



ISSN 1710-9442

**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Thursday 28 March 2013

**Journal
des débats
(Hansard)**

Jeudi 28 mars 2013

**Standing Committee on
Justice Policy**

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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
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
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 28 March 2013

Jeudi 28 mars 2013

The committee met at 0830 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qaadri): Colleagues, I call to order the meeting of the Standing Committee on Justice Policy. As you know, we're here to continue our hearings.

Before I invite our first witness to come forward, I would just like to announce and share with the committee that because the individuals who are invited to present before the committee are under oath, if they are asked questions of a deep, complex nature, we might want to extend to them the courtesy, without interruption, that they finish their answers because, again, they're under oath, so they should be afforded the opportunity to give fulsome answers.

That's obviously a judgment call. It's a protocol of the committee. If I see you interrupting a particular witness here and there, we let it go, but if it becomes overly burdensome, then we will—

Interruption.

The Chair (Mr. Shafiq Qaadri): And please turn off all cellphones, too.

MR. DAVID LIVINGSTON

The Chair (Mr. Shafiq Qaadri): With that, I would now invite Mr. Livingston to please be affirmed.

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

Mr. David Livingston: I so affirm.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Livingston. As you know the protocol very, very well, you have five minutes to make an introductory address, followed by rotating questions, beginning with the PC Party. I'd invite you to please begin now.

Mr. David Livingston: I won't take the full five minutes. I mostly just wanted to clarify that I had two involvements or two roles with respect to the gas plants. In about June 2011, as the CEO of Infrastructure Ontario, I was brought into the negotiations with TransCanada with respect to the Oakville plant by the then secretary of cabinet, Shelly Jamieson, the then Deputy Attorney General,

Murray Segal, and the then Deputy Minister of Energy, David Lindsay, and was quite active in trying to work out a negotiated solution with TransCanada in that role.

When I became the chief of staff to the Premier in May 2012, then I no longer had a direct role in any of the negotiations or any of the involvements with any of the parties—more just an oversight role on what was going on overall. So when I answer questions, I'll try and clarify—it should be clear from the time frame, but I'll try and clarify which hat I was wearing when I was doing what I was doing. With that, I'm at your pleasure, and I'm happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Livingston. Beginning with the PC side: Mr. Fedeli. Twenty minutes.

Mr. Victor Fedeli: Thank you very much. I was trying to write some notes down when you were speaking. What date were you brought in to lead the negotiations with TransCanada?

Mr. David Livingston: I don't remember exactly. I think it was June 2011.

Mr. Victor Fedeli: And who specifically asked you to lead that file?

Mr. David Livingston: There were three people, if you like: Shelly Jamieson, who was the then secretary of cabinet; Murray Segal, who was the then Deputy Attorney General; and David Lindsay, who was the then Deputy Minister of Energy.

Mr. Victor Fedeli: When you were brought in to lead that file, how much money were you authorized to offer and what were the parameters set around that amount?

Mr. David Livingston: At that time, I have no recollection that there was any amount of money—and in a sense, I didn't really have any authority to do any kind of deal. It was more, "Go and talk to TransCanada and find out what deal it is possible to do, and come back to us with what is possible." I wouldn't have framed it that I had a mandate or that I had the power to close anything or do anything; I had a mandate to go and find out what was possible and bring that back to the three.

Mr. Victor Fedeli: Eventually, offers were made back and forth. So when were you given an amount of money to begin those more serious offers as time went on?

Mr. David Livingston: I wouldn't say that there were offers back and forth. The first approach or the first step I took was to go and talk to TransCanada and figure out where they were, what was their interest, what were they

looking for. I had a sense of what they wanted. At that point, we started into discussions. I think it's fair to say that what TransCanada really wanted was—they had a contract to provide power to the province in Oakville. They wanted another contract to provide power to the province—obviously not in Oakville. So the question was, where was it going to be possible to do that?

While I was having a conversation with them, TransCanada also started having conversations with OPG about, was there another site where it would be possible to do that?

Mr. Victor Fedeli: Did you lead the negotiations with TransCanada?

Mr. David Livingston: I would say yes.

Mr. Victor Fedeli: If you look at our slide number 1 or document 1 where it talks about “Government participation,” this is a slide that says, “Province would be pleased if the following or a combination of the following criteria were achieved:

“—Negotiated solution does not exceed” \$1.2 billion, and that

“—No cheque issued to” TransCanada.

Is that the number that you were given as well, the number that is printed in this slide?

Mr. David Livingston: I don't recognize this slide. I'm not sure that I've ever seen it. I don't really recall ever being given a number. I would say more that once it became clear what was going to be possible to do, I was coming to the government—the parties to the agreement, if there was going to be one reached, were going to have to be TransCanada, OPA and the province. So it was more me explaining what was possible and them deciding were they prepared to live with it, as opposed to them saying to me, “Here's what we'll do. You go out and sign a deal.” I had no signing authority, no signing power. I was trying to facilitate an agreement between the parties.

Mr. Victor Fedeli: I'm sorry, but by the time you took the file over, there had already been two offers to TransCanada.

Mr. David Livingston: Yes. I've seen that, and I've heard that. It's not obvious to me that that's what happened. So—

Mr. Victor Fedeli: Well, it's obvious to us. We have the documents that—in fact, if you'd like to jump to document number 3, “This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million.” Were you aware when you took this over, when you briefed yourself on the file—I presume you would have been briefed or had briefed yourself on the file—that you were taking over this billion-dollar file?

Mr. David Livingston: Been briefed by the people.

Mr. Victor Fedeli: So would you have been aware at that time, when you were briefed by the people, that there was indeed a \$712-million offer to settle?

Mr. David Livingston: No.

Mr. Victor Fedeli: You did not know of that offer?

Mr. David Livingston: No.

Mr. Victor Fedeli: You did not know, then, that TransCanada rejected the offer?

Mr. David Livingston: No, and I would go further and say—

Mr. Victor Fedeli: How did you brief yourself on the file then?

Mr. David Livingston:—this is surprising to me.

I was briefed on the file by the three people I mentioned—

Mr. Victor Fedeli: And they didn't tell you there was a \$1.2-billion limit or that there was a \$712-million offer that was rejected?

Mr. David Livingston: No.

Mr. Victor Fedeli: You came in cold and started negotiations, not learning what the other side has already turned down?

Mr. David Livingston: I went and talked to the other side and heard from them first-hand what they were interested in doing.

Mr. Victor Fedeli: Let me just go back here, then. If you look at document number 2, on August 19, you sent confidential advice to cabinet. In that confidential advice to cabinet, you would see that there are several offers that you were making to TransCanada: A, B, C, D and E. There's five different offers there. Who would have authorized you to make those offers to TransCanada?

0840

Mr. David Livingston: I would not say they were offers. I had no authority to make an offer of any kind to TransCanada. These would have been my view on what the possibilities were as between TransCanada and the province to settle the dispute. These would have been my opinion of what was possible, and it would have been to others to decide whether they were prepared to do them or not.

Mr. Victor Fedeli: So who would have authorized you to create these five proposals?

Mr. David Livingston: Again, they're not proposals. They were my view, as the person brought in to talk to TransCanada about what was possible to do to be able to settle the dispute.

Mr. Victor Fedeli: Okay. So who would have authorized you to go ahead and prepare this private and confidential draft of a development agreement between OPG and TransCanada Energy?

Mr. David Livingston: I would have assumed that responsibility, or assumed that authority, by the brief that was given to me by the three people I mentioned.

Mr. Victor Fedeli: So we're back to Shelly Jamieson, Murray Segal and David Lindsay?

Mr. David Livingston: Yes.

Mr. Victor Fedeli: So this document called “Confidential Advice to Cabinet”—you authored this?

Mr. David Livingston: I did.

Mr. Victor Fedeli: Without knowing that TransCanada already turned down other offers?

Mr. David Livingston: Again, I was talking to TransCanada at the time, and I certainly wasn't getting the sense from them that they felt there was an offer on the

table, that there was something that they were—it just didn't seem to me that was the case.

Mr. Victor Fedeli: Well, I mean, it was the case. We have the actual offer. We have their declining of the offer of \$712 million. They wanted to hold out for more. We also, as I pointed out, have the document that said the government would be pleased if it didn't exceed \$1.2 billion.

