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**Tuesday 10 September 2013**

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(Hansard)**

**Mardi 10 septembre 2013**

**Standing Committee on  
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON JUSTICE POLICY

## COMITÉ PERMANENT DE LA JUSTICE

Tuesday 10 September 2013

Mardi 10 septembre 2013

*The committee met at 0831 in committee room 2.*

### ELECTION OF VICE-CHAIR

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the justice policy committee to order.

We have our first issue for the day, which is the election of a Vice-Chair. I'd like to, first of all, on behalf of the committee, thank Mrs. Albanese for her work as Vice-Chair. As you know, the Vice-Chair's responsibility is to step in should the Chair be incapacitated or unable or possibly unwilling to fulfill his role.

Mr. Delaney, do you have a motion coming forward?

**Mr. Bob Delaney:** Thank you very much, Chair. I move the election of Mr. McNeely as the new Vice-Chair of the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Are there any discussions on this issue, on the election as Vice-Chair of Mr. McNeely? Mr. McNeely, I take it you accept.

All those in favour? All opposed?

Mr. McNeely, I congratulate you on being elected Vice-Chair of the justice policy committee.

### MEMBERS' PRIVILEGES

#### MR. ANDREW FORGIONE

**The Chair (Mr. Shafiq Qaadri):** I'd invite our first witness to please come forward: Mr. Andrew Forgione, issues manager and press secretary, government House leader's office. Welcome, Mr. Forgione. You'll be affirmed, I understand. Please proceed.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Andrew Forgione:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Forgione. You have a five-minute address, beginning now.

**Mr. Andrew Forgione:** Thank you, Chair and committee members. My name is Andrew Forgione, and I am currently the issues manager and press secretary to Minister Milloy in his capacity as government House leader.

I believe I have been called to this committee because of my previous roles working for Minister Bentley and Minister Chiarelli at the Ministry of Energy. I began working at the ministry at the end of May 2012, and I continued there until one month ago. My role for both Minister Bentley and Minister Chiarelli was related to issues management and communications. My job entailed creating communications materials for question period, media events, briefing the minister daily, as well as helping see legislation pass and working on the committee process for the minister.

As you are well aware, the Oakville gas plant was cancelled in 2010 and the Mississauga gas plant was cancelled in 2011. Because I did not start working at the ministry until May 2012, my knowledge is limited to the committee process and communications after my start date.

During the months of June and July, I was a new staffer at the ministry. I spent most of my time shadowing the former issues manager, sitting in introductory briefings and becoming familiar with the various issues in the ministry.

In July 2012, the ministry announced a relocation agreement for the Greenfield South gas plant. My involvement in this was purely communications and issues management. I did not have a seat at the negotiating table. For this announcement, we received our costing materials and backgrounder from the experts at the OPA and in the ministry. These were complex calculations, and we did not have the capacity or the resources available in our office to do them ourselves.

I was, however, involved in the release of documents related to this project. I reviewed a set of documents in early July. To the best of my recollection, these were responsive records from the OPA relating to the Mississauga gas plant. My role was to review these records for issues management purposes and report back to the minister's office as to what could be expected in the release.

I was also involved in the release of records relating to the Oakville facility. In August 2012, 10 boxes of the OPA's documents were delivered to Ms. Jesse Kulendran and myself. I was again involved to review these records for issues management purposes and to report back to the minister's office on what was to be expected in the release.

I was not involved in any discussions with the OPA or the ministry on how to actually interpret the motion. I

was not involved in the actual production of the responsive records, and had no involvement with respect to redactions.

I think it is important to note that Minister Bentley himself had no direct involvement in the document search or subsequent disclosure of the documents. I also want to stress that this was a new process for the ministry and the OPA, and they were not familiar with how to properly conduct document searches of this magnitude.

I'd like to speak briefly about the period in September to October 2012. During this time I prepared Minister Bentley's House book notes for question period. I always did my utmost to provide the minister with accurate information. The details with respect to both agreements came from the ministry and the OPA, and the minister's notes reflected those details. I also did my best to ensure that with respect to the document disclosure, the minister's House book notes reflected accurate information.

It was our understanding that all documents responsive to the committee's motion had been produced. As we know, on October 12, 2012, both the ministry and the OPA disclosed additional documents that were previously missed. I believe it was an error that these documents were missed in the original search and that good-faith efforts had been made at all times.

In terms of my more recent work in the ministry, I was involved in the preparation of communications materials for the Auditor General's Mississauga report. I received a draft copy about one week before it was released; I received this draft from my chief of staff. I have not seen a copy of the Oakville report.

Finally, with respect to my own emails and documents, the motion passed during the last meeting is the first committee motion that encompasses my records. I understand a search is currently under way and I can assure this committee that you will be receiving many of my records. I also understand that the inboxes of previous staff in the minister's office are also being searched for this request.

With that, I open up the floor to questions, and I hope I can assist this committee with its proceedings.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Forgione. Twenty minutes to the PC side. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. We'll be handing out some documents.

You mentioned that from May 2012 until February 2013, you worked in the energy ministry's office.

**Mr. Andrew Forgione:** Yes.

**Mr. Victor Fedeli:** You said it was purely communications and issues management. Is that correct?

**Mr. Andrew Forgione:** Yes, correct.

**Mr. Victor Fedeli:** So, I understand communications, as somebody who was in the marketing field for many decades. I completely understand that communications business. I guess it's the issues management I did want to speak with you about. You, like many witnesses before you, kind of downplay your role. "I didn't really know. I was only the issues guy." I want to direct you to the first Liberal gas plant scandal document 1 of 1. This is an

email from a Dylan Marando to a group of people. The second-last line—this was talking about gas plants: "Andrew Forgione MO authority on this subject...." Is that the minister's office? Is that what MO means?

**Mr. Andrew Forgione:** Yes.

**Mr. Victor Fedeli:** So you were the guy. You were the authority on this subject. Would you agree with that statement made by someone in the Premier's office?

**Mr. Andrew Forgione:** There were different levels in each minister's office. There are policy directors, there are policy advisers, there are issues managers, there are legislative assistants. When it came to the issues management and legislative side of things, I was a resource to the Premier's office, as I could get the information quickly from the ministry.

So this is me forwarding on an email that I received from the ministry on how many gas plants we currently have in Ontario.

**Mr. Victor Fedeli:** So you were the authority on the subject of gas plants in the Ministry of Energy?

**Mr. Andrew Forgione:** No. I think it even says here "that these numbers are current and from the energy ADM responsible...." So all I did was email the energy ADM and received this chart.

**Mr. Victor Fedeli:** You don't have to downplay your role. It'll be fine.

When the minister was in estimates back in May 2012, your colleague Ryan Dunn and you were the lead staffers at the time. Is that correct?

**Mr. Andrew Forgione:** I was new at the time, so I was mostly shadowing and helping out with the process. We worked on the estimates committee process together.

**Mr. Victor Fedeli:** What was your advice to the minister about complying with the committee's request to turn over documents?

**Mr. Andrew Forgione:** I never had an opportunity to speak with the minister about specifically complying with the request. I assume that would be the role of the chief of staff, as well as the legal opinion of the ministry.

**Mr. Victor Fedeli:** So your job is to communicate and manage the issue. The issue of the day was the minister having to choose whether to comply with the committee and the request to turn over all the gas plant scandal documents or not. You're telling me that in this biggest issue that he had, you didn't have any role in that decision?

**Mr. Andrew Forgione:** I did not sit at the table advising the minister on whether or not to protect the interests of ratepayers or to comply with the privilege—

**Mr. Victor Fedeli:** So what was your advice to the minister about complying with the request of the committee? Did you have an opinion?

**Mr. Andrew Forgione:** I provided communications advice to the minister—so perhaps what he would say in the House when it came back in September. I also worked on the large number of issues that we had at estimates. Estimates didn't just revolve around the gas plants. We also had a number of other issues that we were focusing on.

0840

**Mr. Victor Fedeli:** Were you the person who recommended not giving the documents to the committee?

**Mr. Andrew Forgione:** No, I was not.

**Mr. Victor Fedeli:** Then who did advise the minister not to give the documents that were requested by the estimates committee?

**Mr. Andrew Forgione:** I can't speculate on that, but I know the minister came before this committee and was very clear that he received advice. I think it was legal advice that he said that he received.

**Mr. Victor Fedeli:** Which legal people would we need to talk to, then?

**Mr. Andrew Forgione:** I think you've already had our director of legal, Halyna, before this committee. She could have spoken to that, perhaps, or perhaps our chief of staff at the time. I'm not 100% sure.

**Mr. Victor Fedeli:** So you think it was the legal people and the chief of staff who gave the advice to the minister not to comply with the committee's request?

**Mr. Andrew Forgione:** It definitely wasn't me, in my capacity as a legislative assistant.

**Mr. Victor Fedeli:** You didn't do it.

**Mr. Andrew Forgione:** No, I did not.

**Mr. Victor Fedeli:** Was it not your job as issues manager to identify and deal with these issues that came up in the ministry?

**Mr. Andrew Forgione:** It was, but this was a particular issue where I was not engaged. I was brand new; I started the job at the end of May. The motion was passed on the 16th of May, I think, and so by the time I arrived at the ministry, it was already well under way and there were decisions that had already been made.

I think he actually sent a letter to the committee two days after I arrived. So I did not help create that letter, and I was not involved in the deliberations.

**Mr. Victor Fedeli:** What would your recommendation have been to the minister about providing the documents?

**Mr. Andrew Forgione:** It was a very difficult decision, and I don't think I have an opinion right now on that.

**Mr. Victor Fedeli:** Who do you think made the final decision to withhold the documents that were requested by the committee?

**Mr. Andrew Forgione:** I'd say the minister had the authority to do that, and I think he made the decision.

**Mr. Victor Fedeli:** Were you in touch with anyone in the Premier's office during the time there was a request from estimates?

**Mr. Andrew Forgione:** We were in touch daily on a number of issues—I don't think specifically discussing documents. No, I don't think I was.

**Mr. Victor Fedeli:** So you're suggesting, then, that the Premier's office had nothing to do with the withholding of the documents—that it was all the minister's?

**Mr. Andrew Forgione:** I can't speculate. I wasn't involved in those discussions.

**Mr. Victor Fedeli:** You were the issues manager?

**Mr. Andrew Forgione:** I was, but I was brand new at the ministry at the time, so I was shadowing. We had a number of people engaged on this file.

**Mr. Victor Fedeli:** Who were the people engaged on the file who were in control, if not you?

**Mr. Andrew Forgione:** We had the chief of staff, who was—

**Mr. Victor Fedeli:** Some names, then, please.

**Mr. Andrew Forgione:** You've had Craig MacLennan at this committee before. He was my chief of staff at the time. He was definitely engaged on the file. He would have been the one who had more authority to at least advise the minister on this and organize the meetings where they had the discussions. I was a junior staffer at the time, and it was my first week in the office. I was not advising the minister on this committee.

**Mr. Victor Fedeli:** In your shadowing of this activity, did they provide any instruction to the minister to withhold documents, that you were witness to?

**Mr. Andrew Forgione:** No, I was more so shadowing, sitting beside the former issues manager in the House during question period, going to committee and observing how we would provide the minister with resources to accurately answer questions, that sort of thing. I wasn't privy to any conversations about specifically responding to the committee's request.

**Mr. Victor Fedeli:** So you were new on the job.

The minister was seized at the moment with a very major decision, which turned out to be one of the more major decisions of his political career, which some will say cost him his political career. Would that be a safe assumption so far?

**Mr. Andrew Forgione:** That this cost him his political career?

**Mr. Victor Fedeli:** Yes.

**Mr. Andrew Forgione:** I'm not too sure. I don't want to speculate on that. The minister made a personal decision to leave politics. I'm not 100% sure why he made that decision, but he called me and told me it was for personal reasons and he wasn't going to run in the next election.

**Mr. Victor Fedeli:** I want to talk about document 2, page 2 of 2. This is from Brian Clow in the Office of the Premier, and it's to you and to David Salter: "Hi Andrew—what's your suggested response to any questions about the potentially higher cost of the gas plants, given Colin Andersen's refusal to answer yesterday?"

Colin Andersen, of course, is the boss over at the Ontario Power Authority, and he wouldn't answer questions that the cost was going to be increased.

Can you talk us through, obviously, from the time you started, when you were merely shadowing people, to February 22—this was pretty close to when you were leaving, if I'm not mistaken.

**Mr. Andrew Forgione:** No, I left the Ministry of Energy a month ago.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Andrew Forgione:** I only left one month ago from today.

**Mr. Victor Fedeli:** Oh, okay, I'm sorry. Oh, this is when the new minister would have come on—

**Mr. Andrew Forgiione:** Exactly, yes.

**Mr. Victor Fedeli:** I apologize for the timing.

So now you're into it pretty deep. You're the guy they go to: "Hi Andrew—what's your suggested response to any questions about the potentially higher cost of the gas plants, given Colin Andersen's refusal to answer yesterday?" What do you think that means? What does that sentence mean to you? This is February 2013.

**Mr. Andrew Forgiione:** Yes. We had a new minister coming in, a new Premier, and I think Brian was asking my opinion on how to answer questions on the potentially higher costs of the gas plants, especially since the auditor was looking into it already. We wanted to make sure that any advice given to an elected official was good advice on replying to this question.

**Mr. Victor Fedeli:** So did you know then, or did Brian Clow know then, that the costs of the Oakville gas plant were going to be more than \$40 million?

**Mr. Andrew Forgiione:** I knew the auditor was looking into it, and we didn't want to come out with different numbers and we didn't want to—we wanted to make sure that we weren't speculating on it. We wanted to make sure that elected officials—

**Mr. Victor Fedeli:** I appreciate that. But did you acknowledge, then—is this an acknowledgement, in your opinion, that it's higher than \$40 million?

**Mr. Andrew Forgiione:** No. I would say that the auditor was looking into it, so we wanted to make sure that we had a strong answer, and at this time Brian was reading media reports that had different numbers every day. So he was just looking for my advice on this.

**Mr. Victor Fedeli:** So your advice is kind of interesting, actually, in terms of how you start to rephrase things here. You write back to Brian Clow in the Premier's office—this is the new Premier; this is Premier Kathleen Wynne's office now. So we're not talking about Dalton McGuinty anymore here. The documents that I'm going to start talking about, February, this is Premier Kathleen Wynne.

You now seem to put some emphasis on some words. I'm going to call them "wobble" words. You might not like the fact that I call them that, and that's fine.

The word "cancel" is in capital letters. This is page 1 of 2 of the Liberal gas plant scandal document 2. You're writing this. "Once negotiations were complete, in July for the Mississauga gas plant and in September for the Oakville gas plant"—now, these are your words that you're suggesting they use—"the ministry and OPA officials informed the government of the final costs to CANCEL"—you put "cancel" in capital letters; that's important—"these plants. We were informed that the costs which cannot be 'repurposed'"—and you have "repurposed" in quotations—are \$190 million for the Mississauga gas plant, and \$40 million for the Oakville gas plant."

So in my interpretation is, by putting "cancel" in capital letters, that's one of the wobble words that says

this is only to cancel, not to go ahead, and the "cannot be 'repurposed,'" in quotation marks, is your wiggling around the fact that the auditor actually comes out with \$275 million, not \$190 million, because the repurposed is \$190 million, but your minister said the total cost for cancellation is \$190 million—the total cost.

Are you suggesting—are you the one who started suggesting they subtly change the wording from "total" to "repurposed"? Is that you?

**Mr. Andrew Forgiione:** As you know, the auditor came out and took a longer-term estimate and cost calculation over the next 20 years. At the time when we announced the cancellation and the relocation of these gas plants, we announced the \$180 million and then subsequently \$190 million, versus the \$40 million, because that's just the way that the calculations were done. We didn't have the capacity and the OPA was not in the business of calculating the 20-year cost of gas plants. We have a lot here in Ontario, and if you did that for all of them, it's cumbersome.

We still don't have the right number for the Oakville gas plant, which is why the Premier called in the auditor. But in this case, it's just clear that the auditor is taking a longer-term approach, and I think we wanted to differentiate the difference between what originally the cancellation cost was and then how the auditor was taking his approach.

**Mr. Victor Fedeli:** So the auditor's approach, which everybody agrees with—your minister, your Premier, Kathleen Wynne, everybody agrees with the auditor's number. You may categorize it as the auditor took a different approach, but everybody agrees with the approach. It was the right approach. You're still clinging here in February 2013—quite recently—to \$190 million, even though at this point you already know it's \$275 million. In my opinion and in the opinion of many, you're trying to tie the \$190 million and the \$40 million to show that that \$40 million is wrong as well, that that's going to be a much bigger number because the auditor is going to take a much different approach. Is that correct?

**0850**

**Mr. Andrew Forgiione:** We didn't know that the cost was different at this point. The auditor's report came out in April. So at this point in time, we were just making sure that any advice we gave elected officials, especially the new Premier who didn't know anything about the issue—

**Mr. Victor Fedeli:** That's not really quite true. Let's talk about why that's not quite true. The \$40 million cannot be, as you call it, "repurposed." That's only a drop in the bucket of the Oakville cost. You know that. You knew it back then, which is why you couched "Cancel," as opposed to the total cost of the gas plants—"repurposed" as opposed to the total cost of the gas plants.

We know there's \$210 million—you know it; I know it—just in turbines alone, that's going to be put into the cost. We know there are hundreds of millions of dollars in gas costs. We know there are hundreds of millions of dollars in transmission costs. You know it. You knew it

when you wrote this. You cannot tell me that you did not know that the total cost of Oakville was going to be \$40 million. Please don't insult our intelligence with that.

**Mr. Andrew Forgione:** We also knew that there were hundreds of millions of dollars in savings from a lower net revenue requirement.

**Mr. Victor Fedeli:** Let's talk about that. The cost of Oakville, if you look very carefully at the spreadsheet from the OPA—it's \$1.1 billion to cancel Oakville minus, hopefully, \$700 million in alleged savings, which equals \$310 million. So you knew at that point when you wrote this "\$40 million" that it's not \$40 million. You can't cling to that \$40 million at this point.

**Mr. Andrew Forgione:** At this point in time, we knew that there were costs and we knew that there were savings. It was public on the OPA's website. The OPA just hadn't done the calculations to figure out what the net present value was of those savings over the next 20 years, because that's not how we calculated the cost of our supply plans.

**Mr. Victor Fedeli:** You can't tell me that. You were with the Ministry of Energy, for heaven's sake.

In the ministry's own documents, it talks about \$200 million in transmission fees if you locate out in Oakville, \$210 million in the turbine costs. The real cost that was the question was how many hundreds of millions it's going to cost for gas to get down to the new site in Napanee. That's the real question. It was just a matter of how many hundreds of millions, not if there's going to be hundreds of millions. OPA did eventually say \$1.1 billion minus what we hope to be \$700 million in savings.

We know they were all wrong, according to the Auditor General, on their alleged savings numbers for the Mississauga calculations. You talked about that, that the Auditor General used his own set of calculations, which everybody agrees with. The OPA was wrong by 50% in many cases—some, 75%. That could be another \$350 million, if you look at it.

The point is, you knew back in February that it was not \$40 million—that you've got the "repurposed" was \$40 million. You knew way back when, your Premier knew, your minister knew, everybody knew—in fact, we had that discussion from the OPA. It was a bombshell one day. Everybody knew. You didn't know?

**Mr. Andrew Forgione:** I didn't know.

**Mr. Victor Fedeli:** You're the comms guy and the issues management guy. Why did you put quotes around "repurposed," and why did you capitalize "Cancel" if those weren't kind of wiggle words, special words?

**Mr. Andrew Forgione:** I would have written if I knew what it was. I wouldn't have been providing ministers with inaccurate information. That wasn't my—

**Mr. Victor Fedeli:** So you think telling them, "Stick to the \$40 million, wink, wink," is accurate information?

**Mr. Andrew Forgione:** That's not what it says here at all.

**Mr. Victor Fedeli:** Well, "repurposed" in quotes and "Cancel" in caps: It's exactly what that says.

**Mr. Andrew Forgione:** You've had testimony from the deputy, who said that there were costs and savings and they didn't know what they were at the time. And the first time you ever heard the gas rate charges was at this committee—JoAnne Butler in March. So we didn't know at the time. This was February.

**Mr. Victor Fedeli:** No, the first time we ever heard it was when we read one of the reports from 2010 that said if you located this anywhere else, i.e., outside of Oakville, add about \$200 million in transmission costs. Heck, I hadn't even been a member when that was written, and even I knew back then.

Let's move on. Obviously, you knew, which means your minister knew, which means your Premier knew, considering she was the one, in July 2011, who kick-started the whole negotiations with TransCanada.

Let's go to Liberal gas plant scandal document 3. We're going to go to page 2 of 2. Again, you're crafting words for the minister's apology in the House for his incorrect statement. The minister obviously made a statement in the Legislature where he denied something and had to come back with a "mea culpa." Why were you so afraid of using the word "negotiation"?

You started off using, "I would like to clarify my earlier comments on the negotiations surrounding Oakville...."

"In my comments ... The government ... was aware of the costs...." But in the final version, he took out "aware of the costs" and "negotiations." They tried to pretend they weren't involved in the negotiations when they clearly were. Even in the original draft by Melanie Francis, which went to Melanie Wright, Brian Clow and Andrew Forgione, you knew there were negotiations and you knew you were aware of the costs. Melanie Francis wants some more time and to tone it down a bit. The final version takes out the fact that you were involved in any negotiations or that you were aware of the costs.

You've admitted you're aware of the costs, that there are more costs coming. Why would you have taken all of those out of the apology?

**Mr. Andrew Forgione:** It says, "The government of Ontario was involved in the discussions and was aware of the contents of the" memorandum of understanding, "signed by all parties and made public."

**Mr. Victor Fedeli:** Yeah, but they took out "was aware of the costs" and—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Fedeli. To the NDP side. Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Good morning, Mr. Forgione.

**Mr. Andrew Forgione:** Good morning, Mr. Tabuns.

**Mr. Peter Tabuns:** I just want to follow on a bit of what Mr. Fedeli was asking about here, and Liberal gas plant scandal doc 2, page 1 of 2.

Colin Andersen has said before in front of this committee that everybody knew that we were talking about more than \$40 million. We come across the costs for the turbines pretty regularly in communications from the fall of 2012. Why are you not mentioning in your messaging

that there are \$40 million in sunk costs and various other costs that are going to have to be described? Why didn't you say, "\$40 million in sunk costs; \$210 million for gas turbines"?

**Mr. Andrew Forgione:** We were under the impression that it was \$40 million of sunk costs and then the costs in savings over the 20 years of the contract were essentially going to even each other out at the time they were making this announcement. At the time, my communications advice was reflecting that.

