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**Official Report  
of Debates  
(Hansard)**

**Tuesday 5 June 2012**

**Journal  
des débats  
(Hansard)**

**Mardi 5 juin 2012**

**Standing Committee on  
Estimates**

Ministry of Energy

**Comité permanent des  
budgets des dépenses**

Ministère de l'Énergie

Chair: Michael Prue  
Clerk: Valerie Quioc Lim

Président : Michael Prue  
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Hansard Reporting and Interpretation Services  
Room 500, West Wing, Legislative Building  
111 Wellesley Street West, Queen's Park  
Toronto ON M7A 1A2  
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Salle 500, aile ouest, Édifice du Parlement  
111, rue Wellesley ouest, Queen's Park  
Toronto ON M7A 1A2  
Téléphone, 416-325-7400; télécopieur, 416-325-7430  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON ESTIMATES

## COMITÉ PERMANENT DES BUDGETS DES DÉPENSES

Tuesday 5 June 2012

Mardi 5 juin 2012

*The committee met at 0845 in room 151.*

### MINISTRY OF ENERGY

**The Chair (Mr. Michael Prue):** We're going to call the meeting to order. I realize that not everyone is here yet, but if we are going to finish with this minister and this ministry over the next two days, we have to start now.

We're here to resume the consideration of the estimates of the Ministry of Energy, vote 2901. There is a total of six hours and 16 minutes remaining. When the committee adjourned at the last meeting, the third party had finished its 20-minute turn. It is now the turn of the government. Following that, we'll have the official opposition for another round of questioning.

To the government, you have 20 minutes.

**Mrs. Teresa Piruzza:** Thank you, Chair, and good morning, everyone. It's a pleasure to be here again this morning, and thanks for the wonderful pie, by the way, to get that in there.

Minister, I'll turn it over to us with respect to some questions for you. One of the areas that I hear about or that I get calls about in my office is with respect to door-to-door retailers, marketers and different elements as people knock on the door. I know we try to have discussions with my constituents in terms of what the rates are and what they can and can't do with respect to the door-to-door sales like that, but my question to you on this matter is, what is Ontario doing to protect Ontario consumers from electricity retailers and gas marketers?

**Hon. Christopher Bentley:** Thank you very much. I'm just going to spend a second or two, if I could, framing a few of the issues, and then turn it over to the deputy for some more of the detail. Most of us receive a bill from our distribution company and deal directly with the distribution company. There is another option, and that is to go through a retailer of some description. It could be for hydro; it could be for gas. We all have the power to make our independent arrangements with a retailer, if we choose.

Over the years there have been some challenges with respect to the conversations that take place between the homeowner and an energy retailer that might come to the door, some challenges, in part, because not all of us are or are intended to be experts in what makes up the bill, how it gets calculated, what variables there are, what we

have control over, the different parts of a bill, the different charges. We're really not expected to be experts. Sometimes those conversations in the past with people who come to the door proceed on the assumption that we are experts, and so in the past there have been people who have entered into contracts that really were not in their best interest, entered into contracts where they might not have fully understood or appreciated all the different charges they were going to pay, some of which were in addition to the charge they were negotiating with the energy retailer. Of course, when people come to the door and they make a very strong and forceful presentation, it's always tempting to be drawn into that conversation. Sometimes you don't always have the extra moment or two you need for reflection, to think about other issues.

A couple of years ago we started taking a look at this and started taking a look at some additional initiatives that would enable homeowners, when they're having the door-to-door conversations with potential energy retailers, to make sure that they had the information they required before they started entering into contracts. I think what I'll do now is turn it over to the deputy just to talk about what the initiatives were in the legislation we brought forward, which came into force on January 1, 2011.

**Mr. Serge Imbrogno:** Thank you, Minister. I was actually going to call John Whitehead. He's the assistant deputy minister of the regulatory affairs and strategic planning group. John can walk through those details.

**Mr. John Whitehead:** Good morning. As the minister mentioned, the Legislature approved in 2010 a new Energy Consumer Protection Act that came into effect on January 1, 2011. The goal of this act—the minister has touched on some of the inherent issues that we were trying to get at—was to ensure that consumers had a ready and accessible amount of information available to them at the time of the sale, and to rebalance the relationship, if I can put it that way, between the consumer and the energy retailer to ensure that the company selling products at the door was held accountable to ensure that certain standards were met.

**0850**

So when the legislation was being designed, we really did consider it right from the time that the salesperson left their office and walked up somebody's front step, through the process at the door, on to the life of the contract and even through the end of the contract. The new rules affect a variety of elements of the contract

relationship, so they deal with what must be disclosed to the consumer, or the potential consumer, at the time of the sale and the manner in which it must be disclosed.

The minister mentioned in his comments a moment or two for reflection, so we have built into the legislation specific requirements and standards for what retailers must do in terms of a follow-up call to consumers to assist them with their decision-making and to ensure that they've had that moment for reflection.

We have dealt with what many would consider to be unfair practices by those who sell contracts at the door. So there is a variety of new rules that apply there, as well as to the end of the contract period. There is now a new set of rules for contracts ending after January 1, 2011, in respect to what can be renewed and under what terms.

To ensure that the act has adequate administrative support and backup, the Ontario Energy Board, which licenses retailers and other entities in the energy field, was granted new enforcement powers. So it has powers of audit. As a licensing entity, it can apply new standards and requirements to energy retailers. For example, retailers must now, as part of their ability to sell in the market, verify that they've trained their sales agents in appropriate and allowable techniques at the door. They must have their sales agents prominently display an appropriate identification. One of the issues that we heard about through consultations in the development of this act was confusion on the part of some consumers, not just with respect to the details of the bill but actually with who was standing in front of them—whether the individual was a representative of the utility in the area or whether they were a representative of a retailer.

So there is a variety of new protections and a rebalancing of the relationship between energy retailers and their customers. I think the legislation is comprehensive. It's been in place just over a year at this point, and we have seen some significant changes in the marketplace as a result.

**Mrs. Teresa Piruzza:** Thank you for that response with respect to the act and the development of the act. Some of the elements, as you've indicated, came into effect at the beginning of 2011, so I'm sure there's still an element of education and awareness, I think, that may have to go out to our communities with respect to what is in the act and what their rights are and what the responsibilities of the retailers are. But to that end, what does a consumer do if they believe a retailer is not in compliance with the act?

**Mr. John Whitehead:** As I said, the Ontario Energy Board is our primary enforcement agent for ensuring that the rules and the requirements are met. I should mention that in addition to this legislation, the energy board also has a variety of codes and standards that it develops to ensure that there is an appropriate range of protections. For a consumer who is concerned about what happens or what has happened with their contract, or whether they are in a fair or appropriate arrangement, calling the energy board is a good first step. The energy board does now have powers of investigation and follow-up, and can

enforce—and does enforce—a variety of administrative penalties in the event of non-compliance.

The energy board has also taken the opportunity to revamp its website in the last year. Because of the breadth of their business, they have to deal with the sophisticated service providers, but they also deal with customers who are not, as the minister mentioned, experts in the review of their bill. So they've split their website into a consumer and an industrial approach. By all accounts, it's a much more user-friendly approach. Certainly we'd encourage people to reach out to the OEB as a first step.

**Mrs. Teresa Piruzza:** Just on that as well, is there a number that they can contact as well, given that some may not have access to those websites?

**Mr. John Whitehead:** Yes, there is a toll-free number for consumers as well. I'm sure we can get that for the record.

We have noticed as part of this that the number of times that people need to contact the OEB seems to be dropping. We're monitoring this. One of the key concerns that consumers noted for us during consultations was automatic renewals of contracts, things like that. Those renewal provisions, as I mentioned, have been changed, so there are fewer opportunities to find oneself in a contract one didn't intend to be in. If a contract is renewed—there are no automatic renewals of electricity contracts, and if a gas contract is renewed now, the terms of the deal are that it can't be renewed at a price higher than or different than the pre-existing contract, and it can be withdrawn from without a cancellation fee.

I think those things have helped, but again, we'd certainly encourage anyone with concerns to contact the OEB, either through their website or a toll-free number.

**Mrs. Teresa Piruzza:** You spoke of the enforcement that the OEB can provide through this act and some of the rules and regulations that they do have. If someone does call, how do they go about enforcing, or how do they enforce the act? Sometimes, when there is an act—the enforcement rules are there, but how does the OEB go about enforcing the act?

**Mr. John Whitehead:** It's actually a multi-step process. If somebody does have a concern or a complaint, the OEB would register that. We do, as a matter of course now, require retailers to record their phone calls with customers so that we can independently assess what was said to the customer and what they agreed to do.

The OEB starts with—it's an escalating series of steps that the OEB can take, from a simple phone call to the retailer to say, "There is a problem here. What would you like to do about it?" through to and including investigations and enforcement through audit and administrative penalties. In fact, by August 2011, there had been 12 administrative penalties issued to retailers involving allegations of non-compliance. So the board was active immediately in the first several months of the act's coming into force. Those allegations and those administrative penalties dealt with a range of things, including sales agent training, contract requirements, incorrect use of disclosure statements and price comparison documents.

If I could go back to your earlier question for just a moment, the toll-free number, apparently, is 1-877-632-2727.

**Mrs. Teresa Piruzza:** Perfect. Thank you.

**Mr. John Whitehead:** Of the various penalties that were issued, 10 of the retailers have filed assurance of voluntary compliance with the board, and they have set up a plan to pay their administrative penalties. The two remaining companies remain in hearings and in a process to resolve the outstanding issues.

In total for 2011, the Ontario Energy Board collected just under \$1 million of administrative penalties that are being used for further consumer education programs.

**0900**

**Mrs. Teresa Piruzza:** So certainly working on that. Again, given that the act is relatively new—it just came into effect in January—when we bring forward rules and regulations, there's an element of review or seeing if the act has attained its objectives, whether it's meeting its goals in terms of why it was originally developed. What happens if the existing rules aren't enough as we move forward?

**Mr. John Whitehead:** The legislation that was approved does include a variety of regulatory provisions, only some of which have been used and which could be used more fully. With the OEB, we are monitoring the changes in the patterns that we're seeing of consumer complaints and what we can do. Under the existing legislation, we do have additional regulatory authority that could be applied if it looks like there is a continuing problem.

I would say that in terms of the pattern so far, in 2010 the OEB recorded a total of over 5,700 consumer complaints in respect of retailer contracts. I'm just referring to a table here. By the first quarter of 2011, that had dropped to 1,458, second quarter was 732, third quarter was 578, and by the fourth quarter of 2011 it was down to 378. Certainly not that consumers are uniformly happy or that they are—but we think this is significant and directionally appropriate. The pattern that we're seeing is that there are certainly changes taking place in the marketplace, and it gives us optimism that these rules are appropriate. But as I say, if we see a change, there is further action that can be taken.

**Mrs. Teresa Piruzza:** Perfect. How much more time do we have?

**The Chair (Mr. Michael Prue):** About two and a half minutes.

**Mrs. Teresa Piruzza:** Good, so I'll just finish up.

With respect to the act, you've spoken about the fines that have been collected, and that money then gets reinvested in education and awareness for our consumers. You've talked about complaints being reduced over time since the introduction of the act, and some of that is the education and awareness. Is there a cycle, I guess, that the board goes on in terms of ensuring that the education and awareness is there? Are you suggesting, with the reduction in complaints that we're getting, that in fact the

act was successful in its original objective and goal; that is, to protect consumers?

**Mr. John Whitehead:** Certainly, what we're seeing at the ministry and what the Ontario Energy Board is reporting to us suggest that there is a great deal of success. As I mentioned, the pattern of complaints has been falling consistently.

We feel that there may be several contributing factors there. I mentioned that the automatic renewal of contracts was one element. Another element was for those consumers who find themselves in a contract. They may have entered into it quite knowingly but their circumstances have changed through time; the act also limits cancellation fees for exiting from the contract. There's a variety of factors that may have contributed to this. The act was pretty comprehensive.

But we are also seeing changes in the pattern of sales overall. We believe that the door-to-door sales of these contracts are diminishing, and so people will have more opportunity and perhaps less of the pressure that the minister mentioned in his comments to make a quick decision on a matter that, day to day, most people wouldn't walk around with a lot of detailed knowledge about what the implications of the contract would be. We do feel it's directionally appropriate.

As I mentioned, we and the Ontario Energy Board are watching the marketplace closely. As a licensing body, the Ontario Energy Board has the ability to review and, in extreme circumstances, suspend the contracts of retailers. I mentioned the rebalanced relationship between consumers and the retailers. One of the things that has been rebalanced is that if a retailer is found to have offered a contract that included unfair practices and that contract is deemed void, the consumer gets all of their money back from that contract.

**The Chair (Mr. Michael Prue):** I'm going to stop you right there. We're on to the Conservatives.

**Mr. Rob Leone:** Good morning everyone.

Minister, I'm going to come back to the Mississauga and Oakville gas plants for a moment. It was noted in the Toronto Star last week that there is an \$82.3-million suit against the government. Unfortunately, Minister, we had to find out about that suit through the newspaper even though we had asked you about what the value of these suits or pending suits was.

Could you tell us why you couldn't tell us and why we had to read this information through the newspaper?

**Hon. Christopher Bentley:** Well, in fact—thank you very much for the question; I appreciate that—you did not find out about a lawsuit through the newspaper, because I have mentioned that there were lawsuits with respect to the Mississauga gas plant. I've mentioned the fact that there are lawsuits on both sides of the border in a number of answers that I've provided to different questions. I've said, in relation to the questions that you've asked, that because of the lawsuits, because of the very sensitive discussions that are going on involving the gas plant, I'm not in a position to speak to those issues in detail at the moment.

