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Tuesday 25 June 2013

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Mardi 25 juin 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

Tuesday 25 June 2013

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**COMITÉ PERMANENT
DE LA JUSTICE**

Mardi 25 juin 2013

The committee met at 1031 in room 151.

MEMBERS' PRIVILEGES
INFORMATION AND PRIVACY
COMMISSIONER OF ONTARIO

The Vice-Chair (Mrs. Laura Albanese): Good morning, everyone. I am the very temporary Chair. Our Chair, Mr. Shafiq Qaadri, is running late, so I'll be filling in for a few minutes until he arrives. Welcome to the Standing Committee on Justice Policy.

This morning our first witness is Dr. Ann Cavoukian. Welcome. I would ask, first of all, that you be sworn in, and I'll ask the Clerk to do that.

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

Dr. Ann Cavoukian: I do. Thank you.

The Vice-Chair (Mrs. Laura Albanese): I understand that you have a 15-minute presentation to our committee. Please proceed. Thank you.

Dr. Ann Cavoukian: Thank you very much. Good morning, ladies and gentlemen. My name is Ann Cavoukian. I am the Information and Privacy Commissioner of Ontario. I'm joined today by my assistant commissioner, Brian Beamish.

Members of the committee, Chair, I want to thank you for the opportunity to comment on the investigation report that I released earlier this month called Deleting Accountability: Records Management Practices of Political Staff, which examined the deletion of emails by the chiefs of staff to the former Minister of Energy and the former Premier.

As you are aware, my office is responsible for overseeing freedom-of-information and protection-of-privacy laws in Ontario. It is further to this mandate that I'm here to speak to you about my report that I released on June 5 and the subsequent recommendations that I made.

In mid-April of this year, I received a complaint from Mr. Peter Tabuns, member of provincial Parliament for Toronto–Danforth, alleging that Craig MacLennan, the former chief of staff to the former Minister of Energy, had improperly deleted all emails concerning the cancellation of the Mississauga and Oakville gas plants. Upon receipt of his complaint, I immediately launched an in-

vestigation and completed it as quickly as possible, in about a month and a half.

I made a number of findings in my report; among them was that the former chief of staff, Mr. MacLennan, had a practice of routinely deleting all emails. Why, you might ask. Because he said he liked to maintain a clean inbox policy. A similar practice was also followed by the chief of staff to the former Premier, which I will be addressing shortly.

My report concluded that this indiscriminate deletion of all emails was in violation of the Ontario Archives and Recordkeeping Act and the records retention schedules developed by the archives. The practice also undermined the principles of the public's right of access to government records under the Freedom of Information and Protection of Privacy Act, in addition to undermining the transparency and accountability principles that form the foundation of both of these acts.

I found it very difficult to accept that the routine deletion of all emails was not an attempt by the staff in the former minister's office to avoid transparency and accountability.

Turning to the Premier's office, we interviewed David Livingston, former chief of staff to the former Premier. He, too, had deleted all of his emails. While I cannot say with complete certainty that there was improper deletion of emails by the former Premier's staff as part of the transition to the new Premier, in my view it simply strained credulity that it could be for reasons other than shielding one's activities from public scrutiny. Therefore, I concluded that the email management practices of both the former minister's office and the former Premier's office were in clear violation of the obligations set out in the Archives and Recordkeeping Act, the ARA.

The failure to comply with the records retention requirements of the ARA, coupled with a culture of avoiding the creation of written and electronic records, I believe contributes to explaining the paucity of documents relating to the gas plant closures. This occurred despite the fact that the secretary of cabinet indicated that he had taken steps some time ago, through the government's chief information officer, to inform Mr. Livingston of his obligations to retain records.

My report also made reference to the apparent lack of awareness on the part of political staff of their responsibilities under the ARA. I noted that there was a need for active training of all new political staff in order to

reinforce the fact that a blanket approach to deleting all emails was in breach of the Archives and Recordkeeping Act. Most important, this flies in the face of the principles of transparency and accountability that underpin the province's access-to-information regime.

In light of the findings arising from my investigation, I recommended that the government take concrete steps in three areas to ensure that records that may be subject to an access request under our freedom-of-information law are indeed retained.

First, I recommended that a directive be issued by the Premier requiring that a senior official within each minister's office and the Premier's office be designated as the person who is accountable for records retention and for ensuring that ministers' staff receive training on their records management obligations. The Premier should clearly communicate that these obligations must be taken seriously, along with a firm expectation that all staff must comply.

Second, I recommended that both the Freedom of Information and Protection of Privacy Act and its municipal counterpart, MFIPPA, be amended to address the government's responsibilities to ensure that all key decisions are documented and records securely retained and, most important, making it an offence to wilfully destroy government records.

Third, I found that, while the records retention policies of the Archives of Ontario were indeed very comprehensive, I felt that this was an opportune time to review and update the policies to ensure that they were crystal clear and in keeping with today's online world.

I listened with great interest to the testimony of Chris Morley, the earlier former chief of staff to the former Premier, and felt that it was important to address Mr. Morley's interpretation of the responsibilities of political staff to delete records, which, I must admit, I found to be misleading. His focus was entirely on the deletion of records, not with their retention. And his suggestion that there were "99 reasons why the rules require the destruction of records," was, in my view, a misinterpretation of the facts. Please allow me to explain.

Mr. Morley failed to acknowledge that the fundamental purpose of the ARA is the retention of government records. Let's start with the name of the act. It's called the Archives and Recordkeeping Act, not the record-deleting act. In fact, the only references to records destruction in the ARA are a handful of provisions telling people not to delete.

I brought it with me, because I just wanted to show you because it is just so clear. Do we have them anywhere? We will find them in two seconds. I just wanted to show you this. Page 7, section 15, of the ARA contains prohibitions against destroying public records. That's it. But Mr. Morley said—and if I can just point you to them. Literally, this half page—this is it. It says, "Prohibition against destroying, etc., public records."

Mr. Morley said that he had identified 99 circumstances in which there was an obligation to delete and destroy records, so how could this be? I want to be fair to

Mr. Morley. While his comments were technically true for some of the categories he identified, they were totally slanted in the direction of deletion. I reviewed his extensive list and must point out what I believe to be Mr. Morley's misinterpretation.

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First, many of the items on his list are simply repetitions; they're repetitive. For instance, 21 of the items: items number 1, 3, 8, 15—I've got this all outlined, and you're going to get a copy of all this; it's all in the records. These 21 items all refer to examples of records that qualify as duplicates or surplus duplicates. So, in reality, these 21 instances represent but a single category of records that may be deleted at a given point in time, not 21 separate categories. I think it's quite important to make that point.

So yes, it's true that duplicate records may be deleted, as I noted on page 10 of my report, but it is disingenuous, in my view, of Mr. Morley to take examples of this category and count them as separate exemptions of records that need not be retained. They reflect but a single category.

Incidentally, another six out of his 99 reasons why destruction of records were required were extracted from my report, which came after the fact, not before.

Secondly, as you know, the Archives and Recordkeeping Act does not apply to political or constituency records, as I also noted in my report. But this does not mean that there is an obligation to destroy these records. You are not compelled to delete them. Such a suggestion would be ludicrous, particularly for MPPs such as yourselves who may wish to retain such records. However, I note that in more than one instance, Mr. Morley referred to these excluded records as records that must be deleted, but there is no mandatory requirement to delete these records in either the Premier's or the minister's retention schedules. The schedules simply require that these records be stored separately from government business records.

What I found hardest to believe was that Mr. Morley did not acknowledge that the primary purpose of a record-keeping act was not with the deletion of records, but rather with their retention, to preserve records of government decision-making. That's what's key. This is the essential first step to enable openness and transparency, which are key to holding the government to account. It is unfortunate that his testimony only emphasized the circumstances under which records may be destroyed, as opposed to the requirements where government business records must be retained.

Mr. Morley's comments also overlooked the fact that email records are not necessarily transitory or duplicate records. Their context must be reviewed before they may be deleted in order to determine whether they should be retained, in accordance with the retention schedules. In other words, the content of the email, as with any document, is what determines whether it should be retained or deleted—substance over form. This was made abundantly clear in the retention schedules and in the training

materials developed by the Ministry of Government Services.

There are clear requirements to retain records relating to the following areas: policy development, program development, stakeholder relations, legislative activity, and ministers' and Premier's correspondence. These are critical categories of documents, particularly when government is dealing with important issues of public policy. It is simply not credible that documents falling within these categories would not have been in the possession of political staff at some point in the decision-making process, or that staff would not be aware of their obligation to retain any of these documents.

By adopting a "delete all" email policy, political staff were not addressing the requirement that government business records must be retained, with the exception of transitory, personal, constituency or duplicate records.

And while Mr. Morley may have been aware of his record-retention responsibilities—or more appropriately, his record-deletion responsibilities—it is clear that this knowledge was not widely shared, not the least of which by his successor, Mr. Livingston, who said that he had no record-keeping training and had not received any direction regarding the management of emails. This view was later contradicted by the secretary of cabinet.

As the last observation, the fact that Mr. Morley placed such a weight on the perceived obligation to delete emails rather than the real obligation to retain critical documents is, in my view, telling in and of itself. It is indicative of the problems discovered during the course of the investigation.

I'm pleased now to report that the new government has acted proactively to address the recommendations made in my report. Just last week, we met with the Premier's chief of staff, followed by the Minister of Government Services, his deputy minister, his chief of staff, the Ontario government's chief information officer, the chief archivist of Ontario and several others to discuss the steps being taken to rectify the situation on a go-forward basis.

Just yesterday, I received an update from Mr. Tom Teahen, the Premier's chief of staff, about the steps being taken by the new government to implement the recommendations in my report. I can tell you that a thorough review and update of the records retention schedules and policies has been initiated by the Ministry of Government Services. Policies and procedures are now being developed and senior staff are being designated in ministers' offices and the Premier's office to be accountable for ensuring that these policies are actually followed. Once these measures are in place, the Premier will issue a directive to all political staff that they're aware of their obligations and will be providing scenario-based training to all staff, which is a very positive development.

In closing, let me emphasize that one of the most important rights that citizens have in a free and democratic society is access to information about their government's activities. If I have time, I'd like to tell you about a new

program that we introduced last year called Access by Design to expedite government openness even further.

One thing is clear: Without written records of how government decisions are made, transparency is seriously undermined and the basis for the government's policy choices is shielded from public scrutiny. Without such scrutiny, there can be little accountability, which in turn jeopardizes our free and democratic process. It clearly erodes the public's trust in government and, in turn, our very freedom.

I think it was Thomas Jefferson who said that the price of liberty is eternal vigilance, and I believe that's what we're doing here today.

I thank you very much for your time and I'm happy to answer any questions you may have.

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

We'll begin with the PC side. Mr. Fedeli, I offer you the floor.

Mr. Victor Fedeli: Thank you very much, Chair. Welcome, Dr. Cavoukian.

Dr. Ann Cavoukian: Thank you.

Mr. Victor Fedeli: We're very pleased to have you here. Welcome, Mr. Beamish, as well.

Commissioner, in your opinion, was the document destruction a violation of the law?

Dr. Ann Cavoukian: The document destruction was a violation of the ARA, the Archives and Recordkeeping Act of Ontario. It was in breach of that, so yes, it was in violation of that law.

Mr. Victor Fedeli: You have delivered a scathing indictment of the Liberal government today, yet last week, Premier McGuinty's former chief of staff, Chris Morley, was here—as you pointed out—and he argued that the document destruction was entirely in keeping with the law. Aside from your comments that start on page 8, do you agree with his overall statement?

Dr. Ann Cavoukian: Again, to be fair, what Mr. Morley indicated in his remarks and in the statements he provided was technically accurate, but again, the method of presentation suggested, in his language, that there were these 99 reasons that you could keep things exempt and prevent them from being retained. That's what I took issue with. Nowhere, in any of those documents, are you going to find that these are the 99 exemptions that are permitted. We classified them into four areas relating to political, constituency, duplicate and personal records that could be exempted. Public records—information that was already published—we didn't include that because we thought that spoke for itself, that this was already out there.

But with respect to those four areas of exemption—to suggest that there are 99 areas I think is highly misleading because it characterizes the Archives and Recordkeeping Act as a document that is there for the purpose of deleting records and destroying them as opposed to the exact opposite, which is all about the preservation of records, the retention of records, which, as I said, in our

view, forms the foundation of our free and democratic process.

Access to government records is absolutely essential to keeping accountability. So I disagreed with his characterization of those records.

Mr. Victor Fedeli: You state there was a culture of avoiding written records. Who, in your opinion, would have been responsible for this?

Dr. Ann Cavoukian: We interviewed the former chiefs of staff of the Minister of Energy and the former Premier's office. They both had a very—I don't want to say "cavalier attitude" towards the retention of email records, but that's what came to mind because it was, "Of course I deleted all my emails every day. I want to keep a clean inbox policy." Who does that? We are all very busy people. Also, these people, to be fair to chiefs of staff, are running; they're putting out fires every day. They don't have a minute to breathe. They're running from issue to the next issue, which I totally respect and accept.

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Contrast that amazing, busy cadre of activities with being absolutely fastidious about cleaning your emails and deleting all your emails. It just doesn't jibe with that.

In my view, I think this was their own—I had no reason to believe that they were directed to do this. I felt that they just decided, "This is what we're going to do," and it was their choice to do so.

Mr. Victor Fedeli: It was encouraged by senior staff. What about elected officials? Did you ever find that they went out of their way to avoid creating written records as well?

Dr. Ann Cavoukian: I have no evidence to suggest that.

Mr. Victor Fedeli: The lack of emails from the Minister of Energy: Would that indicate this as well? We have virtually no emails from the Minister of Energy, or from the Premier, actually, on this issue.

Dr. Ann Cavoukian: I want to be very fair. We only interviewed the chiefs of staff and spoke to them about their practices and the staff of the former Premier and the former Minister of Energy. We did not actually speak to the minister and the former Premier.

Mr. Victor Fedeli: When you first came out with your report, I have to say—I'm going take a personal moment here, if I may. After all these months, I should be allowed a personal moment to reflect.

On September 24, the batch of documents was released; 36,000; 20,000 were held back, as we've learned here in testimony, ordered by the Ministry of Energy.

My colleagues Leone and Yakabuski and I stood up in the Legislature the very next day and said, "Hang on a second here. We've asked you for all documents. There's nothing here from the Minister of Energy on the cancellation of an energy plant. There's nothing here from the Premier, who has ordered the cancellation of an energy facility. Why?"

For nine months they pointed fingers at us, suggesting that we have conspiracy on our brain. Your report—I'm going to use the word "vindicated." It vindicated all of us

who have pointed fingers at these holes and said, "There are no emails. Something is wrong." How can you have a cancellation of a gas plant—I'll ask you a question. Have you ever seen anything like this before in your tenure?

Dr. Ann Cavoukian: I don't believe I have, not to this scale.

Mr. Victor Fedeli: I'd like you to refer to Liberal gas plant scandal document number 1. On April 16, 2013, a freedom-of-information was filed requesting gas plant-related records from nine former Premier's office employees. Only six of the nine individuals had responsive records. Five of them, including David Livingston, confirmed that no records were found. It was revealed that three of them, Chris Morley, Sean Mullin and Jamison Steeve, had their accounts purged. I would say to you that this scandal is much deeper and more extensive than merely Mr. MacLennan and Mr. Livingston.

This is a letter that we received back from Cabinet Office, which I ask you to take and keep. Perhaps you would consider further action now that we know that Mr. Morley, Mr. Mullin and Mr. Steeve are too part of this cover-up. Would you consider adding them to a further investigation similar to the one you did of Mr. MacLennan and Mr. Livingston?

Dr. Ann Cavoukian: I'm going to just respond for a moment, and then I'll ask Mr. Beamish to also respond.

I'm going to start by saying that we will certainly take it under advisement. I want to be clear: We want to make sure that we have the necessary jurisdiction to review matters. As you know, under the Freedom of Information and Protection of Privacy Act, we review matters relating to records and access to records, denial of access, the destruction of records, as we looked at here.

All of this started—as you may recall, it was all the Ministry of Energy. There was the Speaker's ruling and there was a motion before that relating to the Minister of Energy and records emanating from his jurisdiction. That was then followed by Mr. Tabuns's filing a complaint with us asking us to investigate that matter. So it was quite narrow at the beginning, and we expanded it somewhat during the course of our investigation.

So what I will say, and I'm going to ask Mr. Beamish to respond as well in a moment, is that we would consider, as we do on an ongoing basis—if there are matters relating to freedom of information that are being subverted and require investigation, and we have the authority to do that, we would certainly launch another investigation or expand this one. But I would very carefully review the requirement first.

Brian?

Mr. Victor Fedeli: Thank you.

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Mr. Beamish, any witness before this committee needs to be sworn in, which I invite you to do now.

Mr. Brian Beamish: Can I affirm, please?

Interjection.

The Clerk of the Committee (Ms. Tamara Pomanski): Do you solemnly swear that the evidence

you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Brian Beamish: I do.

The Chair (Mr. Shafiq Qaadri): Go ahead.

Mr. Brian Beamish: This is an area where we have to step very carefully. We currently have a number of outstanding appeals arising from FOI requests in this area. Those are active appeals in front of our tribunal. In fact, I'm the adjudicator on one of them and have not reached a decision. So we have to be very careful about making any comments about what is in fact a live issue in front of us as a tribunal.

I think you can be assured that as this particular appeal makes its way through the appeal process, we will look very thoroughly at whether there should be other records, and if not other records, why not.

Mr. Victor Fedeli: So would it help if this committee passed a motion coming from this justice committee, as opposed to someone doing an appeal on their freedom-of-information request?

Mr. Brian Beamish: I guess that's something for the committee to consider.

Mr. Victor Fedeli: Okay. Thank you very much. So I would ask you, then, based on your first investigation of both Mr. MacLennan and subsequently Mr. Livingston, and now these three names that came up—Chris Morley, Sean Mullin and Jamison Steeve, who had their accounts purged—do you think it's coincidental, then, that nearly everyone who had a hand in this scandal has failed to produce any records or have now, as we've further learned, had their accounts deleted? Is this coincidental?

Dr. Ann Cavoukian: With respect to the two individuals in my report, that I definitely am familiar with, as I use the language of it "straining credulity" that there was not a single email that was retrieved. I haven't been able to investigate these other individuals, and so I want to refrain from commenting about their issues.

I just want to say that if there is not one, single email that is located in association with any of these, what are the odds of that? I mean, it just seems to me that it's truly an incredible occurrence that not one email could be found on a subject matter that is so important.

Mr. Victor Fedeli: We feel the same way, so we may be putting something a little more formal to you to conduct an investigation into at least these three, then, considering we do have a letter from cabinet that says there are no records from these three people who we know to be heavily involved in this particular scandal and subsequent cover-up.

In your report, you state that the hard drives were wiped clean, or "purged," to use Premier Wynne's terminology. The contents were transferred onto electronic portable devices, such as a USB key, I'm presuming you are referring to. Who is responsible for transferring that data? Have you been able to determine that?

Dr. Ann Cavoukian: Forgive me. I don't recall—I was just checking with Mr. Beamish. I don't think we included anything of USB keys in our report.

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Mr. Victor Fedeli: You called it "electronic portable devices": page 24 of your report. Down at the bottom of page 24: "The CIO confirmed that he had been contacted by Livingston in late January 2013, asking for the administrative computer system passwords so that they could transfer electronic records from the desktop computers of staff to portable electronic devices and 'wipe clean' the computers as part of the transition process." So it was the transition sector then.