**Mr. Peter Tabuns:** I didn't see any documents, and maybe I missed some, that suggested that the gas turbine was going to be completely paid for in reduced payments to TransCanada. It was a very big number, that \$210 million—

**Mr. Andrew Forgione:** This is the first time the minister's office is getting a request from this committee, as of the last meeting. So you should be receiving those records. I have records from the OPA that say that in media responses and otherwise. So you should be receiving those records.

**Mr. Peter Tabuns:** I look forward to reading them, then.

You were responsible for document production in response to Mr. Leone's motion.

**Mr. Andrew Forgione:** I was involved in helping through the process. I was new at the time, so I was shadowing my colleague and we were reviewing documents for issues management purposes to report back to the minister's office to tell them what exactly was being released because a lot of these documents were from 2010 and 2011, so there was a new staff at the time.

**Mr. Peter Tabuns:** Kristin Jenkins indicated she delivered the OPA's responsive documents to you and Jesse Kulendran on August 24, 2012.

**Mr. Andrew Forgione:** It was a copy of their records we asked for them to review for issues management purposes.

**Mr. Gilles Bisson:** Would you say that again, please?

**Mr. Andrew Forgione:** It was a copy of their records. We asked to review them for issues purposes to know what was coming out in the contents. We weren't familiar with—I was still in university when these plants were cancelled. So when I was reviewing these documents, I wanted to make sure that we knew what was coming out, what was becoming public.

**Mr. Peter Tabuns:** Okay. Kristin Jenkins testified that she was told by Jesse Kulendran that the OPA had identified records responsive to the committee's motion which Ms. Kulendran said should not be disclosed. For example, Ms. Jenkins said, "[W]e were told at the meeting ... that 'SWGTA' or 'southwest GTA' was not to be considered as a proxy for Oakville—and again, that this was the approach that the ministry was using." Is that consistent with the approach you were taking?

0900

**Mr. Andrew Forgione:** As I said in my opening statement, I wasn't involved in the discussion of code names or search terms or anything like that that they were using

in the actual searches. I think Jesse has come before this committee, and the deputy, and they've spoken to that, as well as Kristin.

**Mr. Peter Tabuns:** I think you may have misunderstood my question, then.

**Mr. Andrew Forgione:** Oh, sorry.

**Mr. Peter Tabuns:** You didn't make up the code names. That's fair enough, but—

**Mr. Andrew Forgione:** No, and I didn't decide which ones were going to be used in the search terms, is what I was also saying.

**Mr. Peter Tabuns:** In preparing the documents, did you follow the instruction that "SWGTA" and "southwest GTA" weren't to be searched for, weren't to be produced?

**Mr. Andrew Forgione:** No. We were reviewing documents. I wasn't taking anything out. They were copies. So I was reviewing them and making sure that I knew what was going to be released for House book notes and for media responses, so if my press secretary called me and said, "Andrew, what is this issue on the front page of the Star?" I could respond to them and give some answers.

**Mr. Peter Tabuns:** So you were producing documents that had "SWGTA" and "southwest GTA" in them. They were seen as a relevant search term by you at the time?

**Mr. Andrew Forgione:** I can't recall specifically, but there were definitely documents with "SWGTA" in them that I was reviewing. I reviewed so many documents at the time that I can't remember specifically if they were included.

**Mr. Peter Tabuns:** Who gave you your instructions, you and Ms. Kulendran, to follow particular search terms?

**Mr. Andrew Forgione:** I didn't conduct any searches. The searches were done by the ministry and the OPA, as the deputy has said before this committee. My only role in the document production was to review records, copies of records and brief the minister's office on what to expect when they were released on September 24, I think, and October 12.

**Mr. Peter Tabuns:** And were you asked to look out for those particular terms?

**Mr. Andrew Forgione:** No. I was just asked to look out for contentious records that we may need to be prepared to respond to when they went public.

**Mr. Peter Tabuns:** So you were not a decision-maker in deciding which documents were responsive and which were not?

**Mr. Andrew Forgione:** No, I was not.

**Mr. Peter Tabuns:** You simply reviewed what came and you looked for any ticking time bomb that you had to tell the minister about?

**Mr. Andrew Forgione:** Essentially, yes. I came in at the end of May, so at that time the search was already started. The meetings had already happened to discuss what was responsive and what wasn't.

**Mr. Peter Tabuns:** My colleague has a question.



**Mr. Gilles Bisson:** Just in response to Mr. Tabuns: In reviewing those documents, did you flag any documents that might have caused difficulty for your minister of the day?

**Mr. Andrew Forgiione:** In the House and in media questions—like that? That’s what you mean by “difficulty”?

**Mr. Gilles Bisson:** Yeah. Did you see any documents that you went, “Oh, my God, this is going to be a problem,” and try to flag whoever in regard to whatever line you had to use in defence of the document? Did you have any of those types of situations?

**Mr. Andrew Forgiione:** Oh, yeah. When I briefed the minister before question period, I’d bring up contentious records that I had seen.

**Mr. Gilles Bisson:** And are you aware of any of those documents after that being redacted as a result of that?

**Mr. Andrew Forgiione:** No, not that I recall, and I was not involved in the redaction—

**Mr. Gilles Bisson:** So none of the documents that you saw were ever redacted?

**Mr. Andrew Forgiione:** No, they were already ready to go to committee.

**Mr. Gilles Bisson:** I understand they were ready to go to committee. That’s not my question. My question is, are you aware of any of the documents that you saw that you were reviewing that eventually were not released to the committee or were redacted in some way?

**Mr. Andrew Forgiione:** No, and I think this committee has asked for both sets anyway, so you can see which ones were redacted for what reason.

**Mr. Gilles Bisson:** I want a clear answer. In reviewing the documents, are you aware of any of the documents you looked at that were eventually pulled and not given to the committee?

**Mr. Andrew Forgiione:** None that I can specifically recall.

**Mr. Peter Tabuns:** Did you know who was determining the search terms for the documents that you were reviewing?

**Mr. Andrew Forgiione:** I know that the ministry was doing their own process and they had meetings—Jesse, when she came before this committee, I think had meetings with legal staff in the ministry to decide how to interpret the motion. I know the OPA had legal staff as well, and I think that they actually hired the services of an outside legal firm to also interpret the motion.

**Mr. Peter Tabuns:** And the chief of staff in the minister’s office, other senior staff in the Ministry of Energy: Did they get involved in determining the search terms?

**Mr. Andrew Forgiione:** Not that I recall. It may have been done before I arrived at the ministry—the actual meetings—since the motion happened two weeks before I arrived. So perhaps a different staff member would be able to help you with that. But by the time I got there, the search terms were decided and the search had already started. June, I think it was, is when I went to the OPA to review documents, just for issues purposes.

**Mr. Peter Tabuns:** You were around after the first significant production of documents, and I assume you saw the response of the opposition and the third party in the House. We weren’t pleased. We didn’t think we’d been given the documents. What happened in the ministry when you realized that we might be very exposed here?

**Mr. Andrew Forgiione:** I think the minister originally said all the records had been released—

**Mr. Peter Tabuns:** Yes, he did.

**Mr. Andrew Forgiione:** —and sent that letter to committee. I think he subsequently came before this committee and said he had made mistakes and that the ministry had decided they missed some former staffers of the Ministry of Energy and missed some words as well. Then the deputy and Colin Andersen sent letters to the House apologizing for their mistakes and said it was in good-faith efforts. But I think the minister found out on the 28th or the 27th of September, which is when we found out that there was a possibility that there would be more records. He didn’t know if there were; if there was one, if there was zero, if there were 20,000, like they actually found. We didn’t know at the time. The minister just said, “Get them out the door. Do the search.” So the OPA and the ministry did their searches separately, and the minister found out on October 11, the day before, that they were releasing 20,000 records to the committee. Then he said, “Write a letter to”—he didn’t even say that. They wrote letters to the House, apologizing and explaining the situation—what words they missed, former staffers etc. Again, it was a very large search, and they weren’t familiar with doing this at the time.

**Mr. Peter Tabuns:** And you were familiar with the code names that were used for these projects: Vapour, Vapour-lock?

**Mr. Andrew Forgiione:** I now am very familiar with them.

**Mr. Peter Tabuns:** Were you when you started reviewing these documents last May?

**Mr. Andrew Forgiione:** Like Project Vapour and those?

**Mr. Peter Tabuns:** Yes.

**Mr. Andrew Forgiione:** Those ones I was, because they were ministry ones. I wasn’t familiar with Fruit Salad and Apple and Banana because those were OPG terms. I wasn’t familiar with those ones, and I had to ask individuals when I found that word.

**Mr. Peter Tabuns:** On May 16, Mr. Leone moved a motion that called for “the Minister of Energy as well as the Ministry of Energy and Ontario Power Authority to produce, within a fortnight, all correspondence, in any form, electronic or otherwise, that occurred between September 1, 2010, and December 31, 2011, related to the cancellation of the Oakville power plant as well as all correspondence, in any form, electronic or otherwise, that occurred between August 1, 2011, and December 31, 2011, related to the cancellation of the Mississauga power plant.”

In your minds, did it matter how the documents were labelled?

**Mr. Andrew Forgiione:** Sorry, can you be more specific?

**Mr. Peter Tabuns:** Did you take a broad interpretation of that request for documents, or did you try to take a narrow interpretation of those documents?

**Mr. Andrew Forgiione:** The ministry led the search in the Ministry of Energy, and the OPA led their search and decided on their code words and their search terms and what they were going to be using, so I'm not 100% sure. I know legal was heavily involved in interpreting this motion for both. I was not at that table for those discussions.

**Mr. Peter Tabuns:** And if documents weren't disclosed that said "Project Vapour" on them or because they said "southwest GTA," you'd agree that they should have been disclosed?

**Mr. Andrew Forgiione:** Yes. At this point in time, they should have definitely been disclosed, and I think they should have been. I'll leave it at that. But again, I wasn't in a position to make those decisions at the time, and I was not at the table, so it wasn't up to me. I understand that legal was involved at the ministry and the OPA, and maybe they missed that term in the first search but they found it in the second search. All I know is that the letters that they both sent to the committee and to the House have explicitly and profusely apologized to the Legislative Assembly for their mistakes, and they have completed their searches for this particular motion. And I know that they have now started on this—

**Mr. Peter Tabuns:** Okay. I'll turn it over to my colleague.

**Mr. Gilles Bisson:** Explain to me what you mean by you relying on people in order to interpret the motion from the committee. What do you mean by "interpret"?

**Mr. Andrew Forgiione:** I wasn't at the table for these discussions, so I'd be speculating on exactly what they were doing in their meetings and how to interpret this motion.

**Mr. Gilles Bisson:** But what do you mean by "interpret this motion"?

**Mr. Andrew Forgiione:** I think this motion was dropped on the desk of the deputy and the CEO of the OPA, and they were deciding how to respond to it, is what I meant by "interpret."

**Mr. Gilles Bisson:** Were you aware that a request by a committee for documents is equal to a summons of the court?

**Mr. Andrew Forgiione:** At the time, I was not, but I know that Minister Bentley had a responsibility. He was trying to balance out both the interests of taxpayers and his responsibilities to the committee.

**Mr. Gilles Bisson:** That's not my question. In the conversations you overheard within the House leader's office and others, was there knowledge on the part of those people around you or yourself that, in fact, a request by a committee for documents must be complied with?

**Mr. Andrew Forgiione:** The minister knew. We knew. The minister wrote to committee and said, "I have these two balances."

**Mr. Gilles Bisson:** So what was the interpretation about? I'm a bit intrigued by the word "interpret."

**Mr. Andrew Forgiione:** Because the minister said it's not a matter of if but when the documents were going to come, so the search was still being done.

**0910**

**Mr. Gilles Bisson:** No, we got into this whole mess because the minister didn't want to release the documents initially, and only when it was faced with contempt did the documents get released.

So I go back to: At that time when you were working within the minister's office, were people aware—and I think what you said was "yes"—that in fact a request by the committee has to be complied with?

**Mr. Andrew Forgiione:** The minister knew it was a serious request, and he wrote to the committee saying, "I understand my responsibilities."

**Mr. Gilles Bisson:** So what was the interpretation about? What were they trying to interpret—what not to give up?

**Mr. Andrew Forgiione:** No. They were probably trying to—again, I can't speculate on what they were discussing, but what I meant by "interpret" was that they received this massive motion that would cost \$1 million to do and require ridiculous amounts of human resources—

**Mr. Gilles Bisson:** Were you a party to any conversation in regard to withholding some of the documents and not releasing those documents?

**Mr. Andrew Forgiione:** No. The ministry led the search—the Ministry of Energy.

**Mr. Gilles Bisson:** Nobody ever talked about it in your presence—

**Mr. Andrew Forgiione:** I came to the ministry at the end of—

**Mr. Gilles Bisson:** —over the coffee cooler—

**Mr. Andrew Forgiione:** No. The ministry—

**Mr. Gilles Bisson:** Were you in a dome of silence? Did you walk around like Maxwell Smart in a glass bubble, or what?

**Mr. Andrew Forgiione:** No. I reviewed the documents. They were already copies of the documents that were going to go to committee once negotiations were complete.

**Mr. Gilles Bisson:** I'm having a bit of a problem with your comment around interpreting, because it is clear there is a privilege that exists within this House, both for the House and for the members collectively, and one of those is that you have the full right as a committee to request documents and it must be complied with. You have now said that the minister was aware that that was a fact, that in fact you have to comply with a committee request, but you guys were trying to interpret what the hell the motion meant, and I guess I'm having a bit of a problem squaring around what you mean by "interpreting." What were you trying to interpret—what not to give up, what to give? What do you mean by "interpret"?

**Mr. Andrew Forgiione:** The ministry led the search in the Ministry of Energy. Again, I was not at the table, but

what I assume would happen is when they receive a motion of this magnitude, they would say, “How are we going to respond to this? What search terms are we going to use? Who are we going to search?” Clearly the ministry revised that once, and the OPA revised that twice.

**Mr. Gilles Bisson:** At what point did the minister change his mind about the release of the documents?

**Mr. Andrew Forgione:** He never did. He said, “When these negotiations are complete and releasing documents won’t hurt the position of the province, I’m happy to release them,” and he did right after—

**Mr. Gilles Bisson:** But the minister, as a lawyer, and the minister, as a minister of the crown, would understand that a committee, once requesting documents, that that motion had to be complied with. So what drove him and what drove that office in not releasing those documents, when they knew that the request from the committee had to be complied with?

**Mr. Andrew Forgione:** I can’t speculate on the minister’s decision-making.

**Mr. Gilles Bisson:** Were you party to any discussion that discussed that item?

**Mr. Andrew Forgione:** No, I was not, as I—

**Mr. Gilles Bisson:** Did you overhear any discussions that discussed that item?

**Mr. Andrew Forgione:** No.

**Mr. Gilles Bisson:** And remember, you’re under oath.

**Mr. Andrew Forgione:** I understand that.

**Mr. Gilles Bisson:** You’d better understand it, because if we find out otherwise, you could be held in contempt.

**Mr. Andrew Forgione:** Yes. I was a junior staffer at the time. It was my second week at the ministry.

**Mr. Gilles Bisson:** I understand you were a junior staffer.

**Mr. Andrew Forgione:** I wasn’t advising the minister on this particular issue.

**Mr. Gilles Bisson:** I’m sure that—

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, we appreciate your enthusiasm, but you’re kind of threatening the witness. I’d invite you to—

**Mr. Gilles Bisson:** No, I’m not threatening. I’m reminding the witness that he has a responsibility to tell the truth to this committee, and if not, he could be found in contempt. That is just the rules of how this place works. I’m just reminding him so he’s aware of the gravity of the answers to the questions I’m looking for.

I understand you’re a junior staffer, and I understand that you were not the person making the big decisions in that office—I get that—but as a member in that office, you had to overhear some of the discussions that were going on. I ask you again: Did you hear any conversations in regard to not releasing the documents as per the committee’s request?

**Mr. Andrew Forgione:** I was not privy to those discussions. The minister made them—

**Mr. Gilles Bisson:** That’s not what I’m asking. I’m asking: Did you overhear any conversations in the time

that you worked for those offices—reasons why not to release those documents?

**Mr. Andrew Forgione:** No, not that I can recall specifically, no.

**Mr. Gilles Bisson:** Okay. How much time do we have?

**The Chair (Mr. Shafiq Qaadri):** Three minutes.

**Mr. Peter Tabuns:** If you knew that there was a lower payment going to TransCanada Enterprises, what other details did you know?

**Mr. Andrew Forgione:** I read the memorandum of understanding, and I knew that we had taken on gas management delivery costs, or the OPA had. I knew that they were receiving a lower net revenue requirement. I knew that they were taking on the gas turbines as well that were already purchased by TransCanada. I knew that the gas management delivery costs weren’t calculated at that time. The OPA hadn’t calculated. There was a formula in the contract which I didn’t know how to do, and I think the OPA has actually struck a working group and told the committee that they would have those numbers by 2014, just to show how complex they really are. So we didn’t know. At the time, we thought that they balanced out the savings and the costs, especially with the lower net revenue requirement. I think that was the reason that Deputy Imbrogno, when he came before this committee, said that they reduced the net revenue requirement to take on those additional responsibilities. The idea behind that was to balance them out so there was an equal contract with the \$40 million of sunk costs already for zoning and architectural work for the actual plant.

**Mr. Peter Tabuns:** So you knew about the gas demand management costs—

**Mr. Andrew Forgione:** Not the number. I didn’t know what the number was.

**Mr. Peter Tabuns:** No, no. You’ve said that; I understand that. And you knew there were gas turbines. You knew about the cost for the site, for—

**Mr. Andrew Forgione:** Yes. That was in the—I think it was around \$25 million. But there was a stipulation where it was only up to \$5 million or something like that. It was in the contract, though. I read it.

**Mr. Peter Tabuns:** And knowing all these other costs were out there to be determined, the number you gave your minister to carry forward was \$40 million.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** And we heard consistently, “There’s only one number. There’s \$40 million.” But you actually knew that there were a variety of other numbers that were circulating out there, a variety of other factors that were going to have impact on this.

Nodding your head is not—

**Mr. Andrew Forgione:** No, no. We did, but as I said, we thought the costs and the savings balanced out at the time. We thought that the lower net revenue requirement offset the gas management delivery costs and the turbines, because we had paid the turbines in December, I think.

**Mr. Peter Tabuns:** But that was all a guess on your part.

**Mr. Andrew Forgione:** It wasn't on my part; it was the OPA's guesses at the time—

**Mr. Peter Tabuns:** On part of the government as a whole, because we could tell \$40 million was not going to be the number. Anyone could look at it and say, "You aren't going to settle a \$1.2-billion deal for a \$40-million settlement. It's just not on."

**Mr. Andrew Forgione:** I didn't know—the plant wasn't built, so we thought that they maybe had a different costs-and-savings formula.

**Mr. Peter Tabuns:** And no one in your shop thought that \$40 million seemed like—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Well, thank you very much, Chair. Good morning, Mr. Forgione. I want to just go through a number of things in your background and do it in kind of an organized and logical way, so bear with me for a few minutes. Just to set out again the timeline of your employment in the Minister of Energy's office, when did you start working there?

**Mr. Andrew Forgione:** The end of May 2012.

**Mr. Bob Delaney:** May 2012. So that means—I think you covered this earlier—that the estimates motion asking for correspondence related to the gas plants would not have captured any of your documents because the motion asked for correspondence up to December 2011. Correct?

**Mr. Andrew Forgione:** Correct.

**Mr. Bob Delaney:** Two weeks ago, this committee passed a motion for documents from the Ministry of Energy from January 1, 2012, to August 2013. If I understand this correctly, that would be the first committee motion that is applied to you. Is that also correct?

**Mr. Andrew Forgione:** Correct.

**Mr. Bob Delaney:** Would you have had documents responsive to that motion?

**Mr. Andrew Forgione:** Definitely, and this committee will be receiving those records.

**Mr. Bob Delaney:** Okay. On March 5 of this year, government members of this committee moved a motion directing a government-wide search of all documents related to the relocations of the two gas plants in Oakville and Mississauga. That motion would have required all government ministries, ministers' offices, Cabinet Office, the Premier's office and the OPA to conduct a search. Had that motion passed, would you have provided us with any documents you may have had by now?

**Mr. Andrew Forgione:** Yes, definitely.

**Mr. Bob Delaney:** You recently moved to the government House leader's office. What happened with your files from the Ministry of Energy during that transition?

**Mr. Andrew Forgione:** I left them at the Ministry of Energy.

**Mr. Bob Delaney:** So that would mean that your Ministry of Energy documents have been appropriately

retained and would be searched by the Ministry of Energy in response to the recent motion asking for energy documents from 2012 forward. Correct?

**Mr. Andrew Forgione:** Correct.

**Mr. Bob Delaney:** Going back to the spring of 2012, when the estimates committee moved a motion asking for documents related to the two gas plants from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority, as we're aware, at the time, negotiations were ongoing with the proponents of both the Oakville and the Mississauga power plants. Was it your understanding, at the time, that those negotiations were commercially sensitive?

**Mr. Andrew Forgione:** Yes, it was. I wasn't directly involved with negotiations or particular discussions about responding to the actual committee's request, but we were told by—I was told by—higher-up people in the minister's office that we were being advised by legal—and the OPA was of the same mind, as well—that these documents were commercially sensitive and solicitor-client privileged. So putting them forward—I think the Auditor General said before the public accounts committee—I believe I'm correct here—that he would wait to conduct a study on the Oakville plant until the negotiations were completed, because he also understood that there may be sensitive information there that may hurt the negotiations if he received those records.

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**Mr. Bob Delaney:** Okay. So, then, you're confirming that your understanding was that there would be some very real and tangible risks associated with the release of information that bore upon negotiations—at that time, still in progress—before those deals were finalized.

**Mr. Andrew Forgione:** Yes. I wasn't a lawyer, and I'm still not a lawyer, but we were under that impression.

**Mr. Bob Delaney:** Okay. Earlier, as you were discussing things with Mr. Bisson, you were talking about the interpretation of a motion. I would assume that that meant that the Ministry of Energy would be figuring out how to conduct a search, such as, for example, which staff members' records would need to be searched, what keywords should be searched and this sort of thing. Would that be correct?

**Mr. Andrew Forgione:** Yes. I must have miscommunicated. All I meant was that this motion was going to be given to the ministry and the OPA, and that they were going to need the time to learn how to conduct the search. From my discussions with the deputy, this was the largest search they've ever received, so I assume it took a lot of time for them to understand exactly how to respond to it and who to search, and it took them a couple of times to get it right, as evidenced by the letters that they've sent the committee and the House.