**Mr. Rob Leone:** So even where the information is public, you aren't able to speak to those issues at all?

**Hon. Christopher Bentley:** I think as a general rule, when there are lawsuits that relate to a matter—and I'm speaking generally—and in addition there are very sensitive discussions, speaking about what may or may not have been heard, may or may not have been said, may or may not have been fact, or may or may not have been part of a discussion strikes at the very heart of the reason that you don't speak about things. It's much better and it's much more important to allow the conversations to take place within the realm of confidentiality, which protects the conversations, protects the negotiating position, in this case, of the people of the province of Ontario.

**Mr. Rob Leone:** This information is public, though.

**Hon. Christopher Bentley:** As I say, I'm speaking very generally, but what people may hear or may not hear, what may or may not be public, commenting on little bits of it would inevitably start to strike at the heart of the need for confidentiality for the discussions and place at risk potentially the protection of the position of the people of the province of Ontario. That's why we've taken a position with respect to the conversations—which are very sensitive, covered by privilege—and the lawsuits on both sides of the border that at this point in time it's not appropriate to speak to those issues, because the position of the people of the province of Ontario is being represented and defended and protected in a number of ways.

**Mr. Rob Leone:** I appreciate the fact that some sensitive matters and commercially sensitive matters, as you referred to them before, can be restricted. There's probably a legitimate basis for that. But what I'm talking about here, Minister, is the public information, the fact that we have reported in the Toronto Star last week an \$82.3-million suit. Now, we asked previously, and I'm going to ask again, where in the estimates do we find money set aside to defend these lawsuits? Where are they?

**Hon. Christopher Bentley:** Yes, thank you very much. There is not a line in the estimates, which are the spending of the Ministry of Energy. With respect to any comments, reports, details, suggestions, references, what we need to make sure that we do is protect and respect the interests of the people of Ontario, which are being protected and respected, both involving the lawsuits and in the discussions. It would not advance, and may well hinder, the interests of the people of Ontario to get into a discussion about those specifics at this point in time. I hope to be in a position to speak to the issues at a later date. Today is not that date.

0910

**Mr. Rob Leone:** Minister, are we to assume, then, that anywhere where there might be a pending lawsuit in the Ministry of Energy would be off limits to the kinds of questions we can ask in this committee?

**Hon. Christopher Bentley:** You've asked me specifically about the Mississauga gas plant relocation, a gas plant relocation which, I've said before, was and is sup-

ported by your party, was and has been supported by your party from the beginning. You've been asking me about issues relating to confidential, sensitive, privileged conversations, discussions and lawsuits relating to that matter, and I'm answering your questions in the context of those issues.

**Mr. Rob Leone:** Let me restate our position on this, Minister. While we agree that the location that you chose was not the best location for a gas-fired plant, we wouldn't have put that plant there to begin with. The siting of that plant, to begin with, was a decision that was made by your government, which we can't ask questions on because you're refusing to answer those questions.

Now, Minister, the reason why I asked the previous question was related to the fact that if we look through your ministry, the threat or the potential threat of lawsuits actually is pandemic. They are with respect to natural gas-fired plants. Whether they're green energy, windmills or solar plants, or folks who can't connect to the grid for whatever reason and these folks are also threatening lawsuits, does that mean we can't ask your ministry any questions?

**Hon. Christopher Bentley:** Thank you very much. I hadn't yet noticed that you had run out of questions to ask, either during estimates or during question period. Indeed, I have been privileged and blessed to have been the recipient of quite a number of different forms of inquiry, and sometimes those questions don't require the formality of estimates or question period in which to have them framed. I too can sometimes read about them in the occasional press release or press report from time to time.

I think what is important is that you're having the opportunity to pose the questions. What is very important is that we make sure at all times that the interests of the people of Ontario are protected. We have a shared interest in that and we have a shared, in some sense, responsibility, but certainly a shared interest.

There may be information that the discussion of which would hinder or harm or hurt the interests of the people of Ontario because they're in the midst of either the defence of lawsuits or confidential discussions.

The great privilege of living in a society such as ours, with free and open access to the courts, is that anybody, about anything, at any time, can either exercise any rights they have or exercise any rights they say they have under different contracts and have access to the courts. Access to the courts is one of the things that we have always protected and respected. Not everybody with access has a successful case, but the principle of a democracy such as ours is that there be access to the courts, and that's what we constantly work to defend and encourage.

**Mr. Rob Leone:** It's a good thing that you mention that we have a great system, and I agree that we do, but part of having that great system provides members of the Legislature to ask the government to be accountable and transparent to the affairs of the government, particularly the ministry. And that's what we're doing here in estimates. We're asking you questions related to your

ministry that are of the public interest and in the public interest. We just don't seem to be getting very many answers, Minister.

I'm wondering whether you'd be happy or excited, since you read the newspaper and you've alluded to that fact quite frequently, to read a headline in tomorrow's Toronto Star that states something to the effect that "Energy Minister Fails to Answer any Question on the Mississauga or Oakville Plants." Would you be happy with such a headline?

**Hon. Christopher Bentley:** Well, thank you very much for the question. My responsibility is always to perform my responsibility, and I leave the comment on it to others. Sometimes it is easy, and sometimes it is easy, but it's always a responsibility that we bear and we take very seriously.

I think it's important that we do recognize that sometimes in lawsuits, sometimes when you're defending the comments and actions of others, there are many who will have a much freer ability to comment—correctly or not—on the actions of a government than the government might have, because some of the interests that it is defending and protecting require either that it not comment, it not violate the confidentiality, which sometimes may accrue to its benefit and sometimes may accrue to the benefit of the party that it's having confidential conversations with, but protecting and respecting commercially sensitive, confidential conversations is essential to the maintenance of those conversations. When you're defending lawsuits or participating in legal action of any sort, defending or not, it is important that you respect the process, respect the approach, and it's important that you always protect and defend not only the principles of justice but the interests of those that you're representing.

The interests of the people of the province of Ontario are being represented in those discussions, and to engage in further conversation of them in any form at this point in time would not help advance, and may well hinder or hurt, those particular issues.

**Mr. Rob Leone:** Minister, we've been asking questions with respect to this for a number of hours, I would say, on this committee. We've asked questions on whether the government could produce any information with respect to whether a gas plant was needed, either in Oakville or in Mississauga. We've asked for a site assessment on the location of the gas plants in Oakville and in Mississauga. We weren't provided with that either. We've asked for the costing of what we've spent on constructing the plant in Mississauga and halting that. We weren't able to have any answers on that. We've asked you questions with respect to the legal issues and legal costs that you're going to incur as a result of the relocation of these plants, and you've failed to provide those as well. Minister, do you have any comments with respect to your failure to answer questions on any of these matters?

**Mrs. Teresa Piruzza:** Point of order with respect to the question just asked, Chair: He's indicated in his question that the questions that they're asking all have to do with legal proceedings or various types of negotiations

that are ongoing. The minister has indicated in his answer a number of times that with respect to those negotiations, with that process, the objective and the element that we must all consider is the protection of the province and of the families of Ontario.

Now, to ask the minister or to indicate, or even to suggest, that the minister is not responding to the question I believe does not stay in the spirit or the element in terms of the standing order, in terms of the questions of legal negotiations. We've discussed this before in terms of elements. In standing order 23(g), a member shall be called to order if they refer to any matter that is the subject of a court process. All these questions that they're asking are with respect to elements that are within a court process. So, again, to suggest that the minister is not responding—he has been responding. I just need to indicate that.

**The Chair (Mr. Michael Prue):** I listened intently. This is not a point of order. I mean, it is an argument, but I did rule as the Chair early in the procedure that the members of this committee are entitled to ask those questions. I also ruled, I think quite fairly, that the minister may respond as he sees fit. I don't think that the point of order is well taken. Mr. Leone has the right to ask that question; the minister has the right to respond in the way that he wishes.

**Mrs. Teresa Piruzza:** But with respect to that question—sorry, Chair—and in respect to your rulings that you've done with this as well, he's indicating that the minister is not responding, and in your comments you just indicated that the minister may respond as he sees fit with respect to the questions.

**The Chair (Mr. Michael Prue):** I think the—

**Mrs. Teresa Piruzza:** The minister is responding.

**The Chair (Mr. Michael Prue):** Yes, the minister is responding, perhaps not as Mr. Leone wishes, but the minister has responded. Mr. Leone, though, is entitled to ask this question.

I'm going to add another minute on to what you have because of this.

0920

**Mr. Rob Leone:** Thank you.

**Hon. Christopher Bentley:** Thank you very much. You know, I've quite extensively responded to the various issues surrounding these gas plants. I quite extensively indicated the commercially sensitive and the privileged nature of various discussions, and the different lawsuits in relation to the Mississauga plant, on both sides of the border. All of those issues are alive. They are current, they're not historical, and the interests of the people of the province of Ontario and the families and businesses are being represented in all of them. I think it's important that we allow the representation of the families and businesses of the province to take place.

**Mr. Rob Leone:** Okay, thank you. Mr. Harris?

**Mr. Michael Harris:** Minister Bentley, good morning. I would also like to follow up on a few items last week that we left off on. I'll draw your attention to the Auditor General's report, 2011. I'm sure you've got a copy of it

or have been through it. Specifically, the first, on page 11, where the Auditor General said that the ministry signed a contract with Samsung yet “no economic analysis or a business case was done to determine whether the agreement with the consortium was cost-effective...”

Next, on page 89, with regard to the renewable plan, “no comprehensive business case evaluation was done to objectively evaluate the impacts of the billion-dollar commitment.”

Page 96: With regard to the government’s energy plan and renewable energy policy, he says that “the minister essentially had the authority to direct the OPA, which minimized the need for an analysis of different policy options and an assessment of the cost-effectiveness of alternative approaches.”

On page 97, under the government’s energy plan and Green Energy Act, “billions of dollars were committed to renewable energy without fully evaluating the impact, the trade-offs, and the alternatives through a comprehensive business case analysis.” It goes on to say on that same page that “no thorough and professional cost-benefit analysis had been conducted to identify potentially cleaner, more economically productive, and cost-effective alternatives to renewable energy, such as energy imports and increased conservation.”

In his press release, finally, he stated, “Going forward, it will be critical for the Ministry of Energy and the Ontario Power Authority (OPA) to conduct an objective cost-benefit assessment of the progress made to date to provide government decision-makers with the information they need to strike an appropriate balance between the promotion of green energy and the price of electricity in Ontario.” That was what AG McCarter said.

Now, I’d like to ask you, obviously, if this cost-benefit assessment was done prior to the Green Energy Act. I’m assuming I will not get an answer on that one, so I’ll just simply ask, will you follow the Auditor General’s recommendation and perform this cost-benefit analysis on the Green Energy Act?

**Hon. Christopher Bentley:** Thank you very much. I very much appreciate the question and the number of different references—specific page references—to the Auditor General’s report, and the advice and the suggestions of the Auditor General. I very much appreciate all of that information.

I think you ask a multi-part question, so I’ll attempt to, in the time that’s—

**Mr. Michael Harris:** No, actually it’s just one: Will you perform a cost-benefit assessment and follow the Auditor General’s recommendation of doing so with regard to the Green Energy Act? Yes or no?

**Hon. Christopher Bentley:** Thank you very much. I think you asked your one question from a number of different aspects, with a number of different issues. I’ll give you one simple example: The green energy approach, which we have had some discussion of here in some detail, I think, really begins back with the determination that we won’t burn coal anymore. Because part of an analysis, any analysis by anybody, is, what is the

actual cost of burning coal for your energy? In any business case analysis, of course, you would always want to consider and take into consideration the externalities, the factors affected by a particular decision that are not always drawn in on a line-by-line basis. So when a number of independent studies, one of which, performed in 2005, suggested that the cost of burning coal and dirtying the air was about \$4.4 billion just for health and the environment, that’s a significant factor to be taken into consideration. Interestingly, it was not taken into consideration when determinations were made, I gather, to increase the use of coal in the province of Ontario as a source of energy.

So you start with a \$4.4-billion decision and then as you approach the opportunities that green energy represents, green or renewable energy being used all around the world, whether it’s bio, solar, wind—I’ll leave hydro out of that for a second—you also take a look at how the use of renewable energy can provide you with clean sources of power, reduce the burden on health care and environment—which of course are paid by taxpayers, not just ratepayers—and also potentially be used as a source of jobs-producing, income-producing opportunities for families and businesses throughout the province of Ontario. We’ve spoken quite a bit about the various considerations which went into the analysis of the Green Energy and Green Economy Act.

**The Chair (Mr. Michael Prue):** Okay, I’m going to stop you right there, and the next time we can go ahead.

Mr. Tabuns.

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

**Hon. Christopher Bentley:** Good morning.

**Mr. Peter Tabuns:** Minister, we’ve touched on this before, but just for the record, why does your government believe it’s necessary to maintain nuclear power at 50% of the grid mix over the next 30 years?

**Hon. Christopher Bentley:** It’s interesting. Yesterday, I believe, was the 50th anniversary of nuclear power in the province of Ontario. I actually was speaking to somebody about that yesterday—a rather significant anniversary, 50 years of nuclear power in the province of Ontario. It has for many decades been a substantial source of reliable and clean power, emissions-free power, a very important consideration with respect to nuclear.

We have developed, through Candu, a technology made in Canada. It’s been very successful, exported around the world, a technology that we’ve used at various sites in the province of Ontario to develop nuclear capacity. We have almost 80,000—it’s north of 70,000 and less than 80,000, they tell me, so I’ll choose almost 80,000—workers in the province of Ontario who derive their income through very skilled, highly advanced, very important work in the nuclear industry. We foresee that, given the assets that we have in the province of Ontario, as continuing to provide a significant source of our generation—not capacity necessarily, but our generation—for many years to come, and we’ve said it will be about 50%. I think in the long-term energy act it just goes under 50% in the future.

**Mr. Peter Tabuns:** Could you please give us an undertaking to provide the background documentation and analysis justifying your position that nuclear should remain at 50% of the grid mix?