Mr. David Livingston: My sense of the discussions with them is that what they wanted was essentially to have the same contract and do the same thing: produce power for a price somewhere else.

Mr. Victor Fedeli: In these five drafts, these five ideas, did you have any idea whatsoever what either of these five would have cost?

Mr. David Livingston: No, I wouldn't say that I had a detailed idea of what each of them would cost. It was more of a higher-level view, I think is right.

Mr. Victor Fedeli: Would you have had input from the Ministry of Energy, the Ministry of Finance—anybody sort of helping you along on crafting these major energy proposals?

Mr. David Livingston: No, because I was quite specifically directed or instructed to not involve a lot of other people, to keep it to the three, with the intention, as I said, that these were proposals. I guess my presumption would have been that they would go back in to the government, and they would be doing the analysis before they decided if they were prepared to live with any of these.

Mr. Victor Fedeli: When you provided this confidential package—an energy proposal submitted with no energy expertise—to cabinet, would they have approved this to be presented, any of these options to be presented, to TransCanada then?

Mr. David Livingston: I don't know that any of these went to cabinet, and so I don't—

Mr. Victor Fedeli: This is the “Confidential Advice to Cabinet.”

Mr. David Livingston: Right.

Mr. Victor Fedeli: You don't know if it went to cabinet?

Mr. David Livingston: I had no ability, no authority, to take anything to cabinet. If it happened, it would have been done through the ministry.

Mr. Victor Fedeli: So who would you have handed this file to, this “Confidential Advice to Cabinet” that you wrote? Who did it go to, then?

Mr. David Livingston: It would have been to the three.

Mr. Victor Fedeli: So you would have sent that, again, to Jamieson, Segal and Lindsay?

Mr. David Livingston: Yes.

Mr. Victor Fedeli: Nobody else?

Mr. David Livingston: No.

Mr. Victor Fedeli: Okay. Eventually, one of these proposals was accepted, basically. I can't remember which one it was. It might have been A, actually. So one of these proposals not created by anybody with energy

expertise is now made a government-designed proposal to TransCanada. Do you have any idea, then, what the actual costs were for this proposal?

Mr. David Livingston: I wouldn't have had a detailed idea, no.

Mr. Victor Fedeli: You had no idea what this cost the taxpayer when you made this proposal? It was just a proposal that sounded good, or—what would it have been? If the price wasn't a concern, if money was no object, and energy concerns were no object either, as you've stated, what would have driven this, then?

Mr. David Livingston: The motivation would have been—in trying to settle this, the paramount objective was to do something that was good for the taxpayer—

Mr. Victor Fedeli: But we didn't know the cost.

Mr. David Livingston: —would have had some idea of what the value of the contract to TransCanada would have been. It would have been informed by what TransCanada's thinking was, and then trying to find something that we're prepared to do with the assumption that the government would be looking at that and saying, “Are we prepared to live with this trade-off?” So my job was to find out what was possible. I would say it was the government's job to find out if the “what was possible” was acceptable.

Mr. Victor Fedeli: So again: With no energy expertise and no holds barred on the amount of money it cost, you created five options, of which TransCanada obviously took one.

I'll draw your attention to document number 4 from the Ontario Power Authority; it's page 2 of JoAnne Butler's opening statement. She says: “A memorandum of understanding ... was made public on” September 4 that “stated that there would be other costs to the relocation in addition to the \$40 million in sunk costs. This included the extra costs to get gas to the plant in Lennox and for connecting the plant to the province-wide transmission system.” Were you a party to that MOU?

Mr. David Livingston: Sorry, was that September 4, 2012?

Mr. Victor Fedeli: That would have been September 24, 2012.

Mr. David Livingston: So no, I wouldn't have been a party to that.

Mr. Victor Fedeli: You weren't aware of it at all? What position were you in at that time?

Mr. David Livingston: I was the chief of staff to the Premier at that time.

Mr. Victor Fedeli: So the Premier never saw this memorandum of understanding?

Mr. David Livingston: Not to my knowledge.

Mr. Victor Fedeli: Not to your knowledge. Okay.

Do you have any idea of what she's referring to in the lead-up, considering that this notice from her is based on the proposal you wrote?

Mr. David Livingston: The proposal that I wrote was a year previously. Things had changed a lot over that year, and it's not even obvious to me that where it ended up was one of the original options.

Mr. Victor Fedeli: Well, it ended up at Lennox, and your option A was to do a facility at Lennox. I would suggest that they took your proposal and continued to work with you to craft it. You were somewhere during the time that this proposal went from, “Hey, I have an idea and I don’t know what it’s going to cost, and nobody in energy has ever seen it, but I’ve got a great idea. Let’s put this out there”—from that point on, you continued to work with TransCanada on this file. You were the lead negotiator.

Mr. David Livingston: If I could maybe elaborate on what happened over the course of the month of July: I was brought into it; I had discussions. There was really a parallel negotiation going on with TransCanada. On the one hand, they were talking with OPG directly about what was possible with respect to a replacement plan. It was OPG and TransCanada that were having discussions about Lennox.

At the same time as that was happening, we were drafting an arbitration agreement, a binding arbitration agreement, as a way of being able to have a means to settle this that wouldn’t have required litigation, wouldn’t require a lawsuit.

Mr. Victor Fedeli: Why was the arbitration agreement you spoke of halted and the settlement negotiated?

Mr. David Livingston: I don’t think it was halted. Within the arbitration agreement, there was a process laid out about how the parties would come to an agreement. It was always assumed that the discussions between TransCanada and the province would continue. The arbitration agreement, if you like, was a fallback if those didn’t get anywhere.

Mr. Victor Fedeli: So let’s look at these costs, then, that OPA is talking about, that were based on your original A.

Mr. David Livingston: I’m not sure they were based on my original A, so—

0850

Mr. Victor Fedeli: Well, your original plan A was to get to Lennox, and that’s where they ended up. You negotiated this all the way through. You were the negotiator of it right up to—when did you stop being the negotiator of this, just the date?

Mr. David Livingston: When the arbitration agreement was signed, that would have been the end of July 2011, then I would no longer have been actively working with TransCanada on trying to come to a solution.

Mr. Victor Fedeli: So the costs here that Ms. Butler was talking about—transmission costs, getting gas to another site—you made none of those determinations when you came up with the five plans, of what the additional costs could be? When you came up with plan A, plan B, C, D and E, there was no thought, no concern, no issue, no budget limit, of what this could cost the taxpayer? You came up with five ideas that sounded good?

Mr. David Livingston: Five ideas that then the government would properly do the work on what was the cost and which of these were possible. If I may—

Mr. Victor Fedeli: The cost, according to Ms. Butler here, is in the hundreds of millions. She has verified what the energy expert that was here—his number was \$828 million, but he had one number of that component that was \$313 million. She said, “No, that number is a little low. It could be \$319 million to \$476 million.” If you do her math on top of his math, we’re at \$991 million. Her opening statement was very clear that an MOU was signed and that the government was a signatory to the MOU. You’re saying that you had no involvement in that. You were the guy at the beginning and the chief of staff at the end, but you were out of that middle pocket. Is this what I’m hearing you say to us today?

Mr. David Livingston: Yes.

Mr. Victor Fedeli: Okay. So what was your role in the government on September 24, 2012?

Mr. David Livingston: Chief of staff to the Premier.

Mr. Victor Fedeli: The government was a signatory to this agreement, and you’re saying that, as the chief of staff, you had no involvement, no knowledge whatsoever of this \$991-million deal.

Mr. David Livingston: Yes.

The Chair (Mr. Shafiq Qadri): One minute.

Mr. Victor Fedeli: Quite frankly, I’m having a hard time with that. I’ve got to be honest. You were the creator of the problem with TransCanada, you were brought in to solve it, and you were there during the announcement of what the total was, yet you’re taking no credit for coming up with the deal that you proposed. Chair, I’m baffled at this. We’ve got the man sitting here in front of us who did the deal with—

Interjection.

Mr. Victor Fedeli: I’m getting there; I’m just not sure which way to go. I’ve just got to think. I’m so baffled that we’ve got somebody sitting here who is telling us there was no limit, that he could spend whatever he wanted on these proposals, and had no contribution from anybody in energy planning a billion-dollar gas plant. My question to you—

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

To the NDP: Mr. Tabuns, you have 20 minutes.