Dr. Ann Cavoukian: Yes. Now, let me be clear: On page 24, what we outline is what we expect would happen during a transition period—

Mr. Victor Fedeli: Oh, okay. That's different.

Dr. Ann Cavoukian: Further down, we did say, as you indicated, that during our interview with the secretary of cabinet, we learned that the former Premier had announced his resignation, and prior to the appointment of his successor, Mr. Livingston had approached him asking for administrative system advice regarding how to wipe clean the hard drives to the Premier's—so he did ask that question to the former cabinet secretary.

Mr. Victor Fedeli: So you're not aware of whether that was actually followed through, whether those portable devices were indeed utilized?

Dr. Ann Cavoukian: That's correct.

Mr. Victor Fedeli: Would you know of the existence, then, of these portable electronic devices?

Dr. Ann Cavoukian: Not that we're aware of; not through our investigation.

Mr. Victor Fedeli: So you don't know if any were provided to Cabinet Office, the OPS or whether they were indeed made and kept in possession of staff? This is not something that you're aware of?

Dr. Ann Cavoukian: We are not aware of that.

Mr. Victor Fedeli: Is that something that concerns you?

Dr. Ann Cavoukian: Certainly information has to be transferred prior to having devices wiped clean—of course; there's no question. The question would be, "Was the information first transferred, as one would require?" Then you can wipe the devices clean to give the device to the next person after the transition happens. That would be the question we would look at.

Mr. Victor Fedeli: So—

Dr. Ann Cavoukian: Sorry. We have one more comment.

Mr. Brian Beamish: The other possible explanation is that because some staff had a clean inbox policy and routinely deleted all their emails, in fact there were no emails on those devices to be transferred.

Mr. Victor Fedeli: Very good point. Thank you very kindly. Later, in the last 10 minutes, we're going to get back to talking about the destruction of the backups and that kind of thing.

Right now, I want to go to your opening comments, on page 8—thank you very much for such a direct comment. You talked about the new government rectifying the situation. Has anything to rectify the situation been done

to deliver the deleted emails or any of the emails that have been destroyed? Has any of that come forward?

Dr. Ann Cavoukian: The short answer is no, but the reason, I think, is because the new government wouldn't have a clue where those emails are—

Mr. Victor Fedeli: Oh, I think they do, by the way, and I don't really consider them to be a very new government. It's the same old faces. Dr. Cavoukian, we're still here asking questions about how much this scandal cost and who ordered the cover-up, so we really don't have any new answers so far.

Dr. Ann Cavoukian: You're right, but let me add one thing: What I'm speaking to is the recovery of the emails that have been deleted. We went to great lengths—and if you want, we can talk about it later because I think you mentioned it—to unearth those, and that's what doesn't exist.

Mr. Victor Fedeli: We're going to talk about that later.

Do you know, in the new government's policy of now using Gmail accounts—have you been made aware of this: that they communicate by Gmail, which keeps them away of the freedom of information? Is that one of the new revelations of this government?

Dr. Ann Cavoukian: I'm going to ask Mr. Beamish to address that as well, but my understanding is that the government, especially political staff for non-government-related business—

Mr. Victor Fedeli: But I'm talking gas plant scandal information, here. This is specifically Gmail talking about gas plant scandal.

Dr. Ann Cavoukian: Gas plant. Brian?

Mr. Brian Beamish: I would say it's a misnomer to think that simply because you use Gmail you've somehow removed records out from the Freedom of Information and Protection of Privacy Act. Records are records, and if they're responsive to a request, they are responsive, whether they were sent by—

Mr. Victor Fedeli: Unless they're deleted and we don't find out they had them.

Mr. Brian Beamish: Well, yes. But simply by sending emails by Gmail, you have not removed the content of those records from the Freedom of Information and Protection of Privacy Act.

Mr. Victor Fedeli: Okay. Under this new go-forward situation—you realize, of course, that they have been there for five months. The government has been there for five months, and it took the OPP investigation and the threat of jail doors slamming behind people before these changes to rectify the situation had been made, and again, we still don't have any material. We're still sitting here, asking witness after witness, "How much did this scandal cost, and who ordered the cover-up?" We don't particularly find anything new other than the material that we are now sending to the OPP, because thanks to your report, actually, the OPP have found enough information to launch a full criminal investigation. So I would say that there's nothing new about this particular apparent change of heart.

I do want to ask—just quickly, so I understand and so I can formulate some other thoughts while the others are speaking—about the destruction of backup. Take a moment and just tell me, in a nutshell. I haven't been able to comprehend how that can even have been done.

Dr. Ann Cavoukian: I know, and I was of the same view until we got into this investigation. The Ministry of Government Services uses something called a RAID server, a redundant array of independent disks—I believe that's what it's called. It's for massive amounts of emails. I think the government has 90,000 active accounts on a daily basis, and a billion records over time. It's just massive.

So what they do is, there is a daily backup for disaster recovery purposes, but then, over the course of a week, and definitely a month, all of the data on the disk is overwritten, rewritten—

Mr. Victor Fedeli: I can't tell you how many—

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

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: He literally can't tell you.

Mr. Victor Fedeli: I really can't tell you. In 40 minutes, we'll be back.

Mr. Peter Tabuns: Thank you, Mr. Chair. Dr. Cavoukian, first of all, my thanks to you, to Brian and all your staff for the excellent work you did. I thought you did your duty and you did it admirably—all of you.

Do you believe that the Premier's office—you weighed in on this, but there's a point I just want to emphasize—was actually following its own laws in the Archives and Recordkeeping Act and freedom of information in its practices with regard to record-keeping?

Dr. Ann Cavoukian: The area I can comment on is the deletion of emails, because that's what we investigated, and that was really the only thing we investigated relating to records retention. Clearly, they weren't following the law in respect to that, because they were in breach of the ARA, the Archives and Recordkeeping Act. So with respect to that finding, they clearly were not following their own law. With respect to the retention and their intentions, I can't speak to that.

Mr. Peter Tabuns: Okay. If New Democrats submitted a freedom-of-information request for PINs—personal messages on BlackBerrys—to the Premier's office, including the Premier himself, would there be any reason to exclude them from coverage of freedom of information or the Archives and Recordkeeping Act?

Dr. Ann Cavoukian: It would depend on the content. Brian?

Mr. Brian Beamish: I think that—again, similar to Gmail—the fact that a communication is sent by PIN does not, in and of itself, remove it from the coverage of the act. The nature of PINs is, I suppose, that it's more likely to be what would be called a transitory record; they tend to be very short, pithy comments, but if there was substantive work done by way of PIN, then yes, that would come within the ambit of an FOI request, even if it was by PIN.

Mr. Peter Tabuns: So as long as it's responsive, it doesn't matter what the form is.

Dr. Ann Cavoukian: Right. That's correct.

Mr. Peter Tabuns: Does it seem to you that the failure to keep records was simply an oversight, or does it speak to something else?

Dr. Ann Cavoukian: I think it has to speak to something else on such a massive scale. If it was just the odd email here and there, I would understand that; we all can delete things mistakenly. But I think that there was not one record, one email, retained. It seems excessive to me on the part of the two chiefs of staff that we interviewed.

1110

Mr. Peter Tabuns: Do you believe that political staff are actually aware of the responsibilities to maintain records?

Dr. Ann Cavoukian: The individuals that we interviewed said that they were not aware, that they had not received record-keeping training and were not aware of their obligations under the ARA.

Mr. Peter Tabuns: Does that strike you as credible?

Dr. Ann Cavoukian: It was contradicted by the secretary of cabinet.

Mr. Peter Tabuns: Yes, it was, very strongly, in fact. I don't believe that failing to keep the information was simply a misunderstanding of the act. Would you concur with that?

Dr. Ann Cavoukian: It would be difficult to conclude that this was just an oversight and that all the emails got routinely deleted because they wanted to clean their inbox.

Mr. Peter Tabuns: Okay. On page 21 of your report, you note that training began with staff after your investigation, in April, three months after the new Premier was sworn in. This was six months after the NDP had raised the issue. If staff already were largely aware of their responsibilities, was this more a communications effort than anything else?

Dr. Ann Cavoukian: I think it could also be just driving home this exercise. We all talk about record-keeping and that it's important etc., but it's sort of this dull, boring thing. No one's focused on it. You focus your attention on the business of the day. There are a million things going on. So it may be drawing attention back to it.

Brian, your thoughts?

Mr. Brian Beamish: I think the individuals that were interviewed during the investigation showed that they did not have a complete understanding of their records retention responsibilities. I think that might explain why some training was undertaken.

Mr. Peter Tabuns: Okay, thank you. Mr. Schein?

Mr. Jonah Schein: Thanks. I want to echo my colleague's gratitude for the good work that your office has done. We appreciate it.

My question is, do you have any indication that the current Premier has moved away from what you called a "verbal culture" of communication in her new office?

Dr. Ann Cavoukian: I believe that to be true. I think it was April 17—I can't even remember. Before we had the report issued, she had already started staff training on the importance of retaining records, both in email content and physical, and that was followed by a memo by her current chief of staff to all staff, reminding them of their obligations under the ARA and their record retention responsibilities. So I think she takes it quite seriously, and that's what we've seen to date.

Mr. Jonah Schein: Thank you. Chris Morley testified that he maintained records on important files that were being managed by the Premier's office. These included teachers' negotiations, Samsung, the 2012 budget, communications materials and some miscellaneous materials. Do you find it strange, given the prominence of the gas plants issue, that he would have saved information on these other files but not on the gas plants?

Dr. Ann Cavoukian: Yes.

Mr. Jonah Schein: Is it credible that every record created by Chris Morley, either emails, PINs, or paper records, was either a duplicate or a transitory record?

Dr. Ann Cavoukian: It defies probability. Brian?

Mr. Brian Beamish: Yes, I think as the commissioner pointed out in her report, one would have thought there were some communications that would have been there—minister to minister's office; communications within the Premier's office; communications with stakeholders—where there wouldn't have been surplus duplicates that were in the hands of the ministry staff themselves.

Mr. Jonah Schein: What other issues is the Information and Privacy Commissioner in the process of considering in respect of information that has been destroyed by the Premier's office?

Dr. Ann Cavoukian: I think you've heard that the OPP have started an investigation. We are meeting with them tomorrow, and we will be co-operating with them fully, of course.

If they are in a position to be able to retrieve some of the deleted records—I will go to great lengths to explain why we couldn't—I would welcome that. I would welcome their intervention. They have an entire department that is devoted to such activities, whereas I do not, and perhaps they can unearth something that we were not successful in unearthing. I think that's unlikely, but I would welcome their intervention, and they will have our full co-operation.

Mr. Jonah Schein: When New Democrats requested information about Project Vapour, we were told that no records existed in the Premier's office. Do you find this believable?

Interjection.

Dr. Ann Cavoukian: The reason I'm going to refrain from commenting on that is that Mr. Beamish currently has an appeal before him that's about to be adjudicated, so if you wouldn't mind, that decision will be out shortly.

Mr. Jonah Schein: Thank you. I'm going to turn it back to my colleague Peter Tabuns.

Mr. Peter Tabuns: Mr. Beamish, you may be conflicted on this. I'll address it to you, Dr. Cavoukian. You heard nothing today.

We appealed our freedom-of-information requests around the documents related to Project Vapour and Vapour-lock. Premier Wynne's office has taken up the torch arguing against our appeal, saying that we made assertions about deletion of records that have nothing to do with the freedom-of-information and privacy protection act. Isn't the law based on the idea that records will be kept?

Dr. Ann Cavoukian: Of course. I don't want to say too much because this matter is under appeal, but what I tried to make abundantly clear in my remarks this morning is that the retention of government records, what we call general records, forms the basis of freedom-of-information laws. That is what enables the public to scrutinize the activities of government by accessing that information, which, I always like to remind the government, is that of the public. The government is there at the pleasure of the governed. This information is the public's information, subject to certain exemptions. In a word, freedom of information is essential in terms of having records retained, in order to be able to make it accessible to the public. That's a long way of answering your question.

Mr. Peter Tabuns: I don't mind—a thorough answer on this matter; very useful.

The thrust from Premier Wynne's office in this matter, saying that these matters also fall outside the commissioner's authority established under section 52 of the freedom-of-information act, which authorizes the commissioner to conduct an inquiry to review any decision made by a head of an institution—I'm sorry; it's a long section there. It sounds to us like the Premier is trying to keep you away from these files.

Dr. Ann Cavoukian: I'll ask Mr. Beamish to respond. Technically, she is within her purview to quote appropriate sections like that. Brian?

Mr. Brian Beamish: As a starting point, the freedom-of-information act is not a retention act.

Mr. Peter Tabuns: That's correct.

Mr. Brian Beamish: There's only one requirement in the regulations for the retention of information, and that relates to personal information that has been used by a government organization. That has to be kept for a minimum of one year. The act that we're responsible for really doesn't speak directly to records retention.

As the commissioner said, it's interwoven with the archives act. If the records aren't kept in accordance with the archives act, then they're not available to be there for a freedom-of-information request. I took that to be the tenor of the submission.

We have had no hesitation to co-operate with our work, at any level, from anyone we've dealt with. So I don't think there has been a suggestion that the commissioner should not be involved in this by anyone. Is that correct?

Dr. Ann Cavoukian: I totally agree. Just take it to the extreme—and this is going to sound ludicrous. One of the reasons we're asking for a review of the ARA—and also our act, the freedom-of-information act—is because it is predicated on the belief that there are going to be government records that the public can access. That's the whole predicate of freedom of information. If you didn't have government records retained, what is it that the public would access in order to scrutinize the activities of government? They would have nothing. I'm sure that when FOI was being developed, it never occurred to anyone that there might be massive deletion of records, so it was never added specifically as a section: "Thou shalt retain these records." It's a given. So perhaps there has to be a greater interplay with the ARA, the Archives and Recordkeeping Act, and FIPPA.

1120

Mr. Peter Tabuns: Okay. There has been an awful lot of publicity around this in the last six months, a year. When documents initially came out and were given to us in the Legislature, we made it very clear that it was obvious there were big gaps: Records were missing. I think that politicians, political staff, people in the Ontario government community were aware of that. Is it credible that Premier Wynne was not aware that there was document destruction before she came into office?

Dr. Ann Cavoukian: I honestly can't speak to that because we did not interview Premier Wynne; we didn't interview people associated with that. I have no reason to believe that she was aware of it. I simply have no evidence to that effect.

Mr. Peter Tabuns: So you can't comment one way or the other.

Dr. Ann Cavoukian: I cannot.

Mr. Peter Tabuns: One of the things that was striking to us, and I'm not sure if you're aware of it, is that John Kelly from the Ministry of the Attorney General, in testimony before us, said that in April 2011, because of the possibility of lawsuits, there was wide discussion then of preservation orders, preservation letters, to everyone involved in this matter to maintain their records so that if Ontario went to court, it wouldn't be in a situation of saying to a judge, "Your Honour, unfortunately, we have no records in this matter."

Were you aware that—sorry. If, in fact, these gentlemen were given extra notice of the necessity of keeping records, does that change your opinion of their deletion of these records?

Dr. Ann Cavoukian: I think the deletion of the records—and I think we went to great lengths in the report to express our view of how inappropriate it was and how improper it was. So I think we were as negative as one could be relating to that matter. I would have to look at the preservation orders and really address that issue in order to see if that would impact our conclusions.

Mr. Peter Tabuns: Thank you. The request for documents about Project Vapour and Project Vapour-lock was made in the fall of 2012. At that time—sorry. The accounts of the chief of staff, principal secretary and energy

adviser were destroyed in the summer, shortly after estimates asked for the gas plants information from the Ministry of Energy. We were told that if a freedom-of-information request had been made in the summer, those accounts would have been preserved. However, we were unaware of the term “Project Vapour” or of the extent of the involvement of the Premier’s office at that time. Would you agree that that creates a significant barrier to accountability?

Mr. Brian Beamish: Yes. As I understood the testimony, in terms of the deleted accounts, the proper practice would have been to save any records that were business records—public records, business records—from those accounts, and then delete the accounts. That would have been proper.

We don’t know what happened with those accounts, whether that proper procedure was followed or not. Again, it would not have depended on whether—if they were records that should have been retained, it wouldn’t have mattered whether they were called Project Vapour, Vapour-lock or what have you. You’re quite right.

Mr. Peter Tabuns: They should have been.

What impact does that verbal culture have on your ability to do your job for us in this province?

Dr. Ann Cavoukian: If you take it to the extreme, imagine that government records weren’t retained on an ongoing basis for a fear of whatever. That would be my biggest concern.

Freedom and democracy is predicated on the public knowing the business of government and the policy decisions being made and the programs and how funds are being invested etc. It’s absolutely essential that we have openness and transparency of government activities as reflected in the government’s records.

If you had no records—I mean, it’s preposterous—then you couldn’t have the kind of accountability that is predicated on the existence of such records to enable the public to have access to this much-needed information.

I’m always reminded of Attorney General Ian Scott, who was Attorney General when I started working many, many years ago. He always said, “I will never accept”—I forget the exact quote—“that the business of the government is none of the public’s business.” That just was so telling to me, that we have such a positive, affirmative obligation to retain government records so that precisely they can be made accessible to government. It is the public’s right to know. It’s simply untenable that we could have a verbal culture permeate to the exclusion of written records.

And let me just add one thing. I say “to the exclusion of written records.” It doesn’t mean that we can’t have verbal discussions. Of course, we have to have them. In fact, I prompt my team all the time.

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

Dr. Ann Cavoukian: I say, “Get up and talk to me; don’t just send me an email.” I want verbal culture. It’s absolutely critical. You just don’t do it to the exclusion of written records.

Mr. Peter Tabuns: You were very thorough in going after Mr. Morley’s testimony. One of the things that was really noticeable to us is that he had kept records about the Samsung deal; he kept records about teachers’ negotiations. He had handwritten notes about teacher negotiations, he referenced in his testimony. And yet for this white-hot issue that was dominating question period and slowing down the Legislature, he had zero. Does this seem entirely inconsistent with what seemed to be his practices?

Dr. Ann Cavoukian: It was clear that that one issue was the outlier, and that seemed to be the case in the investigation that we conducted as well, and interviews that we conducted.

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

Mr. Steven Del Duca: Thank you very much, Mr. Chair. Thank you, Dr. Cavoukian, for being with us here today.

I just want to begin by talking a little bit about some of the Premier’s office records. Opposition members of our committee have talked a lot about the information that they believe is, as they say, missing. But I think it’s important, as we start today here, from our side, that we make clear a little bit about the sheer volume of information that has actually been disclosed to date. I’m pretty sure you’d probably be aware of this, but I just want to clarify it.

About 4,000 documents were provided in April in response to a request related to the Oakville and Mississauga gas plants. Also, in addition to that, the Premier’s office provided about 30,000 documents in May in response to a request from this committee, which included emails, transition materials and even handwritten notes—handwritten notes, for example, from people like Jamison Steeve and Sean Mullin, some of the names that were referenced here earlier today by members opposite. That also included, in some of those batches, emails which were presented to this committee last week for members opposite from Mr. Morley regarding this particular issue.

So you have thousands of emails, transition and communications materials, and some handwritten notes. I just wanted to make sure you are aware of the fact that there is an inordinate amount of information that has been disclosed, has been provided to this committee throughout this process regarding the Mississauga and Oakville gas plants. Is that true?