**Hon. Christopher Bentley:** Well, I think you can—different countries and different jurisdictions can make a different determination—

**Mr. Peter Tabuns:** I'm sure they can. I'd like to know what the basis was for your determination.

**Hon. Christopher Bentley:** I'm sure that part of the determination was the fact that nuclear has historically been part of our mix here in the province of Ontario, that nuclear has provided safe, reliable, clean power to the people of Ontario for many decades. I suspect that that is a very significant source.

We are blessed in the province of Ontario to have a number of different opportunities to derive electricity from different sources, and we have a very good mix—well, almost a very good mix; we're getting out of coal. That was part of the mix.

**Mr. Peter Tabuns:** So, Minister, if you could actually provide us an analysis that shows us why the 50% target is the one you consider appropriate.

**Hon. Christopher Bentley:** Well, I know the long-term energy plan was the subject of much discussion, a public hearing, analysis, no doubt questions in the House, and you would have been part of those discussions, quite significantly.

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**Mr. Peter Tabuns:** Yes.

**Hon. Christopher Bentley:** I think history with respect to nuclear power in the province of Ontario was probably a very significant driver to how we derive that for the future. They are good assets, they perform well, and that's our determination as to what should happen in the future.

**Mr. Peter Tabuns:** I'm sure, Minister, you have a more in-depth analysis than "We've always done it and we'll continue to do it." So we would appreciate it.

I had the ministerial briefing when the long-term energy plan came out, and I was told this is a very rough document—lots more in-depth. I'd like the in-depth. Why 50%? Why not 20%? Why not 80%? Your justification would be good.

I'll move on. Did the OPA provide the government with a revised integrated power supply plan based on the long-term energy plan last summer?

**Hon. Christopher Bentley:** I know we have the long-term energy plan, which you've made reference to. We have not forwarded on to the Ontario Energy Board an IPSP, and it is our determination, our consideration, that we, going forward, should have a different approach to planning, a more focused and scoped approach to planning. So there is no completed IPSP that has been forwarded on to the Ontario Energy Board.

**Mr. Peter Tabuns:** So, after you produced the long-term energy plan, you did not in fact then prepare an integrated power supply plan. I'm clear in understanding you?

**Hon. Christopher Bentley:** No, there's no completed—there's no IPSP that we have forwarded on to the Ontario Energy Board. There was obviously work on what that would consist of, absolutely.

**Mr. Peter Tabuns:** Sorry. Was one drafted and then not forwarded on?

**Hon. Christopher Bentley:** I have no doubt there were drafts of various sorts.

**Mr. Peter Tabuns:** And the reason for not completing it and referring it to the Ontario Energy Board?

**Hon. Christopher Bentley:** Well, the reasons are as I have said. One of the challenges with the planning approach that exists in the province of Ontario is that it is a very long approach, not as flexible or responsive as it needs to be to meet different issues that arise in a fast-changing world economy, a fast-changing Ontario economy, and an economy in any jurisdiction which can seize new opportunities, technological or otherwise, that should be considered.

One of the things that we've said about planning is that for all its strengths, by the time we had finished with the planning process and with the detailed part of the planning process and the Ontario Energy Board's consideration of that, we would be many, many years down the road, and that wouldn't be terribly helpful to the people of Ontario. So what we have in legislation before us is a different approach, an approach which I think will be much more responsive and enable us to get input not only from members of the public, not only from stakeholders, not only from energy experts, but from the Ontario Energy Board in a much more scoped focus and timely way than the old approach would have provided.

**Mr. Peter Tabuns:** So did the government, under the law that's actually in place now—it has not yet been replaced. Did the government receive a draft integrated power supply plan from the OPA based on Energy Minister George Smitherman's previous long-term planning directive between 2008 and 2009?

**Hon. Christopher Bentley:** I'll get back to you on that.

**Mr. Peter Tabuns:** Yes. If you could give us an undertaking to confirm the existence of that document, and if you have that document, I would like an undertaking that you will provide us with a copy of that document.

**Hon. Christopher Bentley:** I'll get back to you on your question.

**Mr. Peter Tabuns:** And I guess, further, if in fact a revised IPSP was produced under the orders of Minister Smitherman, if you could tell us why that wasn't referred to the Ontario Energy Board under the laws of Ontario.

*Interjection.*

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

Peter Jennings stated earlier in estimates on May 9, 2012, that reactor refurbishment costs would be approximately—

**Hon. Christopher Bentley:** Is it Rick?

**Mr. Peter Tabuns:** Sorry; it's Rick. My apologies. Sorry, Rick. Sometimes I read these things and sometimes they're wrong.

**Hon. Christopher Bentley:** Sorry, yes. I interrupted your question.

**Mr. Peter Tabuns:** I appreciate the correction.

It was stated that reactor refurbishment costs would be approximately \$1.8 billion per unit. Could you provide documentation showing us how that estimate was arrived at?

**Hon. Christopher Bentley:** Well, I appreciate your series of questions and the answers. This, I think, is one of the reasons why—when you've asked me various questions in the House and I don't have a figure, there's a reason for not having figures. The reason is that the contracts that will be negotiated around refurbishment with respect to Darlington have not been completed. When we started the refurbishment process in Darlington, we took a different approach than has been taken in the past. In the past—and it's not just Ontario; it's around the world—jurisdictions have looked for a bottom-line contract which both builds in every conceivable issue and can't possibly hope to be accurate, as accurate as it needs to be. That's one of the reasons why there are variations between the contracts agreed to and the ultimate costs.

So the approach taken by Ontario Power Generation here in the province of Ontario is to break down the contracting process into different parts. The first part we've spoken to; the ultimate cost we've not, because the contracts still need to be competitively let, competitively tendered and competitively negotiated. So there is no bottom-line price at the moment. OPG is going to keep every contractor's or every potential contractor's feet to the fire to make sure we get the best possible price for the people of the province of Ontario.

**Mr. Peter Tabuns:** I will point out that in open session you've said that your estimate is \$1.8 billion per unit.

**Hon. Christopher Bentley:** Mr. Jennings spoke to that in answer to some of the questions that you've asked around the long-term energy plan. My point is that the final prices and the makeup of the final prices are the subject of competitive contracts which have not yet been tendered or spoken to by OPG. So I think you have the very, very, very rough, ballpark estimate, which is like lots of other rough, ballpark estimates, but the hard work is still to be done.

**Mr. Peter Tabuns:** It would be to the advantage of this committee if you were to table the basis upon which that estimate was calculated, and I appreciate an undertaking to do so.

**Hon. Christopher Bentley:** I'll take your question back.

**Mr. Peter Tabuns:** Next question, then: What is the final cost of the refurbishment of Bruce A units 1 and 2 compared to the original estimate? And in addition to that answer, if you could provide us with documentation. So I'll start off with the final cost of the refurbishment of Bruce A units 1 and 2 compared to the estimate.

**Hon. Christopher Bentley:** I'll take your questions back. I don't know the extent to which the documentation

or other things are public or covered by commercial privilege, but I will take the questions back.

**Mr. Peter Tabuns:** Okay. I'll take that as an undertaking, and I appreciate it.

**Hon. Christopher Bentley:** You can take it as the answer that I've provided.

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

Is it correct that the government's estimated cost of the new build at Darlington is \$15 billion? That is the long-term energy plan budget of \$33 billion minus \$18 billion for refurbishments.

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**Hon. Christopher Bentley:** I appreciate the question. In the long-term energy plan, where you attempt to come up with numbers on the basis of contracts which have not yet been negotiated, through an approach which has not yet been devised, you're going to come up with some very rough numbers. There are lots of numbers out there. That, as I understand, was the very rough basis of a very rough process.

I'm not sure where you go with the number, because, before any decision on a new build would be made or completed by the government, we'd have to have a lot more detailed information, assuming you decided to proceed with it, about what the costs would be and what the different issues would be and who was bearing the cost risk of those different issues. Lots of hard work ahead, and I suspect that we'll take a different approach to these things in the future than we have in the past, just like we've taken a rather fundamentally different approach to the refurbishment at Darlington than we have in the past, one that seeks to minimize the cost risk to the people of Ontario, whether they're a taxpayer or a ratepayer, and one that seeks to get large projects—and large construction projects of all sorts—not just nuclear, but of all sorts—have always been a challenge for governments—not just in Ontario; throughout the world—one which seeks to more closely match the estimates with the final figures.

**Mr. Peter Tabuns:** Was your estimate for new build at Darlington \$15 billion?

**Hon. Christopher Bentley:** My understanding is that that was the rough result of a subtraction mechanism, yes. It wasn't mine; it was the rough estimate of the long-term energy plan.

**Mr. Peter Tabuns:** Your government's, then. Your government is making decisions based on those numbers.

**Hon. Christopher Bentley:** No, and I think that's important. We're not making the decisions based on those numbers. The long-term energy plan is a plan, and the figures in the long-term energy plan are the estimates, but before you actually make the decision on the basis of the estimates, you have to test the estimate according to a contracting approach. For example, before you would actually make a decision about a new build, you would want to very rigorously test those who are proposing to do it and to see whether it was commercially justifiable for the ratepayers, whether that figure matched or was lower than the estimate in the long-term energy plan.

I would not want anyone to walk away from here thinking that if they matched the figure in the long-term energy plan, they're home-free as far as the cost of new build. I wouldn't want anyone to think that—no, not for one second. I think we want to take a very hard look at what would go into the contract, what the different issues are, and fight for the best price possible.

**Mr. Peter Tabuns:** Interesting.

On May 6, Mr. Jennings spoke about a South Carolina reactor, American reactors and a 2007 McKinsey report as the basis for your cost estimate of the Darlington new build. Could you please provide these studies and any other studies or analyses that led you to arrive at the \$15-billion cost estimate for the Darlington new build?

**Hon. Christopher Bentley:** I'll take your question back. Thank you very much.

**Mr. Peter Tabuns:** Pardon?

**Hon. Christopher Bentley:** I'll take your question back. Thank you very much.

**Mr. Peter Tabuns:** And you'll provide us with those figures?

**Hon. Christopher Bentley:** The first thing I'll find out is what there is.

**Mr. Peter Tabuns:** Find out what there is and you'll provide us with what there is.

**Hon. Christopher Bentley:** And then we'll go from there.

**Mr. Peter Tabuns:** Minister, how exactly do you expect the Legislature to hold you accountable if we can't ask you for this material?

**Hon. Christopher Bentley:** Well, you are. It's always difficult to provide certainty with what you will provide unless you know what actually exists. So I think the first step and the responsible step is to go back and find out what exists and make sure that there is material that exists, make sure that it's available to be disclosed and make sure that it's in our ability to disclose it. I just want to be as helpful as I can with respect to your question, and that's why I'm going to go back and find out what does exist and what state anything that exists is in.

**Mr. Peter Tabuns:** Assuming your ministry does have documentation, and assuming that it's not legally constrained, I understand that you'll provide it to us, which is great.

**Hon. Christopher Bentley:** I'm going to go back and find out, yes.

**Mr. Peter Tabuns:** Can you provide us with your latest long-term demand projections for energy in Ontario up to 2030?

**Hon. Christopher Bentley:** There are a number of different projections, and one of the things that we're working through at the moment is how the long-term energy plan demand curve—and there are a number of different potential scenarios—

**The Chair (Mr. Michael Prue):** I'm going to have to stop you there. Perhaps you can complete that answer later. We'll move on to the government.

**Mr. Reza Moridi:** Good morning. Thank you for appearing before this committee, Minister.

Minister, as we all know, a transmission and distribution system is a major part of our electricity system. Could you please let this committee know about the investments your ministry has made over the past few years in the transmission system within our electricity system?

**Hon. Christopher Bentley:** At the risk of wishing to answer every question, let me simply say, before I turn it over to the deputy, who may further delegate or pass off, a lot of work has been done with respect to the transmission system in the province of Ontario. We've spoken quite often about the \$9 billion-plus in investment in transmission in the province of Ontario. We've spoken quite often about the 5,000 kilometres of transmission system that is either new or has been upgraded or replaced, enhanced, which they tell me would get us from my home in London all the way up to the Yukon.

There has been a lot of work that has been done already, a lot of work that now, of course, comes on to be paid for and is paid for by ratepayers; obviously, a lot of work that needed to be done. We're doing a number of times more investment in transmission than historically was done in the years before we became the government, and they do it when they need to do it, so it was needed work.

With that, I'll pass it to the deputy.

**Mr. Serge Imbrogno:** I'm going to ask Rick Jennings to come up and walk you through the investments that have been made in transmission.

**Mr. Rick Jennings:** In terms of what major transmission investments have been made in the last few years, further to what the minister said, there have been substantial upgrades to existing facilities and the addition of new transmission projects since 2003. These were primarily planned to respond to four major drivers:

- to enable Ontario's off-coal policy by the end of 2014;

- to improve reliability of the provincial grid;

- to enhance interconnection with the neighbouring jurisdictions; and

- to help connect and integrate new renewable generation.

Together, these investments have met these objectives and allowed the transmission grid to keep pace with changes in supply and demand to ensure the integrity and reliability of the system.

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The largest or the most major inter-regional improvements that have taken place since 2003 include the Bruce-to-Milton transmission expansion project. This is the largest electricity transmission investment in Ontario in the last 20 years. This will connect over 3,000 megawatts of clean and renewable energy while helping facilitate removal of coal-fired generation from the province's energy grid.

The reinforcement of the power transfer capability between northern and southern Ontario—this allows a lot more hydro power from the north to come south—has enabled an additional 750 megawatts of transmission

capacity, to enable planned clean energy generation, and this includes the Lower Mattagami expansion. It's a major hydro increase.

Another major project is the Ontario-Quebec inter-connection project. This has been fully in service for the last two years and has increased the ability to move power back and forth between Ontario and Quebec by 1,250 megawatts. This gives us access to hydro power from Quebec, and Quebec can buy power from us during winter and other times when they need power.