**Mr. Bob Delaney:** The Ontario public service receives an estimated one million emails a day, so it's not a surprise that the Ontario public service would then need a plan for how to search through, quite literally, hundreds of millions of records.

**Mr. Andrew Forgione:** Correct. I think the OPA has actually written this committee, and the same with the

IESO, asking for more time and outlining the potential costs to the committee—to the actual OPA, I meant—to conduct this search. So they are not small endeavours. It typically takes a lot of time and a lot of human resources. As the OPA has said before when they've come before this committee, they're not in the business of document production; they're in the business of energy, so it's difficult for them to learn how to do it. But they've done it in a very quick manner, and now they're going to need a little bit more time for this search, apparently.

**Mr. Bob Delaney:** Would you clarify your role with respect to the production of documents to the estimates committee?

**Mr. Andrew Forgione:** As I said in my opening statement, my only role was to review records for issues management and communications purposes, whether it be for the House and the minister's question period or whether it was for media calls and helping my press secretary respond to media. I just wanted to get familiar with the issues and report back to the minister's office so that we knew what the issues were, because we knew it would be a top issue in question period come September.

**Mr. Bob Delaney:** You were asked a little bit about a former witness to this committee named Jesse Kulendran. Jesse Kulendran was here under oath, and testified that she had done nothing inappropriate and did not tell the OPA to withhold documents. In fact, the Deputy Minister of Energy—who Mr. Fedeli confirmed, to use his words, was a credible and very solid witness—testified before this committee that he believes Ms. Kulendran's summary of events.

The deputy testified—and I'll use his words—"I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse" had said.

Secretary Wallace, in fact, launched an investigation into the allegations in the memo, and confirmed that there was no evidence that Ms. Kulendran had acted inappropriately. Furthermore, when asked by the media during a news conference here at Queen's Park about the memo and the allegations, Colin Andersen would not confirm that anything inappropriate had happened; that there appears to have been some miscommunication, but, ultimately, the OPA was responsible for its own search and provided the responsive documents to the committee.

Would the OPA being responsible for its own search of its own documents be in accord with your recollection?

**Mr. Andrew Forgione:** Yes. The OPA was responsible for their own document production and replying to the committee's request, just like the ministry was in charge of doing it for the Ministry of Energy.

*Interruption.*

**The Chair (Mr. Shafiq Qadri):** I'd just invite folks to please either turn their cellphones off or at least get better ringtones. Thank you.

**Mr. Bob Delaney:** I don't think you'll find any shortage of seconders to that motion.

In May of 2011, Dr. Ann Cavoukian stated, in her words, "Our position has consistently been that a system designed to give ministers and senior officials a 'heads up' about the disclosure of potentially controversial records is acceptable. These processes or systems are designed to ensure the timely notice and communication of relevant details of the request and the related records, in order to assist the minister or senior officials when responding to questions in the Legislative Assembly or from the media or members of the public."

So given your role, which I understand is pretty limited, you would be, then, well aware that, ultimately, the estimates committee received 56,000 documents from the Ministry of Energy, the Minister of Energy and the OPA, and that given the volume, either errors and/or omissions were made and a number of document releases occurred.

The testimony from the secretary of cabinet, from ministry staff and the OPA, has been consistent that the searches were done in good faith. In your recollection, would that be correct?

**Mr. Andrew Forgione:** I wasn't involved in the actual searches. The ministry conducted those, and the OPA conducted their own. But after hearing the deputy come before this committee and having heard Peter Wallace come before this committee, I have no reason to doubt their testimony, and they have both said that they had good-faith efforts to comply with the motion. I don't see why they wouldn't. And they both sent letters to the committee and to the House, stating in these letters—that explain the situation and how they missed search terms, as it was their first time conducting a search this large. I think—that's what I believe.

**Mr. Bob Delaney:** You were around at various times when people were doing their best to comply with document requests to this and to the estimates committee. Do you think that there are any—is there any truth to the allegations that this was not done in good faith?

**Mr. Andrew Forgione:** There have been multiple letters to committee and to the House explaining the situation and how search terms and code names were missed and how former staff had their inboxes missed, so I don't think there's any reason to doubt it. This committee has heard ample testimony. I think there have been over 50 witnesses and over 80 hours of testimony. But I think they've heard quite a bit of evidence that shows there's no reason to doubt the public service. I think the secretary of cabinet said the same thing when he came before this committee.

**Mr. Bob Delaney:** When you were in the Ministry of Energy, you would have met Deputy Minister Serge Imbrogno?

**Mr. Andrew Forgione:** Yes.

**Mr. Bob Delaney:** When he was testifying before the committee, Deputy Imbrogno described the incredible amount of time and resources that went into searching for the documents, identifying and compiling documents that were responsive to the estimates committee motion. He told us, and I'll use his words, "We basically shut the

ministry down for that search period ... a lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive ... that took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry.” Does that sound like an accurate description of what went on in the Ministry of Energy when the ministry was responding to the estimates motion?

**Mr. Andrew Forgiione:** Yes, and I think the same with the OPA. They both put a lot of resources into this, and I remember at the time a lot of the deputy minister’s office staff being very tired after working so difficult on weekends and late at night to respond to this committee’s request. It was a priority for the ministry and for the minister to accurately respond to this committee’s request. But as this committee has heard, it was a very difficult and challenging motion to respond to, since it covered a very large time period. They’ve both subsequently written to the committee and to the House, talking about the issues that they’ve had throughout the process.

**Mr. Bob Delaney:** All right. I just want to move into some of the costing of the cancellations of the two plants, or such as we know what the costing was. To recap some of the conversations you’ve previously had here in the Standing Committee on Justice Policy, were you involved in any discussions where it was determined that the sunk costs for Oakville would be one number and the sunk costs for Mississauga would be another number?

**Mr. Andrew Forgiione:** No. As I said in my opening statement, I was not at the table. I was not at the negotiating table. I was not involved in the numbers being selected to be used. Those were from the experts at the ministry and the experts at the OPA. We didn’t have the capacity in our office, as I said in my opening statement, to calculate these ourselves.

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**Mr. Bob Delaney:** In other words, all the information on costing came from the Ontario Power Authority.

**Mr. Andrew Forgiione:** Yes. They were at the negotiating table, as were government officials, but the experts at the Ontario Power Authority and in the ministry provided us with those numbers.

**Mr. Bob Delaney:** That pretty much lines up with what we’ve read in the emails and heard from the testimony here at the committee.

When the CEO of the Ontario Power Authority, Colin Andersen, attended the committee and discussed the Mississauga costing, he said, “We did provide them with the numbers. That is what you would expect.”

In fact, an email from Mr. Andersen from July 2011 to the ministry office at the Ministry of Energy confirms that he provided them with the \$180-million figure for the sunk costs of relocating the Mississauga plant.

For Oakville, Colin Andersen had told the committee, “It’s true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized....”

From your experience, does that sound accurate?

**Mr. Andrew Forgiione:** Yes, and those emails will be coming forth in the upcoming motion as well, so there will be emails showing where we received our numbers.

**Mr. Bob Delaney:** Again, the numbers came from the OPA.

**Mr. Andrew Forgiione:** Yes. Again, I was not at the table to receive those numbers. I received them from my superiors, but—yes.

**Mr. Bob Delaney:** Based on the information that you had, limited as it was, what was your understanding about whether there would be any additional future costs for the two plants beyond the sunk costs?

**Mr. Andrew Forgiione:** We received briefing decks that showed the numbers \$190 million and \$40 million and explained, as was public in the memorandum of understanding on the OPA’s website, the structure of the contract and what the OPA was taking on versus what they were receiving a savings on. Both plants had a lower net revenue requirement, which projected out as savings over the next 20 years.

Again, I must stress that the OPA was not in the business of calculating the incremental costs of running a gas plant over the next 20 years. We have 19 in this province, and a lot of other sources of generation. That’s just not the way that they did it. So it took them a while. They struck a committee to do it for 2014, as I understand it, to make sure that they have the correct gas management and supply numbers as well.

That’s the structure that we had at that time, and it was all public on the OPA’s website. The briefing decks, that should also be coming to this committee, highlight those numbers.

I was involved in Minister Chiarelli’s briefings with the ministry, and those numbers said “\$190 million” and “\$40 million.” Those documents will be coming to committee in the upcoming request.

**Mr. Bob Delaney:** Just to talk about some of your recollections over the past few years: I would assume that, as a staff person, you would have paid close attention to the policies and the commitments of the other two parties as well as the government. Would that be correct?

**Mr. Andrew Forgiione:** Correct. I spent a lot of time—a little bit too much, I’d say.

**Mr. Bob Delaney:** Almost every witness before the committee has confirmed that there were very clear commitments by all three parties to either cancel or to relocate the two plants. That certainly permeated down into the two communities as well. In fact, Mayor Hazel McCallion said to us, “The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it”—it referring to the Mississauga gas-fired generation plant.

When he was here at the committee, Oakville mayor Rob Burton told the committee that he had “won promises from all parties to stop the proposed power plant.”

With the transcripts and campaign literature and robocall scripts that we have, they highlight the commitments made by both opposition parties to cancel the plants.

In your role, you would be fully aware that all three parties had promised to either cancel or relocate the Mississauga or Oakville plants, correct?

**Mr. Andrew Forgiione:** Correct. We have lots of pages of quotes that will also be coming forth in the next motion, showing all three parties committed to cancelling the plant.

**Mr. Bob Delaney:** Let me ask you a very direct question, then, on record-keeping. Were you ever directed by your former chief of staff to delete any emails?

**Mr. Andrew Forgiione:** No.

**Mr. Bob Delaney:** Former Premier McGuinty had testified that there had been a lack of adequate training for staff in this area. In his June 7 response to the Information and Privacy Commissioner's report, the former Premier stated, and I'll use his words, "I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

Would you agree with the former Premier that there was a lack of formal training with respect to how to properly manage records?

**Mr. Andrew Forgiione:** Yes, especially at the time that I came to the ministry, at the end of May. It was an odd time for me to come, just at the end of a legislative session and during estimates committee as well. So I didn't receive training, I don't think, until Premier Wynne came in, I think in April, when we received specific training to document retention and the processes.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** All that said, I'm sure it was apparent to staff that they were not required to keep every single record.

**Mr. Andrew Forgiione:** I think that was apparent at the time.

**Mr. Bob Delaney:** Okay. Chair, I think I'm going to stop there and I'll pick it up in the next round.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Yakabuski, 10 minutes.

**Mr. John Yakabuski:** Thank you, Mr. Forgiione, for joining us today. Listening to your answers to the member from the government side, I'm sure your bosses will be happy with you. You've answered the lob-ball questions just the way they wanted you to do it. However, I have some other questions for you.

You said in your opening statement, talking about emails that were not disclosed by both the OPA and the ministry, that it was an error that these documents were missed in the original search and that good-faith efforts had been made at all times. We have sworn testimony from a vice-president of the Ontario Power Authority that they were directed to withhold documents, from Jesse

Kulendran, who you are named with in other documents, so you must have a relationship with Jesse Kulendran of some working kind. It was clear in the sworn testimony of the vice-president of the Ontario Power Authority that they were directed to withhold documents. Were you aware of that?

**Mr. Andrew Forgiione:** No. And you've also had sworn testimony from the deputy and from Jesse. I know both of them. I don't know Kristin as well, but I think both of them have said it was a miscommunication, and I think the deputy has said he has no reason to doubt his employee, Jesse, when she came before this committee and gave her sworn testimony.

**Mr. John Yakabuski:** I'm not asking about his testimony. I'm asking about yours.

**Mr. Andrew Forgiione:** All I would know is from what they came to committee and said. I wasn't involved in those discussions.

**Mr. John Yakabuski:** It's clear from your testimony today to my colleague Mr. Fedeli and also to questions from the New Democrats that it was widely known that there were costs in excess of the so-called unrecoverable or sunk costs in both the power plants.

**Mr. Andrew Forgiione:** And savings, yes.

**Mr. John Yakabuski:** There were costs. We're talking about costs. You knew and your masters knew, yet the intent or the continued mantra of the government was to insist on only disclosing the sunk costs. In fact, I want to refer you to document 4 of the Liberal gas plant scandal file here, 1 of 1, an email from yourself to Melanie Wright and Samantha Grant—Melanie Wright of the Office of the Premier of Ontario and Samantha Grant of GHLO. I'm not sure what that is.

**Mr. Andrew Forgiione:** Government House leader's office.

**Mr. John Yakabuski:** Government House leader's office—where you are now; correct?

**Mr. Andrew Forgiione:** Correct.

**Mr. John Yakabuski:** One of the advices is, "We can add in a line on 'these documents verify the sunk costs of \$40 M,' but I don't want the P saying a number in the House"—P meaning Premier.

**Mr. Andrew Forgiione:** Correct.

**Mr. John Yakabuski:** This email is from April 11, 2013. You people were well aware, as the Premier was well aware, because we have documentation showing that, that everyone knew clearly that there were costs in excess of that. Was this clearly an attempt to continue to mislead the public with regard to the true costs of these cancellations, hoping that this would all blow away? Why would you continue to advise that the Premier not use those numbers in the House?

**0940**

**Mr. Andrew Forgiione:** Because at this point in time I had seen a copy of the draft Auditor General's report on Mississauga. I received it for issues purposes to prepare speaking notes in response to it and help work on our press conference the next day etc., etc. So at this point in time I didn't want the Premier saying numbers in the

House on either plant because we were already aware that the auditor took a different approach in calculating his numbers over the next 20 years. I don't think either of these staff members, Melanie or Samantha, were aware of the auditor's report at the time—the numbers in them. So I was just providing my advice.

**Mr. John Yakabuski:** Until the auditor's report came out, that was the number that government officials continued to cite, including elected members. This would also have exposed previous statements in the House as having been either deliberately misleading, or at least grossly in error, for elected members including cabinet ministers who had insisted that that number was in fact \$40 million.

**Mr. Andrew Forgione:** The number is still correct. It's just that the auditor took a different approach over the 20 years on how much ratepayers would be charged over the 20 years of the contract. The sunk costs are still correct. I think the auditor verified them in his opening statement, saying that \$190 million is the correct number for the taxpayers of Ontario, and that—

**Mr. John Yakabuski:** He also implied very clearly that the approach of the government was not one that was—I'm not quoting him but paraphrasing—with the intent of disclosure. Clearly, the intent was to minimize, to as great a degree as possible, what the actual costs were to the public, whether they be sunk costs and/or costs passed on to the taxpayer. It was clearly a conspiratory mindset in the offices of the government, and it would have been in the offices that you worked, that they were going to try to continue to forward this number as being “the number that we want the public to get in their minds that this is what it's going to cost, and if we say it and repeat it often enough, the coffee house and the water fountain talk is going to be that, ‘These are the numbers.’”

We actually even had members of the media starting to accept those numbers and actually quote them in their stories. Who in your ministry at that time—the Ministry of Energy and then subsequent ministries since then—took it upon themselves? I know that Mr. Delaney talked about the energy that has been spent trying to retrieve documents—I suspect it takes a considerable amount of time and energy to conjure up a cover-up of the magnitude that you people have perpetrated. Who insisted that we continue to use these numbers both in the media, in the public and in the House, so that we could try to create a mindset in the public that these were in fact the true numbers and then whatever the opposition said would be just kind of flying over their heads? Somebody was in charge of that. Was it you? I don't think so.

**Mr. Andrew Forgione:** I think what the minister said when he came before committee—Minister Bentley. I still call him that because he was my first boss at Queen's Park. When he came before this committee, he said, “With all due respect to Colin, I asked for whatever costs that we can get. I want to go out with a number when he wanted to announce the relocation of the plants.” The

minister wanted to say the costs and that those were the costs that the OPA provided to the ministry at the time and that those records will be coming forward in the upcoming document request motion.

What the auditor did for the Mississauga plant was to take a very different approach that the OPA doesn't typically do when procuring power. When they're procuring power, they don't calculate out, every single year, how much it's going to cost ratepayers over the next 20 years. It's just not the way they do it. They negotiate, they get a price for power and then they build the plants. I can't speak to the specifics of what they do but I knew that at the time when we were announcing this relocation—

**Mr. John Yakabuski:** So you don't know? You don't know who came up with that?

**Mr. Andrew Forgione:** There was nothing to come up with.

**Mr. John Yakabuski:** We have a document, a letter, that was signed by then-Minister Brad Duguid, prepared by—he testified before the committee a few weeks ago—that clearly indicated that—the minister signed a letter. It clearly indicated that they knew there were costs over and above the sunk costs. Now, are you implying that there's no communication between the transition from one minister to another? That the minister that you worked for, Mr. Bentley, was not aware that there were costs other than the sunk costs when he was making his initial statements? I don't think anybody is going to believe that.

**Mr. Andrew Forgione:** For which facility?

**Mr. John Yakabuski:** For either facility.

**Mr. Andrew Forgione:** All the notes and records I provided to the minister were from the experts at the ministry and the OPA. If there were added costs at the time, they weren't calculated and we weren't aware of them. So what the minister said in the House was in good faith.

**Mr. John Yakabuski:** So when Brad Duguid wrote a letter, and clearly indicated in the letter that he knew there were costs over and above—

**Mr. Andrew Forgione:** I didn't see Minister Duguid's letter, so I can't speak to it. I apologize.

**Mr. John Yakabuski:** Well, we had it—it's been presented before this committee, that clearly there were costs over and above. That his successor would not be aware of that—that's very difficult to believe.

**Mr. Andrew Forgione:** I apologize; I can't speak to the specifics of that discussion. How the ministers talked and what information—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Yakabuski.

Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Forgione, you were political staff in Mr. Bentley's office for a number of months.

**Mr. Andrew Forgione:** Yes, for a number of months, until Minister Chiarelli came in, and then I worked for him.



**Mr. Peter Tabuns:** Did political staff in the minister's office ever write emails to each other about the gas plant issues?

**Mr. Andrew Forgiione:** I would assume so. We wrote to each other regularly about a number of issues, and email was a form of communication—a lot of meetings and other various avenues as well. But I'd say yes.

**Mr. Peter Tabuns:** So when documents were produced—because you started in May and so you were there for the initial production and then you were there for the major production in September and then the next round—

**Mr. Andrew Forgiione:** Yes.

**Mr. Peter Tabuns:** We never got a single email out of the minister's office. Didn't that strike you as strange—that although the minister's office was named to produce documents, there wasn't one piece of paper that came out of the minister's office, and none of the staff?

**Mr. Andrew Forgiione:** My minister's office never received a request from this committee. My particular one—the requests were from 2010 to 2011, so I'm not sure who worked in the minister's office at the time. But when I was reviewing records, I did see emails, including minister's office staff, in them, as well as OPA staff and legal staff and ministry staff as well. I'm not privy to who provided records to the ministry when they were doing their search, so I can't specifically comment on it. I just reviewed the records.

**Mr. Peter Tabuns:** So when you reviewed records, did you know that they were sourced from the OPA, for instance?

**Mr. Andrew Forgiione:** Yes. The OPA, yes, and the ministry, yes. But it was one individual in the deputy minister's office who printed them all off, so their name appeared at the top. So I wasn't familiar with who actually was giving over records.

**Mr. Peter Tabuns:** But you found it easy to distinguish that Ontario Power Authority was one group.

**Mr. Andrew Forgiione:** Yes.

**Mr. Peter Tabuns:** And Ministry of Energy was another group?

**Mr. Andrew Forgiione:** Yes.

**Mr. Peter Tabuns:** And you never saw a pile for the minister's office?

**Mr. Andrew Forgiione:** No, they would have been included in the ministry, I would have assumed. I wasn't privy to who provided the records, though.

**Mr. Peter Tabuns:** Who gave you your instructions, when it came to reviewing emails that have been produced, to look for ones that were problematic?

**Mr. Andrew Forgiione:** We had a communications team discussion about it and tried to predict what type of issues would arise. Then it was up to my colleague and I to review the records and report back to our superiors on what to expect.

**Mr. Peter Tabuns:** Who was on that communications committee managing that?

**Mr. Andrew Forgiione:** It would have been my colleague Ryan, who's already been mentioned a number of times. He and I were the ones reviewing the records and reporting them back. It was actually pretty much the entire office. There were policy advisers, there were communications advisers, everyone who should have been aware of these issues, because we knew it would be gripping the Legislature in September.

**Mr. Peter Tabuns:** So you met with just about everyone who was involved with this issue in the minister's office.

**Mr. Andrew Forgiione:** In the minister's office, it was my job as the one who prepared the minister's notes in the morning to have a grip on what was being discussed, what issues there were. So, yes, I'd meet with a policy adviser on a wind farm that had an issue and someone else on a gas plant.

**Mr. Peter Tabuns:** That's okay. But in terms of this production, you met with all the minister's staff.

**Mr. Andrew Forgiione:** To discuss what was being released?

**Mr. Peter Tabuns:** Yes, and to decide how to deal with it.

**Mr. Andrew Forgiione:** There was nothing to decide about how to deal with it; it was just the review. So we said that we were going to be looking for these specific things to prepare for media calls.

**Mr. Peter Tabuns:** Did you come across documents that you thought were not responsive?

**Mr. Andrew Forgiione:** I wasn't looking for responsive records or not; I was looking for issues. I was focused on controversial emails, numbers, that sort of thing.

**Mr. Peter Tabuns:** So you never saw an email and said, "Gee, that's not responsive. I don't know why it's here."

**0950**

**Mr. Andrew Forgiione:** No. I wouldn't have made that decision, no.

**Mr. Peter Tabuns:** And who was ultimately responsible for document production at the staff level?

**Mr. Andrew Forgiione:** In the ministry?

**Mr. Peter Tabuns:** Yes.

**Mr. Andrew Forgiione:** I think Jesse was the lead, and the deputy has said that as well before this committee. She was seconded before I arrived at the ministry. So I think it was Jesse for the ministry, and I think it was—I'm not even sure who it was at the OPA, actually.

**Mr. Peter Tabuns:** The ministry is fine. Did you ever discuss the consequences from an issues management perspective of not producing the documents the committee had directed to be produced?

**Mr. Andrew Forgiione:** No. I wasn't part of those discussions with the minister or the high-up staff; just the communications side of things.

**Mr. Peter Tabuns:** And on the communications side, did you have discussions about the consequences of not producing the documents that had been ordered produced?

**Mr. Andrew Forgione:** We discussed the balance that the minister had to the ratepayers and to the committee, and we knew he had written to committee as well. So, no, we didn't talk about the specific consequences. I think that was more of a government House leader discussion, as you've seen with previous members of this committee who have come before it and the testimony that they've had. I wasn't at the table to discuss the consequences in particular.