Dr. Ann Cavoukian: Thank you. We were aware of that. We were restricting our comments to the emails associated with those individuals we interviewed.

Mr. Steven Del Duca: Okay, terrific.

With respect to the process that you undertook with respect to the investigation itself, on page 6 of the report you did state, “Throughout this entire investigation, my office received the full co-operation of all parties involved, including the Premier’s office, Cabinet Office, the MGS, current and former staff in the Minister of Energy’s office, and the Archives of Ontario staff.”

In a letter to the Toronto Sun, you stated that “the offices of the Premier and Minister of Energy have co-operated fully with my investigation into this matter.”

Can you speak in a little bit more detail about the support and the co-operation that you’ve received from these parties?

Dr. Ann Cavoukian: Of course, and I’ll ask Mr. Beamish also, who is directly responsible for the investigation.

At no time did we get any negative responses. Whenever we inquired, whenever we approached anyone’s office, they were fully co-operative. I can’t think of one “no” that we were told.

Brian, you were hands-on, so maybe you could just expand on that.

Mr. Brian Beamish: No, I think that’s fair. As the commissioner said, we had a list of people we wanted to interview. There was no push-back at all. In fact, everyone we wanted to interview was more than happy to agree to that. We had full co-operation from all levels.

Mr. Steven Del Duca: Terrific. I know that in your opening statement and also in response to some of the members opposite, you have mentioned here today that you have spoken and met with the Premier’s chief of staff and Minister John Milloy and his staff, following the release of your report. Are you satisfied that your report is being taken seriously by this government?

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Dr. Ann Cavoukian: Oh, I am. When we had the very large meeting last week with a number of parties there, it was clear that our recommendations would be followed. One of them relating to legislative changes—that takes a little more tweaking, the drafting of legislation—but we were also assured that was going to be forthcoming, and any co-operation we needed was there. So I have no complaints at all relating to that.

Mr. Steven Del Duca: Premier Wynne has also taken many steps to be open and transparent on the issue of the specific relocated gas plants. For example, it was Premier Wynne who offered a select committee to investigate these matters. It was Premier Wynne who asked the Auditor General to look into the Oakville situation. It was Premier Wynne who expanded the scope of this committee, which to date has heard from somewhere in the neighbourhood of 40 witnesses.

The government members on this committee have also put forward a motion to provide the committee with all documents, government-wide, but the opposition actually voted that one down.

Since then, dozens of motions have passed for documents and, again, the committee has now received over 130,000 documents from this government, including 30,000 documents from the Premier’s office, and has thousands of pages of emails and files from the former Premier’s office.

So from your perspective, with your expertise, given all of the steps that Premier Wynne and our government have taken, would it not seem apparent that there is a real

desire to be as open and transparent as possible on these issues by this government?

Dr. Ann Cavoukian: I think, speaking for this government, I would answer yes. This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming—Brian, please expand if there’s something I’m missing—but we have not had anything suggested as not being doable, in terms of things we’ve requested.

Mr. Brian Beamish: Yes, we’ve been focused in on our report and our recommendations, and to the extent that the commissioner released her report with her recommendations, we’ve had very good feedback from the government.

You’ve raised some other issues that aren’t directly related to our report, and we really can’t comment on that.

Mr. Steven Del Duca: Okay, thank you.

I want to move on a little bit to talk about the concept of transitory records. As the ARA lays out, transitory records are not required to be kept. The Common Records Series defines these records as “records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.”

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

Does that seem to be an accurate characterization of transitory records to you?

Dr. Ann Cavoukian: I think so, and I think we can all understand that. I have a million exchanges with my team every day. I ask them to do something and they say, “Will do.” There’s all kinds of transitory emails like that, to describe it that way.

I think what was telling in our investigation was just the complete absence of any emails associated with a particular topic.

Mr. Steven Del Duca: I appreciate that, but I just want to—I think clarification around this particular issue is extremely important because, from our perspective, there is a fairly wide misconception, and perhaps I would say a deliberate attempt to mislead on the part of some of the opposition members, that every single piece—

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. Mr. Del Duca, I invite you to adopt parliamentary language, although I must say, that word has been used thrice today.

Go ahead.

Mr. Steven Del Duca: Perhaps a deliberate attempt to confuse, by the opposition—that every piece of paper needs to be kept. But I think that you would agree that's not really the intent of either the freedom-of-information legislation or the archives legislation—that's correct, would that be?

Dr. Ann Cavoukian: I think in our report we made it clear that decisions relating to the business of government must be retained. There are transitory records, there are duplicate records, there are personal records and there are constituency records. Those are the categories that do not need to be retained.

But I think suggesting that transitory records are so broad that they would capture entire categories of information, in my view, would be excessive.

Interjection.

Dr. Ann Cavoukian: Please, Brian.

Mr. Brian Beamish: I think the commissioner notes in her report that the records retention schedule requires some judgment to be brought to bear on whether a particular email is transitory or not. If you adopt a practice of deleting every email, you are clearly not bringing any judgment to bear; in effect, you're treating every email as if it's transitory, and that simply is a practice that shouldn't be followed.

Mr. Steven Del Duca: You said at the outset today that when Mr. Morley was here, his assertion about how this should be undertaken—that he was technically correct. I did hear that earlier, when you were answering a question from Mr. Fedeli?

Dr. Ann Cavoukian: I said “technically correct in certain areas.”

Mr. Steven Del Duca: And in your opening statement, you talked about—

Dr. Ann Cavoukian: “Certain categories.”

Mr. Steven Del Duca: Sure.

In your opening statement, you also talk a little bit about how when Mr. Morley was here, he said he identified 99 circumstances. You point out that in several of those instances, from your perspective, there's a duplication in terms of his citations. I presume that's what you're referencing.

Dr. Ann Cavoukian: Yes.

Mr. Steven Del Duca: So you pointed out 21, and then an additional six—I'm just looking for it here. I think that another six out of those 99 reasons—and perhaps, from some of his language last week, whether there's an obligation or not an obligation or it's okay to do it or not to do it. But if I understand your opening statement correctly, though there is some duplication, perhaps, in his citations, generally speaking, he identified a number of instances in which, depending on the nature of the communication, it was, if not necessarily obligatory, certainly permissible to delete or to remove or eliminate some of the information that we're talking about. Right?

Dr. Ann Cavoukian: Permissible, yes, and we've summarized—and I know that it will be made available to you. We've collapsed his 99 categories into the five

categories that I referred to earlier. Eighty of his references, 80 of the 99, fall under transitory records, two fall under personal records, 10 for political party records, five under constituency records and two under published works. So the majority were transitory records. Again, as Mr. Beamish pointed out, in order for transitory drafts to be deleted, you have to make a determination first as to the content of the email.

Mr. Steven Del Duca: Okay. On page 9, you discuss two general categories of records in the office of a minister and the office of a Premier. They are (1) public records, and (2) personal, political and constituency records. On page 10 of your report, you go on to explain that “ministers’ and the Premier’s personal, political, and constituency records are those generated by ministers in their capacity as members of the Legislature and as private citizens.” Can you explain for us a little bit more about these personal and political records, and why they are not required, under the ARA, to be retained?

Dr. Ann Cavoukian: I'll ask Brian to expand, but you can imagine emails that are personal in nature: “I'll meet you at so-and-so place at noon for lunch”—silly nothing things that are truly personal in nature and would have no government-activity-related interest. That's one example.

Brian?

Mr. Brian Beamish: Well, I wouldn't say that the ARA says they shouldn't be retained. The ARA simply says they're excluded. The Archives and Recordkeeping Act is designed to set up records retention for government business. MPPs' constituency work is not government business; their political activities are not government business. The ARA is simply saying that these retention schedules related to government business do not relate to them. In fact, Mr. Morley went further and said that there is an obligation to delete those records, which is just simply not correct.

Mr. Steven Del Duca: But it is permissible to.

Mr. Brian Beamish: Well, it is, but I—

Dr. Ann Cavoukian: But it's not a mandatory “Thou shalt.”

Mr. Steven Del Duca: No, I understand that—

Dr. Ann Cavoukian: It's discretionary.

Mr. Steven Del Duca: —but it doesn't actually violate the act to do that.

Mr. Brian Beamish: You're quite right.

Mr. Steven Del Duca: Okay. Thank you.

Because this has been brought up quite a bit, including again today, with respect to the so-called USB keys, I'm not a technologically evolved human being, necessarily, I suppose—

Dr. Ann Cavoukian: Neither am I.

The Chair (Mr. Shafiq Qaadri): You seem sufficiently evolved to us, Mr. Del Duca.

Mr. Steven Del Duca: I appreciate that. I hope that's in the record somewhere.

Following the release of your report, some of the opposition members have alleged, and in fact it's come up here again today—they kind of put words into your mouth, I think—that you believe that records were down-

loaded onto USBs and, in their words, “stolen” from the government.

I think you already clarified this, but I think it’s really important to make sure that we understand it: Do you have any evidence to suggest that information was actually downloaded to USBs?

Dr. Ann Cavoukian: No.

Mr. Steven Del Duca: Okay. So I want to go a little bit further, because on June 6 specifically, Mr. Fedeli had this to say: “The privacy commissioner told us two things: Number one, the data was deleted and destroyed and cannot be recovered. But what she said in advance of that was that those data were copied onto a USB key and removed before the copies were deleted and destroyed. So there are USB keys out there that were stolen from Queen’s Park.” That’s what Mr. Fedeli said.

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Interjection.

Mr. Steven Del Duca: That was a direct quote.

In the Legislature, Mr. Leone stated: “The privacy commissioner says deleted documents wiped clean from computers may still exist on USB drives. This is stolen property.”

That’s the inflammatory language that they’ve used, and I’m quoting them.

Are these comments an accurate reflection of what you were trying to say in your report—those direct quotes? I’m wondering about those direct quotes.

Dr. Ann Cavoukian: I don’t think we said that in our report. I also can’t say that things haven’t happened. What I don’t know is if anything was copied or transferred onto other portable devices. I simply would not have the means or the jurisdiction to address that issue.

Mr. Steven Del Duca: Sure, but in the quotes that I’ve provided to you, they weren’t saying, “It is possible that....” They were using you, they were using the authority of your office, and they were claiming that you were making claims that support some of the stuff that they’ve been spewing over the last number of months. I just wanted to make sure it was clear to the committee and to the public that their quotes were not really based on what you said in your report.

Dr. Ann Cavoukian: I don’t think they’re based on comments we’ve made in the report.

Mr. Steven Del Duca: Thank you.

To go a little bit further, Mr. Fedeli has explained that the basis for his complaint to the OPP was this notion that there are USB keys. On June 6, again, he stated, ‘I phoned the OPP and I said, ‘I’m calling to report a crime.’ They asked, ‘What is the crime?’ I said, ‘A USB key has been stolen from Queen’s Park. There has been a theft here.’” That’s a quote from Mr. Fedeli. He has reiterated this specific point several times.

Here’s another quote from him: “The privacy commissioner has told us—the privacy commissioner has told us—that information was removed from computers, put on a USB disk, taken out of the precinct and then those files destroyed. That is information that has been stolen

from Queen’s Park, and that is why we are calling the OPP in.”

Again, given the fact that you have now confirmed several times here today that your report does not say anything about files specifically downloaded onto USB keys, how do you feel about your report being the basis of these allegations?

Dr. Ann Cavoukian: I think my report speaks for itself.

I want to emphasize that we did not address the issue of USB keys. What I can’t rule out, and I have absolutely no idea if any information was transferred to some other device before deletion—that, I simply can’t comment on because I have no awareness.

The one thing I would like to address at some point—and I don’t know if this is the appropriate time—is what we did find in terms of the deletion of records and the absence of backups. So—

Mr. Steven Del Duca: I appreciate that, and I don’t want to belabour this point, but I think it’s extremely important. I know that whenever I compose something, I write something—for example, Mr. Leone across the way has written lots of stuff in his career, in past careers. It just strikes me that someone like yourself—professional, accomplished, written this report, taken this work very seriously—I want to make sure I understand how you feel about the fact that they have taken your report, they have torqued it beyond all recognition and they have used it to score, I think, fairly cheap political points.

It just strikes me that your report has lots of great recommendations. Premier Wynne and this government have taken those suggestions very seriously, as you have stipulated here today. Instead of focusing on how we can move this forward, work with you, work with your office, work with your report, we have members of the PC caucus repeatedly being quoted in the Legislature and elsewhere saying your report says something that it clearly doesn’t say. How does that make you feel about the work that you’ve put into this?

Dr. Ann Cavoukian: I’m very proud of the work that we’ve done on this report, and I think the report speaks for itself.

Mr. Steven Del Duca: But it’s clear that they don’t speak for the report when they’re torquing it out of all recognition, the way that they’ve been doing over the last number of days and weeks. It’s pretty clear that when they talk the way they are about what they’re doing on this specific issue within your report, they’re, frankly, making it up as they go along. I think that’s fair to say. I’m not even asking a question. I’m just making a statement. I think it’s fairly obvious to everyone in this room.

I want to talk a little bit about backup tapes. The opposition has also misrepresented, I think, what you said in your report about how the backup tapes work for emails, and I know that you might want to get into a little bit more of this at some point, if we have time.

On June 18, Mr. Fedeli told CP24—and I’m going to quote him again; he’s a very quotable guy—“The privacy

commissioner told us the backups were destroyed. That's a coordinated effort to do that."

He brought up this allegation several times in committee last week as well, in questioning a former executive assistant to the chief of staff. Mr. Fedeli asked her, "Did you order the backup tapes be destroyed?"

My understanding from your report is that the backup system—you alluded to this a little bit earlier—is configured by the Ministry of Government Services IT so that daily snapshots of emails are backed up to tape for one day. Those daily tapes are put into a pool of tapes which are overwritten at the end of the next day. There's also a backup onto tape on a monthly basis, which are held for one year or thereabouts and then returned to a pool of tapes for overwriting.

As for the Premier's office, backup tapes are maintained for 10 days and then put into a pool to be overwritten. Your report states that these backup tapes are overwritten as part of the usual backup system.

Is that an accurate summary of what you've learned in terms of how—

Dr. Ann Cavoukian: Yes. That's very good.

Mr. Steven Del Duca: So it is.

Dr. Ann Cavoukian: That's an accurate reflection.

Mr. Steven Del Duca: So do you have any evidence to suggest that backup tapes were "ordered destroyed," as the opposition has alleged?

Dr. Ann Cavoukian: No, I do not. What people have to understand is that the massive volume of information that takes place in terms of the provincial government has—not caused them; has led them to use this kind of system called—

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

Dr. Ann Cavoukian: —a RAID server that does not produce backup tapes on any kind of frequent basis that are then archived and can be accessed in any reliable manner. We had an independent computer forensic consultant who assisted us, because we always want to trust but verify what we're being told by IT departments. They verified that it's just simply not possible to retrieve any deleted information over time, especially dating back a year or so.

Mr. Steven Del Duca: We're almost out of time, but I just want to make sure that it's clear, as we close off this section, that you found no evidence of something being ordered destroyed as part of a normal process.

Dr. Ann Cavoukian: No. It was a matter of routine destruction and the absence of backup tapes.

Mr. Steven Del Duca: But nothing ordered destroyed as, again, they've alleged.

Dr. Ann Cavoukian: Correct.

Mr. Steven Del Duca: So it's just simply the way the system always works.

Dr. Ann Cavoukian: That's correct.

Mr. Steven Del Duca: Fantastic. Thanks very much, Mr. Chair.

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

Mr. Victor Fedeli: Thank you very much.

I've got a couple of quick questions for you before I get into this. Dr. Cavoukian, is important data still missing?

Dr. Ann Cavoukian: The emails of the individuals that we interviewed are missing; they're gone.

Mr. Victor Fedeli: So data is clearly missing.

Dr. Ann Cavoukian: Yes.

Mr. Victor Fedeli: A quick question: Is a USB key a portable electronic device?

Dr. Ann Cavoukian: Yes.

Mr. Victor Fedeli: Thank you very much. I just want you to know how pleased I am that the OPP agreed with that and have followed their investigation through the routine destruction—I guess you don't need an order to destroy when it becomes routine; it's your normal way of proceeding in government. It's also fairly easy for Premier Wynne to now appear transparent when the evidence has already been destroyed.

A senior staffer in Premier Wynne's office testified here last week that backups were kept when a drive was purged. Is that true or accurate?

Dr. Ann Cavoukian: Let me just take a guess on what I think that is, and Brian, you can help me.

Mr. Victor Fedeli: Please, because I don't know what that is either.

Dr. Ann Cavoukian: When you have transitory staff or staff transitioning from one government to another, it would not be unusual for their devices to have whatever is contained on them moved onto a server, which then, I think, goes to the secretary of cabinet, and then that device wiped clean in order to give it to the next staff person.

Can you add anything?

Mr. Brian Beamish: I read the testimony, and I'm not quite clear—I think there were a couple of issues that were unclear. I took her testimony to suggest that she thought there were backup tapes that were used for records-retention purposes. As the commissioner has explained, that's not the case. It was very clear to us that the backup system that MGS has put in place is for disaster recovery; it's not an archive system. I think she may have assumed that there were backup tapes that could retrieve these emails when, in fact, our information is that that's not the case.

Dr. Ann Cavoukian: And it's a common assumption.

Mr. Victor Fedeli: Do you know where that information is kept?

Mr. Brian Beamish: As the system is currently configured, if an email is deleted and it doesn't show up on the daily backup tape, then it's not kept anywhere. Someone would have to take the positive step of saving it or archiving it themselves.

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Mr. Victor Fedeli: So how is it possible for anybody to circumvent this? You talked about that in your report, about having these accounts purged. Is this normal activity or routine destruction, as we heard it, or are there other methods employed?

On page 24, when we talked about the portable electronic devices—I refer to them as USB keys, the most popular portable electronic device. This material, this information that's not available anymore: You suggest, Dr. Cavoukian, that your industry experts say that we'll never be able to recover that. We're getting calls, of course, hourly, daily, weekly now that say, "Oh, come on." I know you get the same kind of thing; right? Will you go on the record and talk about that, please, because nobody believes us when we tell them that evidence has been destroyed.

Dr. Ann Cavoukian: I totally understand that because in writing this report and with my team, I couldn't believe it either. I kept saying to them, "How is that possible?" I thought you could never truly delete anything. Apparently you can.

Having said that, I would love to be proven wrong, and I invite the OPP and many consultants we've talked to to please prove me wrong. I invite their intervention.

From what I understand, the most you could get—let's say you bring in the OPP department that is dedicated to doing these kinds of activities. From what I understand, with the RAID kind of server that they had, the most you could find is remnants, digital little dust bunnies, if you will, but that they couldn't be associated with the personally identifiable individuals whom you want to link them to. I hope I'm wrong.

Mr. Victor Fedeli: Look: Every computer expert who calls us says that it's got to be found. We obviously have great faith in your report—

Dr. Ann Cavoukian: And the only thing I could suggest next time they call: Tell them it's a RAID server, because whenever we've said "a RAID server," then all the people call me and they go, "Oh, whoa. Hands off. I'm not going to go near that one." That's the only thing I would suggest you ask.

Mr. Victor Fedeli: Yes, okay. But these emails, then, would be routinely destroyed. This is something that didn't happen by accident, those emails?

Dr. Ann Cavoukian: That's correct.