Since 2003, more than \$9 billion has been invested to improve, replace and expand Hydro One's transmission and distribution system. That includes upgrades to over 5,000 kilometres of wire. The work is ongoing: In 2011 alone, Hydro One invested nearly \$1.5 billion into the upgrading and expansion of the transmission and distribution systems.

**Mr. Reza Moridi:** Thank you very much. These projects which you indicated at the bottom, which increase our transmission capacity with Quebec by 1,250 megawatts, I believe you mentioned: What will be our transmission capacity with Quebec at this point, considering this new system which is added to the previous one?

**Mr. Rick Jennings:** We have had the ability to move power back and forth to Quebec. This allows a dedicated line that allows us 1,250 at any one time. Previously, the Quebec system hasn't been that fully integrated, so they have actually had to separate generation to sell to different sides. This allows the systems to operate fully synchronously with each other, so it has greatly enhanced the ability to move the power back and forth.

**Mr. Reza Moridi:** Thank you. Among these projects which you have mentioned, are there new projects, and if there are, what are the stats of these new projects under construction?

**Mr. Rick Jennings:** The projects I've mentioned are ones that are either completed or well on their way to completion. The long-term energy plan set out new projects, planned projects. They outlined five priority projects, and these were identified for system reliability, to service new load and to incorporate renewables.

The five transmission projects, and the priority ones, are the east-west tie along Lake Superior—that's to better connect the northwest to the rest of the province. This will maintain an efficient and reliable supply to the northwest, and the Ontario Energy Board is currently conducting a designation process to select a qualified transmitter to develop this line.

There are three southwestern Ontario transmission projects, and these are largely to help integrate additional renewable energy into the grid. There's a new line proposed to go to Pickle Lake in northwestern Ontario, and this is to serve both increasing demands by the gold mining industry as a first step, and to enable connection to some of the remote First Nations communities.

Because the long-term energy plan integrates transmission and generation and supply, these work together in terms of the transmission projects, so they help facilitate the renewables targets in the plan as well as other

capacity and demand requirements in the plan. Particularly, as I said, a major, important point is integrating renewables. The southwest Ontario projects drive that.

Just to update on those, Hydro One is currently seeking Ontario Energy Board approval for the reconductoring of lines west of London. That means upgrading the wires so they can carry more power. This project is a proposal to upgrade about 70 kilometres of existing line in the west-of-London area by installing higher-capacity conductor. This is a very cost-effective way of adding capacity. You've got an existing right of way; you're just basically using the existing infrastructure but putting in lines that can carry more power.

In the Bruce area, as part of the planning, the power authority has recommended that Hydro One proceed with specialized equipment at its Milton station. This would help in being able to move more power through the existing system.

Further, the long-term energy plan has also asked the power authority to develop a plan for the connection of remote First Nation communities beyond Pickle Lake, so this is starting in northwestern Ontario but covering potentially a large area of the province. This is communities that currently rely on expensive diesel generation. The OPA has been working with communities in that area through a group called the Northwest Ontario First Nations Transmission Planning Committee. This involves about 25 different First Nation communities that have remote diesel systems. This committee is helping develop a business case for the expansion of the line and further expansion work.

**Mr. Reza Moridi:** Mr. Jennings, you talked about the east-west tie transmission line and its importance in terms of reliability of distribution and transmission of power in the northwestern part of the province. Could you tell us how you go about the procurement of this line?

**Mr. Rick Jennings:** The east-west tie is one of the five priority projects that I mentioned from the long-term energy plan. It is to provide greater connection capability between the northwest and the rest of the province, which currently has limited ability to transfer power. If approved, the project will maintain a reliable electricity supply in the northwest and make the system more efficient so we can take advantage of some of the resources there, and they can rely on some of the resources in the rest of the province.

The Ontario Energy Board has initiated a designation process to select a qualified electricity transmitter to carry out the development work; this is the technical studies, the environmental studies, public consultations. The selected transmitter would be able to receive cost recovery for any prudently incurred development costs, such as those related to conducting an environmental assessment and consultations with local communities. Seven transmitters have registered for this designation process.

The board plans to reach its decision on designation using a two-phased process. In the first phase, the board

has invited parties to make submissions on a specified issues list covering the following decision criteria: filing requirements and timing, obligations and consequences arising on designation, and the process for phase 2 of the hearing. In phase 2, the board will receive the plans filed by applicants for designation and evaluate those plans through a hearing process.

The unique nature of this is that instead of a transmitter sort of automatically having the right to do the project, there will be the ability to—as I said, there are seven different companies, and they're generally partnerships; some of them have partnerships with First Nation groups. So it is really a means of getting the best proposal to go ahead with the project.

**Mr. Reza Moridi:** Mr. Jennings, sometimes I compare the electricity system as a whole to a car, saying that if you have a car, you have to maintain your car. Otherwise, one day as you're driving on the highway, your car will stop immediately in the middle of the highway.

Our electricity system was basically ignored in terms of its maintenance and keeping it updated from 1990 up to 2003. We invested almost a very zero amount in terms of maintenance of our electricity system. A good example is the shutdown of a few nuclear power reactors because of lack of maintenance and updates of these systems.

In the past several years, as the minister mentioned, we have invested about \$9 billion in terms of upgrading just the transmission and distribution systems within the electricity system. Could you tell us where we are on this? Are we up to date in terms of keeping our system maintained in terms of reliability and also from a technical point of view as well?

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**Mr. Rick Jennings:** Maintaining system reliability is Ontario's number one electricity priority. Hydro One's systems include about 29,000 kilometres of transmission lines and, through their distribution system, 123,500 kilometres of distribution lines. This is enough to circle the earth three times. There are about 50,000 steel towers, 1.6 million wooden poles, nearly 300 transmission stations and about 1,000 of the smaller distribution and regulating stations. So it is a massive system and, as you note with the analogy with the car, there is a need to maintain it.

Since 2003, Hydro One has invested over \$9 billion to improve, expand and replace equipment in Hydro One's transmission and distribution, including upgrades to more than 5,000 kilometres of power lines. As the minister noted, that's the distance from London to Whitehorse, the Yukon.

About 50% of Hydro One's overhead transmission lines and more than 20% of power transformers are over the age of 50. This shows when the system was built out. This is another reason why the maintenance and ongoing work is important. Over 15% of transmission stations across Ontario received overhauls in the five years between 2006 and 2011, amounting to a total investment of \$850 million. This is critical to making sure that they're up to date and have the most modern equipment.

Throughout 2011, Hydro One continued to make prudent investments to enhance reliability and facilitate the connection of clean energy. I think I had noted before, but just to show how this is ongoing, during 2011, Hydro One invested nearly \$1.5 billion in capital to improve system reliability, address an aging power system, facilitate connection of new generation and improve service. Ontario's average annual investment into Hydro One's transmission and distribution system since 2003 was more than double the average annual investment over the preceding eight years.

**Mr. Reza Moridi:** Thank you, Mr. Jennings. This is comforting information you've been telling us: that our system is reliable and that we can rely on the supply of electricity for years to come.

These investments, as the minister and yourself mentioned, about \$9 billion just on the maintenance of upgrading our electricity distribution and transmission systems: In terms of its economic impact, have you done any analysis to tell us how many jobs, for example, have been created as a result of these investments?

Of course, the main intention wasn't job creation; the main intention, I believe, was to do maintenance on and upgrade our electricity system, but of course it will have economic impacts in terms of job creation and other spinoffs. In terms of just job creation, has there been any analysis to see how many jobs have been created as a result of these investments?

**Mr. Rick Jennings:** Yes. As you noted, the principal reason is that renewing and rebuilding the province's aging electricity infrastructure is critical for reliability. It's also making it easier to connect clean energy projects, and of course it creates good jobs.

As an example, as part of the system overhaul, Hydro One is upgrading five major area supply stations in Toronto, Ottawa and Niagara. Hydro One's estimate is that 150 new construction jobs will be created from this upgrade work. Each station will involve apprentice electricians, so it's also critical to training for young people.

Hydro One currently employs more than 600 apprentices, including electricians, millwrights, mechanics and power line technicians. In addition, other major transmission upgrades throughout the province contribute to Ontario's effort to sustain and create new, clean energy jobs.

**Mr. Reza Moridi:** Thank you very much, Mr. Jennings.

I have a couple of questions with regard to FIT, Mr. Jennings or Minister. The FIT program has been quite successful since we introduced the Green Energy and Green Economy Act, and many people—homeowners, for example—have been a part of this program. Recently, what have we done, Minister, to make sure that connections have been made to the grid by those who have signed up on the FIT program?

**Hon. Christopher Bentley:** I think that's a very good point and I may turn it over to Mr. Jennings in just a moment or two to speak further about the details. But one of the things that happened when we launched the Green Energy and Green Economy Act and then the Feed-in

Tariff program was that there was a huge amount of interest in it, not just by the larger companies for the larger contracts, but it provided an opportunity, as you say, for individuals, for families, for homeowners to participate in the generation of electricity. That's something that we really hadn't had to any significant degree before. It provides them an opportunity to obtain a contract and, either as part of a rooftop or as part of a ground-mounted opportunity, provided them with the opportunity to generate electricity from their residences and then sell it back into the grid, sell it to the people of the province of Ontario. The contracts enabled them to make the significant, substantial investment in the equipment necessary to provide the generation. Of course, when you have a lot of enthusiasm, you have a lot of people indicating all around the province that they want to participate, and—

**The Chair (Mr. Michael Prue):** And I'm going to stop you there.

On to the Conservatives. We have approximately, I guess, 12, 15 minutes, so you'll have to start now and continue this afternoon, so just be mindful of that.

**Mr. Rob Leone:** Ten or 12 minutes, you say?

**The Chair (Mr. Michael Prue):** Well, no, I think 12 or—maybe up to 17 minutes, actually, but not the whole 20.

**Mr. Rob Leone:** Go right to 20 after? Okay.

Mr. Nicholls.

**Mr. Rick Nicholls:** Thank you, Chair. Good morning, Minister.

**Hon. Christopher Bentley:** Good morning.

**Mr. Rick Nicholls:** It's a known fact, sir, that the Liberals cancelled the planned 280-megawatt gas-powered plant in Mississauga just days before the election, and it's also a known fact that the plant was cancelled to save some Liberal seats. It's also a known fact that EIG Management, a US hedge fund, is suing the province for \$300 million over the Mississauga power plant.

My question, Minister, is a simple one. The OPA in fact offered to settle this lawsuit by offering \$82.3 million as a settlement for the cancelled power plant in Mississauga. So I'm just curious as to where this \$82.3-million payment will in fact come from. Will it come from the taxpayer, an increase in taxes? Perhaps the elimination of the OPA? Where will that \$82.3 million come from, sir?

**Hon. Christopher Bentley:** Much of your question I have spoken to in different ways, but I'll just address it again. The statement by the party that was in the middle of the election, the Liberals, a commitment to the people of Mississauga and the western part of the GTA, was that there would not be—it was our commitment, should we be re-elected, that we would not site the plant or continue with that plant at the Mississauga site.

I do note that I believe the same night the local PC candidate made exactly the same commitment and that the party leader—

*Interjection.*

**Hon. Christopher Bentley:** If I could, your party leader, who is still your party leader, made the same commitment, and, in fact, the NDP made the same commit-

ment. I do believe that everybody made the commitment for the right reasons—

**Mr. Rick Nicholls:** Well, Minister, I guess my question, though, was simply—

**Hon. Christopher Bentley:** —and probably for the same reasons.

**Mr. Rick Nicholls:** —where that money will come from, because there was a commitment made by the OPA to settle for \$82.3 million. So if we could just focus on that particular aspect and leave the other known facts for another time, perhaps. I was just curious to know, sir, where that money would come from.

**Hon. Christopher Bentley:** It's a good question and I'm going to address the question, but I take issue with what you state to be the known facts. As I say, the one known fact with respect to the decision not to proceed with the gas plant at the Mississauga site—in fact, when it was a decision that was quickly echoed both by the PCs and by the NDP. I know from our perspective, we did it having listened to the people of Mississauga and the western GTA. It was our commitment, and I would be surprised if your party's commitment or the NDP commitment was of a different form than that, all as a result of having listened and determined that that should not be a plant that proceeded.

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You ask about what is or isn't happening in the litigation. We have litigation on both sides of the border, as you know, in relation to the Mississauga gas plant. It would not be in the interests of the people of this province to comment on what is or isn't happening with respect to the litigation. At this point, it is important those interests of the people of the province of Ontario—the families and the businesses—be protected in the course of the litigation. So I won't comment one way or the other with respect to the questions about what is or isn't happening in the course of the litigation through various conversations—

**Mr. Rick Nicholls:** Respecting that, sir, the question, though, is—the OPA had made an offer of \$82.3 million to settle. Our curiosity has been strongly aroused simply because we're wondering where that \$82.3 million would come from. The OPA makes an offer—we also know it was rejected, by the way, because EIG is in fact suing for \$300 million.

But the question remains: Where would that money come from? Obviously, it has to come from somewhere if they're going to make an offer.

**Hon. Christopher Bentley:** The question you're asking me is what my comment would be about what you say is something that has happened in the course of litigation that is not, you say, coming to fruition, and you say, where would the funds come from in the event that something that isn't happening might have happened?

What I would repeat is that it really doesn't advance the interests of the people of the province to comment one way or the other on what is or isn't happening in the course of—

**Mr. Rick Nicholls:** So you're not sure where that money would come from. If the OPA made an offer,

we're not sure where that money would be coming from, then.