**Mr. Peter Tabuns:** But you did talk about that messaging balance between—

**Mr. Andrew Forgione:** Yes, that I did. That was our decision, or the minister's decision. Based on the legal advice that he was receiving, he wanted to make sure that it was safe for the records to be released and that it didn't prejudice any of the discussions with TransCanada or Greenfield South. But it wasn't my decision to make; it was the minister's.

**Mr. Peter Tabuns:** When we talk about the production of documents, was it the Ministry of Energy that came in and oversaw the search of documents in the minister's office?

**Mr. Andrew Forgione:** I'm not 100% sure. My records were never searched, because I didn't have anything responsive to the motion, so I'm not 100% sure. But I would assume the minister's office oversaw their own records and the deputy minister's office oversaw his own records, and then there were divisions. The same with the OPA: They oversaw their own searches.

**Mr. Peter Tabuns:** Mr. Delaney asked you a question about the position of the different parties on the cancellation of the plants. Was it ever pointed out to you that it was Liberal Minister Dwight Duncan who authorized the Mississauga plant to go forward in the first place?

**Mr. Andrew Forgione:** The Mississauga plant? Yes, I understood that it was a ministry RFP for that plant, and subsequently, I think, it was turned over to the OPA when it was renegotiated.

**Mr. Peter Tabuns:** And that George Smitherman gave the direction to the OPA to put the plant in Oakville? You were aware of that?

**Mr. Andrew Forgione:** I think he just said "south-west GTA," and then the way that the RFP process worked, it came with a location. Now I understand that Minister Chiarelli is working on changing the process to make it better for Ontario, but at the time, when an RFP went out and came back with a location, the minister didn't say, "Put one on that corner; put one on that corner." It was more that the bid came in and the lowest bid won. If the location was Loreland Avenue or the Ford plant, that was the location.

**Mr. Peter Tabuns:** So, in fact, public consultation would have been irrelevant to the location.

**Mr. Andrew Forgione:** No. It was still required through the environmental review process.

**Mr. Peter Tabuns:** It may have been required, but it was irrelevant, because the lowest price had already been secured, and thus the project had already been secured.

**Mr. Andrew Forgione:** And Minister Chiarelli is working on improving that process.

**Mr. Peter Tabuns:** No, I understand that. I understand that message.

Did you work on the message track that we're getting, trying to say that it was the opposition parties that were responsible for all this? Did you actually get involved in that?

**Mr. Andrew Forgione:** For all of what?

**Mr. Peter Tabuns:** One of the defensive points we've been getting back from the government has been that, "Well, everybody agreed that these plants needed to be cancelled or relocated." Did you work on development of that?

**Mr. Andrew Forgione:** I worked on some research, on finding out—I didn't follow the 2011 election as closely as I maybe should have, so I did a lot of research, finding out what the positions of all the other parties were. I definitely worked on that messaging, yes.

**Mr. Peter Tabuns:** And did they ever tell you to do the research on what the other parties said when the government first started talking about putting these plants in place?

**Mr. Andrew Forgione:** No, I wasn't aware of that.

**Mr. Peter Tabuns:** Fair enough. Mr. Bisson, do you have any questions?

How much time do I have left?

**The Chair (Mr. Shafiq Qaadri):** One and a half minutes.

**Mr. Peter Tabuns:** Hardly enough to say "good morning."

Did you have any regrets about the production of those documents last fall?

**Mr. Andrew Forgione:** I wasn't involved in the actual disclosure, but I know the minister has come before this committee and said that there were mistakes made, and the same with the deputy and the same with Colin Andersen.

**Mr. Peter Tabuns:** What do you think the most fundamental mistake was?

**Mr. Andrew Forgione:** I think not coming to an agreement with all three parties on a way to discuss them in a confidential way, so that the committee was happy with the records but the public was still protected from the actual process and the negotiations. But I understand the NDP's perspective of always wanting documents public. I know you've said that before in committee. But I think that was the main regret, not having an agreement with all three parties to discuss so that the province could still be protected, and that Minister Bentley said many times.

**Mr. Gilles Bisson:** Well, you piqued my interest again. It's not a question of what you want; it's a question of what we're obliged to do by the rules of this House and by convention. So I just caution—well, I'm not cautioning. I guess I would just say, it's not what you want and it's not what I want; there is a requirement when a committee requests a document that that motion be complied with.

**Mr. Andrew Forgione:** It was complied with.

**Mr. Gilles Bisson:** No, that's not—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson.

To Mr. Delaney: 10 minutes. Final round.

**Mr. Bob Delaney:** Thank you very much, Chair.

Andrew, when you first began working in energy, your minister was Minister Bentley. When he appeared before the committee, one of the things that he said is—and I'll use his words exactly—"I want to say clearly and directly that I've always worked as hard as I can, used my best judgment and acted in good faith in the best interests of the people I represent in all of my capacities." In the time that you spent working with Chris Bentley, would you agree with that statement?

**Mr. Andrew Forgione:** Yes. He was a great boss, and I know he worked really hard for his constituents in London and was awesome.

**Mr. Bob Delaney:** Okay. Thank you, Chair. That's all we have this morning.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Mr. Forgione, for your testimony. The committee is in recess—

**Mr. John Yakabuski:** Chair—

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you, Mr. Chair. This afternoon, we have witnesses coming, one a recalled witness, David Livingston.

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. John Yakabuski:** I think you can agree that his testimony is going to be significant, based on some questions and the answers provided to questions in his previous testimony. Is it not possible to have this moved to 151, where the accommodations are larger? We expect there will be a fair number of media interested in covering that as well.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. My understanding is that the Standing Committee on Estimates has precedence of that room—no particular reason.

Mr. Bisson?

**Mr. Gilles Bisson:** Isn't this being streamed? I thought this was being streamed.

**The Chair (Mr. Shafiq Qaadri):** This is being streamed, yes. We wouldn't think of having a justice policy committee without streaming.

**Mr. Gilles Bisson:** I'm just saying because of the motion—

**The Chair (Mr. Shafiq Qaadri):** Mr. Clark.

**Mr. Gilles Bisson:** Just to remind the committee, there was a motion that was passed that it be streamed, and my understanding is, this is being streamed.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Yes, it is.

**The Chair (Mr. Shafiq Qaadri):** We are in mid-stream now.

Mr. Clark.

**Mr. Steve Clark:** Mr. Chairman, while we recess, I wonder if you could speak to the Chair of estimates with a view to switching rooms for this afternoon.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. We will do that.

The committee is in recess till this afternoon.

*The committee recessed at 0958 and resumed at 1501 in room 151.*

#### MR. DAVID LIVINGSTON

**The Chair (Mr. Shafiq Qaadri):** Colleagues, the Standing Committee on Justice Policy is now called officially to order.

I'd invite our first presenter to please come forward: Mr. David Livingston.

I would also like to thank our able Clerk for the room change, as was requested earlier today. Thank you, Ms. Pomanski.

Mr. Livingston, you know the drill very well. You'll be affirmed?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. David Livingston:** I so affirm.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Livingston. Your five-minute opening address begins now.

**Mr. David Livingston:** Thank you, Chair. Good afternoon.

The last time I was here, we talked extensively about gas plants. Today it seems that there are three issues being treated as if they are related, and they are not. I want to comment on each separately.

With respect to email management, when I joined the Premier's office in May 2012, there were briefings on the many issues the office needed to address. Email management policies were not among them. There were no policies or procedures regarding email management, nor was any legislative material offered either by the office or by the Ontario public service.

In managing their emails, all staff continued to follow practices developed over the years before my arrival. In my case, I followed my own long-standing practices. Emails were my to-do list. Once action was taken, the email was deleted so that it was clear what remained outstanding.

We became aware that for departing staff, email accounts remained open and that unread emails were piling up. As chief of staff, I talked to Peter Wallace many times every week on many issues, so I naturally turned to him for advice on how to deal with the situation. The answer seemed to be one of better execution of existing policy: Close the account on a timely basis on the departure of the staffer, which is what we did.

With respect to electronic file management, as chief of staff in the Premier's office, there was no need for me to create electronic records. So in January 2013, as the outgoing chief, I had no active government files and no records that were not duplicates or transitory in nature. However, I did have some personal files, and as you can imagine, I had some privacy concerns about them. Again, it was perfectly natural for me to turn to Peter Wallace for advice, and the resulting actions were entirely consistent with his advice.

As with emails, all staff continued to follow their own long-standing practices for managing their own files.

With respect to the gas plants: As I have said to this committee before, I spent nine months in the Premier's office, from May 2012 to February 2013. I became the Premier's chief of staff long after decisions regarding cancelling the gas plant contracts had been made.

During my tenure, the job of government was to settle disputes with the companies involved. The Ministry of Energy was responsible for the negotiations and kept the Premier's office informed. Files regarding gas plants did not originate from the Premier's office, and everything relevant to the settlements came from the ministry. Any interaction between the Premier's office and the ministry would have been provided under previous information requests. Email and electronic management practices had nothing to do with the gas plant file.

Going forward, I have co-operated with all requests to appear before this committee and the Office of the Information and Privacy Commissioner and have answered all questions asked. I will continue to co-operate, and I believe that any direction or recommendations from the committee will be helpful to future staff.

I'd be happy to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Livingston.

To the NDP: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Thank you, Mr. Livingston.

The initial batch of documents was released by the Ministry of Energy and OPA around September 2012; that's your recollection?

**Mr. David Livingston:** Sorry, I really don't have a recollection. I—sure.

**Mr. Peter Tabuns:** You became chief of staff, again, you just said in May of—

**Mr. David Livingston:** May 2012.

**Mr. Peter Tabuns:** Did you, in your time as chief of staff, have discussions with the Premier about the release of those documents?

**Mr. David Livingston:** Not that I recall.

**Mr. Peter Tabuns:** Actually, have you circulated, Clerk, the—

*Interjection.*

**Mr. Peter Tabuns:** Oh, you're getting photocopies. Quel dommage.

In August 2012, you had a check-in with Colin Andersen, and you wanted to check in with your approach on a couple of files. I don't know if you have any recollection

of your discussions with Mr. Andersen in August, prior to the release of the documents requested by this committee. I imagine that you had discussions with him about the release of these documents; did you not?

**Mr. David Livingston:** I honestly do not recall the conversation. I don't know what we would have talked about.

**Mr. Peter Tabuns:** So you never had any discussion with—if you could go to documents 4 and 5.

**Mr. David Livingston:** I'm sorry. I really don't recall what we talked about.

**Mr. Peter Tabuns:** So did you or did you not have discussions with the head of the Ontario Power Authority about document release in August 2012?

**Mr. David Livingston:** I accept that I did because it's here in the emails, but I would have talked to lots of people all the time. I really don't recall what I discussed with Mr. Andersen.

**Mr. Peter Tabuns:** Mr. Bisson, you had something?

**Mr. Gilles Bisson:** I have questions, but when you're done.

**Mr. Peter Tabuns:** That's fine, okay.

So did you have ongoing discussions with the Premier about the documents and about the situation that you were facing in the House?

**Mr. David Livingston:** I briefed the Premier regularly on things. There may have been discussions about what the status was of the negotiations, but I don't recall a specific briefing. I don't recall discussing the documents, the release of documents. That was not a topic of conversation, in my memory.

**Mr. Peter Tabuns:** None. So you have no recollection of the Premier ever being involved in a discussion about which documents would be produced and the potential impact on his government?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** And yet, at the same time, some of your staff—Laura Miller, who was your deputy, emailing with Don Guy all about this whole document production issue, but it never reached you?

**Mr. David Livingston:** I would have been aware that there was a request for documents. I was aware of what the strategy was. I felt that it was being handled. There would be no reason to have a conversation beyond that.

**Mr. Gilles Bisson:** Can I?

**Mr. Peter Tabuns:** Yes, go ahead.

**Mr. Gilles Bisson:** Just on that point, we've had your counterpart, Mr. Morley, before this committee, who swore under oath that in fact the Premier was briefed, knew everything that was going on, and it was a way that Mr. McGuinty worked, to make sure that in doing his work he was aware of what was going on in his office. One chief of staff tells us in fact that that information was given to the Premier. So are you contradicting that?

**Mr. David Livingston:** No. Mr. Morley was the chief of staff for some time before May 2012 and may well have briefed the Premier on what was going on before I came into the office, but after I came into the office, it was not a topic—

**Mr. Gilles Bisson:** Was the Premier in the knowledge of what was going on at the estimates committee?

**Mr. David Livingston:** I don't know.

**Mr. Gilles Bisson:** Okay, carry on. That's interesting.

**Mr. Peter Tabuns:** And you didn't follow what was going on at the estimates committee?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** So we were debating motions about privilege and contempt that could shake your government. Apparently the Liberal Party rehired Don Guy for the fall of 2012 on fear that there would be an election, and this didn't trouble the waters in the Premier's office at any point?

**Mr. David Livingston:** In the Premier's office, we were looking at what was happening with respect to the negotiations. Were negotiations going on with the companies? As I said in my opening statement, our concern is to make sure that these things were getting resolved, so as long as the conversations were continuing, then we felt that the job was being done.

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**Mr. Peter Tabuns:** But everything that was going on in the House, in estimates—the stability of the government—was not a matter of concern?

**Mr. David Livingston:** I don't know what the answer to that is.

**Mr. Peter Tabuns:** Well, no, if you never had a discussion—if you're maintaining to us that you never discussed this with him—

**Mr. David Livingston:** Right. I did not feel at the time that what was going on was something that represented—something that was going to cause the fall of the government, if you like. These were concerns that were being expressed. I felt the concerns were being addressed and everything was moving along the way that it should.

**Mr. Peter Tabuns:** When did you change your mind to the point that Don Guy got brought into the picture?

**Mr. David Livingston:** I didn't bring Don Guy into the picture. I don't know when Don Guy came into the picture. We would have had conversations with Don about various things at various times. I don't know the answer to that.

**Mr. Gilles Bisson:** Did you ever discuss this issue with Don Guy?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** Were you yourself regularly in touch with Don Guy?

**Mr. David Livingston:** I've known Don for years, so I would talk to Don about different things at different times. "Regularly" would be a word I would use quite literally. I would talk to him often.

**Mr. Peter Tabuns:** Did the speed or the frequency of your discussions increase when he was brought on to prepare for an election in the fall of 2012?

**Mr. David Livingston:** I don't remember him being brought in for an election in the fall of 2012. The speed of my conversations with him during the summer would not have increased, no.

**Mr. Peter Tabuns:** What was your opinion when you had to deal politically with the decision of the Speaker around a prima facie finding of privilege, of contempt?

**Mr. David Livingston:** As we have said before, as was discussed last time I was here, I don't think I was hired by the Premier for my political advice, so my political view on it would not have mattered. I had a view that the contempt motion after the documents' release was unfair, so that would be as much as I could say about it.

**Mr. Peter Tabuns:** Did you discuss the implications with the Premier and with Minister Bentley?

**Mr. David Livingston:** I didn't need to discuss the implications. I think those were well known to Minister Bentley. They would have been well known to the Premier because of what was going on in the House. It was not a topic of conversation between me and him or me and them.

**Mr. Peter Tabuns:** Did you discuss it with Laura Miller, who was your deputy?

**Mr. David Livingston:** Again, it was something that was very well known, so there was going to be no need to talk about it specifically.

**Mr. Gilles Bisson:** Can I—

**Mr. Peter Tabuns:** Go ahead. Why don't you try?

**Mr. Gilles Bisson:** I think we're having a bit of a problem here. You were the chief of staff. There was a request by a committee to release documents. Were you aware that a motion by committee had to be complied with, that you had no wiggle room, that you had to give the documents? Were you aware?

**Mr. David Livingston:** We're going back to the summertime?

**Mr. Gilles Bisson:** Yes, going back to the original motion from the estimates committee, were you aware that—first of all, were you aware that such a motion was made?

**Mr. David Livingston:** I was aware that the motion was made.

**Mr. Gilles Bisson:** Were you also under the understanding that you had to comply with that motion?

**Mr. David Livingston:** That part would have been unclear to me, because it seemed, as a matter of commercial sense, commercial prudence, that documents related to negotiations that were under way should not be released.

**Mr. Gilles Bisson:** Did you see this as a political problem?

**Mr. David Livingston:** Again, politics would not be something that I was brought in to discuss—

**Mr. Gilles Bisson:** Did you see it as any kind of a problem for the Premier and the government in regard to the refusal to release those documents?

**Mr. David Livingston:** I felt that because it made commercial sense not to release them, everybody would have come to that point of view.

**Mr. Gilles Bisson:** Well, obviously, you were wrong. The Speaker made a ruling that was pretty clear. You

have to provide those documents, and you can't use that as an argument not to give them.

You're here telling us that you never had any conversation, at the time you worked in the Premier's office, with the Premier about this particular issue.

**Mr. David Livingston:** Yes.

**Mr. Gilles Bisson:** That's, "Yes, I've never had the conversation."

**Mr. David Livingston:** Yes.

**Mr. Gilles Bisson:** Were you aware of any conversations going on in the Premier's office in regard to this particular issue: the release, the May 16 estimates?

**Mr. David Livingston:** Again, we kept a running list of all the files we had in the Premier's office, and the status of gas plant negotiations would have been on that list.

**Mr. Gilles Bisson:** I'm not talking about the status of the negotiations.

**Mr. David Livingston:** Right.

**Mr. Gilles Bisson:** I'm talking about the release of the documents. Were you aware of any conversations that took place in the Premier's office, among staff or anybody else, in regard to the non-release of the documents requested by the estimates committee?

**Mr. David Livingston:** Again, we would have been discussing it in the context of, did it make commercial sense to release them. We were concerned, as was Minister Bentley, that in releasing them, we would have prejudiced the negotiations, and so that was the reason they were not released. The implications of that were not something that was discussed extensively.

**Mr. Peter Tabuns:** But you had legal staff who were exploring all this, writing opinions, looking at whether or not documents legally could be withheld. You were getting opinions that in fact you had to bring them forward, that you didn't have any maneuvering room on this. You weren't paying any attention to any of those?

**Mr. David Livingston:** I would say that my view was that because it made sense not to, that everybody would have come to that point of view.

**Mr. Peter Tabuns:** And thus you would ignore the power of the Legislature?

**Mr. David Livingston:** I didn't feel like I was ignoring the power of anybody. I felt that the question around the release of documents was always when were they going to be released, not if they were going to be released, and I believe what the minister had said is that when we had deals, then the documents would come out, and I felt that that was going to be enough.

**Mr. Peter Tabuns:** Were you in touch with the government House leader's office or the Minister of Energy about this? Were you essentially giving them that line of argument?

**Mr. David Livingston:** I would say that it wasn't an argument that I was making. It would have been the understanding between the House leader and the Minister of Energy.

**Mr. Peter Tabuns:** So, in effect, your whole state of mind was, "We don't have to comply with the decision of

the Legislature or of its committees, and these House rules are irrelevant"?

**Mr. David Livingston:** No. My state of mind was that it made commercial sense not to, that everybody would understand that that was the appropriate thing to do, and if that occurred, then there would be no dispute.

**Mr. Peter Tabuns:** Mr. Livingston, we elected a government here. It's democratic, it has rules, it has committees, and they have powers. Effectively, you're saying that notwithstanding democratic rule and the powers of committee and centuries of tradition, you could ignore it, and that was the state of mind in your office, in the Premier's office and amongst the senior staff that you dealt with in the ministry and House leader's office?

**Mr. Gilles Bisson:** Or you're not telling us the whole story.

**Mr. David Livingston:** I would say it was not that we were ignoring it. The view was that the documents would be released when the deals were reached, and that's in fact what happened. The question was when it was going to be complied with, not if.

**Mr. Gilles Bisson:** Let me go back to the question that I asked you earlier. Were you aware of any conversations within the Premier's office in regard to the refusal of releasing documents requested by the estimates committee?

**Mr. David Livingston:** And I would just say again that my recollection of that entire period was that there was a good and valid reason why the documents were not being released immediately.

**Mr. Gilles Bisson:** Were you party to any of those discussions?

**Mr. David Livingston:** There would have been discussions around it, and the—

**Mr. Gilles Bisson:** With whom did you have those discussions?

**Mr. David Livingston:** I don't recall specifically with who. I'm just trying to think back to what would have likely happened, and during that time, there was an understanding that the documents would be released when the deals were reached, and I don't think it would have gone beyond that. So that would be my recollection of what would have been discussed.

**Mr. Gilles Bisson:** Because you just said in your testimony that you never briefed the Premier about this particular issue.

**Mr. David Livingston:** Right.

**Mr. Gilles Bisson:** We're having a bit of a hard time squaring that off, because the testimony of others says that in fact the Premier, in a style of work which I think was commendable, made sure he knew what the heck was going on. So either you're not telling us the whole story here or—I don't want to say what the other one is.

**Mr. David Livingston:** So I will just say again that during the summer, there were many, many files that were being addressed. This was one of them—

**Mr. Gilles Bisson:** Was this one of them?

**Mr. David Livingston:** Absolutely.

**Mr. Gilles Bisson:** And did you discuss this with other staff—

**Mr. David Livingston:** There were many files that were under way and—

**Mr. Gilles Bisson:** Did you discuss with other staff in the Premier's office the issue of not releasing the documents at the estimates committee?

**Mr. David Livingston:** So, in direct answer to that, I would say the answer is no. What we discussed was exactly what I said, and that is that there was a reason why the release was delayed until a deal had been reached, and that once the deal had been reached, then the documents would be released. That was the understanding.

**Mr. Gilles Bisson:** Did you have any discussion with anybody in the House leader's office or the whip's office, or the House leader or the whip, in regard to this particular issue of the non-release of documents that were requested by the estimates committee?

**Mr. David Livingston:** I certainly don't recall anything with the whip's office. David Phillips from the House leader's office was a regular part of discussions that we were having inside the Premier's office, and so there could well have been discussions with David, but I don't recall them in the kind of specificity that you're talking about.

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**Mr. Gilles Bisson:** Did you ever talk to David Phillips around the issue of the strategy of not releasing documents?

**Mr. David Livingston:** I think David had views on it. I recall that those views were expressed—

**Mr. Gilles Bisson:** And you were not concerned? You just said, "Okay, do what you've got to do"? I'm just trying to figure this out here.

**Mr. David Livingston:** Again, it's not that it was being ignored. It's not that there was anything that was trying to be brushed aside. It's not that there was anything that was being not taken into account. I feel like I'm just repeating myself, and I apologize: There was an understanding that documents were going to be released, that there was commercial sensitivity attached to them and that, if we had released them immediately, that could have prejudiced discussions.

