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Mardi 16 avril 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 16 April 2013

Mardi 16 avril 2013

The committee met at 0830 in room 151.

MEMBERS' PRIVILEGES

The Chair (Mr. Shafiq Qadri): Thank you, colleagues, and welcome to the Standing Committee on Justice Policy. As you know, we're here to consider issues with reference to energy infrastructure and, in particular, the gas plants.

MS. SHELLY JAMIESON

The Chair (Mr. Shafiq Qadri): I welcome our first witness to the committee testimony, Ms. Shelly Jamieson, who will be sworn in very ably by the Clerk.

The Clerk Pro Tem (Mr. Trevor Day): Place your left hand and raise your right hand. Do you solemnly swear that the evidence you shall give to this committee touching on the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. Shelly Jamieson: I do.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Jamieson. I know that as a former secretary of cabinet, you know the drill very, very well. You have five minutes for an opening address, beginning now, and then a rotation of questions. Please begin.

Ms. Shelly Jamieson: Thank you. Good morning. I'm Shelly Jamieson. I am currently the chief executive officer of the Canadian Partnership Against Cancer, and I've been there since July 2012.

I'm not going to go through my entire resumé, but I will confirm what I assume is of most interest to the committee. I served as the secretary of cabinet, clerk of the executive council and head of the Ontario public service from January 2008 to December 2011, the period during which the government announced its decisions regarding the Oakville and Mississauga gas plants. I appreciate the opportunity to appear today and to speak to the role of the Ontario public service with respect to these decisions.

As the committee is aware, prior to my departure, the public service was involved in the implementation of the government's decisions to cancel and relocate the Oakville and Mississauga gas plants. As the committee is also aware, these decisions related to contracts between the Ontario Power Authority and the proponents of these

two projects. Not only was there considerable public and political interest in these transactions, there was the risk of litigation against both the Ontario Power Authority and the crown.

As a result, the job of the public service was to work with the Ontario Power Authority to offer our best advice to ministers and to the Office of the Premier on the implementation of their decisions. Given the nature of these decisions and the context in which they were made, I also believed our job was to get the best possible value and outcome for Ontario.

As the secretary of the cabinet, my primary role was to identify the expertise that would be needed to work with the Ontario Power Authority to support what I knew were going to be very complex and politically sensitive commercial decisions and negotiations.

Aspects of both transactions necessitated input from a number of ministries, including the Ministry of Energy, the Ministry of the Attorney General and the Ministry of Finance, as well as agencies and offices including the Ontario Power Authority, Infrastructure Ontario and Ontario Power Generation.

As is often the case with issues involving multiple ministries and parties, some months after the decision to terminate the Oakville contract was announced, I was asked to coordinate the discussions between these various parties and ensure that they and the government had the information needed at various critical stages in the negotiations.

Although I was coordinating these discussions, we were implementing decisions of the government, and I continued to get my direction from one of three sources: the Premier, the executive council or cabinet, or the chief of staff to the Premier.

Later in the summer of 2011, I asked Deputy Minister Giles Gherson, who was then deputy minister of policy and delivery in cabinet office, to take the lead on that coordinating role. Deputy Gherson then worked with my office, the Premier's office and various deputy ministers and officials at different points in time as the file progressed. I was also in direct contact with many of these individuals throughout this period.

In the Oakville file, much of the early work was taking place against the backdrop of unsuccessful negotiation between the Ontario Power Authority and the proponent. I asked David Livingston, who was then head of Infrastructure Ontario, to serve as an intermediary between the

public service, the Ontario Power Authority and the proponents. In these early days, this was not about a particular agreement, but whether an agreement was even possible and under what circumstances.

Because this group model was well established for Oakville, a similar approach was then taken for the Mississauga file following the 2011 election. I was, however, involved in this file only until December 2011, when I left the public service.

At the time of my departure from the public service, active negotiations were still proceeding on both files. I'm therefore not in a position to speak authoritatively about the process or the contents of these final agreements.

I wish to confirm for the committee that I did consult with the former Deputy Attorney General and make a decision to screen three individuals from further involvement in the Oakville negotiations. This decision was made because their earlier involvement with the proponents made them potential witnesses in threatened litigation resulting from the decision to cancel that particular contract. I felt this step was appropriate to protect their interests but, more importantly, those of the public service, should the matter result in litigation.

With that, I would be pleased to answer your questions.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Jamieson. Thanks for your precision timing as well.

Yes, Mr. Yakabuski?

Mr. John Yakabuski: I would like to ask for a five-minute recess prior to questioning of the witness.

The Chair (Mr. Shafiq Qadri): That's within your prerogative. A five-minute recess is agreeable? Five minutes.

The committee recessed from 0836 to 0841.

The Chair (Mr. Shafiq Qadri): Thank you. Back in session, and we'll pass Ms. Jamieson to the Conservative side, to Mr. Fedeli. Twenty minutes.

Mr. Victor Fedeli: Thank you very much. Good morning, Ms. Jamieson. Thank you very much, first of all, for your public service and now for your service with the charitable organization. It's much appreciated.

Your opening statement was quite revealing, actually—obviously well thought out and well crafted. You confirm basically what Mr. Livingston told us when he was here. He called you the “centre of my decision-making,” as you are undoubtedly aware. He said that you and Mr. Segal and Mr. Lindsay were the three people that everything revolved around in terms of the files. So I'm going to ask you to take a couple of minutes and sort of briefly walk us through the evolution of the Oakville gas plant cancellation. When did you first become involved, who were you dealing with, who contacted you first, those types of things—the discussion. Just a very brief one, but a brief and concise one, if you don't mind.

Ms. Shelly Jamieson: Certainly. I would say that I wasn't involved myself. I certainly was reading the paper and understanding that in Oakville there was an issue and the citizens of Oakville were objecting to the fact that the

plant was going to be located there. About a week before October 7, 2010, the Deputy Minister of Energy at the time, David Lindsay, came to my office to tell me that his minister was considering sending a letter to the Ontario Power Authority to cancel the project.

Mr. Victor Fedeli: When was that again?

Ms. Shelly Jamieson: About a week before the October 7, 2010, letter was sent. He came to tell me because he reported to me and because good deputies make sure their secretary of cabinet isn't surprised by anything, and good secretaries of cabinet check in with the Premier's office to make sure that a minister is actually doing something that they know about.

Mr. Victor Fedeli: So you were informed a week before October 10 by David Lindsay.

Ms. Shelly Jamieson: I was.

Mr. Victor Fedeli: And who did you then inform?

Ms. Shelly Jamieson: I informed the chief of staff at the time in the Premier's office. I didn't inform him; I asked him if he knew that this is—because the minister had the authority to send this direction, and they did.

Mr. Victor Fedeli: And did he know?

Ms. Shelly Jamieson: And they did. So, after that, over to the Ontario Power Authority because, as you know, the agreement is between the Ontario Power Authority and the proponent. So they go away, and it's not on my radar screen, other than—

Mr. Victor Fedeli: Did they know?

Ms. Shelly Jamieson: Did the Ontario Power Authority—

Mr. Victor Fedeli: When you got there to tell them that the—

Ms. Shelly Jamieson: Oh, I didn't check with the Ontario Power Authority. They got a letter. I know they knew. They got a letter from the minister. And so they went away to do their negotiations with the proponent about the cancellation, and that went on for months and months and months. Every now and then, the deputy of energy would tell me mostly that it wasn't going well.

Sometime in the spring of 2011, I was notified by the deputy of energy again that the negotiations seemed to have fallen apart between TransCanada and the Ontario Power Authority. Around April 2011, we received notice that TransCanada intended to litigate. We were named in that litigation. So now, in the secretary of cabinet's office, that becomes a bigger issue, and there is sort of more involvement.

As the spring went on, we tried to get up to speed on where the negotiations were and if there was any further discussion, and there wasn't. Now we were named in litigation, and so I was asked by the Premier's office to look into whether in fact there was a deal to be had to avoid litigation, or something else. So what you'll see is—as I said in my statement, I knew I needed help. Being the secretary of cabinet is a full-time job. It's not my job actually to be out there leading these negotiations. So I do what the secretary always does: I assembled a team of people with the best expertise to assist me in this regard. I thought about several candidates. I decided David

Livingston was the person I thought I could ask to undertake this assignment. I asked David around the third week in June. I phoned him and asked him if he'd do me a favour, and he said he would. He has lots of experience with commercial companies. We were looking for someone to be the point person. I assembled a team of internal expertise, including the OPA, so that we could make sure we move forward.

I'm not sure if that's as far as you want me to go or—

Mr. Victor Fedeli: No, that's quite revealing, considering Mr. Livingston downplayed his role and told us you were at the centre of all of this. He named you, Mr. Lindsay and Mr. Segal repeatedly. Over and over and over, he said, "I don't know." "I don't know." It was Shelly Jamieson, Shelly Jamieson, Shelly Jamieson.

Ms. Shelly Jamieson: When I was refreshing myself for my appearance today, I did read Mr. Livingston's testimony, and I would say this: There was a three-week intense period after my phone call with Mr. Livingston when he was engaged—and he was the public face. He was the only person speaking to the proponent on behalf of all of us. That's actually pretty common. There was a group of us who were talking about the negotiations and trying to understand the contracts and thinking about our strategy, but there was one person pointed forward. If David had gone off and done something that I hadn't anticipated, I wouldn't have been very happy about that. But that's about implementation and that's on direction from the government, and by that I mean the Premier's office and the cabinet.

Mr. Victor Fedeli: So, was it the Premier's office and the cabinet that were—to use the expression—"driving the bus" on this?

Ms. Shelly Jamieson: Yes, in terms of the decision to cancel it. They asked our opinion about things like, "What is the avenue forward?" We said, "Litigation; a negotiated settlement; maybe some kind of arbitration or mediation," all of these options, and the direction I got back was unambiguous: "Investigate all of these things and try and understand, given this context, what is the best outcome for the people of Ontario."

Mr. Victor Fedeli: There's a Toronto Star story, and I didn't bring it with me. We've had it here 100 times. I know you're going to know the one I'm referring to, the one where TransCanada said to Brad Duguid—Minister Duguid at the time, Minister of Energy—"The decision's already made. Go talk to your bosses." Do you know which one I'm referring to?

Ms. Shelly Jamieson: Certainly I know that point in time. I don't know when it was, and I can't recall it right here.

Mr. Victor Fedeli: Okay. That's my mistake, then, for not having that down here today. We've had it here so many times.

Ms. Shelly Jamieson: If you have it, I'd be happy to look at it.

Mr. Victor Fedeli: It's in my old binder. I brought a new binder today, or I would have had it.

I want to go back to a week before October 10, 2010, when you were told by David Lindsay. Would the minister, Brad Duguid, have known at that time of the cancellation of—

Ms. Shelly Jamieson: Yes. That's where Deputy Lindsay heard about it.

Mr. Victor Fedeli: You think he heard about it from Minister Duguid?

Ms. Shelly Jamieson: Either that or his chief of staff. That's the only place he could have heard of it.

Mr. Victor Fedeli: Okay. When do you think or when do you know that the actual decision to scrap the power plant in Oakville was made? If you heard about it on the 3rd-ish of October, when do you understand the actual decision was made?

Ms. Shelly Jamieson: I don't have insight into that. I know when the letter went. Again, the minister has authority to send that letter without it going to cabinet. So I know the decision had been made by the time the letter left, which was October 7.

Mr. Victor Fedeli: When was cabinet first made aware, then, of the discussion to cancel Oakville?

Ms. Shelly Jamieson: I'm not aware of—it didn't come to cabinet through that fall. So I assume they were all aware; it was in the public realm. They may have had discussions in camera without us. It wasn't a decision that had to come to cabinet, so I'm not aware of when they became aware.

0850

Mr. Victor Fedeli: Okay. In your role as secretary of cabinet, would you have been privy to cabinet discussions?

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: Are you there in the room when cabinet has their meetings?

Ms. Shelly Jamieson: Yes. The way it works is, I attest to the discussions in the room. So I sign the minutes that come from cabinet. Also—or I did; this is all past tense.

Mr. Victor Fedeli: Yeah.

Ms. Shelly Jamieson: I don't have any authority—I couldn't park my car today.

Mr. Victor Fedeli: How times change.

Ms. Shelly Jamieson: How times change. I do attest to what happens. The government has to have me in the room when they make a decision that is to be recorded. We also, in Cabinet Office, plan the agenda. So there's back and forth about what's coming to cabinet this week. The agendas come from our office, and we keep track of the minutes.

Mr. Victor Fedeli: To the best of your recollection, what would be the first time the Oakville gas plant cancellation was discussed at cabinet?

Ms. Shelly Jamieson: July 29, 2011, is—I did go back to get my records—

Mr. Victor Fedeli: That's the famous Vapour minute.

Ms. Shelly Jamieson: That's exactly right, and that's the first time that I was in the room and they were discussing it.

I just would like to say, there is an opportunity for ministers only in cabinet, and that's when the rest of the staff leave the room. The Premier and the chair of cabinet use that as an opportunity to talk mostly about political business. We would rather be outside of the room, frankly, when they're having those discussions.

In some of those instances, Premier McGuinty had a preference for keeping me in the room for some of the discussions. So something could have happened at ministers only when I was out of the room, or it could have happened in ministers only when I was included in the room. That's just a practice.

Mr. Victor Fedeli: On July 29, 2011, cabinet first heard of the cancellation through the Vapour minute. Was the cancellation referred to as Project Vapour or was the word "vapour" used in that room or was the Vapour minute just called the "Vapour minutes"? Do you have any recollection?

Ms. Shelly Jamieson: I think both is the case.

Mr. Victor Fedeli: Okay.

Ms. Shelly Jamieson: I know there's been a lot of discussion about these names.

Mr. Victor Fedeli: You're aware of Project Vapour?

Ms. Shelly Jamieson: I am certainly aware of Project Vapour and Vapour-lock. The use of these names is something that's quite common, both in the private sector where I came from and—

Mr. Victor Fedeli: So to you, as the secretary of cabinet, the cabinet, the Premier's office, the word "vapour," the Vapour file, was well known?

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: Okay. You attended that 29th meeting.

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: Okay. Deputy Minister Imbrogno was here. He confirmed that the OPA provided the Ministry of Energy and, I presume, the Minister of Energy with all the costs associated with the cancellation. Were these numbers ever discussed at cabinet?

Ms. Shelly Jamieson: Okay. So this deputy minister you're referring to is one who wasn't—

Mr. Victor Fedeli: There at the time. You're right.

Ms. Shelly Jamieson: He wasn't the deputy at the time. He wasn't even in the ministry at the time.

Mr. Victor Fedeli: Yes.

Ms. Shelly Jamieson: But I'm happy to answer your question generally about costs, if that's okay?

Mr. Victor Fedeli: Yes, thanks.

Ms. Shelly Jamieson: Okay.

Mr. Victor Fedeli: I may have been referring more to Mississauga, but I realize you're not there much after the Mississauga cancellation.

Ms. Shelly Jamieson: That's correct.

Mr. Victor Fedeli: So I'll try to remember to stick to Oakville more for you today.

Ms. Shelly Jamieson: No, no, that's fine. That's fine. I just want to be clear.

As it pertains to costs, in the summer of 2011, we did not know what it was going to cost to stop the project. In

fact, in the spring of 2011 when we first started to talk about that, we started to try and figure out what the costs would be.

I think it's important for the committee to remember that this wasn't even a contract between us and somebody. It was a contract between the OPA and somebody. So we had to become familiar with the contract. We had to become familiar with gas plants. We had to lean heavily on the OPA's experience. They'd been through a negotiation, so there were residual costs, sunk costs—you know, it goes on and on.

Mr. Victor Fedeli: Was that known, that there were more than just the sunk costs?

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: Thank you. I want to go back to that July 29 Vapour minute. You have a meeting. The approval—actually, we've got the one, and I think it's document 1, if you don't mind us handing it out. This is PC doc 1, and you're going to be familiar with it. It's the famous agenda item, the "Ministry of Energy ... TransCanada" dated July 29, 2011, "Cabinet agreed that:

"The Minister of Energy be authorized to" etc.

So how do you tell the minister—I know he's in the room. He signed the agenda. How do you tell the minister, then, that "Cabinet tells you to go and do this. Cabinet has now authorized you to do a deal with TransCanada"? How was the minister officially told that?

Ms. Shelly Jamieson: Well, the minister would not have been surprised through this process. He would have been getting updates both from his deputy and his chief of staff—no, let me just think about that. He wouldn't have been getting—

Mr. Victor Fedeli: Is there a formal—is this in writing somehow? What do you do now? You've got a cabinet minute, 1-48/2011, that says:

"Direct to Cabinet—Policy

"Ministry of Energy

"Ministry of Finance ...

"Cabinet agreed that:

"(1) The Minister of Energy be authorized to:"—and it goes on—"Enter into an agreement," "Engage in settlement," "Report back to cabinet." How would the minister and the ministry formally be notified? Would you just say, "Hey, Brad, do this," or is there some kind of paperwork?

Ms. Shelly Jamieson: I would not have had a direct conversation with the minister, but as soon as this was signed, my office would have told the Deputy Minister of Energy that it was signed—that they were authorized to proceed.

Mr. Victor Fedeli: Now, how do you tell them that?

Ms. Shelly Jamieson: By telephone. I would have phoned them and said, "It's done."

Mr. Victor Fedeli: You would have phoned them. Would there be any paperwork, any paper trail?