**Mrs. Teresa Piruzza:** Chair, I believe the minister is being—

**The Chair (Mr. Michael Prue):** The minister is doing a fine job.

**Hon. Christopher Bentley:** —through the course of the litigation, because the interests of the families and businesses of the province of Ontario in these very commercially sensitive, litigation-protected discussions and proceedings are being represented at the various discussion points and in the proceedings. It is important that that protection and that representation continue—

**Mr. Rick Nicholls:** Do you know how they arrived at that number, sir?

**Hon. Christopher Bentley:** —and it would not be aided by further comment by me about issues that may or may not be happening or have happened or are about to happen in the course of the litigation.

**Mr. Rick Nicholls:** We're just curious because it is public information, sir, and we're just wondering how the OPA may have come up with that particular number, to try to lay this particular issue to rest.

**Hon. Christopher Bentley:** One of the challenges—and I think your question nicely touches on one of the challenges—when you are in the position of wanting to protect and respect the interests of the families and businesses in the province, it doesn't advance those interests to comment on specific things that people want to ask you about litigation or about discussions, whether they happened or didn't or whether they're in context or not or whether they came to fruition or they didn't. What you end up doing, ultimately, is undermining or harming the interests that you're charged to protect. So we're protecting the interests—when these matters have reached the appropriate conclusion, I look forward to speaking to them, and I look forward to the questions that I'll be asked about them.

**Mr. Rick Nicholls:** Then, Minister, maybe you could help me understand one other thing here. With regard to large projects such as this, would I be correct in assuming that there are reserve funds sometimes built in for such things as lawsuits?

**Hon. Christopher Bentley:** Oh, gosh, that's an interesting question. I'm not sure that I'm in a position to provide that information one way or the other.

I would expect and hope that as we look to site any form of project in the province of Ontario, we come up with the best possible approach. When it comes to the siting of generation projects, gas or otherwise, we're taking a look at opportunities to make sure that we have the strongest possible approach to the siting of projects.

You'll see and you'll note, through the review of the Green Energy Act that we conducted, that we came up with a different approach we're receiving comment on now with respect to the siting of green energy projects throughout the province of Ontario to make sure that those that have good, strong local support are more likely to proceed than those that might not have as much.

**Mr. Rick Nicholls:** So there's probably not a reserve fund built in for lawsuits. I'm wondering, if there was, might we be able to find that in the estimates binder? If not, then I guess the question would be, why wouldn't there be a reserve fund there? Why is it not there?

I'm going to pass the questioning over to my colleague Mr. Leone.

**Mr. Rob Leone:** Minister, you stated a number of times over the course of the last few weeks that all three parties shared the motivation to cancel the gas plant.

You made that decision a week or so before the last election campaign. I'm wondering, why did you wait so long? Why did you wait until seven to 10 days before the last election? Why wasn't it before the last election or maybe three months before the election or six months before the election?

We're offering a reason for that, Minister, and that's because you wanted to save some Liberal seats. I want to give you the opportunity to come up with an alternative reason why you may have waited so long to make that decision.

**Hon. Christopher Bentley:** At the time that the determination was made and publicly stated last September that the Liberal Party, if re-elected, would not proceed with the siting of the gas plant on the Mississauga location, I know it was spoken to publicly at that time. It's been spoken to many times since then—

**Mr. Rob Leone:** How about before then, though, Minister?

**Hon. Christopher Bentley:** It's been spoken to many times since then, as a result of the public comment, listening very carefully to the communities in Mississauga and the western GTA. I know that that night and within the days afterwards, both parties spoke quite determinedly to exactly the same position—

**Mr. Rob Leone:** So the only reason why you made the decision was to save a seat or two or three?

**Hon. Christopher Bentley:** —and I trust that the motivation of both of the other parties, yours and the NDP, was related to your listening to the communities of Mississauga, taking the position that the plant could not and should not proceed in that particular location, and spoke to the highest of ideals—that that's why you took the position that your party did and that the NDP did.

**Mr. Rob Leone:** So it was about saving a seat, then, for you?

**Hon. Christopher Bentley:** No, it was about listening to the people of the community. They have the right to express their position on a particular project, whatever that project happens to be. In this particular case, the project was the siting of a generation facility, a gas plant. Obviously, as the permits were concluded in the spring of 2011, that public comment built.

It was spoken to when we made the determination that, if re-elected, we would not proceed with the siting of the gas plant. I just repeat that the determination that we made and publicly spoke to was exactly the same determination your party made that night and in the days afterwards—all, I assume, for reasons that were similar

to ours: that we had listened to the people of Mississauga and the western GTA and determined—

**Mr. Rob Leone:** Did you seek their opinion at any point before actually siting that plant there? Did you engage in these community consultations before actually putting a plant where you located it? We asked for that criteria; you haven't provided a reasonable explanation, from my perspective, and I think that of people in the opposition and in those communities. Why wasn't this consultation done before siting it? Wouldn't you have saved hundreds of millions of dollars by doing that?

1020

**Hon. Christopher Bentley:** I think, generally speaking—and I won't get into the details with respect to the Mississauga facility, because there are a number of different not only lawsuits but conversations going on with respect to that, and I have no doubt that—

**Mr. Rob Leone:** So you didn't engage in consultations.

**Hon. Christopher Bentley:** —and I have no doubt that the lawsuits would touch at some point on how the decision was made, what was made, what was taken into consideration. I think it would be fair to say, and I've spoken to this a number of times publicly since I became the minister, that what we're looking for is an approach to siting facilities that is as strong as it can possibly be and that will enable these facilities to proceed with much greater ease in the future than, from time to time, they have been able to do in the past.

**Mr. Rob Leone:** So the government changed its mind. Does the government now admit that its initial decision to put the plant where it was located and where construction began—is it the position of the government today that the previous government made a bad decision in locating that plant where they did in Mississauga? Was it a bad decision?

**Hon. Christopher Bentley:** Just to be clear, from time to time you might be given to reframing or rephrasing what I say in a different and, I might say, a creative way. My answer is as I contain it. The fact that I do not go back and change or restate my opposition to your reframing is not in any way, shape or form to be taken to be an acceptance of the reframing.

I think it would be unhelpful to the protection of the interests of the people of the province of Ontario, through the litigation that is on both sides of the border, about which I've been asked again today, or the confidential, sensitive discussions that are going on, to get into an analysis of the approach.

What I have said quite clearly is that the siting of major power projects has, from time to time, been a challenge for governments all over, our being no different. Everybody wants the power. Being able to see its source is not always something that we like. Finding an approach to the siting of these generation facilities—we're taking a look to see if there's an approach that can be different, that will garner greater acceptance from the beginning, as we proceed—

**The Chair (Mr. Michael Prue):** I'm going to have to stop you there, because the time has elapsed. We will conclude with the Conservatives' time this afternoon.

**Mr. Rob Leone:** How much time?

**The Chair (Mr. Michael Prue):** Five minutes left for this afternoon.

Before we break, we're going to have to have a subcommittee, because the House has said that we have up to four days in June and July to continue this committee's business around estimates. I would suggest it would be wise to hold that subcommittee sometime before we leave here tomorrow, maybe after the meeting or perhaps sometime earlier in the day. The reason I'm saying that is because the following week, although we will be meeting, the House leaders and others will not be here, and given that it's June and July, there's likely to be a good number of substitutions and other things necessary.

Could I have agreement that we would hold a subcommittee sometime tomorrow? Agreed.

Any druthers on when you'd like to have that? Would you like it at the end—we're going to be in session until 6. We could do it from 6 till 6:15 or so, if that would accommodate everybody. Will that work?

*Interjections.*

**Mrs. Teresa Piruzza:** Six tomorrow, did you say?

**The Chair (Mr. Michael Prue):** At 6 o'clock, we'll hold the subcommittee and we'll determine how many of those four dates and when they're going to be. It would be wise, I think, for all parties to consult with their House leaders etc., in order to make sure that we can have a full group here, including substitutions that may be necessary.

Okay, this meeting is recessed until this afternoon at approximately 3:45. There is still pie left.

*The committee recessed from 1025 to 1556.*

**The Chair (Mr. Michael Prue):** The meeting is resumed. We're now into orders of the day, so we can continue. It's now five minutes to 4. We are here to resume consideration of the estimates of the Ministry of Energy, vote 2901. There is a total of five hours remaining.

When the committee recessed this morning, the official opposition had five minutes left of its 20-minute rotation. The official opposition has the floor.

**Mr. Rob Leone:** Mr. Chair, we're hoping that we can have a five-minute recess. We're wording a motion that we'd like to bring forward to the committee, and we're just trying to get some advice from the clerks on that. Could we have a five-minute recess, please?

**The Chair (Mr. Michael Prue):** Well, it needs agreement. There is a request for a five-minute recess. Is there general agreement?

**Interjection:** Agreed.

**The Chair (Mr. Michael Prue):** Is it agreed?

**Mrs. Teresa Piruzza:** Is it that you're still working on the motion—

**Mr. Rob Leone:** That's right.

**Mrs. Teresa Piruzza:**—or you're trying to get it approved?

**Mr. Rob Leone:** We're just at the final touches to the motion that we're trying to bring forward to the committee.

**The Chair (Mr. Michael Prue):** Is it agreed or no? Hearing no one against, it's accepted. We'll take a five-minute recess.

*The committee recessed from 1557 to 1602.*

**The Chair (Mr. Michael Prue):** The meeting is resumed. The floor again is with the Conservatives.

**Mr. Rob Leone:** Mr. Chair, I move adjournment of the committee.

**The Chair (Mr. Michael Prue):** I want to make sure: Is this adjournment for the day or for the balance of the committee?

**Mr. Rob Leone:** For the day.

**The Chair (Mr. Michael Prue):** Okay, for the day.

*Interjections.*

**The Chair (Mr. Michael Prue):** It's not debatable. The motion has been made, moving adjournment of the committee.

All those in favour of adjourning the committee for the day?

**Mr. Michael Harris:** Can I call for a 20-minute recess?

**The Chair (Mr. Michael Prue):** No, we have a motion on the floor.

*Interjections.*

**The Chair (Mr. Michael Prue):** This seems highly unusual to me, but I've been advised by the clerk that your motion to ask for a 20-minute recess in advance of the motion to adjourn for the day would be in order. All right, so you have that right, and it's not debatable. We are recessed for 20 minutes.

*The committee recessed from 1603 to 1623.*

**The Chair (Mr. Michael Prue):** The meeting resumes. We have a motion before us which is a motion of adjournment. All those in favour, please signify. Raise your hand. All those opposed? The motion is lost.

Back to the Conservatives.

**Mr. Rob Leone:** Mr. Chair, we have a motion that we would like to put forth to the committee. I want to raise this motion as it pertains to some of the proceedings that we've had in this committee. We are in the midst of providing copies to members of the committee as we speak. I believe they're on their way here today, right now.

Mr. Chair, may I read the motion?

**The Chair (Mr. Michael Prue):** If you have a motion, it must be read.

**Mr. Rob Leone:** Sure.

**Mrs. Teresa Piruzza:** On a point of privilege: I'd like a copy before you start reading it. So before you read it, just hold on a minute.

**The Chair (Mr. Michael Prue):** The point of privilege is well taken. If you would wait till all members have a copy in front of them.

**Mr. Rob Leone:** Sure.

**The Chair (Mr. Michael Prue):** Does everyone now have a copy of the motion to be read? Okay, please read it into the record.

**Mr. Rob Leone:** Thank you, Mr. Chair.

I move that the Chair write a letter to the Speaker as well as report to the Legislature and to draw its attention to a possible matter of contempt and a breach of the ancient parliamentary right of privilege that each elected member enjoys, and that the report include the following information:

That the Standing Committee on Estimates asked questions of the Minister of Energy on May 9, 2012, about the Oakville and Mississauga power plants. The minister refused to provide specific answers, citing that the answers would be "commercially sensitive." This is after the minister attempted to invoke the sub judice principle, which the Chair ruled was out of order for compelling and correct reasons, on the advice of the clerk.

The committee then passed a motion on May 16, 2012, which stated:

"That the Standing Committee on Estimates, herein 'the committee,' under standing order 110(b), stating that 'each committee shall have power to send for persons, papers and things,' directs 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, 2012, 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."

Despite that order as a directive of the committee, and despite giving ample time to comply, the Minister of Energy, the Honourable Christopher Bentley, MPP for London West, on behalf of the Ministry of Energy, responded in writing to the committee on May 30, 2012, which included the following excerpt:

"In light of the confidential, privileged and highly commercially sensitive nature of these issues, it would not be appropriate for my office or the ministry to disclose information that would prejudice these ongoing negotiations and litigation."

Accordingly, the committee wishes to report to the Speaker and to the House as a whole that the Minister of Energy has refused to comply with an order of the Standing Committee on Estimates under the standing orders of the Legislative Assembly of Ontario. Furthermore, that the committee recommends to the House that the Minister of Energy be compelled to provide the Standing Committee on Estimates, without delay, the documents and information it ordered, pursuant to standing order 110(b), and, if the minister refuses, that he be held in contempt of Parliament for breach of privilege.

Mr. Chair, on Wednesday—

**The Chair (Mr. Michael Prue):** Just hold on. Before you go on, as you were reading it out, there were several changes made to the written copy that I have. I just want to make sure that they are correct.

First of all, in the first paragraph, you stated "and a breach of the ancient parliamentary right of privilege." "Parliamentary" is not contained in the written document, unless I have something that's different?

*Interjections.*

**The Chair (Mr. Michael Prue):** Then I guess I was not given a copy. I was given something—maybe it was an earlier one. The clerk doesn't have that copy either.

*Interjections.*

**The Chair (Mr. Michael Prue):** Okay, yes, all right.

Then we went down to the fourth paragraph, midway, where it says “all correspondence, in any form, electronic or otherwise, that occurred between September 1, 2010”—on the record, you stated September 1, 2012.

**Mr. Rob Leone:** Oh, I apologize.

**The Chair (Mr. Michael Prue):** Which one is the correct one?

**Mr. Rob Leone:** It's 2010.

**The Chair (Mr. Michael Prue):** So 2010 is correct. Okay. Those were the two that I saw. Okay, thank you, just so the record is correct.