Mr. Victor Fedeli: And only gas plant emails have been destroyed, that we've found—

Dr. Ann Cavoukian: There are two questions here. The emails of the two individuals who destroyed all of their emails: That is questionable. The activities of the IT staff in the tapes being overwritten on a daily basis the way that we've described: That is routine, and that takes place in other organizations that employ a RAID server and that have the massive volume of emails that the provincial government has.

Mr. Victor Fedeli: The fact that we're sitting here nine months later and we still don't know how much this scandal cost and we still don't know who ordered the cover-up, other than hearing from one ministry representative who told us—OPA representatives who told us they were ordered to remove documents.

I think what we've learned here today is that this is a Liberal government-orchestrated cover-up of the highest

degree, in my opinion. I think we've seen the law being broken and an attempt to cover it up.

I'm going to ask my colleague Rob Leone if he has a couple of questions for you in the few minutes we have remaining.

Mr. Rob Leone: How much time?

The Chair (Mr. Shafiq Qaadri): Four minutes left.

Mr. Rob Leone: In your report you state there is a Premier's Office Records Retention Schedule. The normal practice of the government, when they're trying to change and transition and people are coming and going from office, is to follow this retention schedule, which means that all the information that's on a computer gets transferred to a portable electronic device and then the computer gets wiped.

Dr. Ann Cavoukian: Yes.

Mr. Rob Leone: So one would infer, given that protocol, that either these portable electronic devices exist and have information that might be pertinent to us—whether they've also been destroyed. What would you say to that?

Mr. Brian Beamish: When I read the Premier's office records retention schedule and what should happen on transition, I read that as contemplating a transition from—if I can put it this way—one political party to another; you have a brand new government coming in. That wasn't the case back in January and February. You had a Premier coming in who was of the same political party. If you're changing political parties, it's understandable that policy files, stakeholder files, correspondence, that type of thing, would not be left behind for the incoming administration.

Our understanding was that because there was some consistency in terms of the government, things like policy files were in fact left in place. They weren't transitioned onto a mobile device and sent to the archives.

Mr. Rob Leone: Everyone in government, everyone in the province of Ontario, basically, who is watching Ontario politics knew last fall, or the fall of 2012, that myself and others in the Legislature were moving contempt on the government for failure to produce documents. That occurred last September, when that was debated, and a motion passed, followed by a subsequent prorogation of the Legislature. This was a hot button issue. It was an issue that the opposition clearly was committed to investigating. Does the timing appear coincidental that prior to the resumption of this Legislature we have now deletion, purging of, destruction of potential evidence that would be pertinent to this committee? Does that timing factor into any of your analysis?

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

Mr. Brian Beamish: What I would comment on, and as the commissioner notes in her report, during that transition period, as the report says, the MGS IT group did take immediate steps to secure the emails during transition, so presumably those email accounts from that transition period are still around and available for scrutiny.

Mr. Rob Leone: I hope the OPP find them. Do we have all the documents in our hands that are pertinent to the investigation of this committee, according to your investigation of the destruction of emails?

Dr. Ann Cavoukian: Everything that we unearthed during the course of our investigation you have available. We went to great lengths to try to secure as much information as possible and we'll be sharing that with the OPP during their investigation.

Mr. Rob Leone: In the event that not all documentation has been provided—you've talked about this—

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

Mr. Peter Tabuns: Thank you, Dr. Cavoukian. Chris Morley was pretty strong in his testimony, saying that, in fact, your comments didn't apply to him. I would just like to know if you saw a big difference in the administration of record-keeping from the Morley regime to the Livingston regime.

Dr. Ann Cavoukian: I would have to say no, but in fairness to Mr. Morley, I don't know exactly what he was referring to in saying that my comments didn't apply to him. Perhaps he meant I didn't interview him, which is correct.

Mr. Peter Tabuns: He did say that, yes.

Dr. Ann Cavoukian: And that is absolutely correct; I did not interview Mr. Morley. We felt it was sufficient to interview Mr. Livingston as the former chief of staff for the former Premier. Perhaps it was the case that Mr. Morley had a greater familiarity with the Archives and Recordkeeping Act because he'd been around much longer than Mr. Livingston had. Maybe that's what he was referencing. It's not clear to me. I don't know what to say beyond that.

Mr. Peter Tabuns: But in your research you didn't see night and day in terms of record-keeping between one and the other.

Dr. Ann Cavoukian: No.

Mr. Peter Tabuns: No. Okay.

Mr. Brian Beamish: Although I'm not sure that was the focus of—as the commissioner said, we didn't speak to Mr. Morley, so it would be maybe unfair to comment on what his practices were. Our focus really was on the individuals that are in the report.

Mr. Peter Tabuns: Okay. Do you believe there was a failure to document government and political decision-making in the matter of the gas plants?

Dr. Ann Cavoukian: Yes.

Mr. Peter Tabuns: I was guessing from the nodding of the head that that's where you were going.

Do you believe that the secretary of cabinet was accurate when he said that political staff knew the difference between records that should be kept and not kept, even if they weren't perhaps trained on every comma and period in the act?

Dr. Ann Cavoukian: I do. Now, it's clear that the political staff wouldn't be familiar with the details associated with the Archives and Recordkeeping Act. People would think, "It's boring. I don't care about the minutiae;

it doesn't matter," things of that nature. Having said that, taking the secretary's comments, I believe that they certainly had a general understanding that there are some records relating to government activities that must be retained.

Mr. Peter Tabuns: Although training would reinforce, in people's minds, the necessity to act in a certain way, at the heart of it here, we're not looking at a failure of training.

Dr. Ann Cavoukian: I think it would depend on how deep you go in terms of the training. At a high level, I think there certainly should have been an understanding of, "You have to keep some records."

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Mr. Peter Tabuns: Some. One, two, three, maybe four in your years here.

It seems to me, and I think it would to you and to Mr. Wallace, there's a certain level of simple common sense, of keeping substantial records and not worrying about the, "Can I get you a coffee or go to lunch with you?"

Dr. Ann Cavoukian: Of course.

Mr. Peter Tabuns: We only learned about the deleted accounts because we filed a freedom-of-information request. Is there any oversight of record retention? Is there anyone who's looking around and saying, "Hey, we're getting gaps in record-keeping here"?

Dr. Ann Cavoukian: Generally, you mean?

Mr. Peter Tabuns: Yes.

Dr. Ann Cavoukian: I would think the archivist. Brian? That's a good question. I'm just conferring with Mr. Beamish. We don't do that.

Mr. Brian Beamish: We don't do that, although I will point out that the commissioner made some recommendations in her report that were an attempt to give her some jurisdiction to review record retention policies, or the failure to keep records. I think those were really important recommendations that she had, which would give us some type of oversight in that area so if people felt that records had been improperly deleted, we would be able to take some action. But currently, as you know, we don't have any particular jurisdiction under the Archives and Recordkeeping Act.

Dr. Ann Cavoukian: It doesn't extend to records retention.

Mr. Peter Tabuns: Okay. In terms of records retention, you tell us about this particular array of servers that Ontario uses, the RAID.

Dr. Ann Cavoukian: Yes.

Mr. Peter Tabuns: Is this a system that's especially problematic in terms of retaining records? Is this a standard approach to retaining records? I ask in part because some of my colleagues at the city of Toronto have found that their emails have been retained in perpetuity.

Dr. Ann Cavoukian: Well, because the city of Toronto uses a different system that does archive all emails, deleted or otherwise; they have a backup system. But they do not have the volume of emails that the province of Ontario has. And so from what we understand in terms

of our investigation, the RAID kind of server is not unusual. It's something that the specialists we spoke to were very familiar with. They said it was not an uncommon type of server to be employed in the context of massive amounts of email and that you would not archive that massive volume, that number of emails, for backup purposes. So that was not considered to be unusual. Now, whether it's desirable or not, that's another question.

But also, if you changed to a backup system that did archive, then you would be incurring significant costs, and all of that would have to be debated.

Mr. Peter Tabuns: Okay. One thing, and you mentioned this earlier: When I look at the way I handle my emails in the time I have, I just save everything because it's easiest.

Dr. Ann Cavoukian: I know. Me too.

Mr. Peter Tabuns: It took a lot of time to wipe out all these records.

Dr. Ann Cavoukian: You know what's interesting? Since doing this investigation, I've been trying to be a little more responsible about deleting my emails.

Laughter.

Dr. Ann Cavoukian: No, the ones I should delete. I ask lots of people to do things for me and they respond, "Will do." Of course, I could just delete those. I just can't delete all of them on a daily basis, let alone a weekly basis, because it takes a lot of time, and that's what struck me. You have to turn your mind to it. Even though it's one second to delete, you still have to turn your mind to it, go and do it.

Mr. Peter Tabuns: Some people actually seemed to be very rigorous in making sure that there was nothing left, because it takes a lot of time to be that good.

Dr. Ann Cavoukian: It does for me.

Mr. Peter Tabuns: I would say you're fairly normal in these matters.

We found it extraordinary that not only were there no emails from Jamison Steeve, Sean Mullin, Chris Morley; Craig MacLennan's were gone. We have no materials from Dalton McGuinty in emails or PINs, none from Chris Bentley. He referred that he didn't have a government email account, but that didn't exclude other email accounts that he might have communicated with. I mean, this complete lack of records has huge implications for a culture of transparency. Do you have comment on that, or should we just take your report as the comment on that?

Dr. Ann Cavoukian: Just allow me to repeat that transparency and openness are absolutely essential to maintaining our free and democratic process. I know that may sound very high-level, but I can't emphasize it enough. We need to have scrutiny of government activities, and in order for that to happen, the public has to have a right of access under the freedom-of-information act. They will be denied that right of access unless there are government records for them to access, so I can't emphasize the importance of retention of government-related activities—I can't emphasize that enough.

Mr. Peter Tabuns: What do you think about the fact, then, that we have no documents from those we were told were the decision-makers—the Minister of Energy and the Premier—when it came to cancelling these plants?

Dr. Ann Cavoukian: Again, I have no jurisdiction in this area because it doesn't extend to that matter, but my guess would be that everyone has staff, and you can understand that the ministers are very busy and running around doing things, and they probably would have expected their staff to take care of these matters and retain records that needed to be retained.

Mr. Peter Tabuns: Mr. Schein?

Mr. Jonah Schein: You've raised some issues about the transition—

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

Mr. Jonah Schein: —between Premier McGuinty and Premier Wynne's office. Can you elaborate further on what you've seen in that transition process?

Dr. Ann Cavoukian: Brian—the transition process? I'm familiar with what's happening with Premier Wynne's office, and she has been very transparent with us in terms of records that she has in her possession, or her government's possession.

Mr. Brian Beamish: Yes. As the commissioner said, in terms of our recommendations so far, the response has been positive. We're optimistic.

Mr. Jonah Schein: Shouldn't it have been obvious to her that there are missing documents, though, during that transition process?

Dr. Ann Cavoukian: I don't know how to answer that. It's not something we address in our report, but it's not clear to me how she would have been aware of information that was missing and deleted. As I said, we did not address that issue.

Mr. Jonah Schein: But there's absolutely nothing on this file in that transition—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Schein. To Mr. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair. I'd like to begin my last round of questions talking a little bit about duplicate records. Your report also does discuss, of course, duplicate records, which are defined as copies of records kept by other offices or branches within the ministry or the government. You state that, "If staff in either the ministers' offices or the Premier's office determined that another government branch or department was retaining the records, there would be no requirement under these records retention policies for the minister's office or the Premier's office to retain additional copies."

You go on to say on page 27 that the "program owner" is responsible for maintaining business records relating to their specific initiatives...."

From my experience—my short experience—over the last few months as a parliamentary assistant, I know that it's customary that the ministry provides briefing decks and policy options for the vast majority of the meetings that I've attended. Similarly, a cabinet minister and their staff would know that Cabinet Office would retain all

documents prepared for and presented at cabinet meetings. So in those instances, I would imagine that it would be up to the program owner—in these two examples, the ministry and the Cabinet Office—to retain these documents. The copies that I would have in my possession would be surplus duplicates. Is that right?

Mr. Brian Beamish: Yes, to the extent that there is a program owner, you are correct: There needs to be a copy retained, and the records retention schedules provide that that can be done by someone within the ministry.

Mr. Steven Del Duca: Okay. Great. I also want to talk a little bit about verbal communication. Specifically with respect to your comments surrounding verbal communications in the report, some have interpreted it to mean, “There is something wrong with in-person discussions or the verbal exchange of ideas amongst politicians and between their staff.” I know that in the earlier round, you did mention that that’s not the case. Specifically, in a letter to the Globe and Mail, you offered some important clarification. You stated, “It is obvious that I would never suggest politicians should be required ‘to disclose every passing thought.’ Such a proposition would be ludicrous.” I think you said that earlier today here: ludicrous.

“In fact, I often encourage my own staff,” as you said earlier, “to stop sending everything via email and have more discussions in person.” Can you expand a little bit on that?

Dr. Ann Cavoukian: Certainly. I think it’s the view that somehow this is a zero-sum game, that you can either have verbal communication or written communication, and somehow you’re not going to have an interplay. That’s what is ludicrous. Of course you must have verbal communications with your staff, with your team. It grows ideas, it generates new thoughts and it’s a very, I think, healthy environment to have within an office. But that is not to suggest that that is to the exclusion of having some written records associated with that which forms the content of the verbal communications. You must have both. It has to be a positive sum, not a zero-sum outcome.

Mr. Steven Del Duca: No, and I appreciate that. I think, to reiterate what I mentioned in the very first question that I had for you today, this committee has actually received tens and tens of thousands of records from the current and the former Premier’s office: emails, handwritten notes, documents, including from some of the people who have been talked about here today—Mr. Morley, Mr. Steeve, Mr. Mullin, Mr. Livingston, Mr. MacLennan; others. In fact, as this committee well knows, the accounts of around 52 former staff have been reviewed and records have been provided to this committee.

Understanding completely that it is a balance between the verbal communications and making sure that certain records are kept, I just wanted to make sure it was clearly understood by this committee that there is nothing wrong with an approach to having in-person conversations; that not every single thing that is uttered between a politician and staffer, or staff to staff, needs to be retained.

Dr. Ann Cavoukian: No, I totally agree with you. In fact, I’m delighted that you actually read my letter to the editor of the Globe. I didn’t think anyone read those, so I’m so happy to hear that.

Mr. Steven Del Duca: I’m not exactly busy styling my hair, so it’s okay. I have a little bit of extra time.

With respect to FIPPA, and the exemptions that exist in FIPPA, I’d like to speak a little bit more generally about FIPPA and, again, some of the exemptions that are contained in that piece of legislation. There are a number of exclusions contained in that act with respect to documents to be disclosed in response to an FOI request, and I’m particularly interested in “Cabinet records,” which I think is section 12; records under the “Economic and other interests of Ontario” category, section 18; and “Solicitor-client privilege” materials, section 19, I think. Can you provide this committee with some insight as to why those exemptions exist and why they are appropriate?

Dr. Ann Cavoukian: I’ll ask Mr. Beamish to join me in a moment. I think those sections are very, very important because governments have to be able to engage in policy-related discussions, blue-sky thinking. You need to explore options that may start off being wild and much broader than you would go, and then you dilute them into the actual content of what the decision is. So I think there was an understanding that there had to be some protection of that information.

Brian?

Mr. Brian Beamish: Yes. As the commissioner points out, there’s a recognition that there should be a zone of discussion for government, particularly cabinet. In terms of our report, though, it’s important to note that there’s a distinction between the duty to retain records and a duty to disclose those records, subject to an FOI request. Simply because something may fall within section 12 or 18 or 19, “Solicitor-client privilege,” doesn’t—that means that you don’t have to disclose it. That’s a separate question from whether you need to retain it.

Mr. Steven Del Duca: Okay. The Premier has been pretty clear, I think, on this: Government business should be conducted using government property, and government business is subject to FOI no matter where it takes place. That said, MPPs and certain staff do exercise legislative functions that can and should take place using Legislative Assembly email accounts.

You would have to agree, I think, that there are—and you kind of talked about this a bit earlier—definitely legitimate reasons to use these legislative resources, such as caucus deliberations and constituency and political matters. I think that’s why FIPPA specifies that it doesn’t apply to the Legislative Assembly. Is that right?

Dr. Ann Cavoukian: I agree. Yes.

Mr. Steven Del Duca: Okay. I think that’s it, in terms of my questions for today. I just want to say—I know others have said it before—thank you very much for your report, for being here today. I think we all look forward to continuing having this conversation, so thanks very much for being here.

Dr. Ann Cavoukian: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Thank you, commissioners.

The committee is recessed till 1 p.m.

The committee recessed from 1213 to 1259.

MR. DALTON McGUINTY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the Standing Committee on Justice Policy to order once again. As you know, we heard from the Information and Privacy Commissioner. I would now like to welcome the former MPP for the region of Ottawa South, the former Premier of the province of Ontario, the honourable Dalton McGuinty. Mr. McGuinty, I invite you to be sworn in by our Clerk.

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

Mr. Dalton McGuinty: I do.

Le Président (M. Shafiq Qaadri): Merci, monsieur McGuinty. Comme vous le savez, vous avez cinq minutes pour vos remarques introductoires. Je vous invite à commencer maintenant.

Mr. Dalton McGuinty: Merci beaucoup, monsieur le Président.

Good afternoon to all of you. Thank you so much for giving me the opportunity to speak to you yet again.

I have made it clear that I believe my government got the decision to locate gas plants in Oakville and Mississauga wrong. We got 17 other gas plants right, but we most assuredly got these two wrong. My government's decision to locate very large gas plants next to schools and homes, on sites where our new law prevented us from locating even a single emissions-free wind turbine, was wrong. People in those communities told us so, the opposition told us so, and we acted. I regret that we did not listen to the communities and the opposition sooner, I regret that costs are as high as they are, but I don't regret the decision to relocate those plants. It was the right thing to do.

Our job in government is always to get the big things right, and we did that, in health care, in education, in the environment and in the economy. Had we not gotten those big things right, this committee, or another like it, would rightly be taking the government to task for it. Instead, this committee is focusing on the relocation of two gas plants, a decision for which I accept responsibility.

I welcome the report from the Information and Privacy Commissioner. In 2006, my government demonstrated leadership by passing the Archives and Recordkeeping Act, but as the commissioner pointed out, my government did not do enough to ensure staff were fully trained in the responsibilities created under that new law. I am pleased that Premier Wynne is committed to ensuring that staff receive the necessary training, but going for-

ward, in my opinion, training won't be enough. The rules here are confusing, and they cry out for clarity.

What to destroy and what to preserve is, today, a matter of judgment. There is no comprehensive, exhaustive list for you and your staffs to look to which tells you precisely when to preserve and when to destroy. What one of you may consider as a record that is transitory, personal or political and therefore can and even must be destroyed, another of you may insist is a public record and therefore must be preserved. It's a matter of judgment guided by some very confusing rules, including the 99 rules authorizing destruction that this committee learned about for the very first time just last week.

I believe that this committee also recently learned about the existence of a Cabinet Office directive, one issued by the civil service, requiring that emails be purged when staff leave. As I indicated in my response to Ms. Cavoukian's report, we need clarity here.

Ms. Cavoukian's report also raises the issue of mandating the documentation of verbal communications in government. I have a real concern with such a proposed legislative duty. Opposition committee members have had a hard time accepting a fact of governments in Canada, and probably many more around the world: When it comes to communications, much of the practice of government by politicians is verbal in nature. This has been government practice for a long, long time. The Bureaucracy prepares written materials for the politicians to consider, the politicians give mostly verbal consideration to these written materials, and the politicians' final decisions are duly recorded.

