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**Official Report
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(Hansard)**

Tuesday 6 August 2013

**Journal
des débats
(Hansard)**

Mardi 6 août 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 6 August 2013

Mardi 6 août 2013

The committee met at 0902 in room 151.

MEMBERS' PRIVILEGES

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

Colleagues, I officially call this meeting to order, the Standing Committee on Justice Policy. I would like to commend you for your presence and dedication to the work of the Ontario Parliament, particularly since the Legislature itself is not sitting.

We have before us our first witness, Ms. Laura Miller. But in light of some of the recent mailings, documents, that have been provided to you through this committee, I will be required, with your indulgence, to read a statement. The statement is as follows:

In light of the last batch of documents provided to this committee, I would like to make something clear before we begin today. It is the Speaker's finding of the prima facie breach of privilege that forms part of our terms of reference, and not the process by which that ruling was determined. Please know that I will disallow any line of questioning that I feel is outside of this committee's terms of reference, and that will become more apparent, most likely, as the day proceeds.

Mr. Gilles Bisson: Point of order.

The Chair (Mr. Shafiq Qadri): I would be happy to entertain that point of order. I was going to ask our legal folks here to just comment on that, and then I'll offer the floor to you, Monsieur Bisson.

Mr. Peter Sibenik: Thank you very much, Mr. Chair. Whenever there has been a referral to a committee based on a Speaker's ruling of a prima facie case of privilege, the standard operating procedure of the committee is to investigate the substantive matter that is before it, that is, the prima facie matter, not the internal mechanics by which a decision has been made. If a committee is to investigate something other than the prima facie matter, it would require an order of the House in order for the committee to investigate, but that is a separate matter in and of itself. So the Chair's statement is basically correct here.

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

Mr. Gilles Bisson: Well, Chair, I understand full well in regard to once a decision of the Speaker has been

made, there's no ability to debate the decision: The decision's the decision. And in regard to witnesses particularly today—this particular witness, who was trying to influence the Speaker's decision—that is in order. There's just no way in hell that you don't have the opportunity to ask those questions.

The Chair (Mr. Shafiq Qadri): The Chair's not aware of the way to hell, Monsieur Bisson. But, in any case, the ruling stands. I will just inform members of the committee that should you object to the Chair's ruling, which apparently is on fairly solid ground, you are entitled to in fact appeal to the Speaker. Now, with that I would now welcome—

Mr. Steven Del Duca: Actually, Mr. Chair—

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

Mr. Steven Del Duca: Just before we begin today's proceedings, I wanted to raise what I think is actually a point of privilege. Last Tuesday—and I'm happy to table this with the Clerk—I was quite upset to come across a tweet from a member of the PC caucus, the member from Kitchener-Conestoga, specifically directed at Ms. Laura Miller, our witness who is here today. The tweet is here. I have copies of it if we'd like to pass those around. Specifically, that tweet said, "Let's see if your excuses for the Liberals' #GasPlantScandal change when you're called to testify at Queen's Park."

This tweet was sent to Ms. Miller, as I understand it, before she was even asked to testify or had agreed to testify. It's fairly clear to me that the member was using this legislative committee as a way to, frankly, bully a potential witness. While she has chosen to testify here today despite this attack, I worry that this kind of online intimidation will actually turn off other potential witnesses.

This might not be the exact, right moment to deal with this specific question, but I'm wondering if at some point we can get a ruling on these kinds of online threats—whether the use of this committee's work is an appropriate way to antagonize a potential witness.

The Chair (Mr. Shafiq Qadri): All right; I will at this point take that under advisement. I would invite you to please submit the documentation. A ruling will be forthcoming. Now, with that—yes, Mr. Bisson?

Mr. Gilles Bisson: While you're doing that, you maybe want to look at July 29, a tweet from Laura Miller that essentially calls this committee a partisan witch hunt.

The Chair (Mr. Shafiq Qaadri): Thank you for that, Mr. Bisson. If there's any further—yes, Mr. Delaney.

Mr. Bob Delaney: Yes, there is one clarification comment here. It would be one thing if Mr. Harris had a personal Twitter account, but it is sent out from an MPP Twitter account, and as such is functionally the same as Mr. Harris using legislative resources in a personal attack on someone who is a witness.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Same comment: Stands under advisement; ruling forthcoming. We'll deal with the issue of the tweets and all its various subject matters.

MS. LAURA MILLER

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Laura Miller to please be sworn in by the Clerk.

The Clerk pro tem (Mr. Katch Koch): Ms. Miller, do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Ms. Laura Miller: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Miller. As you know the drill very well, you have five minutes to make your opening address. I invite you to please begin now.

Ms. Laura Miller: Chair, I do have a question about one of your comments about some of the documents that were produced. My opening remarks did reference the email in question—the one that Mr. Bisson has referred to. Would you prefer that I strike that?

The Chair (Mr. Shafiq Qaadri): Ms. Miller, the floor is yours.

Ms. Laura Miller: All right; perfect.

Good morning, and thank you for the invitation to appear. Before we begin I would like to address the recent production of emails and documents from my time in the Premier's office. Hundreds of pages were provided to members of this committee to assist with the task at hand, which, as I understand it, involves the review of the production of documents by the Ministry of Energy and the Ontario Power Authority and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville plants.

By and large, the documents produced do confirm the facts laid out by the former Premier, the former Minister of Energy and my colleagues in their committee appearances. That is: (1) Premier McGuinty made the decision to relocate the gas plants; (2) All of our facts and figures were provided by the Ontario Power Authority, either directly or indirectly by the Ministry of Energy; and (3) The government was prepared to provide the committee the relevant documents.

While it is likely beyond scope—I hope that you'll indulge me—I would like to take a moment to discuss the other document, the red herring of an email exchange that piqued the opposition's interest early last week.

Mr. Victor Fedeli: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I'd appreciate if you could allow the witness to have her time.

Mr. Victor Fedeli: But how could she discuss that when we can't? She's about to discuss something you've asked us not to discuss. So it's a point of order and I'd like you to rule on our point of order. If she can discuss it, certainly we're going to be able to rebut that.

The Chair (Mr. Shafiq Qaadri): I appreciate the logic of your question, Mr. Fedeli. It is her statement, so I'll let it stand. Please continue.

Ms. Laura Miller: Okay. The opposition had a microphone and an audience last week; this week I have a microphone and an audience. Obviously I will have the same reach and impact here that you had last week when you misinterpreted and torqued my words.

0910

In the weeks leading up to the particular email exchange, the PCs were deploying, in my opinion, hostile tactics. Through press releases, press interviews and pronouncements in the House, the PCs threatened the then Minister of Energy, Chris Bentley, his integrity, his livelihood and his liberty.

On September 13, 2012, Speaker Levac asked the three House leaders to find a path forward to satisfy the request of estimates—that is, the production of documents by the Ministry of Energy and the Ontario Power Authority by Monday, September 24. Inspired by Milliken's ruling on Afghan detainees, the Speaker said that he had immense faith, if both sides exercised sobriety.

On September 21, 2012, three days before the Speaker's deadline, the PCs announced that, even if the government met the deadline for document production, they would proceed with a contempt motion against Mr. Bentley, and let's remember what they meant by that: potential disbarment and a threat of incarceration. As far as I was concerned, the PC statement was definitely not in keeping with the spirit of the Speaker's ruling, and, just like a hockey player who calls out unfair plays to the referee, we would call out the PCs' unfair play to our referee, the Speaker.

Now, much in that quickly written email exchange has been misinterpreted and torqued, as I mentioned, and I look forward to correcting the record today.

First, my intention was to inform the Speaker that we were unhappy with the PCs' statement, that he had asked the three parties to work together and that clearly was not happening, and that Chris Bentley deserved much better than this as an elected official.

Second, when I wrote that Dave Gene was not confident, it was that he was not confident that the outcome would be fair to Chris Bentley. Coming out of his conversation with the Speaker, Dave Gene told me that the Speaker said the people will decide on this, and given that we were the minority, that did not bode well for Chris Bentley. That ultimately proved to be true.