Mr. Peter Tabuns: Thank you, Mr. Livingston, for being here. When the deal was finally reached with TransCanada Enterprises and the MOU was signed, the story that we’ve been told, the words that were used were that we were out of pocket \$40 million. Were you aware of that figure being used at the time?

Mr. David Livingston: Yes.

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

Mr. David Livingston: I don’t have a recollection of that.

Mr. Peter Tabuns: Okay. A problem in which the government was embroiled for well over a year, where you had done a fairly central paper recommending options for taking things on, it’s finally resolved, and as

the chief of staff, you weren't briefed as to how much it cost?

Mr. David Livingston: I can only repeat, I was well aware of the \$40 million, well aware of the discussions with TransCanada going back to my earlier days. The MOU is not something that I recall.

Mr. Peter Tabuns: So this was a minor item; you accepted the figure of \$40 million, and you moved on with life.

Mr. David Livingston: The advice that we had was that the \$40 million was the out-of-pocket cost in Oakville, and that's the figure that I accepted.

Mr. Peter Tabuns: No one ever said to you that there was a cost for gas distribution and management that was in the hundreds of millions that was part of this?

Mr. David Livingston: Not to my recollection.

Mr. Peter Tabuns: So the Minister of Energy and the deputy minister never told you or anyone else in the Premier's office that, in fact, we're talking about a lot more than \$40 million here?

Mr. David Livingston: No one told me, and I can't speak to what else people would have been told. But there was not a discussion that there was more money involved than the \$40 million.

Mr. Peter Tabuns: Like my colleague, I find that quite extraordinary.

You were given carriage of this file in roughly June 2011?

Mr. David Livingston: Correct.

Mr. Peter Tabuns: You were told at that time that an impasse had been reached?

Mr. David Livingston: Yes, that there had been discussions with TransCanada; they were not going well and could I do something.

Mr. Peter Tabuns: You were never briefed by the OPA?

Mr. David Livingston: No.

Mr. Peter Tabuns: Did you talk with their legal counsel about this?

Mr. David Livingston: Towards the end—as I said, once we got to the arbitration agreement—they would have had to have been signatories to it. So I would have been talking to OPA at that time about what were the terms of the arbitration agreement. It was more, in a way, me briefing them on what was happening as opposed to the other way around.

Mr. Peter Tabuns: At the end of July 2011, there's an email from Michael Lyle, who is counsel for the OPA, writing to Colin Andersen about the arbitration and saying he was going to talk to you that night because there was a board meeting coming up with the OPA. Do you have any recollection of that discussion?

Mr. David Livingston: I don't have a recollection of the discussion. I think I went to the board meeting, though. My recollection is that I was invited to that board meeting.

Mr. Peter Tabuns: At that board meeting, one of the documents that we believe was presented—because the staff emails were all about this briefing deck—was a

review of everything that had happened to that point. Do you remember that briefing?

Mr. David Livingston: That would have been, presumably, a briefing to the board, not a briefing to me, so no, I wouldn't have been party to that.

Mr. Peter Tabuns: So you were handed a major file with no historical background whatsoever?

Mr. David Livingston: I was handed a file where there was an impasse, and my job was to figure out, was it possible to break the impasse? My knowledge of it came from discussions with TransCanada.

Mr. Peter Tabuns: You never availed yourself of talking to the Ministry of Energy or the Ontario Power Authority?

Mr. David Livingston: Again, the brief that I was given was that the three people I mentioned wanted me to keep it to discussions with those three.

Mr. Peter Tabuns: One of the things that has been perplexing to us in the course of these hearings is that everyone seemed to have a small chunk of this, and no one seems to be aware of what anyone else was doing. Was there a guiding mind that was carrying this file? Was there anyone in charge?

Mr. David Livingston: I don't know how to answer that.

Mr. Peter Tabuns: Well, did you have a guess at the time as to whether or not there was someone in charge, or was this a free-floating crap game in the cabinet?

Mr. David Livingston: I think the Ministry of Energy would have owned the file, if you like, and it would have been them that would be providing advice to everybody about what's appropriate to do in the circumstances.

Mr. Peter Tabuns: In the Ministry of Energy, who was running the show? Who, from day to day, said, "Gee, we've got a problem here. We should be making sure that it gets addressed"?

Mr. David Livingston: As I said, one of the three people, when I was first given the brief, was David Lindsay, who was the Deputy Minister of Energy. He would have been my contact with the Ministry of Energy. Then when David left, I think Serge Imbrogno became the deputy after that.

Mr. Peter Tabuns: So they were the people who were running the government's effort. When we follow the strings back, should they all go back to the Deputy Minister of Energy throughout this project?

Mr. David Livingston: It's probably best to ask the Deputy Minister of Energy. I would have assumed that the Ministry of Energy would be the centre point for the discussions, negotiations and the outcome.

0900

Mr. Peter Tabuns: I'm sure we will get that opportunity. I have to just say, now having watched this, that everyone came in for a few months, did a little bit and then was moved on, and no one seems to have had any comprehensive picture. I find it hard to believe that you run a \$100-billion-plus government without someone having control of, carriage of, understanding of and direction on a file.

But as you've said, you were brought in, and you weren't given the history; you talked to the party that we were engaged in arbitration with—that we were in conflict with—for your background; and then you left and didn't pay attention when the settlement happened, so you don't know what the value of the settlement was. That just seems very strange to me.

Mr. David Livingston: I would have been briefed, as I said, by the three people who were involved, and undertook negotiations with TransCanada based on that.

Mr. Peter Tabuns: You had negotiations with TransCanada for about a year?

Mr. David Livingston: About a month.

Mr. Peter Tabuns: About a month.

Mr. David Livingston: Me, personally?

Mr. Peter Tabuns: Yes.

Mr. David Livingston: About a month.

Mr. Peter Tabuns: Did you take notes of those meetings?

Mr. David Livingston: If I did, I have no idea where they are. I guess it's possible.

Mr. Peter Tabuns: Could you do us a favour and check your files to see if you have notes of those meetings, or if you sent any emails to the three people you were working with to inform them of how things were going?

Mr. David Livingston: Certainly.

Mr. Peter Tabuns: And you, Mr. Chair, I'm sure, will send a reminder letter.

The Chair (Mr. Shafiq Qaadri): I shall do so, Mr. Tabuns.

Mr. Peter Tabuns: Okay. Did Chris Morley and the Premier's office have no leadership role in this matter?

Mr. David Livingston: When I was involved with it, going back to June and July, it was with the three people I mentioned.

Mr. Peter Tabuns: And that's June and July of 2011.

Mr. David Livingston: Correct.

Mr. Peter Tabuns: Did you not have any discussions with Chris Morley on this matter?

Mr. David Livingston: I don't recall. My discussions and the things that were substantive would all have been with the three.

Mr. Peter Tabuns: When JoAnne Butler was before us, she testified: "Mr. Livingston came in when the deals broke down between the OPA and TransCanada early in 2011. Again, we weren't comfortable that we were getting the right data."

As I have read it, she's referring to the data from TransCanada as to what their real costs were and what their real damages were. Were you getting the right data from them?

Mr. David Livingston: By the terms of the arbitration agreement, that data would have been provided as part of the arbitration, so it wouldn't have been necessary for me to get the data. It would have happened through the course of the process. That was the purpose of the exercise.

Mr. Peter Tabuns: Did you ever have the opportunity to analyze TransCanada's financial assessment of its situation?

Mr. David Livingston: No, and it wouldn't have been necessary, because it would have been done through the process of the arbitration, where lots of people would have been able to get the information and properly analyze it.

Mr. Peter Tabuns: In July 2011, Ontario Power Generation wrote to you about its deal with TransCanada Enterprises, saying that the turbines were only worth 60% of what TransCanada was claiming. Do you have a recollection of being informed about that?

Mr. David Livingston: I have a recollection. It seems to me that what they were saying is the market value of those would have been less than the purchase value. That's my recollection. So if we had taken those turbines and sold them on the market as, in effect, used turbines, they would have been less than the purchase price.

Mr. Peter Tabuns: And did you use that information in your dealings with TransCanada?

Mr. David Livingston: As I said, my discussions with TransCanada at the time were about trying to create the arbitration agreement, to create a process to get to a solution. The discussions about the specific plant would have been between TransCanada and OPG.