**Mr. Gilles Bisson:** So, at no time, nobody in the House leader's office came to you and said, "Here's how we're going to deal with not releasing the documents"? Nobody from Bentley's office came to you or your staff and said, "Here's how we're going to deal with not releasing the documents"?

**Mr. David Livingston:** It could well have happened. I don't recall it happening.

**Mr. Peter Tabuns:** And so, if you never came to an agreement, then you never would have released the documents?

**Mr. David Livingston:** I think that as we got closer to the contempt motion, Minister Bentley's view on that was changing.

**Mr. Peter Tabuns:** And what did it change to?

**Mr. David Livingston:** Again, this would be speculation, because we did get to a deal and the documents did get released. What would have happened if we hadn't gotten to a deal, I don't know.

**Mr. Peter Tabuns:** Well, based on everything you've indicated so far, you would have ignored the will of the Legislature and of this committee. You would have ignored the rules of the House. You would have been in contempt.

**Mr. David Livingston:** Again, the view that was taken is that the documents would be released when the deals were reached, and we had confidence the deals were going to be reached and the documents would come out, as they did.

**Mr. Gilles Bisson:** I just have to say, your credibility on this—I'm trying to find a way to square it all off, but it doesn't fly. On the one hand, in the answer to the question you just gave Mr. Tabuns, Mr. Bentley was changing his view on it, which means to say that he obviously had another view prior to that, which was not to release the documents. I can't believe that the Premier's office, and you as the chief of staff, didn't have discussions with Bentley or his office, or Mr. Milloy or his office, in regard to the strategy around not releasing documents.

So, I ask the question again: Did you talk to anybody about not releasing those documents?

**Mr. David Livingston:** The strategy was that the documents would be released when we had deals.

**Mr. Peter Tabuns:** And who did you talk to about that? It wasn't osmosis. It wasn't telepathy. You actually had to talk to people.

**Mr. David Livingston:** The reason that I'm being vague was that it was a general understanding, by everybody that was involved with the file, that the documents were going to be released when the deals were reached. And so—

**Mr. Peter Tabuns:** Including the Premier? How did you understand the Premier's mind?

**Mr. David Livingston:** When I'm referring to "the office," I'm referring to the people that work for me, so people inside the Premier's office. The Premier, I think, would have just expected and assumed that we were dealing with it in the way that we had said, and that is that we were going to be releasing the documents when the deals were reached.

**Mr. Peter Tabuns:** And that was your best guess of his state of mind?

**Mr. David Livingston:** Yes.

**Mr. Peter Tabuns:** You never asked him, and he never said?

**Mr. David Livingston:** I don't recall having that conversation, no.

**Mr. Gilles Bisson:** There's an email here from Dave Phillips, that was sent to you, that talks about the strategy around this whole issue. So you never read your emails?

**Mr. David Livingston:** Sorry, where is that?

**Mr. Gilles Bisson:** You have an email, in package number 1, I take it, that you've got. September 19.

**Mr. David Livingston:** Right.

**Mr. Gilles Bisson:** Yes. I just want it for the record: These are documents that have been released to the general committee. They're open documents. I just want to confirm with the Clerk—right? That's a "yes"? Thank you.

Clearly, as of September 19, you were dealing with issues of strategy with Mr. Phillips in regard to how you were going to deal with this whole thing. So you never had a discussion with him until September 19? Is that what I am to believe?

**Mr. David Livingston:** I think that David would have been part of the same discussions around just generally updating all the files, and he would have been working under the same understanding that I was; that is, that the documents would be released once the deals were reached on the gas plants. I notice that this memo is dated September 19—after the documents had been released, after the gas plant deals had been done, and the contempt motion had already been filed—so I would have said that this was more about how to deal with the contempt motion than it was about how to deal with the release of documents.

**Mr. Peter Tabuns:** But certainly you had ongoing discussions—with people you can't remember—about how all of this was going to be handled, and you were not going to comply until you felt that you wanted to comply.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns and M. Bisson. To Mr. Delaney: 20 minutes.

**Mr. Bob Delaney:** Thank you, Chair. Mr. Livingston, thank you very much for being here again today. I just want to actually pick up some of the discussion that you left off on and clarify some past committee discussion about documents and records.

In response to an estimates committee request for records on the two gas plant relocations last year—2012—56,000 documents, in fact, were turned over by the OPA and the Ministry of Energy, right?

**Mr. David Livingston:** Okay.

**Mr. Bob Delaney:** Okay. Since the justice committee began its hearings in March, the government has provided more than 135,000 documents, including some 30,000 documents from the Premier's office, and in April, some 4,000 documents were released in response to a freedom-of-information request related to the Oakville and Mississauga gas plants. These document disclosures include records from both the current and former Premier's office. They include thousands of pages of emails and handwritten notes, as well as communications and transition materials.

Do you want to address the statements that we've heard in this committee, primarily from the opposition, that they do not have records from the former Premier's office?

**Mr. David Livingston:** It seems to me that there was a lot of information around, that everything that didn't affect the commercial sensitivity of the negotiations was released; that there was always a clear understanding that once the commercial sensitivity went away, everything

was going to be released. So it was never a question of "if;" it was always a question of "when," and that the volume of information that was out there was as complete as anybody could make it.

**Mr. Bob Delaney:** So to restate that, then, there was never a strategy about how not to release documents. However, there was a consensus as to how to balance the need to release the documents with the need to protect commercially sensitive information and the public interest. Would that be correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** Okay. I'd like to ask you a few questions about the Information and Privacy Commissioner's special report. Here again, I think it's important that we set the record straight. In the report, the Information and Privacy Commissioner provides comment from the chief information officer in terms of conversations that you apparently had regarding records management.

**Mr. David Livingston:** Sorry, regarding?

**Mr. Bob Delaney:** Around records management.

**Mr. David Livingston:** That's right.

**Mr. Bob Delaney:** According to the report, the chief information officer told the Information and Privacy Commissioner that—and I'll use his words exactly—"at no time did he ... believe that the inquiries from [Mr.] Livingston regarding the most effective way to 'wipe clean' the computers on transition were being made for an improper purpose." And in response, the Information and Privacy Commissioner reports that your discussions with the chief information officer and the secretary in January were motivated by a concern that email accounts for departing staff must be decommissioned to avoid the possibility that old accounts would continue to accumulate emails after that staff member had departed, and that it was not motivated by an attempt to inappropriately delete electronic records or other relevant material.

Would you like to add anything to that?

**Mr. David Livingston:** Maybe correct it. I'd like to start by saying that there was never an intent by anybody to inappropriately delete emails or records. I think there were two separate conversations. The issue with respect to emails piling up for departed staff happened earlier. I think it happened in—I don't remember exactly, but in August or September. In January, it was much more about—as I said, I had records that were personal in nature, and with those I was trying to figure out, "What do I do with them? How do I make sure that those were deleted?"

So they were two separate conversations motivated by the same things. In one case, we had emails piling up for people who had left, and what do we do about those; and in the second case, it was the personal records that I had that I wanted to have deleted. In both cases, I think the advice was taken, and we reacted to it in the appropriate way.

**Mr. Bob Delaney:** Another issue that came up in the report is whether or not it is standard protocol for staff email accounts to be deleted after they leave government. In fact, Secretary Wallace confirmed to the committee



that it's a common practice, government-wide, on both the political and public service side. To use his words, he said, "The wrapping up of email accounts would be a perfectly routine business. It's done in all businesses. There's no expectation in the archives act or anyplace ... that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place ... within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down...."

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Again, just to confirm: Allegations that email accounts were deleted inappropriately are false. Is that correct?

**Mr. David Livingston:** Absolutely correct.

**Mr. Bob Delaney:** Thank you. To move now to the transition period, there have been a lot of misconceptions about what happened at that time in terms of record and media retention, so let's explore that a little bit and again set the record straight.

William Bromm from the Cabinet Office has confirmed to this committee that the email accounts of some 50 of the former Premier's office staff were preserved during transition in light of an ongoing freedom-of-information appeal, not because of any extreme measures. Furthermore, the recovery of electronic devices like BlackBerrys and laptops was all part of standard property recovery process when an employee leaves the Ontario public service.

It's also important to note that in her report, the Information and Privacy Commissioner confirms, based on interviews with you, with the secretary of cabinet, with members of the former and current Premiers' office and with the chief information officer, "None of these individuals had any specific knowledge or information about the inappropriate deletion of records occurring as part of that transition." Would you like to add anything else on that transition period?

**Mr. David Livingston:** The only thing I would add is that we had put together a set of binders—I think I mentioned this the last time I was here—that covered off everything, from what all the files outstanding were and what the organization chart was. We created records for the new government that were also part of that transition.

It is absolutely correct that emails or records were not being inappropriately deleted or that they were not being dealt with in the way that they had always been dealt with. Absent any policies or information otherwise, people dealt with them in the way they always had. We did make every effort to make sure that there were good documents and records for the new government when they came in.

**Mr. Bob Delaney:** Do you recall whether you received any advice or guidance on archive and record-keeping practices or requirements when you became the chief of staff to Premier McGuinty?

**Mr. David Livingston:** I specifically recall not getting that guidance.

**Mr. Bob Delaney:** Based on Premier McGuinty's June 7 statement in response to the Information and

Privacy Commissioner's special report, it does appear that his staff, in general, were not adequately trained in this regard. The former Premier said that, "despite some efforts," the government "did not devote adequate resources and attention to ensuring that all government staff in all ministries and in the Premier's office were fully informed of their responsibilities."

He went on to say, "This inadequate training has made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

In the IPC's report, the Information and Privacy Commissioner outlines that you didn't recall providing staff with copies of the Premier's office records retention schedule, nor did you supervise or instruct staff regarding records retention processes. Is that accurate?

**Mr. David Livingston:** Correct; nor did I know that such a thing existed.

**Mr. Bob Delaney:** Okay. Anything else you wanted to add to that?

**Mr. David Livingston:** Only that if policies had been available, there would be every intention of abiding by them. Absent knowing what to do otherwise, people were dealing with them in the way they always had.

**Mr. Bob Delaney:** Okay. Mr. McGuinty also testified that the rules, as laid out in the Archives and Record-keeping Act, are "confusing" and "cry out for clarity." He told the committee that "what to destroy and what to preserve is ... a matter of judgment." In fact, one of the responses to the Information and Privacy Commissioner's recommendations is that our government has initiated a review of the archiving schedules so that they can be better clarified. Would you like to comment on the rules and why they're as confusing as they are currently written?

**Mr. David Livingston:** It seems, with the benefit of hindsight on it, that there are reasons why you can delete and reasons why you should retain. They are, at best, unclear. The purpose of regulation and the purpose of policies would be to give that clarification so people knew exactly what to do. Absent that clarification, then, they're really dealing with it the way that they think best.

**Mr. Bob Delaney:** Mr. McGuinty told us that he urges the government to immediately devote all necessary resources to train all government staff regarding record management obligations, so at this time, many important steps are already being taken to ensure that all staff are aware of and all staff follow the rules under the Archives and Recordkeeping Act and under the Freedom of Information and Privacy Act. All of these steps were initiated prior to the release of the Information and Privacy Commissioner's report, including mandatory all-staff training held in April and improvement in the orientation process for new political staff to ensure that they're aware of their responsibilities as soon as they're hired. In fact, our government has responded to the majority of the Information and Privacy Commissioner's

recommendations and continues to study her suggested amendments to freedom-of-information legislation.

My question to you is, would you have any other suggestions on how we can ensure that staff are adequately trained?

**Mr. David Livingston:** I am sure the government is doing an excellent job.

**Mr. Bob Delaney:** Mr. McGuinty's statement concludes by urging the government to draft clear guidelines describing in detail what kinds of records are deemed public and therefore must be preserved and which are transitory records or personal, political and constituency records and therefore need not be preserved. He goes on to state, "In the absence of such clarity, it will be very difficult for government staff to exercise sound judgment."

Throughout our work, the committee has been provided with and reviewed several different record retention schedules which outline several rules around, and definitions of, transitory records. What is clear is that not all records need to be kept, and the Information and Privacy Commissioner herself has confirmed that. The common record series defines transitory records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

When we asked Secretary Wallace about his personal experience with transitory records, he told us, "from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant."

So the question is, based on your experience in government, does that seem to be an accurate characterization of transitory records?

**Mr. David Livingston:** Yes.

**Mr. Bob Delaney:** Anything else you want to add to that?

**Mr. David Livingston:** This has obviously been well thought out by people who are very close to it. They understand it at least as well as I do, and probably better. I can't imagine how I could make it better than what they've already thought of.

**Mr. Bob Delaney:** Fine. We're trying very hard to clarify these points around transitory records, what we've found is that there's a widespread misconception, perhaps even a deliberate misconception, that every piece of paper and every electronic record needs to be kept, and I think one thing we can conclude now is that that is not true; correct?

**Mr. David Livingston:** Yes, absolutely true.

**Mr. Bob Delaney:** Another category of transitory records are, of course, duplicates, which the Information

and Privacy Commissioner defines as "copies of records kept by other offices or branches within the ministry"—or within the government. That report states, "If staff in either the ministers' offices or the Premier's office determined that another government branch or department was retaining the records, there would be no requirement under these records retention policies for the minister's office or the Premier's office to retain"—and here's the operative word—"additional copies," and she emphasizes that the program owner would be responsible for maintaining business records related to their specific initiatives.

I know from my experience as a parliamentary assistant that it's customary that the ministry would provide, for example, briefing decks and policy options for the vast majority of meetings that I would attend, and that, similarly, a cabinet minister or their staff would know that Cabinet Office would retain all documents prepared for and presented at cabinet meetings. Hence, you don't have to.

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So in those instances, I would imagine it would be up to the program owner, and, for the purposes of these two examples, the ministry and the Cabinet Office, to retain these documents, and the documents that someone else would have in their possession then would be surplus duplicates. Can you comment on that?

**Mr. David Livingston:** That sounds absolutely right, and I would say it also applies within an office. So if somebody within an office sends a document to somebody else within the office, then presumably the same rules would apply: The person who originated the document would be the program owner, in that definition, and would be the responsible one for keeping it.

**Mr. Bob Delaney:** Not wishing to belabour the obvious, but there is no need or requirement now or in times past for someone to retain what are clearly surplus or duplicate documents if you know that the program owner is responsible for retaining the original. Correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** In her report, the Information and Privacy Commissioner also touches on what she refers to as a "verbal culture" in political offices, which she says caused her great concern. Some have interpreted this to mean that there's something wrong with discussions or the verbal exchange of ideas between or among elected officials or between or among their staff. Can you expand a little bit on that for the committee? Based on your experience, do you feel verbal communication with staff is an important part of the way that you operate?

**Mr. David Livingston:** I would say absolutely, and I would actually, in my own experience, go further and say that we have become too quick BlackBerry oriented in terms of communicating, and that nothing beats actually sitting down face to face with somebody and talking about an issue and trying to come to a consensus on the issue. So I would have encouraged more face-to-face communication or more communication one on group.

**Mr. Bob Delaney:** Okay. Chair, how am I doing on time?

**The Chair (Mr. Shafiq Qaadri):** Three minutes.

**Mr. Bob Delaney:** Three minutes? Okay.

All right. I'm going to see if we can do one more quick question in the balance of our time, and I'd like to use the balance of our time today to talk about the issue of the relocation of the two gas plants from the communities that didn't want them and were not willing hosts. As everyone in this room knows, it was certainly the right decision to relocate the plants. Just to recap, all three parties supported the October 2010 decision to relocate Oakville and all three parties committed during the 2011 campaign that they would cancel the Mississauga plant. But it was, in fact, our government that was elected, so it was our government's responsibility to implement these commitments.

Now, some of the other parties have said the plants should have been cancelled outright, but we've heard from many witnesses that that approach would have been much more costly and that clearly the best path forward, in the testimony of the witnesses who have appeared here, was to renegotiate alternative sites with the proponents. Numerous witnesses have said that it was far more prudent than ripping up the original contracts and paying premium prices and damages without any power being produced.

In the remaining time, in your view, why was it important to approach the negotiations in this way, and what do you think the costs might have been if the province had simply ripped up the agreements rather than renegotiating them?

**Mr. David Livingston:** The companies involved would have been claiming lost profits, would have been claiming that they were owed returns under their contracts, and either through arbitration or judicially, depending on the circumstance, if that had been found to be true, then the province would have been in a position of having to write big cheques to two companies and getting nothing in return.

The alternative was—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. David Livingston:** —to be investing in plants, creating jobs, creating power, getting value for money. It seemed obvious that that was a better approach.

**Mr. Bob Delaney:** Okay. In the remaining time, anything that you'd like to add to that from your perspective?

*Interjection.*

**Mr. David Livingston:** Excuse me?

**Mr. Bob Delaney:** In the remaining time, is there anything else you'd like to add from your personal perspective during that time?

**Mr. David Livingston:** I felt that everybody who was involved with the file was doing their very best to get the best deal possible for the taxpayer, that there was nobody who was withholding information, there was nobody who was trying to do anything but get the right deal, and we tried to create a circumstance where the right people were together to reach that outcome. I felt that the negotiators and the people who were involved did a good job.

**Mr. Bob Delaney:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. Thank you, Mr. Livingston, for being here today.

On document 1, I want to talk about the October 10, 2012, freedom-of-information request. Can you tell me, were you in the employ of the Premier's office on or about October 10, 2012?

**Mr. David Livingston:** Sorry. I was the Premier's chief of staff in October 2012, yes.

**Mr. Victor Fedeli:** So you were still in government?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** You hadn't left yet?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** The freedom-of-information request was for "access to the following information from the Office of the Premier"—and there is a series of names, yours is included—"emails, memoranda, Outlook calendar invitations making reference to 'Project Vapour' or 'Project Vapor' during the calendar years of 2010, 2011 and 2012."

And your response to the freedom of information was, "I have nothing responsive." Is that accurate?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** So you're telling us that while you were still in government, still in the Premier's office, you had no Project Vapour files?

**Mr. David Livingston:** Correct.

**Mr. Victor Fedeli:** How is it that I have so many Project Vapour files from you, but you didn't turn any over to the freedom of information?

Go to page 2 of Liberal gas plant scandal document 1. This is "Update on Vapour mtg with OPA today." First of all, I just want you to take a quick look at it. This is something that you're—this was sent to you; you have received this email. It mentions Vapour all the way through it. Is this a transitory email?

**Mr. David Livingston:** So this is the one from November 2011?

**Mr. Victor Fedeli:** November 24, 2011. It falls into that 2010, 2011, 2012 category.

Would it appear to be a transitory document? It's quite a lot of paragraphs. It's got percentages: 5.25%, 7% to 8%—20 years, OPA model. Would you consider this to be a transitory email?

**Mr. David Livingston:** From my point of view, this would have been an information email about things that were already in other documents and would have been in other places. So from my point of view, yes, this would have been a transitory email.

**Mr. Victor Fedeli:** So you didn't turn this document over because it didn't comply?

**Mr. David Livingston:** As I've said, my practice with respect to—

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, point of order, I presume.

**Mr. Bob Delaney:** Chair, I do have a point of order. The document that Mr. Fedeli is asking about is an October 2012 request for a freedom of information from the Office of the Premier. And the document that he's referring to is from an Andrew Lin at Infrastructure Ontario.

**The Chair (Mr. Shafiq Qaadri):** While true, it's not a point of order, Mr. Delaney. Thank you—

**Mr. Bob Delaney:** Actually, Chair, it is. He's asking the witness about a document that was outside the scope of the request for documents. It is a point of order.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney—

**Mr. Victor Fedeli:** Oh, don't worry; I've got a lot of other examples. We'll get around to more of them—

**Mr. Bob Delaney:** Well, all I'm asking you to do is to make sure you stay within the scope of the request.

**Mr. Victor Fedeli:** Look, I'm not going to waste my time with him.

So go to page 3 of 5 then. Now we're talking about—again, this is “Vapour Deal Summary.” This is from somebody to you—“last point, with the province as the signatory to the arbitration agreement the default would be for the province (i.e. taxpayer) to cover the settlement.” Is this a transitory email, in your opinion, or this crucial information about the taxpayer covering that settlement, is that not information that is of value?

**Mr. David Livingston:** The Vapour documents themselves, the arbitration agreement, all of that—I think they were released. I think they're in the public domain. This is not a—

**Mr. Victor Fedeli:** So when I see here, David Livingston, Office of the Premier, “I have nothing responsive,” you said you had no files because you just figured somebody else gave them all?

**Mr. David Livingston:** You can correct me if I'm wrong, but this is all from when I was at Infrastructure Ontario.

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** This would have been at the time when I was involved with negotiating the arbitration agreement. That arbitration agreement was successfully signed by everybody, and I believe that document was released or is out there. So any of this information would have been extraneous to that; there'd be no reason to have it.

**Mr. Victor Fedeli:** So you don't feel that a Vapour document that was sent to you on July 28, 2011, has any value here? You can tell, with a straight face, freedom of information, “I have no files,” even though I have thousands.

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**Mr. David Livingston:** But I did not have this file. This email I would not have kept, if that's the question that you're asking.

**Mr. Victor Fedeli:** On page 4 of 5, the Vapour Minute.doc: You're suggesting that that's not a responsive file as well?

**Mr. David Livingston:** This was the minister's briefing, and once the briefing was done, I wouldn't have kept the file.

**Mr. Victor Fedeli:** Go back to page 1 of 5, then. This is from John O'Leary to a whole number of people. Are you suggesting, then, that Laura Miller (OPO), John Brodhead—again, Office of the Premier of Ontario—Karim Bardeesy, Office of the Premier of Ontario, and the list goes on and on and on here—should those people, then, have turned over these documents? Their names are throughout these documents, as well. They're cc'd on some of them, if not all of them.

Let me rephrase it: If there was a document that had somebody, Laura Miller in the Office of the Premier of Ontario, with details on Project Vapour, would that have been a document she should have responded with, in your opinion?

**Mr. David Livingston:** If she had the document, then she should have responded with it. It's a question of whether she had the document, whether she kept it or considered it to be transitory.

**Mr. Victor Fedeli:** Page 5 of 5: again, “Project Vapour.” It's a pretty major document. This is the “Minister Briefing November 2011, David Livingston.” You wrote this, and it's called “Project Vapour,” the slide deck. You still claim you have no documents that are responsive?

**Mr. David Livingston:** In this case, I gave the briefing. Once the briefing was complete and he had the information, then from my point of view there was no need to keep the document.