Now, if you wish, you may speak to your motion.

**Mr. Rob Leone:** Thank you.

Chair, on Wednesday, May 16, 2012, the Standing Committee on Estimates passed a motion that required the Minister of Energy, the Ministry of Energy, and the Ontario Power Authority to provide the committee with documents relating to the Oakville and Mississauga power plants. The Minister of Energy, on behalf of the Ministry of Energy, responded to the committee on May 30, 2012, and stated, “In light of the confidential, privileged and highly commercially sensitive nature of these issues, it would not be appropriate for my office or the ministry to disclose information that would prejudice these ongoing negotiations and litigation.” The Ontario Power Authority provided similar reasoning.

Chair, when we made the request for the documents, we were not being unreasonable and afforded the minister an appropriate amount of time to table the documents. Overall, it is important to remember that the mandate of the committee is to investigate and to find out through estimates what is happening in government ministries. To achieve this goal, the committee should not be obstructed from receiving documents that it orders.

The committee understands that the government has a job to do. However, the opposition's job is to hold the government to account, and the government's refusal to provide the documents that the committee requested is blocking us from our undoubted role.

Members of the committee are only trying to do our job with full and complete documents. The minister has refused to provide the committee with documents, and it is important that we let the Legislature know what has happened.

On page 83 of O'Brien and Bosc, they provide a list of instances that would amount to contempt in the Legislature. Included in that list was, “without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee.” I believe that the minister's failure to provide documents to the standing committee falls under this description and constitutes a breach of privilege.

**1630**

Parliamentary precedent supports the committee. In 2011, a similar case occurred in the House of Commons. The finance committee had requested documents from the government regarding the cost of some of the bills before the House. The government refused to table the documents and cited cabinet confidence. The committee sent a report to the House and MP Scott Brison rose on a point of privilege. The Speaker ruled that the government's failure to produce the documents constituted a *prima facie* breach of the House's privilege.

In addition, in 2010, the House of Commons ordered the government to table documents regarding the transfer of Afghan detainees. The government refused, citing national security concerns. Speaker Milliken ruled that a breach of privilege did occur. He stated that “procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of government documents, even those related to national security.” His finding of a *prima facie* breach of privilege ultimately came down to the Legislature's ability to request documents to hold the government to account.

I would like to draw to the attention of the committee some recent developments regarding the issue at hand. More importantly, if the litigation on the Mississauga and Oakville power plants is so commercially sensitive, why were documents available to the media and the public through court? The Minister of Energy and the Ontario Power Authority, at the very minimum, should have provided those documents to the committee. As such, the minister's and OPA's disregard for the authority of the committee, I believe, is a *prima facie* breach of the Legislature's privileges and constitutes contempt of the House.

The remaining element of this issue before us is whether the Minister of Energy was correct in his ability to use a form of the *sub judice* convention. Former Speaker of the House of Commons the Honourable Jeanne Sauvé ruled that when considering a *prima facie* matter of privilege “the House has never allowed the *sub judice* convention to stand in the way of its consideration of a matter vital to the public interest or to the effective operation of the House and its members.”

O'Brien and Bosc cite the first report of the Special Committee on the Rights and Immunities of Members, which—this is on page 100—“recommended that the imposition of the convention should be done with discretion and, when there is any doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention. Since the presentation of the report, Speakers have followed these guidelines....” Mr. Chair, I would suggest that allowing further debate would be to inform the Speaker about what happened here through a report from committee and recommend that the House take whatever measures it deems appropriate.

Thank you, Chair.

**The Chair (Mr. Michael Prue):** Thank you. A question of privilege has been raised and I must rule on

it—not the question of privilege per se, but whether or not it is a question of privilege.

I had no idea this was going to come up today, but evidently the clerks' office did, and they have provided me with some guidelines. I've read through them in advance of what was said just to see exactly what a Chair is required to do.

I'd like to quote, in part, from what was provided to me, because I think it's quite instructive. It says what the responsibility of a Chair in this Legislature is, what the responsibility of the Legislature is, and what that of the Speaker is, because they're all separate, of course.

From this document, just a few—well, I guess maybe 15 or so sentences need to be read from the entirety of it.

“Since the House has not given its committees the power to punish any misconduct, breach of privilege, or contempt directly, committees cannot decide such matters; they can only report them to the House. Only the House can decide if an offence has been committed.”

Then it goes on to talk about the Speaker.

It goes on further in this document which has been given to me as the Chair:

“Unlike the Speaker, the Chair of a committee does not have the power to censure disorder or decide questions of privilege. Should a member wish to raise a question of privilege in committee, or should some event occur in committee which appears to be a breach of privilege or contempt, the Chair of the committee will recognize the member and hear the question of privilege, or in the case of some incident, suggest that the committee deal with the matter. The Chair, however, has no authority to rule that a breach of privilege or contempt has occurred. The role of the Chair in such instances is to determine whether the matter raised does in fact touch on privilege and is not a point of order, a grievance or a matter of debate. If the Chair is of the opinion that the member's interjection deals with a point of order, a grievance or a matter of debate, or that the incident is within the powers of the committee to deal with, the Chair will rule accordingly, giving reasons. The committee cannot then consider the matter further as a question of privilege. Should a member disagree with the Chair's decision, the member can appeal the decision to the committee (i.e., move a motion ‘Shall the decision of the Chair be sustained?’). The committee may sustain or overturn the Chair's decision.”

Now, getting to the nub of the whole thing:

“If, in the opinion of the Chair, the issue raised relates to privilege (or if an appeal should overturn a Chair's decision that it does not touch on privilege), the committee can proceed to the consideration of a report on the matter to the House. The Chair will entertain a motion which will form the text of the report. It should clearly describe the situation, summarize the events, name any individuals involved, indicate that privilege may be involved or that a contempt may have occurred, and request the House to take some action. The motion is debatable and amendable, and will have priority of consideration in the committee. If the committee decides that the matter should be reported to the House, it will

adopt the report which will be presented to the House at the appropriate time under the rubric ‘Presenting Reports from Committees’ during routine proceedings.”

Then it goes on to say that the matter must be dealt with by the Speaker.

I listened intently, and I have read this motion. With the exception of one paragraph that I do have a problem with, I think the motion carries what is being conveyed by Mr. Leone. And we can get into that, should it be debated or should the committee wish it to go ahead. But it is quite clear, given what has been stated, that this is not a matter of a point of order, it is quite clear that it is not a matter of a grievance and it is quite clear that it is not something that can be dealt with in any other way, save and except as a matter of privilege. Therefore, I think I have no option other than to say he is raising a matter of privilege and that must be referred to the House and to the Speaker for a decision. It is not my decision whether or not it constitutes privilege. That is within, and only within, the ambit of the Speaker of the House.

What would then fall to us today—this is a debatable and amendable motion—is that it is open for debate and amendment whether to change any or all parts of this question of privilege. Does anyone wish to speak to it?

**Mrs. Teresa Piruzza:** Just with respect to the motion itself, given that we've just received it and I've been listening as well to the comments that were made following the reading of the motion itself—and, Chair, you will of course recall that we did have this discussion, this debate with respect to the sub judice ruling on May 16. We've pointed out a number of elements in terms of how we believe some of this information could prejudice the interests of parties involved in legal proceedings. We had that full debate. It was a lengthy debate. You did review the points we had made at that point, and in fact you didn't indicate that it was not in order. What you did indicate, however, is that the minister has the right to decline either giving the documentation or giving voice to that documentation during his answering, or the release of the documents. If I recall, during that discussion, your ruling at the time was that the motion could go forward, but what would be produced would be with respect to what the legal proceedings were and what the minister and his legal advisers considered to be reasonable with respect to releasing the information.

I recognize you're not ruling right now with respect to the breach or the conflict, as Mr. Leone has indicated in his motion, but I'd just like to remind everyone that the ruling was that the documentation that would have come forward would be reviewed by legal, and what would be released is what was considered to be appropriately released at that point.

On that matter as well, are you suggesting that we're voting on this motion? Is there going to be further debate, or what will be the process?

**The Chair (Mr. Michael Prue):** We're not voting on the motion. I have ruled, because I am compelled to rule, that this is a question of privilege because it is a question of privilege. I am not stating whether it is in order; I am not stating that it is well founded; I am not stating any-

thing else other than it is a proper question of privilege. Mr. Leone has raised this question of privilege, which is his right to do, and it must be referred to the Speaker and to the House. Those are the rules that I must follow, that we all must follow.

The only question now is—he has read out his motion. It is a debatable motion, and it is amendable. So if you think that there is any aspect which is contained herein that is not correct and should be amended, or if you want to debate that, then you're entitled to do so.

I must state that I think that paragraph 2 does not capture exactly what I intended or did state to this committee, and perhaps that is something that you may wish—I cannot amend it. I'm the Chair, but I am citing that if you see that paragraph 2 does not actually capture what was done, then you have the authority to move an amendment to change that.

**Mrs. Teresa Piruzza:** Would we be provided with 20 minutes to review this and determine if amendments are required?

**The Chair (Mr. Michael Prue):** That is in order, if you wish 20 minutes. It's only at the time of vote, though, is it not?

*Interjection.*

**The Chair (Mr. Michael Prue):** Only at the time of vote. I'm sorry, no. Twenty minutes is only at the time of vote, but yes, that can be accommodated when we're at that—

*Interjection.*

**The Chair (Mr. Michael Prue):** But you can ask for a recess by agreement to look at it, if you feel that you need that. If you want a recess, simply ask for it and we'll see whether it's the will—

**Mrs. Teresa Piruzza:** I would suggest, just given the length of the document and the type of allegations that are being made within the motion, I would need time to review this and then determine.

**The Chair (Mr. Michael Prue):** Okay. So you're asking for a recess.

**Mrs. Teresa Piruzza:** I am asking for a recess.

**The Chair (Mr. Michael Prue):** For what period of time?

**Mrs. Teresa Piruzza:** Let's say 10 minutes.

**The Chair (Mr. Michael Prue):** There is a request for a 10-minute recess. Are we in agreement?

**Interjections:** No.

**The Chair (Mr. Michael Prue):** I've heard some noes. All those in favour of a 10-minute recess, please indicate. Those opposed? It is tied. It's three to three, with one abstention. Therefore, again it falls to the Chair. I want to try to be fair to all parties. I think it's important. This is an important matter. I am going to allow the recess. I am going to vote in the affirmative for the 10-minute recess. It is, as you have stated, a lengthy document, and that would be my rationale. We stand recessed for 10 minutes.

*The committee recessed from 1644 to 1654.*

**The Chair (Mr. Michael Prue):** The meeting is resumed. Any further discussion?

**Mr. Rob Leone:** Chair, we have a friendly amendment that we would like to put forward.

In paragraph 2, we would like the last sentence to end after "sub judice principle," and strike out "which the Chair ruled was out of order for compelling and correct reasons, on the advice of the clerk."

**The Chair (Mr. Michael Prue):** I would not take that to be a friendly amendment, but it is an amendment. It's not like one word that's going to—okay, it is an amendment.

We have an amendment on the floor. Discussion on the amendment? Any discussion on the amendment? All those in favour?

*Interjection.*

**The Chair (Mr. Michael Prue):** Pardon? All those in favour of the amendment?

**Mr. Reza Moridi:** Mr. Chair, I have a point.

**The Chair (Mr. Michael Prue):** That's what I asked: Is there any discussion? I did not see an indication—

**Mr. Reza Moridi:** Yes, I was pushing the button. Sorry; I forgot to raise my hand.

**The Chair (Mr. Michael Prue):** No; don't push the button in here. You have to wave.

**Mr. Reza Moridi:** I was pushing the button. Sorry.

**The Chair (Mr. Michael Prue):** We'll cancel that and we'll go back. Mr. Moridi, the floor is yours.

**Mr. Reza Moridi:** Thank you, Mr. Chair. We've read this motion and we have serious issues with this motion, so we would like to bring our own amendments to this motion. I request a 20-minute recess so that we can bring our own amendments to the motion.

**The Chair (Mr. Michael Prue):** We have an amendment that is on the floor now. As soon as we've finished with that amendment, I will recognize you next and you can make that request. But the amendment is on the floor and we're in the middle of a vote.

The amendment is to delete the words "which the Chair ruled was out of order for compelling and correct reasons, on the advice of the clerk." That is the amendment.

All those in favour of the amendment to delete those words, please signify. Opposed?

**Mr. Vic Dhillon:** Chair, we would like a 10-minute recess.

**The Chair (Mr. Michael Prue):** A 10-minute recess for the purpose of?

**Mr. Vic Dhillon:** We need to discuss a few things on our side, so if we can have—

*Interjection.*

**The Chair (Mr. Michael Prue):** We're in the middle of a vote. This should have been raised before the—

**Mr. Vic Dhillon:** But this is the first time that this amendment is coming up.

**The Chair (Mr. Michael Prue):** Yes, that is correct. But when I asked if there was any discussion, that is when that should have been said: "We request a—"

*Interjection.*

**The Chair (Mr. Michael Prue):** But we are in the middle of a vote. I just have some difficulties with this. I

want to be fair, again, to all parties. Had you asked for it earlier, you would have an unqualified right—

**Mr. Vic Dhillon:** But earlier, Mr. Leone requested the adjournment of the committee and then a 20-minute recess was requested.

**The Chair (Mr. Michael Prue):** Yes, and—

**Mr. Vic Dhillon:** So what's the difference?

**The Chair (Mr. Michael Prue):** You need to listen to what I'm saying. You have an unqualified right to ask for this, but you have to ask for it at the appropriate time. The opportunity was there for you to have done so, and you have an unqualified right for it. Unfortunately, I have asked for those in favour and I have a vote, and now I am compelled to ask who is opposed. If there is anything else—

**Mrs. Teresa Piruzza:** Chair, under the circumstances—I believe Mr. Dhillon was trying to push the button to ask for a recess while you were looking over there, to request the 20-minute recess on this vote.