Mr. Peter Tabuns: Okay. In the Ontario Power Authority briefing deck, July 15, 2011, the deck says that the Ministry of Energy didn't want their directive for action to say that repayment to TransCanada Enterprises was going to be buried in the cost of the replacement plant. "Remain silent" were the words they used. They didn't want to flag that in fact the potential Kitchener-Waterloo-Cambridge plant, which was going to be much smaller than OPG, was going to have to carry this big repayment cost—

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, just to inform you—first of all, you have about seven and a half minutes left, which you will get in any case. There's a quorum call, so the committee has the duty and/or responsibility or option of responding to it.

Mr. Peter Tabuns: Ignore it.

Mr. John Yakabuski: Can we ignore it?

The Chair (Mr. Shafiq Qaadri): All right.

Mr. John Yakabuski: There you go. I fixed the problem.

Mr. Peter Tabuns: You're a magician, Yak.

The Chair (Mr. Shafiq Qaadri): Please continue.

Mr. Peter Tabuns: Were you given similar instructions, that whatever happened, costs were to be buried within the agreement?

Mr. David Livingston: I'm sorry, I lost the first part of what you said just because of the—

Mr. Peter Tabuns: Okay. The OPA internally understood that the ministry didn't want any directive to indicate that repayment or compensation to TransCanada was going to be visible in any directive that was going to be issued; it was supposed to be buried in there. Were you given any such instruction?

Mr. David Livingston: No, but that would have been between the OPA and the Ministry of Energy. I was working on an arbitration agreement with TransCanada. In the arbitration it was a process to get to a solution, so it didn't involve directives or anything.

Mr. Peter Tabuns: Did your arbitration process give a product in which the majority of risk was going to be transferred to the ratepayers, something that OPA, in its documents, says was a real problem with TransCanada? TransCanada was trying to make sure that the ratepayers took all the risk and they were absolved of risk.

Mr. David Livingston: In a typical arbitration process, you have an arbitrator, you have one party making their representations about what should be done and the other party making representations, and then the arbitrator decides, so that process—the arbitration agreement outlined the process, it didn't start the process, if you like, so those kinds of conversations would not even have begun.

Mr. Peter Tabuns: But you can structure an arbitration in a variety of ways. An arbitration can recognize that, for instance, the risk of building a plant was significantly higher than TCE had originally envisioned; in fact, that the value of the plant was going to be far less because its chances of being built were very small. Did your arbitration structure recognize the fact that TransCanada in fact had a plant that wasn't going to go anywhere?

Mr. David Livingston: We don't need to speculate about this. There is an arbitration agreement that was signed, and so it's probably best to just go to the agreement itself.

Mr. Peter Tabuns: Were you given instructions to ensure that TransCanada got the best deal it could get?

Mr. David Livingston: No. My brief was, is it possible to get a deal as between TransCanada and the province, meaning, is a deal acceptable to TransCanada and acceptable to the province?

Mr. Peter Tabuns: I think one of the difficulties that I've had with your statements that you weren't given any history is that the reason things apparently broke down is the Ontario Power Authority was pointing out that TransCanada had a plant or a contract that had a very, very low value, because there was huge risk that the plant couldn't get built at all. In fact, if you go through their documents and through their briefings, they're saying that TransCanada grossly overvalued the value of this plant, never took into account the fact that, on the face of it, they weren't going to get one built anyway, and you were given orders to put forward an arbitration process that didn't reflect the fact that this plant may well have been worthless. This contract may well have been worthless.

0910

Mr. David Livingston: But presumably that would have come out in the arbitration process, so that would have been presumably the province's argument. Then TransCanada would have their arguments, and the arbitrator would decide. Clearly TransCanada had a view, clearly OPA had a view, and they were not coming to

agreement. That's when I got asked to come in and see if there was a way to resolve the problem.

Mr. Peter Tabuns: Why did the government not just let things go forward? OPA looked at its options. It looked at the risks and made its best offer to TransCanada. TransCanada didn't accept. It comes apart. There's a court case. OPA looked at its risk, and frankly, its risk was not a lot more than it ultimately settled for. Why were you brought in when, in fact, TransCanada had a plant that may well not have been buildable?

Mr. David Livingston: It's probably best to ask the three about why I was brought in. I can only presume that the idea of having this settled in the courts was not felt to be the best way to go.

Mr. Peter Tabuns: So you were never briefed that TransCanada had significant weaknesses in its bargaining position?

Mr. David Livingston: I would have been briefed by the three. I would go into any discussion assuming that their case was weak. That's the nature of a negotiation. But there would have been nothing specific.

Mr. Peter Tabuns: Were you given any briefing in writing when the three first met with you?

Mr. David Livingston: No, I don't recall that.

Mr. Peter Tabuns: So you're taking over a project with potential liability in the billion dollars, and no paper was exchanged?

Mr. David Livingston: Because I was not given a negotiating mandate; I wasn't given latitude to go out and settle something for an amount of money or on any terms. My job was to come back with what was possible, and then it would be the government's responsibility and the government's right to look at that and decide "Are we prepared to live with that or not live with that?" My job was to present options, and the government's job was to decide, were those options acceptable or not?

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

Mr. Peter Tabuns: So Shelly Jamieson and company never gave you a single piece of paper when they briefed you on this whole project?

Mr. David Livingston: Not to my recollection.

Mr. Peter Tabuns: Is this common that you hand over billion-dollar projects with not a single piece of paper?

Mr. David Livingston: It's the characterization that I was handed a billion-dollar project. I didn't have a billion-dollar authority. I would be coming back with options, and then the analysis of those options and whatever the government chose to do would be the government deciding between itself. I—

Mr. Peter Tabuns: Did you know the value of the contract at issue?

Mr. David Livingston: Sorry?

Mr. Peter Tabuns: Did you know the value of the contract?

Mr. David Livingston: There was a huge dispute about the value of the contract.

Mr. Peter Tabuns: Well, no, there was a contract that had been signed with the government. Did you know how much it cost when you sat down with them?

Mr. David Livingston: It would have been clear what the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Just before handing it off to the government side, I'd just like to let you know that you did have your full 20 minutes. The Chair thanks Mr. Yakabuski for your intervention on the quorum call.

Mr. Delaney.

Mr. Bob Delaney: Good morning, Mr. Livingston. Good to see you again. I just want to run down a couple of questions regarding some of your roles, both leading up to and during this period. I'm wondering whether or not you can explain a little bit about your previous role as president and CEO of Infrastructure Ontario.

Mr. David Livingston: My job there was to lead the company that was—we had two lines of business or I guess, by then, I think the merger with the Ontario Realty Corp. had happened, so there were now four lines of business. Once the government decided that it wanted to build a piece of infrastructure, that project was assigned to Infrastructure Ontario, and our job was then to create a procurement process by which that project would get built using alternative financing and procurement. That was one line of business.

The second line of business was to provide loans to public authorities in Ontario that were not consolidated with the province—municipalities and others—for them to build infrastructure.

A third, as part of the Ontario Realty Corp. mandate we assumed, was to look at surplus property that the province had and make recommendations to the government on what it could do with those properties.

And a fourth was to be the landlord to the public service, in effect, managing the properties that the public service inhabited.

Mr. Bob Delaney: It would be then fair to say that with regard to projects of this magnitude, you would have an intuitive grasp of what might be in the realm of the possible?

Mr. David Livingston: Yes. I think that my time at Infrastructure Ontario and my time previously—I spent most of my life negotiating relatively big agreements. This wouldn't have been dissimilar.

Mr. Bob Delaney: With respect to the relocation of the gas plants, your role was initially through Infrastructure Ontario and began at a time well before you became the Premier's chief of staff?

Mr. David Livingston: Correct.

Mr. Bob Delaney: Okay. I just wanted to make sure that we clarified that.

What sort of things in your previous career might have made you an appropriate choice to take on a lead role in the resolution of this matter?

Mr. David Livingston: Before I ran Infrastructure Ontario, I had a 30-year career in banking. Especially in my latter days in banking, I was mostly involved with the

development of strategy and doing mergers and acquisitions work, so I had a fairly broad background in negotiating agreements between private sector companies. I think the way the government looked at that was that they had, with me and with people at Infrastructure Ontario, expertise in negotiating with the private sector that they felt was of use in trying to make sure that we got the best deal for the taxpayer.

Mr. Bob Delaney: Why would Infrastructure Ontario, specifically, have been involved in this type of negotiation?