Ms. Shelly Jamieson: There might be. There might be an email, but a decision like this would have—my EA or one of my deputies in Cabinet Office would have spoken directly to David Lindsay. He would have been very

aware. He would have helped prepare the minutes. He was part of our little team.

Mr. Victor Fedeli: Yes, we have the early versions of the minute.

Ms. Shelly Jamieson: We knew exactly what we were going to cabinet to ask for, and that's how he would have found out.

Mr. Victor Fedeli: Very good. Okay.

So, in the cabinet discussion, where I asked you and you acknowledged that they would know there's more than just the sunk costs, when Mr. Livingston was dispatched, if you will—that's my word—to go out and do that, where he came up with these five options, he said he had no upside limit. There was no financial limit put on it. Would you concur with that?

Ms. Shelly Jamieson: I would concur. We wouldn't have known what the upside limit was at that point in the process. We weren't even sure—we were headed to litigation; we'd received notice that we were headed there. Now we had to find out what was possible.

Mr. Victor Fedeli: So there's no limit on this. Was there any limit that the Premier was willing to pay for this?

Ms. Shelly Jamieson: Sorry, could you—

Mr. Victor Fedeli: There's no cap on this?

Ms. Shelly Jamieson: There was no cap on the mandate. There was, "Get information, come back and talk to us." But in each of these instances, we weren't just told to go and do something without coming back. We would have had to come back—come back with a memorandum of understanding, come back with a proposed settlement—so as the numbers became clearer, the check-ins come back.

This is normal for all of our processes in negotiation: First you get a mandate; in this case, the mandate was: Investigate if anything's possible. Is there a deal on the table to negotiate and avoid litigation? What would happen if we went to litigation? What else could you do other than litigation?

Mr. Victor Fedeli: So cabinet knew of Project Vapour; there was no limit set. Who, then, at the staff level, in your opinion, was most centrally involved in the Oakville—and, if you know about it, Mississauga—cancellations? Who was your pivot person that you would go to on all of these things?

Ms. Shelly Jamieson: For what?

Mr. Victor Fedeli: The Oakville cancellation discussion.

Ms. Shelly Jamieson: For a decision?

Mr. Victor Fedeli: Decision, discussion—mostly decision, then.

Ms. Shelly Jamieson: Decision would be the Premier or the chief of staff, for me; that's where I would go. But implementation—it's important to understand here: the public service provides input during the decision-making. The government—the elected officials—make decisions, and then we do implementation. The political side often puts checks and balances, as they should, into how we

implement, how we report back etc. That's what was the case here.

Mr. Victor Fedeli: Okay.

Ms. Shelly Jamieson: We couldn't have gone away and settled this for some number, come back and said, "Well, we did that." That's not the way that works. It was to go away, investigate and bring scenarios back with better detail as we got it, which we did.

Mr. Victor Fedeli: Do you recall any discussion on the \$712-million offer to settle with TransCanada?

Ms. Shelly Jamieson: I read mostly about that number after I'd left the public service. I did know when we became involved in the spring of 2011 that there had been many offers back and forth through the negotiations between the OPA and TransCanada. It's interesting to talk about something that was never agreed to. I don't know; there would have been many iterations of things that went back and forth, so I can't say that that \$712-million number sits in my head. What sat in my head is that the OPA and TransCanada—their negotiations had fallen apart.

0900

The Chair (Mr. Shafiq Qadri): About a minute left.

Mr. Victor Fedeli: Okay. The decision to screen Jamison Steeve and Craig MacLennan off the Oakville file: Whose decision was that, and why was that necessary?

Ms. Shelly Jamieson: That was my decision, and it was because I became aware that they had had discussions with the proponent directly, and it was now my responsibility to look for an option. We needed one voice, and it had to be us, our team, to control that negotiation, to be as successful as we could be. And secondly, I was aware of the potential for litigation.

Mr. Victor Fedeli: Was there anybody else screened off that file?

Ms. Shelly Jamieson: Yes. Sean Mullin.

Mr. Victor Fedeli: Sean Mullin was screened off the file. Anybody else?

Ms. Shelly Jamieson: No, just the three of them.

Mr. Victor Fedeli: Why him?

Ms. Shelly Jamieson: Because he was involved in those discussions. I became aware of the three of them being involved in those meetings and screened them out.

Mr. Victor Fedeli: My neighbour here asked, is that a normal activity?

Mr. Rob Leone: Let me clarify if I can. For the political side to be engaged with TransCanada in this—is that a normal practice?

Ms. Shelly Jamieson: Well, our political colleagues have—

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

Mr. Tabuns, 20 minutes.

Mr. Peter Tabuns: It's rather abrupt here, you'll find.

Ms. Shelly Jamieson: That's fine. I understand.

Mr. Peter Tabuns: Good morning. Thank you for attending. We appreciate it.

Ms. Shelly Jamieson: Good morning.

Mr. Peter Tabuns: Yesterday the Auditor General indicated that the cost of cancelling the Mississauga gas plant was \$275 million, and pretty continuously we've had ministers say to us that it was only \$180 million, \$190 million. Earlier this morning, you indicated that people would have been aware that there were more than sunk costs involved. Do you find it credible that a minister would not have been informed by the OPA that there were costs beyond the sunk costs?

Ms. Shelly Jamieson: First of all, let me say I read the papers this morning, but I have not seen the Auditor General's report. I always find him very helpful in hindsight, looking back and costing things, because it usually means we can move on—that the Auditor General has established a number and that's probably what it cost.

Point number two: If we could have come up with a deal where TransCanada could take its entire contract and move it somewhere else and only have some residual cost that was somehow not reflected—because they had spent a lot of money on Oakville—then I guess there could only be sunk costs. But these things are moving targets, because they're in negotiation.

In the summer of 2011, when I was there, we wouldn't have known what the costs were. Sunk costs would have been one category.

Mr. Peter Tabuns: But you would have been aware that other categories existed?

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: And you would have expected the Ontario Power Authority to brief the minister reported to on the risks that it was facing?

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: I would have thought so as well, to tell you the truth.

JoAnne Butler testified on March 19 that Colin Andersen, head of the OPA, was part of a weekly meeting with senior civil servants. She referred to it as the Meeting Makers. I don't know if you're aware of that group and if you were part of it.

Ms. Shelly Jamieson: What time frame are we talking about?

Mr. Peter Tabuns: We're talking about the period in the fall of 2010, as we go into the Oakville negotiations between the OPA and TransCanada.

Ms. Shelly Jamieson: I was not part of that group; I was not involved in the fall of 2010. But the Ministry of Energy would have been involved. It was their file. Cabinet Office typically doesn't get involved until many ministries are involved and the issue is in some trouble.

Mr. Peter Tabuns: So you weren't part of that group—

Ms. Shelly Jamieson: I was not.

Mr. Peter Tabuns: —and you're not aware of who the members were?

Ms. Shelly Jamieson: Not in the fall of 2010. But to be clear, I was the one calling the meetings beginning the spring of 2011, as we tried to—those would be my meetings.

Mr. Peter Tabuns: I'll come back to that.

Ms. Shelly Jamieson: Okay.

Mr. Peter Tabuns: Jamison Steeve testified at the end of October 2011 that as acting chief of staff and as principal secretary, he convened a group to deal with Greenfield South. He was working with Giles Gherson and with you to find the best advice to give government on meeting its commitment to shut down the plant. Can you tell us what advice came out of that meeting and whether notes were kept that can be tabled?

Ms. Shelly Jamieson: A specific meeting? Or was it a series of meetings?

Mr. Peter Tabuns: He convened an opening meeting with you, Giles Gherson and himself. There was a decision that had been made. You understood the consequences because you had been going through TransCanada. You were pulled together to give advice. Do you remember that meeting?

Ms. Shelly Jamieson: I don't remember that specific meeting because I had meetings myself throughout the fall that I would have said I called, and Jamison might not have been at, to do with that. So I'm not sure I can speak specifically to that meeting.

This is an opportunity, however, to talk about the importance of the trust and respect between us and our political colleagues. The foundation of our system is that if there's trust and respect, we do well. So we aren't keen to talk about the advice we give in casual forums—you have the written advice—or my personal advice because we want a setting where we're treated with respect and our advice is sought; that's the ideal scenario for the civil service. That's why we sign up; that's why we come to work.

For the political side to trust us, it's important that we don't talk about the situations where we gave advice and it was accepted or ignored. We don't brag when they accept it and we don't whine and complain when they ignore it. Both happen all the time and have happened with every government.

We take an oath of office; I've brought it with me today. I know I took an oath when I came here. I'm trying to make sure that I don't—I understand the importance of the issue you're talking about; I want to help you understand it. But I certainly, as the former head of the Ontario public service, don't want to erode the trust and respect element that we count on to be effective.

Whether our advice was listened to, what advice we gave, those are really questions for the members of the executive council, and I don't see that you've called any of them.

Mr. Peter Tabuns: No. We expect that we will.

Ms. Shelly Jamieson: We gave all kinds of advice. Premier McGuinty set a style with me that I very much appreciated, where my advice was always sought, not always listened to. But I always had the opportunity to give my advice and I appreciated that. I've always encouraged the public service not just to give advice on what they think the party of the day wants to hear, but what they think they're paid for by the people of Ontario. I got unambiguous direction on these files and we went

and implemented them. But the advice we gave into the decision-making process feels like it should be—I was allowed to give advice; we gave our advice. We did the best we could. It feels like I shouldn't be talking about those discussions in their gory detail.

Mr. Peter Tabuns: Chair, I need to think about that answer and I ask for a five-minute recess.

The Chair (Mr. Shafiq Qadri): We welcome your thoughts, Mr. Tabuns.

Ms. Shelly Jamieson: Would you like to see our oath, or do you know it? All the civil service takes it.

Mr. Peter Tabuns: I don't know it, so it might not be a bad thing for me to see.

Ms. Shelly Jamieson: Would you like me to read it into the record? It's short.

The Chair (Mr. Shafiq Qadri): Please go ahead.

Mr. John Yakabuski: He's asked for a five-minute recess.

Mr. Peter Tabuns: Yes. I don't mind if she reads the oath into—

Ms. Shelly Jamieson: Okay. It's the oath of office and confidentiality. This is the spirit in which we come to work every day. It would say:

"I, Shelly Jamieson, having been appointed as secretary of cabinet, do solemnly swear that I will, faithfully and impartially, discharge my duties. I will provide leadership to promote the values of service to the public, excellence in management, and recognition of employees as a vital resource. In doing so, I will uphold the highest level of service quality, integrity, and public trust.

"I will support the government in the development and implementation of its vision, policies, and priorities for the province of Ontario.

"Except as I may be legally required, I will not disclose any information or document that comes to my knowledge or possession by reason of my appointment. In all matters, I will abide by the conflict of interest guidelines and observe and comply with the laws of Canada and Ontario.

"So help me God."

Every civil servant takes this oath. It's an important underpinning of our system.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Jamieson. A five-minute recess?

Mr. Peter Tabuns: Thank you. Five minutes, please.

The Chair (Mr. Shafiq Qadri): Fine.

The committee recessed from 0909 to 0914.

The Chair (Mr. Shafiq Qadri): Thank you, colleagues. We are back in session.

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you very much, Chair.

I've had a chance to look at the oath. It's clear that you won't divulge information unless you're legally required to do so.

Ms. Shelly Jamieson: No, I wasn't using this as a place to not answer questions, just to be clear. I was speaking to the spirit of what we're trying to do here. You have a specific thing that you're trying to get to the bottom of. I understand that. As a former head of the

Ontario public service, I don't want to erode the trust and respect so that we're excluded from conversations where we could be helpful in the future. That was my point. I'm happy to answer your question. If you'd like to rephrase it I'll probably just answer it.

Mr. Peter Tabuns: Fair enough. Can you tell us what advice you gave the government in the wake of the election, the promise to cancel the plant? You had gone through things with TransCanada. You had a sense of the kind of problems that you were going to be dealing with. What did you advise them to do with regard to Mississauga?

Ms. Shelly Jamieson: We gave, and I believe you have documents that show this, many options of things that could be done, including saying, "From now forward we will review the siting of these gas plants." We gave the option of passing legislation. We gave a series of options to the government. I got an unambiguous decision back that we were to proceed to stop the Mississauga plant. That's the question—Mississauga.

Mr. Peter Tabuns: What was the status of the Mississauga file when you left office?

Ms. Shelly Jamieson: The government, with the OPA, was in negotiations with the proponent, Eastern Power. Those discussions had begun. In those early days we had discovered there was an outstanding matter called Keele Valley with the proponent. The proponent was still building on the site and we were trying to establish a mechanism for having negotiations with them. That's where it was.

Mr. Peter Tabuns: And at that time did you have, accessible to you or brought to you, an estimate of the cost of the decision to relocate that plant?

Ms. Shelly Jamieson: No. Costs were starting to come in. We started to understand that there were turbines being built somewhere and they needed to be deployed and that there was cost for the land, and we were estimating and trying to understand, but these were negotiations at that point. So we still were trying to get a handle on—when I left, we were still trying to understand what the residual value of such a contract would be and if any of the business could be replicated somewhere else in the province.

We were of the view that the best-case scenario to get value for the people of Ontario was, rather than to write a cheque and have a proponent go away, that to write a cheque and have a proponent still deliver power was better. So we were very seized with trying to find another place for Eastern Power to operate, but that was not concluded by the time I left.

Mr. Peter Tabuns: And were you aware that Ontarians were potentially on the hook through taxes or rates for nearly \$150 million to the US-based hedge funds that had financed this plant?

Ms. Shelly Jamieson: That came up just as I was leaving. I became aware of an American funder, but I certainly was aware all the way through that Ontario taxpayers and ratepayers were on the hook for these costs—all of the costs.

Mr. Peter Tabuns: Were you aware of that amount at the time?

Ms. Shelly Jamieson: I was not.

Mr. Peter Tabuns: Okay.

Ms. Shelly Jamieson: I remember, just as I left—I would have to refresh my time on the dates—we became aware of an American interest in the file.

Mr. Peter Tabuns: So do you know if anyone was aware of the scale of the cost risk at the time the cancellation was decided?

Ms. Shelly Jamieson: I believe everyone knew—well, I believe I knew—that this had the potential to cost an awful lot of money. This was a big decision coming down the road unless we were able to negotiate something that mitigated those costs. So there was a wide range, and I couldn't speak to the range.

Mr. Peter Tabuns: Okay. The Auditor General indicated that the deal for Mississauga was not a good deal for Ontarians, but a good deal for Eastern Power. He indicated that Ontarians would be paying for bills that were never provided to negotiators, that savings favoured the private power company instead of the tax or rate base, and that massive amounts were paid to American hedge funds. Was this seen or would you have seen this as good practice?

0920

Ms. Shelly Jamieson: I haven't seen the Auditor General's report, so you're ahead of me in this regard because it was released yesterday.

I would say that the context in which we were working was to try and get the best deal, given the scenario, for the people of Ontario. That's all we were trying to do. I can't speak to who did well in the end. I don't actually even know the particulars of the deal in the end. You probably know more about that than I do.

Mr. Peter Tabuns: One of the things that was pointed out by the auditor yesterday was that the hurry to stop the construction put the OPA in an extraordinarily difficult position and weakened their negotiating hand. If you and the bureaucracy were seized with the idea that you had to get the best deal for ratepayers, did you make this argument with the government at the time that their approach was in fact increasing the risk?

Ms. Shelly Jamieson: I would have listed, in my head, many risks. One of them would have been that the ratepayer and the taxpayer were also at risk as construction continued. As long as construction was continuing and decisions were continuing to be made that cost money on a site where the government did not have any intent to have a gas plant, that also was a risk. So speed, to me, was important. Is it ideal? Probably not.

Mr. Peter Tabuns: Okay. In a different direction, we've recently been told by the former chief of staff, Craig MacLennan, that all his emails were destroyed by him. In fact, in our request as a committee for documents, no documents whatsoever were produced from the minister's office. In each minister's office, who's responsible for ensuring that documents are maintained in keeping with the law?

Ms. Shelly Jamieson: It is not the role of the civil service, and I don't have insight into their process.

Mr. Peter Tabuns: Do you expect that ministers and their staff will follow the law on document preservation?

Ms. Shelly Jamieson: I do.

Mr. Peter Tabuns: Do you have knowledge that they do?

Ms. Shelly Jamieson: I don't have knowledge that they don't. We are responsible for our records, but we aren't responsible for their records.

Mr. Peter Tabuns: When we asked the Premier's office for documents on projects Vapour and Vapour-lock, we were told they didn't exist. Do you have any knowledge as to whether or not the Premier's political staff destroyed their documents on a regular basis?

Ms. Shelly Jamieson: I have no knowledge of that.

Mr. Peter Tabuns: When you were cabinet secretary, did you receive emails or other correspondence from political staff about projects Vapour or Vapour-lock?

Ms. Shelly Jamieson: I did.

Mr. Peter Tabuns: So Sean Mullin or Jamison Steeve would actually have produced in writing documents that referred to Vapour and Vapour-lock?

Ms. Shelly Jamieson: On which project are we speaking? Vapour-lock, you said; both of them. Sorry. My normal point, as I said in my opening statement, would have been with the chief of staff. Jamison and Sean were screened out of the Oakville project, so certainly they weren't involved in anything after they were screened. Other than meeting requests and things, I wouldn't have gotten an email from Sean or Jamison—personally, I wouldn't have.

