not an official
14 transcript that was provided.

15 108. Q. Right. So, it's not a transcript,
16 it does not have the full wording from all of those
17 meetings, it's selected quotes?

18 A. It's not a transcript of the entire
19 meeting, no, not at all.

20 109. Q. Right. Okay, and it's not a
21 transcript...and you were not present for at least
22 one of those meetings, you were not present at the
23 October 30, 2020 meeting?

24 A. That's correct.

25 110. Q. Thank you. So, I'm just going to

V. Lachance - 28

1 circle back to your affidavit now at paragraph 18

2 which is on page 130 of the record.

3 A. Yes.

4 111. Q. Okay. And so, here you say that the

5 Ministry of the Solicitor General hosted a public

6 engagement session on November 26, 2020, correct?

7 A. Yes, that's correct.

8 112. Q. And you attended that session?

9 A. I did.

10 113. Q. And, Mr. Lachance, you submitted a

11 list of questions in advance of that session, right?

12 A. I did.

13 114. Q. And you include those questions as

14 Exhibit B to your affidavit, and that's at page 152?

15 A. I did, yes.

16 115. Q. Okay. So, we're going to go there

17 now, I'll give you a moment.

18 A. It's Exhibit...

19 116. Q. Exhibit B.

20 A. B as in brother?

21 117. Q. Yes. I can also share my screen to

22 that page...

23 A. I think I may not have brought that

24 with me.

25 118. Q. No problem. I can share my screen.

V. Lachance - 29

1 Let me know when you can see that?

2 A. Yes, I see Exhibit B on the screen.

3 119. Q. So, this is Exhibit B, page 152 of
4 the record and is this the list of questions that
5 you referred to in paragraph 18 that you submitted
6 in advance of the November, 2020 session?

7 A. Yes, it is.

8 120. Q. And you submitted 13 questions,
9 right? I'm just...this is the 13 questions?

10 A. Yes, I did.

11 121. Q. And at question number 11, you ask:
12 "...Shouldn't a prison be built on land
13 that has little or no agricultural
14 value..."

15 Right?

16 A. That's correct.

17 122. Q. So, from your perspective at the
18 time of writing, the land that the proposed prison
19 is set to be built on had agricultural value,
20 correct?

21 A. That's correct.

22 123. Q. And in question 12, you say:
23 "...Kemptville is a small town with a small
24 town charm to it..."

25 And you say that's why you moved to Kemptville,

1 correct?

2 A. That's correct.

3 124. Q. You say that:

4 "...No matter what name you give this
5 facility, it will be known as the
6 Kemptville Prison..."

7 Right?

8 A. Yes, I wrote that. Yes.

9 125. Q. And, Mr. Lachance, that's also what
10 you said in one of the paragraphs that we looked at
11 earlier and I'm happy to take you back to that. But
12 in the letter that you wrote for the North Grenville
13 Times, in that paragraph you said:

14 "...For our small community to accommodate
15 a prison, Kemptville would have to change,
16 we would have to become a prison town..."

17 Do you remember looking at that?

18 A. Yes, I do.

19 126. Q. And you didn't want that to happen,
20 right? You did not want it to become a prison town?

21 A. I did not think it was a good thing
22 for Kemptville, no.

23 127. Q. Okay. I'm going to stop sharing my
24 screen here. So, going back to your affidavit at
25 paragraph 22, you comment on the acquisition cost of

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1 the Kemptville property; do you see that? Paragraph
2 22 and it's on page 131.

3 A. I see paragraph number 22, yes.

4 128. Q. Okay. And do you see there that you
5 are commenting on the land acquisition cost, that's
6 at line 2?

7 A. Yes, I mentioned that a provincial
8 official said that there would be no land
9 acquisition cost to...

10 129. Q. Right. So, in speaking about that
11 November, 2020 engagement session, just to quote
12 from that, you say:

13 "...Provincial officials further justified
14 the choice of Kemptville on the grounds
15 that there would be no land acquisition
16 cost to the Province since it still owned
17 this part of the former Kemptville
18 Agricultural College..."

19 Is that what you see or what you wrote?

20 A. Yes, that's correct.

21 130. Q. So, I'm going to share my screen
22 again. I'm showing you here a document and as you
23 can see, this is a Ministry of the Solicitor General
24 presentation called, "Eastern Ontario Correctional
25 Complex Public Engagement". And the presentation is

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1 dated November 26, 2020; do you see that?

2 A. I do.

3 131. Q. And, Mr. Lachance, do you recognize
4 this as a presentation that was given to you at the
5 November 26, 2020 engagement session?

6 A. It certainly looks like it, yes.

7 132. MS. LEVINE-POCH: Okay. I'm going to
8 ask that this be marked as Exhibit 3,
9 please.

10

11 --- EXHIBIT NO. 3: Document entitled, "Eastern Ontario
12 Correctional Complex Public
13 Engagement", dated November 26, 2020

14

15 BY MS. LEVINE-POCH:

16 133. Q. I'm just going to make the view, so
17 we can see it a bit bigger here. I'm not going to
18 ask you to confirm the truth of the content of this
19 presentation, but I am going to ask you to...I'll
20 just refer to some of the slides and I'll ask you
21 some questions about those.

22 So, scrolling through this presentation, we
23 see that there is a land acknowledgement, there's
24 discussions about protocols and technology.

25 And then, we see here that there is a list

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1 of introductions and it appears to be a list of
2 names. As per your recollection, are these the
3 people that you remember having attended the session
4 on behalf of the government?

5 A. I recognize several of the names,
6 yes.

7 134. Q. Thank you. And if we keep
8 scrolling, we'll see some slides about the purpose
9 of the engagement session, an agenda of the session,
10 justice sector transformation, collaboration across
11 sectors, a correctional services overview and then,
12 here on slide 11, we see a slide called "project
13 description". And on slide 12, we see "Eastern
14 Ontario Correctional Complex"; do you see that?

15 A. I do.

16 135. Q. And one more slide later, slide 13,
17 we see a slide called "Site selection"; do you see
18 that as well?

19 A. I do.

20 136. Q. On the left-hand side of the slide,
21 it appears that there's a list of factors that fall
22 under the heading, "Site selection rationale".
23 These factors include, already in government
24 portfolio, government policy, value for money and
25 private land purchase costs ranged from \$10 million

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1 to \$40 million; do you see that?

2 A. I do.

3 137. Q. I would put to you that the November
4 26, 2020 session, the provincial officials did not
5 say that there would be no land acquisition cost,
6 rather they said that the land, as we see on the
7 slide, was already in the government portfolio, that
8 there was value for money and that the private
9 acquisition costs ranged from \$10 million to \$40
10 million.

11 A. Well, what was on the slide is not
12 necessarily what they said during the session.

13 138. Q. But what is on the slide is that the
14 site selection rationale included that the property
15 was already in the government portfolio, that it was
16 value for money and that the private land purchase
17 costs ranged from \$10 million to \$40 million,
18 correct?

19 A. That is what is on the slide, yes.

20 139. Q. And actually, this is consistent
21 with what's in the October 30, 2020 presentation
22 deck from an earlier engagement session. I'm just
23 going to pull that up on the screen as well.

24 And that presentation is already in
25 evidence and it's attached as Exhibit C to Kirk

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1 Albert's affidavit. That's at page 53 of the
2 record; do you see that here? This here...I can
3 scroll up to the top just so that we see, this is a
4 Ministry of the Solicitor General presentation dated
5 October 30, 2020.

6 A. That's what the slide says, yes.

7 140. Q. And again, this is already in
8 evidence in the affidavit of Kirk Albert. So, at
9 slide 5, you see here that the same factors that
10 were included in the November 26 presentation, such
11 as the government portfolio, the value for money and
12 the private land purchase costs ranging from \$10
13 million to \$40 million are also included here; do
14 you see that?

15 A. I do.

16 141. Q. Okay, thank you. I'll stop sharing
17 my screen. And since the November 26, 2020 slide
18 deck, that was the presentation that you would have
19 seen on that day, correct? That information on
20 those slides is what you would have seen?

21 A. If I understand the question, the
22 answer is yes.

23 142. Q. Just to make sure that you
24 understand, so the slide deck I was just sharing my
25 screen with, the November 26, 2020 slide

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1 presentation, that was the information you would
2 have seen on a presentation, that you visually would
3 have seen that and received that information in that
4 session, right?

5 A. Yes, I would have seen that
6 PowerPoint presentation. Yes.

7 143. Q. Okay. And I'm just going to go back
8 to your affidavit now. So, we're going to look at
9 paragraph 22 and I'll just give you a moment to get
10 there as well.

11 A. I'm there.

12 144. Q. Just give me a moment to get there,
13 one second please. Okay. So, with reference to
14 your paragraph 22, in this proceeding we have put
15 forward evidence that Ontario acquired the
16 Kemptville site from ARIIO, which is the Agricultural
17 Research Institute of Ontario for approximately \$2.4
18 million.

19 And I'm just going to share my screen here
20 to the affidavit of David Macey, who is our affiant
21 in this proceeding. So, here is our motion to
22 dismiss. And if I go here to page 15 of our record,
23 you'll see here at paragraph 18, that Mr. Macey
24 attaches or says that he attaches the land purchase
25 invoice for the property as Exhibit C to his

1 affidavit; do you see that?

2 A. I do.

3 MR. EMARD-CHABOT: I'm going to
4 interrupt for two seconds. If I can ask,
5 Shayna, if you can give me an idea where
6 this is going because I'm not sure Victor
7 is the one to speak to whether or not that
8 money was paid, whether that money is
9 accurate, whether...he can certainly
10 testify to confirming what he sees on his
11 screen, but I'm just not sure of the value
12 of that.

13 So, before we go a little bit
14 further on, on how much was paid and
15 whether that was...or anything else about
16 that, if you don't mind just giving me a
17 little bit of an idea of the line of
18 questioning.

19 145. MS. LEVINE-POCH: No problem. I don't
20 have to take him there. That's okay. We
21 can move on. We were just confirming that
22 he doesn't disagree that that invoice was
23 attached in that affidavit, but there's no
24 need.

25 MR. EMARD-CHABOT: Yes, that's on the

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1 record and was explored I think quite fully
2 on Friday.

3 146. MS. LEVINE-POCH: Yes. No problem.

4

5 BY MS. LEVINE-POCH:

6 147. Q. I am just going to go back to
7 paragraph 26 of your affidavit, so that's at page
8 132 of the record. And in that paragraph, you ask a
9 question and your question is:

10 "...Why was a new prison built on
11 designated farmland in Kemptville, now
12 preferable to constructing a replacement
13 facility in Ottawa?..."

14 Is that what you wrote?

15 A. That's what I wrote.

16 148. Q. And you had that question on your
17 mind in November, 2020 as well, correct? I can just
18 refer to Exhibit B, which we already went to today,
19 that was the list of questions that you submitted
20 prior to the November engagement session. One of
21 the questions that you asked at number 11 was:

22 "...Shouldn't a prison be built on land
23 that has little or no agricultural
24 value?..."

25 So, both of those questions...in both of those

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1 questions, would you agree that you're wondering why
2 the proposed prison is being built on land that you
3 felt had agricultural value?

4 A. Yes, that's correct.

5 149. Q. Okay. Moving on now, after the
6 November 26, 2020 engagement session, you describe
7 that you"

8 "...became very active in organizing and
9 participating in activities to express
10 opposition to the proposal..."

11 I'm looking at paragraph 28.

12 A. I apologize because I did
13 double-sided and unfortunately did it on the short
14 end, not the long end and so, I get the 28...I have
15 paragraph 28, yes.

16 150. Q. So, in that paragraph, you describe
17 that you:

18 "...became very active in organizing and
19 participating in activities to express
20 opposition to the proposal..."

21 Right?

22 A. Yes, I say:

23 "...I became very active in organizing and
24 participating in activities..."