Again, reaching out to the Speaker is no different than calling out an unfair play to a referee, particularly when

that unfair play could cost a good man, a very honourable man, his integrity, his livelihood or his liberty.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Miller. I will now offer the floor to the PC side. Mr. Fedeli, you have 20 minutes.

Mr. Victor Fedeli: Thank you, Chair.

Ms. Miller, I'd like you to look at the documents we've handed out. Have the documents been distributed to everybody?

Ms. Laura Miller: I don't have the documents.

Interjection.

Ms. Laura Miller: Thank you.

Mr. Victor Fedeli: The front page, Liberal gas plant scandal document 1: This is an email from you, written on Wednesday, October 24, 2012. The first line says—and you typed this email?

Ms. Laura Miller: Yes.

Mr. Victor Fedeli: “I have completed a search. I have no responsive emails.” Can you tell me what this was in reference to?

Ms. Laura Miller: Well, based on this email here, we had been requested to search, based on the FOI request, “emails, memoranda, Outlook calendar invitations making reference to ‘Project Vapour’ or ‘Project Vapor’ during the calendar years of 2010, 2011 and 2012.”

Mr. Victor Fedeli: So in this response to Mr. John O’Leary, manager of legislative issues, Office of the Premier of Ontario—he has asked you to look for emails, memoranda, Outlook calendar invitations making reference to “Project Vapour,” spelled with a U, or “Project Vapor,” just spelled with O-R, during the calendar years of 2010, 2011 and 2012. This is what he’s asked you to return to the office of the freedom of information. Is that correct?

Ms. Laura Miller: Sorry. The office of the freedom of information?

Mr. Victor Fedeli: The freedom-of-information request. Is that correct?

Ms. Laura Miller: He has asked us to do a search and to respond to him, yes.

Mr. Victor Fedeli: So he has asked you for Project Vapour documents, including your Outlook calendar. It was for a freedom-of-information request; I don't know who this was from, to be perfectly frank. And you responded, “I have completed a search. I have no responsive emails.” Is that accurate?

Ms. Laura Miller: Yes.

Mr. Victor Fedeli: Do you still stand by that email?

Ms. Laura Miller: Yes.

Mr. Victor Fedeli: So if you go to Liberal gas plant scandal document 2, the next page, in the “To,” this is from Jorge Gomez to you or one of the recipients; subject, “Project Vapour.” This was on October 17, 2012.

Would you not think that an email in which the subject is written “Project Vapour” within 2012 was responsive to the request?

Ms. Laura Miller: Well, I guess what I would say is that, having looked at this document, which is a PC press release—

Mr. Victor Fedeli: No, no; we're not talking about the content. The subject line is “Project Vapour.”

Ms. Laura Miller: But the content is very important because it is a press release from—let's see—the PC caucus, so I would have considered this to be a transitory record and I would have deleted it.

Mr. Victor Fedeli: Transitory? “Gang,” we are to ask “to convene on a call at 8:30 ... on Vapour.” So you're talking about Project Vapour. You have an email here that is responsive on October 12 to the freedom of information, yet you told the freedom-of-information request that you have no responsive emails.

Let's go to gas plant scandal doc 2.

Ms. Laura Miller: Right. I think it's important, Mr. Fedeli, to note that when you say, “We're convening a call,” that was actually at the top of the press release issued by your caucus. So it's a transitory document.

Mr. Victor Fedeli: The content is irrelevant. You have—well, look. We don't have to belabour this one.

Ms. Laura Miller: Well, Mr. Fedeli—

Mr. Victor Fedeli: You're listed in almost 1,000 emails; almost 1,000 mentions of your name in 2010, 2011 and 2012.

Let's just go to the next page, then. Gas plant scandal doc 3—

Ms. Laura Miller: Yes, but, Mr. Fedeli—

Mr. Victor Fedeli: Laura Miller is the organizer. This one is a meeting of Project Vapour-lock, but the word “vapour,” spelled O-U, is in this. You don't feel that was responsive. You sent this to John Brodhead, Neala Barton, John O’Leary, David Phillips, Wendy McCann, Emily Jephcott.

Let's go to gas plant scandal document 4: another meeting. This time the meeting status is accepted. This is 2012. Let's go to gas plant scandal 5; another one. I could go on and on. There are 1,000 times you're mentioned here.

Let's look at the gas plant scandal doc 6. Let's look at that one. Now, this one is to do, Chair, with the Speaker's letter, but I won't be referring to that at all. I'm looking to the freedom of information. Gas plant doc 6: Let's look at the second-last page. It's listed as number 21 down at the bottom. This is page 4 of 5. “Controversy over the gas plants.”

Ms. Laura Miller: I'm sorry, Mr. Fedeli. I don't know where you are.

Mr. Victor Fedeli: I'm at Liberal gas plant scandal doc 6, page 4 of 5. If you look down at the bottom, it's page 21.

Ms. Laura Miller: Sorry; I seem to have an incomplete—mine goes from one page of doc 6, right back to doc 1. Let's see if this one is a complete set. Hold on.

Mr. Victor Fedeli: It's elsewhere in the package—

Ms. Laura Miller: No, sorry; it's later on in the package. I think there was a duplication.

Mr. Victor Fedeli: It's labelled as—actually, down on the bottom of the pages, it's labelled as page 21, down at the bottom. It was the typing. You see that down there?

Ms. Laura Miller: Sorry, which one?

Mr. Victor Fedeli: Twenty-one.

Ms. Laura Miller: Yes, I see 21.

Mr. Victor Fedeli: The second-last sentence: "Controversy over the gas plants." Page 20, in the middle: "Manage the gas plant issue." This document here is October 2012, and you're in it. This is a responsive document. You told the freedom-of-information people you have no responsive emails, yet in the 1,200 that we just got—I've got a dozen here—just out of 1,200, never mind the 110,000 documents that we received where your name is mentioned 1,000 times, and you tell the freedom-of-information office, "I have no responsive emails." How do you explain these emails that are responsive that you claim don't exist? Was it because you deleted your emails? Can you tell us if you did delete your emails?

Ms. Laura Miller: First of all, Mr. Fedeli, I think it's really important, when you say you have thousands of emails from 2010, 2011 and 2012—

Mr. Victor Fedeli: We have your name in thousands of emails.

Ms. Laura Miller: I think it's important to note that in 2011, I was actually on an unpaid leave from the government, so I find it unusual that you would find—

Mr. Victor Fedeli: That makes it even more interesting that there are so many in a shorter period of time.

Ms. Laura Miller: —that you would find emails in 2011—

Mr. Victor Fedeli: Your name is in there 1,000 times.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, you need to let the witness answer the question at some point.

Mr. Victor Fedeli: Well, she's going to have to answer to somebody—perhaps the legislative group here—on why you told the freedom-of-information office that you have no responsive emails when I have produced half a dozen right off the bat.

0920

Ms. Laura Miller: I'm happy to respond if you'd give me an opportunity, Mr. Fedeli.

Mr. Victor Fedeli: Well, you're going to have to respond to somebody soon.

Ms. Laura Miller: Mr. Fedeli, I think that the document in question, gas plant document number 6—I would have considered this political communication. I would have deleted it.

Mr. Victor Fedeli: Does it not say "vapour" or "gas plants"?

So you deleted email. Tell me what other email you deleted, then.

Ms. Laura Miller: It does, but it's from Wednesday, October 17.

Mr. Victor Fedeli: So when you said you have no responsive email, it is because you deleted them? Is that what you're saying to me?

Ms. Laura Miller: Because it was a transitory or political document, I would have deleted it, which is completely within the rules.

Mr. Victor Fedeli: When did political documents—so all these other documents, the ones about the Speaker, those aren't political documents, then?

Ms. Laura Miller: I would consider those political documents.

Mr. Victor Fedeli: Did you delete that one?

Ms. Laura Miller: I would have deleted that one, yes.

Mr. Victor Fedeli: So how did we get it?

Ms. Laura Miller: I'm not sure.

Mr. Victor Fedeli: I can tell you how we got it. This is in the 1,200 in those tapes that were discovered. Your document came to us through that process. So how many more emails did you delete?

Ms. Laura Miller: But I'm glad that you found those documents, because—

Mr. Victor Fedeli: I'm very glad I found those documents.