Mr. Peter Tabuns: Did you get emails from any other political staff?

Ms. Shelly Jamieson: I did.

Mr. Peter Tabuns: That referred to Vapour and Vapour-lock?

Ms. Shelly Jamieson: I did, from Chris Morley, the chief of staff.

Mr. Peter Tabuns: Okay. I think it's fair to say that such emails did exist and were circulated to senior people in cabinet, in the civil service. Certainly you saw them.

Ms. Shelly Jamieson: I did.

Mr. Peter Tabuns: One of the things that perplexes us in these hearings—and we've heard from Craig MacLennan, Jamison Steeve and others—is that it appears no one actually had responsibility for the Oakville and Mississauga files. Everyone says, "I had a little bit here; I had a little bit there." Who were the key political staff who had carriage of these files? Let's start with Oakville. Who did you look to, when you were brought in, to say, "What have you guys done? Where are we?"

Ms. Shelly Jamieson: I looked to the Ontario Power Authority and the Deputy Minister of Energy to be briefed, because I was not involved. It had been going on. I was aware of it. Those are the two places I looked to begin with, and I looked to the chief of staff, the Premier and cabinet, as it pertained to decisions.

Mr. Peter Tabuns: With regard to screening off the three people from the Oakville file, can you tell me what “screening off” means?

Ms. Shelly Jamieson: Yes. Screening is something that we use somewhat frequently but in very specific cases where we’re concerned that there’s somebody involved in a file who may have a bias or a perceived bias or may be involved in litigation. I think those are the kinds of things I can think of. There are a few examples in my time as secretary, but it’s not a frequent thing. I decided to use the screen in this instance, and what it means is no meetings, no correspondence, not to be discussed, not to be involved in the file any further.

Mr. Peter Tabuns: What prompted your action?

Ms. Shelly Jamieson: The Deputy Minister of Energy at the time came and told me, as we began to assume kind of a coordinating role for getting a deal with TransCanada, that they had heard back from legal counsel on the other side that there had been promises made or statements made that led TransCanada to believe that they could get some kind of deal. Who knows what the deal was? I was surprised by this. I had just begun this negotiation, and I didn’t know these meetings had occurred—

The Chair (Mr. Shafiq Qaadri): About a minute left.

Ms. Shelly Jamieson: It didn’t occur to me to ask, and so I sought the advice of the then Deputy Attorney General. I was worried about litigation. We had received notice that there was intent to litigate, so these people could be called as witnesses for what they said, plus I was trying to negotiate something. I was trying to understand how this would work.

I received advice. The Deputy Attorney General suggested the screen, as I recall, as a way, and I went and informed the chief of staff to the Premier that I was screening these three people out and why, and he said he understood.

Mr. Peter Tabuns: Did their continued relationship with TransCanada pose a threat that, under oath, they would be revealing decision-making within cabinet?

Ms. Shelly Jamieson: No. That wasn’t what my worry was.

Mr. Peter Tabuns: What was your worry, then?

Ms. Shelly Jamieson: My worry was that we were trying to have a central place, point, for negotiation, and when the civil service is trying to negotiate anything, the other side always tries to go around us to the political.

Mr. Peter Tabuns: I notice that, yes.

Ms. Shelly Jamieson: And that doesn’t help us. It works against us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the government side: Mrs. Cansfield, 20 minutes.

Mrs. Donna H. Cansfield: It’s nice to see you, Shelly. Welcome.

Ms. Shelly Jamieson: It’s nice to see you.

Mrs. Donna H. Cansfield: I wanted to ask a couple of questions about the whole issue around the documentation. What was it? Fifty-six thousand pieces of docu-

ments were subsequently filed with the request I think from Mr. Leone on correspondence etc. There’s been a lot of discussion around, first of all, the scope of that, so the question would be, have you ever dealt, as secretary of cabinet, around a request of a scope of that size?

And then, secondly, maybe you could take us through the process of how those documents would be retrieved, and then the other process about how they would be redacted and why.

Ms. Shelly Jamieson: Yes. Thank you for the question.

First, let me say, as secretary of cabinet, I never dealt with a standing committee request of this magnitude, so I actually would not have had that experience and, I should point out, did not have that experience. By the time you were asking as a committee for these documents, I was gone.

But there are many document requests, freedom-of-information requests etc. It’s almost a cottage industry inside government to prepare these things, so there are well-worn processes for searching people’s email inside the civil service and being able to understand the scope of a request, answer the question you’re asked, which ministry. Sometimes people ask for all documents pertaining to something and request a specific ministry, and they don’t realize that they’ll only get all documents pertaining to something in that ministry. You have to be specific about which ministry you’re asking for etc. That is one of the processes. We have experts who help us do this, both on the IT front but also on the privacy and confidentiality element.

The issue of redaction is important, and we aren’t involved at all in what’s redacted and what isn’t, so people don’t come and say, “Should we redact this or not?” There are rules around redaction. I have requested materials subsequent to leaving the OPS, when I was refreshing myself for here, and I see something is redacted, and it’s like my dentist appointment or something. It’s something on the bottom of an email where I’ve used that opportunity to say, “I won’t be here tomorrow for an hour and a half, because I’m going to the dentist.” It is felt that redaction is that or redaction is to do with completely unrelated issues, and usually it says on it, “Redacted because it’s unrelated.” These decisions are not made by the people closest to this file, for example. They’re made by professionals in the civil service who have a decision-making tree about how to do that.

0930

I think I will also say that I’ve read in the paper about the volume of information you’ve received and the way in which it was received. It looks like it was a bit of a mess. I understand that one of the responsibilities of this committee is to make recommendations. I don’t envy you; that’s a burden. But I think perhaps you could make recommendations about that process. Why you need 35 copies of the same document or something is kind of beyond me, and it can’t help you when you receive them because you have to go through mountains to find the relevant documents. There must be a better way to have a

dialogue so that you get what you want from us and so that you have confidence in redaction. Redaction is important; it's important to us, but it should be important to you, and you should trust it. It would appear to me, in some cases, that as a committee you don't. So it would be helpful if you could make comments and recommendations at the end about how that process could work better.

Mrs. Donna H. Cansfield: Actually, that's a really good point because I think there has been a fair amount of discussion that, in fact, the redaction meant that things were being hidden. It's not really, as you've identified through the civil service, that they redact to hide anything; it's they redact because it's a personal nature, and there is an actual process that's put in place.

Maybe if we had an opportunity at some point—not necessarily today—to understand that process, you're right, we'd be able to be more helpful, and ultimately, if there's another situation and documents are given out and redacted, people understand the process ahead of time. I would share the frustration of getting something, thinking I was getting something, and it's blank. Not understanding why it's blank is the frustration.

One of the other situations that you chatted about was the issue of a recommendation around siting. Part of the responsibility of this committee ultimately is to look at how we do this better in the future, so that we don't repeat, regardless of who is in government.

We heard something from—I can't remember which individual it was, but it was about what was happening in California where they actually put a group of people together and pre-sited all sorts of procurement places. It wasn't just power plants but, I guess, a number of renewable situations etc. In your recommendation, when you looked at the siting, can you expand on that for us?

Ms. Shelly Jamieson: I was confident that the OPA had followed its public consultation process and followed the existing siting rules. So off they go to Mississauga and Oakville. I was also completely convinced that the people of Mississauga and Oakville didn't want those gas plants in the end. I'm interested in how did we get to the point, then, that they were awarded.

It seems to me that we could be reviewing setbacks, we could be reviewing the kind of neighbourhoods where these things are set because people will feel better, not because I actually am worried about other concerns but just because people don't want them there.

It's interesting: I believe the government sited another 13 gas plants, and it went fine. In fact, in one community, they were getting transmission lines instead of the gas plant, and they said, "No, no, please; we don't want the transmission lines. They're too disruptive to land use etc. We want the gas plant." This is a different setting, where these two communities have made a different choice.

In the case of Oakville, I was wishing we'd had a more fulsome debate with the people of Oakville about the fact that it's not just "do nothing." You can't just choose not to have a gas plant, because you won't have power at some point in time. So if you're not going to generate the power from within your community, you

have to bring it from somewhere else, which means the discussion in Oakville, really, probably should be, "If not this, then what?" And what does that look like, so that people understand the choices they're making.

I'm hoping that the public consultation process is robust enough that when we're through, we're really through; we have a decision and that's the decision—and also that the siting requirements be reviewed. Those were the pieces of advice in that item that we gave.

Mrs. Donna H. Cansfield: You spoke about the consultation. That's certainly one of the areas where I think there was significant laxness, if that's the term, in terms of how robust that consultation was and whether or not it should be a part of the procurement process and really spelled out how it should take place.

I can share with you that I was at one in particular where it was extraordinarily limited to access; there were people on the streets because the place was just too small. It was going to take only the residents who were actually asked to participate, and when something of this nature is that significant, then one would think the proponent should have a far greater understanding of the complexities of consultation: what you are consulting about, how you go about doing it, how you engage. How do you then take those issues back into the community that you've heard? How do you resolve them?

Have you got any thoughts about that?

Ms. Shelly Jamieson: Well, just that what we want ideally is a robust and informed decision by the community so that there aren't any surprises, so that later on in the process we aren't faced with the reality of a massive objection and a reversal of decision. That's not in the interest of everyone.

Mrs. Donna H. Cansfield: One of the discussions that's currently I think again out there because of—well, lots of reasons, not necessarily just this. It's the whole issue around procurement as a whole that you discussed, that—what do I always say?—96% of the people live in about 4% of the land mass, or 94% live in 6%, whatever. But it's very close. So the issue of siting is critical, but also the issue of size is critical as well. You look at countries such as in Europe; they look more to distributed energy, combined heat and power distribution, and smaller plants in communities where they're not that obtrusive. So planning in regional or community or site planning becomes really very specific.

In your discussions around that siting, were those the kinds of things that you were giving advice to the government about?

Ms. Shelly Jamieson: Yes. I mean, we gave advice at a very high level, to be honest, about this option, and it didn't preclude the other options. It was in addition to "You could have a review of this mechanism for siting and for public engagement and make sure that it is as robust as it can be and it is recognizing what people are asking for." That is one of the pieces of advice we gave.

Mrs. Donna H. Cansfield: I guess my last question to you—this is nothing new; it has been going on since 1999, as I recall. Having been through the process in a

variety of roles, again, the idea here is how do we learn and how do we do things better? You were in a specific position to have far broader oversight, if you like, because it involved energy, it involved environment and it involved IPO—I mean, all sorts of different places. What is your advice going forward on how we could do this better?

Ms. Shelly Jamieson: I have two pieces of advice for the committee in that regard. One is, in both cases, both of these proponents received all the approvals that were necessary to proceed with their project. So that should be enough to proceed with a project, you would think. You would understand why the proponents would view it that way. However, obviously, as I've said, the people of Mississauga and Oakville felt differently, and maybe they only felt differently later. Maybe it was a smaller group at the beginning and then it was a bigger group at the end, but the reality is, in our fantastic province of Ontario, when the people speak, they speak to their elected members, and their elected members make decisions accordingly. That piece seemed to work at odds with all of the approvals that had been received.

I think we need a better understanding of public engagement that's honest about choices, that people understand it's not this or nothing—it's this or something else—and that the facts are all laid out in easy ways, in a participatory way.

Also, coming down to the system level, I think the relationship between the civil service and a standing committee should be re-examined in terms of document requests, so that you can do your job and we can do our job. The size and volume of the document requests that—I wasn't secretary when you sent it, but it means people aren't doing other things while they're assembling 35 copies of a specific deck.

So I think we have to come up with a trusting reciprocal relationship about how we provide information in a way that allows you to deliberate on what matters the most.

Mrs. Donna H. Cansfield: Thank you very much. I really appreciate your candidness.

Ms. Shelly Jamieson: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you. Further questions from the government side? Thank you.

To the Conservatives: 10 minutes. Mr. Fedeli.

0940

Mr. Victor Fedeli: Thank you very much. I want to talk a little bit about the Auditor General yesterday. He presented a very interesting scenario where the government has consistently said that the Mississauga gas plant—I'm coming back to Oakville here with reference to yourself, but he said that the government has consistently said that the Mississauga gas plant cost \$190 million to cancel. He brought up the fact of a change in language from the government, from first using the expression "total cost of \$190 million"; then they changed their language to "cost to the taxpayer of \$190 million," because, as he learned, in the 10 side deals that were done, there was 85 million net more dollars. It was far

more than that, but there were some offsets. So a net \$85 million more that was borne by the ratepayer—that subtle change between the taxpayer having to pay \$190 million and the ratepayer picking up the other \$85 million, which nobody was informed about.

That \$85 million, by the way, came from things like transmission costs, gas supply and management costs, additional costs because of where the location was changed to. I asked the auditor if he will be using that same criteria in developing a cost for Oakville. He said yes, he would; he would be looking at transmission costs, gas supply and management.

I want to go back to this \$40-million number that the government has been using as the total cost for Oakville. In your time there, what can you tell me about cabinet's understanding of the total costs?

Ms. Shelly Jamieson: First of all, I read the \$40-million number in the paper after I had left my position, so I feel unable to comment on where it came from.

I do agree with you that there are buckets of costs. Depending on the structure of the final deal, those different buckets would have been whatever. It does not surprise me that the Auditor General will use the same construct in his Oakville analysis, because that's why we go to the Auditor General. He speaks a consistent language and he—

Mr. Victor Fedeli: That's why we went there, too, by the way.

Ms. Shelly Jamieson: He's very good at what he does. I never saw him as a threat to my job; I saw him as another source of information.

You will learn from this report what those different buckets are. It doesn't surprise me at all that you'll see an analysis with the same buckets in the future report.

Mr. Victor Fedeli: Would it surprise you if I told you that both an energy expert that was here and the vice-president of the OPA put those extra costs, plus sunk costs of \$40 million, at \$991 million to cancel and move Oakville? Would that surprise you?

Ms. Shelly Jamieson: It wouldn't surprise me that they're experts in their field. I can't comment on the number. I've never even heard that number. These are people who spend every day looking at these kinds of issues, and I'm sure they're very good at it.

Mr. Victor Fedeli: In your role, were you comfortable or uncomfortable with the role of political interference in this particular cancellation, the Oakville cancellation?

Ms. Shelly Jamieson: "Comfortable or uncomfortable." I was uncomfortable, when I assumed the lead in the implementation of the government's decision, to find out that there had been parallel conversations that may or may not have committed people to other things.

Mr. Victor Fedeli: I want to talk about that a little bit more for a second. Who was having these parallel conversations, and when?

Ms. Shelly Jamieson: I can't speak to the "when." It would have been between June 2011, maybe even before that—sorry; excuse me: October 2010 or earlier, and I

don't know how often. I know it was Jamison Steeve. I know Jamison was involved, and I know Sean Mullin and Craig MacLennan were involved. I don't know how often—I don't recall, to be honest. Maybe I did know at one point, but I don't recall.

Mr. Victor Fedeli: They were all political staffers of the Liberal Party?

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: And you think that was all around the first part of October.

Ms. Shelly Jamieson: No. I don't know exactly when it was, but I think it went on around the decision to cancel, and then about a negotiation to settle. I believe they were involved. I know they were no longer involved after we screened them.

Mr. Victor Fedeli: Okay. We have a lot of OPA emails back and forth that revealed they felt they were undermined, that the government and political staff were in contact with TransCanada and subsequently with Greenfield in circumventing the OPA and making their lives more difficult. How would you characterize the OPA's thoughts on that?

Ms. Shelly Jamieson: I would say that Colin Andersen was frustrated, and he told me so.

Mr. Victor Fedeli: He told you so. What would he have told you and when, and in what context?

Ms. Shelly Jamieson: Oh, in the spring, again, of 2011, he would have said, "We have to be organized and coordinated, and we can't have multiple discussions going on." I think you said that there was political interference in Mississauga, and I'm not aware of that. In fact, when we were given direction to proceed with the Mississauga closure, I did ask the Premier to ensure that his staff were not involved.

Mr. Victor Fedeli: When did you ask the Premier that question?

Ms. Shelly Jamieson: When he gave me direction, after the election, to close the plant.

Mr. Victor Fedeli: So we're talking about Mississauga now?

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: So the Premier gave you direction, and you said to him—I don't want to put words in your mouth, but words to the effect of, "Please don't have your political staff interfere this time"?

Ms. Shelly Jamieson: No. What I said is, "Premier, we will take on this assignment, and I would ask that you ask your staff not to reach out to this proponent," because it makes our job easier, and he agreed.

Mr. Victor Fedeli: And would you acknowledge that they had done that the last time, in the Oakville, which precipitated this?

Ms. Shelly Jamieson: I didn't say that to him, actually.

Mr. Victor Fedeli: No, but I'm asking you.

Ms. Shelly Jamieson: Yes.

Mr. Victor Fedeli: Is that what your underlying reason was?

Ms. Shelly Jamieson: Yes, it was.

Mr. Victor Fedeli: Because you had been through the experience a couple of years before where they had interfered in Oakville?

Ms. Shelly Jamieson: Half a year before; six months before.

Mr. Victor Fedeli: Half a year. Just so you know, what I was referring to back then was on October 5, when the folks from TransCanada had met with Minister Duguid at the time, where he was trying to put a political—they call it here in the documents "a political spiel," but that's the meeting when TransCanada would have "blew a gasket," they said, where they said, "Go talk to your bosses. We already have a deal." Is that the interference that you're referring to?

Ms. Shelly Jamieson: No. So that's 2010?