25 Yes.

1 151. Q. And you continued...so, I'm just
2 going to go through some of those activities. You
3 continued to actively reach out to experts, is that
4 correct? That's at paragraph 29.

5 A. Did I...is that part of my list of
6 activities?

7 152. Q. If you look at item...at paragraph
8 29, the first sentence there is:

9 "...I continued to actively reach out to
10 experts..."

11 A. Sorry, I thought it was the list of
12 activities. That's what I wrote, yes.

13 153. Q. And you led the organizing and
14 hosting of three public information sessions, right?

15 A. Yes, I did.

16 154. Q. You participated in a number of
17 activities such as sending letters to various
18 officials, correct?

19 A. That's correct.

20 155. Q. And that included writing op-ed
21 articles for the local weekly paper?

22 A. Yes, it did.

23 156. Q. You organized public rallies,
24 correct? I'm just looking at paragraph 30, line 4.

25 It says there that you:

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1 "...as a member of CAPP, [you] participated
2 in activities such as organizing public
3 rallies..."

4 A. Yes, that's what I wrote. Yes.

5 157. Q. And you also developed informational
6 videos?

7 A. Yes, I did.

8 158. Q. And you participated in the
9 municipality's strategic plan development session?

10 A. Yes, I did.

11 159. Q. You also participated in the
12 municipality's local green initiative which was
13 related to the proposed site?

14 A. Yes, I did.

15 160. Q. And you made a presentation at a
16 town hall event on March 23, 2020?

17 A. That's correct.

18 161. Q. And CAPP and JOG were involved in
19 that event, correct?

20 A. Yes, we were.

21 162. Q. And you then organized another
22 delegation to municipal council that you presented
23 at June 22, 2021 and that was for a meeting of the
24 North Grenville Municipal Council, correct?

25 A. I can't remember the date exactly

1 but that's correct.

2 163. Q. Okay, so the date, it's at paragraph
3 32. And you say that the delegation was invited to
4 attend the June 22, 2021 of the North Grenville
5 Municipal Council?

6 A. That's correct.

7 164. Q. And you helped solicit financial
8 contributions through a GoFundMe campaign to cover
9 the costs of producing information material and
10 advertisements, right?

11 A. That's correct.

12 165. Q. And you co-chaired CAPP's regular
13 online meetings?

14 A. Yes, I did.

15 166. Q. And over the course of 2021, Kirk
16 Albert, the other applicant in this case, he
17 attended and contributed to CAPP's regular online
18 meetings, correct?

19 A. He didn't attend all the meetings
20 but he did attend and contribute to some, yes.

21 167. Q. Okay, thank you. And in total, you
22 say that you participated in 74 events or activities
23 in opposition of the prison between November, 2020
24 and November, 2021, correct? That's at paragraph
25 36.

1 A. That's correct, yes.

2 168. Q. Okay. You also say at paragraph 62
3 that you:

4 "...organized, contributed to or attended
5 at least 117 activities in opposition of
6 the prison in the two years preceding the
7 application for judicial review..."

8 Correct?

9 A. Well, could you repeat that? I
10 wasn't looking at the paragraph at the time you
11 asked the question.

12 169. Q. Yes. So, at paragraph 62, you say
13 that you:

14 "...organized, contributed to or attended
15 at least 117 activities in opposition of
16 the prison in the two years preceding the
17 application for judicial review..."

18 A. Yes. Yes, that's what I wrote.

19 170. Q. And you also wrote that you:

20 "...worked continuously on opposing the
21 prison every week from October, 2020 to
22 August, 2022..."

23 Correct?

24 A. That's correct.

25 171. Q. And that those efforts included:

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1 "...contacting the provincial opposition
2 parties before the June, 2022 election and
3 that those efforts started in February of
4 2022..."

5 Is that correct? That reference is paragraph 44.

6 A. 44?

7 172. Q. Yes.

8 A. You're referring to the sentence in
9 February, 2022:

10 "...I began to contact provincial
11 opposition parties to obtain their position
12 on the proposed jail..."

13 173. Q. Yes.

14 A. That's correct.

15 174. Q. And in that...or the results of that
16 June, 2022 election, were that the current
17 government was re-elected, correct?

18 A. It was.

19 175. Q. And you still did not file a legal
20 case until August 16, 2022, is that right?

21 A. That's correct.

22 176. Q. Thank you. So, we're just going to
23 go back to paragraph 33 which is on page 134 of the
24 record. And in paragraphs 32 and 33, you describe a
25 presentation given at a June 22, 2021 meeting of the

1 North Grenville Municipal Council, correct?

2 A. That's correct.

3 177. Q. And the last sentence of paragraph
4 33, you indicated that:

5 "...council collectively reiterated that it
6 would only object to the proposed facility
7 if North Grenville taxpayers were faced
8 with having to bear any direct costs
9 related to the prison..."

10 Is that right?

11 A. That's what I wrote, yes.

12 178. Q. So, it remains the case that at that
13 time on June 22, 2021, the municipality, so the
14 municipal council was still not objecting to the
15 proposed prison, correct?

16 A. That's not quite how they phrased it
17 but the meaning is correct.

18 179. Q. So, they said that they wouldn't
19 oppose unless X happened and X did not happen at
20 that time, so they were not opposing to the proposed
21 prison; is that how you understand that?

22 A. On...

23 180. Q. So, if we just look back...

24 A. Now, I can't quote the date, that's
25 the problem. What I can say is that at a meeting,

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1 which I think was the june...the second one, June
2 22, they said...they individually spoke and said
3 that while they didn't like the, you know, proposed
4 prison plan, they were not going to oppose it.

5 181. Q. Okay. And just for the sake of the
6 record, I did get the date just from paragraph 32.
7 So, that was just the location there. And so, I'm
8 now going to move down a little bit to paragraph 39
9 of your affidavit. And in that paragraph, you say
10 that at the November 17, 2021 engagement session,
11 participants were told that the Province had looked
12 at 38 possible locations and that five or six
13 properties were short listed. Is that correct?

14 A. As I read it, not quite.

15 182. Q. Okay, so I'll read directly from
16 that paragraph. It says:

17 "...Notably, during the November 17, 2021
18 session, participants were told that the
19 Province had in fact looked at only 38
20 possible locations, not the 100 or so
21 stated in 2020, and that they had whittled
22 that list down to a short-list of five or
23 six which included the Kemptville site
24 ultimately selected..."

25 Is that right?

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1 A. That's correct.

2 183. Q. Okay. And you say that this
3 information was troubling to you, right?

4 A. Yes. The paragraph starts off by
5 saying:

6 "...More troubling to me was the fact
7 that..."

8 184. Q. And...

9 A. Yes, yes.

10 185. Q. And it was troubling to you because
11 the number 38 was different than the information you
12 say was shared at a session in 2020; is that
13 correct?

14 A. Yes, if I understood the question.
15 Yes.

16 186. Q. Okay. And then you discuss some of
17 CAPP's freedom of information requests. You refer
18 to those as FOI requests, is that right?

19 A. Could you point me to the...

20 187. Q. Yes. So, in paragraph 40...

21 A. 40?

22 188. Q. Yes, about mid-way down, you make
23 reference to the CAPP team beginning to discuss
24 turning to freedom of information requests.

25 A. Yes, that's what I wrote.

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1 189. Q. And in paragraph 42, you reference a
2 release that Lisa Gallant received in response to
3 one of her FOI requests, do you see that?

4 A. Yes, I reference Mrs. Gallant's FOI
5 information.

6 190. Q. Okay. And if you give me a moment,
7 I'm just going to share my screen again. So, I'm
8 going to share my screen to page 183 of the motion
9 record. And if I scroll up, we can see that this is
10 listed as Exhibit C to the affidavit of Lisa Gallant
11 and that this is already in evidence in this
12 proceeding. So, do you see that here when I scroll
13 down to 183?

14 A. I do see it.

15 191. Q. So, I'm showing you here a letter
16 dated June 4, 2021 that is included in that Exhibit
17 C and Exhibit C is the release package that Ms.
18 Gallant received in response to her FOI. And you
19 said that Ms. Gallant kept CAPP informed of the
20 progress of her FOI request, correct?

21 A. Yes.

22 192. Q. So, have you seen these documents
23 before? By these documents, I mean the release
24 included at Exhibit C.

25 A. Well, I did go through the entire

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1 document that our legal counsel put together. So, I
2 did see this, yes. Obviously at that point, but I
3 don't remember its content, I don't know.

4 193. Q. Okay. So, in your recollection, or
5 do you have any recollection of whether you saw the
6 responses to Ms. Gallant's FOI request at the time
7 that it was received?

8 A. Well, not at the time it was
9 received but at some point, yes, she would have
10 shared that information with us and...

11 194. Q. That's great. So, on page...I'm
12 just going to scroll down here to page 188 and I'm
13 just going to ask you some questions about this
14 document. So, on this document, which is again
15 included as part of that release, you'll see that
16 it's dated July 16, 2019 and that the document is
17 titled, "Ottawa land acquisition update". Do you
18 see that?

19 A. I do.

20 195. Q. And in that first section here at
21 the top, you'll see that under the heading, "Were
22 completed to date", it says:

23 "...Over 38 properties assessed this
24 month..."

25 Do you see that?

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1 A. I do.

2 196. Q. So, not only that, but this document
3 also references a number of reasons why properties
4 were not recommended for further consideration. And
5 so, some of those factors...I'll just scroll off for
6 you to look at this third bullet under that same
7 heading and it appears that those factors included
8 that:

9 "...those properties were too small, were
10 inappropriate site configuration, lack of
11 municipal servicing, no access to transit,
12 and significant natural heritage
13 restraints..."

14 Do you see that?

15 A. Yes.

16 MR. EMARD-CHABOT: I'm going to
17 interject again, sorry, just to ask about
18 the relevance of this to the timing of the
19 application. I'm just unclear on that
20 point.

21 197. MS. LEVINE-POCH: This just goes to what
22 information was available to members of
23 CAPP and JOG at the time that the release
24 were received.

25 MR. EMARD-CHABOT: Okay. Thank you.

1 198. MS. LEVINE-POCH: No problem.

2

3 BY MS. LEVINE-POCH:

4 199. Q. And if we scroll down to page
5 190...I'll zoom out here. So this is a chart and it
6 indicates that there were five sites still in the
7 running, so there were the five short-listed sites
8 as previously said. And that these sites remained
9 under consideration and on that slide we see one of
10 those sites was Kemptville; do you see that?

11 MR. EMARD-CHABOT: I'm going to jump
12 again, sorry. And I may have missed this,
13 so if I have, please forgive me. Have we
14 established when the witness would have
15 become aware of this document? I'm not
16 questioning when it was released in the
17 sequence of events, but if he didn't
18 personally see it until 2022, then the line
19 of questioning I think should reflect that.

20 200. MS. LEVINE-POCH: So, we haven't
21 established a specific date, but we do know
22 that CAPP and JOG were working
23 collaboratively...

24 MR. EMARD-CHABOT: But, collaboratively
25 doesn't mean that Ms. Gallant would

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1 necessarily have shared this or that Mr.
2 Lachance would have seen this at the time.

3

4 BY MS. LEVINE-POCH:

5 201. Q. Right. So, Mr. Lachance, I'll just
6 ask you, did Ms. Gallant share this release package
7 with you or with CAPP when it was received?

8 A. Can I check to see if this was the
9 first release package or the second?

10 202. Q. I can confirm this was the first
11 release package.

12 MR. EMARD-CHABOT: Agreed.

13 THE DEPONENT: So, the first release
14 package, I can't say exactly when I would
15 have received it or seen it because...

16

17 BY MS. LEVINE-POCH:

18 203. Q. And is there...go ahead, sorry for
19 interrupting.

20 A. Well, it's just that...like, the
21 process wasn't structured that way. What I remember
22 is it took a long time for her to get this release.
23 So, if she...and I can't speak to the length of
24 time, but she filed it, the first one I think in
25 November, right after...

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1 A. If that is the case, then yes.