Ms. Laura Miller: —the vast majority of those documents confirm what we have been saying about the gas plant relocations.

Mr. Victor Fedeli: So let's jump to a whole separate freedom-of-information request, and this one I will say who it's from. It's from Tom Adams.

Ms. Laura Miller: Okay. Is it in this package?

Mr. Victor Fedeli: Yes. You're going to eventually get to Liberal gas plant scandal document 7.

So Tom Adams—I have his appeal here—on November 30, 2012, asked for all email related to this gas plant scandal from—now these dates are very important—January 1, 2012, through October 1, 2012. It was a very limited time period. This is not going to require a whole lot of effort. This is the first nine months of the year.

Your email, on gas plant scandal number 7, is from you to a Lauren Ramey, Office of the Premier. She is asking, "Please search your records for anything responsive.... January 1 through October 1, 2012 ... associated with the gas-fired power plants." You write back again, "I have no records." You have no records for anything to do with the gas plant in those first nine months of 2011.

Well, let's go to gas plant scandal document number 8, the very next one. Laura Miller is responding to a letter from Jim Wilson, September 21, 2012, "concerning the Mississauga and Oakville power plants." Here it is: September 21, you're responding to an email—again, it talks about the Speaker and his prima facie finding, but you're responsive to "concerning the Mississauga and Oakville power plants." How can you tell the freedom-of-information office you have no records when there's one?

Let's go to gas plant scandal document number 9. This one is from Don Guy to you, and he brings in Brendan McGuinty, and you're talking about "gas plant docs." The last page, page two of nine: "gas plant docs." This is email from September 2012—within that period that you are asked to turn over your email—and yet you have said,

“I have no records.” How can you have no records when I have your records?

Ms. Laura Miller: Because they were political and transitory emails, and according to the rules, there are 99 reasons—there are reasons that you’re able—

Mr. Victor Fedeli: Well, they’re not transitory.

Ms. Laura Miller: —that you’re supposed to delete documents, and these documents would fall under those reasons.

Mr. Victor Fedeli: So we had your party—I’ll get back to transitory in a second, but we had your own party read to us one day what transitory is. That’s the “Can you go for a coffee, Tom?” “No, I can’t, Jennifer.” That’s how they describe transitory, and that’s why, allegedly, so many thousands of emails were deliberately deleted by Liberals.

So if that’s transitory, let’s then go back to Liberal gas plant scandal document 3. Again, this is a meeting re: Vapour-lock. This is not political now; this is not transitory. This is you as the organizer—you organized a meeting on Vapour-lock on 07/06/2012. Gas plant scandal 4, 07/04/2012, “Meeting re: Vapour-lock.” And 07/17/2012, Tel/Con re: Vapour-lock.

You are to turn over all files associated with gas plant, including—including—Outlook calendar records, which I’ve clearly presented are yours, yet you have said on two occasions now to freedom of information, “I don’t have any.” How do you justify that sentence to freedom of information?

Ms. Laura Miller: Do I have an opportunity to respond now?

Mr. Victor Fedeli: Well, let’s hear it.

Ms. Laura Miller: So I can’t really speak to why my Outlook calendar records would not have shown up in a search. I did do a search, as we were required, on those terms, and none of this came up. As to why, I can’t really speak to why. Did I do an improper search? I definitely know I did a proper search of my inbox and my sent items. In terms of the Outlook calendar, I can’t speak to why those documents didn’t come up.

Mr. Victor Fedeli: So why do you think it is that I have your email and your Outlook calendar when you couldn’t find it?

Ms. Laura Miller: Well, I think that you have the Outlook calendar because I think some of my colleagues—it looks here like some of my colleagues in the Premier’s office and the government House leader’s office, when they did their search, did find these records, and they provided them to whoever it was who was doing the freedom-of-information request.

Mr. Victor Fedeli: So that’s true for scandal doc 3 and 4, but what about doc 5? That’s from you. You found it.

Ms. Laura Miller: Sorry, which document was that?

Mr. Victor Fedeli: Doc 5. The first one is from Wendy McCann; the second one is from Kevin Spafford. The third one is from you. Why did you tell the freedom of information you have no responsive documents when you indeed did have documents?

Ms. Laura Miller: I believe that at the time that I did the search, no records came up.

Mr. Victor Fedeli: You’re named in more than 1,000 emails, and you are sitting there under oath and want us to believe that you told them—the dog ate them? What? What did you—why would you say, “I have no responsive emails”? Did you lie to these people?

Ms. Laura Miller: No, I absolutely did not.

Mr. Victor Fedeli: I think you lied.

Ms. Laura Miller: I think it’s important to remind you, Mr. Fedeli—

Mr. Victor Fedeli: I think you lied to these people.

Ms. Laura Miller: —that I am under oath.

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

Ms. Laura Miller: I am under oath right now, and that might not mean something to you, but it means something to me.

Mr. Victor Fedeli: Oh, it means a lot to me. I have listened to dozens of your—

Ms. Laura Miller: It means something to me.

Mr. Victor Fedeli: —dozens upon dozens—

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

Mr. Victor Fedeli: Then, under oath, tell me, did you have responsive documents to either of these two FOI requests? Yes or no.

Ms. Laura Miller: At the time I did the research, no.

Mr. Victor Fedeli: So when the review has been undertaken, May and June—June 27—do you now admit that you have documents?

Ms. Laura Miller: I’m sorry; what’s the review of June 27?

Mr. Victor Fedeli: This is the inquiry, the appeal process, that Tom Adams is going through.

Ms. Laura Miller: Which document is this?

Mr. Victor Fedeli: You don’t have the document. This is a public document.

Ms. Laura Miller: This is a public document. Sorry, what’s the question?

Mr. Victor Fedeli: It’s a public document, “Representation of the Premier’s office”: Did the Premier’s office conduct a reasonable search? Did the institution contact the requester? It goes on and on, and it says, “Ms. Forrest”—I don’t know her first—

Ms. Laura Miller: Jamie.

Mr. Victor Fedeli: Somebody Forrest met with somebody else to discuss the approach to the search. Ms. Ramey would coordinate the search in the records. Nine senior staff were identified as potentially having responsive records. These staff were selected because of their senior roles.

You’re one of the nine; you’re number five of nine. It says here, “Five staff members confirmed”—confirmed—“to Ms. Ramey in writing that no records resulted from their search. In addition, no records were located by Ms. Codd-Downey in the former Premier’s files.” So how is it that I have records?

Ms. Laura Miller: Mr. Fedeli, if I had the opportunity to do a search and access deleted emails on a server, then I would have had responsive documents.

Mr. Victor Fedeli: So what you're saying is you deleted your emails to do with the gas plant? That's why you have none—

Ms. Laura Miller: I would delete political, personal and transitory emails.

Mr. Victor Fedeli: Okay. These are not political or personal. There are emails that I've brought forward to you that are clearly gas-plant-related documents, including your Outlook calendar. Is it systemic through the Liberal associates to delete their email? Is that why we don't have any from you? You deleted them and felt safe to tell the freedom-of-information people, "I don't have any," because you did tell the truth: You didn't have any; you'd deleted them all? All 1,000?

0930

Ms. Laura Miller: When I delete emails, I do not have the ability to go back. Perhaps it's a lesson learned that the government can take back, in terms of maybe it shouldn't be political staff who search their emails; maybe it should be an individual in the civil service who has access to inboxes and sent-mail folders and deleted archives—whatever it is—to conduct the search. But at the time—

Mr. Victor Fedeli: You know the lesson learned? The lesson learned is, you thought you deleted your emails permanently and they weren't deleted permanently. Only when the Ministry of Government Services looked "under the hood" did they find your emails that you thought were safely deleted. Is that true?

Ms. Laura Miller: And I'm glad that they found them. I'm absolutely glad that they found them.

Mr. Victor Fedeli: I'm glad they found them, too, because you told the freedom-of-information request you had no responsive records.

Ms. Laura Miller: Well, let's be frank. If I had those records—

Mr. Victor Fedeli: You had none because you deleted your emails.

Ms. Laura Miller: If I had those records, I would have provided them to the freedom-of-information request.

Mr. Victor Fedeli: I have the records now; don't worry. We have them now. We know you're in this up to your forehead in this gas plants scandal.