Mr. Victor Fedeli: Yes. October of 2010.

Ms. Shelly Jamieson: No, no, that isn't the—

Mr. Victor Fedeli: There was other interference, other than that one?

Ms. Shelly Jamieson: No. I was just referring to Mr. Steeve, Mr. MacLennan and Mr. Mullin.

Mr. Victor Fedeli: Yes. Those are the people that are involved in this meeting.

Ms. Shelly Jamieson: Yes, but I was asking in the spring of 2011, so it wasn't that specific instance. I'm not sure I even knew that had happened at the time.

Mr. Victor Fedeli: Okay. Do you think it was appropriate for these political staffers to be making deals with these companies without notifying or working with the OPA or the Ministry of Energy?

Ms. Shelly Jamieson: Political staff have relationships with stakeholders across the province, and that's their job and responsibility. In hindsight, it doesn't surprise me that they may have known people there or that they were talking to people there. It's just that at that point I wasn't involved, so it wasn't on my radar screen. When we sat down and we were asked to come up with a strategy to understand and avoid litigation, I didn't realize those discussions had gone on.

Mr. Victor Fedeli: So you did not realize that the Premier and his staff had already made a deal with TransCanada?

The Chair (Mr. Shafiq Qaadri): About one minute.

Ms. Shelly Jamieson: They didn't make a deal. If there was a deal, they wouldn't have needed us.

Mr. Victor Fedeli: The quote was, from TransCanada, "We got a deal with the PO. Go talk to them." That was when TransCanada "blew a gasket." This is a quote from notes of Mr. Chin: "TC apparently blew a gasket and said, 'We got a deal with the PO. Go talk to them.'" This was on an October 5 meeting. Would that surprise you to know that?

Ms. Shelly Jamieson: I did subsequently know that in the spring, but it wasn't on my radar screen at all back then, because I wasn't involved in the file.

Mr. Victor Fedeli: We appreciate your being here today. I think certainly we've learned a couple of things from you: number one, that cabinet was well aware that

there were extra costs—you called it different buckets of costs—and that cabinet knew of Project Vapour.

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

Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Thank you, Chair.

Ms. Jamieson, were there discussions at your level about cancellation of Mississauga prior to the election?

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: And how early did those discussions commence?

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Ms. Shelly Jamieson: In the spring of 2011, I saw in the news that there was some talk of reviewing the environmental assessment for Mississauga. There were two people in the news speaking to that. I had questions from the Premier's office about certain elements of the Mississauga plant through July and August of that year. They didn't say why they were asking, but my job was to get them the information. I did and—yes.

Mr. Peter Tabuns: So for you the decision wasn't totally unexpected, then.

Ms. Shelly Jamieson: Unexpected? Well, they didn't make a decision before the writ dropped. There are lots of things that we look at and then they decide not to do something or whatever. So it was in that category of, obviously, they were probably thinking about it and then they decided not to do it. The writ dropped and they could no longer make that decision.

Mr. Peter Tabuns: If this matter was coming up in the spring of 2011, before construction started, and frankly, since, to my memory, the company didn't even get financing until May 2011, I think it's logical to assume it would have been a lot less expensive to cancel before they got financing and started construction.

Ms. Shelly Jamieson: Likely.

Mr. Peter Tabuns: Okay.

Deputy ministers would report to you.

Ms. Shelly Jamieson: Correct.

Mr. Peter Tabuns: And they would keep you informed of problems and opportunities.

Ms. Shelly Jamieson: Good ones.

Mr. Peter Tabuns: I'll assume for the moment that the Deputy Minister of Energy was a good one.

Ms. Shelly Jamieson: He is; he was.

Mr. Peter Tabuns: Did he ever complain that the Ontario Power Authority kept him in the dark about developments?

Ms. Shelly Jamieson: No.

Mr. Peter Tabuns: So they kept him abreast of what was going on—sorry, the OPA would have kept him abreast on a regular basis?

Ms. Shelly Jamieson: I believe they would have, yes.

Mr. Peter Tabuns: Okay. Did you yourself have any role in the discussions with TransCanada?

Ms. Shelly Jamieson: Directly with TransCanada?

Mr. Peter Tabuns: Yes.

Ms. Shelly Jamieson: No—not part of my job.

Mr. Peter Tabuns: That's fine. I just needed to know.

At one point when TransCanada filed notice that they were going to bring a lawsuit—I think they have to file a 60-day notice prior to bringing a lawsuit. In the correspondence we've seen, we've seen commentary on the need to send out preservation notices to staff. Were you ever aware of that?

Ms. Shelly Jamieson: I'm not sure I know what a preservation notice is, so no.

Mr. Peter Tabuns: Okay. For what it's worth, it's a notice telling people, "Don't destroy documents. Discovery is coming."

Ms. Shelly Jamieson: Well, we don't—anyway. I certainly knew there was intent to litigate, and in my office and throughout government we would have been aware—on both of these files I thought that we would either end up in court or before a standing committee.

Mr. Peter Tabuns: One out of two. Not bad.

Ms. Shelly Jamieson: I'm proud to live in a province that would review decisions like this. This is the right thing to do, to have this discussion.

Mr. Peter Tabuns: Have you been involved in lawsuits previously?

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: And you know the importance of preserving documents.

Ms. Shelly Jamieson: I do.

Mr. Peter Tabuns: At the time that notice was given by TransCanada, were staff informed that they should be preserving documents?

Ms. Shelly Jamieson: When we receive notice of litigation, there is a process within government that actually makes sure that we're protecting the records that are necessary in the civil service, and that would have happened. I never heard it called a preservation notice, to be honest, but I'm confident that we would have done what we were supposed to do to get ready for litigation.

Mr. Peter Tabuns: And so you would have just informed civil servants rather than political staff?

Ms. Shelly Jamieson: Correct—of the preservation notice?

Mr. Peter Tabuns: Of the need to preserve records.

Ms. Shelly Jamieson: Yes, that's correct.

Mr. Peter Tabuns: You were aware, though, at that point, that political staff have been deeply involved in this, and you'd screened them all?

Ms. Shelly Jamieson: Yes, I had them interviewed. I had the people who were screened interviewed by crown attorneys for the purpose of getting ready for litigation and I had them turn over their notes.

Mr. Peter Tabuns: Were those interviews by crown attorneys retained?

Ms. Shelly Jamieson: They're in the legal opinion, which I believe has been released to this committee.

Mr. Peter Tabuns: The one that was most recently provided to us by Peter Wallace?

Ms. Shelly Jamieson: Correct. That's a legal opinion that I asked for, and it's because of the screening and the need to understand where we were, because it looked

like, as a result of that notice, we were headed for litigation.

Mr. Peter Tabuns: And so you've been involved in lawsuits. You understand the need to preserve records.

Ms. Shelly Jamieson: I do, yes.

Mr. Peter Tabuns: Destruction of records would damage Ontario's prospects in a lawsuit?

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: Thank you. Were you aware that the government directed an offer from the Ontario Power Authority to TransCanada to settle all this in April 2011?

Ms. Shelly Jamieson: Sorry, could you repeat that question? Who?

Mr. Peter Tabuns: Sorry. The Ontario Power Authority made two offers to TransCanada to settle. They made one that was rejected. Then, according to the notes I've written, they were told by the government to submit another, which was also rejected. Were you aware of the government's direction to OPA to send in a second settlement offer?

Ms. Shelly Jamieson: I would say that at a very high level I was aware of that, because this is before we took over the coordination of this effort. I recall Deputy Minister David Lindsay keeping me abreast of these things: "How's that going?" "They've made an offer." But I wouldn't know the details of the offer or necessarily where the direction came from; just that OPA was proceeding to try and reach a settlement with TransCanada.

Mr. Peter Tabuns: When those offers failed and the notice of pending litigation was sent, did you meet with the Premier to discuss why things failed and what the next steps were going to be?

Ms. Shelly Jamieson: I met with the chief of staff, Chris Morley, to discuss all of that. I don't remember which came first, me saying, "Here's this notice of litigation," or him saying, "We would like you to coordinate a group to see what we can do about this." I believe those things happened at the same time and we had a discussion, and it is from that meeting that I went away and asked David Livingston to be involved, etc.

Mr. Peter Tabuns: When David Livingston was brought in, he has said to us that he was briefed by you and two others. Can you tell us (a) what you told him at that briefing, and (b) was he given any written material in that briefing?

Ms. Shelly Jamieson: He was not given written material from me, because it was a phone call. I called him and asked him—I said, "I need some help with something," and he said, "I'll do anything." I think perhaps he's wishing he hadn't said that. I said, "Well, wait and listen to what it is." I said, "I need help joining our team, and I need a forward-facing person, an outward-facing person, to deal with TransCanada. The situation is that negotiations between the OPA and TransCanada have failed, and the relationships aren't good. We think we need a new face and a new approach, and we're trying to see what we can do to bring this to ground and settle this."

It went on a little longer than that, but not much longer. David accepted. I asked him to spend an intensive three-week period—we knew we only had a certain period of time—and he flew back and forth to Calgary and worked with us. He actually suspended his work at Infrastructure Ontario to take this on at my request.

Mr. Peter Tabuns: And was he given any background on the two failed offers?

Ms. Shelly Jamieson: Yes. I asked him to go and speak to the Deputy Minister of Energy to get what he needed to know.

Mr. Peter Tabuns: And to your knowledge, did the deputy minister brief him?

Ms. Shelly Jamieson: I'm sure he briefed him, yes.

Mr. Peter Tabuns: One thing that has been clear in reading the Ontario Power Authority's emails on the arbitration agreement that was ultimately put in place was an awful lot of complaints that the OPA was handcuffed, that—

The Chair (Mr. Shafiq Qadri): About a minute.

Mr. Peter Tabuns: Their defence is that this plant was in trouble and couldn't be put into the arbitration agreement, couldn't be recognized. Were you aware of their objections?

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: And why were they not included in the arbitration agreement?

Ms. Shelly Jamieson: By the time we got to the summer of 2011, I would say no one was getting what they wanted, which is actually typically what happens in negotiations. There were complaints from different parties about where we were at. It wasn't going to be perfect. We were just working our way through.

I feel that everybody got a chance to say, at my table, what they were concerned about. My deputy colleagues—the deputy of finance was concerned about the cost. Deputy Lindsay was concerned about signatories to agreements. The OPA was concerned about ratepayers versus taxpayers. Everybody had a concern.

Our job was to try and marshal all of those and proceed with some backup, should a negotiated deal not be—

Mr. Peter Tabuns: So the highest priority—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns. To Mr. Delaney: 10 minutes.

Mr. Bob Delaney: Thank you, Chair. Shelly, you've been describing negotiations that, to understate it a little bit, would be complex and difficult.

Ms. Shelly Jamieson: They were.

Mr. Bob Delaney: Okay. In your view, what would it have meant for the Ontario taxpayer if the OPA and the province's negotiating position was prejudiced because the other side, during the negotiations, had access to confidential and privileged information?

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Ms. Shelly Jamieson: Well, it would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in

terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves. So I would have been concerned about that in any negotiation.

Mr. Bob Delaney: What specific concerns do you recall being raised about the other party having privileged and confidential information from the province?

Ms. Shelly Jamieson: I wasn't here at the time. I apologize. But I was concerned as a taxpayer.

Mr. Bob Delaney: So let me put it another way: From your vantage point of having been the senior member of the Ontario public service, would it be reasonable to assume that given the access of privileged and confidential information, the other side would have tried to get a higher settlement if they knew what the government's and the OPA's position was?

Ms. Shelly Jamieson: Well, I would just say that if I were the other side, I would find it useful to see what was going on. I don't know where they were at at that stage in the negotiation, so I can't even speak to when the requests came and when they came out, but I wouldn't want—it's really tough to negotiate complicated deals. You need to actually line up your best chance at a good deal. Your best chance includes having one spokesperson at the table and being able to have at least the same privileges as the other side has.

Mr. Bob Delaney: It would then be accurate to call that a significant risk to the taxpayer.

Ms. Shelly Jamieson: I would think so, yes.

Mr. Bob Delaney: In terms of the Oakville plant, just remind me again: When was it announced that the plant would not go forward?

Ms. Shelly Jamieson: October 7, 2010, by letter from the minister to the OPA.

Mr. Bob Delaney: There was a document provided to the committee last week by Secretary Wallace. He was asked for documentation that showed who attended a July 27 cabinet meeting regarding the Oakville relocation negotiations. You've just told us the Oakville cancellation was announced in October 2010, so that document, which was, I believe, requested by Mr. Fedeli, related to a meeting that took place more than eight months after the public announcement that the Oakville plant wouldn't be built.

Ms. Shelly Jamieson: Correct.

Mr. Bob Delaney: Now, a draft version of this cabinet submission has already been turned over in the 56,000 documents disclosed by the Ministry of Energy and the OPA. The documents did not include the cabinet final minute or the signatures, and the opposition then alleged that the ministry withheld the full document. But based on what you've been saying, my understanding is that while ministries are responsible for drafting cabinet submissions, it's the executive council—

Ms. Shelly Jamieson: Correct.

Mr. Bob Delaney: —that prepares these briefings. By extension, it would have been for Cabinet Office staff to coordinate and keep records of such—what are they called, walk-around items?

Ms. Shelly Jamieson: Exactly. That would be the responsibility of my office. It might not even have been known by a ministry whether something went to a full cabinet meeting versus the walk-around. The machine is our responsibility, not the ministry's responsibility.

We would advise them after a walk-around had been completed. That is true; we would tell them afterwards. They would likely have been involved in preparing the information. I can't think of an instance where they wouldn't have known that this had happened. We walked around, we would get the signatures, and that is our mechanism for making sure we know the decisions of cabinet.

Walk-arounds—we like them to be rare, but they end up being more frequent because of timing etc.—are reported into the next full cabinet meeting so that cabinet is aware as a whole that a walk-around has occurred on a specific item.

Mr. Bob Delaney: So to encapsulate that, the document that we're discussing wouldn't have been responsive to the original motion, which was just correspondence from the Minister of Energy, the Ministry of Energy and the OPA.

Ms. Shelly Jamieson: That's correct.

Mr. Bob Delaney: Just a question of clarification on Mr. Livingston's involvement in the Oakville negotiations. What area of expertise was it that prompted you to ask him to assist in that?

Ms. Shelly Jamieson: I sat down and thought about four or five people who I thought could assist us in this regard. I had in my view—I wanted the deputy of finance, the deputy of energy and the deputy Attorney General on my team. I wanted somebody else who had the time and energy. The people I just mentioned have extremely busy day jobs and other things to do other than this file. I wanted someone who would dedicate themselves over the next few weeks to determining if there was a deal to be had and what it might look like to avoid litigation.

When I thought about people, I thought about someone who has the gravitas necessary to actually speak to the CEO of TransCanada. David Livingston comes to us from the private sector, but also in his job at Infrastructure Ontario, was used to dealing with publicly traded companies and understands that world and can present himself in that way. So I suggested to Chris Morley, the Premier's chief of staff, that I would like David Livingston to join the team for this purpose. He agreed, and I asked David.

Mr. Bob Delaney: Okay. A few concluding questions, mostly about the implementation of campaign commitments: During the writ period, does the OPS engage in a little process of preparing for an incoming government?

Ms. Shelly Jamieson: We do.

Mr. Bob Delaney: Okay. Would you keep an eye on various campaigns and the commitments being made?

Ms. Shelly Jamieson: We do. We track them.

Mr. Bob Delaney: So then it's accurate to say that the OPS is following an election tasked with helping the winning party implement their campaign commitments?

Ms. Shelly Jamieson: Yes, whoever they are.

Mr. Bob Delaney: So there's nothing unusual about a process where a political party makes commitments during a campaign and then that commitment is implemented by that party, with the help of the OPS, once they're elected.

Ms. Shelly Jamieson: Correct.

Mr. Bob Delaney: Thank you very much, Chair. We're done.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jamieson, for your testimony today, as well as your tenure in the Ontario public service. You are officially dismissed.

Ms. Shelly Jamieson: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Leone?

Mr. Rob Leone: Just to put a bug in the committee's ears, I understand that we're not going to have a 4:30 witness today. I'm just hoping that in the future we can try to minimize those occurrences. I'd like to have, to the greatest extent possible, a full slate of witnesses before us. So I'm happy to engage in a discussion with all parties on how we can best achieve that goal. I don't wish to engage in that discussion right now, necessarily, but if we could think about ways in which we do that, that would be good.

The Chair (Mr. Shafiq Qaadri): Just for the record, four witnesses provided by the government were all basically unavailable. So that's what happened, as I understand it.

Mr. Bob Delaney: Rob, it wasn't intentional.

Mr. Rob Leone: I know.

The Chair (Mr. Shafiq Qaadri): Fair enough.

So committee is recessed until 3 p.m. today.

The committee recessed from 1007 to 1501.

MS. KRISTIN JENKINS

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

As you know, we're here to hear energy infrastructure issues with reference to the gas plants. I would invite our first witness to please come forward: Ms. Kristin Jenkins, vice-president of communications, Ontario Power Authority—OPA—who will be affirmed momentarily.

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?

Ms. Kristin Jenkins: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jenkins. I would invite you to begin your introductory remarks. Five minutes.

Ms. Kristin Jenkins: Good afternoon. I am Kristin Jenkins, and I'm the vice-president of communications at

the Ontario Power Authority. I report to Colin Andersen, OPA's CEO, and I'm a member of our executive team.