**Mr. Victor Fedeli:** Okay. So you feel clean with freedom of information; even though you have thousands of documents, you know all about Project Vapour, you're fine to tell the FOI, “I have nothing responsive.” You're good with that? That's your answer to them, four words: “I have nothing responsive.”

**Mr. David Livingston:** As I said in my opening statement, my practice was that once a file had been dealt with, then it was deleted. So I had no files—

**Mr. Victor Fedeli:** Oh, that's right. Honestly, I forgot. You were one of the deleters. Honestly, I did forget that.

Let's go to Liberal gas plant scandal document 2. Here again we're now looking for—this is again another freedom-of-information request, and this is far more reaching, but a limited date now. This is “January 1, 2012 through October 1, 2012 by the Premier, the Premier's office, consultants to the Premier's office, or advisers to the Premier's office relating to the construction, contracting, relocation or any other arrangements associated with the gas-fired power plants once contracted ... or related entities....”

So this is pretty all-encompassing, pretty much anything to do with the gas plants scandal that happened between January 1, 2012, and October 1. You were asked to turn over records, and your answer was, “Nothing here.” You have nothing?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** No records whatsoever.

**Mr. David Livingston:** Correct.

**Mr. Victor Fedeli:** Period.

**Mr. David Livingston:** Correct.

**Mr. Victor Fedeli:** This asks you not about whether you worked in the Premier's office that day or that week. This is advisers to the Premier. Again, you wrote a fairly major document, Project Vapour—you wrote the plan for Project Vapour, the briefing for the ministers back in November 2011 when they all got hired on after the election. That's you who wrote that, and you still say, "Nothing here"?

**Mr. David Livingston:** So the briefing that was given to the minister in the fall would have been a recitation of facts that were well known. Once the briefing was done, I would not have kept the document.

**Mr. Victor Fedeli:** Okay.

**Mr. David Livingston:** To go back to my opening statement, my practice with respect to files was that once they were done, they were deleted.

**Mr. Victor Fedeli:** Page 3 of 13 of this document 2, "High Profile Projects": You've crafted this document. It's ServiceOntario, ONTC—

**Mr. David Livingston:** Sorry? Where? Three of 13?

**Mr. Victor Fedeli:** Three of 13. This is doc 2. Page 1 of 13 is the document where they asked you under freedom of information, and you said, "Nothing here."

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** Page 3 of that, three quarters of the way down, is "Vapour Lock" and "Vapour" files."

**Mr. David Livingston:** But there's nothing, unless I'm missing it, on 3—

**Mr. Victor Fedeli:** "High Profile Projects" is the headline.

**Mr. David Livingston:** Right, but where does that say who that's from? Was that from me?

**Mr. Victor Fedeli:** It's included in your files that we received.

Let's just go to number 4 of 3 then, if that one has confused you.

*Interjection.*

**Mr. Victor Fedeli:** Oh, 4 of 13. This is to David Livingston. Now you're at the Office of the Premier of Ontario. It's July 11, and throughout it is conversation of Vapour. Let's cut through all the nonsense now. Now you're at the Office of the Premier. This is an email to the Office of the Premier. It's discussing Vapour and yet you have now told—your excuse on the last one was, "That was my IO files. I didn't keep them."

Now you're in the Premier's office. They've asked you for your files. There's no excuse this time. They've asked for files from January 1 to October 1. This is July. This is right in the window, right in the pocket. Why didn't you turn this email over?

**Mr. David Livingston:** As I said at the beginning, my practice with respect to emails was that I receive them. Once action was taken, I deleted the email because it had already been dealt with. I wouldn't have had this email so there would be nothing to respond with.

**Mr. Victor Fedeli:** When would you have deleted this email?

**Mr. David Livingston:** It says, "I am signing off." Once I signed off, then I would have deleted it.

**Mr. Victor Fedeli:** So you have no files whatsoever? You send an email and you hit the delete button?

**Mr. David Livingston:** With every email that I got, I would have to action it in some way, shape or form, or it would sit. So if I had not dealt with it for whatever reason, it would stay. Once I had actioned it—I'd either have made a decision, done a response, forwarded it to somebody else—I would have deleted it, yes.

**Mr. Victor Fedeli:** So again, all of these files on page 8 of 13, again it's from you, "What did you and Jonathan decide about Vapour?": You would have deleted that Vapour file, which would have been what the freedom of information was entitled to receive from you. That would have been gone?

**Mr. David Livingston:** I would not have had that email; correct.

**Mr. Victor Fedeli:** This is very suspicious, by the way, that you have told the freedom of information you have nothing. I have all your files, by the way. I have them here. I have them, but you don't. That's stunningly amazing.

**Mr. David Livingston:** So you would have had them from other people because—

**Mr. John Yakubuski:** That's quite a management practice.

**Mr. Victor Fedeli:** Well, it's a very interesting and very suspect management practice when I've got email after email after email that is responded—did you make any efforts to contact anybody and say, "Look, I've got a problem here. Freedom of information is asking me for all these documents. I remember typing 1,000, 800, 700 documents about Vapour, Project Vapour, gas plants. I wrote a whole slide deck. God, I've got to turn this stuff over. Can anybody help me out here?" You didn't make any calls, no effort whatsoever to try to comply?

**Mr. David Livingston:** It seems to me that there have been, as was said earlier, thousands of pages of documents around gas plants that have been released by others. I had nothing. I simply said what was true: I had no files. My practice with respect to emails is something that I've done. In the private sector this would have been something I did regularly. When you action something, when you deal with something, then you move on. What's the point of keeping it around?

**Mr. Victor Fedeli:** It's no wonder the privacy commissioner had so many questions when she got around to you. This is either outlandish or incredible or unbelievable at best. I just have to tell you that. I've got your files and you don't have them. You made no efforts whatsoever to get them, yet I have them.

**Mr. David Livingston:** I can only repeat what I said—

**Mr. Victor Fedeli:** Okay. Let's go on to Liberal gas plant scandal document 3. I'm changing gears here now. We're over your freedom of information misdeeds here.

We're now into where Hansard—I'm just going to read you a couple of lines from Hansard before I get to document 3. The last time you were here, I asked a very important question about the MOU, the memorandum of understanding.

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** And you told us you had nothing to do with that whatsoever. I asked you very specifically. I drew your attention to document 4, Ontario Power Authority, JoAnne Butler's opening statement, a memorandum of understanding was made public, etc., and I asked you, "Were you a party to that MOU?" Your answer was, "So no, I wouldn't have been a party to that." First, you said, "Was that on September 4?" I said yes, that's September 24. You said, "So no, I wouldn't have been a party to that."

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Mr. Tabuns then asked you, "As the chief of staff to the Premier, had you been briefed on the MOU that had been signed with TransCanada?"

Your answer was, "I don't have a recollection of that."

You actually said two dozen times when you were last here that you didn't have a recollection or "I don't know," and you said "I don't recall" six times in the first four minutes of your being here today. So I'm going to ask again: Do you have any recollection of the MOU that was signed?

**Mr. David Livingston:** I think I said at the time, and I'll say again, that it is possible that I received the MOU. But when I said I wasn't party to it, I wasn't a signatory to it; I was not involved with the negotiations. There were people involved with the negotiations directly. They would have come up with that MOU as between themselves. I was aware those negotiations were going on; I was not at the negotiations. That was the context in which I said I was not a party to it.

**Mr. Victor Fedeli:** No involvement in the negotiations and no input to this MOU whatsoever, according to this?

**Mr. David Livingston:** The negotiations were with people from the ministry. I think Infrastructure Ontario was involved. As I said, I was very aware of what was going on, but I was not party to creating the document and certainly not party to signing it.

**Mr. Victor Fedeli:** You were not party to—what was the first thing?

**Mr. David Livingston:** Creating the document.

**Mr. Victor Fedeli:** Creating it? Any input to it?

**Mr. David Livingston:** It was only done by the people who were negotiating, and I wasn't doing the negotiating, so no.

**Mr. Victor Fedeli:** All right. Well let's have a peek at Liberal gas plant scandal document 3, page 1 of 2. This is September 21—

**Mr. David Livingston:** Sorry, is this 3 of 13?

**Mr. Victor Fedeli:** Document 3, 1 of 2. So we're passed 13 of 13; we're now at page 1 of 2. This is September 21, three days before the MOU was signed.

This is a series of emails between parties, yourself included. You're the author of many of them:

"Rachele,

"The deck is being amended by energy to increase the break fee to \$125M. Finance is onside. Once you receive the amended deck, please execute the walkaround. I don't need to see it again."

What is the break fee to \$125 million? What has that to do with?

**Mr. David Livingston:** Going back to the beginning of this, it originated from the Ministry of Energy?

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** So I am presuming that the Ministry of Energy, in its negotiation—there must have been a break fee. I don't specifically recall what it was in relation to.

**Mr. Victor Fedeli:** The MOU?

**Mr. David Livingston:** It was in relation to the MOU?

**Mr. Victor Fedeli:** I'm asking you. This is three days before the MOU, and they're talking about "DL"—I presume that's you—

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:**—"asked energy to increase the break fee to \$125M (from \$100)." This isn't something they dreamt up; you've asked for this to be done. You're involved in this; you're making a decision about a break fee here. This is a pretty detailed level of conversation for somebody who—you "weren't a party to that MOU."

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** Were you a party to that MOU?

**Mr. David Livingston:** No. So energy wants to amend something to increase the break fee to \$125 million, they've got finance onside—

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** Anything that goes to cabinet or requires a walkaround had to go through me, and so I was passing it on to Rachele to have that—

**Mr. Victor Fedeli:** No, no, no, you aren't passing on: "DL asked energy to increase the break fee to \$125M." Is "DL" you?

**Mr. David Livingston:** That's Steen saying that; I'm just reading from the emails. I'm going down to the email from me to Rachele that says, "The deck has been amended by energy to increase the break fee...." I'm presuming from this that this is an energy-initiated document and I'm signing off on it.

**Mr. Victor Fedeli:** So you did have something to do with the MOU then? You understood, you are familiar with the MOU? I asked you if you were—

**Mr. David Livingston:** This is specifically in relation to a break fee. I am not recalling exactly how the break fee fit into the deal. I really don't remember.

**Mr. Victor Fedeli:** You were telling us you weren't aware of this at all the last time you were here—you don't have any recollection of it. Does this help remind you of anything?

**Mr. David Livingston:** No, it doesn't.

**Mr. Victor Fedeli:** Well, let's try document 4 then. This time—again, you tell us you have no involvement, but this is Tom Mitchell, president of Ontario Power Generation. He's talking about you. He's talking to Serge Imbrogno: "You and I need to talk about who and how this 'proposal' gets vetted. I suggest you call a meeting ... with Colin Anders[e]n, David Livingston, you, and I..." These are four very serious people. You've got the president of OPG; the Deputy Minister of Energy; Colin Andersen, the president of OPA; and you. You weren't there for charm. You were there because you're an important player in this whole gas plant scandal. How can you tell us that you have no recollection or that you're not a part of it? You're one of the four people sitting at a table. Three of these are the most senior people here. This is you; you're in the game.

**Mr. David Livingston:** I'm reading the email. It's an email from Tom Mitchell to Serge Imbrogno, the Deputy Minister of Energy, asking that I be there.

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** I suspect that he was asking because I was previously involved at Infrastructure Ontario. I have no recollection of being at this meeting.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Fedeli. Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, Chair.

Mr. Livingston, you deleted everything, and yet we've been asking questions for an hour, and the most common response we get is that you don't remember. How did you keep track of things?

**Mr. David Livingston:** The important thing in the office was what files were outstanding. We had fairly detailed project lists that we kept, that represented a summary of all of the things that were going on. There would have been 30 or 40 things on those lists, and we met every couple of weeks to talk about the status of those projects. The way that we kept on top of everything was by sitting down and talking through the lists: "Are we on time? Are things happening the way they should be happening? Are the files moving the way that they should be moving?"

**Mr. Peter Tabuns:** Was there a written record of these files that we're talking about?

**Mr. David Livingston:** The project lists were certainly paper, yes; they were written files. Well, they're not files; they were lists of all the projects that we had and the timelines associated with each of them.

**Mr. Peter Tabuns:** And did you note on these lists the status of things, actions that had been taken?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** Okay.

**Mr. David Livingston:** The purpose of the discussion was to discuss where we were on each of these files, and were they on track with the timelines that were established with them?

**Mr. Gilles Bisson:** Just a follow-up to his question: Was the issue of the non-release of documents by the minister part of that list?

**Mr. David Livingston:** No.

**Mr. Gilles Bisson:** Oh. Thank you.

**Mr. Peter Tabuns:** According to the Information and Privacy Commissioner, you broke the Archives and Recordkeeping Act. You just set it aside. It wasn't part of your operations. Why?

**Mr. David Livingston:** As I said in my opening, my practice with respect to emails, and this is what I had been doing for years, was, absent any knowledge, regulations or policies otherwise, once an email was dealt with, once an action was taken, I deleted it, because I used my emails essentially as my to-do list. I wanted to be able to look at it and say, "What haven't I dealt with?" and then be able to prioritize accordingly.

**Mr. Peter Tabuns:** Peter Wallace testified here that he sat down with you. He gave you a legal brief on the requirements to keep emails and keep records. Did you start to respect the law the day after you were briefed by him?

**Mr. David Livingston:** When was that? That was—

**Mr. Peter Tabuns:** In January 2013.

**Mr. David Livingston:** In January 2013, but by then all I had left was personal records, as I mentioned. There would have been no question that, regardless of what the policies or practices were, everybody would have agreed those should have been deleted.

**Mr. Peter Tabuns:** You had no business emails at all from the day that you were told that, legally, you were required to keep them?

**Mr. David Livingston:** This was right at the end of January.

**Mr. Peter Tabuns:** It was all personal from that point on?

**Mr. David Livingston:** There would have been no business files. By the end of January, there certainly would have been nothing.

**Mr. Peter Tabuns:** I was talking to you, I believe, around mid-January, but I would have to check.

Do you remember having that discussion with him?

**Mr. David Livingston:** I don't remember having the discussion with Peter. What I remember is that I got an email from David Nicholl, the chief information officer, and that he had attached certain documents to it.

**Mr. Peter Tabuns:** So even though you were told about this law, it didn't change your practice? You didn't let the people in your office know about the legal requirements, did you?

**Mr. David Livingston:** We're in the last two weeks of the government—

**Mr. Peter Tabuns:** The law still applies. I presume the law doesn't lapse in the last two weeks of a government, that it has some stability.

**Mr. David Livingston:** Fair enough, and you are correct that with two weeks to go, I did not pass that on.

**Mr. Peter Tabuns:** Okay. A good question: Did you keep a daybook?

**Mr. David Livingston:** No.

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**Mr. Peter Tabuns:** So it all depended on those project files and those lists?

**Mr. David Livingston:** And the discussions that we would regularly have about them.

**Mr. Peter Tabuns:** So email is gone, your memory is not serving you really well today, so everything was those project lists?

**Mr. David Livingston:** The project lists and the discussions were the way that we kept organized, kept knowledgeable of what was going on with respect to all the files we had to deal with.

**Mr. Peter Tabuns:** Now, when Peter Wallace talked to you in August 2012, you talked to him about deleting email accounts—

**Mr. David Livingston:** Closing email accounts.

**Mr. Peter Tabuns:** Closing email accounts—well, what he said to us is, “We provided him with background information, connected him with the appropriate officials ... who explained to him the mechanics of how you delete a document and then how a document is deleted from the trash, and also the protocols and mechanisms by which tapes are backed up for disaster recovery” etc. You seemed to get a very in-depth briefing on the existence and deletion of emails. Do you have a recollection of being told about all this?

**Mr. David Livingston:** As I said in my opening, I definitely recall a conversation with Peter, and as far as I was concerned, that was about closing of email accounts for people who were no longer staff members. You know, we became aware that there were emails that were piling up, they were unread emails, and so it was about closing those accounts so that that would not occur, and then, with the closing of the account, presumably those emails would have been deleted.

**Mr. Peter Tabuns:** Now, he gave you, as he says, “informal or verbal advice” in January, and he says, “observing that, at a minimum, the optics of having absolutely no records or of overriding hard drives would be very challenging and might remove a defence of innocence, of inadvertence....” What you did was set things up so the Premier could never say, “Well, I have these documents showing that I behaved in this way.” You wiped the slate clean.

**Mr. David Livingston:** With respect to the electronic file management, as I said, as the chief of staff, there would be no reason for me to be creating electronic records. Everything I would have received would have been coming from somebody else, and so the only files I would have had would have been my own files, and those were the ones that were deleted. I can’t imagine that there would be a policy that would have said that those kinds of files should have been kept.

**Mr. Peter Tabuns:** But, in fact, Mr. Fedeli just went through a variety of emails showing you commenting on a number of aspects of the government’s operations and, in fact, those were not just, “Hey, can you bring me a doughnut?” These are substantial matters about contracts the government was working its way through.

**Mr. David Livingston:** They were emails. Action was taken with respect to the email, and once the action was taken, the email was deleted, but the documents that they

were associated with would have been cabinet documents. There would have been other things that would have been released through freedom of information with the ministry. So I would consider my contribution to it, if we take, for example, the issue about the break fee, was as part of the process of getting it approved by cabinet, so those documents would have been readily available to you through other sources.

**Mr. Peter Tabuns:** Well, having had the Information and Privacy Commissioner before us, having read her report, she was pretty clear that the Archives and Recordkeeping Act was about preserving a record of how government acts, not about making sure that you can delete everything that’s on your computer.

In fact, Peter Wallace said to us, one of the things that he tells us he said to you, he provided you “with advice around how that would look”—that’s wiping out all these files—and “that would give reference to—that this would be consistent with the behaviour of an organization that wipes all its records, and that is not a normal organization in this context.” He’s right. It’s a democracy. We require records to be kept so governments can be held to account and so citizens can access information. You didn’t take these as red flags from him about the way your office was operating?

**Mr. David Livingston:** There are hundreds of thousands of documents of information around about the gas plants. My practice with respect to my own emails and my own electronic records was as I said at the beginning: It was to take action, delete them. With respect to electronic files, there would be no need for me to re-create them. Everything I would have received would have been created by somebody else.

The main thing that I would like to emphasize is that these were practices, as I’ve openly said here, as I openly said to the Information and Privacy Commissioner, and we didn’t do any of this in relation to gas plants in particular. It’s not like we were picking on them and said, “Let’s make sure we get rid of”—

**Mr. Peter Tabuns:** No, I believe you were destroying documents in all your files. This was of great consequence—

**Mr. David Livingston:** It was a practice that I have had for some time, absent any sort of regulations, policies or direction to do otherwise.

**Mr. Peter Tabuns:** Well, you did this province and that Premier a disservice by breaking the law. You did a great disservice. You had a requirement to follow this. You were told by the chief of the civil service that you were supposed to be following these rules. You were supposed to tell your staff. That never happened.

**Mr. David Livingston:** The discussion with the chief of the civil service was in January 2013, when we had two weeks left. If I had had that kind of discussion in May 2012, when I arrived, then I think it is safe to assume there would have been a very different process followed.

**Mr. Peter Tabuns:** And you didn’t ask, “What’s the legal framework I operate within”?



**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** Mr. Livingston, you started with the Office of the Premier in May 2012, right?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** I just want to follow up on something that I find very interesting. In the documents that Mr. Fedeli circulated, the very first one on the top of the page is an email from you dated October 2012, and it's asking for freedom of information. Then, there are references throughout it to documents or emails that passed through you at Infrastructure Ontario the previous year. You wouldn't have had all of your IO files copied over to the Office of the Premier's computers, would you?

**Mr. David Livingston:** No.

**Mr. Bob Delaney:** So in other words, when you ask for a search that is limited to records from the Office of the Premier, all you can search are records that come from the Office of the Premier during the time period in question. Correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** So in other words, without violating the terms of the freedom-of-information request that was provided to you, you couldn't get access to documents that you had created the previous year when you were with a different branch of the government from which no documents had been requested in the FOI request in the fall of 2012, right?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** Good. Thank you.

When you were the CEO of Infrastructure Ontario, then-secretary of cabinet Shelly Jamieson asked if you could help support the negotiations between the province and TransCanada. I'm going back to something that the committee is actually charged to do, which is suggestions on locations for energy infrastructure.

When you last appeared before this committee, you described your role in the negotiations between the province and TransCanada over the Oakville plant as a facilitator, and you emphasized that you didn't have any mandate to present options to TransCanada. Later on, the opposition alleged that you were ill-suited for the role. Clearly this is not the case. In fact, former Deputy Minister of Energy David Lindsay had testified that you were very well positioned to support these negotiations, given your expertise. Shelly Jamieson said, "I decided David Livingston was the person I thought I could ask to undertake this assignment...."

"David Livingston comes to us from the private sector, but also in his job at Infrastructure Ontario, was used to dealing with publicly traded companies and understands that world and can present himself in that way."

Going back to that time, what did you feel were your qualifications to take on that role?

**Mr. David Livingston:** Both going back to my 30 years in banking and the time at Infrastructure Ontario, I had dealt with complicated negotiations between all

kinds of different companies. I think in this particular case, it was that expertise in trying to bring parties together that was being called upon. I think it was also helpful in this case that I had some objectivity about what could be done; I could have a conversation with TransCanada that they felt was helpful. In the end, I was able to bring the parties together to be able to come to an agreement on something that everybody was satisfied with.

**Mr. Bob Delaney:** Okay. In terms of the decisions to relocate these two plants, we've heard testimony from literally dozens of staff that there were serious concerns with the siting of both plants. I also think it's important to note here that while the province sent out the directive for the general area where the plant should be built, it was the companies themselves that chose the sites. For example, both sites had been zoned by the town of Oakville and the city of Mississauga as industrial, and in the city of Mississauga's case, it was zoned industrial/power plant. So there is no suggestion that the government was prescriptive in its choice of the site; in fact, it was the companies that had to find a site zoned by the municipality for that purpose and acquire the land and present a case that they had legally and properly acquired land zoned for the purpose by the municipality.

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This is a process that has been reviewed by the Ontario Power Authority and the Independent Electricity System Operator, who've submitted a very helpful report to the government with their findings. It's also one of the topics that we're reviewing here at this committee, and we've heard recommendations from a variety of experts in the field.

Based on your experience with these two gas-fired peak power electricity-generating plants in particular and the lessons learned, could you talk to us a little bit about recommendations you would have on how the province, going forward, can better improve the siting process for energy infrastructure?

**Mr. David Livingston:** I will give a comment here, but I guess I would preface whatever I say with the fact that the Ontario Power Authority, the Ministry of Energy and Ontario Power Generation, to some degree, are the experts in the field. There is no way that I would have a view or a capability to give anything that would be contrary to theirs. So I think that whatever I might say may be interesting, but not that useful, because I am not an expert in this field.