2 207. Q. Okay. Just for the sake, I can show
3 you quickly. So, at page 197 here, there's
4 information about four sites being shared. At page
5 213, we see here site number four and then it
6 provides information about the criteria that were
7 being considered. And again, this continues all the
8 way down, if we scrolled all the way down it goes
9 until page 233.

10 And likewise, the same types of
11 descriptions or images are contained at the other
12 pages referenced. So, in this first release
13 package, there was this information about the sites
14 that were being considered at that time; would you
15 agree?

16 A. Yes.

17 208. Q. Okay. And is it...

18 A. However, may I make a clarification?

19 209. Q. You can go ahead.

20 A. In looking at what you just
21 presented, it occurs to me or reminds me that I
22 recognize some pages, absolutely, but I don't
23 recognize every page. So, it is possible that when
24 Lisa shared material, she didn't share the entire
25 release, she may have shared information she thought

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1 was relevant and that's why I can't...and it's a
2 problem. That's all we got, a fragment of this...

3 210. Q. No problem. No, I understand that.
4 Thank you. So, moving on. I'm just going to stop
5 sharing here. And so, just in the context of the
6 FOI request, just to clarify, the three requests
7 that you personally submitted, those were to school
8 boards, is that right?

9 A. That's correct.

10 211. Q. And in paragraph 48 of your
11 affidavit, so that's page 138, you reference that
12 the Kemptville site was identified as early as 2017;
13 is that right?

14 A. Yes, that's what is written there,
15 yes.

16 212. Q. And it also says that the hold for
17 the Kemptville site was only put on the property in
18 2019, is that correct?

19 A. That's correct.

20 213. Q. Thank you. So, we're going to move
21 on now. I'm going to share my screen again, just
22 bear with me. I'm going to share my screen, it's
23 page 114 of the motion record and at that page,
24 you'll see that this is Exhibit J to the affidavit
25 of Kirk Albert and this is already in evidence in

1 this proceeding. Do you reference to Exhibit J
2 there on the screen?

3 A. I do.

4 214. Q. So, I'm going to just scroll down to
5 page 117 here and as you can see at the top, it
6 says, "JOG meeting minutes, December 3, 2020".
7 Again, I won't ask you to confirm the content of
8 this document and I don't expect that you would have
9 seen these before, but I do want to ask you some
10 questions about your recollections of this time
11 period for CAPP.

12 So, you can see at page 118 at the top
13 there is an action item...sorry, page 118 at the
14 top, there is an action item that reads:

15 "...Seek local legal counsel, pro bono
16 assistance, municipal process,
17 environmental land claims..."

18 Do you see that?

19 A. I do.

20 215. Q. And under that we see a couple of
21 names written there. And so, do you know that
22 Connie Lamble is a local lawyer?

23 A. I've seen her signs around the city,
24 yes.

25 216. Q. And Tom Byrne is also a local

1 lawyer, right?

2 A. I don't know that name.

3 217. Q. And Jensen is to your recollection,
4 is Jensen a law firm in Kemptville?

5 A. Again, I don't recognize that name.

6 218. Q. So, I have this information
7 just...we learned this from Kirk Albert, but I can
8 move on. It also lists, as you can see there, the
9 Ottawa Court House and free legal clinics. Did you
10 know that JOG was looking to contact these people or
11 was considering contacting these people for legal
12 advice at this time, so this is December, 2020?

13 A. I did not know that they were
14 speaking to those specific people but I know that
15 I...I believe that Kirk would have spoken to me
16 around Christmastime of December, 2020 about
17 probably the results of those inquiries which
18 were...that it wasn't the...I forget exactly, but
19 something to the effect that it would not have made
20 sense, you know, at the time to pursue that, so I
21 have to confirm that I am aware, but not the detail
22 that you described, no.

23 219. Q. Okay. That's understood. And so,
24 if I keep scrolling down to page 120 and these are
25 still part of those meeting minutes. If we look at

1 "8a/", which is right here in the middle, the notes
2 say:

3 "...Law school access exists through
4 Justin. Law students to volunteer and
5 explore viability and other aspects of the
6 proposed correctional facility, due
7 diligence, permits and zoning..."

8 Et cetera. Do you see that?

9 A. I do see that.

10 220. Q. And would it make sense that Justin
11 is Justin Piche?

12 A. Yes.

13 221. Q. And Justin Piche was a member of
14 CAPP at this time in December of 2020, correct?

15 A. The use of the word member will
16 always be a little bit difficult, but he
17 participated in the steering committee of the CAPP,
18 yes.

19 222. Q. Okay. And so, JOG appears to have
20 been aware that a CAPP member, Justin Piche, had
21 access to law students at this time. As a member or
22 as part of CAPP, were you also aware of that?

23 A. You're pointing to what then?

24 223. Q. I'm saying that at this time in
25 December, 2020, JOG appears to have been aware that

V. Lachance - 59

1 Justin Piche had access to law students and I'm
2 asking if you, as a member or as part of CAPP, also
3 were aware of that, that he had access to law
4 students?

5 A. Well, he's a professor of
6 criminology, so I would think that the answer is
7 yes.

8 224. Q. And from your recollection, were
9 you...

10 MR. EMARD-CHABOT: Sorry, I'm going to
11 object to that question and the answer it
12 implies because the question was related to
13 Justin Piche having access to students in
14 December, 2020. I want to be clear, the
15 answer was more of a speculation that he
16 probably did have but there is no
17 indication of knowledge and I want that to
18 be clear on the record.

19 225. MS. LEVINE-POCH: Yes, that's fair.
20 Thank you.

21

22 BY MS. LEVINE-POCH:

23 226. Q. And so, did you again...if we're
24 just looking at 8a, again it says here that aspects
25 such as the due diligence, permits and zoning would

V. Lachance - 60

1 be explored. Did you know that JOG was concerned
2 about those aspects at this time?

3 A. Yes.

4 227. Q. Okay. I'm going to stop sharing my
5 screen here. I'm going to take you back now, back
6 to your affidavit and back to late 2020, we'll stay
7 in that time period. So, we're looking at paragraph
8 17, which is on page 130 of the record.

9 A. Yes, I have it.

10 228. Q. And so, you describe in that
11 paragraph that in the course of November and
12 December, 2020, you helped CAPP develop an
13 information database; is that correct?

14 A. That's correct.

15 229. Q. And you say that this was to
16 complement the work of JOG, right?

17 A. That's correct.

18 230. Q. And while CAPP and JOG worked
19 independently, the organizations shared information
20 and collaborated with one another, is that correct?
21 And that's with reference to the...you say that at
22 paragraph 35. So:

23 "...CAPP and JOG were independent
24 organizations but that they did share
25 information and collaborate..."

1 A. That's correct.

2 231. Q. Isn't it the case that in the wake
3 of the October 30 stakeholder session and after some
4 initial emails, you and CAPP founder Colleen Lynas,
5 sought out and contacted individuals with expertise
6 in the field of correctional facilities?

7 A. That's correct.

8 232. Q. And that was around November or
9 December, 2020?

10 A. That sounds right, yes.

11 233. Q. And these experts included Justin
12 Piche and Marie-Therese Voutsinos; is that correct?

13 A. Yes, it did.

14 234. Q. And Justin Piche is an associate
15 professor of criminology at the University of
16 Ottawa, right?

17 A. That's correct.

18 235. Q. And Marie-Therese Voutsinos, she's
19 an agrologist; is that correct?

20 A. That's correct.

21 236. Q. To your understanding, is an
22 agrologist a science-based professional that works
23 in the areas of agriculture, fire resources or the
24 environment?

25 A. That sounds right, yes.

V. Lachance - 62

1 237. Q. And is it your understanding that
2 Ms. Voutsinos did have some knowledge and experience
3 in the area of agriculture?

4 A. Yes.

5 238. Q. So, I'm going to share my screen
6 again. And I'm going to share my screen to Exhibit
7 I of the affidavit of Kirk Albert, so this is
8 already again, evidence in this proceeding. Do you
9 see that there?

10 A. I do.

11 239. Q. So, if we scroll down one page. I
12 am showing you a document that's titled, "An open
13 letter to the Honourable Lisa Thompson, Minister of
14 Agriculture, Food and Rural Affairs"; is that right?

15 A. That's correct.

16 240. Q. And the second line, it appears that
17 the title also includes:

18 "...Please stop the transfer and
19 destruction of landmark heritage farmland
20 to build a prison..."

21 Is that right?

22 A. That's what it says.

23 241. Q. And this letter, it's dated December
24 13, 2021, right?

25 A. Yes.

V. Lachance - 63

1 242. Q. I can scroll through this, but have
2 you see this letter before?

3 A. Yes, I have.

4 243. Q. Okay. And Kirk Albert, in his
5 affidavit, he has described this as a letter that
6 was sent by email to the Minister about the proposed
7 land transfer for the proposed prison; does that
8 suit your understanding?

9 A. To my knowledge, that's what
10 Marie-Therese did, yes.

11 244. Q. So, when I scroll down just to the
12 bottom of the letter on page 108, it appears that
13 this letter was signed by Marie-Therese Voutsinos;
14 do you see that?

15 A. I do.

16 245. Q. And from her signature, it looks
17 that she has a Bachelor of Science in biology, an
18 AGR accreditation, so I assume that that's related
19 to agriculture, and a Master of Science in also
20 something that relates to agriculture or agrology;
21 would you agree?

22 A. I do.

23 246. Q. And is this Marie-Therese Voutsinos,
24 is that the same person that you refer to as an
25 expert in your paragraph 14?

V. Lachance - 64

1 A. Yes, it is misspelled unfortunately.

2 247. Q. But it is the same name, is that
3 correct?

4 A. It is.

5 248. Q. So, I am going to take you back to
6 that paragraph, just back to your affidavit. So,
7 Marie-Therese and the other people that you list as
8 experts in paragraph 14, were advising CAPP and JOG
9 after the October 30, 2020 stakeholder session; is
10 that right?

11 A. Yes.

12 249. Q. And you were talking with these
13 experts and then you had another meeting with the
14 mayor on November 11, 2020; is that right?

15 A. If you permit, I'm just checking the
16 names of the people that I listed.

17 250. Q. No problem.

18 A. Because you refer to them all as
19 experts and if...

20 251. Q. I was referring to your wording, you
21 describe them in your affidavit as experts.

22 A. Yes. But then, I would have
23 considered them experts in the subject area of their
24 field, yes.

25 252. Q. So, after you spoke with these

V. Lachance - 65

1 individuals, you then had another meeting with the
2 mayor on November 11, 2020; is that right?

3 A. That's correct.

4 253. Q. And at that meeting, were you,
5 Colleen Lynas, the CAPP founder, Mayor Peckford and
6 Deputy Mayor McManaman and the municipality's chief
7 administrator and executive officer Gary Dyke, those
8 were the people in attendance; is that right?

9 A. That's correct.

10 254. Q. And is that the chief administrative
11 officer of North Grenville?

12 A. Yes, it is.

13 255. Q. And at that meeting, you say that
14 the CAO, so Mr. Dyke, intervened to state that the
15 current municipal zoning of the property could be
16 interpreted as allowing for the jail; is that right?

17 A. That's correct.

18 256. Q. And at that meeting, the mayor and
19 the deputy mayor indicated that they accepted what
20 the CAO said, right?

21 A. Which paragraph is this now?

22 257. Q. It's the last line of paragraph 16.

23 A. Yes. I see that. Yes, they did.

24 258. Q. So, from that meeting on November
25 11, 2020 you knew that the municipality was not

V. Lachance - 66

1 opposing the prison at that time; is that correct?

2 A. No.

3 259. Q. So, you knew at that time that the
4 mayor and the deputy mayor were accepting or they
5 said that "we're accepting what the CAO said",
6 right?

7 A. Yes.

8 260. Q. And you've said previously that you
9 had the understanding that the mayor and deputy
10 mayor at that time would be making the best of the
11 situation and that they would not be opposing at
12 that time?