I have a master's degree in political science from Carleton University and another master's in health administration from the University of Toronto. I was political staff in Bob Rae's government from 1993 to 1995. Since then, I've held a number of communications and public affairs positions, primarily with government agencies.

Prior to August 22, 2012, my role in the disclosure of the power plant documents was limited to communications and issues management.

On August 22, Mike Lyle, the OPA's general counsel, asked me to go to the Ministry of Energy with Ziyaad Mia, one of OPA's lawyers. I was told that Halyna Perun, the ministry's director of legal services, had arranged an urgent meeting for Jesse Kulendran to go over issues the ministry had with our non-privileged Oakville documents. Ms. Perun asked Ziyaad Mia to bring a copy of these documents to the meeting. Notes of Ziyaad's conversation with Ms. Perun are included in the package that I circulated to the committee.

Earlier, in May 2012, OPA legal staff had searched and reviewed our gas plant documents to comply with the estimates committee's request. No outside firm was involved in this work. In early August, the law firm advising us on the gas plant negotiations assisted in separating the Oakville privileged from the Oakville non-privileged documents.

The two-hour meeting with Ms. Kulendran took place at 10 a.m. in the deputy minister's office. She told us that the ministry was using a strict interpretation of the wording of the estimates committee motion and that this had been discussed with ministry freedom-of-information staff. She then told us how the ministry was specifically reviewing its documents to comply with the motion.

She told us that a number of our documents were not consistent with the ministry's approach, that we should use the approach described and that a new set of documents needed to be resubmitted to the ministry by 5 p.m. that day.

We were not told that these were simply observations or that they were from the minister's office. Ziyaad and I made notes of this discussion, and copies are in your package.

Ziyaad and I did not commit to anything at the meeting, and we told Ms. Kulendran that Colin Andersen's approval was required.

At the request of Ms. Kulendran, she and Ziyaad went through the documents page by page and applied the ministry's approach. I sat across the table and wrote the reasons for excluding the documents on Post-It Notes. As Ms. Kulendran testified on April 4, the Post-It Notes reflect the conversation we were having at that time. I have these documents with me today.

Prior to the August 22 meeting, the minister's office had asked me about communications materials, so at the meeting I told Ms. Kulendran that our documents had not yet been reviewed for communications purposes and that

I did not have any communications materials developed. At the meeting, we did not discuss the specific search terms the OPA used in May, did not tell Ms. Kulendran that an outside firm had searched our documents, and did not say that our documents had not yet been reviewed for relevancy.

After the meeting, Ziyaad and I met with Colin Andersen and Mike Lyle. As Mr. Andersen said at his news conference in February, the OPA felt being consistent with the ministry on the document request was important. Given that Ms. Kulendran had told us that this was the ministry's approach and that it had been discussed with ministry FOI staff, and the fact that the ministry's director of legal services had arranged the meeting with Ms. Kulendran for the specific purpose of discussing the ministry's issues with our documents, the OPA decided to proceed as Ms. Kulendran had directed and we resubmitted the documents to the ministry at 5 p.m.

Over the next 48 hours, OPA staff applied what we were led to believe was the ministry's approach to privileged Oakville and Mississauga documents. On August 24 at 7:30 p.m., 10 boxes were delivered to Ms. Kulendran and Andrew Forgione, a staff person from Minister Bentley's office.

The OPA disclosed about 27,000 pages of documents on September 24. On September 27, we determined that we likely had more documents to disclose. On October 2, Colin Andersen told me and Mike Lyle that the approach that Ms. Kulendran had told us to use was not in fact what the ministry had been using. I wrote a memo to Colin Andersen on October 3, 2012, to reconfirm what I had consistently been communicating verbally and in writing about the August 22 meeting. This included a memo from September 25, which is included in your package.

On top of carrying out additional searches, applying additional search terms and adding more employees to the searches, we then went back and reviewed the documents we had left out based on the August 22 meeting. Through all this work, about 14,000 pages of documents relevant to the May 16 motion were disclosed on October 12.

This was the first time I was involved in document disclosure. What I have learned is that large-scale document disclosures create challenges for organizations, and that the OPA was no different. Throughout this process, however, my colleagues and I made best efforts to comply and the OPA has disclosed over 40,000 pages of documents responsive to the estimates committee's request.

Thank you, and I am now happy to take your questions.

The Chair (Mr. Shafiq Qaadri): Thank you very much. We'll move to the NDP. Mr. Tabuns, you have 20 minutes.

Mr. Peter Tabuns: Thank you, Ms. Jenkins. Why did you write the memo to Colin Andersen on October 3 telling him that you'd been asked to exclude documents?

Ms. Kristin Jenkins: I wrote the memo to Mr. Andersen on October 3 to confirm what I had said to him verbally and in writing previously about the meeting with Ms. Kulendran.

Mr. Peter Tabuns: And what prompted you to talk to him about that meeting with Jesse Kulendran?

Ms. Kristin Jenkins: On October 2, the Deputy Minister of Energy had informed Colin Andersen that the approach that we were using to screen our documents was not in fact the approach that the Ministry of Energy was using.

Mr. Peter Tabuns: Can you tell us—you've just gone through and told us in fact about the meeting on August 22, 2012, with Jesse Kulendran. Did you have a box of documents and did she have a box of documents? Her description to us was there was about half a banker's box worth of material.

Ms. Kristin Jenkins: My colleague Ziyaad Mia, who had been invited to the meeting by the ministry's head of legal services, brought a copy of the OPA's non-privileged Oakville documents to the meeting. These are the documents here that we brought to the meeting.

Mr. Peter Tabuns: Okay, and was there another set of documents or a copy of those documents brought by Jesse Kulendran?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: She kept those, and as she said to us, she annotated those documents. Did you see her annotate the documents as you went through?

Ms. Kristin Jenkins: I can't specifically recall that, but that is completely possible that she did that.

Mr. Peter Tabuns: The exclusions: Was there any pattern as to why one document was being excluded over another?

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Ms. Kristin Jenkins: There's a description in the package that I circulated to the committee—

Mr. Peter Tabuns: Which tab is that?

Ms. Kristin Jenkins: Tab 10.

As I said in my opening remarks, Ms. Kulendran told my colleague and I that the ministry was using a strict interpretation of the wording of the estimates committee motion. Essentially, the three things that she told us were that the documents needed to be correspondence, that they needed to fall within the dates of the motion, and that the correspondence needed to mention Oakville or Mississauga in the correspondence itself; otherwise, the correspondence and any attachments to that correspondence were to be excluded, even if the attachments mentioned—the test was that the correspondence must mention the cancellation of the Oakville and Mississauga power plants.

The other thing we were told at the meeting was that "SWGTA" or "southwest GTA" was not to be considered as a proxy for Oakville—and again, that this was the approach that the ministry was using and that it had been discussed with ministry FOI staff.

Mr. Peter Tabuns: Were you asked in that meeting to not discuss any of this with anyone else once the meeting was finished?

Ms. Kristin Jenkins: No, we were not.

Mr. Peter Tabuns: Did you challenge her on her interpretation of how documents were to be produced?

Ms. Kristin Jenkins: No, we did not. We went to the meeting to listen. The meeting was called very urgently. I was pulled out of another meeting at 20 to 10, and I was in that meeting at 10 a.m. We weren't sure, because it was scheduled at the last minute, what to expect and had decided prior to going to the meeting that we would listen and come back to the OPA and speak to our general counsel and CEO.

Mr. Peter Tabuns: Had you dealt with Jesse Kulendran in the past?

Ms. Kristin Jenkins: Yes, many times.

Mr. Peter Tabuns: Who did she say she was representing when she met with you?

Ms. Kristin Jenkins: Ms. Kulendran's position at the time was in the deputy minister's office, and we assumed that she was representing the ministry. As I said, the instructions that she provided to us were held out as the ministry's approach for screening the documents.

Mr. Peter Tabuns: As you're now aware, obviously, this approach is not one that was envisioned by this committee. The criteria that were put before you were far too narrow to capture the documents that we expected to have brought before us. Did Jesse Kulendran explain why there was such a narrow interpretation?

Ms. Kristin Jenkins: She said—my notes, which are also in your package in tab 3, was that the ministry was using a strict interpretation of the wording of the motion and that it had been discussed with ministry FOI staff.

Mr. Peter Tabuns: Did she ever indicate she was working on behalf of the Premier's office or anyone in the Premier's office?

Ms. Kristin Jenkins: No.

Mr. Peter Tabuns: When you were finished your meeting with Jesse Kulendran, you took these criteria and those were applied to the larger or fuller search for OPA documents. Is that correct?

Ms. Kristin Jenkins: Yes. When we finished the meeting, my colleague and I went back to the Ontario Power Authority and briefed the CEO and our general counsel, and subsequent to that, Colin Andersen made the decision that the OPA would proceed based on the instructions that Ms. Kulendran had presented to us. She had told us that they were the approach that the ministry was taking, and the fact that the head of legal had set up the meeting and we knew that the legal department at the ministry was leading the document disclosure—those were largely the reasons that I'm aware of, based on which Mr. Andersen made the decision to go ahead.

Mr. Peter Tabuns: Which legal counsel was present with Colin Andersen when he was briefed by you?

Ms. Kristin Jenkins: My colleague who was at the meeting, Ziyaad Mia, is an in-house lawyer for the OPA; and Mike Lyle, our general counsel.

Mr. Peter Tabuns: Did you get any pushback from them on this interpretation?

Ms. Kristin Jenkins: I didn't take any notes in that meeting, and I don't recall the specific discussion that took place.

Mr. Peter Tabuns: Okay. Had you had other interactions with Jesse Kulendran prior to this meeting?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: Can you characterize those interactions?

Ms. Kristin Jenkins: When I first started working at the OPA, Ms. Kulendran worked in communications and issues management, so it was often around news releases, Q&As, key messages on key issues. Then when she moved into the deputy minister's office, it would be on issues that were generally high-profile. Just prior to the estimates committee, it would have been the feed-in-tariff review. Prior to that, the OPA had updated the IPSP, and it would have been around that. Those would have been the most recent previous interactions with Ms. Kulendran.

Mr. Peter Tabuns: When she was here, she told us, "I did not direct the" OPA "to exclude documents. I do not have the authority..." I "acted in good faith."

Can you explain why she made those comments to this committee?

Ms. Kristin Jenkins: I can't explain why Ms. Kulendran made those comments to the committee. Ms. Kulendran gave us instructions and asked us to use them. The OPA decided, based on the fact that they were presented to us as the Ministry of Energy's approach to screening the documents, and for the reasons I've outlined previously, to go ahead and to rescreen our documents based on the instructions that we received from Ms. Kulendran.

Mr. Peter Tabuns: Tell us again when you realized that what you were doing was actually out of sync with what the Ministry of Energy was doing.

Ms. Kristin Jenkins: Colin Andersen told me and Mike Lyle on the afternoon of October 2 that he had just learned that the approach that we were applying to the documents was not in fact the approach that the ministry had been applying and that he'd found this out through the deputy minister, Serge Imbrogno.

Mr. Peter Tabuns: Serge Imbrogno indicated to us that he had received a call from Colin Andersen about an allegation of interference with document preparation. Can you tell us about those discussions you had with Colin Andersen when you pointed out to him that you were acting as directed by Jesse Kulendran?

Ms. Kristin Jenkins: When Mr. Andersen found out from the deputy that the approach we were using was not what the ministry had been using, he asked me and Mike to again go over what had gone on in the previous month, which I said I would be happy to do—to go back to review my notes and speak to my colleagues. Then I wrote the October 3 memo.

Mr. Peter Tabuns: What were the consequences for you of having written that memo on October 3?

Ms. Kristin Jenkins: There were no consequences.

Mr. Peter Tabuns: The whole matter leaves me very puzzled, I have to tell you. These are radically different interpretations of what went on. I've tried for a while to understand what was the goal of the instructions that were given to you. In those materials that you have, was there a pattern in exclusion that related to an aspect of the issue? Was there a pattern in terms of financial information or analysis?

Ms. Kristin Jenkins: I've not undertaken that kind of review of the documents. Again, the application of the instructions that Ms. Kulendran provided to us had the effect of excluding what turned out to be responsive attachments to non-responsive pieces of correspondence. In terms of the content of the attachments that were excluded, I have not analyzed to see if there's any kind of pattern.

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Mr. Peter Tabuns: Okay. I will be asking, Chair, at the end, for the transfer of those documents from you to the Clerk and a photocopy of the documents that were excluded so we can decide for ourselves if there's any pattern we can see.

Ms. Kristin Jenkins: You're asking me to leave the originals, or you're asking me to provide a photocopy?

Mr. Peter Tabuns: I would be comfortable with photocopies, but I would like to have the documents that were excluded.

Ms. Kristin Jenkins: That shouldn't be a problem. I would remind the committee that earlier in the month our CEO, Colin Andersen, wrote a letter to the committee about how we would like to share documents with the committee. In committing to provide copies, I would like to say that it would be in keeping with Mr. Andersen's letter, and we'd be happy to discuss that with you.

Mr. Peter Tabuns: Just so I'm clear, while you're still on the record, what would be different in his instructions from our just having photocopies of everything that got marked?

Ms. Kristin Jenkins: There is unrelated information in this, and although it's non-privileged, I can't say for certainty that there's not confidential information in here. Although it's non-privileged information, there could be confidential information. I can tell you that there is information in here that is unrelated to the cancellation of either of the gas plants. Mr. Andersen's letter is in this package. It does set out options for transferring that information to the committee, providing that information to the committee.

Mr. Peter Tabuns: Well, I will take this up at the end of this session rather than use up more of my questioning time right now.

Do you recall when you were told that the Mississauga plant would be cancelled?

Ms. Kristin Jenkins: Yes. I was told the evening before the plant was cancelled. I'm sorry; I want to rephrase that, please. I was told the evening before the Liberal Party announced as a campaign platform that, if the government was re-elected, the plant would be cancelled.

Mr. Peter Tabuns: If I remember, that was on a weekend?

Ms. Kristin Jenkins: Yes. I think it was September 23 or 24 that I was told. It was the night before the Liberal Party made the announcement.

Mr. Peter Tabuns: Were you aware at that time if the Ontario Power Authority had any internal estimates on the cost of cancellation?

Ms. Kristin Jenkins: No, not at that time.

Mr. Peter Tabuns: Did you see estimates for the cost of cancellation later?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: And when would you have seen them?

Ms. Kristin Jenkins: I couldn't give you a specific date, but by some point in the few months after the cancellation probably some estimates—as my colleague JoAnne Butler testified a couple of weeks ago, there would have been initial cost estimates, and as more information became available, they would have become more certain. Then other costs would have been factored in as well.

Mr. Peter Tabuns: We had the opportunity yesterday to hear the Minister of Energy talk about the cost that has been determined for cancellation, a cost determined by the Auditor General. There was some implication that the OPA was derelict in explaining fully to ministerial staff or even the minister what the costs were going to be. Have you got any evidence to support or refute that allegation?

Ms. Kristin Jenkins: There would have been communication with the Ministry of Energy throughout the negotiation process. That would have included information shared about costs, and that would have happened throughout the process, as I said, and leading up to the signing of the agreement in July 2012. As we were looking, with our colleagues in the ministry, at potential sites, the costs of alternative sites would have been factored into the decision-making and into that process.

Mr. Peter Tabuns: Were you ever briefed on the full costs of cancelling the Oakville and Mississauga plants?

Ms. Kristin Jenkins: When the announcement was made on the Mississauga plant, I had gone on vacation just shortly before the transaction was finalized and didn't return for several weeks after. When I came back at the beginning of August, I would have reviewed the materials, primarily communications materials, that the government had put out during that time period.

With respect to TransCanada, on the 24th of September, an MOU was announced between the OPA, the government and TransCanada. So, yes, I was briefed on that and I did participate in developing the communications materials that went out on the 24th, when we posted the MOU, etc.

Mr. Peter Tabuns: Were there internal discussions at that time that there were costs beyond the sunk costs, the \$40 million that had been discussed?

Ms. Kristin Jenkins: Yes, the gas management and delivery costs, and then there were also discussions

around the—certainly on the day, I knew, because it's reflected in our communications materials and it's in the MOU, the gas management and delivery charges. Then there were discussions around the transmission costs, as well as connections at the site, connecting the new facility to the grid.

Mr. Peter Tabuns: On March 19, in testimony here, your colleague JoAnne Butler said the government would have been aware, given that they signed the memorandum of agreement, that these costs were going to be on the government's shoulders. Would that be your impression? The government would have understood the scale of what they were signing off on?

Ms. Kristin Jenkins: Yes, I agree with what JoAnne has said, and I would just make sure that it's clear that at the time that the MOU was signed, the exact quantum of those costs was not known. Some of them, as JoAnne pointed out, are still to be determined because they require engineering and design work, but certainly that there were these categories of costs would have been known in September when the MOU was concluded.

Mr. Peter Tabuns: Okay.

The Chair (Mr. Shafiq Qaadri): About one minute.

Mr. Peter Tabuns: You were involved in producing a considerable amount of media material. Did you ever produce a question-and-answer on costs?

Ms. Kristin Jenkins: Probably, but off the top of my head I can't recall.

Mr. Peter Tabuns: All right. Do you believe that the OPA has not been open and forthcoming with the government, with the Minister of Energy, about the costs of these cancellations?

Ms. Kristin Jenkins: I believe that the OPA has been forthcoming and open about the costs of the cancellations.