This is not to say that some of the political discussions inside government prior to a final decision are not being recorded. The very fact that this committee has caused the review of over one million documents and has received over 130,000 documents, including 30,000 from the Premier's office, speaks eloquently to the reality that much is being recorded along the way to minuted cabinet decisions.

However, much is left unrecorded, and, in my opinion, that's the way it should be. Politicians and political staff need to be free to kick around ideas—good ones and bad ones, wise ones and foolish ones. They need to be able to think through their decisions out loud before they make them. They need to be able to go through that often messy exercise that, at its best, leads to the creation of good public policy.

In conclusion, I thank committee members for your work. I look forward to your constructive advice and recommendations, including advice, hopefully, on how we can do a better job of locating gas plants. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McGuinty. I commend you on your precision timing. Mr. Tabuns?

Mr. Peter Tabuns: Thank you for being here, Mr. McGuinty.

Mr. Dalton McGuinty: Yes, sir.

Mr. Peter Tabuns: Your government passed the Archives and Recordkeeping Act in 2006. Why didn't you follow it?

Mr. Dalton McGuinty: Let me tell you a little bit about what I focused on as Premier, and I know this will not come as a surprise to you, but I think it bears some illustration.

Mr. Peter Tabuns: Mr. McGuinty, I understand that there are a lot of things that you could talk to us about, but you, in fact, put a law into place which your government, your office didn't follow. Why didn't it follow your law?

Mr. Dalton McGuinty: I moved on to the next thing. I moved on to the next thing.

Mr. Peter Tabuns: So when you pass a law, it's gone?

Mr. Dalton McGuinty: I would be focused heavily on: What is it that we need to do to ensure that test scores continue to rise in the province of Ontario? What is it that we need to do to ensure that we create more jobs in the province of Ontario? What is it we need to do to get wait times down in the province of Ontario? So I devoted very little attention to that particular piece of legislation. To my knowledge, I have never been asked about this legislation, either in question period or by way of some kind of an inquiry from any member of the opposition. I can tell you that I have never heard from any secretary of the cabinet, and I've had the privilege of working with three. I have never heard from the Information and Privacy Commissioner about any dereliction of duty on the part of my office or any ministry with respect to this particular piece of legislation. It has been something that has been to the side. I've been focused on the immediate responsibilities of the Premier.

Mr. Peter Tabuns: So if a law is not an immediate responsibility and we're not asking a question in question period, then the law is irrelevant. Is that what you've just said to us? Because your office ignored it.

Mr. Dalton McGuinty: What I'm saying is, I count on my staff to do the necessary things with respect to new legislation. I would also, just to demonstrate how confusing the area is—we've got a Cabinet Office directive, a protocol in place, issued by the civil service, that says that when somebody leaves the office, you've got to delete all their emails. That's a Cabinet Office directive. That is obviously in conflict with some other rules over here that would be more specific to the archives legislation. So there's a lot of confusion out there, and I think one of the things that this committee can do to be helpful is to help us develop a process by which we can clarify what those rules might be.

Mr. Peter Tabuns: I can tell you that today Dr. Cavoukian and, previously, Peter Wallace, cabinet secretary, were pretty clear that people could and did understand, on a common-sense basis, that substantial documents were to be saved and others could be deleted. Your staff didn't do that. Your staff were deleting email accounts. They were wiping BlackBerry PINs. Why?

Mr. Dalton McGuinty: First of all, I disagree with the statement contained in the preface to your question, because Peter Wallace, the secretary of cabinet, said the following: "I don't know if political staff, or indeed many public service staff, understand the parameters and details associated with the archives act.... That is a little bit arcane." He said that. That's an admission from the head of the public service that the public service does not really, truly, fully understand the implications associated with the archives act.

I can say as well, Mr. Tabuns, that that applies to the political class. You would be very familiar with this. Let's draw this distinction, because I think it's important. Think of the integrity legislation and the Integrity Commissioner's office. That Integrity Commissioner meets with every one of us on an annual basis, and if anybody has any kind of a challenge, they can speak to her over the phone, get her on the line, get her to intervene.

I have never met with the Information and Privacy Commissioner regarding the archives act. I don't believe any of you have ever sat down with the Information and Privacy Commissioner in the province of Ontario and discussed the archives act. At no time has any secretary to the cabinet—I've had the pleasure of working with three—raised this issue with me. You might imagine that the Premier's day is pretty full, so I don't give much thought to the archives act. I don't give much thought to the management of emails, but I do give thought to creating jobs. I do give thought to ensuring we improve the quality of health care and I do give a lot of thought to improving the quality of our education. That's what I focused on.

Mr. Peter Tabuns: Mr. McGuinty, you're eating up the clock; that's what you're doing.

The privacy commissioner's report notes that the secretary of cabinet "indicated that political staff were fully aware of their obligations in this area."

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I sat in this room and questioned Peter Wallace about this matter, as well. People may not know every note in the Archives and Recordkeeping Act but they certainly know they have a responsibility to retain records, and yet your staff were wiping out their emails, clearing the decks. Chris Morley retained records on your fight with the teachers, on the Samsung deal, on your budget changes, but he kept no records on this deal, this gas plant scandal, which was consuming this Legislature. You had a law in place, and you and your staff were not keeping that law. Your office was not keeping that law. What were you trying to cover up?

Mr. Dalton McGuinty: Obviously I reject the assertion contained in the final question in that statement. But I think if you take a close look at the report prepared by the Information and Privacy Commissioner, one of her findings specifically states that my staff was not aware of the law. When she talks about Mr. Livingston on a couple of counts, she specifically says—and I'll just get that particular passage for you—that the CIO, which I assume stands for the chief information officer, "stated

that at no time did he ever believe that the inquiries from Livingston regarding the most effective way to ‘wipe clean’ the computers on transition were being made for an improper purpose.”

She goes on to say, “Information provided to my office by Livingston, the secretary” of cabinet, “the executive director of policy in the...Premier’s office, and the CIO was consistent in one regard—none of these individuals had any specific knowledge or information about the inappropriate deletion of electronic records occurring—”

Mr. Peter Tabuns: But both she and Peter Wallace previously—

Mr. Dalton McGuinty: I think we need to be honest about the absence of a broad understanding, both in the public service and in the political class, when it came to the implications and the new responsibilities to be assumed under the new legislation. I think that’s a fair assessment and—

Mr. Peter Tabuns: Actually, I don’t think it is a fair assessment.

Mr. Dalton McGuinty: —I’m confident the Information and Privacy Commissioner came to that conclusion.

Mr. Peter Tabuns: I actually have had the opportunity to read through many thousands of emails from civil servants who seem to retain almost everything. They could have deleted the odd comment, but in fact, they seem to retain almost everything. It takes a lot of work to go around and delete. In fact, your chief of staff, Mr. Livingston, wiped out everything. The former chief of staff, Mr. Morley, seemed to wipe out everything to do with the gas plants. There isn’t a single document from any of those gentlemen that will back up your assertion that you made a decision around the gas plants for environmental reasons. They took away your ability to declare innocence and they were warned by the cabinet secretary that that’s what would happen if all the emails were deleted. Nonetheless, records were destroyed. What was your office trying to cover up?

Mr. Dalton McGuinty: It’s been said that all records have been destroyed. That’s not true. You’ve received 130,000 records so far. I don’t know how many more you are in pursuit of at this point in time, but something tells me you’re going to get a lot more non-existent records—130,000, and 30,000 of which came from the Premier’s office.

In addition to that, at the last time you sat, last week, you were quoting emails that had been recorded by Chris Morley, the former chief of staff. You said that he has destroyed all his emails. How could you possibly be quoting from those at the same time?

I know that Jamison Steeve and Sean Mullin prepared notes in connection with meetings they had with Trans-Canada. Those notes were made available to this committee.

When it comes to cabinet documents, I’m not sure if you understand—you made a request for cabinet documents. Those are virtually sacred in the context of confi-

dentiality. And Peter Wallace phoned me and said, “You were given official custody of cabinet documents. The committee’s asking for them.” I said, “Give them whatever they’re asking for.”

So you had cabinet documents—

Mr. Peter Tabuns: Mr. McGuinty, you could have given us phone books—

Mr. Dalton McGuinty: —130,000 records so far.

Mr. Peter Tabuns: You can give us phone books, you can give us encyclopedias, you can give us databases, but if the key correspondence by your key staff was destroyed—and so you had no responsive records in your office. I consider that those key documents are gone, and Peter Wallace warned your chief of staff about that.

What was your involvement or the involvement in your office in the decision to withhold documents from the Standing Committee on Estimates?

Mr. Dalton McGuinty: I took a good, long hard look at all of the testimony that you’ve heard. On several occasions, senior bureaucrats have apologized for their shortcomings with respect to producing documents, and the secretary of cabinet himself has said that there was never any political intervention in the production of those documents. But here’s what we need to do, I believe, going forward. You need to understand that what you put in place—an unreasonable deadline, and to ask the civil service to comply with that deadline, and to ask them to produce tens of thousands of records—that is not sensible. It’s a recipe for a disaster. So hence, you had three productions, when, if you had said, “Look, why don’t we use date number 1 for the first tranche, date number 2 for the second tranche, date number 3 for the third tranche,” and so forth, as they do in commercial discoveries and disclosures, for example—that’s just a sensible, responsible way to do it.

Everybody you’ve heard from before this committee has said that it was just human error and that the civil service took responsibility for that. You need to stop looking through that partisan lens and recognize that the civil service did the very best that they could.

Mr. Peter Tabuns: I actually think that the civil service did try very hard, but you were in the House when all of us noticed that the documents we’d been given had pages missing. In fact, it was the Ontario Power Authority, watching us in the House, who came to the conclusion that they had been given incorrect instructions on how to pass documents on to us.

Your Minister of Energy: His office gave not a single document. Are you aware that withholding documents from a committee is a breach of a member’s privilege?

Mr. Dalton McGuinty: I know that you’ve received over 130,000 documents. You say that the OPA was misguided somehow?

Mr. Peter Tabuns: Yes. You could have checked their testimony.

Mr. Dalton McGuinty: We’ve all heard about this witness, but I like to rely on the cabinet secretary. He said he couldn’t come to any conclusion that anything

untoward or anything wrong had happened. I think you need to go with the cabinet secretary. You need to go with the non-partisan in coming to that conclusion, whether it has to do with this production of documents that took place over time, whether there was any kind of political intervention in the production of those documents; I think you need to rely on the public service, and they've given you the straight goods on this stuff.

Mr. Peter Tabuns: I actually did get a chance to ask the OPA, and they concluded, on the basis of listening to the questions we were putting in the House, that documents hadn't been turned over that should have been turned over.

But I have a second question for you: Whose email is djpm@liberal.ola.org?

Mr. Dalton McGuinty: That was mine.

Mr. Peter Tabuns: Okay. On May 7, under oath, you said, "I can tell you again that in my office, for example, I did not have an office computer; I did not use a government email. My interaction overwhelmingly was verbal in nature with my staff. It was, I'd get on the phone, talk to my assistant, bring some people in, let's talk about this right now"—did you use that email or not?

Mr. Dalton McGuinty: I did.

Mr. Peter Tabuns: And in those emails, did you touch on this matter?

Mr. Dalton McGuinty: Not that I can recall. Let me tell you again about my practice of business as Premier. At the end of the day I would be provided with a big file containing many documents, generally produced by Cabinet Office or ministry offices or consisting of policy notes prepared by my own office. These are all—I know you understand this now—documents not generated by me but by others, and hence, when I receive them, they are duplicates. So I review those documents, I take them back to the office the following day, and they do whatever they do with them; I didn't look into that.

I did have an email: djpm@liberal.ola.org. I used it predominantly for political matters and for exchanges with my own kids. That was the only email address that I was using. I didn't have one separate to that.

I did a lot of political business with that as well, related to the party. I may have, at some point along the way, received an email connected to gas plants, but it would not be substantive in nature. It may be along the lines of, "Minister Duguid is going to make a statement tomorrow. Here's his statement. Here's the release that we're going to be putting out on this." "You need to be present for this," somewhere else. But overwhelmingly, the nature of my business, when it came to the gas plant or anything else, was verbal in nature.

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Mr. Peter Tabuns: Did you have a BlackBerry?

Mr. Dalton McGuinty: I did on two occasions. One, at the beginning of my first mandate. I thought, as Minister of Research and Innovation, that I should have a BlackBerry; then I stopped using one. And at the time, I was only using it, frankly, as a telephone. And more recently, I acquired a BlackBerry.

Mr. Peter Tabuns: When you say "more recently," in the period in which the gas plant scandals were occurring?

Mr. Dalton McGuinty: In the period during which we were working hand in hand to honour our campaign commitments related to the relocation of gas plants, yes.

Mr. Peter Tabuns: To suggest for a moment that we were working hand in hand is a fair chunk of chutzpah. Nonetheless, did you use PINs and SMS?

Mr. Dalton McGuinty: I have never used a PIN or SMS.

Mr. Peter Tabuns: Okay. Did you keep your BlackBerry when you resigned as Premier and continued on as MPP?

Mr. Dalton McGuinty: I kept the technology, but then I got a new personal email account.

Mr. Peter Tabuns: Did you ever check your emails to see if you had communicated on the gas plant matter?

Mr. Dalton McGuinty: I check my emails every night.

Mr. Peter Tabuns: Have you ever done a search of your emails to see if you have material relevant to this committee?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: I think at the end I will ask if you could produce that. In fact, why don't I ask now? Will you go through the emails—

Mr. Dalton McGuinty: Did you not, at the conclusion of your last meeting, seek all the records connected with DJPM?

Mr. Victor Fedeli: Yes, we did. Peter was away.

Mr. Peter Tabuns: I was not at that meeting.

Mr. Dalton McGuinty: Okay.

Mr. Peter Tabuns: Did you ever communicate with your staff in writing about the gas plants—non-electronic communication?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: In testimony, you said, "My staff were fully expected to be both aware of the laws and ... following those laws." In your June 7 statement, you said that "inadequate training has made it" impossible "for staff ... to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept...."

Which is it: They were keeping the law, or they weren't exercising sound judgment?

Mr. Dalton McGuinty: They were both not aware of the law and, secondly, of course, untrained in its application and how it is that they should exercise their responsibilities. I'm not saying that's an excuse; I think it's a statement of fact. But here's what I'm saying, going forward: I'm saying that the Premier's staff today, your staffs, you yourselves, if you took a close look at the legislative framework, the 99 rules put forward by Mr. Morley, the standing directive issued by Cabinet Office saying that you shall delete all emails when somebody leaves, not to use any kind of discrimination in that regard—these rules are conflicting, they are messy, they are confusing. We need to find a way, and I'm asking

you to give this some consideration going forward—you need to find a way to ensure that staff and politicians understand the rules, because today they are, at best, murky.

Mr. Peter Tabuns: Well, I would say that, in fact, in our experience on this committee, the rules have been relatively straightforward. Your staff are supposed to retain substantive records. They are supposed to turn them over to the Archives of Ontario, and machines which have had their useful records taken off them can then be wiped clean. It's not that complex—

Mr. Dalton McGuinty: But here's the problem—

Mr. Peter Tabuns: —and in fact, your people weren't doing that. Either they were trained in the law or they were—

Mr. Dalton McGuinty: Here's the problem: At the end of the day, it's a matter of judgment. You may deem something to be a political record, and I'll say, "Well, actually, that's related to my constituency, so it's exempt." Or I might say, "Actually, that's political, so it's exempt." Or I might say, "No, actually, I think that falls into the transitory category, so it's exempt."

I know it's easy from on high, with the benefit of 20/20, to second-guess, but when you're on the ground making these decisions—I think we owe these people who are making these decisions—these are just ordinary staffers, in many cases—some clarity with respect to the rules. They don't have that benefit at this point in time.

Mr. Peter Tabuns: I would just say that they're not ordinary staffers. These were the chiefs of staff, senior people, not clerks. Frankly, Mr. Morley said he was well aware of the act. He retained a variety of records; unfortunately, not a single piece on the gas plants. To those of us who are looking at it from the outside, it looks extraordinarily selective. It looks like information has been covered up. Frankly, Mr. Wallace made it very clear as well: Your staff destroyed records and your ability to claim innocence. There is no documentation showing that you made a decision on the gas plants, other than for political reasons—simple as that.

Mr. Dalton McGuinty: Well, save and except for 130,000 have been produced so far for you to review.

Mr. Peter Tabuns: And, again, I've gone through those documents, and, surprisingly enough, there are a lot of drafts and a lot of duplicates.

The civil service seems to be able to keep all their records, but your staff—

Mr. Dalton McGuinty: The other thing—

Mr. Peter Tabuns: —seem to have been very diligent in making sure they were—

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

To Mr. Del Duca.

Mr. Steven Del Duca: Thanks very much, Mr. Chair. Thank you, Premier McGuinty, for being with us again here today.

Mr. Dalton McGuinty: Thank you for having me back.

Mr. Steven Del Duca: I know you referenced it in your opening and in several of your responses to questions from Mr. Tabuns, but I just want to go over this a little bit regarding former Premier's office records. I want to start by clearing up some, what I think are misconceptions about the documents and the records.

As you kind of alluded to, in response to an estimates committee request for records on the two gas plant relocations last year, 56,000 documents were turned over by the OPA and the Ministry of Energy. Since this particular committee began its hearings in March, the government has produced, as you've said repeatedly, over 130,000 documents, including almost 30,000 documents from the Premier's office. Furthermore, in April, 4,000 documents were released in response to an FOI request related to the Oakville and Mississauga gas plants. So these document disclosures include records from both current and former Premiers' offices. That includes thousands of pages of emails from your former staff and handwritten notes from two of your senior advisers on this file. We've also received communications and transition materials.

So my question is, would you be okay with addressing what I think are the false statements by the opposition, that they don't have records from your office? And, beyond that, what do you suspect is motivating this continued line of questioning from the opposition?

Mr. Dalton McGuinty: Well, I think that this is not a determined effort to pursue the truth. This committee is a partisan exercise, and I think we need to be honest about that. If you go to the Oxford dictionary and look up "partisan," it defines it as "prejudiced in favour of a particular cause."

This committee, dominated as it is by the opposition, is prejudiced in favour of the defeat of a government, and that colours everything that they do. That colours their characterization of witnesses. It colours their assessment of their integrity, their credibility, their truthfulness. It colours their assessment of the weight to be given to particular pieces of evidence.

Let me just give you a sense of what I'm talking about here. I mentioned this before. When it came to the production of documents, they say that there has been political intervention. The secretary of cabinet said that is not the case, and several senior bureaucrats have apologized for their missteps. When it comes to producing commercially sensitive documents—I here refer specifically to Minister Bentley's actions—the auditor, and every other witness who appeared before this committee, said that to release those documents would be foolish. They maintain this is part of a conspiracy. The whole notion of the language of "kept whole," which I think the NDP in particular have talked about—every witness who has had the opportunity to broach that, including TransCanada, said it was language that was put forward by TransCanada, and yet they refused to accept that.

What about the issue of code names? They absolutely insist there's something nefarious and untowards regarding the use of code names, like Project Vapour. The cab-

inet secretary himself said for his 31 years since he's been here, the code names have been commonplace.