But it does seem clear that, while cost is certainly a factor in a gas plant—how much it is going to cost relative to an alternative site—the view of the community trying not to be in a position where things get too far advanced where there's money being spent is, obviously, the right thing. So having some type of forum, some type of engagement with the community about what they're looking for, would seem to be an appropriate step.

**Mr. Bob Delaney:** Okay. Any further thoughts you may have from the perspective of either the municipality

or the Ministry of Energy on recommendations on locating energy infrastructure?

**Mr. David Livingston:** No. I have no further recommendations.

**Mr. Bob Delaney:** Just one last point, then: Mr. Fedeli referred to a briefing that you had given based upon what appears to be a PowerPoint presentation that you had created that's dated November 12. November 12 was a point at which you were still employed by Infrastructure Ontario.

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** The request for documents was made while you were with the Office of the Premier in 2012, and the scope of that request for documents was just the Premier's office. Correct?

**Mr. David Livingston:** Okay.

**Mr. Bob Delaney:** That would mean that, by definition, the document that you had created, which was turned over in a subsequent request for documents, would not have been within the scope of that request. Correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** That's all I have to say, Chair. Thank you very much.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Delaney. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you kindly. Let's pick up on Mr. Delaney's weak attempt to try to belittle freedom-of-information requests. Both he and you, basically, are saying because one request was specifically—if you look at the letter of the law, much like when they withheld 20,000 documents because it said “SWGTA” instead of “southwest GTA,” these kinds of things. Do you agree with him that because you were at Infrastructure Ontario when that request—is that why you're saying you didn't turn those documents over, or because you had deleted them?

**Mr. David Livingston:** I didn't have the documents. Clearly, the document existed because it's here, and so—

**Mr. Victor Fedeli:** But you deleted the document.

**Mr. David Livingston:** The—

**Mr. Victor Fedeli:** Did you delete that document?

**Mr. David Livingston:** I did not have the document in the Premier's office.

**Mr. Victor Fedeli:** Okay. Why don't we go to documents you did have in the Premier's office, then. I've talked about those. Mr. Delaney doesn't like to remind you that there were documents, when you were in the Premier's office, that meet the date requirements. I'd given several examples of that. Let's go specifically; I want you to go to Liberal gas plant scandal document 10, page 1 of 2. Now, this is from William Bromm to Jennifer Rook, “Committee powers to compel documents,” document retention—these are all the documents. “Thought you might want to see the three notes we did for the Secretary's discussion with David Livingston. All info you and Dave know of course.”

So page 2 is a briefing note, “Office of the Secretary of Cabinet....

“What are the legal requirements related to retention, deletion and subsequent search of government records?”

Have you ever seen this document before? This is August 3, 2012. He is saying that they did this for the secretary's discussion with you.

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** Did the secretary discuss this with you?

**Mr. David Livingston:** I met with the secretary every week throughout my time in the Premier's office. I note this is a briefing note to him. We may well have had this discussion—

**Mr. Victor Fedeli:** Well, William Bromm: He's in the Cabinet Office. He's saying, “These were the notes we did for the secretary's discussion with David Livingston.” So he seems to feel you've seen this. I know you have not been able to recollect a lot of things, but do you recollect the meeting?

**Mr. David Livingston:** I don't know how he would know. These were briefing notes done for the secretary. The secretary then would be—it's within his power to decide what he's going to brief me on and what he's not going to brief me on.

**Mr. Victor Fedeli:** Well, this is William Bromm from Cabinet Office, and this is August 3. He's telling us that the secretary told you about record retention.

**Mr. David Livingston:** I'm sorry. I don't mean to quibble; all I'm reading is what's here. It's that they did for the notes to the secretary. What was discussed in the meeting would have been between the secretary and I.

**Mr. Victor Fedeli:** So did the secretary discuss anything about records retention with you around August 1? Documents seem to show three of them: “Records retention,” “Committee powers to compel documents” and “Options to address document production orders.” Those are three pretty seriously named documents. He either sat down and talked to you about them or he didn't.

**Mr. David Livingston:** I don't know.

**Mr. Victor Fedeli:** You don't know.

**Mr. John Yakabuski:** You don't recall.

**Mr. Victor Fedeli:** You don't recall or you just don't know? You just don't know.

This is a pretty serious topic. This is about how to keep your records, and it's August 3. On page 13 of 13—you don't need to look at it; you can trust me on this. It's August 16—two weeks after they told you to keep all your records—there's a David Livingston (OPO), August 16, talking about “Vapour.” That would have been a document that meets the compliance of the Office of the Premier. You're not at Infrastructure Ontario anymore. You're still employed by the government. You're now in the Premier's office. They asked you for all your records on Vapour, gas plants and all kinds of dates and items—but this clearly falls within both of those freedom of information. On August 1 you were told how to keep your records, and now on August 16 you don't turn this document over?

On page 9 of 13, again, August 25, 2012, right in the pocket, “David Livingston (OPO)” —this is not an Infrastructure Ontario thing, as Mr. Delaney tries to slough it off. You’re in the Premier’s office. This is August 25, 2012. It meets both criteria. It’s about “Vapour/Vapour-Lock.” It meets either FOI. You were told not to delete your emails on August 1, and this is August 25. Why did you delete these ones after you were clearly told not to delete your email any longer? Why did you continue to delete email after you were involved with the Cabinet Office, the secretary—not to delete the email?

**Mr. David Livingston:** I would repeat: This was a briefing document for the secretary. What the secretary discussed with me I don’t recall. The emails that you’re referring to would have been emails sent to me by somebody else, and there would be no reason for me to keep an email sent to me from somebody else—

**Mr. Victor Fedeli:** Other than the fact that the Secretary of Cabinet talks about “business records” required.

“All ministries have adopted the ... Common Records Series.” This is a detailed, confidential solicitor-client privilege and not for distribution. It’s a pretty high-level document that says, “You’ve got legal requirements to retain your documents and not to delete things.”

**Mr. David Livingston:** I’m sorry, which document are you referring to?

**Mr. Victor Fedeli:** I’m still back at the one that you can’t remember whether the secretary talked to you about it, page 2 of 2.

**Mr. David Livingston:** This is the one that says, “Briefing Note Office of the Secretary of the Cabinet.” That’s not a briefing note from me.

**Mr. Victor Fedeli:** Yes, and on the page before that it says, “Thought you might want to see the three notes we did for the Secretary’s discussion with David Livingston. All info you and Dave know of course.” So you’re trying to tell me now that maybe the cabinet secretary—do I need him, the cabinet secretary, here to tell me whether you have this document or not? You don’t have it, because you deleted it.

**Mr. David Livingston:** So, as I said, I had conversations with Peter Wallace every week, and it is entirely possible—

**Mr. Victor Fedeli:** So we can only make an assumption, then. If you met with Peter Wallace every week and William Bromm from Cabinet Office—he discussed this with you; we can presume that he discussed it with you. Why would you continue deleting your emails in late August when, on the first of August, you were told, “Hang on a second. Flag on the play here. We’ve got to start keeping these emails”? Why would you continue doing that to gas plant documents?

**Mr. David Livingston:** So there was a discussion earlier about what constitutes a transitory record, as a for instance. I would—

**Mr. Victor Fedeli:** So now you deleted it because it was transitory.

**Mr. David Livingston:** The discussion with Peter would have been a verbal discussion. I would have taken

away from that that there are still no policies, there are still no practices with respect to email management, and I would have followed the practice that I had had basically all my life up until that point.

**Mr. Victor Fedeli:** I don’t know how he can say it with a straight face, to be perfectly honest. I truly don’t.

Let’s go back to your continued allegations that you had very little to do with anything to do with the gas plants. Liberal gas plant scandal document 6: If you go to page 3 of 5, this, again—we’ve got Serge Imbrogno, we’ve got Peter Wallace from finance, we’ve got all kinds of high-level people here. “David Livingston was asked to resolve ASAP.” You go down here: “David has already settled the major business issues with TCPL.”

**Mr. David Livingston:** I’m sorry. Which document are you referring to?

**Mr. Victor Fedeli:** Page 3 of 5, document 6.

How much time have I got, Chair?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mr. Victor Fedeli:** Two minutes.

I mean, you’re in this. You are so deeply involved. Go to document 7, then, a couple of pages later. This is your cabinet briefing. This is “Project Vapour Minister Briefing November 11,” written by David Livingston. Forget the fact that you didn’t turn this over; we’re beyond that now. Let’s go to the second-last page here. This is the last—

**Mr. David Livingston:** May I respond to the question?

**Mr. Victor Fedeli:** No, I’ve only got a minute left. This is the critical issue, you wrote here. This is a document you—“ratepayer vs taxpayer.” You know what that tells me, Mr. Livingston? That you knew there were two costs. You knew. You briefed cabinet that there were ratepayer and taxpayer. But sadly, cabinet only comes out and says \$40 million for Oakville, \$190 million for Mississauga. Those are only the taxpayer numbers. The ratepayer number, we now know, is \$275 million minus \$190 million for Mississauga. We’re waiting for the Oakville one from the auditor. You knew—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** —and you briefed cabinet that you knew there were two sets of costs. So Kathleen Wynne knew; she was in cabinet at the time. The energy minister knew. The Vapour minute that you prepared the July earlier includes two sets of costs. You knew there were two sets of costs. So I’ll ask you: How much is the cost to the ratepayer for Oakville?

**Mr. David Livingston:** These documents you’re referring to were all in July 2011, when I was actively involved with the negotiation of the arbitration—

**Mr. Victor Fedeli:** Now we’re at November 2011. You wrote a briefing to the ministers and told them there are ratepayer and taxpayer costs. You know there were two sets of costs, and you stood there and watched them stand up in the Legislature and tell us \$230 million is the total cost, but you know and they know. Why do you think they continue to say the total cost was \$230 million when you’ve already told them there are ratepayer costs

that they haven't disclosed, and taxpayer costs? How much were the ratepayer costs?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, for your questions. Thank you, Mr. Livingston, for your presence. Committee members will take a five-, 10-minute-or-so recess.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Pardon?

**Mr. Gilles Bisson:** Can we deal with the motion?

**The Chair (Mr. Shafiq Qaadri):** When we return.

*The committee recessed from 1634 to 1644.*

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We're back in session. I'll invite our next presenters, Pat Vanini and Russ Powers of AMO, the Association of Municipalities of Ontario, to come forward. Both will be sworn in momentarily.

Ms. Vanini.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Pat Vanini:** I do.

**The Chair (Mr. Shafiq Qaadri):** Mr. Powers?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Russ Powers:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Welcome. Your five-minute combined address begins now.

**Mr. Russ Powers:** Thank you for providing the Association of Municipalities of Ontario with the opportunity to contribute to your discussions.

As noted, I'm the president of AMO, which represents nearly all of Ontario's 444 municipalities. Our role is to support and enhance strong and effective municipal government in Ontario. We share the municipal perspective with policy-makers at the provincial and, at times, the federal level with the aim of developing stronger public policies with better outcomes.

We understand that part of your mandate is to make recommendations on the future planning and siting of energy services. Ontario's municipalities welcome the opportunity to provide input on this important matter, and specifically on the siting of large energy projects. It is clear that on this front, a better path is needed. My remarks will focus on how we can move forward. It would be inappropriate for AMO to comment on the gas plant cancellation component of your mandate, as we have no direct knowledge.

AMO advocates for a new process that demonstrates key principles of municipal government and community involvement early on—and I emphasize “early on.” This contributes to transparency and is our first area of advice. Going forward, communities need to understand what decisions are being made, how they are made, as well as the costs and consequences of different alternatives. It is essential that the science, the rationale and the options are dealt with in public information sessions and other forums and consultations before—and I emphasize “before”—a project moves to the RFP stage.

Most importantly, the public needs to be actively involved, not just notified. Local governments and communities need to have a voice and to know how this voice has been acted upon, as well as why it may not be possible to accommodate certain options, alternatives and concerns.

The new process also needs to recognize that municipal governments have a duty to their citizens. We are mandated to protect public safety, to provide adequate infrastructure, protect the environment, stimulate economic viability, and balance corporate well-being against individuals' needs and interests.

Given the broad range of concerns and the complexity involved, it seems to us that we need more than just energy experts to plan energy. Choosing the right location goes beyond identifying just the energy needs in a region, but to an understanding of local plans, initiatives and concerns, and, I'll call it, local ambitions. Major development proposals need to be viewed through the triple bottom-line lens, meaning that social, environmental and economic costs and benefits must be addressed. The provincial interest and local interest need to be mutually evaluated to tackle both local and broader needs.

Finally, municipal governments can provide valuable insight not only on what sites would work best, but also how to maximize public investment by integrating new infrastructure into local land use and other planning. Integration of planning needs must occur earlier on.

Linking into local land use planning early on just makes sense. The planning process in Ontario is a mature one, understood, and can be the vehicle to bring forward change and move forward.

Doing it well does take time. It is important that the process respects the time frames required for normal municipal business. The development of municipal comprehensive planning documents can take upwards of 18 months before adopted, let alone approved. Good, integrated planning with solid, meaningful input will take time. As a process, it also needs to recognize that across Ontario, municipal governments have different capacities and priorities. It needs to accommodate municipalities that have few staff and lack expertise or the resources to purchase that expertise.

One thing I have learned as president of AMO is that when governments work together, we are able to come up with improved solutions that serve the public well. Thank you for the opportunity to address this committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you. I'll begin with the government side. Mrs. Albanese.

**Mrs. Laura Albanese:** Thank you very much for being here today.

As you may know, part of the mandate of this committee is to provide recommendations on how we can improve the siting process for large-scale energy projects. We've asked you here today because you have extensive experience in municipal-provincial relations and have been advocating for the interests of municipalities for many years. Between this experience and your roles with AMO, you are, in our opinion, uniquely placed to speak to the interests of Ontario's municipalities.

A very significant part of our commitment to improve the siting of energy infrastructure in Ontario relies on listening to municipalities to learn how we can better engage them in the siting of energy infrastructure. So we will certainly be asking you some questions about this today.

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But to start, I wonder if you could tell us a little bit more about your experience working in the area of municipal-provincial relations, your prior experiences in government and how you came to be part of AMO.

**Mr. Russ Powers:** Myself?

**Mrs. Laura Albanese:** Yes.

**Mr. Russ Powers:** I am entering my 30th year of government involvement. I was formerly a councillor and deputy mayor of the former town of Dundas. I served as a member of Hamilton-Wentworth regional council. I was also a member of the newly amalgamated Hamilton city council up until the point I went to Ottawa. I was a member of Parliament during the 38th Parliament of Canada and, upon being retired by the public in 2006, I thought I would be able to take advantage of golfing and winters in a warmer climate. But I was enticed back into the municipal sector, and in 2006 I was re-elected as a municipal councillor on Hamilton city council. At that point, I joined AMO, and over the time period got more involved. Last year, I was elected president of AMO, after serving as a vice-chair of AMO for a couple of years.

**Mrs. Laura Albanese:** I understand you were intimately involved with the changes to the Planning Act and the legislation that was introduced during the mid-1990s. I wonder if you could take a little bit of time to tell us how that altered the relationship between Ontario and its municipalities.

**Mr. Russ Powers:** I think I'll let Ms. Vanini answer that. I myself can certainly speak from a local perspective, as it related to my municipalities, but certainly Ms. Vanini, who is our executive director with a planning background in that herself, could contribute to this more, if you don't mind.

**Mrs. Laura Albanese:** Absolutely. Please.

**Ms. Pat Vanini:** I think, as people say, I'm a recovering land use planner.

The planning system in Ontario—to be frank, I started with the province as an employee in the 1970s, when in

fact all planning approvals were done at the province. There were three divisions for official plans, subdivisions and zoning bylaws. I think now most of the approvals of those documents, save and except some of the major official plans, are delegated to upper tiers. So over way too many more years than I'd like to do the math on—I just had that moment; that's a lot of decades there—the province has evolved the planning system so that it really does speak more toward its own provincial interest, and there is a different kind of relationship as a result. So it's a little less hands-on, on day-to-day matters, but really speaking through more of the broader policy statements.

We've also seen the provincial policy statements under the Planning Act evolve. As well, I think there's a myriad of other documents through Oak Ridges moraine, Smart Growth and the Niagara Escarpment Commission. I will say that there are still about 200 pieces of legislation and regulation that impact municipal activity, not just the Planning Act.

So I think that when the president talked about the responsibilities and his comments around what councils have to do in terms of public safety and infrastructure—all those things—that's still true. The rules and the authorities may have changed over time.

**Mrs. Laura Albanese:** So you were with AMO when the first memorandum of understanding between the province and the municipalities was introduced?

**Ms. Pat Vanini:** I was.

**Mrs. Laura Albanese:** And at the time, it was, I guess, the first kind of agreement, regarding consultations at least, anywhere in the country. How important was it?

**Mr. Russ Powers:** Oh, it was extremely very important, and we still are the envy—I just returned from meetings with my colleagues in the provincial and territorial associations—Ms. Vanini meets with them on that—and we were the envy of the country from the standpoint of regular ongoing dialog. In this case, Ms. Jeffrey, as Minister of Municipal Affairs and Housing, and I co-chair the memorandum of understanding table, which meets on a monthly basis to discuss issues of importance to us. And the importance of the whole thing is, I call it, the pre-consultation; in other words, the ability for us to have input to what I'm going to call outreach. One of the things I prefaced is, the fact is that getting out early enough and having that consultation is so important to the success. If there's anything that we espouse to in those discussions of MOU, it is the element of earliness and pre-consultation with everyone that proposed legislation will impact.

**Mrs. Laura Albanese:** Thank you. I would like to move now to some questions about the electricity system in Ontario. From AMO's perspective and from what you've heard from municipal governments across Ontario, how does Ontario's energy situation compare with what we had a decade ago, particularly in terms of reliability, in your opinion?

**Mr. Russ Powers:** Thank you for the question. We believe that there is some improvement. Over the period

of time, there has been some improvement. There's a direction to providing a source of energy that will support the demands of the community. The challenge that we find, notwithstanding the evolution to the supply, is the transmission; the ability to transmit the energy to end-users is something that we still have a concern about, and we've expressed that multiple times. But certainly the types and the sources and that have increased substantially, and how it gets to the customers is still a concern of ours.

**Mrs. Laura Albanese:** Bruce Campbell from the IESO testified before this committee in August. When we asked him about the changes in the energy system over the past few years, he talked about the effect that phasing out coal has had on the system, and he explained that coal is being replaced by investments in natural gas, wind and solar.

As he described it, what we've been doing is putting in place the tools and learning how to operate a very differently configured system, one that we can operate just as reliably, but one that is very differently configured from what had been the practice for many years, and very low carbon.

Does AMO have a position on the types of generation that Ontario invests in, and the makeup of its energy supply?

**Mr. Russ Powers:** The answer is no, we take no fixed position on it.

The fact that we deal with high-level positions—a lot of our municipalities—if we were actually to have this dialogue amongst our membership, I don't think we'd come to a consensus. We have municipalities that are willing to consider wind power. We have other ones that are willing to consider nuclear energy. We have other ones that are prepared to consider EFW. The fact that there are so many opportunities for the provision of what I'm going to call “replacement” energy—very clearly they moved away from coal, and then we had the move away from fossil fuels—a very, very positive move, I think, for all of us as it relates to greenhouse gases, from that standpoint. But we have no consensus with regard to “preferred.” We leave that up to our municipalities to consider themselves when they take into consideration the elements of the Planning Act and how it impacts their particular municipality.

**Mrs. Laura Albanese:** Could we say that clean energy sources could be preferable to other sources, or would that not be the right statement?

**Mr. Russ Powers:** Probably the statement is that anything that is an improvement over fossil fuels is an improvement for our environment.

**Mrs. Laura Albanese:** You may be aware that the Ministry of Energy is currently consulting with Ontarians to discuss the future of our long-term energy plan. To date, they have received over 2,000 responses. Has AMO participated in any of those consultations?

**Mr. Russ Powers:** I'll let Ms. Vanini answer that. Yes, we have been very, very actively involved, including myself, in those dialogues.

**Ms. Pat Vanini:** Yes, we're part of that 2,000 figure. To the credit of OPA and IESO, we've had some conversations on a number of occasions. There is a written response to them. We've also provided some commentary on the report that was just released. If the committee would like access to that, we can make that happen.

**Mrs. Laura Albanese:** Could you share what kind of feedback you provided, in general?

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**Ms. Pat Vanini:** It's a long letter—

**Mrs. Laura Albanese:** It's long, so maybe—

**Ms. Pat Vanini:** —and it covers a number of things, both in terms of long-term energy—the plan and the content—and some of the broader context from municipal government as well. It might be just better to provide it to the committee, so I don't necessarily overemphasize or de-emphasize something unnecessarily that is otherwise put in the letter.

**Mr. Russ Powers:** I think an important one was the one that I prefaced in my opening remarks: the fact of doing the outreach and consultation, with anyone who's going to be affected, very early in the process. That was one thing that we emphasized. You'll see that in the document, the fact that sufficient lead time and appropriate consultation must take place.

**Mrs. Laura Albanese:** One of the mandates of this committee is to develop recommendations on improving the process of siting infrastructure in the province. We've had over 50 witnesses who have come before this committee, and many of them have provided valuable feedback and advice. Many, especially members from the Mississauga and Oakville communities, have stated that there should be a better consultation process with local residents, right from the very beginning of the siting process, just as you are suggesting. So based on your experience, what role can engaging with the local communities play to better support the energy infrastructure siting process? If we engage early, in other words, what difference can that make?

**Mr. Russ Powers:** Well, I'll start off, and if you would allow Ms. Vanini. That is, very early in the process, the proponents—whether it's a private entity or whether it's something that's operated by the province of Ontario—would know whether there is support or opposition for it. Very clearly, the issues would come to the surface, very, very early in the process.

It would also raise the issue of what I'm calling siting from a planning perspective, from a social-economic standpoint. An early, and open—and I do mean open—dialogue with the potential partners would allow for a meaningful siting, if it's to proceed, and also provide an understanding as to what I'm going to call the positives and the negatives that may result.

And if you'll allow Ms. Vanini to complement this.

**Mrs. Laura Albanese:** Sure.

**The Chair (Mr. Shafiq Qaadri):** Just as you continue there, Ms. Albanese and Ms. Vanini, I'd just like to acknowledge, for members of the committee, the

presence of newly elected Percy Hatfield from Windsor-Tecumseh, who is unofficially here but most welcome.

Go ahead.