Ms. Laura Miller: I don't really feel that I am, but thank you for that.

Mr. Victor Fedeli: Well, the 1,000 times you're mentioned—you're one of the pivotal people in this gas plant scandal, in the spin of it all.

Ms. Laura Miller: "Pivotal"?

Mr. Victor Fedeli: You're organizing meetings about it.

Ms. Laura Miller: Can I quote you for my bio?

Mr. Victor Fedeli: Yes, you can.

Ms. Laura Miller: That's great.

Mr. Victor Fedeli: It won't be a very impressive bio when you're talking about gas plant scandals—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, could we—one minute.

Mr. Victor Fedeli: Do you have any more comments about why you deleted your emails, the non-transitory and the non-political emails?

Ms. Laura Miller: I do not see any document here that is non-transitory, non-political or non-personal.

Mr. Victor Fedeli: Is it systemic through the Liberal Party to delete your emails?

Ms. Laura Miller: Or that isn't a duplicate.

Mr. Victor Fedeli: Duplicate? We never had any from you—zero—never mind duplicate. "I have no responsive emails": Did you lie to the freedom-of-information—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, this is not an appropriate form of question to ask a witness.

Ms. Laura Miller: I am under oath.

Mr. Victor Fedeli: I have two documents that say, "I have no emails," "I have no responsive emails," and yet in the little sampling of 1,200, I've pulled up a dozen. When I go through the 110,000, how many times am I going to see your name?

Ms. Laura Miller: Mr. Fedeli, there have been other freedom-of-information requests where I did provide responsive records.

Mr. Victor Fedeli: Not to the gas plants scandal. You deleted all those; you've told us that.

Ms. Laura Miller: Because, for the most part, they were transitory or political.

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

Mr. Victor Fedeli: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson or Mr. Tabuns?

Mr. Peter Tabuns: I'll be leading off. Thank you very much, Mr. Chair.

Good morning, Ms. Miller.

Ms. Laura Miller: Good morning, Mr. Tabuns. How are you?

Mr. Peter Tabuns: Not bad.

Ms. Laura Miller: Did you have a nice weekend?

Mr. Peter Tabuns: Yes.

The documents that we've been provided with—and we will see where the Chair draws the line on questioning. In the package of documents you have, document 9, way down in here, there's an email from you to Don Guy, Brendan McGuinty, Chris Morley and Dave Gene. You've got a line here: "Dave is putting the member from Brant on notice that we need better here." What did you mean by "we need better"?

Ms. Laura Miller: If I refer back to my opening statement, it's that we were very unhappy. If I can just describe to you how unhappy we were with the circumstances: We thought that there was a glimmer of hope with the Speaker's ruling. The spirit of his ruling was that everyone would come together, work together—

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, I will, as you have correctly anticipated, rule that particular question out of order.

Mr. Peter Tabuns: I'm sure there are others in this room today who will ask the question later.

Mr. Gilles Bisson: No, Speaker, Speaker—

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson.

Mr. Gilles Bisson: For the record, what's at question here is, somebody tried to influence a decision of the Speaker. That is a matter that is a purview of this committee. I don't accept that we're not able to ask questions with regard to what it was, because what this committee is charged with is trying to determine what happened with the release of documents. Why is it that when the estimates committee asked for documents, the minister did not release those documents, and who else was involved? The series of questions that we want to ask are related to that.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, I appreciate the gymnastics involved. My understanding is that we are here to consider the product of the ruling and not the process.

Mr. Gilles Bisson: Well, let me ask this question, Chair.

The Chair (Mr. Shafiq Qaadri): Sure.

Mr. Gilles Bisson: Do you mind?

Mr. Peter Tabuns: Ask a question.

Mr. Gilles Bisson: The question is simply this: There was a decision made by the Speaker which we cannot question, because it's clear, as per the precedents, that the Speaker's ruling is a decision that cannot be appealed—and we understand that. But what's at question here is this: You obviously were trying to get the Speaker to do something. It sounds to me that if the decision had already been made that in fact there was a *prima facie* case of contempt when the documents were not released—were you trying to ask the Speaker at the time of the meeting—because, if you remember, the Speaker had said it was up to the House leaders to try to figure out how to release the documents. Was the purpose of your meeting in order to try to—how would you say?—lessen the impact of how those documents would be released, and which documents would be released? Because that certainly is a matter before this committee.

Ms. Laura Miller: No. I would say a few things. First of all, while I disagree with your characterization of what I was trying to do, I'm happy to answer questions about that. I think last week, a number of elected officials stood up and said things and misinterpreted and torqued my words, so I do welcome the opportunity to let you know what I was trying to do.

In terms of what I think we were trying to do, and I do have the Speaker's ruling here—the spirit of his ruling is that the House leaders had to work together. The spirit was that the House leaders had to work together. It became clear, three days before the deadline, which I think was Monday, September 24, that the PCs were no longer playing ball. They were no longer playing ball and they had decided that they were going to pursue—

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, Ms. Miller, I am directed once again by the powers that be, which—

Mr. Gilles Bisson: But, Speaker, this committee is charged with trying to determine if there was a *prima*

facie case of contempt when it came to the release of the documents that were requested by the estimates committee. Clearly, the decision of the Speaker had already been made when this particular email exchange was—

The Chair (Mr. Shafiq Qaadri): Correct.

Mr. Gilles Bisson: And what was at hand is the Speaker had charged the House leaders to try to find a way to release those documents. It was apparent, and I agree with her, that at that point it didn't appear as if the House leaders were able to come to an agreement on how to release the documents, so these questions are perfectly in line with what this committee is all about. Was the purpose of the meeting in order to figure out how not to release the documents in some form to the House and to the committee? That is directly related to what this committee is all about. Documents were refused to be released and there was a meeting with the Speaker at the time when the House leaders were charged to determine how those documents were to be released. When I read something that says, "Dave is putting the member from Brant on notice that we need better here," is the "better" having to do with the release of documents? That's a perfectly logical question and in keeping with the committee.

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

Mr. Peter Tabuns: I do hope you're extending our time, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Monsieur Bisson, apparently, the understanding or the issue should be considered in the following light: One, the ruling came from the estimates committee, which took place about a month previous to what you're speaking about, and the *prima facie* breach of privilege ruling I guess you can consider as day one, or the initial kind of trigger of the committee. All questions that are of relevance to the scope of this committee and its mandate follow from that and not with regard to the ruling.

Mr. Peter Tabuns: And in fact, I'm asking—we are asking—questions that follow the decision and finding of the Speaker, because this happened in the week after the Speaker in fact made his ruling. Not correct, Mr. Chair?

The Chair (Mr. Shafiq Qaadri): I may be undercaffeinated to fully consider all of this, but in any case—

Mr. Peter Tabuns: Why don't you take a minute to consult with the Clerk and then we'll go back.

Mr. Peter Sibenik: Yes, documents or emails that occur after the Speaker's ruling are not really relevant to the matter that is before the committee. We're talking about two things here: one, the *prima facie* case of privilege, the alleged non-release of documents, and number two, the second order of reference that came from the committee about the relocation and cancellation of the gas plant. The documents—

Mr. Gilles Bisson: And also any other matters relevant to the—

Mr. Peter Sibenik: There was a point of congealment at the time of the Speaker's ruling. Everything that really

occurred after that is not really relevant to the matter that is before the committee—that is, on the date that those orders of the House were passed.

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Mr. Gilles Bisson: Is it or is it not one of the things that this committee has to deal with: Why were those documents not released when they were requested, and who was involved? Is that not what this committee is all about? Yes, it is.

The question that we're asking the witness is a really simple one: Was the purpose of the meeting that's referred to in this email a discussion with the Speaker about how those documents are to be released? That is perfectly related to the mandate of this committee.

Mr. Peter Sibenik: If the emails occurred after the date of the order, the answer is no.

The Chair (Mr. Shafiq Qaadri): That's the ruling, Monsieur Bisson.

Mr. Gilles Bisson: No. I disagree.

The Chair (Mr. Shafiq Qaadri): Once again, I would simply advise you that if you wish to challenge that ruling, that is your parliamentary right—

Mr. Gilles Bisson: Well, we know what that means, and I'm not about to challenge the Chair at this point.