Mr. Peter Tabuns: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Mr. Delaney, 20 minutes.

Mr. Bob Delaney: Okay. Thank you very much, Chair. Good afternoon, Kristin. Welcome.

Ms. Kristin Jenkins: Thank you.

Mr. Bob Delaney: I just want to start with a quick recap. Can you recall which members you worked for while you were here at Queen's Park, prior to joining the civil service?

Ms. Kristin Jenkins: I worked for Ruth Grier when she was Minister of Health.

Mr. Bob Delaney: Okay. And then from there straight into the civil service?

Ms. Kristin Jenkins: No. I worked at the Ontario Medical Association before going to Cancer Care Ontario.

Mr. Bob Delaney: Okay. Well, clearly you're not the first person to step from working for an elected member into a more neutral role within either a government agency or a private company, so I guess we could characterize that as fairly common?

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Yes, okay. Following that, into the OPA?

Ms. Kristin Jenkins: I worked at Cancer Care Ontario for four years, and then I worked at Waterfront Toronto for about six years. Then I did a short stint at Toronto Community Housing, and joined OPA in 2009.

Mr. Bob Delaney: Okay, thank you. In between 2009 and when you became the VP of communications, what were you doing with the OPA?

Ms. Kristin Jenkins: I was the director of stakeholder and media relations.

Mr. Bob Delaney: Okay. I spent a little bit of time myself in PR prior to being elected. Just so that everybody else understands the jargon that we use, when you're doing stakeholder and media relations, what would that be?

Ms. Kristin Jenkins: Responding to media calls, preparing news releases, Q&As, key messages—

Mr. Bob Delaney: Right.

Ms. Kristin Jenkins: A lot of the work in my department is carried out in coordination with the Ministry of Energy, and a lot of that coordination happens in that particular area.

Mr. Bob Delaney: And you went from that to being the VP of communications?

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Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Did your reporting relationship change when you were promoted to the position of VP of communications?

Ms. Kristin Jenkins: Yes. I reported to Ben Chin prior to becoming the VP; Ben was the VP. When Ben left, I was promoted, and I now report to Colin Andersen.

Mr. Bob Delaney: Right. Okay. Is there anyone else in the reporting relationship?

Ms. Kristin Jenkins: To me?

Mr. Bob Delaney: Yes, for you.

Ms. Kristin Jenkins: Yes. I have a staff of about 20. Three directors report directly to me, and one admin assistant.

Mr. Bob Delaney: So, yourself, three directors, one admin assistant, and another dozen and change?

Ms. Kristin Jenkins: Another dozen or so staff, yes.

Mr. Bob Delaney: Okay. Would it then be the staff in your department who would be responsible for preparing news releases, key messages, Q&As? What other things on a daily basis does the shop produce?

Ms. Kristin Jenkins: Maintaining our corporate website, working with our various operating departments around stakeholder relations if we're managing a program such as the feed-in tariff program, new conservation programs, those sorts of things; providing support to the other divisions within the OPA.

Mr. Bob Delaney: Okay. A few questions regarding your role in the document search: You've mentioned that you were involved in that document search process, right down to talking about, "What terms are you searching for?" Had you ever done anything like that before?

Ms. Kristin Jenkins: First, I'd like to just clarify something. I, in fact, was not involved in the original search that was done on the documents. As I said in my opening remarks, the OPA's documents were searched and reviewed in May 2012, when the estimates committee motion was made. I became involved on August 22, and by that point, our documents had already been searched and reviewed. But to answer your question, no, I have not been involved in a large-scale document disclosure prior to this one.

Mr. Bob Delaney: Would it be reasonable to characterize it as very labour-intensive?

Ms. Kristin Jenkins: Very labour-intensive and time-consuming.

Mr. Bob Delaney: In brief, what type of skills, what type of hours; how did you organize your effort?

Ms. Kristin Jenkins: Initially, when I was asked to be involved, it was really to marshal staff. I don't provide advice—I didn't at the time—to our CEO on document disclosure. Following the August 22 meeting, I was asked to make sure that the documents were turned around to the ministry in the timelines that were requested. Most immediately that day were the non-privileged Oakville documents, but we had over 30,000 other pages of privileged documents that needed to have the screen—once we had agreed to apply the screen—applied to them. I had to marshal a number of staff and assist our legal department, who do have the responsibility for document disclosure, to get those documents screened in the 48 hours.

At that point, it was thought that the non-privileged were going to be disclosed on the 24th and that the privileged documents would be disclosed in camera to the estimates committee the following Monday and that we were working towards those deadlines based on the request from the Ministry of Energy.

Mr. Bob Delaney: So anybody who has ever tried to lift the boxes knows how much paper that truly is. It's an unprecedented effort. It's a difficult, organizationally complex and fairly tedious process to go through it.

At the same time, the Ministry of Energy was running—would it be fair to call it a parallel process?

Ms. Kristin Jenkins: Do you mean reviewing their own—

Mr. Bob Delaney: Reviewing its own ministry documents.

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Okay. What you were trying to do at this point as well was to coordinate with the Ministry of Energy to compare notes and ensure that, to the limit of your ability, the request of the committee was being met?

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Okay. And it was in that context that you had your meeting with Jesse Kulendran, who was a Ministry of Energy staff person, on August 22?

Ms. Kristin Jenkins: Yes. The previous week, our legal department had provided the ministry's legal department with a full set of our Oakville documents. In

July, our legal department had provided the ministry with a few sets of our Greenfield South or Mississauga documents to review.

Mr. Bob Delaney: Right. Speaking here at Queen's Park in a news conference, your CEO, Colin Andersen, was asked about that particular meeting between yourself and Ms. Kulendran. His answer was—and I'll use his words—"It's natural that we compare notes on what we are doing." Would you agree with Mr. Andersen that it was important to—and I'll use his words—"compare notes" to make sure that the ministry and the OPA were following a similar approach to respond to the request?

Ms. Kristin Jenkins: Yes, I do agree with that.

Mr. Bob Delaney: Okay. Would that be an accurate description of the purpose of your meeting on August 22, that you were there so you could share your observations made during your respective searches?

Ms. Kristin Jenkins: No, I don't agree that that was the purpose of the meeting. The meeting was called very urgently by the Ministry of Energy for the Ministry of Energy to share their issues, to let us know the issues that they had with our documents. The Ministry of Energy did not share their documents with us until just before the disclosure on September 24. I believe we received the ministry's documents as a courtesy a few days—maybe on the 20th or the 21st. But we didn't come to that meeting to provide comments to the ministry.

Mr. Bob Delaney: To talk about that meeting again in a little bit more detail, do you know who arranged it?

Ms. Kristin Jenkins: Halyna Perun, the director of legal services at the Ministry of Energy. She contacted our general counsel, Mike Lyle. Mike Lyle asked one of his lawyers, Ziyaad Mia, to follow up with Ms. Perun, and then I was asked to attend; Mike Lyle asked me to attend the meeting with Ziyaad.

As I said, it happened very quickly. I was in another meeting at 9:30 and was in the deputy minister's office at 10.

Mr. Bob Delaney: Yes, you have described throughout a process where you had a lot of work to do and you had to do it very quickly, so we understand the efforts that you made.

Do you recall who was in attendance at the meeting?

Ms. Kristin Jenkins: Myself, Ziyaad Mia and Ms. Kulendran.

Mr. Bob Delaney: So some relatively senior OPA officials and Ms. Kulendran.

Ms. Kristin Jenkins: That's correct.

Mr. Bob Delaney: I guess you're aware that Ms. Kulendran has already been here to testify before the committee. In her testimony, Ms. Kulendran said that in the meeting, you were reviewing documents that had been flagged as potentially non-relevant. Just one more time, would you give us some examples of some of the types of documents—you don't have to tell us what was in them—that might have been flagged as non-responsive?

Ms. Kristin Jenkins: There's a document that contains all of the transition briefing notes that the OPA

prepared after—it wouldn't have been; I'm mixing up Mississauga. It would have been after one of the changes, a cabinet shuffle. Because all of the files were saved as one Word document, there are a number of briefing notes, including notes on Mississauga and Oakville; but because they were all contained in one document, all of the briefing notes were in the package, so those other briefing notes would not be relevant.

Mr. Bob Delaney: In other words, pretty common-sense stuff. And if it didn't respond to the request, then it wasn't part of what you had disclosed.

Ms. Kristin Jenkins: Yes. And when the OPA had screened its documents in May—my colleagues had gone through the documents in May and screened them for relevancy—it was missed.

Mr. Bob Delaney: Okay. You described earlier that you report to Mr. Andersen, so I think it's very clear, then, that you don't report to Jesse Kulendran.

Ms. Kristin Jenkins: No.

Mr. Bob Delaney: Nor did she have any line authority over you at the time of that August 22 meeting.

Ms. Kristin Jenkins: No.

Mr. Bob Delaney: The Deputy Minister of Energy, Serge Imbrogno, stated that Ms. Kulendran—again, I'll use his words—“was in a capacity of coordinating. She wasn't in a capacity of” providing direction. Ms. Kulendran herself told the committee, “I did not have the authority to direct the OPA.” Based on what you've told us so far, that seems accurate?

Ms. Kristin Jenkins: It's factually correct. There's only one person who has the authority to direct the OPA, and that's with a capital D, and that's the Minister of Energy.

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Mr. Bob Delaney: Okay. In the memo that you wrote on October 3, you seem to suggest, and perhaps you can clarify this, that Ms. Kulendran somehow—the word that you used in the memo was “directed” the OPA. How was it possible for Ms. Kulendran to direct senior OPA officials?

Ms. Kristin Jenkins: As I've said previously, Ms. Kulendran instructed, directed, told us that we should be following the same approach as the ministry. She presented that approach. We took it back to the OPA and Colin Andersen made the decision to follow Ms. Kulendran's direction.

When JoAnne Butler was here, there were a number of questions asked of her around a second counter-offer that the OPA made to TransCanada. The government asked us to make that counter-offer. They told us that—they set an expectation. The OPA board of directors agreed to do that.

Mr. Bob Delaney: What I'm trying to clarify here, and I think you're helping in this regard, is that I know that neither you nor Ms. Kulendran intended to either mislead anyone or leave the wrong impression. But in your memo where you used the word “direct”—I'm just trying to clarify here—Ms. Kulendran could not direct you to exclude anything.

Ms. Kristin Jenkins: Ms. Kulendran gave us instructions on how to screen the documents, told us that it was the ministry's approach and set an expectation that the OPA would follow it. We took that back to Colin Andersen and our general counsel. Ms. Kulendran had also told us that the approach had been discussed with ministry FOI staff and the head of legal at the ministry had set up the meeting. For those reasons, and potentially others, Mr. Andersen decided to proceed as Jesse had asked us to do.

Mr. Bob Delaney: In the end, though, the decision to disclose what was responsive and what needed to be disclosed was made by the OPA?

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Okay. When you described that process, earlier you used the words “strict interpretation” in your evaluation. What did “strict interpretation” mean?

Ms. Kristin Jenkins: Based on what was presented to us in the meeting, if you go back to tab 10 and the instructions that Ms. Kulendran provided us, I would say that I took, based on the context that she provided, a strict interpretation of the wording of the motion. It would really be these three points: It has to be correspondence, so it couldn't just be a document, it would have to be correspondence; it had to fall within the dates of the motion; and it had to mention the words “Oakville” or “Mississauga power plant” in the correspondence. If it didn't, then everything was to be excluded, including attachments to the correspondence. That's what I took to be the strict interpretation of the wording of the motion.

Mr. Bob Delaney: In other words, it was neither your intent nor in your experience the ministry's intent to withhold anything, but to make sure that both the OPA and the ministry were trying to do the same thing in the same way.

Ms. Kristin Jenkins: I agree that the OPA felt that it was very important that the OPA and the ministry be consistent in the approach that they were applying to disclosing the documents that were requested by the estimates committee.

Mr. Bob Delaney: I'm going to take that as a yes.

Who formally provided the Clerk with the final documents in all three OPA disclosures?

Ms. Kristin Jenkins: The OPA, OPA staff. Mike Lyle provided the documents to the Clerk in the July disclosure, then the two subsequent disclosures in the fall I believe were from a staff person from my department.

Mr. Bob Delaney: After hearing what you've said, then, I think this is clear. I'm sorry if I seem to be beating this to death; I think this is something we'd just like to make very clear. The OPA was responsible for their own document search. They had the final signoff, and they provided them to the Clerk.

Ms. Kristin Jenkins: That's correct.

Mr. Bob Delaney: Thank you. How am I doing on time, Chair?

The Chair (Mr. Shafiq Qaadri): About 2.5 minutes.

Mr. Bob Delaney: A couple of questions that describe the process a bit more generally. In his news conference,

Mr. Andersen emphasized that everyone at the OPA was working really hard—and again I’m going to use his terms—to get it right. So, from what we’ve heard from witness after witness, the ministry and the OPA acted in good faith to comply with the motion for documents. Would you agree?

Ms. Kristin Jenkins: I can say that, yes, the OPA applied best efforts, acted in good faith to comply with the motion.

Mr. Bob Delaney: So after the initial search, when you saw that search terms were missed which resulted in additional documents being disclosed to the committee—for example, in his letter to the Clerk on October 12, 2012, after the second disclosure of documents, Colin Andersen wrote, “It was always our intention to provide all responsive records and respect the ruling of the Speaker.” Would you agree with that?

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Okay. Chair, time?

The Chair (Mr. Shafiq Qaadri): About 1.4 minutes.

Mr. Bob Delaney: Okay. I can get a couple more of these in, then.

In this letter, Mr. Andersen goes on to apologize to the committee and the Legislature, saying, “Our initial efforts fell short....”

“Our due diligence on the September 24 disclosure revealed the need to search additional terms and OPA employees’ mailboxes.”

Could you tell us what these additional search terms were? Do you remember?

Ms. Kristin Jenkins: I don’t have the list in front of me.

Mr. Bob Delaney: Okay.

Ms. Kristin Jenkins: It would have included the proper name of the power plant, Oakville generating station.

Mr. Bob Delaney: Okay.

Ms. Kristin Jenkins: I can provide you with that list.

Mr. Bob Delaney: Well, I think we’ll start there in the next round, and I just want to thank you for clearing up some things in this first round of questioning.

Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. You still have 0.5 minutes left, but in any case, Mr. Fedeli?

Mr. Victor Fedeli: Thank you very much, Chair, and thank you for being here today. I know you’ve gone over some of this. I just need it kind of in plain English.

Back in September, the OPA had done the document search based on the criteria they felt was accurate and correct and had your documents somewhat ready to go. Jesse Kulendran and others come in and tell you, “Hang on a second. The documents needed to be correspondence falling within the dates. They needed to mention Oakville, Mississauga. If not mentioned in the correspondence, the correspondence and any attachments were to be excluded, and SWGTA was not to be considered a proxy for Oakville.” Is that clear?

Ms. Kristin Jenkins: Yes. The only thing that I would clarify was that the initial search and review of the OPA documents was done in May. It was completed the first week of June.

Mr. Victor Fedeli: May—June?

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: Please?

Ms. Kristin Jenkins: And then copies of the Mississauga documents were provided to the ministry in July, and then in August the Oakville documents—and I just say that they were being reviewed by the ministry during that time. We did not have copies of the ministry documents until later.

Mr. Victor Fedeli: No, no, not the ministry documents, your OPA documents.

Ms. Kristin Jenkins: So when we met with Ms. Kulendran on August 22, when I was asked to attend that meeting, I was told by our general counsel, Mike Lyle, that the purpose of the meeting was for Jesse Kulendran to provide us with the ministry’s issues about our documents.

Mr. Victor Fedeli: So you turned over OPA documents on Mississauga to the ministry in July, and Oakville in August?

Ms. Kristin Jenkins: That’s correct.

Mr. Victor Fedeli: And they came back to you—Jesse Kulendran comes back to you and says, “Look, you’ve got too many documents here. Again, it should fall under these four criteria.”

Ms. Kristin Jenkins: Yes, and the feedback, again, that Ms. Kulendran provided was specifically to the Oakville non-privileged documents.

Mr. Victor Fedeli: So why I read that is, when you read your opening statement, you didn’t read those four points and you missed another paragraph down in the middle—on purpose or just by accident?

Ms. Kristin Jenkins: I was told that I was going to run out of time.

Mr. Victor Fedeli: Oh, okay. So you picked that one to—that’s no problem.

So, back then, again you’ve got—eventually the OPA and the government turned over 36,000 documents to the Clerk and then in October we had another batch of 20,000 documents.

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Ms. Kristin Jenkins: Approximately 14,000 of those were OPA documents.

Mr. Victor Fedeli: Were OPA?

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: So in that 14,000, do you go back to what you originally had?

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: Okay. So you originally had how many thousand?

Ms. Kristin Jenkins: In the first disclosure—

Mr. Victor Fedeli: Of the 36,000, how many are yours?

Ms. Kristin Jenkins: —27,000 pages were the OPA’s documents.

Mr. Victor Fedeli: That's 27K, OPA. The 20,000 pages—how many thousand? Fourteen thousand?

Ms. Kristin Jenkins: Fourteen.

Mr. Victor Fedeli: So originally, you had 41,000 documents from the OPA?

Ms. Kristin Jenkins: No, you can't do that, because we didn't have the—well, you could say in the original search, we added custodians.

Mr. Victor Fedeli: Oh, the three names, right.

Ms. Kristin Jenkins: We augmented and we added search terms. We augmented.