**Ms. Pat Vanini:** Thank you. We don't know who he is.

What I would also add is that one of the things that is probably important underneath those words "public engagement" is making sure that they have an understanding of what the needs are. Some of the recommendations in the report around better long-range planning on energy needs are a positive move, I think certainly, people understanding what the different energy supply options are and what the pros and cons are for each of those options. Behind that, too, is what the president has said: What are the social implications, what are the economic implications, and what are the environmental implications? How does that, then, relate to some of the other things that are going on in the community?

One thing that I think happens is that municipal governments, when they're doing their own planning, whether it's a new official plan or a zoning bylaw or a secondary plan, go beyond the minimum requirements for notification in public. I think that over the years municipal governments have made a really good art of public consultation, involving them and making sure that they have the right information, because when a decision is made, you also not only have to say what the decision is, but why another kind of decision didn't happen. They need both sides of the equation. So it's not just, "This was the decision," but it's why this other decision didn't happen, to understand what was behind that.

I think we need to sort of, quite frankly, unplug the word "engaged" a little bit to talk about what that really does look like and feel like. It will be probably different across this province. This province is extremely diverse, from where we're at today in this city to whether you're in Kenora or in Shuniah or in Timmins or anywhere else in southern Ontario. We're not all the same, and those things need to also be embraced in any sort of engagement process, to use the current term.

**Mr. Russ Powers:** And then going beyond what I'm going to call the secular municipality, one of the suggestions from an energy standpoint is that they look at it from a regional perspective.

**Ms. Pat Vanini:** Right.

**Mr. Russ Powers:** That builds on what Ms. Vanini has indicated, which is the fact that not only do you look within your own borders, but you look beyond your borders to not only your neighbours, but also that a decision you make may very well impact a neighbour 100 kilometres down the road, from that standpoint.

My experiences over the years, from my municipality's standpoint, is that we do the outreach to our municipalities beyond our borders, in order to determine impacts that we might not have thought about: transportation linkages, watershed impacts, those particular things. An intense dialogue and an appropriate dialogue early in the process would make things a lot easier.

**Mrs. Laura Albanese:** I had another question on engaging the local communities, but I think in some ways you've answered some aspects of that. My question was, in your opinion, what are the most effective ways, and are consultations enough? Just what we call—if they're adequate, let's say, or if there are different way to consult, I guess.

**Mr. Russ Powers:** I suppose it's in the definition of what consultation is. In other words, I believe that in the vast majority of the municipalities, and as Ms. Vanini indicated, we go beyond what's prescribed in the Planning Act. We do the outreach; we do everything within our ability. I believe the providers of energy, in siting a location, should do exactly the same thing: Go beyond the minimum and optimize the opportunities to solicit comments.

**Ms. Pat Vanini:** If I could just add to that, there probably will be a bit of a temptation to regulate notification etc. I guess I would urge the committee to think about what that might look like across Ontario. Again, as the point was made, municipal governments have been doing the consultation business a long, long time in their communities, and not just on planning pieces but other activities. What might work well in one municipality may not work well in another. I think there's probably a way for the government agencies to in fact find out what does work well in a community and build on that.

Again, they are minimum requirements municipal governments exceeded. I think we've got, as public entities, probably a higher benchmark—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mrs. Laura Albanese:** One last question, and I'll try to be brief. One of the people that testified before us was Dr. Alan Levy a few weeks ago. We asked him sort of the same question. He recommended that energy need and supply should be taught at an early age and included in the school curriculum. What do you think of that idea?

**Mr. Russ Powers:** Are we talking about things such as water conservation or energy conservation?

**Mrs. Laura Albanese:** Well, he said it should start at the schools. It's as important as clean water. It's one of the most important things in our society. I think he was talking about the supply, the energy, the electricity. So it would be less rhetoric towards electricity prices. We have to evaluate carefully; we have to plan for it carefully. He was saying that we should teach that to our kids at an early age.

**Mr. Russ Powers:** I think any early education provision to—I mean, I have grandchildren who, if I was to leave a light on, I'd get corrected—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese.

To Mr. Clark of the PCs: 20 minutes.

**Mr. Steve Clark:** I just want to take this opportunity to welcome both of you to the committee. I appreciate the work that the association does, and I'm a proud past president of the association.

I really do want to take a moment just to talk about the last paragraph of your presentation, where you talk about governments that work together.

I know that in a minority parliament, you could have taken a different path, perhaps a more traditional path, in trying to deal with issues. Certainly from my perspective, as the critic for municipal affairs and housing for the Ontario PC Party, I really do thank you for having a number of meetings with us to talk about issues. The arbitration issue that I brought up in question period certainly is one that—I value the dialogue that we’ve had because, as you know, the MOU—private members’ bills are outside of it. Pat, if I could put words in your mouth, I think that at one point you called that a bit of a problematic situation, where you don’t have that opportunity to have dialogue before it’s tabled. So I do, on behalf of our House leader, thank you for meeting with us and helping us understand what municipalities are asking for in terms of arbitration reform. I wanted to start my comments that way.

**1710**

It’s also interesting: At the committee, we’ve heard people use the term, when it comes to Mississauga and Oakville, of “not willing hosts.” I know that in Ontario right now, and certainly at your convention in Ottawa three weeks ago, when people used the term “not willing hosts,” they were talking about municipalities that didn’t want wind projects in their riding. But this whole issue of “not willing hosts” for Mississauga and Oakville certainly came to the floor of this committee, because both Mississauga mayor Hazel McCallion and Oakville mayor Rob Burton testified that their councils were vehemently opposed to the gas plants being sited in Mississauga back in 2004 and in Oakville in 2009, but in terms of how the government dealt with their objections, they fell on deaf ears. Certainly, the government pushed forward with siting both of those plants in those two communities and only made the change to stop that once they realized that the seats for their particular members were in jeopardy.

I guess my first question is: From your perspective as the head and executive director of Ontario’s voice of municipalities, should those plants have been sited in those two unwilling hosts in the first place, in your opinion?

**Mr. Gilles Bisson:** Careful; anything you say will be used by your colleagues.

**Ms. Pat Vanini:** I’ll start if you want.

**Mr. Russ Powers:** Yes, why don’t you start, Pat?

**Ms. Pat Vanini:** Part of this is that you’re asking us to make an opinion on something we really—I’ll be honest: I couldn’t even tell you what the RFP process looked like for those. Those are pretty local issues. Without putting you on the spot, Steve, we have a relatively small staff. I think we have about seven policy people trying to keep up with about 17 ministries that work with municipal governments, so for some of that day-to-day stuff, we just don’t have the resources. It’s probably not in our wheelhouse to comment on those local things. I think it’s really difficult.

In any community, there’s probably some activity that the public doesn’t want or that doesn’t fit with those local ambitions. I think the challenge is, how do you make that

stuff happen in a way—and it may not be the right location; it may be a different location. But I do think that, as we have said, people need to understand what all of the ramifications of all of the decisions and options are. I think that may have been a piece—I don’t know—in the RFP that might have been lacking, and those things do catch up and get a little messy.

**Mr. Russ Powers:** And one of the things that we conveyed in the most recent consultation that’s coming out with regard to the siting of large energy plants is the issue of what I’m going to call local veto ability vis-à-vis the big picture in that. We were very pleased that, certainly in the discussion documents before here, the issue of regional impact, as I’m going to call it, will be taken into consideration. I think we’re of like mind that the ability of a municipality to stop a project that would benefit a particular area causes some angst for all of us, but, where possible, the right of unwilling hosts should be considered and have somewhat of a higher priority.

**Mr. Steve Clark:** Fair enough. Chair, through you: I’m glad you talked about your staff, because I think there’s a perception out there that if you represent 444 municipalities, at the drop of a hat you’re going to be able to roll out a policy statement on every little issue that you deal with. I appreciate the fact that that was one of the reasons why you wanted an MOU: so that you could actually sit down and have that meaningful discussion over a long period of time.

I have to tell you, though, that when I look at the case of Mississauga and Oakville, it was two years for one municipality and seven years for the other, before the government made those changes. I’d just like to hear some of your comments about the new process, how you see AMO’s role in there, and maybe even comment about the fact that when you have a local community that gives that opinion, certainly you must agree that a seven-year response time is not acceptable.

**Mr. Russ Powers:** Well, one of the things that we’ve asked for very clearly in our advice to the committee, and it’s enunciated somewhere in the document, is not only the transparency but the accountability component of it and also the timeliness of the decisions. A decision, after taking due consideration, should be rendered in a timely manner.

I can’t comment on the reasons for the time period that it took to do it. In a lot of cases and in a lot of issues, it’s important for municipalities for a decision to be made in a timely manner, because they need to get on with their lives, and if there is a decision that will impact the way that business is carried on, that business in the big sense is carried on, they need to know sooner rather than later. Whether it’s changes in infrastructure or whether it’s changes in the provision of education, all those things will be impacted by the decision.

**Mr. Steve Clark:** Chair, just further: I appreciate the fact that so many of the comments that the government wanted you to debate would be siting and some of the other practices moving forward. I understand that. I think the bigger picture is the whole decision that was made



around the decision to stop those plants from moving forward, the fact that it cost taxpayers hundreds of millions of dollars, and it was a political decision, as we've heard time and time again.

I did warn you that we were going to invoke some of the same questions that we have invoked to other deputants, so I would like you to address the following question: Do you know the cost to cancel the two gas plants?

**Mr. Russ Powers:** The answer is no, we do not.

**Mr. Steve Clark:** And do you know who ordered the emails about the gas plants to be deleted and held from members of provincial Parliament investigating the abuse of taxpayers' dollars?

**Mr. Russ Powers:** We do not.

**Mr. Grant Crack:** Chair, I have nothing further.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

Mr. Tabuns, 20 minutes—oh, Monsieur Bisson.

**Mr. Gilles Bisson:** Thank you.

Was it you who decided not to release the documents to the estimates committee? Come clean. Tell us, was it you? Were you in any way involved in refusing to release the documents to the estimates committee?

**Mr. Russ Powers:** No, sir.

**Mr. Gilles Bisson:** Have a great day.

**The Chair (Mr. Shafiq Qaadri):** Merci, Monsieur Bisson.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Chair, I find it absolutely incredible that part of the mandate of this committee, which is to get advice on the siting of energy infrastructure, both opposition parties decided to pass on. I guess they're much more interested in a paper chase of whether or not every staff member kept every email. But, anyway, let's go back to what we're here for.

*Interjections.*

**Mr. Gilles Bisson:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson.

**Mr. Gilles Bisson:** We're interested in the government actually doing what a legislative committee told it to do. That's what's we're interested in.

**The Chair (Mr. Shafiq Qaadri):** I thank you for your interest, Mr. Bisson. That's not really a point of order.

Mr. Delaney.

*Interjections.*

**Mr. Bob Delaney:** Okay. So let's go back to what the committee is actually here to do, which is to talk about improving the process of siting of energy infrastructure. As I mentioned earlier, we've had about 50 witnesses come before this committee, and we've had some feedback from some of them.

One of the first recommendations in the report from the Independent Electricity System Operator and the Ontario Power Authority is, "Strengthen the processes for early and sustained engagement"—I'm using their words exactly—"with local governments and the public," which is a point you touched on earlier. Another recommendation was, "Provide local governments and com-

munities with greater voice and responsibility in planning and siting."

Could you go into a few more specifics on how we might strengthen our engagements, on the one hand with local governments and on the other with specific groups and members of the community, and talk a little bit about what steps need to be taken to ensure that these local voices are heard?

1720

**Mr. Russ Powers:** Why don't I have Ms. Vanini start with this—

**Mr. Bob Delaney:** Perfect.

**Mr. Russ Powers:**—and then I'll be happy to join in certainly from my local perspective as it would impact municipalities that I'm aware of.

**Ms. Pat Vanini:** As I read the report from the OPA and IESO to the minister, and some of the other activities going on, it's been a really busy summer in terms of everything energy, it seemed, from long-range planning to regional planning to municipal planning to energy conservation etc. I think that the trick here is going to be, How do all these things come together? The public is confused by all these different activities and, then, how do they relate to them?

I also believe that—I guess it goes back to a point that was made earlier around Dr. Alan Levy's comments about earlier education. I think everyone—not just schoolchildren—need to have a better understanding of what energy consumption needs are.

AMO did some work many years ago when we found out how much energy municipal governments themselves were consuming, by virtue of the services that we do, from the housing that we have to deliver to all the infrastructure and water treatment.

There are a lot of things that need to be done on all fronts, but the real trick is going to be how it all comes together, and how it comes together and makes sense for citizens in communities, because there is really only one taxpayer. They need to understand what the costs of certain things might be or what the other alternative choices are. That has to be part of the conversation.

In terms of how to play this out, my advice would be, I think the report to the minister sets out a good framework, but what we need now is more on how to implement it, how to make it real, how to put it into action. It sets out a reasonably good framework, but it needs that next level. But until you get the buy-in on the first part, that second part sort of comes. Is that the tail on the end of the dog?

**Mr. Russ Powers:** The other thing is that no comment should be taken as petty. In my municipality, when we do distribution under planning, no matter what it is, it finds its way not only to the impacted neighbours—it goes beyond that, but it has a distribution to 38 agencies with regard to their comments. A "no comment" is just a confirmation that they've taken a look at it and they say, "We don't have any objection to it," or "We would add these comments to the consideration." One of the things is optimizing the distribution and allowing for—I'm

going to call—an appropriate time, and go back to my comment on the municipal process as prescribed under the Planning Act and other pieces of legislation prescribe a time period in order to be taking place, along with the abilities for appeals and that. Something too prompt may result in a decision that's not appropriate for the situation.

**Mr. Bob Delaney:** Thank you. I think Ms. Albanese will ask the next—

**The Chair (Mr. Shafiq Qadri):** Ms. Albanese.

**Mrs. Laura Albanese:** I wanted—

*Interjection.*

**Mrs. Laura Albanese:** Sorry?

**Mr. Gilles Bisson:** Would you like to have my 20 minutes?

**Mrs. Laura Albanese:** No. I think I will be fine with the time that I have. Thank you.

**Mr. Gilles Bisson:** Okay.

**Mrs. Laura Albanese:** But thank you for being so generous.

One of the other witnesses we had before this committee, George Vegh, said that he thinks that municipalities have the necessary resources and expertise to make complex decisions, and he mentioned that there are energy agencies that could be sources of information for municipalities. He said, “The key role of the agency should be to provide clear information on the trade-offs that would have to be made, and municipalities should be able to absorb that information and act on it.”

I'm wondering what your thoughts are on that recommendation. Do you see energy agencies playing a role in ensuring the municipalities have the necessary information to make complex energy decisions?

**Mr. Russ Powers:** Any information, I think, can assist in coming towards the most appropriate decision, but sometimes, and more often than not, the purveyors of the information may very well have a vested interest. Doing the outreach to gather the information that will assist in the consideration of the issues—whether it's the siting of a location of a particular thing or a particular type of energy resource—requires the appropriate consultation, and all the agencies and that should be requested to provide information so that balanced consideration can take place.

The statement made that municipalities have the ability in order to do that, in my opinion, is not correct. Our municipalities go from the smallest hamlets up to the largest of the cities, and this was most recently proven with a move towards a development of an asset management plan to assist municipalities to determine what the critical needs of their municipalities are and to prioritize the needs on those particular—you know, funding and the ability to move ahead. What the analysis has determined is that the municipalities don't have the capacity. They neither have the capacity nor the resources nor the expertise, in a lot of cases—in too many cases. I believe it was 352 out of 445 municipalities that do not have the capacity or the ability in order to do the critical analysis

that would provide for a complete and meaningful decision.

**Mrs. Laura Albanese:** And to improve that situation, are there any regulations, any legislation that needs to be amended to improve that? Have you given any thought to that?

**Ms. Pat Vanini:** I'd want some time to think about that. As I said, there's a lot of legislation and regulation now.

I think part of the challenge is that this is a specialty business, energy, whether it's nuclear, solar, wind etc. It's really driven by technology, and the technology changes. I'm no expert on it, but I would think in this industry it's probably been at lightning speed. So I think municipal governments, in terms of the councils and their ability to assimilate information and understand it, ask good questions and know when they get good answers, those type of things—but I think certainly there needs to be access: Whether it's science or technology, are there certain technologies that have different kinds of risks to them? What would be a public safety piece? I think there needs to be an access somehow to that, and I think that's certainly been part of the challenge, even with the wind turbines. There are a lot of small, rural places that didn't feel they had the expertise to manage and ask the questions and know what safeguards they might need to put in. I think that's where, certainly, the policy development as well as the implementation, the program development, really needs to come together. Sometimes we're much better on the former than the latter.

**Mrs. Laura Albanese:** I want to thank you so much for your time.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mrs. Albanese. To you, Mr. Clark: 10 minutes.

**Mr. Steve Clark:** I'm fine, Chair. Thank you for the opportunity.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Clark.

Je passe la parole à M. Bisson.

**M. Gilles Bisson:** Monsieur le Président, on n'a aucune question ici.

**The Chair (Mr. Shafiq Qadri):** Merci beaucoup.

Thank you, Ms. Vanini and Mr. Powers, for your presence and your deputation.

There are some orders of business with the committee—

**Mr. John Yakabuski:** We would like to request a 10-minute recess, please, Chair.

**The Chair (Mr. Shafiq Qadri):** Fair enough: a few minutes' recess. I know we're waiting for Mr. Fedeli.

*The committee recessed from 1728 to 1730.*

#### SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qadri):** Thank you, colleagues. Yes, recess is cancelled. I would invite our Clerk to speed up, if necessary.

We have a subcommittee report. This needs, I presume, to be read into the record?

**Mr. Gilles Bisson:** I have a motion.

**The Chair (Mr. Shafiq Qaadri):** Monsieur Bisson.

**Mr. Gilles Bisson:** Yes, I have a motion. I want to move—

**The Chair (Mr. Shafiq Qaadri):** Yes, we have a subcommittee report that's going to be entered.

**Mr. Gilles Bisson:** Oh, I thought I heard you were going into subcommittee. Sorry.

**The Chair (Mr. Shafiq Qaadri):** No, no.

**Mr. Gilles Bisson:** Okay, I misunderstood.

**The Chair (Mr. Shafiq Qaadri):** Would anyone care to read the subcommittee report? Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you, Mr. Chair. Your subcommittee on committee business met on Tuesday, August 27, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

(1) That the Clerk of the Committee request that the confidential documents received from Cabinet Office on May 7, 2013, in response to the committee's April 23, 2013, motion and the confidential documents received on May 21, 2013, in response to the committee's May 7, 2013, motion:

1. have all personal information redacted by the responder;

2. have all commercially sensitive material which is not related to the gas plants redacted by the responder; and

3. have the responder resubmit the redacted documents to the committee.

(2) That the Clerk of the Committee return the confidential documents received from the Premier's office on May 21, 2013, in response to the committee's May 7, 2013, motion and ensure that the documents are not released or form any part of the committee's public record.

(3) That the Clerk of the Committee invite a representative from the Ontario Power Authority to attend an in camera meeting of the subcommittee to provide an explanation regarding the confidential nature of the documents received in response to the committee's May 14, 2013, motion.

(4) That the Clerk of the Committee request that the confidential documents received from the Ministry of Finance in response to the committee's May 14, 2013, motion:

1. have all personal information redacted by the responder;

2. have all commercially sensitive material which is not related to the gas plants redacted by the responder; and

3. have the responder resubmit the redacted documents to the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

*Interjections.*

**Mr. John Yakabuski:** No, not done.

(5) That the Clerk of the Committee return the confidential documents received from the Ministry of Government Services on July 22, 2013, in response to the committee's June 25, 2013, motion and ensure that the

documents are not released or form any part of the committee's public record.

(6) That the Clerk of the Committee return the confidential documents received from the Ministry of Government Services on July 26, 2013, in response to the committee's June 25, 2013, motion and ensure that the documents are not released or form any part of the committee's public record.

(7) That the Clerk of the Committee sends a letter to Dave Douglas requesting clarification on the confidential documents received from the Ministry of Government Services on July 26, 2013.

(8) That the Clerk of the Committee request that the confidential documents received from the Ministry of Government Services on August 15, 2013, in response to the committee's June 25, 2013, motion:

1. have all personal information redacted by the responder;

2. have all commercially sensitive material which is not related to the gas plants redacted by the responder; and

3. have the responder resubmit the redacted documents to the committee.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Any comments before we do that? All in favour of adoption, as read? Any opposed? Carried. Thank you.

#### COMMITTEE BUSINESS

**The Chair (Mr. Shafiq Qaadri):** We now have a motion from Mr. Tabuns of August 27.

**Mr. Peter Tabuns:** Which I would like to hold down until our next regularly scheduled meeting, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you for holding down the motion without protest, Mr. Tabuns.

We now have a new motion: Monsieur Bisson.

**Mr. Gilles Bisson:** I move that the Standing Committee on Justice Policy meet, when the Legislature is in session, to review the matter of the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants, as follows:

(1) one witness slot on Tuesday mornings, starting at 8:30 a.m.

(2) one witness slot on Tuesday afternoons, starting at 3 p.m.

(3) one witness slot on Thursday mornings, starting at 8:30 a.m.

That each caucus is allotted one witness per week with the same rotation;

That each witness is allotted a total of 95 minutes, including a five-minute opening statement, with the same rotation for questions;

That the new meeting schedule will be effective starting Thursday, September 19, 2013.

**The Chair (Mr. Shafiq Qaadri):** All right. So just to be clear, the effect of this particular motion is that on Tuesday afternoons, instead of hearing two witnesses starting at 3 p.m., it will be one witness. It also will remedy the math that seemed to be offending M. Bisson.

**Mr. Gilles Bisson:** There's a little error here that was just caught by my colleague. It should also say "Minister of Energy, Ministry of Energy and the Ontario Power Authority." Sorry; that somehow was left out.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. We'll need that in writing, by the way, but that's fine.

Are there any issues on this particular motion before we vote? If not, all in favour of the motion, as read? All opposed? Motion is carried.

If there is no further business—yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, I might have been out of the room when we discussed the plowing match.

**The Chair (Mr. Shafiq Qaadri):** Yes. There is no committee on Tuesday next week.

**Mr. Victor Fedeli:** There's no committee on the 17th. Yes, I understand that.

**The Chair (Mr. Shafiq Qaadri):** It will be Thursday, September—

**Mr. Bob Delaney:** There's actually a proposal to have a float on which we could have a committee meeting.

**The Chair (Mr. Shafiq Qaadri):** That's not in order, thankfully.

**Mr. Victor Fedeli:** I know how it could be powered.

**The Chair (Mr. Shafiq Qaadri):** The committee is now adjourned, colleagues.

*The committee adjourned at 1736.*







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