13 A. At that time, being?

14 261. Q. November 11, 2020.

15 A. No.

16 262. Q. So, on November 11, 2020, to your
17 recollection, the deputy mayor and the mayor were
18 not opposing...or were they opposing the prison?

19 A. They were still describing the phase
20 as getting information and listening to residents.
21 They only confirmed that they would...like, publicly
22 confirm that they would not oppose the prison in
23 March of 2021. I mean, in conversations with us,
24 they said that they didn't like the prison but that
25 there was nothing that they could do about it.

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1 263. Q. So, if we're looking at paragraph
2 16, it says there, the last line:

3 "...that the mayor and the deputy mayor
4 indicated that they accepted the advice the
5 CAO was providing them..."

6 A. They accepted the advice from the
7 CAO, yes.

8 264. Q. And at that time, you did not go and
9 talk to a lawyer to find out if the CAO statements
10 were correct or did you?

11 A. No, I did not.

12 265. Q. And so, I'm just going to take you
13 quickly now as well to paragraph 57 of your
14 affidavit which is on page 140. And in that
15 paragraph you say that you:

16 "...relied on municipal council's advice to
17 the effect that there was nothing to be
18 done legally or otherwise to oppose the
19 project..."

20 Do you see that?

21 A. That's what...yes, that's what I
22 said.

23 266. Q. And the municipal council is not
24 your lawyer, right?

25 A. No.

V. Lachance - 68

1 267. Q. And neither is the CAO, correct?

2 A. That's correct.

3 268. Q. And you were free at any time to go
4 speak to a lawyer, is that right?

5 A. Yes.

6 269. Q. You were not required to rely on
7 what the municipal council or the CAO told you, is
8 that right?

9 A. Repeat that question, please?

10 270. Q. Yes. At any time, you were not
11 required to rely on any of the statements from the
12 municipal council or the CAO?

13 A. I wasn't required but I did rely on
14 it, yes.

15 271. Q. And you could have gone at any time
16 to get a legal opinion on the question of whether
17 you had grounds to oppose the proposed prison; is
18 that correct?

19 A. Well, that's not what I was doing at
20 the time. So, if you mean specifically at that
21 time, no. If you mean, does a person have the
22 ability to go speak to a lawyer at any time, well
23 then, the answer is yes.

24 272. Q. Okay. That's fine. And we know
25 that you did eventually go speak to a lawyer and get

1 legal advice, right?

2 A. Correct.

3 273. Q. And that happened after the June 20,
4 2022 election, correct?

5 A. That's correct.

6 274. Q. And once you got that advice, you
7 started this case, correct?

8 A. That's correct.

9 275. Q. And just for clarity, the case that
10 I'm talking about is the application for judicial
11 review that was filed on August 16, 2022?

12 A. Yes.

13 276. Q. Okay. And if it's okay with
14 everyone here I think, now would be a good time to
15 just take in a short break just to see if
16 there's...I believe that I've got him through all of
17 my questions, so I just want to make sure that
18 that's the case.

19 MR. EMARD-CHABOT: How much time would
20 you like, Shayna?

21 277. MS. LEVINE-POCH: Would 10
22 minutes...would that be okay with everyone?

23 MR. EMARD-CHABOT: Absolutely, yes.

24 278. MS. LEVINE-POCH: So, that would be
25 10:55 Toronto time or Ontario time, Mr.

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1 Lachance, I'm not sure what that is for
2 you, but 10 minutes.

3

4 --- upon recessing at 10:48 a.m.

5 --- A BRIEF RECESS

6 --- upon resuming at 10:56 a.m.

7

8 VICTOR LACHANCE, resumed

9 CONTINUED CROSS-EXAMINATION BY MS. LEVINE-POCH:

10

11 279. MS. LEVINE-POCH: So, Mr. Lachance, I
12 just want to thank you for your patience
13 today and I can conclude that, subject to
14 Mr. Emard-Chabot, those are all of my
15 questions today.

16

17 RE-EXAMINATION BY MR. EMARD-CHABOT:

18 280. Q. Thank you. I do have just a couple
19 of areas where I would like to go back on with you,
20 Mr. Lachance. The first is the transcript...well, I
21 can't call it a transcript, that's not what it is,
22 but the excerpts of quotes that you prepared from
23 the public meeting which is Exhibit A to your
24 affidavit, to the best of your knowledge or
25 recollection, how do you choose the excerpts that

V. Lachance - 71

1 are listed in Exhibit A?

2 A. By subject areas.

3 281. Q. And why would you have chosen those
4 specific quotes?

5 A. Because they spoke to the subjects
6 of the consultation, the transparency, that they
7 made commitments to answer questions, that it
8 was...you know, the process was described as a
9 journey. And so,, I organized them that way because
10 those were subjects of importance to me.

11 282. Q. And we've established through the
12 questions of Ms. Levine-Poch that we don't have the
13 full context for these excerpts, these are quotes
14 only. To the best again, of your recollection of
15 the audio that you listened to for the first meeting
16 and the other meetings you attended, do these quotes
17 accurately reflect the content of what was said?

18 A. Yes.

19 283. Q. In other words, is the text
20 accurate?

21 A. Yes, it is.

22 284. Q. And would you say that even without
23 their context, they are a fair representation and
24 again, this is in your view, but a fair
25 representation of what you heard?

V. Lachance - 72

1 A. Absolutely.

2 285. Q. Going back to the PowerPoint deck of
3 the November 26, 2020 meeting, and I don't have that
4 on my desktop at the moment, Ms. Levine-Poch, would
5 you mind sharing your screen and bringing that back
6 up for us?

7 MS. LEVINE-POCH: Sure. If you just
8 give me a second, I closed that.

9 286. MR. EMARD-CHABOT: Sorry.

10 MS. LEVINE-POCH: No problem, just give
11 me a moment. It's the November 26, 2020
12 deck?

13 287. MR. EMARD-CHABOT: Yes, the exhibit you
14 presented today, or added to the record
15 today.

16 MS. LEVINE-POCH: Okay, that's here.

17 288. MR. EMARD-CHABOT: Thank you. And could
18 you...I don't remember the page number but
19 the page that showed sort of the map or
20 schematic of the site with the acquisition
21 cost?

22 MS. LEVINE-POCH: Is it this one?

23 289. MR. EMARD-CHABOT: Yes, thank you. So,
24 page 13 of the slides.

25

1 BY MR. EMARD-CHABOT:

2 290. Q. Mr. Lachance, do you recall being
3 asked questions on this slide?

4 A. Yes, I do.

5 291. Q. And you did confirm that you saw
6 this slide during the meeting you attended on
7 November 26, 2020, correct?

8 A. I did.

9 292. Q. And there seemed to have been some
10 questioning regarding a statement that you say would
11 have been made by provincial officials, that one of
12 the reasons Kemptville had been selected was that it
13 would cost essentially zero dollars to the
14 government. Again, just to be clear, was a comment
15 to that effect made during the meeting?

16 A. Yes.

17 293. Q. And on this slide, is there any
18 information presented that in your view contradicts
19 that statement? Is there anything here where they
20 say the Province says it will have to pay something
21 to acquire the site?

22 A. No, it does not say that here.

23 294. Q. So, what does the first bullet say
24 under the "Site selection rationale"?

25 A. It says:

V. Lachance - 74

1 "...Already in government portfolio
2 (government policy)..."

3 295. Q. And the second bullet?

4 A. "Value for money".

5 296. Q. And the third bullet has a price
6 range, but that is for different options I would
7 gather?

8 A. Yes. When they spoke to this, my
9 understanding was that these were for the possible
10 costs of other properties that they might have
11 looked at.

12 297. Q. And what does the third bullet read,
13 Mr. Lachance?

14 A. It says:
15 "...Private land purchased, costs ranged
16 from \$10 million to \$40 million..."

17 298. Q. And there is no amount given for the
18 transfer of publicly owned lands on this slide, is
19 that correct?

20 A. There is not, that's correct.

21 299. Q. Okay, thank you. Thank you, Shayna,
22 we can stop the screen share, that's all I needed.
23 You were brought to your Exhibit B, Mr. Lachance,
24 which is the list of questions you submitted to the
25 November 26, 2020 public engagement session,

1 correct?

2 A. Yes.

3 300. Q. To the best of your recollection,
4 were any of those questions answered?

5 A. They were not.

6 301. Q. And why do you say that? Because
7 some information was clearly provided in November,
8 2020, some was provided a year later in 2021. Why
9 do you state or do you feel these questions have
10 remained unanswered? And I don't want to take you
11 through every single one, so knowing...

12 A. Well, because one, they never
13 responded to e directly. And by November, 2021 it
14 made sense to me to simply resubmit them because I
15 did not feel they had answered the question.

16 302. Q. And did you receive any direct
17 feedback on those questions after the November, 2021
18 session?

19 A. I did not.

20 303. Q. In your affidavit, you also...so,
21 I'm going to ask this, Shayna, let me know if you
22 agree that I can. There are similar lists of
23 questions that you've included provided by two other
24 community members, is that correct?

25 MS. LEVINE-POCH: I'll just add, he

V. Lachance - 76

1 wasn't asked about those.

2 304. MR. EMARD-CHABOT: Agreed. I figured
3 you would probably object but I thought I
4 would ask.

5

6 BY MR. EMARD-CHABOT:

7 305. Q. On the question of seeking legal
8 advice or exploring legal options more in-depth, Mr.
9 Lachance, you've been asked quite a few pointed
10 questions on this, but I would like to ask you a
11 more open question as to when did you first
12 seriously look into a legal recourse? So, first
13 question would be that, when did that work for you
14 begin?

15 A. June, 2022.

16 306. Q. So, right after or shortly after the
17 provincial election, would that be fair?

18 A. Yes, about three weeks after the
19 provincial election.

20 307. Q. And why did you not seek legal
21 advice before then?

22 A. Well, because to us it would not
23 have made sense, there were many reasons why we
24 didn't seek legal advice before then.

25 308. Q. And the main reasons would be what?

V. Lachance - 77

1 A. Well, the main reason would be that
2 we trusted the Province's process...

3 MS. LEVINE-POCH: I'll just interject
4 for a moment. I think we can allow one
5 more answer but it seems that this might be
6 supplementing information already in the
7 affidavit and that this has already been
8 spoken to.

9

10 BY MR. EMARD-CHABOT:

11 309. Q. Okay. So, can we agree just to ask
12 what the main reason would have been?

13 A. The main reason would have been that
14 we trusted the process and I guess we believed
15 government officials about that process and about
16 the commitments they made to the residents of North
17 Grenville. And there are other reasons obviously,
18 but...

19 310. MR. EMARD-CHABOT: But that would be
20 your main one? Okay. Those are all my
21 questions. Thank you.

22

23 -- upon adjourning at 11:07 a.m.

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| 7 | | | |
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| 14 | 2 | Article in North Grenville Times, | |
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| 18 | 3 | Document entitled, "Eastern Ontario | |
| 19 | | Correctional Complex Public | |
| 20 | | Engagement", dated November 26, 2020 | |
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I hereby certify the foregoing to be a true transcription of the above-noted proceedings held 1st DAY OF FEBRUARY, 2023, and taken to the best of ability and understanding.

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} Greg Vaughan
} Verbatim

TAB 7(A)



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Cancel the Proposed Construction of the Kemptville Prison



1,835 have signed. Let's get to 2,500!



At 2,500 signatures, this petition is more likely to get picked up by local news!

Natasha Niznik signed this petition

Carmel Collins signed this petition

Sign this petition

First name

Last name

Sarah Ciliberto started this petition to Doug Ford and 2 others



Sarah Ciliberto started this petition to Doug Ford and [2 others](#)

In August 2020, the Ford Government and MPP Steve Clark suddenly announced plans to build a 235-bed prison in Kemptville. There was no consultation with local residents or North Grenville council.