Mr. David Livingston: Most of the people who worked there were from the private sector. All the projects that we had done, everything that we were doing, were essentially in negotiation with the private sector, so we had expertise in doing this and how to do it. The government felt that if we came back with options or views, they were ones as being in the taxpayers' interests; they were views that they could trust.

Mr. Bob Delaney: To encapsulate, you would say that Infrastructure Ontario had that unique ability to support this type of negotiation through the agency's and your own experience with private sector partnerships and contracts?

Mr. David Livingston: Fair enough.

Mr. Bob Delaney: Okay. That's good.

I want to talk to you a little bit about the commercial sensitivity of the negotiations and discussions. Again, based on your career path, I'm extrapolating that you would have obviously been well versed in complex contract negotiations with private companies.

Mr. David Livingston: Very much so.

In any negotiation, the thing you want to avoid is having the other side know what your negotiating parameters are, to know how far you're prepared to go. You're trying to get the best deal possible, so the less that they know about your position, the better.

Mr. Bob Delaney: Based on your expertise and experience, would it be fair to describe the negotiations to relocate either or both power plants as commercially sensitive?

Mr. David Livingston: Yes.

Mr. Bob Delaney: Okay. While the negotiations were ongoing, a request was made by the estimates committee for the production of all correspondence related to these two gas plants by the Minister of Energy, the Ministry of Energy and the OPA. You're aware of that?

Mr. David Livingston: I'm aware, yes.

Mr. Bob Delaney: An opinion: How significant do you think the risks would have been to either your negotiations or the negotiations in general if commercially sensitive details had been made public before the deals were finalized?

Mr. David Livingston: I think any possibility that the people we were negotiating with could know what we were thinking or where we would go would have been prejudicial to getting the kind of deal that was in the interests of taxpayers.

Mr. Bob Delaney: Earlier in the questioning, it was suggested that you could spend whatever you wanted. Would you just recap and clarify your role through that 2011-12 time frame?

0920

Mr. David Livingston: I was never given a mandate to spend any amount of money. I was never given a budget, and if I had been given it, I would have turned it down because my job was to create options—I'd even say that differently. My job was to figure out what was possible between the government and TransCanada and to come back with those options for the government, then, to consider. Were they prepared to consider those options or any other possibilities? So I was a facilitator or an intermediary; I did not have a mandate to get a deal.

Mr. Bob Delaney: Would the public interest have been protected when it came to that document production motion on the gas plants, given that the motion would have had everything made public?

Mr. David Livingston: If everything had been made public, then it would have been very difficult to get the deal that we got, I believe.

Mr. Bob Delaney: Okay. Again, about the work that the government did with regard to Oakville and some of the details around that: I want to ask you a question about risks and talk to you about an issue that arose earlier this week regarding the Oakville power plant relocation.

There were some suggestions from our colleagues opposite that our government bailed out TransCanada Energy because the company was concerned the project wouldn't be able to move forward as a result of municipal opposition, in this case, from the town of Oakville. My understanding is that while it's true the municipality had enacted bylaws to try and prevent construction, there was no assurance that these bylaws wouldn't ultimately be overruled by the Ontario Municipal Board, and in the case of the siting of the Mississauga gas plant, the Ontario Municipal Board overturned the municipality's appeal and ordered it to issue a building permit for the construction of the plant. This could very well have happened in Oakville if the government had failed to intervene, especially since this site was also zoned industrial in the city's official plan.

A question: Is it speculation if our colleagues opposite assume that the plant would not have gone forward based only on the municipal bylaws, and would it have been responsible then for the government to simply leave things up to chance?

Mr. David Livingston: There are different ways of saying "leaving it up to chance." It's leaving it up to the courts, and so to leave it to a judge to decide as to whether or not a claim for damages by TransCanada was valid—that would have been risky.

Mr. Bob Delaney: When you say "risky," what are some of the downsides to the public purse, to the government of Ontario?

Mr. David Livingston: If it's in front of the courts, both sides make arguments. If the courts rule in favour of TransCanada, then at that point the courts would be

assuming what was the value of that contract and would award damages to TransCanada that the province would have to pay. So the goal was to try and get a deal where value was created for the money that was going to get paid to TransCanada as opposed to just writing them a cheque for the value of the contract.

Mr. Bob Delaney: So a lot of the work that you did really was in the realm of the mitigation of risk?

Mr. David Livingston: Correct.

Mr. Bob Delaney: Okay. If the province had waited to intervene, as has been suggested, if permits had been issued and construction started, might the sunk cost of relocating the Oakville power plant have been much higher?

Mr. David Livingston: Most assuredly.

Mr. Bob Delaney: A couple of questions on the description of projects, both in your experience at IO in the government and in the private sector, particularly about the use of either project or code names: There's been a lot of mention made that terms were used to describe these two projects in various ways—"vapour," "fruit salad" and a whole lot of other food-related names. Mr. Wallace testified before us earlier that—and I'll use his words—"the use of code names for commercial transactions is routine in the Ontario public service. It covers essentially all major commercial transactions with which we have been engaged and which" the government "has undertaken."

Again, I'm going to ask you, based on your experience both inside and outside government, is it standard practice in the private and public sectors to use either project or code names when commercially sensitive projects are under discussion?

Mr. David Livingston: Absolutely.

Mr. Bob Delaney: Okay. If a suggestion is made that the code names used in these two instances were a cover-up—would it be reasonable to assume, for example, that in your years at the TD Bank, the TD Bank used code names?

Mr. David Livingston: Every project I was ever involved with would have had a code name.

Mr. Bob Delaney: Even at the TD Bank, where FOI laws don't apply?

Mr. David Livingston: Absolutely.

Mr. Bob Delaney: Why are code names used, then?

Mr. David Livingston: When you are talking about what's going on, there's always the chance that a document could be left on a subway, that something could get intercepted. If you were looking at doing a deal, doing a merger, doing an acquisition, and it became public knowledge you were doing it, then there would be information in the public domain that could affect the share price. That's just not on. It is to make sure that there's not inadvertent communication of a company's plans before they should be publicly announced.

Mr. Bob Delaney: So your code or project names are, in fact, an act of due diligence in both the public and the private sector?

Mr. David Livingston: That's a great way of putting it.

Mr. Bob Delaney: Okay. A few questions about the motion made at the estimates committee in May 2012 for correspondence relating to the two gas plant relocations—and just for clarity, at this point now, you are serving as the chief of staff to the Premier, correct?

Mr. David Livingston: I think it probably happened about exactly the same time.

Mr. Bob Delaney: So you would be aware, then, that 56,000 documents were provided to the committee by both the Ministry of Energy and the Minister of Energy, and the OPA in furtherance to that request?

Mr. David Livingston: Very much aware.

Mr. Bob Delaney: What are some of the issues in producing that much paper in that short a span of time?

Mr. David Livingston: I think others have a much better view of what that looks like than I do. It's an extraordinary amount of paper to go through—all the files with all the people and all the possible references to a particular project is an arduous task. My experience would have been in responding to an FOI request at Infrastructure Ontario. I have experience of it from that point of view.

Mr. Bob Delaney: Would you have any reason to believe that the Minister of Energy or the Ministry of Energy didn't act in good faith in trying to comply with the request?

Mr. David Livingston: None whatsoever.

Mr. Bob Delaney: And the Ontario Power Authority?

Mr. David Livingston: Same.

Mr. Bob Delaney: Based on your role as the chief of staff to the Premier during this period, in your observation and opinion, were best efforts made to provide all of the documents that responded to the request?

Mr. David Livingston: Yes.

Mr. Bob Delaney: I have a few questions regarding the former Minister of Energy. Part of the committee's job is, in fact, to review the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Ministry of Energy, the Minister of Energy and the OPA. As a result of this finding, there is a potential that the former Minister of Energy—a long-time member of the House, also a former Attorney General—might be at risk, depending upon the outcome of this committee. Given your testimony so far, in which you stated you were not aware of any effort to obstruct the production of documents and also that there was indeed commercially sensitive information at stake—issues of solicitor-client privilege during commercially sensitive negotiations—do you have any insight on whether or not contempt charges are appropriate?

Mr. David Livingston: I think Minister Bentley always, in my experience with him generally and in anything specific, was trying to do his level best to protect the interests of the taxpayer, respect the direction, the request for information from the committee and just more generally try and do the right thing. I have never once thought that he was wavering from that path. All the

decisions that he made were trying to take into account everybody's interests, everybody's rights. For that reason alone, I think that to hold him in contempt was incorrect.