The Chair (Mr. Shafiq Qaadri): —and that goes to the Speaker.

Mr. Gilles Bisson: We're not going to do that right now.

The Chair (Mr. Shafiq Qaadri): In any case, the floor is now yours.

Mr. Peter Tabuns: The Chair may or may not rule against me on this question. Why were you referring to the Speaker as “the member from Brant,” and not referring to him with the dignity and respect that his position required? It was as if you were referring to a wayward member of your caucus.

Ms. Laura Miller: I don't view it that way. I think that the Speaker is the Speaker because he was elected amongst his peers—MPPs who represent different geographic locations. It's not unusual for us to refer to members as “the member for”—the member for Vaughan, the member for York South–Weston. In retrospect, if I hadn't been so quick to respond, perhaps I would have called him the Speaker, but it's just the way that I refer to members—the member for Toronto–Danforth. I apologize if that gives offence. I didn't think that it would. Sometimes I referred to the Premier as the member for Ottawa South.

Mr. Peter Tabuns: When you referred to “we need better here,” you were talking about the Liberal Party of Ontario?

Ms. Laura Miller: No.

Mr. Peter Tabuns: Who were you talking about?

Ms. Laura Miller: I was talking about the Legislature, and I was talking about the MPPs. I was speaking about, in particular, Chris Bentley, the then member for London West.

Mr. Gilles Bisson: That's a pretty big stretch.

Mr. Peter Tabuns: That's a very big stretch, I have to admit, because frankly, we on the other side—

Ms. Laura Miller: Absolutely.

Mr. Peter Tabuns: —felt that the Speaker should have been ordering release of the documents the day he made his first ruling, and not giving a week's extension.

Ms. Laura Miller: There's a difference of opinion there, for sure.

Mr. Peter Tabuns: Yes, substantially. I believe you're speaking for the Liberal Party.

Was Dave Gene the only staff person you're aware of to meet with the Speaker about his ruling?

Ms. Laura Miller: First of all, I'm not sure that they met. I know that they spoke—

The Chair (Mr. Shafiq Qaadri): Monsieur Tabuns, for various cautionary reasons, I will have to disallow that particular line of questioning.

Mr. Peter Tabuns: Did Mr. Gene brief you after his meeting with the Speaker?

Ms. Laura Miller: We spoke, yes.

Mr. Peter Tabuns: What did he tell you?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, that question is also disallowed.

Mr. Peter Tabuns: My goodness, you're thinning out the questions this morning, Chair.

The Chair (Mr. Shafiq Qaadri): I do apologize.

Mr. Peter Tabuns: What were the ramifications for the Speaker if he didn't change his mind?

Ms. Laura Miller: There are no ramifications for the Speaker.

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

Mr. Peter Tabuns: I assume, Chair, that you're extending our time because you had to confer at length with—

The Chair (Mr. Shafiq Qaadri): You assume incorrectly, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, that's not fair; you know that. That being the case, though, I'll turn it over to my colleague Mr. Bisson.

Mr. Gilles Bisson: Clearly, the government didn't want to release the documents to the estimates committee. True or not true?

Ms. Laura Miller: Not true.

Mr. Gilles Bisson: So that's why the government refused to release the documents?

Ms. Laura Miller: I believe that, at the time—and it wasn't just the then Minister of Energy, but also the then Premier who said that it's not a matter of if, it's a matter of when.

Mr. Gilles Bisson: The Premier, then, was involved in the decision-making around not releasing the documents?

Ms. Laura Miller: I believe that at the time—you're referring to estimates committee in May. Is that correct, Mr. Bisson?

Mr. Gilles Bisson: Yes, that's where I'm at with this point.

Ms. Laura Miller: At that point in time, I believe that legal counsel had advised the OPA and the Ministry of

Energy that it would not be advisable, in the middle of a commercially sensitive negotiation, to—

Mr. Gilles Bisson: So the Premier was—

Ms. Laura Miller: May I finish?

Mr. Gilles Bisson: So the Premier was in full knowledge of the decisions around not releasing the documents to the estimates committee?

Ms. Laura Miller: I don't believe that he was.

Mr. Gilles Bisson: Well, that contradicts previous evidence that we got from Mr. Morley, who was a former chief of staff, when he says it's entirely appropriate. He was aware of anything that went on before the Legislature and his office. So who's telling the truth here, Mr. Morley or you?

Ms. Laura Miller: Mr. Morley probably has a better indication of what was happening at that time.

Mr. Gilles Bisson: Okay. So is it fair to say that the Premier was in knowledge of what was going on when the entire process of events was taking place when it came to the release of documents to estimates?

Ms. Laura Miller: I don't know if I can answer that question.

Mr. Gilles Bisson: Well, you should answer it one way or another, because I've got the former chief of staff who says he was in knowledge of everything, and I'm asking you the question: Was his office, and was he, particularly, briefed on what was going on when it came to the release of documents?

Ms. Laura Miller: I can say this, that our office was aware. As a branch of our office, we had the government House leader's office, and they were obviously quite involved. I can say that towards the—because up until when this first happened, when estimates first met, I had responsibility for intergovernmental affairs. In June, I assumed responsibility for communications, so I can advise that throughout the summer, as things started to heat up, the Premier was aware, I think, of what was happening with documents, but I can't speak to the time period in around May.

Mr. Gilles Bisson: So back to the discussion that you had—Mr. Gene had—with the Speaker: Was that in order to try to lessen how the documents would be released?

The Chair (Mr. Shafiq Qadri): Question disallowed, Mr. Bisson.

Mr. Gilles Bisson: I ask the question again.

The Chair (Mr. Shafiq Qadri): I disallow again.

Mr. Gilles Bisson: This whole committee, Speaker, is about the release of documents. This is what this committee is all about. A Speaker's decision was given in regard to the documents, that they be released, and the House leaders were charged with a week in order to come up with how. It's pretty clear to me what was going on. They were trying to influence the Speaker in some way about how those documents were to be released. So I ask the question again: Was that the reason why you guys were meeting with the Speaker?

The Chair (Mr. Shafiq Qadri): Thank you, Monsieur Bisson. A third time, disallowed.

Mr. Gilles Bisson: Well, I'm going to ask the question a fourth time.

The Chair (Mr. Shafiq Qadri): Then I will invoke $n+1$ mathematical law of induction.

Mr. Gilles Bisson: And I'm going to go to the square root of pi or whatever you want me to do.

The point is that this committee, Speaker—and I ask the question to you again, Ms. Miller. It was clear that the Ministry of Energy, and from your own statement the House leader's office and the Premier's office, were of the view that those documents were not to be released when requested by the estimates committee. There's a decision by the Speaker that those documents need to be released, but how they're to be released is to be discussed with the House leaders. It seems to me, when you're trying to put him on notice that you need better here, you're talking about the release of documents. So my question is, was that the reason why you were meeting with the Speaker back in—I guess it was September 21?

The Chair (Mr. Shafiq Qadri): Monsieur Bisson, in the time you have remaining, you are certainly welcome to ask whatever you wish, whether it's allowed or not—disallowed. The other issue that is then triggered is that Ms. Miller is directed not to answer the question that is disallowed.

Mr. Gilles Bisson: Well, I would argue it is directly related, Speaker—Chair, I should say—

The Chair (Mr. Shafiq Qadri): I appreciate that, Mr. Bisson.

Mr. Gilles Bisson: —because this committee is all about the documents, and something here doesn't—anyway, we'll leave that alone as of this point.

Do you have anything else?

The Chair (Mr. Shafiq Qadri): You have four minutes.

Mr. Peter Tabuns: We have four minutes?

Mr. Gilles Bisson: Let me ask you this, then: According to your own tweets—on the 29th of July, I guess, you're exchanging tweets with former Speaker Stockwell and others—you refer to this committee as a partisan witch hunt. What did you mean by that, exactly? You find this is just a trivial little thing; we're just wasting a little time here?