The location of the jail would be close to our Old Downtown Kemptville which we have worked so hard at building up and getting as much traffic in as possible to help our small businesses. This is also close to residential and school areas which is very concerning for much of our community.

Kemptville is a town that we are proud to live in, it's a place where we feel safe and a great place to invest and grow our families... or so we thought. By allowing this construction to begin, the investment in our town will very likely decrease. People may decide to leave this town and move somewhere else where they don't have to worry about living in a town with this kind of facility. Businesses may suffer due to a reduction in people wanting to visit the area and most importantly, the parents of our up-and-coming youth may live with an increase in anxiety at the thought of a prison being so close to home. Our mayor wants to increase tourism in Kemptville but this new image will definitely affect that plan.

We're asking Doug Ford's government to find a real solution to our deeply troubled incarceration system and recognize that tearing down an old jail and

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https://www.change.org/p/doug-ford-cancel-the-proposed-construction-of-the-kemptville-prison

ProView Westlaw Canada EWRS Elite Webview CanLii IFIS login OPS SCJ filing Rules of Civil Proce... Caselines

We're asking Doug Ford's government to find a real solution to our deeply troubled incarceration system and recognize that tearing down an old jail and building a new one is simply a façade that will negatively affect the businesses and people of Kemptville, Ontario.

Two grassroots organizations, the Coalition Against the Proposed Prison (CAPP) and the Jail Opposition Group (JOG), formed shortly after the announcement. Visit the CAPP website to learn more about this issue: <https://www.coalitionagainstproposedprison.ca/>

The Ontario government plans to pave over farmland, part of the former Kemptville Agricultural College, to build the prison. On August 15, 2022, two Kemptville residents (members of CAPP and JOG) filed a Notice of Application with the Divisional Court of Ontario for a Judicial Review of the Ontario government's proposed prison plan. The primary ground for this Judicial Review is that the provincial government broke the law by not abiding by its own Provincial Policy Statement and the local Official Plan, as it is obliged to do under the Planning Act. The applicants are challenging the legality of the decision to build a prison in Kemptville and seeking a Prohibition Order which will save the farmland and stop the build. Like any legal proceeding, the Judicial Review will cost money. A GoFundMe has been established by CAPP to raise money toward the legal costs of this important initiative. Please help achieve this goal by clicking the link below to donate: gofund.me/13601323

Please add your name to [CAPP's NEW email zap](#) to stop the transfer of this business farmland to the Ministry of the Solicitor General. The legal costs...

1:10 PM
02/01/2023

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https://www.change.org/p/doug-ford-cancel-the-proposed-construction-of-the-kemptville-prison


ProView Westlaw Canada EWRS Elite Webview CanLii IFIS login OPS SCJ filing Rules of Civil Proce... Caselines

Please add your name to [CAPP's NEW email zap](#) to stop the transfer of this heritage farmland to the Ministry of the Solicitor General. The land was transferred earlier this year to the government's Real Estate Portfolio under the Ministry of Public and Business Service Delivery, despite repeated requests to the Minister of Agriculture, Food and Rural Affairs to meet her obligation to protect farmland and stop the transfer from her own ministry.

The fight to stop the destruction of this land is far from over. Please click the link below to complete the email zap:

coalitionagainstoproposedprison.ca/email-your-mpp

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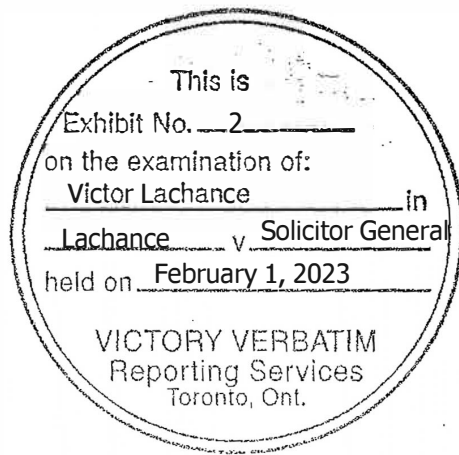
Updates

Thank you and Update!

On behalf of the CAPP team and myself, we wanted to share a big THANK YOU for all of your support so far in the fight to stop the construction of

1:11 PM
02/01/2023

TAB 7(B)





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NEWS ARTICLES EDITORIAL

A better vision for Kemptville

Guest Editorial

By NG Times - December 9, 2020

362 0



by Victor Lachance

If you're like me, when the provincial government announced its plan for a prison in Kemptville, you were curious about its implications on our small community. Some may have given it little thought; others may have liked the idea, and still others know they

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**BUILDING CONFIDENCE,
 DISCOVERING POTENTIAL**

A better vision for Kemptville

Guest Editorial

By **NG Times** - December 9, 2020

by Victor Lachance

If you're like me, when the provincial government announced its plan for a prison in Kemptville, you were curious about its implications on our small community. Some may have given it little thought; others may have liked the idea, and still others knew they hated the idea. But I think none of us have been given complete and accurate information about the government's plan. And that's not good for any of us.

As I've gone through the details of a stakeholder session (Oct. 30), a public engagement session (Nov. 26), a justice sector stakeholder session (Nov. 27), conversations with the Mayor and Deputy Mayor, I've now moved from being curious to being frustrated, if not outright annoyed, at the prison situation. From the province, I do not see the kind of transparency and response to questions that warrant having faith in their expressions of best intentions. From Steve Clark, I do not see anything other than a sense of accomplishment at simply getting the province to speak about their plan.

From our Municipal Council, I do not see the kind of balanced approach between working with the province while publicly responding to Kemptville residents' concerns, including the evidenced-based reasons for not expanding the prison system. It seems to me as if Council has decided to be cheerleaders for the province's plan, which, in my view, then requires countervailing measures to have a balanced public debate. I have therefore joined a group called CAPP – the Coalition Against the Proposed Prison – in an effort to ensure that Kemptville residents are as informed as possible about the prison, and that their concerns continue to be heard.

Before we get to claims of NIMBY-ism, there is a simpler argument: more prisons should not be in anyone's back yard. For example, the Ontario prison population at any given time is made up of between 65% to 70% of people on remand – meaning they're awaiting their day in court or sentencing. The province has long acknowledged this problem with promises to reduce that number. Building more prisons is simply an acknowledgement of the failure to do so. Why spend up to 250 million of taxpayer dollars to build and then operate a prison when you could save money by reducing the remand population, and spend that money on things like our education system, health care, or nursing homes?

When they say “we need prisons and they have to go somewhere”, they are basically saying “we run the prison system so badly that we have no choice but to build more prisons”. Well, maybe they have no choice, but we do. We should hold them accountable for a badly run incarceration system that is both expensive and solvable. And the solution is not to continue to disproportionately incarcerate indigenous people, Black people, poor people, and addicted people. The solution is not to add another piece to the broken system.

The proposed prison wouldn't be in our backyard, it would be in our home. For our small community to accommodate a prison, Kemptville would have to change. We'd have to become a prison town. Call it whatever we like, it will simply be known as the Kemptville Prison. And if that's so good for a small community like ours, why are there no other communities out there clamouring for a prison?

Then, on top of the lack of detailed information, there's what appears to be disinformation – which includes making claims without evidence to back them up. The province claims that their plan will create jobs and be a boon to our local economy. Where's the evidence? Those responsible use vague assurances that they will work with the Municipality to, basically, make the best of a bad situation. Meanwhile, our Municipal Council has chosen to say that the prison is being built within North Grenville's taxpayer population of 17,000. You might as well say that it's being placed on 40 acres within the province's 12 million acres of farmland. It's true, but it's disingenuous. The proposal is to place it in Kemptville, and its population is not 17,000.

Here's a theory: there's an election coming up in 2022 and the provincial government announced 500 million dollars for the prison system. Now the Ministry of the Solicitor General has to come up with a plan in a hurry, as evidenced by their lack of any specific information. Sure, the plan is for a nicer model of prison – not that hard to do when you look at every other prison – but that's just designing a room instead of repairing the house. It seems to me that the choice to build the prison here is not about the site, or the prison population, and it's not about repairing a broken system. It seems to be all about getting the money spent as quickly as possible, instead of taking the time to develop a good plan. We deserve better.

This is about doing things better: a better use of the arable land, a better use of existing prisons by reducing the remand population, a better use of money, a better way for economic development, a better use of the International Plowing Match investment, a better plan for the future of Kemptville.

📊 Post Views: 10

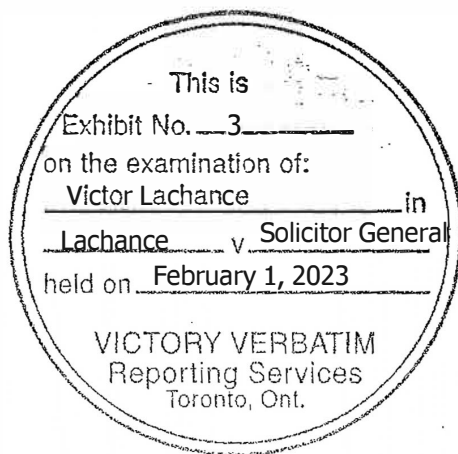
NG Times

<https://ngtimes.ca>

This article was either written by the North Grenville Times staff, or submitted to us for publication.



TAB 7(C)



Eastern Ontario Correctional Complex Public Engagement

Date: November 26, 2020

Land Acknowledgement

Protocols and Technology

| Zoom | Expected Conduct | French Translation |
|--|--|---|
| <ul style="list-style-type: none"> • All participants' have been muted and will be un-muted by the host for the Q&A period. • By hovering your mouse over the top of your screen you will see 'View options'. Click this button to change your view (i.e. exit full screen, side-by-side mode) • Please try to resolve any IT issues you may be having on your own using Zoom FAQ (see 'Chat' for link) • SolGen has made available technical support that can be reached at 343-801-3088 OR 343-805-0810 | <ul style="list-style-type: none"> • Everyone is expected to conduct themselves in a respectful and appropriate manner. • Participants who conduct themselves in a disruptive or inappropriate manner (e.g. coarse language, disrespectful comments) will be muted by the facilitator and will receive one warning. • Continued inappropriate behaviour could result in the facilitator muting the individual and moving on to other participants and, in a worst case scenario, expulsion from the engagement session. | <ul style="list-style-type: none"> • The session and related material will be presented in English. • Session participants can ask questions and provide feedback in French. The facilitator will translate questions, comments and feedback. |

Protocols and Technology

Questions by Phone

- ‘Raise your hand’ on the phone by pressing *9 to indicate you have a question/comment.
- Individuals on the phone will be identified by the last four digits of their phone number.
- There is a two-minute time limit for verbal questions/comments.