0930

Mr. Bob Delaney: Okay. I'd like to put a document in front of you, if I may. I'll give it to the rest of the committee through the Clerk. I'll give you a second to have a look at it.

In looking at the motion made by Mr. Leone on the 16th of May of last year, 2012, in your reading of it, at whom is the motion directed?

Mr. David Livingston: It's directed at the Minister of Energy, the Ministry of Energy and the Ontario Power Authority.

Mr. Bob Delaney: A couple of questions that border on the obvious: Does the motion mention Infrastructure Ontario or the Premier's office?

Mr. David Livingston: No.

Mr. Bob Delaney: And dates: Is there a timeline within which the motion asks for the search to take place?

Mr. David Livingston: No.

Mr. Bob Delaney: So it doesn't specifically ask for documents in 2012.

Mr. David Livingston: It does not ask for documents in 2012.

Mr. Bob Delaney: Okay. Thank you. I'd like to distribute just one additional document. Looking at the parts that are underlined—and this is just in the first paragraph. You don't have to read the lot. In the first paragraph, can you tell us who that motion is directed to?

Mr. David Livingston: The government of Ontario—it would appear to be all ministries, all ministers' offices, Cabinet Office, the Premier's office, Infrastructure Ontario and the Ontario Power Authority.

Mr. Bob Delaney: Okay. The time frame: Does the motion extend into 2012?

Mr. David Livingston: Yes.

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

Mr. Bob Delaney: All right. As we just wrap up this one, I just would like to ask—we would then agree that if this motion, if passed—

Mr. Rob Leone: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Point of order. Mr. Leone?

Mr. Rob Leone: I believe this motion was ruled out of order.

The Chair (Mr. Shafiq Qaadri): I don't think it has been re-presented, but I take your point.

In any case, if you could wrap up, Mr. Delaney. Forty seconds.

Mr. Bob Delaney: I am in the process of wrapping up. In fact, the motion was voted on, ergo it was in order.

So the motion, then, if passed, was far more comprehensive than the original motion, and you may or may not be aware that, of course, the opposition voted against this more comprehensive motion.

In conclusion, Chair, what I'd just like to say is, it's important for the record that we remind the committee that the scope of Mr. Leone's original motion was quite

narrow, and the government tried unsuccessfully to extend the search. If they wanted more documents, I don't understand why they—

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

Just to clarify, the motion originally as presented was out of order. Then, when paragraph number 2 was removed, it was then in order. Then the voting proceeded.

I would now offer the floor to the Conservatives. Ten minutes, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. Before I jump into the next phase, I kind of want to recap where we are so far here.

TransCanada turns down a \$712-million offer. You're brought in as the fixer. You have no dollar ceiling and no energy expertise, and you craft five options. The OPA then confirms the Lennox option cost close to \$1 billion. You're the chief of staff to the Premier who came out that day and announced the deal cost \$40 million. This is where, in my opinion, the cover-up begins.

Let's turn our attention to that. When was the term "Project Vapour" initially used to reference the Oakville plant?

Mr. David Livingston: I think I invented that name, to be honest. I think it would have been in July—

Mr. Victor Fedeli: That was my next question. Were you the author of "Project Vapour"? You came up with "Project Vapour"?

Mr. David Livingston: I think I am the author of "Project Vapour."

Mr. Victor Fedeli: You think you are, or you are?

Mr. David Livingston: I'm pretty sure. I don't remember seeing it before. I'm pretty sure I'm the one that named it.

Mr. Victor Fedeli: What about "Project Vapour-lock"? Was that you, too?

Mr. David Livingston: No. Once I became involved with Oakville, it was felt by the government that I had a job at Infrastructure Ontario, and Oakville was busy enough that somebody else should be dealing with Mississauga. That would have been separate from me.

Mr. Victor Fedeli: You might have touched on this earlier, but my question is, why was that code name necessary?

Mr. David Livingston: Life experience: Every project that I've ever been involved with in my life that had commercial sensitivity to it, I put a code name on it.

Mr. Victor Fedeli: Jim Wilson, the former Minister of Energy—do you know what he told us the code name for the Lakeview project was?

Mr. David Livingston: What?

Mr. Victor Fedeli: The Lakeview project.

When was the decision made not to comply with the two-week deadline ordered by the estimates committee in May 2012?

Mr. David Livingston: I'm not sure I can answer that.

Mr. Victor Fedeli: Who could answer that?

Mr. David Livingston: The information was requested from the Ministry of Energy, the Ontario Power Authority and I forget what the third one was—presumably them.

Mr. Victor Fedeli: Who was involved in the decision to refuse that committee's order? This is a serious decision to make. There's an order of the estimates committee to supply documents by May 2012. A pretty serious decision was made.

Mr. David Livingston: May 2012?

Mr. Victor Fedeli: Yes, May 2012—it was the estimates committee. That's a fairly significant and, in some cases, as we've seen now, life-altering, decision. Who was involved in making that decision?

Mr. David Livingston: I would repeat: The request was made of the parties that were in the motion. The decision would be made by them.

Mr. Victor Fedeli: Again, who? So I can actually write this down.

Mr. David Livingston: The direction was to the Minister of Energy, the Ministry of Energy and the Ontario Power Authority.

Mr. Victor Fedeli: You think the Minister of Energy, the Ministry of Energy and the Ontario Power Authority made the decision to refuse the committee's order to turn documents over in May 2012? That's what you're saying today?

Mr. David Livingston: I think all of the parties would have been, as was talked about previously, trying to balance the provision of the information with the commercial negotiations that were going on and what was in the best interests of the taxpayer.

Mr. Victor Fedeli: Was the Premier consulted? As his chief of staff, I presume you would know. Was the Premier consulted? Was he told, "We're not going to turn these documents over"? Was he involved in that discussion?

Mr. David Livingston: No.

Mr. Victor Fedeli: Not beforehand. So when the decision was made, when the energy minister said, "I'm not turning over any documents to you," to this committee, the Premier was not aware that that was the tack that was going to be taken, that the documents were going to be withheld from the committee?

Mr. David Livingston: No.

Mr. Bob Delaney: Chair, on a point of order: The questions by Mr. Fedeli are making allegations that he has no basis in making—

Mr. Victor Fedeli: I'm not making any allegation; I'm asking a question—

Mr. Bob Delaney: You're making an allegation—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Please continue, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I appreciate that, Chair.

So other than the Minister of Energy, the Ministry of Energy and the OPA, to the best of your knowledge, nobody else was involved in withholding documents from the estimates committee in May 2012?

0940

Mr. David Livingston: I'm not sure I understand. The request was of those entities to provide information. Is the question, why did other entities not provide information?

Mr. Victor Fedeli: No. I'm asking you to confirm. That's your understanding: that no one else was involved in the decision to withhold the documents?

Mr. David Livingston: No.

Mr. Victor Fedeli: Okay. So let's just turn our attention a little bit to the documents themselves. When JoAnne Butler, the vice-president of OPA, was here, she testified under oath that the documents from the OPA were delivered to the government unredacted. As a chief of staff, what would you think happened then to the documents that we received that were indeed redacted? Can you offer any insight into that?

Mr. David Livingston: I would repeat that the ministry would have been trying to balance the request for the information with the commercial sensitivity of what was going on to try and protect the taxpayer. So they would be taking out information that, if it got into the public domain, could be prejudicial to trying to get a deal. I would suspect that they were also taking out—just from experience, I've often seen in these things that there would be information that's completely extraneous to the request, so they'd be also taking out anything that would be of that nature.

Mr. Victor Fedeli: In document number 6 that's in the package, the subject is "Vapour," the code name that you came up with. Every item in this document has been redacted. Every line—

Mr. David Livingston: Sorry. Tell me again, which one are you looking at?

Mr. Victor Fedeli: It's PC document number 6. It's the last one that we have here.

Mr. David Livingston: Okay.

Mr. Victor Fedeli: You're on this file as well. This is sent to you from Shelly Jamieson. It's on Project Vapour, and then as you move up the whole chain, it's redacted. As we go through the next page, it's redacted, and the next page, it's redacted. So, basically my question is, in your opinion, to your knowledge, who redacted these documents?

Mr. David Livingston: I don't know.