Ms. Laura Miller: No, I don't think it's trivial at all. One of the first witnesses that appeared before the committee was the Honourable Peter Milliken. I think Peter Milliken made it clear in his testimony that—let me just pull this up here. He said that if Chris Bentley “complied with the demand for production of the documents, I would” think that would have ended the matter, yes. So the fact that the government did produce the documents by the deadline and it was up to the MPPs to vote on the motion, and the majority, being the opposition, voted for this committee—I don't how else to perceive it, because at the end of the day, we have one of the leading experts in parliamentary privilege, according to the member for Cambridge—

Mr. Gilles Bisson: Let me ask you this question: Who is it that wanted this committee to be formed?

Ms. Laura Miller: Sorry?

Mr. Gilles Bisson: Who is it that wanted this committee to be formed? Wasn't it Kathleen Wynne, the Premier? Are you saying she's setting up a partisan witch hunt?

Ms. Laura Miller: So, Mr. Bisson, I'm not sure—

Mr. Gilles Bisson: Are you throwing her under the bus?

Ms. Laura Miller: Pardon?

Mr. Gilles Bisson: Are you throwing the Premier under the bus?

Ms. Laura Miller: I believe it was all MPPs who voted on forming this committee and having this discussion.

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Mr. Gilles Bisson: No. Was it not the Premier of Ontario who said, "I want this committee formed, and I want the truth to come out. I want it to be transparent. I want this committee to look into all matters related to the gas plant"? So she set up her own witch hunt, is what you're saying.

Ms. Laura Miller: When this committee was struck, I was not in the province, so I cannot speak to what she or any of the MPPs may have said at the time—the discussion around that in the House, the discussion amongst the House leaders, the discussion amongst the leaders, anything like that. I can't speak to any conversations she would have had after being elected the leader of the Ontario Liberal Party and being sworn in as Premier.

Mr. Gilles Bisson: I think what it speaks to is, the government had been in power for nine years and were used to doing things their own way and not being accountable to anybody. All of a sudden, there's a minority Parliament, and this is somehow seen as a partisan witch hunt because you're not in control. I think it speaks to the contempt that your administration has shown over the last number of years.

Ms. Laura Miller: We're completely accountable.

Mr. Gilles Bisson: Boy, you have a funny way of showing it. You won't release documents, you hit the "delete" button, you think you've covered your getaway, and it turns out in fact there were backup tapes of the backup tapes, and you got caught.

The fact is, you did not release documents when this committee—

Ms. Laura Miller: We produced documents in July, after we had reached a negotiation on Mississauga. We produced documents in September, after we had reached a negotiation with Oakville.

At the end of the day, political staff are told to manage their inbox in a certain way, so that requires that duplicate, personal, transitory, political emails be deleted. I did nothing wrong.

Mr. Gilles Bisson: Was it okay not to release documents that were requested by the estimates committee?

Ms. Laura Miller: I believe that Minister Bentley did what he thought was best, in terms of trying to get the best value for the dollar. You don't show your poker hand when you're in the middle of negotiations.

Mr. Gilles Bisson: Thank you very much.

Le Président (M. Shafiq Qaadri): Merci, monsieur Bisson. J'apprécie votre coopération. Je passe la parole à M. Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair, and thank you, Ms. Miller, for being with us here today and answering the committee's questions.

I think one of the things that's probably most important when we're looking back and considering what was occurring is the entire concept of context. I want to ask you a little bit about what was happening during the time at which some of the emails that have been discussed here at committee today were sent.

In a statement that you issued last Monday, you said, "I recall this day very well because it was the moment I realized that the PCs were hell-bent on advancing a partisan cause at Chris Bentley's expense."

Can you please provide us with some background on what was happening at this point, in terms of the Speaker's request for all three parties to come to a consensus on the release of the documents?

Ms. Laura Miller: Absolutely. We anticipated, in bringing back the Legislature early, that Mr. Leone, the member for Cambridge, would stand up on a point of privilege because he felt that—

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca and Ms. Miller, with apologies, that line of questioning is also disallowed.

Mr. Steven Del Duca: Just to be clear, so I understand it for my next few questions—

The Chair (Mr. Shafiq Qaadri): If one could be clear, I'd be pleased to be clear—

Mr. Steven Del Duca: I understand that, and I appreciate that. I'm asking about the context of behaviour, generally, in the Legislature at that time, not with respect to the Speaker himself; with respect to the rest of the—

The Chair (Mr. Shafiq Qaadri): At which time? We need the time.

Mr. Steven Del Duca: In the time leading up to the Speaker's ruling.

The Chair (Mr. Shafiq Qaadri): From my understanding, that's irrelevant.

Mr. Steven Del Duca: Okay. Fantastic.

I'm going to try with the next one, and feel free to jump in and let me know if I have crossed this line.

I bring this up because I actually do remember this time period fairly well. This was my first week in the Legislature as a member of Parliament, and frankly, I couldn't believe what I was hearing from the opposition. All of us were hearing insults. We were hearing threats. There was, I think, frankly, an over-the-top amount of vitriol that was being spewed by the opposition in the Legislature. I know that from my perspective, there was no doubt in my mind, as a rookie, brand new MPP, that the members of the PC caucus, in particular, were out to destroy a man's integrity and his career, specifically Chris Bentley's.

A couple of things from Hansard, from that period of time: On September 25, the PC member from Simcoe—

Grey, Mr. Wilson, in my opinion, smeared former Minister Bentley when he said the minister “knows that he could lose his licence to practise law. He knows that he could be expelled from the Law Society of Upper Canada. He knows that he may be called before this House to deliver a humiliating apology...” And the member from Cambridge, Mr. Leone—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Del Duca—disallowed.

Mr. Steven Del Duca: You haven’t heard the question yet, though.

Part of this committee’s mandate is to review the PC allegations of contempt against Mr. Bentley, and I know that you alluded to this a second ago when you were talking. Initially, it seemed that the contempt charges would be the primary focus of the committee’s work, for the PCs in particular, and at first, frankly, their witness list was made up of parliamentary procedural experts. In fact, the very first person on their list, whom you alluded to just a moment ago, was the Honourable Peter Milliken, and I don’t think I need to remind everyone what happened; frankly, you did. When Mr. Milliken was asked about some of the matters before us, he said, and I’m quoting him, as you did: “I don’t know why there would be a breach. I don’t understand that.” After that particular occurrence, the Tories suddenly changed their witness list; they updated it, and they haven’t invited a single procedural expert to testify again.

Back to Milliken’s point: Given the fact that the order to produce the documents was complied with, were you surprised that the opposition decided to pursue contempt?

Ms. Laura Miller: Surprised, no. Disappointed, yes. I think they had been telegraphing it for quite some time. I think that it was in their interest to smear the then member for London West, the then Minister of Energy, Chris Bentley, and I think it was their intention to try to bring the government down. I was disappointed. I was disappointed because I think the Speaker, in his ruling—I don’t think the spirit of his ruling was met at all by the House leaders, which was a huge disappointment.

Mr. Milliken spoke about Afghan detainees. It was a bad example that was constantly being used in the lead-up to August and September by legal counsel, as a way that you would want to see MPPs work together to try to review documents without showing the government’s hand in the middle of negotiations, because we’re trying to get the best value for money. If we had cancelled the contract outright, as the PCs and NDP had advocated for, it would have cost hundreds and hundreds of millions of dollars more. We were trying to get the best possible deal for taxpayers, and I think some testimony from the OPA—even the auditor—talked to that specifically.

I was disappointed. I was absolutely disappointed, because I think that, at the end of the day, we followed through. We released the documents. I think that the folks at the OPA—whoever is involved with the negotiations with Oakville—did whatever they could, knowing that their minister, his reputation, his liberty and his

livelihood were at risk. We were able to release those documents.

If the negotiation hadn’t come to fruition by the deadline, I have a feeling that the government would have released the documents, but that would have been all for naught, because I think that, at the end of the day, the PCs and the NDP had decided that this was their opportunity to draw blood. It’s really unfortunate, because Chris Bentley is one of the most honourable people I know.

Mr. Steven Del Duca: Thank you very much for that answer.

I want to talk a little bit about the estimates motion specifically. I know that you’ve alluded to it a couple of times here today, but I think it bears repeating, and I think we should talk about that a little bit. I want to take a few steps back and talk about that motion, the motion moved by Mr. Leone for correspondence from the energy ministry and the OPA related to the power plant relocations.