Mr. Victor Fedeli: So in the original, you had more than 27,000 but less than 41,000?

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: Okay. Jesse Kulendran comes in and says, "No, you shouldn't put this, this, this or this in"—the four items—"if they say 'SWGTA'" and those other confines, if you will. Why did you eventually, when you turned the 14,000 over to the Clerk, put those back in? Was it somebody's conscience? What happened? How did those 14,000 get re-added back when they were originally pulled out?

Ms. Kristin Jenkins: I just want to clarify, and this is actually set out. Mr. Delaney has just referred to the letter. It's tab 13 in the package I circulated, and it's Colin Andersen's transmittal letter to the Clerk on October 12.

The additional search terms, the additional OPA employees that were searched, of those approximately 14,000—you'll see this in the third paragraph of the letter—about 7,600 of those pages resulted in the additional search terms and additional people, and then the balance, about 6,400, resulted from us going back and reviewing the documents that we had excluded based on that August 22 meeting.

Mr. Victor Fedeli: So those 6,400 would then have the terms such as "SWGTA," all of the other things—"Mississauga," "Oakville"—all of the words that were pulled out in the first round?

Ms. Kristin Jenkins: Yes. I'd like to clarify that we did use proxy terms in both searches, the one that was conducted in May and in September, so that the first disclosure would have had TransCanada, TCE, Greenfield included, in addition to Oakville and Mississauga. But yes, those were included.

Mr. Victor Fedeli: Can you just repeat those? Those would have been in the first batch?

Ms. Kristin Jenkins: There would have been documents disclosed that refer to TCE, TransCanada, TC, Greenfield, Greenfield South. There would have been documents that were disclosed as part of the 27,000 with all of those terms included in them.

Mr. Victor Fedeli: So then you come back with the approximately 7,000 extra ones that have things like "SWGTA" and the other ones that you would have taken out in that first round?

Ms. Kristin Jenkins: Yes. They would have been the documents that we had excluded based on the instructions we received on—

Mr. Victor Fedeli: So those would have been documents you excluded when you sat—and Jesse Kulendran or whomever else was there that said, "No, that one shouldn't be in. This wording shouldn't be there. You can't use words with that." Is that fair?

Ms. Kristin Jenkins: Yes, it's the screen that we applied to these documents.

Mr. Victor Fedeli: Okay. I want to direct your attention, then, to your number 10—a very well organized binder, by the way, I might add. You said, down on the bottom, second-last paragraph, "With respect to number 3 above, in preparing the documents" that included correspondence, OGS, TransCanada, TCE, TC etc. Then we roll over to number 11. This is the key messaging, okay? Here's where I'm going to have some difficulty: "The documents were not intentionally left out." Well, they were intentionally—they were in the original package. They were taken out intentionally. "It was a mistake...." What was the mistake? Listening to the Ministry of Energy? Is that the mistake that they're referring to in here? Because the documents were, you told us, in the original. Those 6,400 documents were intentionally removed and then they were intentionally put back in, in the second batch. So how can we say the documents were not intentionally left out? Can you answer that?

Ms. Kristin Jenkins: Yes. The first thing I'd like to point out to you is the date on these key messages. They were written on October 1. They were written the day before—at least this draft of them was prepared the day before the OPA was made aware that the approach that we had been applying to our documents was not the approach that the Ministry of Energy had been using. When these key messages were drafted, we felt that we were applying an approach that had been sanctioned by the ministry, by ministry legal; that had been discussed with ministry FOI staff.

Mr. Victor Fedeli: So the next day, you had a meeting with Jesse Kulendran. Is that what you're saying?

Ms. Kristin Jenkins: No, this is October 1. It's the next day—

Mr. Victor Fedeli: When was the meeting with Jesse Kulendran?

Ms. Kristin Jenkins: August 22. The day after these Q&As were prepared, Serge Imbrogno informed Colin Andersen that the approach that the OPA was using—on October 2—was not, in fact, what the ministry was using. October 3, I wrote my memo—

Mr. Victor Fedeli: Oh, I'm not interested in worrying about whether you line up with the ministry. I understand that.

Ms. Kristin Jenkins: Yes. These were written before the OPA knew that there was a problem with the approach that we were using.

Mr. Victor Fedeli: I hear you.

So on September 24, 27,000 documents were disclosed. Back in August, you had more than 27,000 documents, some 6,400 more, that were in your original package. You took 6,400 out on the advice of the Ministry of Energy. And on October 1, you're saying docu-

ments were not intentionally left out; it was a mistake. What was the mistake?

Ms. Kristin Jenkins: Given the date that these were written, it was the fact that we had left out search terms and we had left out employees that we should have searched.

Mr. Victor Fedeli: But you've already given documents on September 24.

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: You're getting ready now for the second document dump, which came in October.

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: This is in preparation for that document dump, the second one, that was going to redeliver the original 6,400 documents. Am I correct so far?

Ms. Kristin Jenkins: Yes.

Mr. Victor Fedeli: Okay.

Ms. Kristin Jenkins: No, no, no. I'm sorry; excuse me. No, on October 1, we were not planning to go back and take a look at those 6,400 documents. On October 4, we still felt that we had appropriately screened those documents out based on the instructions that we—

Mr. Victor Fedeli: So what do you mean by "Key messages"? Number one, this was October 1: "OPA today disclosed documents that should have been disclosed on September 24...." You're getting ready with the message to give when you give the second document dump.

Ms. Kristin Jenkins: That's correct.

Mr. Victor Fedeli: Well, that's my point. In the second document dump are going to be those 6,400 missing documents that were originally included in the first document dump that you took out.

Ms. Kristin Jenkins: We didn't know that on October 1. We didn't know that until October 2, the following day, when the deputy—

Mr. Victor Fedeli: But you say you're disclosing documents that should have been disclosed. Which ones are you talking about? Only the few employee ones?

Ms. Kristin Jenkins: No, the employees and the search terms that we left out. If you go back to the letter—

Mr. Victor Fedeli: Okay, because it says that down at the bottom. It says, "We left out correspondence from three ... employees"—that's fine—"and did not include some relevant search terms." So you're backtracking; you're now going to bring those relevant search terms that you took out the first time. It's clear. It's plain as could be here.

Ms. Kristin Jenkins: No, Mr. Fedeli, can we go back to the transmittal letter for a minute, just so—

Mr. Victor Fedeli: No, I want to stick with this letter. You said on October 1, OPA—you're preparing the document for when you do the dump.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I'd just respectfully remind all members of the committee that we do allow witnesses, especially of a complex nature, to proceed—

Mr. Victor Fedeli: Yes, I appreciate that. I'm asking the questions. I don't want to go back to that document. I want to talk about this one. I haven't got a good answer for this yet. I have not heard the right answer here.

"OPA ... disclosed documents that should have been disclosed on September 24...." Then you say it's the correspondence from three former employees—that's fine; we'll leave them out—"and did not include some relevant search terms." You are talking about the 6,400 documents that you took out.

Ms. Kristin Jenkins: No, I'm not. We weren't—

Mr. Victor Fedeli: Well, what relevant search terms are you missing? There were more than the ones you just talked about?

Ms. Kristin Jenkins: Yes, we ran a number of other search terms. In fact, after October 1, we actually searched more than three OPA employees.

Mr. Fedeli, I guess I'm not expressing myself clearly. There were two reasons why the OPA needed to do another document disclosure. In the first instance, it was because we discovered that we had not, in fact, in May, included enough search terms, and we had not included enough OPA employees. We had not searched the mailboxes of three employees who had left the organization, and then we actually added other current employees to the search in progress.

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On October 2, we then had another reason for doing the second disclosure, and that is when we discovered that the approach that we had applied to screening the documents was not the approach used by the ministry. That resulted in 6,400 pages being disclosed. Searching more OPA employees and searching more search terms resulted in about 7,600—if my math is correct—pages.

So there were two reasons for the disclosure on October 12. One of them was related to the meeting with Ms. Kulendran.

Mr. Victor Fedeli: So let me ask you about the meeting with Ms. Kulendran. She told you, at that time, to take out the SWGTA documents? It says here, in your opening statement, "SWGTA ... was not considered a proxy for Oakville." So did she ask you then to take ones with "SWGTA" out, and did they come out?

Ms. Kristin Jenkins: Yes, and those instructions are reflected on these Post-it Notes.

Mr. Victor Fedeli: So that's fair. She asked you to take those out.

Go to the next page of these key messages. Right in the middle, it says here: "What were the search terms that were left out? The search terms were Oakville Generating Station, OGS, Oakville power plant, Oakville gas plant and Keele Valley. Documents that included the acronym SWGTA, while searched, were left out of the first disclosure. None of this was intentional."

How can it not be intentional when they were in the original batch and she told you to take them out? That's an intentional removal. Why does it say that none of this was intentional? I'm sorry to be so angry here, but I need to hear the truth from you. Why does it say none of this

was intentional? Were these not indeed the documents that you were told to take out, and are these talking points not truthful?

Plain and simple—this is a yes or no. We're at this point now today. We're at a very critical juncture here today. This is a very critical answer from you, and we're ready for it. We're all ready to hear this from you. We're ready to hear this.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli. Sorry. Witnesses are allowed to answer fulsomely. We do not have the privilege to say, "Yes or no."

Mr. Victor Fedeli: Answer fulsomely. We're ready to hear the truth here. Were these not the documents that we're referring to, the documents that were pulled out that are referred to in here?

Ms. Kristin Jenkins: Mr. Fedeli, it was on October 2 that the instructions that Ms. Kulendran shared with us at that meeting that asked us to use, had held out as the ministry's approach—that we determined that they were not what the ministry had done. These Q&As were written on October 1.

Mr. Victor Fedeli: Yes, and you met with Jesse Kulendran in August.

Ms. Kristin Jenkins: That's correct.

Mr. Victor Fedeli: And she asked you to take out the SWGTA documents in August. She asked you that.

Ms. Kristin Jenkins: Yes. Mr. Fedeli, it was as a result of the October 2 meeting with Mr. Andersen that required me to go back and find these documents and review the notes from that meeting. It was on October 2 that we determined that the reason we had excluded the southwest GTA documents was at the instruction of Ms. Kulendran.

Mr. Victor Fedeli: Okay. So look at this other line here. The second paragraph on that second page: "Did the government approve the OPA disclosures? Did they review the documents before they were disclosed to the committee?" Your answer in these talking points is, "The government did not see the additional documents before we disclosed them." Are those documents the ones, including the southwest GTA, that they told you to remove?

Ms. Kristin Jenkins: This—

Mr. Victor Fedeli: So they did see the documents before you disclosed them.

Ms. Kristin Jenkins: If I could just explain, and I will answer—

Mr. Victor Fedeli: We're trying to hear you.

Ms. Kristin Jenkins: I will answer your question, Mr. Fedeli. This sentence was written with respect to the disclosure on October 12. The Ministry of Energy did not request to see the documents prior to our disclosure on October 12, and we knew that they would not be asking to see them.

You are correct that some of the documents that we did disclose on October 12 the ministry had reviewed previously in August, but that wasn't—the intention of this sentence was to say that we had not shared the

second disclosure documents with the ministry prior to the release.

Mr. Victor Fedeli: Look: You were asked in August to take documents out. On October 1, talking points are ready here for the second document dump of 20,000, which are going to include documents that were intentionally left out in the first place.

Your notes say the documents were not intentionally left out. It was a mistake. It did not include relevant terms. It was not done intentionally. Some of the records were overlooked. This was not done intentionally. The government did not see—I say to you, they saw them. They told you to take those 6,400 documents out. Whether it was somebody's conscience or your lawyers didn't like the wiggle words that they used and got you to put these documents back in, the way they should have been in the first time, they did see these documents before. They were intentionally left out. It says here it was not intentional, but they were. "SWGTA," while searched, were left out of the first disclosure. None of this was intentional—that's nonsense. You've already told us you took those documents out. It was an intentional removal of those documents. How can you sit there and tell us anything different now by talking about one date? August, October 1, October dump—bing, bang, bong. Now we understand what we mean by "cover-up." We now understand a lot deeper the cover-up and the depth this cover-up goes to. Thank you, Chair.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Ms. Jenkins, when the OPA did its initial search, clearly you had a different interpretation from the Ministry of Energy as to which documents were to be taken out. Can you tell us what your interpretation was that gave you a stack of documents that the Ministry of Energy, through Jesse Kulendran, later said, "Take these out"?

Ms. Kristin Jenkins: I wasn't involved in the search that was done in May. As I said in my opening statement, I only became involved in the document disclosure process itself on August 22 when I was asked to attend the meeting with Jesse Kulendran. I can't give you the specifics of the process and the searching that was undertaken in May. I could follow up with you, but I don't have that knowledge first-hand.

Mr. Peter Tabuns: In fact, if I could ask, through the Chair, yes, I would like a note back asking what the parameters were that the OPA used prior to these instructions given by Jesse Kulendran.

The Chair (Mr. Shafiq Qadri): Noted.

Mr. Peter Tabuns: The second thing is, those documents beside you, quite a few were not disclosed the first round through. They were marked with Post-it Notes. Were they disclosed in the second round?

Ms. Kristin Jenkins: Everything in the pile that is related to the estimates committee motion has been disclosed.

Mr. Peter Tabuns: So everything that's in that pile beside you we have photocopies of?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: Not marked, but they were the ones that were initially taken out of the process?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: You were trying to put forward your analysis to Mr. Fedeli as to the sequence of events. Could you please give me your analysis of how it came to be that your statement, or the statement that the OPA put out about document release, and the actuality of the documents were different?

Ms. Kristin Jenkins: First of all, this was a draft, and it was revised after the information that we received on October 2. So this statement was not put out; it was an early draft. It was being proactively prepared. As you know, the documents were not disclosed till October 12, and the date on this is October 1.

Colin Andersen informed Mike Lyle and I on October 2, as I've said, that the approach that we had been using was not what the ministry had been using, and there were a couple of things. First and foremost, he said we had to go back—and we all knew this, that we had to go back and we had to make sure that anything that we had screened out based on that approach we needed to go back and make sure that we were disclosing all of the relevant documents.

We had a massive search going on at the time. As I said, it wasn't just three more employees. There were a number of other employees and other search terms that were generating lots of documents. We had to make sure that the staff that were doing that work knew that the screening process had changed.

Mr. Andersen also asked me, given this difference in approach in what I and my colleague Ziyaad Mia had been consistently you know, had reported back to the OPA—Mr. Andersen wanted to obviously understand and be clear that this is what had taken place at the meeting.

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That caused me to go back and review my meeting notes on October 3 and speak to Mr. Mia, and it was through that process, to the specific point of southwest GTA, that it was determined—we knew that at “southwest GTA,” when we started doing the second search, we had excluded documents with “southwest GTA.” At that point, when that was discovered, we were focused on doing the other searches, making sure that those—and didn't give a lot of thought to it other than, “Here's another example of documents that we've left out.”

It wasn't until the second, when we found these documents, when we started reviewing our notes from the meeting—I mean, it had been a month. A month had passed since we had met with Ms. Kulendran. You've got a chronology in here of the document disclosure. You can see that, in addition to the document disclosure, we had also been negotiating the deal with TransCanada. There was a lot going on.

So when we went back and reviewed the notes from the meeting, we discovered that the reason that the SWGTA materials had not been disclosed was that it was

part of the screen that Ms. Kulendran had, and that's why I point to the date, because it's important. The document was drafted before we received that critical information from the deputy that our approach was not what the ministry was using.

Mr. Peter Tabuns: So in fact, these draft talking points were superseded by the information you got the next day?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: On October 3, your email to Colin Andersen said effectively, “Colin, you know there's a lot more going on here and that we were told to exclude documents, so in fact these draft talking points are no longer valid”?

Ms. Kristin Jenkins: That's correct. Our final communications materials for the October 12 disclosure are different than this draft of October 1.

Mr. Peter Tabuns: Are they in this package of—

Ms. Kristin Jenkins: No, they are not.

Mr. Peter Tabuns: Could you please provide us with a copy of those final talking points?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: Noted by the Chair, noted by the Clerk; it's now official.

You must have been very disturbed when you realized that you had been given instructions that were contrary to the intention of the committee and contrary to what even the Ministry of Energy was doing.

Ms. Kristin Jenkins: I think that I and everyone at the OPA was very concerned that we disclose all of the documents, make best efforts to disclose all of the documents that were responsive to the estimates committee motion. At the time, there was debate going on in the House around the contempt motion. We had always taken the committee's request very seriously. As soon as we realized—we realized on September 25 that we likely had—there were other documents. We were conducting due diligence. The disclosure had gone out the day before. We were kind of doing the wrap-up work and determined. We had to look into it, and by the 27th, Mr. Andersen had notified the Clerk of the Committee. We had started the work to carry out those searches on the 27th, and staff worked around the clock, weekends, to make sure that the materials got out. So yes, we were concerned that we had not disclosed all of the documents.

Mr. Peter Tabuns: Did you use an outside firm for the second phase, to help you pull together the documents?

Ms. Kristin Jenkins: We did have some assistance from a law firm, Goodmans, to help us identify the documents that we were finding in our second search that were potentially duplicative with the first search. We didn't want to—and after the first search and before the October second search, we acquired eDiscovery software, which now enables us to do a much more thorough job of searching records. So we did use that for the second search, but because—we weren't able—the first search had not been done that way, we had to, in some instances, compare, and we did get outside assistance to

help us identify the records that we had already disclosed.