**The Chair (Mr. Michael Prue):** In fact, were you trying to do that?

**Mr. Vic Dhillon:** Absolutely.

**Mrs. Teresa Piruzza:** Yes.

**The Chair (Mr. Michael Prue):** Okay, then that's fine. I'm going to, again, err on the side of giving everybody the correct opportunity. Since you were attempting to do that, we will negate the vote. You have the right for a 20-minute recess to discuss this amendment.

This committee is recessed for an additional 20 minutes.

*The committee recessed from 1658 to 1718.*

**The Chair (Mr. Michael Prue):** The meeting is called to order. We are now in the process of calling the vote. We have a motion to delete the words “which the Chair ruled was out of order for compelling and correct reasons, on the advice of the clerk.” That's the motion to delete. All those in favour of deleting those words? Opposed? That motion is defeated.

**Mr. Rob Leone:** Mr. Chair, can we call the question on the motion, please?

**The Chair (Mr. Michael Prue):** Call the question? You're attempting now to limit debate?

**Mr. Rob Leone:** That's correct, sir.

**Mrs. Teresa Piruzza:** I have an amendment that I'd like to bring forward.

**The Chair (Mr. Michael Prue):** I know, but he has called the question. Calling the question—

*Interjection.*

**The Chair (Mr. Michael Prue):** Yes, so—

**Mrs. Teresa Piruzza:** —want you to put that into the—he added that at the end. Come on: No.

**The Chair (Mr. Michael Prue):** Calling the question with other amendments forthcoming I don't think would be fair, so I'm going to say no. It generally does take precedence over, but—you have amendments. Please make them.

**Mrs. Teresa Piruzza:** Thank you, Chair. Thank you for providing us the opportunity to bring forward this amendment prior to calling the question on this motion.

With respect to Mr. Leone's motion for the Standing Committee on Estimates with respect to production of documents, our amendment is with respect to the last paragraph. If we move down to the last paragraph, down to the second-last line:

I move that in the last paragraph of the motion, the following words be added after “the documents and information it ordered”: “except those documents that are protected. by solicitor-client privilege or commercial sensitivity, or documents that, if released, would affect the interest of Ontarians in legal and other commercial proceedings,”

That is some additional wording that we would like added to that final paragraph.

**The Chair (Mr. Michael Prue):** Everybody has that motion before them? Okay, then, any debate? Mr. Zimmer.

**Mr. David Zimmer:** Just give me a second. So we're debating Ms. Piruzza's amendment?

**The Chair (Mr. Michael Prue):** That is correct.

**Mr. David Zimmer:** Chair, I've been asked to attend the committee and I, the other day and again this morning and just before I came in, had the opportunity to read your ruling on this matter of what the minister has to produce in terms of documents relating to what I'll refer to as the Oakville and Mississauga properties.

I note, reading from the Hansard transcript of May 16, 2012, at page E39 in the left-hand column, the pertinent points for my discussion here are:

“Notwithstanding the learned position put forward by Ms. Piruzza,” with respect to other parts of her motion, the Chair then went on to say, “there was one point in which she stated that the minister, of course, has every right to decline.” The Chair reflected on that submission of Ms. Piruzza and went on to say, “I think that that is perhaps the saving grace to allowing this to proceed.

“I would have to rule, in my opinion, that this motion is in order, because the committee has the right to ask for documentation, as Mr. Leone has pointed out in his counter-argument. They,” referring to the opposition, “have the right to ask for the documentation.” The Chair then went on to say, “The minister has the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions.”

Further, on page E39 of Hansard, May 16, 2012, in the right column, the Chair recognized that it was a difficult issue, but went on to say, after obviously careful thought, “I would advise that I'm going to allow the motion to proceed, but I would also advise ... the minister ... knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so. That would be my ruling.”

So we now have the situation here, which is really quite a unique situation, where, if the second attempt to have the minister answer questions he has chosen not to or to provide documentation he has chosen not to—if the minister was compelled to do that, in effect, what we have here is this bizarre situation of the Chair having to act, if you will, against his own ruling.

The Chair, when this was debated at length—and I did have the opportunity to read it over at length. I note that, among other things—and I think this is important. It's an important matter, because it's going to place the Chair in this weird legal position where he's going to have to in effect overrule his ruling. Now—

**The Chair (Mr. Michael Prue):** I want to cut you off here.

**Mr. David Zimmer:** Yes.

**The Chair (Mr. Michael Prue):** The Chair has no authority—you were not here earlier. I have no authority over points of privilege. A point of privilege has been made and it must be referred to the House and to the Speaker. I cannot and I will not be ruling on the point of privilege.

**Mr. David Zimmer:** I appreciate that, but I want to get this on the record—

**The Chair (Mr. Michael Prue):** Go ahead.

**Mr. David Zimmer:** I've got 20 minutes to do that. I want to get that on the record, because if this does work its way further along the ladder, so to speak, I think it's important that those people who are going to have to address this down the road, if it gets that far, understand the difficult situation here.

The Chair—and I compliment you, Chair, on the way that you applied your analysis to this difficult idea. In fact, the Chair went on to say—and I don't think I am going to read in the entire paragraph, because I want people down the road to know what has been going on here on this issue.

“The Chair (Mr. Michael Prue): I had no idea when I agreed to be the Chair of this committee that it would be so contentious so quickly.

“I had an opportunity to look at the motion”—this is the motion to compel the minister to answer certain questions and produce certain documents.

“I had an opportunity to look at the motion”—

**Mr. Peter Tabuns:** Excuse me. Mr. Chair, on a point of order: This doesn't seem to be addressing the amendment.

*Interjections.*

**The Chair (Mr. Michael Prue):** It's skating—on your point of order, I think your point of order is not well taken. I mean, I'm trying to give some latitude here. My ruling was on a point of order, which I am compelled to make. This is a point of privilege, which I am not allowed to make. That is the sole prerogative of the Speaker.

The motion that we have before us, with the greatest of respect, would have little to do with my ruling. This is an amendment to the point of privilege, which is within the parameter of this committee.

You have 20 minutes, but I think whatever I said may or may not hold great relevance to what has been put forward by Ms. Piruzza.

**Mr. David Zimmer:** Yes. Well, thank you, Chair.

“The Chair (Mr. Michael Prue): ... that it would be so contentious so quickly.”

The Chair then went on to say, “I had an opportunity to look at the motion because it was circulated or

attempted to be circulated yesterday. I took the liberty of discussing with the clerks' department and with the legal department what might be involved here, in terms of the sub judice rule, in terms of the minister's right to answer or not answer, or to divulge the documents or not divulge the documents.

“Notwithstanding the learned position put forward by Ms. Piruzza, there was one point in which she stated that the minister, of course, has every right to decline. I think that that is perhaps the saving grace to allowing this to proceed.

“I would have to rule, in my opinion, that this motion is in order, because the committee has the right to ask for documentation, as Mr. Leone has pointed out in his counter-argument.”

**Mr. Rob Leone:** A point of order, Mr. Chair.

**The Chair (Mr. Michael Prue):** On an additional point of order, Mr. Leone.

**Mr. Rob Leone:** Mr. Chair, under standing order 23(c), we have: “Persists in needless repetition or raises matters that have been decided during the current session.” I believe these are matters that you have already had the opportunity to make a decision on and provide a ruling, to which the member, Mr. Zimmer, is referring.

Also, under standing order 23(d): “In the opinion of the Speaker, refers at length to debates of the current session, or reads unnecessarily from verbatim reports of the legislative debates or any other document.”

I think, Mr. Chair, that you would agree that Mr. Zimmer is actually partaking in such repetition and reading from the Hansard. Therefore, Mr. Chair, I believe that we've dealt with a lot of the issues that Mr. Zimmer is now raising and that we should proceed to debate the amendment as presented.

1730

**The Chair (Mr. Michael Prue):** The point of order raised by Mr. Leone is, in part, well taken. The ruling that the Chair made was on a point of order previously made by Ms. Piruzza, and I had to rule on that point of order because the question was whether or not the minister had to respond to the questions of Mr. Leone, which I felt he did. There is a sub judice rule, but I don't see how my point of order reflects on the point of privilege and the motion that is before us. You know, I don't see it.

I'm trying to give some latitude to Mr. Zimmer. He is a parliamentarian of some stature and some considerable time. But the issue before us—Mr. Leone is, in part, correct—is the motion that has been made by Ms. Piruzza. It's whether or not you think this is a good motion or a bad motion, rather than reflecting on a ruling that I was compelled to make some two weeks ago to the minister.

**Mrs. Teresa Piruzza:** Chair? I'm sorry, finish off. Okay.

**The Chair (Mr. Michael Prue):** Is it a point of order? I've just ruled on that one. If not, I'm giving the floor back to Mr. Zimmer.

**Mrs. Teresa Piruzza:** Okay.

**Mr. David Zimmer:** Thank you. You've said, in part—the amendment here—I mean, read what the

amendment says: “Except those documents that are protected by solicitor-client privilege or commercial sensitivity, or documents that, if released, would affect the interest of Ontarians in legal and other commercial proceedings,”

This is the very nub of the thing. We’re trying to protect—the amendment here protects the minister’s right to answer the questions how he sees fit and to disclose what documents he sees fit, which is something that you, Chair, on May 16 already spoke to, in effect that, yes, the opposition parties have the right to ask questions and, yes, the minister has to listen to those questions and, yes, the minister has to provide his response to those questions. If his response is in the nature of, “I understand the question; you want this document and this information, but I’m not prepared to answer that or release these documents for that reason”—you’re right in one sense, Chair, that this was dealt with on the 16th, but we’re back here today and the opposition parties are coming at it a second time.

In response to their coming at it a second time, Ms. Piruzza has put forward an amendment to their motion, to take us back to where we were on May 16, when you made your ruling, Chair, that the questions can be asked and the minister will answer them as he sees fit.

The minister then, at some point, released a letter—I think it was around 4:30 or 5 o’clock in the afternoon. It was a lengthy, lengthy letter, and I’ve got a copy here and I’m prepared to read that into the record again. It was a lengthy document in which he gave very, very detailed analysis and a refined answer as to why he was not in a position, or not prepared, to answer those questions or release documents that would place the negotiations, the taxpayers’ dollars, in jeopardy.

Ms. Piruzza, in response to this second attempt to do what they tried to do on the 16th—and the Chair made his ruling—has brought an amendment to the motion. And I agree: It takes us right back to where we were on the 16th with the motion, because her amendment to the motion says—okay, we’re going to add this to the motion: “Except those documents that are protected by solicitor-client privilege or commercial sensitivity, or documents that, if released, would affect the interest of Ontarians in legal and other commercial proceedings,”

You see, the irony is, we keep coming full circle on this thing. The reason we come full circle—this is the second time you’ve heard these arguments—is because the opposition parties are at it again, so we bring the amendment again. I rather expect, to follow the idea of rulings being consistently applied—and I’m not in any way telling the Chair how the Chair should rule, but you already ruled on this on the 16th. There are no new arguments. Certainly the arguments on this side substantiate or are in support of Ms. Piruzza’s amendment. We’re going back full circle, so I expect—maybe they’ll be here next week and bring another motion, ask the minister to answer questions, release documents; there’ll be an amendment to the motion by Ms. Piruzza saying, “Yes, okay, fine, we’ll do that, except those documents that are protected” and so forth and so on, and I’ll be

back here making the same arguments and the circle goes around.

This has already been decided. I think it’s important to know and to recognize, whoever is going to sort this out later on down the road, if that’s where the folks are going to take it, that the Chair went on to say—there’s a point at which he stated, “The minister, of course, has every right to decline. I think that that is perhaps the saving grace to allowing this to proceed.

“I would have to rule, in my opinion, that this motion is in order, because the committee has the right to ask for documentation”—yes—“as Mr. Leone has pointed out in his counter-argument. They have the right to ask for the documentation. The minister has the right to decline either giving that documentation or giving voice to that documentation during his answering....”

This is the part that I want in the record for the benefit of those down the road who may have to sort this out, because the Chair did not rule casually, if I can put it that way. The Chair, a long-standing member of this Legislature, I think in anybody’s judgment—whether they be Conservatives, NDP or Liberals, they recognize the Chair as an experienced parliamentarian, a thoughtful parliamentarian. I would expect nothing less of him that he would give it the full attention and the detailed analysis and—and, and, and—seek the best possible advice in rendering his ruling. The Chair did that.

He went on to say, and this is the important part, “I further went to the legal department and asked about whether the case is before the courts and things like that, and I’m not sure at this point—and I can be corrected if anybody has this knowledge—but the legal department stated to me that in civil proceedings the rule is said to apply from the time that the action is set down for trial, although some authorities say that it is from when the trial actually begins until judgment”—this is all about the matter being before the courts and so on and when the clock starts to run—“and again from the time that a notice of appeal is filed until there is a decision on the appeal. So I’m not sure that that action has actually begun at this time, which would mean that it would be sub judice under the courts.

“Further, I asked about the extent to which the Chair has to determine the status of the judicial proceeding, and was advised that the Chair should not be engaging in a sophisticated information-gathering exercise or legal analysis.”

He, referring to the—

**Mr. Peter Tabuns:** Mr. Chair, point of order.

**The Chair (Mr. Michael Prue):** On a point of order, Mr. Tabuns.

**Mr. Peter Tabuns:** I think that Mr. Zimmer, as much as I have great admiration for him, is taking us into an area that has little to do—frankly, nothing to do—with the amendment before us. The minister has said in the past his problem was he didn’t want to present material that was sub judice—under consideration in the courts. The amendment is talking about documents that are protected by solicitor-client privilege.

We're talking about two different matters here, Chair. We've got a minister who would use a defence in questions in the Legislature that something was sub judice, but that's not what we're dealing with here. We're asking for production of material. There is an amendment by the Liberals that doesn't even address that argument.