These folks insist that there have been records stolen. The independent Information and Privacy Commissioner said she found no evidence of that whatsoever. But if you're looking through that partisan lens that colours everything you do, where your pursuit here is not the truth but rather the defeat of a government, then you see things in a different light, and you paint a certain narrative, and you're very reluctant to depart from that narrative.

I think we need to be honest about the exercise that is unfolding here before Ontarians. If you bear that in mind, what it helps you do is not lend unwarranted credibility and weight to the workings of this committee.

Mr. Steven Del Duca: Thank you. So another misconception that I'd like to address is that which surrounds our government's response to these issues. The opposition are spreading many mistruths, let's call them, that there has been some sort of staged cover-up—you mentioned this a second ago—when that's clearly not the case, as you've said. As I already outlined, and as you've outlined, hundreds of thousands of documents have been made public.

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As soon as she became Premier, Premier Wynne immediately called the House back and offered a select committee to investigate these matters. When the opposition rejected that, she expanded the scope of the justice committee to include a review of all matters pertaining to the relocations. To date, we've heard from roughly 40 witnesses. This is your second time here before the committee.

Given all of these steps that our government has taken, would you agree that our government is working hard to be open and transparent on this issue?

Mr. Dalton McGuinty: I'm not sure any government in the history of the province has ever done more to reach out across the aisle and extend the hand of co-operation and collegiality. And notwithstanding the refreshing approach brought by Premier Wynne and her government, I notice with some sadness that that government was unable to pass a single bill during her first session, apart from the budget. Not a single bill.

I have every expectation that this partisan exercise will continue until the next election. This is not about pursuing the truth; it's about defeating the government. We're not here today talking about our government's failure when it comes to millions of patients or millions of students or millions of workers, because there have been no big failures there. We did not do the right thing originally when it came to locating these gas plants, and I accept responsibility for that. But at some point in time, it is my sincere hope that the committee—especially driven as it is by the opposition—will produce substantive, positive, welcome recommendations relating to: How should we locate gas plants going forward? How should the bureaucracy deal with the production of documents when they receive requests? How should we ensure that

there are clear rules when it comes to the archives act? Because clearly, right now, neither the bureaucracy nor the political class understand its implications. Those are the kinds of things of a positive nature that this committee can actually do for us.

Mr. Steven Del Duca: Thank you for that. You know what? By way of comparison—because we've heard from a lot of people, including yourself here today, about the openness, the transparency and the considerable efforts that our government has taken with respect to trying to comply, and actually going above and beyond requests from this committee repeatedly. So just for a quick second, if we can put that in perspective, you were opposition leader here in this place from 1996 to 2003. Some might know I had the privilege of working here as a staffer during a couple of windows in that particular period. There was a lot of activity happening in the province of Ontario during that era.

There are three things that stand out in my mind from 1996 to 2003, three things that I know to this day people in my riding and in other parts of Ontario continue to talk about as occurrences that didn't reflect the very best of Ontario. In particular, in no particular order, I'm thinking of the sale of Highway 407, I'm thinking of what took place at Walkerton, and of what took place at Ipperwash. You were Leader of the Opposition. Your caucus and the staff working for you were working very hard, as I recall, trying to unearth what was really taking place on those three particular scandals. I'm just wondering if you can draw a comparison in terms of the efforts that have been made by our government to disclose information, to be open, to be transparent, and think back to documents, emails, correspondence, whatever it was, from that period when they were in power, on those three particular scandals, and draw a comparison and give us your perspective on that.

Mr. Dalton McGuinty: Well, first of all, let me say something which may not be readily aware, but I believe that our government—my government and now Premier Wynne's government—is producing more records than any government in the history of the province. We used to telephone each other and we did not record those telephone calls. There was no wiretapping of telephone calls. We would just pick up the phone and call each other. And now it's easier to take a telephone call, the spoken word, and turn it into the written word through an email. So for all the telephone calls we used to make, for which there is no record, there are now countless—thousands, hundreds of thousands, maybe even millions—of records that have been generated today that were not generated in the past. That's one reason why this committee has access to so many records.

Now, I combine that as well with an important character of western democracies. A lot of the deliberative aspects of decision-making—the conversations, the debates, the arguing, the toing and froing, the kicking around of ideas—that is verbal in nature, and it's very important that you be able to continue to do that.

I can't tell you the number of times, for example, that a member of the opposition would have approached me as Premier and said, "Can I speak to you in confidence about something? It's related to a substantive policy matter; can I speak to you in confidence about something?" I think we need to be able to retain the right to be able to speak to each other in confidence, whether that's in cabinet or whether that's with our constituents.

I recall a meeting with a constituent once who said, "I've got a real concern with one of your liquor licence inspectors. She's going to put me out of business. Can I speak to you in confidence?" I said, "Of course you can speak to me in confidence." There are appropriate times for us to be able to engage in the deliberative elements of our work in confidence. Ultimately, decisions have to be recorded, and they have been, and they will continue to be.

Mr. Steven Del Duca: Okay. I want to talk a little bit about staff training. I want to ask you about your June 7 statement in response to the Information and Privacy Commissioner's special report. You noted that in 2006, as you said, our government passed the Archives and Recordkeeping Act. You mentioned that, despite some efforts, the government did not devote adequate resources and attention to ensuring that all government staff in all ministries and in the Premier's office were fully informed of their responsibilities.

You go on to say that this inadequate training has made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated. The IPC confirmed, here before this committee this morning, that it's very clear that staff were, for the most part, not aware of their responsibilities.

In your letter, you urged the government to immediately devote all necessary resources to train all government staff regarding record management obligations. I'm wondering if you could expand a little bit on that. What information and resources do you think would help staff best understand their responsibilities around record retention?

Mr. Dalton McGuinty: Right. First of all, as I recall, the opposition voted against this particular piece of legislation; I think it's important to understand that as they climb onto their high horses. I think it's also important to understand that we failed, as a government—and I accept that—to put in place the necessary resources. We would have benefited from an intervention at a much earlier stage from the Information and Privacy Commissioner's office as to what it was that we needed to do to ensure that we had the necessary training programs in place.

Again, if you're partisan and you're looking at this exercise through a purely partisan lens, you think this is somehow specific to gas plants, the Minister of Energy and the Premier's office. This is government-wide. This affects all of the political class and affects all the

bureaucracy. We have all come up short when it comes to understanding what our responsibilities are under this new piece of legislation, so I'm glad that Premier Wynne is on top of this. I'm glad that she's making the necessary investments.

I think what we need to do, Steve, is, we need to find a way to create that cultural partnership that now exists between an MPP, their staff and the Integrity Commissioner's office and an MPP, their staff and the Information and Privacy Commissioner's office, so that there are regular visits; there's a sense that you can pick up the phone any time and ask for guidance with respect to "What can I delete? What can I not delete? What do I have to turn over to archives?"—those kinds of things.

Right now, that culture is just not there, and I think that's something that we need to reach for. Beyond the obvious training and clarity of rules, we need to establish a culture of co-operation and collegiality like the one that we have with the Integrity Commissioner's office.

Mr. Steven Del Duca: Thank you. Your statement that I alluded to a few minutes ago concludes by urging the government to draft clear guidelines describing in detail what kinds of records are deemed public and therefore must be preserved, and which are transitory records or personal, political and constituency records, and therefore need not be preserved. You go on to say that in the absence of such clarity—and you've referenced this a couple of times today—it will be very difficult for government staff to exercise sound judgment.

Through our work, the committee has been provided with and reviewed several different record retention schedules which outline several rules around and definitions of transitory records. What's clear is that not all records need to be kept, which the IPC herself confirmed.

The Common Records Series defines transitory records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

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

Based on your experience in government, does that seem to be an accurate characterization of transitory records?

Mr. Dalton McGuinty: I like the cabinet secretary's understanding of this particular language. What I can say is that I have had the benefit from time to time to stand over my appointments secretary, for example, and to look at the emails coming in on a daily basis is staggering, to

say nothing of the chit-chat and minor engagements that take place between staff because of the facility with which we communicate with each other now through email.

There are two points I want to make here. Overwhelmingly, the stuff that is being passed back and forth on email is either transitory or personal. In my case, it was largely political. The other point I want to make is that there is still a lot of important government business that is taking place verbally, as part of a long oral tradition, where we deliberate matters in confidence. That is so important that we retain that.

I know the Information and Privacy Commissioner has said that we need to put in place a new legislative duty requiring that we record certain kinds of deliberations or actions prior to final decisions. I think that would be a big mistake, and you should know that Information and Privacy Commissioners have been asking for this in Canada for some 20 years now, at the federal level and at the provincial level. The reason that the federal Conservative government rejected that advice—by the way, when a private member's bill to that effect was introduced—was because there was a reasonable understanding of how important it is that politicians and their staffs and their constituents and stakeholders from time to time have an opportunity to speak to each other and to deliberate in confidence.

Mr. Steven Del Duca: I want to take up that last point because I think it is very important that we try to clarify these particular points. There is, as I think you would know, a wide misconception and I think a deliberate attempt on the part of the opposition to confuse people with respect to this notion that every single piece of paper, every electronic record, every whatever it is needs to be kept or retained. If that was the case, I imagine that government would grind to a halt.

So let me ask you: What was the intent of the 2006 record-keeping legislation? Because it seems to me that it provides best practices for what is and what isn't reasonable in terms of record retention.

Mr. Dalton McGuinty: It was an effort, modest as it was, to introduce some rules regarding what it is should be kept for posterity. Where we failed, where we came up short, is elaborating those rules in a way that makes them very clear and straightforward. That doesn't mean, by the way, that the way you make something straightforward is you take something that's open to judgment and then write a 30-page treatise to guide individual judgment-making on that particular area. That's not going to be helpful.

We had the right idea in terms of putting forward this legislation. It was in keeping with so many pieces of legislation and initiatives that we had pursued as a government to introduce more transparency and accountability. But now we need some clarity with respect to those rules, and we need to ensure that we don't throw a spoke into the wheels of the foundation for a successful democracy when we prohibit politicians and staffs and constituents and stakeholders from having confidential delibera-

tions leading up to final decisions. Of course, I agree that those final decisions must be the subject of record.

Mr. Steven Del Duca: Thanks very much. I'll stop there, Mr. Chair.

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

Mr. Victor Fedeli: Thank you, Chair. Mr. McGuinty, if there is so much openness and transparency, why is it that we still don't know how much the gas plant cancellation cost?

Mr. Dalton McGuinty: Well, it has been proven to be a very complicated exercise. I think you will recognize that.

Mr. Victor Fedeli: Really? That's it?

Mr. Dalton McGuinty: I think you'll recognize that. And I think it's worth listening to what the auditor had to say about this, because the opposition has insisted that there has been fiddling with the numbers, shall I say, and at one point in time, after a big discussion related to the numbers and who was coming up with what numbers, Mr. Bob Delaney asked the following question: "In reading the report"—that's the auditor's report—"there's nothing in there that indicates any evidence of wrongdoing. Did you find any evidence of wrongdoing on the part of the OPA, the ministry or anybody else" with respect to these numbers—

Mr. Victor Fedeli: Let me ask again. It's a simple question.

Mr. Dalton McGuinty: But I think it's important that we hear the answer, because Mr. Jim McCarter—

Mr. Victor Fedeli: Why do we not know what the total is?

Mr. Dalton McGuinty: —answered, "No, I don't think there was any evidence of what I would call wrongdoing. No."

Mr. Victor Fedeli: So why don't we know how much both cancellations are, with all this alleged openness?

Mr. Dalton McGuinty: Well, I think you've had four numbers from the OPA now.

Mr. Victor Fedeli: What number do you go with today?

Mr. Dalton McGuinty: Well, I think it points to a shortcoming over at the OPA.

Mr. Victor Fedeli: Oh, I see. The last time you appeared before this committee, I asked you almost 20 times when you learned that the costs of the cancellation would consist of more than sunk costs. I'll ask you again today for the first time: When did you know there were more than just sunk costs in the cancellation of both Mississauga and Oakville?

Mr. Dalton McGuinty: Whenever the Ministry of Energy made that public, at the same time that you learned of that.

Mr. Victor Fedeli: Oh, I don't think so. I think there are documents here. Why don't we start with Liberal gas plant scandal document number 5? Clerk, are the documents distributed?

The Clerk of the Committee (Ms. Tamara Pomanski): Yes, they're distributed.

Mr. Victor Fedeli: So the last document there, and this is a 2011 document: “Settlement for cancellation of Oakville and Mississauga gas plants: \$900 million.” There’s a note on this one, number 6: “Government is currently in negotiations to settle the cancellation of these plants with the developers with an exposure identified up to \$900 million depending on the outcome and mechanism ... (may be electricity sector exposure if delivered through)” the electricity vendor.

This is your finance and treasury people. They are very clearly—

Mr. Dalton McGuinty: Sorry? Which document again?

Mr. Victor Fedeli: The last one.

Mr. Dalton McGuinty: The last page?

Mr. Victor Fedeli: The last page, document number 5.

Mr. Dalton McGuinty: Partisan exercise document number 5? I’m there. I’m with you.

Mr. Victor Fedeli: Liberal gas plant scandal document number 5: \$900 million. You can joke all you want about it, but I’ll tell you, the people who are paying their hydro bills, doubled under your government, aren’t laughing today. They are not laughing today, Mr. McGuinty. They are looking at this \$900 million that your own people estimated long before your minister said, “You’re going to hear many numbers. All you need to remember is \$40 million.” That was a condescending sentence, Mr. McGuinty: \$40 million, which now is going to be turning out to be hundreds upon hundreds of millions.

I’ll ask you again: When did you know that it was more than sunk costs?

Mr. Dalton McGuinty: My answer remains the same.

Mr. Victor Fedeli: Well, you haven’t answered it.

Mr. Dalton McGuinty: And I’ve said this before. By the way, on a day like today, where it is so warm and there’s so little air movement, I can tell you that I’m reminded of all the people who have approached me and said, “Thank you for moving so quickly”—

Mr. Victor Fedeli: Well, let me tell you what my cab driver told me this morning in the rain. He said, “I think Mr. McGuinty should go to jail.” That’s what I heard from my cab driver this morning, if you really want to talk about the weather.

Mr. Dalton McGuinty: —“for shutting down coal-fired generation in the province of Ontario.”

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I think that’s beyond—

Mr. Victor Fedeli: Well, it’s the truth. This is what the cab driver said.

I’ll ask you again. Let me reword it in a different way. When did you become aware of additional costs? I’ll give you a chance to answer this one, then. These are additional costs now. This is not the \$40 million sunk costs or the \$190 million that was announced—

Mr. Dalton McGuinty: When everybody else—

Mr. Victor Fedeli: —the \$275 million.

Mr. Dalton McGuinty: When everybody else was made aware. I rely—

Mr. Victor Fedeli: So what you’re saying is, everybody else was made aware back in 2011. This is what you’ve just said to us.

Mr. Dalton McGuinty: In my office, of course, our connection with the negotiations which led to the ultimate resolution of these matters and particular costs—

Mr. Victor Fedeli: So what you’ve just said is—

Mr. Dalton McGuinty: Hang on a second, now—so I relied on—we didn’t make those calculations inside the Premier’s office. I think you can appreciate that.

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Mr. Victor Fedeli: You’ve answered the question. For the first time, I’ll give that to you. You said, when everybody else was aware.

Mr. Dalton McGuinty: We also relied, to a limited extent, on the Ministry of Energy, and they relied, in turn, on the numbers and the calculations prepared by the Ontario Power Authority.

Mr. Victor Fedeli: No, no. This is very good. So let’s go to doc 4 for a moment here—the Liberal gas plant scandal document 4, the second-last document.

You’ve just told us you became aware that there were more than just sunk costs the same time everybody else was. David Lindsay, the deputy minister, received a letter from Brad Duguid, who was your minister at the time. In the last paragraph, he says, “The execution of the arbitration agreement ... regarding the determination of liability as between the crown in right of Ontario”—that’s going to be the taxpayer dollars—“and the Ontario Power Authority”—that’s going to be ratepayer dollars. So you’re now telling us that back in August 2011, you knew there would be two sets of costs. Is that what I’m hearing?

Mr. Dalton McGuinty: Well, I think I see a letter here from the deputy—

Mr. Victor Fedeli: From your minister to your deputy—

Mr. Dalton McGuinty: From the minister to the deputy.

Mr. Victor Fedeli: —telling him there are two sets of costs: one for the taxpayer, and one for the ratepayer. First time—

Mr. Dalton McGuinty: It’s a letter to the deputy.

Mr. Victor Fedeli: But it’s from your minister. So your minister knew that there were two sets of costs back in 2011, and you said you learned of it when everybody else did. This is your minister.

Mr. Dalton McGuinty: Yes, okay. Well, you’ll have to ask him about his understanding of this information.

Mr. Victor Fedeli: But I’m asking you, and you’ve already answered. You learned it at the same time—

Mr. Dalton McGuinty: No, this is the first time I’ve seen this letter.

Mr. Victor Fedeli: But is it the first time you’ve learned that there are two sets of costs?

Mr. Dalton McGuinty: I don’t normally see letters issued by ministers to their deputies. There are many ministries—

Mr. Victor Fedeli: First you blame it on the OPA, and now you’re throwing Brad Duguid under the bus. Is

there anybody else? We're going to need a bigger bus here today.

Let's go back to doc 5, then—the \$900 million. Are you telling me you never looked at this treasury document?

Mr. Dalton McGuinty: I'm assuming that you're in training for a stand-up comic routine somewhere, Mr. Fedeli—

Mr. Victor Fedeli: There's nothing funny about \$900 million here for the taxpayer and, as we've learned, for the ratepayer.

Mr. Dalton McGuinty: Then you should tell your cheering section to stop laughing.

Mr. Victor Fedeli: The settlement for cancellation of Oakville and Mississauga gas plants is \$900 million. This is something that is a 2011 document. You've now said, under oath, that you learned about it when everybody else did, and we learned that others learned about it in 2011. So let me ask you: Why would your caucus have stood up in the Legislature and told us, time after time, person after person, the total—total—cost is \$40 million for Oakville or \$190 million for Mississauga when those are just the sunk costs, not the hundreds of millions that were going to be siphoned off and paid through the OPA to the ratepayer, to add it to global adjustment, which has helped double your hydro bills under your administration? Why would your people have stood up and said that, one after another, if they knew back in 2011?

Mr. Dalton McGuinty: Because it was our honest belief.

Mr. Victor Fedeli: I've got a letter here that says there are two costs back in 2011. Why wouldn't have the energy minister, or ministry, have stood up—

Mr. Dalton McGuinty: I don't see—

Mr. Victor Fedeli: We've provided document after document after document—

Mr. Dalton McGuinty: Premier Wynne has spoken to this, and, I thought, very, very clearly—

Mr. Victor Fedeli: No, I asked her 32 times when she knew, and we haven't got a good answer from her—

Mr. Dalton McGuinty: —and very—

The Chair (Mr. Shafiq Qaadri): Gentlemen. Gentlemen.

Mr. Victor Fedeli: We'll get to her another day.

Mr. Steven Del Duca: Mr. Chair, I have a point of order.

The Chair (Mr. Shafiq Qaadri): Point of order: Mr. Del Duca.

Mr. Steven Del Duca: It would be, I think, helpful for everyone who's trying to get some sort of clarity here that the members asking questions would give witnesses the opportunity to answer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. It's not a point of order, but I would support that.

Mr. Fedeli, continue.