Mr. Victor Fedeli: You don't know. Okay. They're either whited out or blacked out. Do you recall this email chain that you're in? If you go to page 2 of 6, the second page, it's from Shelly Jamieson. It's to you, "Subject: Vapour," and then as you go up, you see the chain. Do you have any idea what would have been redacted there, as you go through any of these documents? There's things blacked out. There's one about orange, but I don't think it's the scandal Ornge; I think they spell "orange" in this one differently.

Mr. David Livingston: I don't know.

Mr. Victor Fedeli: Okay. Who in the government, then—I mean, somebody turned these documents over to the estimates committee.

The Chair (Mr. Shafiq Qadri): One minute.

Mr. Victor Fedeli: Who in the government was responsible for reviewing or redacting these documents?

Mr. David Livingston: I'm presuming it would have been the three groups that were asked for the information in the first place.

Mr. Victor Fedeli: Did you ever order any documents to be redacted or removed?

Mr. David Livingston: I didn't and I would have no authority to order that kind of thing.

Mr. Victor Fedeli: There are documents here that we've held up that are redacted, and as was said in earlier testimony and we've learned in earlier testimony from Ms. Turnbull from the cabinet, there are documents that aren't here. You don't know who would have ordered the documents to be removed or redacted?

Mr. David Livingston: No.

Mr. Victor Fedeli: Well, I find this to be an absolutely fascinating discussion and, quite frankly, I'm quite surprised that—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. While you can continue the fascination, I present the floor to Mr. Tabuns. Ten minutes.

Mr. Peter Tabuns: Mr. Livingston, at the Ontario Power Authority board meeting that you attended Monday, August 1, 2011, there was a minute after you had left which I hope you are able to comment on because you were contacted about it. "The board members indicated that its primary concern was to avoid having the Ontario Power Authority pay compensation that was not justifiable in the interests of the Ontario ratepayer and also was of the view that there were too many disadvantages for the OPA arising out of the arbitration agreement as currently proposed. Management was asked to advise Mr. Livingston of these views."

The Chair (Mr. Shafiq Qadri): Mr. Tabuns, you're willing to make that document available to the other members of the committee?

Mr. Peter Tabuns: It's PC document number 1.

The Chair (Mr. Shafiq Qadri): Thank you.

Mr. David Livingston: That's not what I have as PC document number 1.

Mr. Peter Tabuns: Standby then?

Mr. Victor Fedeli: It's a supplementary document.

Mr. Peter Tabuns: Standby PC document 1, last page.

Did they contact you about their concerns regarding the arbitration?

Mr. David Livingston: I am trying to remember back to the time. I went to the board meeting. I'm not a director. I wouldn't have been privy to whatever the board's concerns are, whatever the board's decisions are. But OPA had to sign the arbitration agreement for it to be valid. Right up until the time that the arbitration agreement was signed, there were negotiations going on, mostly between the lawyers involved—so it would have been OPA's lawyers, the government's lawyers and TransCanada's lawyers—to get to wording in the arbitration agreement that was acceptable to everybody.

I am presuming that by virtue of the fact that OPA ultimately signed, they got to a set of terms or a set of words that they were prepared to agree with.

Mr. Peter Tabuns: Did they advise you that they didn't feel the arbitration agreement was one that protected ratepayers?

Mr. David Livingston: I don't recall having a specific conversation like that, because at that point in the process, it was really—especially by this date, we were down to lawyers working out words in an agreement. In the principle of the agreement, there was agreement that we were going to do this.

Mr. Peter Tabuns: On a second matter, I may have misunderstood your earlier testimony. Did you ever meet with Chris Morley about this matter? Did you ever brief Chris Morley about this matter?

Mr. David Livingston: I saw in some of these documents here that Shelly was saying that there was an agreement to brief Chris. I don't remember being party to that. In order for everybody to be able to sign the arbitration agreement, I knew that cabinet authority was needed. But I don't remember being part of that briefing of Chris. I don't know who would have briefed Chris. I'm hesitating there because it's possible that I was; I just don't remember.

Mr. Peter Tabuns: Setting that meeting aside, did you ever have any other meetings with Chris Morley?

Mr. David Livingston: I met with Chris all the time.

Mr. Peter Tabuns: What was the role of Shelly Jamieson in all of this?

Mr. David Livingston: Going back to the original statement, when I was brought into this, there were three people who, in effect, I was reporting to on the file. There was Shelly Jamieson, who was the secretary of cabinet; David Lindsay, who was the Deputy Minister of Energy; and Murray Segal, the Deputy Attorney General.

Mr. Peter Tabuns: What was Shelly Jamieson's role in pulling this together?

Mr. David Livingston: To figure out if there was a resolution between the government, OPA and TransCanada that everybody could agree to and avoid, presumably, a lawsuit that would have been deemed to be too risky.

Mr. Peter Tabuns: Was she coordinating with other bodies—the Ontario Power Authority, OPG? Was she the person at the centre of decision-making here?

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Mr. David Livingston: I'd think you'd have to ask her who she was talking to.

Mr. Peter Tabuns: It was not your perception that she was at the centre of the decision-making?

Mr. David Livingston: Certainly the centre of my decision-making.

Mr. Peter Tabuns: You were chief of staff in the fall of 2012 when the MOU was signed with TransCanada.

Mr. David Livingston: Yes.

Mr. Peter Tabuns: Did that MOU go to cabinet for approval?

Mr. David Livingston: Not to my knowledge.

Mr. Peter Tabuns: The cabinet had no approval authority in this at all?

Mr. David Livingston: The terms under which TransCanada and the government would have ultimately agreed would have been approved, I think, by treasury board and then ratified by cabinet, so there was no—before any contract could be entered into, especially one where there's money involved, there would have had to be some sort of cabinet-level approval for it and I think it was treasury board.

Mr. Peter Tabuns: So treasury board reviewed the memorandum of agreement. Did they inform the cabinet of the value, the cost implications of signing off on this?

Mr. David Livingston: I was not at the meeting. I don't know. You'd have to ask somebody who was at the meeting.

Mr. Peter Tabuns: Were you chief of staff when the agreement was reached with Greenfield, with the Mississauga developers?

Mr. David Livingston: Yes, I think so. That would have been in June 2012, somewhere around there.

Mr. Peter Tabuns: Some time in the summer.

Mr. David Livingston: Yes.

Mr. Peter Tabuns: So at that point you were chief of staff.

Mr. David Livingston: Yes.

Mr. Peter Tabuns: Did that settlement go to cabinet as well?

Mr. David Livingston: Similarly, before the agreement could be signed as between the parties, it would have required some sort of sign-off. I think it was treasury board, which then all gets ratified by cabinet.

Mr. Peter Tabuns: Were there any lessons that you drew from the experience with the Mississauga plant about either dealing with those developers, with this kind of private power deal, or how one resolves these conflicts in the future?

Mr. David Livingston: The Greenfield agreement, the effort to negotiate with the parties, the Oakville agreement were done in good faith by everybody involved. I feel like the best possible job was done to protect the taxpayer and to get something that created value.

Mr. Peter Tabuns: Could you provide us with copies of the treasury board estimates of the value of the settlement with Oakville?

Mr. David Livingston: I can't. I don't work in the government anymore, so I would have no ability to do anything like that whatsoever.

Mr. Peter Tabuns: Then, just as notice to you, Chair, I'll be moving a motion that we request those estimates from treasury board, their assessment of the cost of the settlement.

The Chair (Mr. Shafiq Qaadri): Noted, Mr. Tabuns. About a minute.

Mr. Peter Tabuns: Mr. Livingston, in your private dealings prior to being in government, if you were given carriage of a conflict in which \$1 billion was at issue, would you not have been given some paper on that?

Mr. David Livingston: Paper, in my experience, paper that matters, comes when you start to figure out what is the nature of the deal or what is possible. So to me, it's not unusual that you start to do analysis and you start to work through numbers once you have concrete views or concrete examples of what is possible. Paper before the fact, when you don't have any idea of what is possible to accomplish, is information but it's not essential.

Mr. Peter Tabuns: I guess I just find it extraordinary that you would be handed a file of this scale with these risks and you wouldn't have been informed—

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

To the government side, Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair. A few, I think, final questions, Mr. Livingston: In serving with the Premier as his chief of staff, how many election campaigns have you worked on?

Mr. David Livingston: Election campaigns?

Mr. Bob Delaney: Election campaigns.