Questions by PC/Mobile Device

- The ‘Chat’ function will be enabled at the start of the Q&A period.
- Send your questions/comments to the individual identified in the Chat as ‘Questions (host)’. This individual can be selected using the drop-down menu above the chat box.
- Type your question/comment in the chat box **OR** type ‘I have a question/comment’ to ask your question/provide a comment verbally (there is a 2-minute time limit for verbal questions)
- Send your question/comment to the host by hitting ‘enter’

| Name | Title |
|-----------------------|---|
| Ali Veshkini | Associate Deputy Minister |
| Karen Ellis | Assistant Deputy Minister – Institutional Services (IS) |
| Renu Kulendran | Assistant Deputy Minister – Community Services (CS) |
| Lynn Norris | Assistant Deputy Minister – Modernization (MOD) |
| Maria Duran-Schneider | Chief Administrative Officer (CAO) – Corporate Services (CSD) |
| Mena Zaffino | Assistant Deputy Minister – Operational Support (OS) |
| Angelo Gismondi | Senior Vice President – Infrastructure Ontario (IO) |
| Lisa O’Brien | Acting Executive Director – Institutional Services |
| Robert Greene | Director, Facilities and Capital Planning (CSD) |
| Daniel Kielly | Manager, Major Projects (CSD) |
| Nick Liantzakis | Manager, Major Capital Projects (IS) |
| Rob Bauman | Project Lead (IS) |

Purpose of this Engagement Session

- Provide a preliminary overview of the vision for the new Eastern Ontario Correctional Complex
- Listen to your perspectives and provide additional information as necessary
- Identify outstanding questions for the ministry to consider
- Begin the engagement journey (which will continue over the next several years)



Agenda

| Item | Presenter(s) | Time |
|--|---|--|
| 1. Introduction and Overview of Justice Sector Transformation/ Correctional Services | <ul style="list-style-type: none"> Lynn Norris and Karen Ellis | <ul style="list-style-type: none"> 20 minutes |
| 2. Project Description | <ul style="list-style-type: none"> Karen Ellis, Ali Veshkini and Angelo Gismondi | <ul style="list-style-type: none"> 40 minutes |
| 3. Break | <ul style="list-style-type: none"> N/A | <ul style="list-style-type: none"> 10 minutes |
| 3. Community Impact | <ul style="list-style-type: none"> Karen Ellis and Renu Kulendran | <ul style="list-style-type: none"> 30 minutes |
| 4. Next Steps | <ul style="list-style-type: none"> Angelo Gismondi and Ali Veshkini | <ul style="list-style-type: none"> 15 minutes |
| 5. Qs and As | <ul style="list-style-type: none"> All | <ul style="list-style-type: none"> 65 minutes |

Justice Sector Transformation

Ontario is making strategic investments in public safety and working to transform the criminal justice system, including support for crime prevention and successful reintegration of individuals into society.

The government's plan for Justice Sector Transformation includes:

- Reducing the number of individuals coming into custody through targeted intervention and by addressing the root causes of crime.
- Improving efficiency, integration and accessibility across the system – from police to courts to corrections – through innovative technology.
- Modernizing adult correctional institutions by renovating outdated infrastructure and building new correctional facilities, helping to contribute to economic recovery by creating new jobs and increased spending locally.

This will allow us to deliver high-quality services, to support more effective outcomes for individuals who interact with the justice system and improve operating costs over the long term, all while protecting the safety of our staff and the public.

Eastern Ontario Correctional Complex

A new correctional complex in Kemptville is being planned to address issues of overcrowding, and create new spaces for the delivery of mental health services, programming and staff training.

This new facility will help to transform the corrections system in Eastern Ontario and improve outcomes for staff and individuals that come into custody, while maintaining public safety.

Collaboration Across Sectors

Ontario is adopting an integrated approach to help prevent vulnerable individuals from coming into contact with the justice system and improving outcomes for those who do.



Correctional Services Overview



Institutional Services

- Currently operate 25 adult institutions across the province
- Average daily count of approximately 6,500 inmates
- Over 6,300 staff



Community Services

- 120 Probation & Parole Offices across the province
- Responsible for an average of approximately 40,000 offenders per day
- Over 1,200 staff



Operational Support

- Provides client-centric services and supports to Institutional Services and Community Services in delivering health care, food services and programming to inmates and offenders, and being responsive to the diverse population including remanded inmates, women, black and Indigenous men and women.



Our staff **live and work** in and near the communities that they **serve and protect**

Project Description

Eastern Ontario Correctional Complex

| Item | Description |
|-------------------------|---|
| Location | <ul style="list-style-type: none"> • Kemptville, Ontario |
| Facility Profile | <ul style="list-style-type: none"> • 235 beds • High security construction (bricks and mortar) |
| Inmate Profile | <ul style="list-style-type: none"> • Accommodate male and female inmates • Predominantly minimum and medium security classified inmates |
| Functional Space | <ul style="list-style-type: none"> • Single cell occupancy • Program and cultural spaces • Day area (security furniture, television, telephones – where appropriate) • Appropriate level of accommodation and medical/mental health services • Regular access to outdoor spaces • Open visitation spaces • Improved professional development space for staff • Video court suites |
| Project Delivery | <ul style="list-style-type: none"> • Public Private Partnership (P3) – design, build, finance and maintain |

Site Selection

Site selection rationale:






- Already in government portfolio (government policy)
- Value for money
- Private land purchase costs ranged from \$10M - \$40M
- Appropriate size to accommodate new facility
- Within catchment area of existing facility in Ottawa
- Adjacent to the highway 416
- No development impediments (i.e. liens, 3rd party rights)
- Staff home locations in proximity to new location
- Build smaller, more efficient and manageable sized facility



Notes:

- Conceptual design greyed out due to commercial sensitivities.
- Plan is conceptual and subject to further studies, investigations and approvals prior to final placement on property.

LEGEND

| | |
|---|-------------------|
|  | PROPOSED BUILDING |
|  | FLOOD PLAIN |
|  | LANDSCAPING |
|  | PROPERTY BOUNDARY |
|  | CREEK |

Design Features: Medical Services

Institutional Area: Medical Services

Goal: Access to quality healthcare

Current State



Future State*



*This photograph is an illustrative example of the future state and may differ once constructed to reflect and accommodate ministry specific security and design features.

Design Features: Inmate Living Units

Institutional Area: Inmate Living Units

Goal: Normalized environment with open space & access to natural light

Current State



Future State*



*This photograph is an illustrative example of the future state and may differ once constructed to reflect and accommodate ministry specific security and design features.

Design Features: Inmate Outdoor Space

Institutional Area: Inmate Outdoor Space

Goal: Access to an outdoor space with green space & natural light

Current State



Future State*



*This photograph is an illustrative example of the future state and may differ once constructed to reflect and accommodate ministry specific security and design features.

Local and Economic Benefits

BENEFITS DURING CONSTRUCTION

1

Hundreds of direct/indirect local jobs created during the construction of the new facility

2

Buying local (e.g., coffee shops, hospitality, etc.)

3

Subcontracting of local trades (e.g., gravel, etc.)

ONGOING BENEFITS

4

Additional staff to operate new facility

5

Buying local (e.g., meals, hospitality, etc.)

6

Other subcontracting opportunities (e.g., grass cutting, snow removal, etc.)

7

Potential positive real estate impact

Reported Impact of Infrastructure Investment

535



\$1 spent in public infrastructure creates a return on investment of \$2 to \$4



\$1 billion in infrastructure spending supports 60,700 new jobs over one year and increases GDP by \$1.14 billion



\$1 million in cycling projects supports up to 11.4 jobs over one year

Source: Data presented to Standing Committee on Finance and Economic Affairs by various witnesses. Graphic by Legislative Research.

CASE STUDIES

South West Detention Centre

- At the peak of construction in Windsor for the South West Detention Centre, there were approximately 200 workers employed and 80% of those were local to the surrounding area.

Durham Region Courthouse P3 Project

- Estimated that about 1,500 people will conduct business daily in the new facility, bringing increased demand for restaurant meals, office space and other services in downtown Oshawa.
- Courthouse employees and visitors will bring an estimated \$7 million per year in additional spending to the City of Oshawa. (Extract from Value for Money Assessment).

LEED Design Standards

- The new Eastern Ontario Correctional Complex is working toward being designed and built to meet the Canada Green Building Council's Leadership in Energy and Environmental Design (LEED) Silver standards.

LEED Benefits

Originated in 1998, LEED building benefits are focused around three dimensions of sustainability

- Reduction in capital and operating costs such as right sizing equipment and improving utility & water performance
- Improve occupant comfort and decrease potential liability resulting from (e.g.) poor indoor air quality or toxic materials
- Substantial reduction or elimination of negative environmental impacts

Example: Past P3 project to achieve LEED Silver certification

South West Detention Centre (Windsor)

Institutional Area: Entrance and Public Waiting Area



Class Environmental Assessment

A Class Environmental Assessment (EA) will be conducted for the Eastern Ontario Correctional Complex project (targeted to occur in 2021)

What is a Class EA?

- A structured process to identify, predict and evaluate the potential environmental effects of a Public or Government project resulting in recommendations to mitigate the project impacts or issues identified.

Which stakeholders are consulted?

- Facility Staff, Authorities Having Jurisdiction (municipalities, conservation authorities, Ministry of Environment, Conservation and Parks, Ministry of Natural Resources (as applicable)), local Health Boards, Local Indigenous Communities, Immediately surrounding neighbours and/or businesses.

What is the timeline for a Class EA?

- A Class EA can commence when there is enough information available to develop a detailed description of the project undertaking.
- A typical Class EA takes approximately **6 months** to complete.

What is the process for a Class EA?

STEP 1:

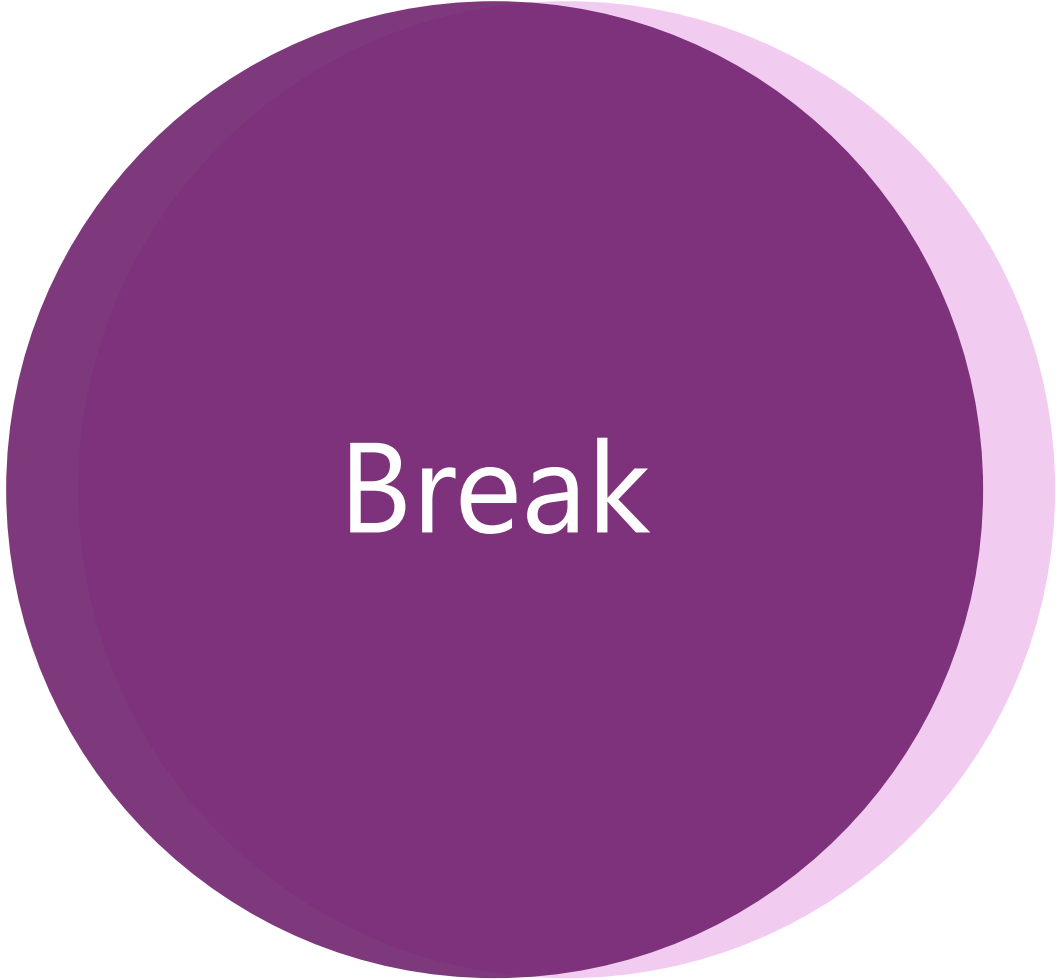
- A letter with a detailed description of the project undertaking is shared with project Stakeholders.
 - This begins a consultation process that lasts a mandatory 30 calendar days for all Stakeholders to provide comments.

STEP 2:

- All comments received are reviewed and mitigation measures are developed.