Mr. Peter Tabuns: You were involved with the second search, then?

Ms. Kristin Jenkins: Yes, I was part of discussions. Yes, I was involved. I again helped ensure that the work was carried out and that the CEO was kept informed as to the progress of the search, yes.

Mr. Peter Tabuns: And you were recovering emails from staff who had left the OPA?

Ms. Kristin Jenkins: Yes.

Mr. Peter Tabuns: Who had left within the last four months or five months?

Ms. Kristin Jenkins: I'm not sure that we set a time period. We looked at staff who had left during the time—who had been present at the OPA during the time period covered by the motion who would have been involved with the gas plant documents. Then we searched those employees.

Mr. Peter Tabuns: Thank you. You've been very thorough.

The Chair (Mr. Shafiq Qadri): To the government side. Mr. Delaney, 10 minutes.

Mr. Bob Delaney: How are you feeling?

Ms. Kristin Jenkins: Good.

Mr. Bob Delaney: Good.

Jesse Kulendran was here under oath. She testified at that time that she hadn't done anything inappropriate and that she didn't tell you to withhold documents with regard to some of the points brought up by my colleague on the opposite side relative to that term "SWGTA." Just for the committee and the witness, Ms. Kulendran said, "In reviewing the documents, it became apparent that it seemed" that they "searched the term 'SWGTA,' and as a result, it captured documents related to issues in the area but not related to the gas plant."

The Deputy Minister of Energy, whom Mr. Fedeli confirmed was, to use his words, "credible" and "a very solid witness," testified before the committee that he believes Ms. Kulendran's summary of the meeting. He said, "I never directed Jesse to go the OPA and ask them to exclude documents. I never myself directed the OPA to exclude ... documents. When I talked to Jesse about the allegations, she told me ... she did not direct the OPA. I have no reason to not believe what Jesse has" said.

In fact, Secretary Wallace launched an investigation into the allegations that were contained in the memo that you wrote, which I think we've explored very thoroughly at this point, and confirmed that there's no evidence that Ms. Kulendran acted inappropriately. Would that synopsis seem familiar to you? Would you agree with that?

Ms. Kristin Jenkins: I'm familiar and I'm aware of the deputy's testimony and Ms. Kulendran's testimony. But no, I don't agree with everything that you've said.

Mr. Bob Delaney: Okay. We'll come back to that.

Going back to your October 3 memo, it seems you sent it to just a small group of people: your CEO, Colin Andersen; Ziyaad Mia; Mike Lyle—anybody else?

Ms. Kristin Jenkins: No.

Mr. Bob Delaney: Okay. Did you forward it after sending it or at any other time to anyone other than the intended recipients?

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: Do you know who you forwarded it to?

Ms. Kristin Jenkins: I do.

Mr. Bob Delaney: Who?

Ms. Kristin Jenkins: His name is Will McDowell. He's a lawyer that I retained last fall.

Mr. Bob Delaney: Okay. Will McDowell.

Ms. Kristin Jenkins: Yes.

Mr. Bob Delaney: It was subsequently leaked. Do you know who might have leaked it?

Ms. Kristin Jenkins: I do not.

Mr. Bob Delaney: In forwarding it to Mr. McDowell, would Mr. McDowell know who may have leaked it?

Ms. Kristin Jenkins: Not that I'm aware of.

Mr. Bob Delaney: I ask this only because this leak resulted in some fairly serious one-sided allegations against Ms. Kulendran, who didn't have the opportunity to defend herself until just recently at this committee.

I'd like to ask you about another memo dated January 25 of this year, 2013, on the OPA's decision to retain Lenczner Slaght and its lawyers to prepare potential witnesses. You're familiar with the memo?

Ms. Kristin Jenkins: Yes, I saw it last week.

Mr. Bob Delaney: On April 9, Mr. Leone stood up in the Legislature to question the government on this "leaked document," which were his words, which he said "the OPA produced to us." Who would have provided that document to the Progressive Conservatives?

Ms. Kristin Jenkins: I don't know.

Mr. Bob Delaney: With regard to that, what type of legal advice could be helpful to a witness such as yourself?

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Ms. Kristin Jenkins: This is the first time that I've appeared before a legal proceeding, a legislative committee, as is the case with most of our colleagues. So Lenczner Slaght has assisted us, given us advice such as, "Listen to the question; read the documents. Even if it's your document, reread it before you answer," and feed-back on the way that we're answering the questions.

I'd also like to point out that Lenczner Slaght was also retained to conduct a review, at the request of our board, around the whole document disclosure process, and that's also part of the work that they did. So they interviewed staff, including myself, and did a report to our board of directors a couple of months ago providing a chronology of the document disclosure process as well as recommendations on improvements for moving forward.

We have developed a new framework for document disclosure which we put into practice with the Auditor General on the audit of the Mississauga gas plant and the document disclosure associated with that audit.

Mr. Bob Delaney: Okay. Did you talk with anyone other than Mr. McDowell about what questions you may be asked and what you might say?

Ms. Kristin Jenkins: The lawyers that are listed in the retainer letter with Lenczner Slaght.

Mr. Bob Delaney: Okay. Did you speak with anyone from any of the parties, the members or the staff about this committee and what your testimony would be?

Ms. Kristin Jenkins: No.

Mr. Bob Delaney: Okay. Is there something you would like to say to us that we haven't asked you at this point?

Ms. Kristin Jenkins: I know that Ms. Cansfield asked my colleague, JoAnne Butler, about any advice on doing things differently or improvements—and I'm not going to speak to the actual siting of gas plants. Around document disclosure, I mentioned that Lenczner Slaght—part of their work was to do a review and make recommendations. They're litigation lawyers; they have expertise in document disclosure. We also got advice from PricewaterhouseCoopers; they prepared a report for us as well.

I think that one of the things that we've learned is that, in the future, with these types of requests we need a written protocol with the ministry. We also need to have a clear understanding with the requesters of the information so that everybody's clear upfront on what we're doing and we're clear on what the expectations are. So I would say that we feel that that's really important going forward.

Mrs. Donna H. Cansfield: Do I have a couple of moments?

The Chair (Mr. Shafiq Qadri): Three.

Mrs. Donna H. Cansfield: Thank you. Actually, it was interesting; this morning we had Shelly Jamieson in, and I asked a similar question. Shelly spoke to the same issue, I guess, within the government: that they do have some processes and that a review of those processes would make some sense, because that's an extraordinarily large document search.

I know it's common practice to use a variety of names, and so, unless you have one of those famous appendixes at the back—half the time I don't know what half of the acronyms mean anyway.

The part that I would be really interested in—and I've asked this question of everyone—is the consultation process. I must admit, in the past I haven't always favourably looked on OPA's consultation processes; I've probably been a good critic. But it would be interesting to hear your perspective on how you could move forward and improve that. It's one of the most difficult things in this world to do: to consult.

Ms. Kristin Jenkins: I think that what we've learned in the OPA and the ministry is that consultation needs to happen very early on in the process, before the big decisions get made. I think that's a key thing. That's something that the OPA—we have a number of regional planning initiatives under way: Kitchener-Waterloo and York region and Toronto region. Consultation is happening right from the start of these planning processes so that once a decision is made to proceed with a piece of large electricity infrastructure, the community and local

officials are aware of the need, and it's not a surprise, and we're getting their input so that we can make sure that we understand where the best location is and can make sure that the local decision-makers also have the information that they need and that the communities are aware. So yes, I agree with you that consultation early on in the planning process, before the big decisions are made, is critical.

Mrs. Donna H. Cansfield: Thank you very much. That was very insightful.

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

Mr. Yakabuski, 10 minutes.

Mr. John Yakabuski: Thank you very much, Ms. Jenkins, for joining us today. You prepared a very thorough document dossier to help us along.

I just wanted to reiterate a couple of things because there have been differing viewpoints. Would it be fair to say that the Ministry of Energy and the OPA had two different ideas about what should be included in the document disclosure?

Ms. Kristin Jenkins: Certainly, when we left the meeting on August 22, we had been provided—we, my colleague Ziyaad Mia and myself—Ms. Kulendran had presented us with a set of instructions that were different than what we had used to review our documents for relevancy.

Mr. John Yakabuski: So the answer is yes.

Ms. Kristin Jenkins: Yes.

Mr. John Yakabuski: So there is a different view on what should be included in a disclosure?

Ms. Kristin Jenkins: Mr. Yakabuski, as it turned out—I just want to be clear, so as to not cause confusion with the Ministry of Energy. In fact, that's not what the Ministry of Energy was doing. They didn't screen their documents in that way. That's what we found out on October 2. But on August 22, we believed that what—

Mr. John Yakabuski: You had a directive.

Ms. Kristin Jenkins: And that what Ms. Kulendran had told us—she had led us to believe that that was in fact what the ministry was doing to screen its documents.

Mr. John Yakabuski: Would it be fair to say that they were trying to keep this as tight as possible with respect to the disclosures—that they would have the greatest amount of control over what documents were actually released?

Ms. Kristin Jenkins: I can't answer that question.

Mr. John Yakabuski: Okay.

I want to ask you about your final talking points, and we don't have them here. Is there anything in those final talking points that immediately comes to mind that was significantly, categorically different than the ones you spoke about earlier, in the document in number 11?

Ms. Kristin Jenkins: Yes. There is one thing that I can certainly remember: On the first page, the second-to-last bullet says, "OPA staff realized that there were additional documents when they were carrying out"—what we did was we added another reason for disclosing the documents. The language that was added to these key

messages is consistent with the language that was in Colin Andersen's transmittal letter to the Clerk on the 12th, which was to say, we had to do more searching; there was an issue with the approach that we used with respect—there's a variance with the ministry, so that there were clearly two reasons why we did the disclosure on October 12. I know that is one distinction between the two documents. As I said, I will provide the committee with—

Mr. John Yakabuski: Very good. Thank you, Kristin.

I want to talk about the auditor's report on Mississauga. The committee ordered the auditor to investigate this. All of the response to the report has been written by the OPA. The government, politically, decided to cancel the plant. Do you find it peculiar that there's no response in this from the minister or the ministry? The responses are only from the OPA. Again, it appears to me that the government is putting the onus of this on the OPA, as opposed to the ministry or the Premier.

Ms. Kristin Jenkins: I think, given the mandate and the scope of the audit, that the OPA was heavily relied on. At the end of the day, it is our contract.

Mr. John Yakabuski: Understood. It was cancelled by the government. Do you not think that a response should have come from the minister?

Ms. Kristin Jenkins: I'm not going to question the Auditor General's approach. I would say that I think that the fact that the government asked the OPA not to proceed with the plant is reflected in the auditor's report.

Mr. John Yakabuski: Let's talk about numbers. You've been with the OPA for some time. You were also part of negotiating when they were dealing with the TransCanada issue at Oakville. We know the auditor's report says that the government lied about the amount that the cost would be to the taxpayers and the ratepayers of Ontario. I suspect that you knew that—when I say “you,” I mean you people at the OPA; you knew that that would end up being the facts as they were released.

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We're now being told that the Oakville plant will cost \$40 million. The cost of cancellation and relocation of the Oakville plant will cost \$40 million. JoAnne Butler, your associate at the OPA, does not agree with those numbers. Are you aware of what the Oakville plant will actually cost—the cost of the cancellation and relocation?

Ms. Kristin Jenkins: No, I'm not.

Mr. John Yakabuski: You're not aware?

Ms. Kristin Jenkins: No, I'm not aware of the total number.

Mr. John Yakabuski: Of the total number? Can you tell me some numbers that you are aware of that would exceed \$40 million?

Ms. Kristin Jenkins: As the OPA and my colleague JoAnne Butler have discussed publicly, there are costs associated with gas management and delivery. There are also costs associated with connecting the new facility, the Napanee Generating Station, to the grid, and there are costs associated with the transmission upgrades that will

have to be advanced in the southwest GTA as a replacement for the power plants that weren't built there.

Mr. John Yakabuski: We've heard of numbers like approximately \$200 million for transmission, \$370 million or something for gas, and \$210 million for turbines that will be recovered over the period of the contract. In addition to that \$40 million, would you agree with those numbers?

Ms. Kristin Jenkins: What I can agree with, Mr. Yakabuski, is that there will be additional costs that have to be taken into account. As the Auditor General pointed out with the Mississauga audit, there are also savings associated with the relocations of these plants. Those costs and those savings—as well as the value, as the auditor pointed out, with the contract payments starting later—all have to be factored in. I personally don't have the numbers associated with many of the categories that I've raised. Some of them we don't know yet because more engineering work needs to be done. But I think it is important to take into account that there will be some savings that also need to be factored in, as was the case with Mississauga, when looking at the total cost of the relocation of the Oakville plant.

Mr. John Yakabuski: And those savings will in no way ever amount to the amount that the government is talking about. Would you agree with that? Under no circumstances is \$40 million going to be the cost of this cancellation and relocation.

Ms. Kristin Jenkins: The \$40 million are the sunk costs. They're the costs that were incurred for Oakville that cannot be reused at Napanee. I do not know what the total cost of relocation of the Napanee plant will be. That is yet to be determined. As I said, there are costs that still need to be identified and there are savings that also need to be taken into account.

Mr. John Yakabuski: I take that as, you are absolutely in agreement with us that that will be well over \$40 million. And we'll all find that out when the next report comes out.

Tell me, Ms. Jenkins: Can you walk me through any discussions that you may have had with members of the government, members of the ministry, about messaging and communicating this gas plant debacle, specifically dealing with questions arising about the costs and the document drop or the document disclosure, if you want to call it that, discussions that you had with members of the government or specifically the Minister of Energy or the Premier's office or anyone like that?

Ms. Kristin Jenkins: I'm remembering this generally. Discussions that we would have had around costs with respect to the document disclosure would have been focused on the fact that these documents covered a period from—a lot of the cost figures that were in the documents that were being disclosed were out of date.

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

Ms. Kristin Jenkins: They were early calculations. As you know, the relocation agreements were signed in 2012, and these documents only reflected up until the end

of 2011. So the discussions around costs would have been that they were not the most recent cost figures.

Mr. John Yakabuski: Okay. You mentioned in your response to Mr. Delaney that the only one who can specifically or categorically direct the OPA is the minister themselves, and they would do that by written directive.

Ms. Kristin Jenkins: That's correct.

Mr. John Yakabuski: But there was no question in your mind that, as an agent of the ministry, Jesse Kulendran was directing you at the OPA?

Ms. Kristin Jenkins: Ms. Kulendran gave us a set of instructions, told us that we needed to use them and we needed to be consistent with the ministry—

Mr. John Yakabuski: So she was directing you.

Ms. Kristin Jenkins: Yes, but I'd like to point out that, as with the decision to not proceed with the plant in Oakville, the government, in fact, did not have the legal authority to direct us not to proceed. We chose not to—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Yakabuski, and thanks to you, Ms. Jenkins, for your testimony and presence.

I understand we have a motion before the floor, and I invite Mr.—

Mr. Rob Leone: May I have a point of order?

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

Mr. Rob Leone: It has happened on a number of occasions where, and I realize that you're sticking to the tight timelines, but just in the response from Ms. Jenkins, who was cut off at the very end—I'm hoping that maybe we could have a little bit of leniency and allow particularly some of our witnesses to finish their thoughts, if that would be agreeable. I don't think it sends the right signal, that we're cutting people off mid-sentence. So I wonder if we could have a little bit of leniency—

The Chair (Mr. Shafiq Qadri): We encourage you in your hopes, Mr. Leone. This was all decided by subcommittee. You do have 1.5 hours per witness, and I would encourage you to be more efficient, because I think that's probably the longest period of time that probably any witness has been heard. But it's the will of the committee.

Yes, may I have the motion now?

Mr. Peter Tabuns: I move that the Auditor General (AG) be invited, as a neutral witness, to the Standing Committee on Justice Policy on Wednesday, April 17, 2013, from 3:15 p.m. to 5:15 p.m., if available, in order to present and discuss the Auditor General's Special Report on the Mississauga Power Plant Cancellation Costs; and

That the AG be scheduled for 100 minutes, with 10 minutes for his opening remarks, followed by a total of 30 minutes for questions by all parties on a rotational basis.

As you may note, Chair, 3:15 to 5:15 is two hours, but I leave room for breaks or recesses.

The Chair (Mr. Shafiq Qadri): Thank you. And more importantly, the operative phrase there is "if available."

Are there any questions before we vote on this particular motion, which is in order?

Seeing none, those in favour? Those opposed? The motion is carried.

If there's no further business before—

Interjection.

The Chair (Mr. Shafiq Qadri): Yes, Mr. Delaney?

Mr. Bob Delaney: Chair, this may end up with a request to convene a subcommittee. Earlier today, as we said, the Clerk did their best to try to schedule any of four government witnesses, none of whom were able to appear this afternoon.

I'm just going to try once to see whether there's any consensus at committee or whether or not we should move this into subcommittee. In the event that this happens to any party, would it be the will of the committee that either you do two in a row or you skip a rotation? Those seem to be the two alternatives, and frankly, I'm fine with either one.

Mr. Peter Tabuns: It's a subcommittee matter.

Mr. Bob Delaney: A subcommittee matter?

The Chair (Mr. Shafiq Qadri): A subcommittee matter. We'll refer it—

Mr. Bob Delaney: A subcommittee it will be, then.

The Chair (Mr. Shafiq Qadri): No further business? Okay; committee is adjourned.

The committee adjourned at 1638.

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