Mr. David Livingston: That would be none.

Mr. Bob Delaney: Okay, that's fine. So the Premier didn't hire you because of your political experience.

Mr. David Livingston: No; that would be safe.

Mr. Bob Delaney: Okay. But in the time that you worked for Infrastructure Ontario and, of course, here at Queen's Park for a number of years, you've likely had the opportunity to get to know the former Premier pretty well.

Mr. David Livingston: Yes.

Mr. Bob Delaney: Would you characterize him as a man of integrity?

Mr. David Livingston: I would say that the reason I came to Infrastructure Ontario in the first place was because I had a very powerful view that this was a man I could work for and respect. Then when I moved from Infrastructure Ontario to become his chief of staff, it was because I believed he was a man of great integrity and great ability. I have no reason to change that today.

Mr. Bob Delaney: Okay. Did the former Premier work very hard to do the right thing?

Mr. David Livingston: Always.

Mr. Bob Delaney: In the time that you worked with him, did he serve honourably on behalf of both his constituents in Ottawa South and the people of Ontario?

Mr. David Livingston: Always. I hold the man in the highest regard, and I always will.

Mr. Bob Delaney: Okay, thank you. Just a little clarification question: Peter Wallace gave testimony here regarding a point that Mr. Fedeli raised earlier on the redaction of documents. Mr. Wallace said a few days ago, "My understanding would be that there was non-responsive information associated with this. It was in accordance with the ordinary practices of document disclosure...."

Is it normal that if a request is made for a document, and the document contains portions that are outside the

scope of the request or unrelated to the request, that they would be redacted?

Mr. David Livingston: Absolutely.

Mr. Bob Delaney: Is there any doubt that from the actions and pledges by both parties leading up to the locations of both power plants—as well as the testimony, if you followed it, of some of the witnesses here—that any of the three parties, if in power, would have cancelled and relocated both power plants?

Mr. David Livingston: This all happened before I became involved with the file, either at Infrastructure Ontario and certainly before I came into the Premier's office. So I don't know any more about that than anybody else who's just reading it. It would appear that everybody had the same view, but that is hearsay.

Mr. Bob Delaney: Okay. Based on your experience and observations, would you have any recommendations as to how electricity generation sites might be sited in the future?

Mr. David Livingston: I think there's a fairly strong view, that was expressed by the mayors of the two areas, that local community input needs to be taken into account. I fully subscribe to that.

Mr. Bob Delaney: How do you think that we, as a government, as Ontarians, can best engage local leaders and organizations throughout the process of choosing where to generate electricity?

Mr. David Livingston: I appreciate the question, and I appreciate the intent. I think that there are people who are way more qualified than I am to be able to come up with answers to that.

Mr. Bob Delaney: Okay, fair enough. I'm going to hand you one last document and call your attention to a highlighted part of page 2. The Clerk will distribute copies for everybody.

We've heard some suggestions that, when the member for Bruce-Grey was the Minister of Energy, he called the project to deal with the Lakeview generating site "the Lakeview project." But that, of course, while true, is only part of the practice at the time. On page 2, it says "In all, the ministry and its advisers compiled 42 documents on the deal," which refers back to the lease of equipment at the Bruce Power plant—"which it code-named Project Boss for internal secrecy reasons."

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Now, I understand that this is a news article, but in referring to a project at the Bruce nuclear power development and calling it Project Boss, do you feel that there was any intent to engage in a cover-up in the use of a code name at that time?

Mr. David Livingston: As I said before, I think it's very common practice, especially when you have confidential matters, to put a code name on it. This would seem consistent with that practice.

Mr. Bob Delaney: I think we have taken that subject and beaten it to death.

In the work that you were asked to do, is energy expertise necessary as a precondition to deal with the

different parties in trying to arrange a settlement such as you did?

Mr. David Livingston: I would characterize this as a commercial negotiation, because I was not given a mandate to sign a deal or to spend money. It was to come up with what is commercially possible between disputing parties. I think it is more commercial expertise that's required than energy expertise because once the options have been identified, then the people who have the expertise can analyze those options and decide whether they're acceptable or not. So I would have said that the expertise that was required here was more the kind that I had and people at Infrastructure Ontario and others that were involved had.

Mr. Bob Delaney: Then, on that note, thank you very much for your time this morning.

Chair, we're done.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney and—

Mr. Rob Leone: Point of order, Chair.

The Chair (Mr. Shafiq Qadri): Yes, Mr. Leone.

Mr. Rob Leone: I would like to table some documents with the committee with respect to an email that I have here that I think contradicts some of the testimony that we've seen—

The Chair (Mr. Shafiq Qadri): It's not necessary to have a point of order for that. I'm just waiting for copies of the motion filed by Mr. Tabuns and once we have the copies issued to all members of the committee, then we can—

Mr. Rob Leone: I do wish also, Chair, to state our intention to recall this witness on April 9. I want to provide that notice in committee today because we feel that there are some contradictions in the testimony that we've seen; we have documents stating such and we want to ask further questions of this witness.

The Chair (Mr. Shafiq Qadri): Thank you for that notice, Mr. Leone. Duly noted.

Mr. Leone, the next witness is an NDP witness.

Mr. Rob Leone: On April 9, our next slot.

The Chair (Mr. Shafiq Qadri): Oh, your next slot. That's fine. Fair enough.

Mr. Bob Delaney: Chair, may I ask the purpose of this request?

The Chair (Mr. Shafiq Qadri): You're absolutely welcome to ask the purpose. Mr. Leone.

Mr. Rob Leone: We are entitled to recall witnesses, as we've agreed to in the subcommittee. We feel, based on some of the testimony that we've heard today, that there are more questions to be asked based on the testimony we've heard. We feel, frankly, that this witness has more information than he's giving us and we want to ask further questions of this witness.

Mr. Bob Delaney: Are you making a value judgment on—

The Chair (Mr. Shafiq Qadri): Mr. Delaney, you're welcome to comment, but I think it's within, as you know, the protocol of the committee that witnesses

can be called back at will. So I would respectfully ask, then, before this degenerates too much further, to allow that to stand.

We have a motion. Mr. Tabuns, would you just mind reading it again for the—

Mr. Peter Tabuns: I don't mind reading it at all.

I move that the treasury board be asked to provide the Standing Committee on Justice its assessment of the cost of the settlement MOU—memorandum of understanding—between TransCanada Enterprises, the Ontario Power Authority and the Ministry of Energy as soon as possible.

The Chair (Mr. Shafiq Qadri): And just before we entertain this motion, I'd like to thank you, Mr. Livingston, for your presence and your endurance. As you've heard, you'll likely be invited back. So thank you.

The motion is in order. Are there any comments before we take a vote on the motion? Mr. Delaney?

Mr. Bob Delaney: A five-minute recess.

The Chair (Mr. Shafiq Qadri): Five-minute recess. Fair enough. Five minutes. Please, let's keep it to five minutes.

The committee recessed from 1005 to 1014.

The Chair (Mr. Shafiq Qadri): Thank you, colleagues. We're back in session, as Mr. Tabuns has duly moved this particular motion, as you know, in order and now before the committee. Mr. Delaney.

Mr. Bob Delaney: Peter, in order to be helpful—I know we have to craft these things on the fly and do them quickly. When you use the word “assessment,” can you be in any way more specific or more helpful on the word “assessment” so that whoever it is who's tasked with responding to this knows what it is they're looking for?

Mr. Peter Tabuns: That's a fair question, Mr. Delaney. My response would be that the treasury board would have taken this memorandum of understanding—I gather from the witness that the treasury board sent it on to cabinet. They would have assessed the value of this, or I am assuming they would have assessed the value of this, to let cabinet know the quantum of dollars they were voting on. So in the treasury board's assessment of the MOU they would have provided, or should have provided, a dollar value. We would like to see that dollar value.

Mr. Bob Delaney: Okay, so documents arising from the memorandum of understanding.

Mr. Peter Tabuns: Yes.

Mr. Bob Delaney: Okay. That's all.

The Chair (Mr. Shafiq Qadri): Thank you. Are there any further questions before we vote on this particular motion? Seeing none, those in favour of the motion moved by Mr. Tabuns? Those opposed? Motion carried.

There's no further business before the committee. There is a motion by Mr. Leone, which we'll deal with later, but we're adjourned till April 4.

The committee adjourned at 1016.

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