Mr. Victor Fedeli: Thank you, Chair.

Minister Chiarelli calls them "other calculations." This is his word for additional costs—costs other than sunk

costs. When did you first become aware that there would be other calculations? I'll use his own wording.

Mr. Dalton McGuinty: Okay, and I'll give you the same answer that I gave the last time I appeared before this committee: I became aware of any additional costs at the same time that you did—

Mr. Victor Fedeli: Well, not—

Mr. Dalton McGuinty: When I had the opportunity to speak to the media about costs, I relied on my staff, who, in turn, relied on the Ministry of Energy, who, in turn, relied on the OPA. We've learned, of late, that the OPA, I think when it came to the case of—I forgot whether it was Oakville or Mississauga, had put out some four different numbers. So perhaps it's not surprising lately that it's important that the Premier call in the auditor, have the auditor take a look at these costs and provide us with information we can all rely on.

Mr. Victor Fedeli: But, Mr. McGuinty, you're talking about the specific number. I just asked you: When did you learn that there were going to be two numbers, not what the number was. The number is still in dispute. That's why we have the Auditor General coming with her report at the end of the summer or at the beginning of the fall.

I'm asking you: When did you learn that there were going to be two sets of numbers, one charged to the taxpayer and one charged to the ratepayer?

Mr. Dalton McGuinty: I did not know how the ultimate number was going to be apportioned—

Mr. Victor Fedeli: But you did know that there was going to be an apportionment?

Mr. Dalton McGuinty: It was not out of the realm of the possible in an energy matter. We had dealt with these kinds of things before in cabinet, for there to be an apportionment of costs. I didn't know specifically at the time, as I recall, how much of the \$40 million would be assigned to taxpayers and how much of the \$40 million would be assigned to ratepayers—and when it came to the \$190 million, where the division there would lie—so you're seeing it in a different way from me. I'm talking about the apportionment of costs—

Mr. Victor Fedeli: Well, the Auditor General saw Mississauga in a different way too. He told us that your government knew, as early as July the year before, when, at that time, the \$275 million had already been paid through the OPA, that you were sticking with the \$190-million number for Mississauga. How can that be if the amount, months and months and months earlier, had already been paid? How can that be, that you stuck with the \$190 million? You certainly didn't correct your ministers when they stood and said that to us. How can that be?

Mr. Dalton McGuinty: Your question presumes that I somehow was in close contact with the OPA—with their accountants—that we sat down from time to time, we reviewed these numbers, these calculations—

Mr. Victor Fedeli: So they did this on their own? They decided—

Mr. Dalton McGuinty: —that we reviewed these numbers and their calculations, and that they had a direct line to me and they'd phone me at home at night and say, "Here are the latest calculations for you."

Mr. Victor Fedeli: Well, they had some instructions from you, because it certainly wasn't incumbent on the OPA just to cancel a gas plant one day.

Mr. Dalton McGuinty: They didn't do that. They would communicate through the head of the OPA and the deputy minister, and then the minister. That's how the numbers were—

Mr. Victor Fedeli: So when did the information on the two sets of costs go to cabinet, then? Let's look at it that way.

Mr. Dalton McGuinty: I don't recall.

Mr. Victor Fedeli: Liberal gas plant scandal doc 1, from Chris Morley: He says, "I've now spoken with 4 who have been briefed and are willing to sign necessary docs on Vapour."

Mr. Dalton McGuinty: Just so I'm clear, is this an email?

Mr. Victor Fedeli: Yes, and I'll tell you a little later how we got our hands on that email.

Mr. Dalton McGuinty: So it was produced by this process?

Mr. Victor Fedeli: I'm going to tell you a little later how we got that email.

Mr. Dalton McGuinty: So this is one of the emails that you didn't get that you do have?

Mr. Victor Fedeli: I'm going to tell you a little bit later how we accessed that.

Mr. Dalton McGuinty: I just wanted to make sure of that.

Mr. Victor Fedeli: You won't be so cocky later.

Bentley, Duncan, Duguid and Wynne all have been spoken to by Chris Morley and are signing the necessary documents on Vapour. The documents on Vapour are very clear that they define that there are going to be two sets of costs. Do you think this, back on July 29, 2011, was when you and your cabinet ministers—including Kathleen Wynne, who chaired the cabinet meeting and signed that document—do you think July 29, then, would have been the first date that Kathleen Wynne and the cabinet knew that there were two sets of costs?

Mr. Dalton McGuinty: I think you've had the benefit of hearing from Premier Wynne on this and you've had the benefit of hearing from Mr. Morley on this—

Mr. Victor Fedeli: I've asked Premier Wynne 32 times, and she won't answer that question, because, of course, it will prove that your cabinet members misled the Legislature.

Mr. Dalton McGuinty: —and you will know that there was a high-level briefing given to the ministers in connection with what is known commonly as a walk-around to seek approval for a particular decision. You will know that no treatment was given to costs during the course of that discussion. You've heard that both from Premier Wynne and from Mr. Morley.

Mr. Victor Fedeli: Well, we didn't hear it from Premier Wynne. She won't answer the question, the same way as you.

Let's jump to those emails, because you wanted to talk about why we received an email from Chris Morley when we said we didn't. Well, let me tell you exactly why, Mr. McGuinty: When a freedom-of-information request was submitted, the answer came back that there are no emails in existence from Chris Morley, from Sean Mullin, from Jamison Steeve. That is now hopefully going to be the subject of the privacy commissioner's next investigation. I'm praying that that will happen. So how did we get this email?

1400

Mr. Dalton McGuinty: With no particular outcome in mind, of course.

Mr. Victor Fedeli: How did we get this email? We got this email because other people did not destroy their email like Chris Morley, Jamison Steeve and the others did. This came from other people who kept their email from Chris Morley. We also had email from the Ministry of Finance, where we're now for the first time seeing these types of email. That's what got us wondering, why are we seeing these for the first time? When they were asked directly for their email, they didn't provide them. This had to come from other sources, so that's how we were able to—I know you talk about the 130,000 documents that we do have, but I think it's more important to talk about those documents that we don't have. Here we sit today—still don't know how much the gas plant cancellations were and who ordered the cover-up.

You talked about those code names. Back when the 36,000 documents were released on September 24, all five of us on this side looked at them and queried, why is there nothing here from the Premier's office? Why is there nothing here from the Minister of Energy? Nine months it took. About two weeks later, we did get another tranche of 20,000. That's where the code names were. It took somebody at the OPA, the ones who you like to throw under the bus—it took somebody from the OPA who had a change of heart, even though they were ordered—we've had two witnesses swear under oath that they were ordered to remove those documents. We did have them have a change of heart.

So I find it disingenuous for you to talk to us about these 130,000 emails when, only after we pushed and pushed hard, did we ever get the next tranche and the next tranche. The fact that we're still getting email is pretty indicative.

Mr. Dalton McGuinty: I think it's important—

Mr. Victor Fedeli: I would ask you, why hadn't the committee received—

Mr. Dalton McGuinty: That's a lengthy statement from you. I appreciate the statement.

Mr. Victor Fedeli: But why hadn't the committee ever received a single email from you concerning the gas plants?

Mr. Dalton McGuinty: Let me speak to the lengthy preamble. I think it's important to recognize that on

several occasions senior civil servants—I think it was the deputy minister for the Ministry of Energy, it was the head of the Ontario Power Authority, the cabinet secretary himself—who, when speaking to the issue of the production of documents in various tranches, talk about how there was no political intervention of any kind in that exercise and to say otherwise is inaccurate. They offered their apologies for their shortcomings when it came to producing these kinds of documents—

Mr. Victor Fedeli: We heard that from you earlier, Premier. I appreciate that.

Mr. Dalton McGuinty: And it would be helpful if this committee, for example, could provide advice ultimately regarding the request and production of documents from the civil service.

Mr. Victor Fedeli: The first thing is the bill that you put in place—maybe you could have actually followed those particular rules. It's not the 130,000 documents, Mr. McGuinty, that we do have, that took months and months, almost a year, to actually get our hands finally on some of them; it's the documents we still don't have, I think, that are of more concern to this committee.

What are you and the Liberal staffers hiding that caused you and your staff to delete email, destroy email and remove any trace of them?

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

Mr. Victor Fedeli: What is so critical in there that this concerted effort was put in place to do that?

Mr. Dalton McGuinty: Again, I really think it is important to look at the facts; they are not entirely unimportant. There is a standing directive from the Cabinet Office. It is a protocol; there are no ifs, ands or buts about it, and the staff comply with that. To the best of my knowledge—

Mr. Victor Fedeli: Nine months later?

Mr. Dalton McGuinty: To the best of my knowledge, that protocol was around during the previous government and the one prior to that. And it says, since the advent of email, when staff retire, their emails must be purged.

Mr. Victor Fedeli: So you do know the protocol after all? You really do know it.

Mr. Dalton McGuinty: I learned about that protocol the same time when you learned about that protocol.

Mr. Victor Fedeli: Do you condone the deletion and destruction of the copies, or do you believe that backups were made?

Mr. Dalton McGuinty: We need clarity.

Mr. Victor Fedeli: No, no, I'm asking you a question. Do you believe there are backups?

Mr. Dalton McGuinty: We need clarity.

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

Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. McGuinty, last Tuesday Chris Morley was in this committee. He was asked about the withholding of documents and the debates that were going on in the Legislature about it. He said, "It would have been entirely

appropriate for them"—the Premier's office—"to be aware of any issue before the Legislature." Is this true?

Mr. Dalton McGuinty: As a general rule, yes. If there's something happening in the House, that's something we should know about.

Mr. Peter Tabuns: Thank you. When you testified before the committee last time, you said you hadn't briefed Premier Wynne about the gas plants issue. My colleague Taras Natyshak asked, "Did you, as an individual, not sit down with Premier-elect Wynne?" And you said, "No, I did not." I think people find that hard to believe. I do, personally, find it hard to believe.

Has she asked you? Has Premier Wynne asked you at any point about these missing emails and missing documents?

Mr. Dalton McGuinty: No. Just so we're clear about how I received Premier Wynne, not unlike the courtesy extended to me by the previous Premier—I welcomed her into my office. This had been preceded by a lot of work between our two staffs, going over protocols and issues and concerns and those kinds of things. So I didn't consider it my place, when I was receiving Premier-elect Wynne for the very first time, to launch into a discussion of substantive issues, but rather to say, "Welcome. If I can ever be of any assistance, please let me know."

Then I offered her a little bit of advice that would be specific to Premiers: Protecting your personal time, for example; making sure that you're not getting too tired, for example. Those kinds of more personal things.

Mr. Peter Tabuns: So she did not ask you about the gas plant issue—

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: —any briefing, and you didn't volunteer one.

Mr. Dalton McGuinty: That is correct.

Mr. Peter Tabuns: Did she, at any point, either—

Mr. Dalton McGuinty: But I'd be surprised if our staffs did not talk about those kinds of things.

Mr. Peter Tabuns: Fair enough, and I think we may have an opportunity to question them on that.

Did Kathleen, as Premier or as cabinet minister, ever ask you about whether your office was destroying emails or shredding important documents?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: In the time between when Kathleen Wynne was sworn in as Premier and when you resigned your post as MPP, did Kathleen Wynne ever ask you why documents were missing? Did she ask you to account?

Mr. Dalton McGuinty: No.

Mr. Peter Tabuns: Last time you were here you said Kathleen Wynne didn't ask about the cost of cancelling the gas plants when she was a cabinet minister. She didn't ask when she was a campaign co-chair, when the Mississauga decision was made. Did Kathleen Wynne simply rubber-stamp whatever was brought to her on this matter?

Mr. Dalton McGuinty: I was not privy to the discussion with Kathleen Wynne then, before she was

Premier, during the campaign, so I can't speak with certainty about whether or not there was a discussion of costs at that particular point in time. I don't recall her raising cost issues in cabinet, connected with this. And of course, I wasn't privy to the discussion that they had when she was asked to sign a walk-around, although Mr. Morley and Premier Wynne herself said that there was no talk of cost. It was all very high-level at that point in time.

I think it's important to keep in mind as you try to—

Mr. Peter Tabuns: That's okay. Why don't I just go on to my next question, because I know time is short and you'll want to make full use of the time, as I will.

Kathleen Wynne has said that "there were decisions that were made about the process, around documents, that I think shouldn't have been made." She didn't call these sins of omission or inadvertent errors, but active decisions.

What do you think about Kathleen Wynne saying that you made the wrong decisions?

Mr. Dalton McGuinty: I'm assuming we're talking here about—

Mr. Peter Tabuns: The gas plants; the cancellations.

Mr. Dalton McGuinty: —the archives.

Mr. Peter Tabuns: No, I'm actually talking to you about the decisions to site these plants and the way you dealt with them when you found you had a big political problem.

Mr. Dalton McGuinty: I accept that. We didn't get it right in the first place. And I'm hoping that there'll be some advice forthcoming from this committee that helps us better site these plants in the future, including—and I think you, Mr. Tabuns—I forget how you put it but I thought you put it very eloquently, something to the effect of "We've been outsourcing the location of these plants to the private sector." And then we take it on the chin in government when somebody out there decides where they're going to put the plant, and it becomes clearly unacceptable to a community. So I think that would be very helpful, to get that kind of advice from this committee.

Mr. Peter Tabuns: When Premier Wynne was asked about who was responsible for the deletion of emails—I'm back to emails—she said, "I think that people were acting in ways that they had been told to act." But in your June 7 statement, you said it was the staff; it was all their decision. Who was telling people to act? Who was telling people to delete their records?

1410

Mr. Dalton McGuinty: I think there was a practice in place that had been extant since the advent of emails here at Queen's Park. When we transitioned from telephone calls to emails, we then put in place an archives act, and we did not take the necessary steps beyond that to ensure that staff understood, just as clearly as they understood about keeping their member out of harm's way when it comes to conflicts, so they understand what they can receive by way of gifts and what they must turn back, just as they are so well-versed in that area of law, we

need to do a better job of making sure they understand what their responsibilities are—what our responsibilities are—when it comes to dealing with materials that ought to be preserved.

Mr. Peter Tabuns: Kathleen Wynne called the mistakes on the gas plants unacceptable. If the decisions were unacceptable, why did you accept them?

Mr. Dalton McGuinty: From time to time, you get things wrong.

Mr. Peter Tabuns: That's it?

Mr. Dalton McGuinty: It's not the first thing that a government has gotten wrong. It won't be the last thing that a government gets wrong. But I think when you do get things wrong, and inevitably all governments do, what really counts is that you own up to that and that you find ways to redress that wrong. It was wrong for us to site those plants in those particular locations. It's right for us to relocate those. I think we can draw a lot from that.

Mr. Peter Tabuns: Just with reference to your earlier comments on the deletion of emails and the training or not of your staff and their use of common sense or not. Is ignorance of the law a defence?

Mr. Dalton McGuinty: I think we both know the answer to that one. I accept responsibility for not recognizing that subsequent to the passage of that law we didn't put in place the necessary programs and training. I say again, and it's in fairness to myself, if we could have the same culture in government related to the preservation of records that we have with respect to understanding our rights and responsibilities when it comes to the Integrity Commissioner's legislation, we will have done what we need to do. But to this point in time, as I said, in nine and a half years as Premier, I never once heard from either of the cabinet secretaries about these kinds of issues—or the Information and Privacy Commissioner either. It's been something that's been off to the side—

Mr. Peter Tabuns: Mr. McGuinty, I appreciate that—

Mr. Dalton McGuinty: It has fallen off the agenda, and that's unfortunate.

Mr. Peter Tabuns: No, I don't think it fell off the agenda. We've had people sit in that chair and say that they knew what the record-keeping laws were. A woman who worked in your issues analysis unit knew the rules. She followed them. We've seen civil servants produce large numbers of documents on request. Clearly, there are a lot of people who understood what the records requirements were and followed them, except for a small, critical group who seem to be very energetic and thorough at destroying their records so that they wouldn't be available for this committee.

Morley's actions: Mr. Morley knew he had to keep some records. He just made sure he wasn't keeping anything on the gas plants. He kept records, destroyed all the transitory ones, kept what he felt were the critical ones on a variety of issues that I related to you earlier. Your people knew what they were doing and you know that they know.

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

Mr. Dalton McGuinty: I want to bring your attention again to what I think is a very important statement made by the secretary of cabinet. He said, “I don’t know if political staff, or indeed many public service staff, understand the parameters and details associated with the archives act.... That is a little bit arcane.”

Mr. Peter Tabuns: He also said that they would know what they had to save. He knew that it was a matter of common sense, and he made that point not just to us in this committee but he made that point with the Information and Privacy Commissioner. They acted with knowledge about what was to be saved, and they wiped out their records.

Mr. Dalton McGuinty: The other point that bears repetition is the fact that this is not specific to gas plants. It is not specific to the Ministry of Energy. It is not specific to my office. This is an issue, government-wide, and because of the lens you are wearing, as you look at this work, you fail to understand that this is an important issue for everybody in the government, both the political class and the bureaucracy.

Mr. Peter Tabuns: Well, most of the civil servants seem to keep their records. Your key political—

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

Mr. Steven Del Duca: Thank you very much, Mr. Chair.

There are a couple of things I want to go through in my final 10 minutes of questions here. I’m not sure if you had a chance to review some of the testimony that was before the committee earlier today—

Mr. Dalton McGuinty: No.

Mr. Steven Del Duca: —from the IPC, from Dr. Cavoukian, or even from a few days ago, when Emily Marangoni was here before the committee.

Mr. Dalton McGuinty: Yes, that I looked at.

Mr. Steven Del Duca: There was a series of very unfortunate questions levelled at Ms. Marangoni which were somewhat followed up on today when the Information and Privacy Commissioner was here regarding the way that the server system works here at Queen’s Park. I’m not technologically the most savvy person who is here so I don’t understand all the intricacies of it, but the opposition, both in their questioning of Ms. Marangoni and stuff that they said to the media and elsewhere throughout this process and stuff that they said in their questions of Dr. Cavoukian today—a lot of conversation took place around something called the RAID system—RAID, I understand, is the acronym—with respect to the servers. I’m not sure if you’ve had a chance to review any of that testimony whatsoever but I just wanted to point out—it’s not even really a question; it’s more of a statement. I just wanted to point out that that is a server system or a computer system that first arrived here in the government of Ontario at Queen’s Park in the mid-1990s. I wasn’t sure if you had a chance to review any of that testimony? Are you aware of that—

Mr. Dalton McGuinty: I saw the testimony. I’m not familiar with the technology. I was not aware that there

was any kind of a backup system. I think Mr. Fedeli or somebody over here asked me about a backup system. I was not aware of that. Frankly, I think my responsibility was to keep my eye on the big picture and to hope that the technological resources were in place and that the rules were in place so that we all understood when you could delete something and when you could not delete something. I know that Mr. Fedeli made reference to an email here from Mr. Morley. I gather he would, in his judgment, categorize this as a public record that must be preserved. I think that’s debatable and I think there are a lot of people who would argue that it may be more transitory in nature and therefore could be the subject of deletion.

The point I’m making is, he could be right and I could be right. It’s a matter, at the end of the day, of personal judgment, and that’s where the shortcoming is to be found. That’s why I’m saying we need more clarity, and clarity doesn’t go by taking us from 99 rules to 499 rules. That’s not where we’re going to find clarity.