As you, I think, would know, at the time of the motion, in May 2012, there were fairly complex and serious negotiations that were taking place that were ongoing with both of the companies. In your view, what would it have meant if the OPA and the province’s negotiating position was prejudiced because the company had access to confidential and privileged information?

Ms. Laura Miller: I think that the cost would have been much higher. I think it would have been difficult to negotiate the deal that the OPA and their associates were able to negotiate, and I don’t think that that would have been in the best interests. I think that, at the end of the day, that was what informed Chris Bentley’s decision.

I do recall that, at the time when then-Minister Bentley was testifying or appearing at estimates, I believe the Chair, the member for Beaches–East York, even advised Minister Bentley that he didn’t need to respond or disclose documents if he thought that that would jeopardize the negotiations. I think that most reasonable people would understand why you wouldn’t want to show your hand. I have not spoken to one person who understands why it would be a good idea to reveal those documents and put them out for everyone to see before the negotiations were completed.

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Mr. Steven Del Duca: Not surprisingly, we’ve had somewhere in the neighbourhood of 40 witnesses come before this committee, and a number have been asked questions along the same lines. Not surprisingly, many have given us testimony that’s actually fairly consistent.

For example, the former secretary of cabinet, Shelly Jamieson, said, when she was here, “It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about what they’re talking about before the conclusion of the deal. It’s just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves.”

The Auditor General also said, before this committee, that it's like in poker, as you said a second ago: "You don't show the people around the table your cards."

Interestingly, we often hear the members from the PC caucus talking about how they want to stand up for taxpayers, yet they wanted to make public the information that would have potentially hurt negotiations and thus directly hurt the taxpayers. Again, it seems to me that they're more interested in scoring cheap political points than actually working for the public good. What do you feel about that?

The Chair (Mr. Shafiq Qadri): Mr. Del Duca, feel free to elevate your language, if you might.

Mr. Steven Del Duca: I will aspire to do so. Thank you.

Ms. Laura Miller: When the Auditor General appeared, he said something that struck me as really interesting. Basically, he said that because of the situation as it pertained to Mississauga, the proponent, the group, Greenfield South, who was contracted to build that plant was in a stronger negotiating position because of the public scrutiny.

We were in a situation where the commitment was made to relocate the gas plant, and then coming out of that election, for some reason, the PCs continued to draw attention to the fact that the work at the gas plant was still under way. I think that the folks at the gas plant were accelerating their work there because they were trying to squeeze more out of the government.

At the end of the day, what the auditor said, I think, is really revealing and damaging to the PCs. Basically, he said that the PCs and the public scrutiny and the pressure around the time, particularly after the election, put the proponent in a stronger position, and I think that's quite unfortunate.

If we're all concerned about what's best for the taxpayer dollar, I don't understand why the PCs and the NDP were going to cancel the contracts—outright cancellation was going to cost hundreds of millions of dollars—and I don't understand why they thought it was a good idea to disclose our negotiating position before the negotiations were up. It boggles my mind.

Mr. Steven Del Duca: Thanks very much. I want to ask you a couple of questions about the Mississauga relocation.

The committee, I think you would know by now, has heard from a number of witnesses who confirm that all three of the parties had made the commitment to cancel the Mississauga plant.

I think we're all familiar now with Mr. Hudak's famous press conference in the middle of the 2011 election, when he said that the plant would be "done, done, done" if he was elected as Premier. Of course, there were the PC flyers that were sent out across Mississauga and Etobicoke during that last election announcing that "the only party that will stop the Sherway power plant is the Ontario PC Party." I actually have copies here if folks need to see those.

I'm sure that you're also aware of the commitments made by local NDP candidates during the election campaign and their opposition to the plant.

Mayor McCallion, when she was here before the committee, told us, "The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it..."

Given all of that, what do you make of the opposition parties trying to, essentially, rewrite history? They stand up every day, here at this committee and elsewhere, pointing fingers at our government for following through on the very same commitments that they made to the people of Mississauga. How do you feel about that?

Ms. Laura Miller: Again, disappointed, but not surprised. The opposition have a role to play. I think that, in particular, the opposition has relished the dynamics of a minority Parliament. I think that they are going beyond trying to hold the government to account. I think at the end of the day, all three parties listen to the communities' concerns. I don't know why it is that the PCs and the NDP feel that that's no longer relevant, because I think it's quite relevant.

You would have heard before from the former Premier, from the former Minister of Energy, maybe even the OPA, that of the 17 gas plants that were sited, two of them we got terribly wrong. As Premier McGuinty says, there's never a wrong time to make the right decision.

It's unfortunate that the decision came so late. That being said, in 2011—I mentioned this before—I was at the Ontario Liberal Party office. I was on an unpaid leave from my role here in government, and I do recall in June, before the election, the Premier kind of telegraphing and saying that there were concerns with Mississauga because for a very long time, it seemed dormant. It didn't seem like it was going to happen. I think that Mayor McCallion and some of the community groups testified to that as well. I think that the proponent saw an opportunity and decided to move forward.

Mr. Steven Del Duca: There have actually been a number of unanswered questions that have come around the work of the committee regarding the opposition commitments to cancel the Mississauga power plant. For example, we wanted to know who approved their robocall scripts, their campaign flyers, their campaign announcements—all of that stuff. They very clearly articulated their desire to kill the Mississauga power plant. We wanted to know what their costing was for their campaign commitment. In fact, when Mr. Hudak was before this committee, he was asked 28 times these very questions, but he refused to answer. Given that he refused to answer what I think were fairly straightforward questions, we decided to invite some local PC candidates who were particularly vocal about their opposition to the Mississauga power plant. This committee has now sent 10 invitations to three PC candidates, but despite our repeated interest to have them appear before this committee and answer our straightforward questions, they continually refuse to appear here. Why do

you think that is? Do you think they may have something to hide?

Ms. Laura Miller: That's a shame. I think that if you are invited to appear before the committee, it's important to appear before the committee to assist with the work that's under way. I can only surmise that those candidates do not want to reflect on or remember that campaign. It wasn't a particularly good one for them.

Mr. Steven Del Duca: Okay. I want to move a little bit to the question of costing. With respect to the hundreds of emails that the committee has actually received to date that haven't received a lot of, I guess, attention, as you highlighted in last week's statement—and I quote you again: "These pages confirm that the Ontario Power Authority was the source of the figures released to the public." Can you explain that in a bit more detail for the committee? What was the information provided to the government by the OPA around costing for the two gas plant relocations?

Ms. Laura Miller: I can speak to this. In my former role, being responsible for communications in the Premier's office, I was not involved with the negotiations, the mandate, when it came to the relocation of the gas plants. I would have been notified when the negotiations were complete. When I was notified on Mississauga—I believe that was the first one in July—we were told that it was \$180 million. Those were the figures that we were provided by the OPA and by the Minister of Energy, that it was \$180 million.

We found out later that there was a non-utility generation payment of \$10 million. The media and I think the opposition started to talk about a \$190-million figure. We accepted the \$190-million figure because we were quite unclear on what that was about, but if it had to do with the negotiations to relocate the plant, that made sense to us. I think that the OPA and the Ministry of Energy weren't particularly happy with the \$190 million, but at the end of the day—it was the \$180 million plus the \$10 million—the \$180 million was the number that we received from them. The same with Oakville. Again, we would have been notified that they had come to an agreement, that it was \$40 million in sunk costs, and those would have been the figures that we would have put into press releases, speaking points, different things like that.

I think it's also important for the committee to know, Mr. Del Duca, that there's something in government called fact check. So it's not that I, as a political staffer, am just writing a release and then we press "send" and it goes to everyone. At the end of the day, it is quite a process. So it would be the Ministry of Energy maybe working with the OPA; political staff working with civil servants; it would come to us through Cabinet Office. If we made any revisions, they'd go back through Cabinet Office and back to the civil service. So at the end of the day, it's not that we were pulling these figures out of nowhere. They were the figures that were provided to us by the OPA, by the Ministry of Energy, and everything

that was released by the government did go through Cabinet Office and it was fact-checked.