STEP 3:

- This information is incorporated into a Consultation & Documentation (C&D) report which is posted on Infrastructure Ontario's website for public review and consultation for a period of 30 calendar days.
 - If no public comments are received at the conclusion of the 30 calendar day period, the Class EA is considered complete and a notice of completion is issued).



Community Impact

Community Implications

The new Eastern Ontario Correctional Complex will have a positive impact on offenders, staff and for the region.

Help address capacity pressures throughout the Eastern region



Ensure that frontline staff have the modern facilities to do their jobs safely and effectively



Expand our supports for inmates with mental health issues and create additional space for programming and rehabilitation



Generate new jobs and support local businesses within the community





SAFETY AND SECURITY

The Eastern Ontario Correctional Complex will be safe and secure with a focus on rehabilitation and programming for remanded and sentenced inmates.

- The institution will be built to the highest security standards, including a secure-perimeter fence, monitored using the most advanced electronic-security technology.
- When outside of the institutional perimeter, inmates will be supervised by multiple correctional officers, specially trained in community escorting. With the implementation of a provincial security risk assessment tool, the ministry will be focusing efforts on rehabilitation and programming.



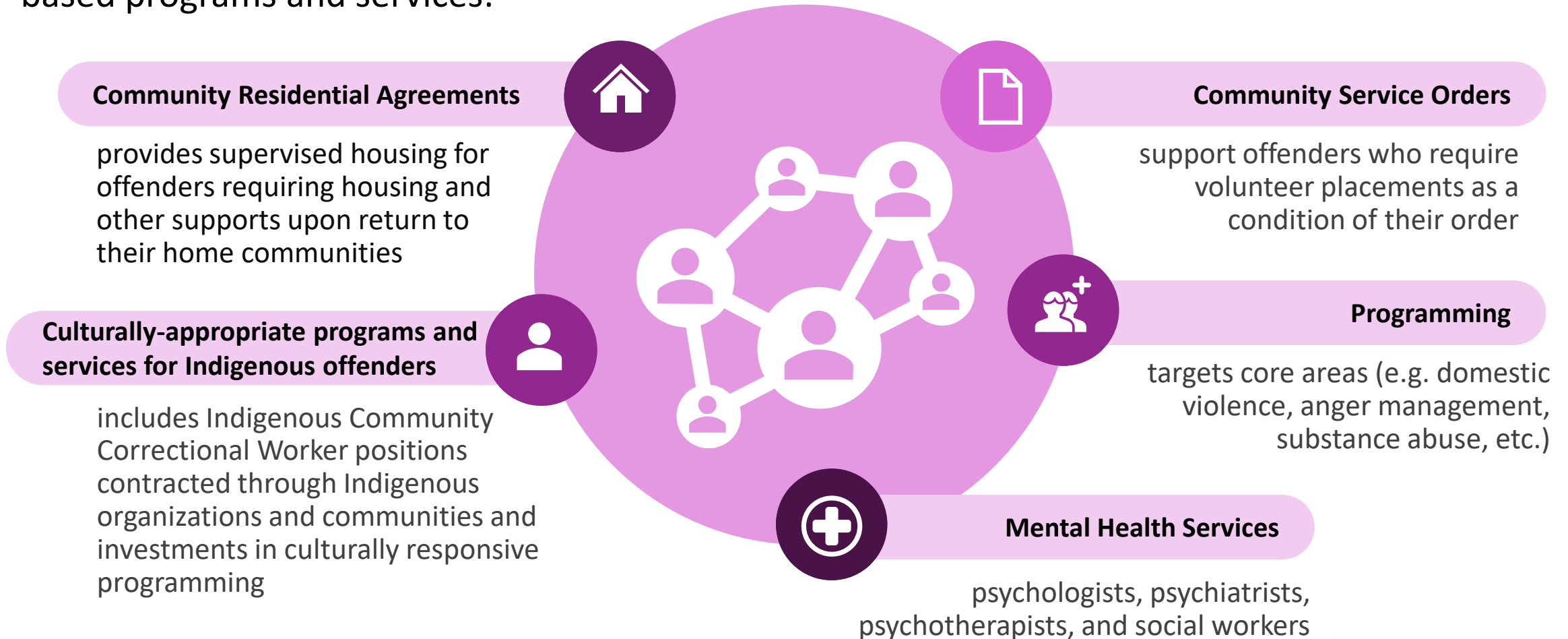
TRANSPORTATION

As these projects move through the design process, the ministry will consult with stakeholders, including affected police services.

- Police services are responsible for court security and for transporting inmates to and from court appearances.
- Under the *Court Security and Prisoner Transportation Program*, the ministry allocates funding to municipalities to offset costs associated with both court security and inmate transportation to and from courts.
- As part of ongoing work to modernize the criminal justice system, the increased use of remote video technology for court appearances will continue to reduce the need to physically move in-custody individuals between the institution and the courthouse.

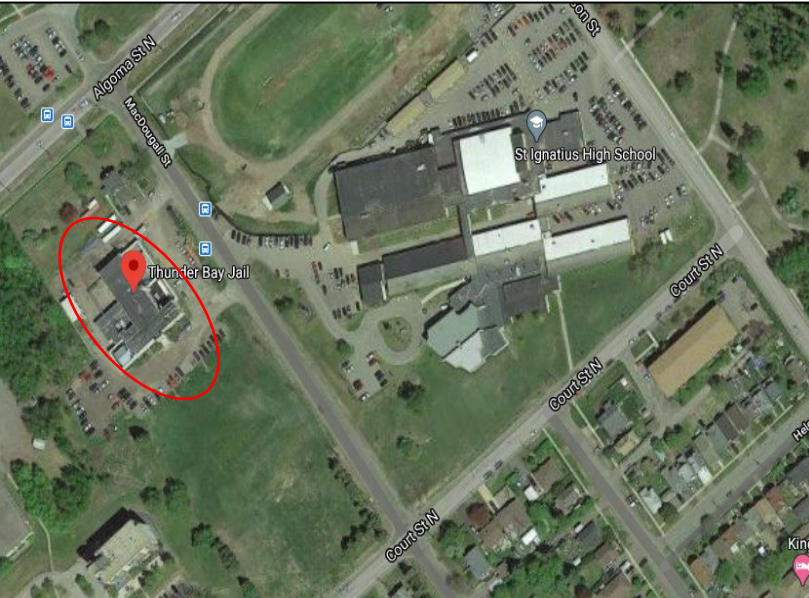
Community Reintegration Supports

The ministry works with community rehabilitation services providers across Ontario to support the reintegration of inmates and offenders and provides funding for the following community-based programs and services:



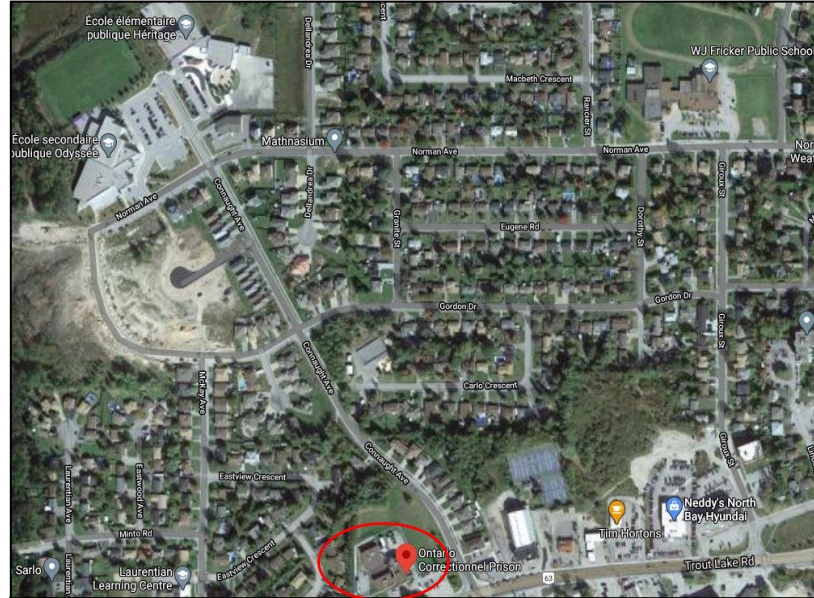
Site Comparison

Thunder Bay Jail



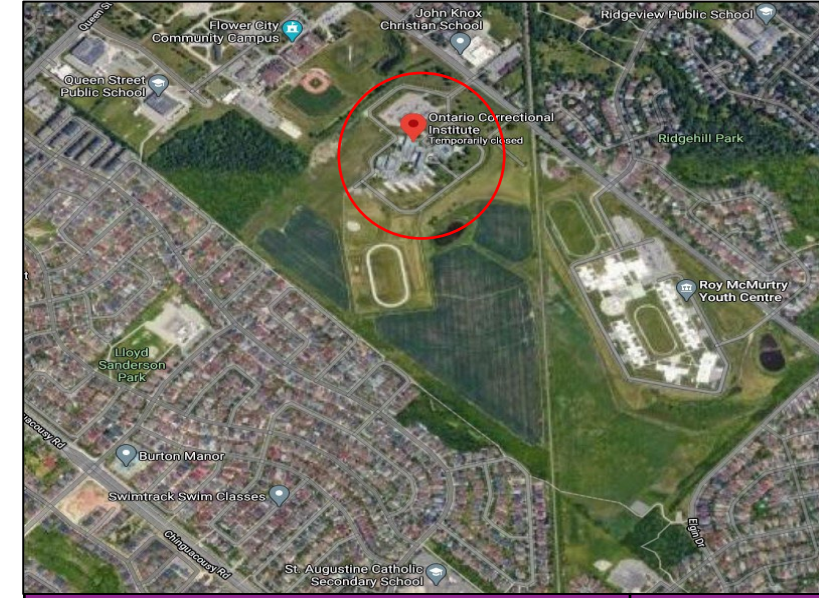
| Item | Description |
|-----------------------------|-------------|
| Year Opened | 1928 |
| Security Level | Maximum |
| # of Beds | 145 |
| 1) St. Ignatius High School | 0.2km |

North Bay Jail



| Item | Description |
|--|-------------|
| Year Opened | 1929 |
| Security Level | Maximum |
| # of Beds | 111 |
| 1) École secondaire publique Odyssee | 0.6km |
| 2) École élémentaire publique Héritage | 0.7km |
| 3) WJ Fricker Public | 0.7km |