Mr. Steven Del Duca: I think your characterization in your earlier testimony today about how this has become fairly clear that this is a partisan attack and that’s the lens that the opposition is bringing to what should be, I think, a constructive process and discussion around how we site energy infrastructure in the future and now, with respect to what we’re talking about at this particular moment, how we might flesh out some clarity around record-keeping—but along the lines of this notion that this is driven largely by their partisanship, I’m just wondering: Are you aware of the fact that the PC candidates in the Mississauga and Oakville ridings have been repeatedly requested to appear before committee and they’ve refused to do so?

Mr. Dalton McGuinty: I was unaware of that, and I’m disappointed to learn that because we hear from the opposition members on the committee that they are determined to bring forward any and all information that would have a bearing on this. They’ve never been reluctant to reach far and wide in terms of asking for different kinds of information, including my political email account. I would expect that Mr. Hudak would want to weigh in on this and encourage those individuals to make an appearance here.

Mr. Steven Del Duca: Would it surprise you to know that when Mr. Hudak was here at committee and there were discussions coming up around all of these topics, he didn’t seem particularly interested in trying to make that kind of intervention?

Mr. Dalton McGuinty: I’m disappointed. I think that ultimately we look to our leaders to help us rise above partisanship and make a genuine effort to pursue the truth. If these gentlemen here can’t look to their leaders for that kind of guidance, then that’s a disappointment.

Mr. Steven Del Duca: I know, in the first round of questioning here today, I did reference three things that occurred back when you were opposition leader, and I want to go back to them just for a quick second. There might be more that you want to elaborate on this; if not,

that's fine too. But I referenced earlier the sale of Highway 407, what took place at Ipperwash and what took place at Walkerton.

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Those were three very, very significant, scarring occurrences that took place in the province of Ontario: a highway sold off for billions of dollars less than what it was really valued at prior to the 1999 campaign, to balance the books; individuals dying in Ontario because of water at Walkerton; and, of course, what took place with Mr. George at Ipperwash.

When you think back on your time as opposition leader during that era and you consider how difficult it was for you as opposition leader, and members of your caucus and your staff, to access relevant information that the people of Ontario had a right to know with respect to those three kinds of—well, frankly, “scandals” is the only word that I can think of to use—and you compare that to how open and transparent, and in many cases voluntarily so, Premier Wynne and our government have been, can you provide us with a little bit of an elaboration or some more historical perspective comparing how we have responded to what's taken place around these two gas plants and what took place around the sale of the 407, Walkerton and Ipperwash when the members opposite and their colleagues were in power?

Mr. Dalton McGuinty: Well, if you take a look at those three particular issues and contrast with the one that brings us here today, they are a striking study in contrasts and how difficult it was for us in opposition to obtain information from the government, notwithstanding the various requests that we made and the forms that those requests took. The government dug in, moved into a kind of bunker mentality, refused to acknowledge that there were real challenges, and refused to provide information.

Compare that with what is happening here today. This is the second time that I myself have appeared here. Premier Wynne has been here. I understand that they may be interested in inviting her or others back, and I am convinced that those who are invited from our side will attend, because we want to do as much as we can to lend insight into what happened here and, in particular, our motivation.

I know much has been made of this, and I don't want to diminish its importance, but what we're talking about here is the relocation of two gas plants, the original siting for which we got wrong. I've been criticized many times over for failing to live up to a promise, but this is the first time that I've been criticized for honouring a commitment. I thought we were all together on this originally; certainly, people living in those communities had every impression that we were united as political parties in terms of the position that we were taking on these gas plants. But, as I say, I guess that was then.

We find ourselves in this position today—not an easy one, but it's still the right place for us to be. By that I mean that we honoured a commitment, and if I think about a day like today, with the potential for smog and for the absence of any real air circulation in the environ-

ment, I am pleased that we're not building gas plants in those communities. I'm pleased that that's part of a broad energy plan devoted to ensuring that we clean up our act, that we shut down coal and that we do more to harness the power of renewable energy.

I think that when we put that in context, it's important for us to understand what we're talking about here.

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

Mr. Steven Del Duca: Terrific. Well, with the final minute, if there's anything else you'd like to add to your testimony today, Mr. McGuinty, feel free.

Mr. Dalton McGuinty: Well, I want to ask committee members yet again to do something of real value for the people of Ontario. Tell us specifically: What should we do in the future when it comes to locating gas plants? What rules should govern the production of documents? If you have an opinion with respect to how long anybody should hang on to an email, you need to put that on the record. You need to tell us specifically. I don't know what the rules are governing your staffs; I don't know, if I move from one office to another, whether they have different rules. I think it's time for us to inject some real clarity into those kinds of issues.

Mr. Steven Del Duca: Thanks very much.

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

To Mr. Fedeli, a final 10 minutes.

Mr. Victor Fedeli: Thank you. I'm going to Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair. Okay, you want me to use which one? Do I get stereo mikes?

Thank you very much, former Premier McGuinty, for joining us today. I'm going to touch on a couple of things that actually you opened the door on with Mr. Del Duca. You talked about access to information and a search to get to the bottom of things. I will point out to you that it was the former government that established the judicial inquiry to look into Walkerton, and then-Premier Mike Harris was the first Premier in over 50 years to actually testify before a judicial inquiry.

Our party has been calling for a judicial inquiry on this gas plant scandal. Would you support a judicial inquiry, or would you encourage the Premier of the day, today, Kathleen Wynne, to establish a judicial inquiry to look into this?

Mr. Dalton McGuinty: I'm here today.

Mr. John Yakabuski: No. I'm asking you: Would you support us? I believe you thought the judicial inquiry was a great thing in Walkerton.

Mr. Dalton McGuinty: I was here before; I'm here again today. I'll leave discussions about—between you and the government of the day. I'm here in my capacity as a private—

Mr. John Yakabuski: Okay, so you're questioning the motivation—

Mr. Dalton McGuinty: —my capacity as a private citizen. I'll let you work on that with the government.

Mr. John Yakabuski: Thank you very much, Mr. McGuinty.

So you question the motivation of the opposition members of this committee, and you've asked them to come up with recommendations. Well, the work of the committee is yet to be completed. At the end of the committee's work, I suspect that there will be recommendations. In order to make the recommendations the best and of highest value possible, we have to actually get to the truth, and that's the problem we're having on this committee, is getting to the truth.

Now, you've made some statements here today which I actually find quite troubling. But I'm going to ask you a question—well, no. You talked about staff having a cabinet directive: that when they leave, their email accounts must be purged. Well, that's not the truth. That's not the truth. Their email accounts are removed from the government system, perhaps, but they're archived. They're protected. In fact, Dr. Cavoukian, today, in contradiction to what you've said and to what Chris Morley said last week—and I'll quote from her statement: "There are clear requirements to retain records relating to the following areas: policy development, program development, stakeholder relations, legislative activity, and minister's and Premier's correspondence."

Well, that would make it very clear that someone who leaves your office when you were Premier, or a member of your cabinet—that, no, it isn't wiped clean. It isn't destroyed. It is perhaps removed from the system, but protected in another way, that so through requests for freedom of information or other government reasons or public reasons or the opposition, we actually have access to those records. So I think you should, quite frankly, retract those statements you've made about purging records.

You also talked about—

Mr. Dalton McGuinty: The point I'm making is that the commissioner—I don't disagree with what the commissioner said in that statement. I didn't have the benefit of her testimony here this morning, but I don't disagree with what you've read. What I can say is it remains confusing, because notwithstanding that and the commissioner's interpretation of the law, there is an outstanding protocol. It is driven by the bureaucracy, the civil service. There is a directive that says when you take over somebody's computer, after staff have left, you've got to clean out the email. That's there. That's there.

Mr. John Yakabuski: Peter Wallace, the secretary of cabinet, did not agree with that statement either. That may be somebody's interpretation; maybe it's an interpretation for convenience. But the reality is, and I'll pick up on what Mr. Tabuns said about ignorance of the law, we're talking about senior staff members here. We're not talking about how somebody was just hired the other week. For example, you've got Chris Morley, Sean Mullin, John Fraser, Jamison Steeve: These are people who have worked in your campaign war rooms. They've worked on your campaigns. They are deeply embedded

in the Liberal Party. Do you have emails from any of those that you haven't disclosed to us at this point?

Mr. Dalton McGuinty: You're talking about the elimination of emails, and again, I think it's important to come back to the Information and Privacy Commissioner's report, and, as you know, much was said about my former chief of staff David Livingston. In her report, the Information and Privacy Commissioner says the following: "The CIO"—the chief information officer, I'm assuming—"also stated that at no time—"

Mr. John Yakabuski: Okay, I only have 10 minutes, Mr. McGuinty, and I'm asking the questions.

Mr. Dalton McGuinty: "—did he ever believe—"

Mr. John Yakabuski: Chair, he is not answering the question—

Mr. Dalton McGuinty: "—that the inquiries from Livingston regarding the most effective way to 'wipe clean' the computers on transition were being made for an improper purpose." That's an independent finding.

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Mr. John Yakabuski: So let's get back to—

Mr. Dalton McGuinty: No impropriety.

Mr. John Yakabuski: —your reason for having these discussions—the free flow of ideas. Everyone understands that in today's day and age we need the free flow of ideas. In fact, I think we all lament the lack of conversation in people's lives today—a little too much emails and text messages and a lack of conversation.

Mr. Dalton McGuinty: I would agree with you there.

Mr. John Yakabuski: But this is not about curtailing the free flow of ideas. This was about the deliberate, wanton destruction of records that, by law, according to the Archives and Recordkeeping Act—

Mr. Dalton McGuinty: Whose law?

Mr. John Yakabuski: —would have to be kept.

Mr. Dalton McGuinty: Which set of rules?

Mr. John Yakabuski: By the law passed by this government.

Mr. Dalton McGuinty: Which rules?

Mr. John Yakabuski: If that was a Criminal Code offence, which it is not—and maybe that's the problem—we'd be talking about sending people to jail right now, or at least sending them to court to be dealing with criminal offences in front of the courts. Of course, as we know, the OPP is investigating whether or not there were criminal activities from members in your office or other ministers' offices to see if the law, in fact, has been broken. So this is a critical issue, and you cannot just pass it off as saying, "People didn't understand or know the law." They have a responsibility to know the law. At that level, there is no excuse for not knowing the law.

As the privacy commissioner said, for someone to believe that one person, a senior person like David Livingston, Chris Morley, Sean Mullin, Jamison Steeve—for those people to have no—well, she couldn't speak to Jamison Steeve, Sean Mullin; she could only speak to David Livingston and MacLennan. But for those people—because they're the ones she actually investigated—to not have a single email retained that dealt with

one of the hot button issues in your office at the time is beyond anybody's ability to believe. And you come in here today—I say to you with all due respect—expecting us to believe just that.

In fact, you've spun the stories today trying to make it seem like this is no big deal; that there was just a misunderstanding and that the rules aren't clear. I think you have an opportunity here—as I say to you with the deepest respect, Mr. McGuinty—to clear the air on this issue. There were serious breaches of an act of this Legislature committed in your office and in the office of others.

Mr. Dalton McGuinty: Remember, this is an act that you voted against. Let's understand that.

Mr. John Yakabuski: We voted against everything when we were in opposition when you had your majority. You got your way with everything; you had 72 seats. That's a ridiculous argument. Get on with the answer.

Mr. Dalton McGuinty: Secondly, let's back it up for a moment. All right, so, you've caused a review of over one million documents. You've received 130,000 so far—

Mr. John Yakabuski: But you kept the ones that were important.

Mr. Dalton McGuinty: You've received 130,000 so far. I have no idea how many more you intend to obtain. I have no idea how long this committee will sit for, although something tells me it will sit until the next election, because it serves, frankly, your short-term political purposes.

I think, in fairness to staff, we've got to agree with the Information and Privacy Commissioner's finding. They were not aware of the law; I take responsibility for that. We passed this law; we then moved on to other things. So those staffs who were somewhat aware of the law—in the absence of training—were faced with conflicting rules. You, yourself, highlighted one of them: The Information and Privacy Commissioner says you've got to hang on to some of this stuff. Yet there's a directive issued by Cabinet Office saying, no, actually, you've got to get rid of this stuff.

Mr. John Yakabuski: No, the rule is very clear: You and your staff in your office—

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

Mr. John Yakabuski: —I would have to accept or believe that you made no attempt to understand the law. Would you not think it's the responsibility of senior staff people to know what the rules are and make some attempt to gain an understanding of those rules? I understand on your part, I honestly do, and your position, but your staff should have made it very clear to you.

Peter Wallace made it clear to people as they were leaving: "Hey, wait a minute. You can't go destroying those records. We have a law here; it's called the Archives and Recordkeeping Act." He cautioned Mr. Livingston—or MacLennan; one of the two—who went to see him to say, "How do I get rid of this stuff?" Wallace says, "Wait a minute. You can't do that. It's against the law."

Those people should have known, and it continued to go on from that time on. That's why we're here today looking for more records, because we don't have them because your people have destroyed them, and we can't get them.

Mr. Dalton McGuinty: I can't accept that, of course. But let me just say this about—

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

Mr. McGuinty, while I cannot promise, as Chair, this will perhaps be your final invitation to this committee, I do thank you for coming for the second time. We wish you all success and peace of mind as you return to your life as a private citizen. On behalf of the committee, thank you very much.

Mr. Dalton McGuinty: Thank you, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): The committee will take a short recess for about 10 minutes. We have a cascade of motions before—

Mr. Peter Tabuns: Can I ask for 45 minutes, because there will be a media—

The Chair (Mr. Shafiq Qaadri): Twenty minutes, Mr. Tabuns, if you might.

Mr. John Yakabuski: How long do you need?

Mr. Victor Fedeli: We don't need 20 minutes, Peter, do we? If we're not going to have 45, we don't need 20, do we?

Mr. Peter Tabuns: No; 45 is what we need.

The Chair (Mr. Shafiq Qaadri): All right, 10 minutes, and then do you want to do whatever it is that you need to do afterward? Is it agreeable? Ten minutes? Ten minutes sharp, please, gentlemen and ladies.

The committee recessed from 1435 to 1445.

The Chair (Mr. Shafiq Qaadri): Colleagues, we're back in session. We have a cascade of motions. The floor is open to either Mr. Fedeli or Mr. Tabuns. Mr. Tabuns?

Mr. Peter Tabuns: I move that the committee requests that the secretary of cabinet conduct a government-wide search of any and all email accounts ending with "@ontario.ca" that have received and/or sent emails to "tteahen@rogers.com" and "tomteahen@gmail.com" related to the matters currently under the purview of the committee's investigation into the cancellation and relocation of the power plants in Oakville and Mississauga and matters related to the *prima facie* case of privilege, and that all emails, attachments and responses to and from; in and out; and/or sent and received from the aforementioned email accounts from the period of time starting January 25, 2013, to the end of day on June 25, 2013, be produced and that those documents be tabled with the Clerk of the committee without redaction by 12 noon on July 11, 2013; and

That these documents be distributed by the Clerk of the committee to the respective caucuses and deemed public once distributed; and

That the secretary of cabinet immediately take steps to secure from destruction or deletion any and all electronic files and backups to the aforementioned provisions of this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. Discussion before we take the vote? The motion is in order. Seeing none, all those in favour? All opposed? The motion carries.

Mr. Peter Tabuns: And I'm acting to withdraw an earlier deferred motion 3, which I believe all have before—

The Chair (Mr. Shafiq Qaadri): For which the Chair thanks you, Mr. Tabuns.

Now, Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair.

I move that the Standing Committee on Justice Policy request from the Premier's office all documents and electronic correspondence stored on the G drive related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received by the following individuals: Mr. Dalton McGuinty, Mr. Christopher Bentley, Mr. Brad Duguid, Ms. Kathleen Wynne, Mr. Chris Morley, Mr. Craig MacLennan, Mr. Jamison Steeve, Mr. Sean Mullin, Mr. David Livingston, Ms. Laura Miller, Mr. John Brodhead, Mr. David Gene and Mr. John Fraser; that the search terms include any and all proxy names including but not limited to the following: Project Vapour, Project Vapor, Vapour, Vapor, Project Vapour-lock, Project Vapor-Lock, Vapour-lock, Vapor-lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG; that the documents and electronic correspondence be provided by July 9, 2013; and that the documents and electronic correspondence be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Discussion before the vote? Seeing none, we'll vote. Those in favour? Those opposed? The motion carries, I think.

Could we do that again? Those in favour of that motion? Those opposed? The motion carries, in any case.

Next motion?

Mr. Victor Fedeli: Thank you, Chair.

I move that the Standing Committee on Justice Policy request from the Ministry of Government Services all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by the following individuals: Mr. Dalton McGuinty, Mr. Christopher Bentley, Mr. Brad Duguid, Ms. Kathleen Wynne, Mr. Chris Morley, Ms. Laura Miller, Mr. John Brodhead, Mr. David Gene, and Mr. John Fraser, including all correspondence from the aforementioned individuals stored on the ministry's RAID servers; that the search terms include any and all proxy names including but not limited to the following: Project Vapour, Project Vapor, Vapour, Vapor, Project Vapour Lock, Project Vapor Lock, Vapour Lock, Vapor Lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG; that the documents and electronic corres-

pondence be provided by July 9, 2013; and that the documents and electronic correspondence be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Mr. Yakabuski?

Mr. John Yakabuski: If I'm looking at the same motion, there were a number of names missing, and—

The Chair (Mr. Shafiq Qaadri): I would invite the PC caucus to confer internally. Such are the issues with document management.

Mr. Victor Fedeli: Do you want me to read the names as supplied by the—do you want me to read them into the record?

The Chair (Mr. Shafiq Qaadri): Just the ones that are missing, please.

Mr. Victor Fedeli: Let me just repeat that. The following individuals: Mr. Dalton McGuinty, Mr. Christopher Bentley, Mr. Brad Duguid, Ms. Kathleen Wynne, Mr. Chris Morley, Mr. Craig MacLennan, Mr. Jamison Steeve, Mr. Sean Mullin, Mr. David Livingston, Ms. Laura Miller, Mr. John Brodhead, Mr. David Gene and Mr. John Fraser.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli; otherwise, it's not official. Any comments before we vote?

Seeing none, those in favour of Mr. Fedeli's motion? Those opposed? The motion carries.

The last motion, Mr. Fedeli?

Mr. Victor Fedeli: The last motion is: I move that the Standing Committee on Justice Policy meet every Tuesday in July from 9 a.m. to 12:10 p.m. and 1 p.m. to 2:35 p.m.; that each caucus be entitled to call one witness each, and that the order of witnesses and questioning rotate in accordance to the previously established procedure.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Mr. Del Duca?

Mr. Steven Del Duca: Thanks very much, Mr. Chair. I'm actually not quite sure—I'm still a relatively new caucus member on this side. I'm not sure; is this actually in order? The committee reviewed this exact issue not that many days ago. In fact, it was an amendment from the PC caucus that sought that we wouldn't sit throughout July, and many of us on this side—and, I'm sure, on the other sides as well—have now looked at our July schedules, have taken that into account, and have done other things with our July schedules. So I'm just wondering if—

The Chair (Mr. Shafiq Qaadri): I think you're correct in citing that this was agreed to previously, but I guess it's the latest deliberation so, in any case, any further comments before we vote on this motion?

Seeing none, all in favour of Mr. Fedeli's motion? All opposed? I believe there is a tie, and the Chair will vote for the government, so that motion is now defeated.

Is there any further business before this committee? The committee is adjourned.

The committee adjourned at 1451.

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