Chair, this is out of order. Can we move on?

**Mr. Rob Leone:** Same point of order.

**The Chair (Mr. Michael Prue):** I have been intrigued, and I think Mr. Zimmer has about 30 seconds left, so I'm not going to rule on that. I'm going to give him his full 30 seconds to conclude.

**Mr. David Zimmer:** Yes. "He went on"—that is the lawyer, I guess you were talking to, Chair—"to tell me that the clause should be seen as a procedural counterpart to the legal maxim that the onus is on he or she who alleges, meaning that the party alleging irregularity has to convince the Chair of the merits of his" argument.

1740

Obviously you weren't convinced of the merits of the argument because your ruling was, "Yes, you can answer the questions"—that's part one; part two is, "The minister can deal with the questions as he deems fit." He can answer the questions; he cannot answer the questions. He can answer them however he wants. He can produce the documents; he cannot produce the documents.

Chair, I think, with all due respect, the matter has already been dealt with and we're just going in a circle. If we don't break the cycle, we're going to be here next week. It'll be the same motion. Ms. Piruzza will have the same amendment. I'll have the same arguments. I think that's 30 seconds.

**The Chair (Mr. Michael Prue):** Thank you. I just want to be clear for everyone for the record. I am the Chair. This is before the committee. The committee will vote. The only way that I would be involved in this at all is should it be a tie. Other than that, it is before the committee. It is before the eight voting members of the committee. Mr. Zimmer and Ms. Thompson, as members of the Legislature, can speak, but cannot move motions or vote. That's who it's before. It is not before me, just so everyone—

**Mr. David Zimmer:** I'm just urging the Chair to be consistent in your thinking on this matter.

**The Chair (Mr. Michael Prue):** I am consistent in my thoughts. Thank you.

Further debate? Mr. Harris.

**Mr. Michael Harris:** With regard to Ms. Piruzza's amendment, for the record I just want to draw to the committee's attention a Tuesday, April 27 Hansard—a Speaker's ruling in the House of Commons on the provision of information to the Special Committee on the Canadian Mission in Afghanistan that reads that "the fundamental right of the House of Commons to hold the government to account for its actions is an indisputable privilege and in fact an obligation.

"No exceptions are made for any category of government documents, even those related to national security." As well, he goes on to read, "Bearing in mind that the

fundamental role of Parliament is to hold the government to account...."

I just wanted to strike that discussion for the record as per Ms. Piruzza's amendment.

**Mr. Rob Leone:** Mr. Chair?

**The Chair (Mr. Michael Prue):** Mr. Leone.

**Mr. Rob Leone:** Mr. Chair, you probably wish you'd called the question when I asked you to, but we've engaged in a long, long discussion here about what was said or what wasn't said. I will restate for the record that, Mr. Chair, you participated in this insofar as you voted in favour of the original motion to produce the documents that we are discussing today. Therefore, a lot of what Mr. Zimmer was talking about I think had nothing to do with the very fact of what we're doing here. The only thing that was being repeated is the fact that he read verbatim from Hansard all the stuff that happened that actually didn't pertain to the motion that we're discussing right now.

I would say, in referencing again: As a parliamentary democracy, we must maintain our ability to hold the government to account to ensure that the government is transparent, and, in doing that and in carrying through our obligations, we have to have unfettered access to documents.

I've cited during my presentation—and I'm sure Mr. Zimmer hasn't read the Hansard on that quite yet as it was just stated very recently that there are two very recent federal issues with respect to unfettered access to documents. One was raised by a Liberal MP in the federal House, Scott Brison, who asked for documents related to financial documents, and we also talked about, as my colleague Mr. Harris has stated, about Mr. Harris.

Mr. Chair, I would suggest that most of the comments that Mr. Zimmer made were not with respect to the motion at hand, and once again I would like to call the question on this amendment.

**The Chair (Mr. Michael Prue):** First of all, I have to see whether there is further debate. Any request for further debate?

**Mrs. Teresa Piruzza:** Yes. Just on that point with respect to some of the comments that were just made, whether discussions we've had in the past are relevant or not relevant to the amendment and to this motion, I would suggest that all of the above is true; in fact, they are very relevant.

The amendment is simply requesting, with respect to documents that come forward, that those that are protected by solicitor-client privilege or are commercially sensitive not be released.

With respect to any documentation, I don't think any one of us would like to see documents that are under solicitor-client privilege or involved in legal proceedings be released, which would then jeopardize any involvement with respect to Ontario, as we've discussed in the past.

It does get back to your ruling, Chair, with respect to the first part of their motion, indicating that there's a contempt or breach occurring here. You indicated in your ruling that in terms of a response, the minister or the

ministry would respond to that question. However, some documents may not be released if they are sensitive in nature. I remember the discussion we had.

I'm not going to back into the whole discussion with respect to standing order 23(g) and the sub judice rule and points that I've made in the past. But even as recently as this morning, Chair, you've indicated that the minister has the right to respond in the way that he wishes. The objective of the amendment is to ensure, again, that we are protecting solicitor-client privilege, something that I don't think any one of us would want to rule against, with respect to any of our interests, with respect to Ontario, either the Ministry of Energy or any other ministry, for that matter, because, certainly, again, as the amendment indicates, we wouldn't want to affect the interest of Ontarians in legal and other commercial proceedings.

With all due respect, I would suggest that all the comments that have been made with respect to this amendment and this motion are, quite frankly, relevant in terms of going forward.

**Mr. Rick Nicholls:** Speaker, if I may?

**The Chair (Mr. Michael Prue):** Further debate? Mr. Nicholls and then Mr. Moridi.

**Mr. Rick Nicholls:** Again, Speaker Milliken actually, at one point, had made a comment with regard to that. It was with regard to "procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of government documents...." Therefore, the Chair must conclude that it is perfectly within the existing privileges of the House to order production of the documents in question. The Honourable Jeanne Sauvé also had made that ruling as well. Therefore, again, I would call for the question.

**The Chair (Mr. Michael Prue):** Mr. Moridi.

**Mr. Reza Moridi:** Mr. Chair, I don't know how many hours the minister has been in this committee—maybe around 10 hours or more. He has been here with his senior staff—the deputy and the three assistant deputy ministers—attending this committee for hours and hours. We fired questions at the minister, and he has been answering all questions with regard to various activities of his ministry, from nuclear power plants to water power plants to solar energy, wind energy, biomass, biogas, gas power plants, water plants. He has been answering, to the best of his knowledge, all kinds of questions that we raised in this committee. The minister and also his senior staff talked about renewable energy, the review of the FIT program. You just name it: There have been lots of questions raised in this committee, and the minister answered all these questions—he himself and his senior staff.

With regard to these points mentioned in this motion, the point is that as parliamentarians, particularly as members of this committee, we have to put politics aside and look after the interest of Ontarians and see where is the interest of Ontarians. Is the interest of Ontarians that we push the minister to come up with sensitive commercial information, to publicize sensitive commercial informa-

tion? Of course not. The minister has responded to all questions which are relevant and in the interest of this committee and in the interest of Ontarians.

I think this motion has a political agenda behind it, and I fully reject this motion because it's not in the interests of—

**Mr. Rob Leone:** So you reject your amendment?

**Mr. Reza Moridi:** I personally reject this motion, yes.

*Interjections.*

**Mrs. Teresa Piruzza:** We're talking about the amendment.

1750

**Mr. Reza Moridi:** Yes, I'm talking about this motion.

**The Chair (Mr. Michael Prue):** The debate is on the amendment. Be careful what you're saying. The debate is on the amendment made by Ms. Piruzza.

**Mr. Reza Moridi:** Yes, Mr. Chair, but the point is that the minister and his senior staff have been answering all questions here which are relevant to this committee, and of course, there are other committees dealing with other matters within this Parliament, within this House.

Mr. Chair, I think at this point I'm just going to go back to your own ruling, where you mentioned this morning, actually, the point raised by Ms. Piruzza. You said, "I listened intently. This is not a point of order. I mean, it is an argument, but I did rule as the Chair early in the procedure that the members of this committee are entitled to ask those questions. I also ruled, I think quite fairly, that the minister may respond as he sees fit. I don't think that the point of order is well taken. Mr. Leone has the right to ask that question; the minister has the right to respond in the way that he wishes."

Then, MPP Piruzza went on saying, "Sorry, Chair—and in respect to your rulings that you've done with this as well, he's indicating that the minister is not responding, and in your comments you just indicated that the minister may respond as he sees fit with respect to the questions."

Then, Mr. Chair, you said, "The minister is responding, perhaps not as Mr. Leone wishes, but the minister has responded. Mr. Leone, though, is entitled to ask this question.

"I'm going to add another minute...."

That is basically what you ruled, Mr. Chair. The minister has responded and is responding in the interests of this province. I think he has done the right thing, and I defer to your own ruling that the minister has done what needs to be done. Basically, that's it.

**The Chair (Mr. Michael Prue):** Mr. Dhillon.

**Mr. Vic Dhillon:** Ms. Piruzza's amendment reads that "in the last paragraph of the motion, the following words be added after 'the documents and information it ordered,': 'except those documents that are protected by solicitor-client privilege or commercial sensitivity, or documents that, if released, would affect the interest of Ontarians in legal and other commercial proceedings,'"

It's my firm belief—I think all of us believe this—that we're all here to represent the best interests of Ontarians. The opposition keeps bringing up the House of Commons example. If my memory serves me correctly, when

those documents they are referring to were released, they were heavily blacked out for national security concerns. Ms. Piruzza's amendment to the motion is asking something similar: that documents that are protected by solicitor-client privilege or commercially sensitive documents that would go directly against the interests of Ontarians not be released. With respect to their argument about the House of Commons example in regard to the Afghan documents that were released, I think this is a very similar request.

**Mr. Rob Leone:** Mr. Chair, could you put the question, please?

**The Chair (Mr. Michael Prue):** I don't have any other speakers. I just want to confirm: Are there any other speakers?

No other speakers being identified, we're going to call the vote.

*Interjections.*

**The Chair (Mr. Michael Prue):** I asked if there were any other speakers; there was no indication.

*Interjections.*

**The Chair (Mr. Michael Prue):** I am fallible, but I did ask the clerk. She did not see any hands go up either.

**Interjection:** Call the question.

**The Chair (Mr. Michael Prue):** The question has been called.

All those in favour of the motion of Ms. Piruzza, please signify.

**Interjection:** In favour?

**The Chair (Mr. Michael Prue):** In favour. Mr. Zimmer, you cannot vote. Don't be confusing this issue.

**Mr. David Zimmer:** My apologies, Chair.

**The Chair (Mr. Michael Prue):** Okay. I saw four hands.

All those opposed? I see four hands.

I think I need a raise.

*Interjections.*

**The Chair (Mr. Michael Prue):** I have listened intently to the debate and what is before us today and I am very mindful of the decisions that I have been forced to make over the course of the many days of these hearings. There has been a lot of procedural wrangling and there have been requests made.

I continue to believe that the estimates committee is empowered to ask questions, sometimes difficult questions, of ministers. That is what estimates exists for, that is the purpose of our job—to hold ministers to account.

The minister before us is a learned and capable minister. He is a lawyer of some considerable standing in the province of Ontario and he knows full well the rules of what he should and should not release. The documents have been requested. There are many options available to ministries. They can release the documents to committee in camera, they can release the documents and redact those portions which need to be redacted, or they may, in some instances, invoke the sub judice rule.

I ruled before what the sub judice rule means. The sub judice rule means that the case is actually before the

court in proceeding. That's why I read it into the record. I have yet to hear, with the exception, which I read in the newspaper, of a court proceeding taking place in New York state, that there is anything before the courts in Ontario.

So the question comes down to, what can the minister be compelled to do? The motion of Mr. Leone is that he give up those documents. The motion of Ms. Piruzza is that he give up the documents except those documents—and there's a lengthy list here. The lengthy list is documents that are protected by solicitor-client privilege, one; two, commercial sensitivity; three, that documents, if released, would affect the interests of Ontarians in legal proceedings; and four, commercial proceedings. That is a huge gamut.

I'm casting a deciding vote and I'm making the explanation because I know that I'm on the hot seat on each and every vote in this place. That's the reality of this committee and the nature and makeup of the committee. I cannot in all conscience vote for Ms. Piruzza's amendment because it is far more far-reaching than that on which I ruled earlier. The ruling before was those documents which are truly sub judice and that the minister knows full well which documents are of such a legal nature that it would prejudice a legal decision. The courts have ruled on this; Parliament has ruled on this. You can read in the learned books; they have ruled on this.

The points that have been made by Mr. Leone and, to a limited extent, by Mr. Harris are well taken. The House of Commons has said that the committees have this right, and I, as the Chair, have to insist that that right be respected.

I'm not going to vote for this. I'm going to cast my vote and my vote is cast in the negative, so the motion fails. But notwithstanding that, I am trying to be clear and consistent in what is being said. The minister has the right to—the members have the right to ask the questions, and the minister, in his wisdom, upon legal advice—and he is a lawyer himself—has to determine which documents are of such a sensitive nature that he can redact them or insist that they be heard in camera or, in those rare circumstances where it is sub judice, he can outright refuse. I stand by that ruling and my vote is cast in the negative.

The time—

**Mr. Michael Harris:** Chair, that being said—

**The Chair (Mr. Michael Prue):** No, no. The time is now 6 o'clock. I've been mindful of that, too, and we have to adjourn. I will hear any and all arguments; we will come back to other additional amendments, if people have additional amendments, on the next occasion, and we will hear from the minister. This is tomorrow afternoon at 3:45, approximately. Then we will proceed to finish, or to attempt to finish—we cannot finish, because we have five hours left of the questions of the minister.

The meeting is adjourned for today.

*The committee adjourned at 1801.*



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