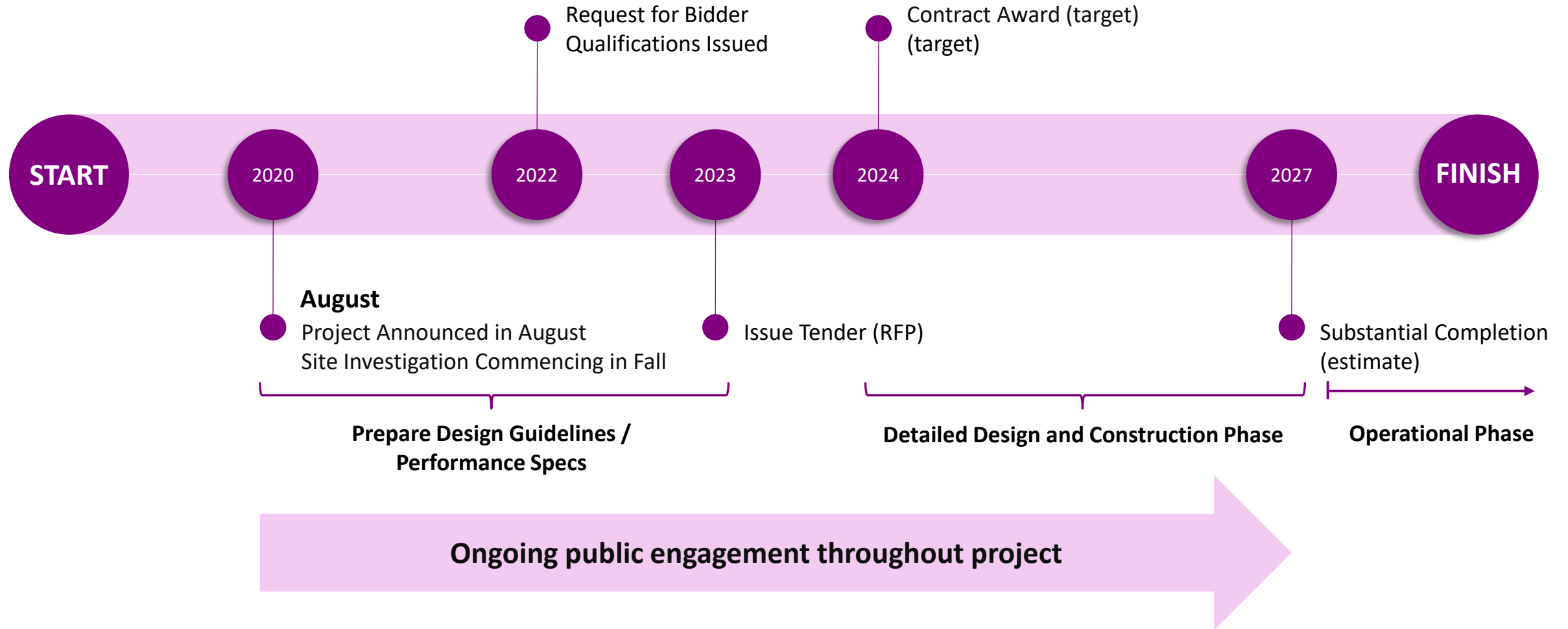
Ontario Correctional Institute (Brampton)



| Item | Description |
|---------------------------|-------------|
| Year Opened | 1973 |
| Security Level | Medium |
| # of Beds | 228 |
| 1) John Knox Christian | 0.3km |
| 2) Queen Street Public | 0.5km |
| 3) Ridgeview Public | 0.8km |
| 4) St. Augustine Catholic | 1.2km |

Next Steps

Project Timelines



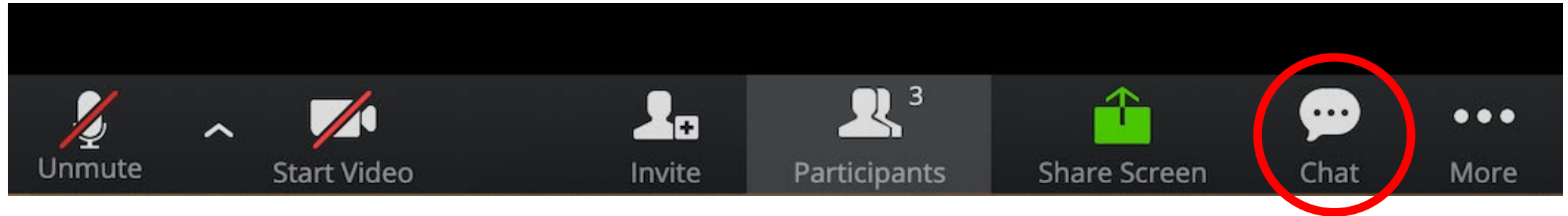
Due Diligence Activity Timelines

The following site works are required to inform the design of the facility on the property

| Discipline | Anticipated Start Date | Approximate Duration |
|--|------------------------|----------------------|
| • Planning / Site Servicing / Transportation Reporting | • Fall 2020 | • 3 months |
| • Land Survey / Topographic Plan | • Fall 2020 | • 2.5 months |
| • Planning Applications | • Winter 2021 | • 12 to 18 months |
| • Geotechnical / Environmental Drilling | • Winter 2021 | • 3.5 months |
| • Designated Substance Surveys | • Winter 2021 | • 2 months |
| • Archaeological Investigation | • Spring 2021 | • 3.5 months |
| • Natural Heritage Survey | • Spring 2021 | • 1.5 months |
| • Class EA | • Late-Spring 2021 | • 6 months |

Questions?

Zoom Tips



- To ask questions, please use the chat function and type your question.
- Hover your mouse over your screen and click the chat button on the bottom toolbar.
- Type your question directly into the chat box or type the word 'Question' and someone will unmute you when we are ready for you to speak.
- You will receive a notification prompting you to unmute yourself. Click the 'Unmute' button.

The host would like you to unmute

Stay Muted

Unmute

Thank you

Thank you for wanting to find out more about the project.

We will continue to engage throughout the project.

If you have any questions or comments please reach out to us by email.



The province will continue to engage with the public throughout the journey to make this new facility a reality



Opportunities to tour the facility will be available prior to operationalization (i.e., open house)



Stay in touch by contacting us at MCSCSfeedback@ontario.ca

TAB 8

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N

VICTOR LACHANCE and
KIRK ALBERT

Applicants/Responding Parties

- and -

SOLICITOR GENERAL OF ONTARIO and ATTORNEY GENERAL OF ONTARIO

Respondents/Moving Parties

ANSWERS ON WRITTEN CROSS-EXAMINATION

I, Lisa Gallant, of the Town of Kemptville, in the Municipality of North Grenville, AFFIRM that the following answers to the questions dated January 27, 2023 submitted by the Moving Party, the Solicitor General of Ontario, are true, to the best of my knowledge, information and belief:

1. Yes.
2. My preference is that it would be located elsewhere. I have seen nothing from the province to indicate that this site is appropriate for a correctional facility, especially considering their refusal to be transparent about the economic burden on this small rural town and the criteria used to select the site.
3. Going by the information released, it appears that it is not in fact comprehensive, regardless of the missing 74 pages. A comprehensive review would include an evaluation matrix with strengths and weaknesses of each site, an in-depth comparative analysis, impact analysis on surrounding properties and the town itself, ie. any documentation that shows positive/negative contributions to the existing community in economical, physical, and social terms, feasibility studies and environmental considerations and site investigation reports. None of these are included and there are no legitimate reasons to withhold that information.

4. Yes.
5. Including the Kemptville site, there are 39 properties included in the release package. The same package indicates “over 38 properties were assessed” It appears that there was a cursory assessment however the “chart” contains 4 properties, with the Kemptville site clearly showing that it is not a preferred location, comparatively speaking. The chart also details criteria for the Kemptville site differently than others in the list of 38 properties.
6. I am not an expert witness.
7. Yes.
8. No, that is not the presentation used at the November 2020 information session.
9. No. The request was made on November 27, 2020, then subsequently passed on to the Ministry of the Solicitor General, as the “Ministry (who) has custody and control of the records”, on December 10, 2020. Despite this transfer, in an email dated May 27, 2022, SolGen suggested making a FOI request to Infrastructure Ontario, even though they were the institution named in the original request.
10. I agree that it would take time, but not 7 months (for the initial release), another 11 months for the secondary release and an additional 6 months for the final denial of records, the latter coming after the FOIP coordinator indicated there were additional records she would be releasing.
11. Yes. Without knowing what the withheld documents are it is not possible to opine on the validity of the reasons.
12. Yes.
13. Yes, the number of undisclosed pages is identified. They are also identified in the Supplemental Decision Letter dated October 5, 2022 and include some email communications not initially identified.
14. Yes.
15. The appeal is at the adjudication stage with IPC. I have not yet received a notice of inquiry which is the initial step in adjudication.

Affirmed by Lisa Gallant of the Town of Kemptville, Municipality of North Grenville, in the Province of Ontario, before me at the City of Ottawa, in the Province of Ontario, on February 3rd, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Lisa Gallant (Feb 3, 2023 15:33 EST)

LISA GALLANT

TAB 9

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N

VICTOR LACHANCE and
KIRK ALBERT

Applicants/Responding Parties

- and -

SOLICITOR GENERAL OF ONTARIO and ATTORNEY GENERAL OF ONTARIO

Respondents/Moving Parties

ANSWERS ON WRITTEN CROSS-EXAMINATION

I, Lisette Major, of the Town of Kemptville, in the Municipality of North Grenville, AFFIRM that the following answers to the questions dated January 27, 2023 submitted by the Moving Party, the Solicitor General of Ontario, are true, to the best of my knowledge, information and belief:

1. Yes.
2. Yes.
3. The website went public on December 1, 2020, but it took me a little over a month to build it. And yes, I do manage the website.
4. I can't really agree with this description of the website in that way. The website was set up to provide information to the public about the issues surrounding the proposed prison. But it wasn't originally set up to specifically garner opposition to the prison; for example our public information sessions were open to everybody, whether for or against or undecided.
5. Yes. I began to produce videos of an advocacy nature starting in the fall of 2021.
6. I have received a clarification that this question is actually about video #11. Video #11 is a clip of the presentations by Cathy Robinson and Lydia Dobson from the Ottawa

Elizabeth Fry Society at CAPP's public information session on Feb 2, 2021. This video features the Executive Director and a board member of the Society speaking about (in their words) the criminalization of women, the supports they need, the failed jail system, the conditions in jails, what the Society does to support women in jails and the need for alternatives to incarceration. The introduction gives both Cathy Robinson and Lydia Dobson's bios, including Lydia's volunteer work with the OCDC hotline, but the video is about what the Society knows about Ontario jails.

7. No, in February 2021 I wasn't having any communication with anyone for the purpose of getting any legal knowledge or legal experience related to the proposed correctional facility.
8. It looks familiar, but because I did not receive copy of the presentation when I requested one from SolGen, I can't be certain. Here is the response I received from Lise Ledoux from the Ministry of the Solicitor General on November 25, 2021 after I requested a copy of the presentation:


*"We are unable to share the presentation in its current format as such SOLGEN staff are working diligently in doing so. As soon as it's available, we will share it as stated by Associate Deputy Minister Veshkini.
Thank you for your patience and have a great day!"*

Unfortunately she never did send me a copy.

9. Yes.
10. Yes, I was looking for the reasons why these sites were rejected.
11. Yes
12. No, I would not agree. I had a question about preserving the farm buildings that are used for farming, on the proposed prison site. My question was referring to all the farm buildings as well as the Barr arena.
13. Yes, I acted as the coordinator in the sense that these individuals were resorting to FOIs for information and they were interested in knowing the progress on other people's FOIs to different departments. My main function as coordinator therefore was to produce and maintain a record of the 14 FOIs known to me and their progress through the FOI system, based on information provided by the applicants.
14. Actually, 5 were directed to either a school board, the hospital or the municipality of NG in order to see if SolGen had shared any information with those organizations.

15. Of the remaining 9 FOI requests, 8 were directed to the Ministry of the Solicitor General and/or Infrastructure Ontario, and 1 was directed to the Ministry of Agriculture, Food and Rural Affairs.
16. No, that would be incorrect. Most of the people who made the 9 requests are not members of CAPP.
17. As the chart of Exhibit C indicates my FOI is about planning, site servicing and transportation. I am now in the adjudication phase of my appeal.

Affirmed by Lisette Major in the City of Albufeira, in Portugal, before me at the City of Ottawa, in the Province of Ontario, on February 3rd, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits



Lisette Major (Feb 3, 2023 20:03 GMT)

LISETTE MAJOR

Court File No.: DC-22-2831

VICTOR LACHANCE AND ALBERT KIRK

v.

SOLICITOR GENERAL OF ONTARIO AND ATTORNEY
GENERAL OF ONTARIO

Applicants/Responding Parties

Respondents/Moving Parties

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(Motion to Dismiss)

MINISTRY OF THE ATTORNEY GENERAL

Crown Law Office – Civil
720 Bay Street – 8th Floor
Toronto, ON M7A 2S9

Susan Keenan, LSO #50784Q

Email: Susan.Keenan@ontario.ca
Tel: 416 898 1301
Fax: 416 326 4181

Shayna Levine-Poch, LSO #815150

Email: Shayna.Levine-Poch@ontario.ca
Tel: 416 895 9333
Fax: 416 326 4181

Counsel for the Respondents
The Solicitor General of Ontario and
The Attorney General of Ontario