Mr. Steven Del Duca: Thank you for that. In fact, the testimony that we heard here at committee from Colin Andersen does actually confirm what you're saying in terms of Mississauga. He testified, while here, "We did provide them with the numbers. That is what you would expect." And for Oakville, he told the committee, "But it's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...." That's his quote.

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Ms. Laura Miller: Right.

Mr. Steven Del Duca: So again, you would agree that when the finalized deals were announced, the information that was costed by the OPA is what was provided to the public.

Ms. Laura Miller: Yes, absolutely.

Mr. Steven Del Duca: Okay. I think you've no doubt heard the PC and NDP critiques, let's call them, about the costs associated with the two relocations. I personally find that a little bit tough to swallow considering that they also, as we've said earlier, committed to cancel both of the plants. And unless I'm missing something, there would have been a cost associated with their commitments had they won the election and formed government. In fact, we've actually heard expert testimony that the PC commitment to outright cancel the plants and not relocate them would have been much more costly. Can you speak to that at all?

Ms. Laura Miller: All that I'm aware of is that if there was an outright cancellation it could have been close to \$1 billion that would have had to be paid out to these companies with no benefit to the taxpayer; nothing would have been built. I think at the end of the day the \$180-million and \$40-million figures spoke to sunk costs, spoke to things that weren't going to be repurposed, that couldn't be reused at the new location, spoke to the fact that money was spent, time was invested, materials were invested that couldn't be repurposed.

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

Ms. Laura Miller: That was my understanding and I think that was most people's understanding coming out of those two announcements.

Mr. Steven Del Duca: With my last few seconds, I want to call attention to a letter that was sent to the Chair on July 26, 2013. I couldn't help but notice in the first round of questioning that you received from the PC caucus there was a lot of discussion—in fact, all of their questioning dealt with this issue of emails and stuff that they had in front of themselves today in committee and they were asking a series of questions. I just wanted to quote from this particular letter, which is from the Deputy Minister of Government Services. In this letter, on page 2, he specifically says, with respect to email searches and document searches, "It is not unusual to have discrepancies between an individual's search of their desktop computer using key words and a system search using"—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Mr. Fedeli, 10 minutes.

Mr. Victor Fedeli: Thank you very much, Chair. In your opening statement, you said the government was prepared to release all the documents. Do we have all the documents now, Ms. Miller?

Ms. Laura Miller: I hope so.

Mr. Victor Fedeli: You also—

Ms. Laura Miller: Mr. Fedeli, your frustration is shared by me and by many others. At the end of the day and through testimony, you would know better than me that the OPA and the Ministry of Energy were preparing these documents in August and then they were released and then, oh my goodness, there's stuff coming in October and the deputy minister and the chair of the OPA: "Mea culpa, mea culpa, everything's out here." And then I read that in February there was a third release.

Mr. Victor Fedeli: It wasn't, "Oh my goodness, here they came." They came later because the documents that were released were only a fraction of the documents requested. The OPA was instructed by insiders at the Ministry of Energy to hold back 6,000 documents, so on the next document dump of 20,000, it wasn't, "Oh my gosh, look what we just found." There was a concerted effort to hide those emails from this committee. That has been under sworn testimony by two witnesses.

The government, you said, produced the documents by the deadline, first in July, then in September. You said that was to make sure we got the documents after the negotiation. Do you think the negotiations are done by now?

Ms. Laura Miller: Pardon? How do you mean?

Mr. Victor Fedeli: You said we got the documents after negotiations in July and then we got another batch after the negotiations in September. They were held back from us so they were not going to interfere with the negotiations. Are those negotiations done?

Ms. Laura Miller: I would think so.

Mr. Victor Fedeli: So why do you think, after the negotiations ended, we received another 54,000, 55,000 documents, up to and including last week, when the negotiations ended about a year ago? Why would we still be getting documents week after week after week after week, including documents that fell under the initial search parameters? Why do you think that is?

Ms. Laura Miller: Well, I can only guess. Having read the former secretary of cabinet and the current secretary of cabinet's testimony, also the Deputy Minister of Energy, even Mr. Andersen from the OPA, I don't think government is equipped or is able to produce documents. I don't know if there is a consistent way that they search for documents ministry to ministry, agency to agency, and I think it's been a real struggle.

I believe that it was a struggle, that everything was produced in good faith—

Mr. Victor Fedeli: Well, hang on a second. On that I have to challenge you: Everything was not produced in good faith. We had to claw and pry your own comment, your own written email to freedom of information: "I

have no responsive emails." That's not producing documents in good faith.

When did you delete your email?

Ms. Laura Miller: How do you mean?

Mr. Victor Fedeli: All at once? As they came? When did you delete your email?

Ms. Laura Miller: Kind of on a regular basis, case by case. So an example would be, related to—

Mr. Victor Fedeli: Gas plant—when did you delete your gas plant emails?

Ms. Laura Miller: I'll give you a specific—the former Premier obviously was preparing to speak in the Legislature on this motion when the debate was shut down, and he held a press conference so he could deliver his remarks because he thought it was important to speak to that.

Mr. Victor Fedeli: When it was shut down—what do you mean by "when it was shut down"?

Ms. Laura Miller: You'll recall that there were a number of, from what I understand, MPPs who still wanted to speak on the motion, and I guess for whatever reason—I'm not the most up to speed on parliamentary procedure, but all of a sudden, I guess, we were going to a vote so no one else could speak anymore. The Premier really wanted to speak, so an example would be his remarks. He would have worked on his remarks. We would have been going back and forth with staff about different facts or "Can we say this?" or "Should we say that?" When that was over, I would have deleted it.

Mr. Victor Fedeli: You would have deleted those, the Premier's remarks that he did or didn't make?

Ms. Laura Miller: Yes. A good example is when we did a trade mission to China in January—

Mr. Victor Fedeli: No, I just want to stick to gas plants.

Ms. Laura Miller: No, but I want you to understand that the way that I would have managed my emails is that once something was completed, I would have deleted it. If something was transitory, I probably would have deleted it immediately. If something was political—

Mr. Victor Fedeli: Would you have deleted any of them in the middle of a request?

Ms. Laura Miller: No.

Mr. Victor Fedeli: Okay. So on October 10, 2012, you get an email from John O'Leary: "I require your assistance to fulfill a freedom-of-information request." On October 24, three weeks later, you write to him and say, "I have completed a search. I have no responsive emails." But in between then, on October 16—that's only days after—is the whole Speaker controversy over gas plants. You have gas plant email that you deleted on October 16, which is after the request came. The request came on October 10. You deleted email on October 16, and on October 24 you said, "I don't have any." You just finished saying, under oath, you wouldn't delete your email in the middle of it, but now you have. You've deleted a vital gas plant scandal document after you were asked to produce them.

Ms. Laura Miller: I'm sorry. What was vital? Which document was vital?

Mr. Victor Fedeli: This is the Levac one. This is the controversy over the gas plant, "manage the gas plant issue." This is a five-page email. You deleted that after you were asked for gas plant documents. You've deleted that one. I'll give you some time to think about your answer.

Ms. Laura Miller: No, no, no.

Mr. Victor Fedeli: Yes, yes, yes.

Ms. Laura Miller: No, I think that's fine, Mr. Fedeli.

I would typically receive 10, 20, 30, 40 emails a day. I think I would tend to respond to either the first or the second request for an FOI search. I think that in terms of that period of time, it was a very busy period of time for us. The Premier had announced the prorogation. He announced his—

Mr. Victor Fedeli: Busy deleting is right.

Ms. Laura Miller: He announced his intention to resign. We were busy trying to deal with the BPS compensation package and trying to figure out what we could do with our public sector partners on that.

Mr. Victor Fedeli: You're stretching credibility here, Ms. Miller. Come on.

Ms. Laura Miller: No, I don't think I am.

Mr. Victor Fedeli: You were asked to turn over, on October 10, all your gas plant documents. On October 16, you and several others had a lively discussion, five pages long, about gas plants. You deleted those and told the people you had no documents to turn over.

Ms. Laura Miller: But I think, if I—

Mr. Victor Fedeli: That is just callous and that is purposeful.

Ms. Laura Miller: No. Mr. Fedeli—

Mr. Victor Fedeli: That is purposeful. You're right in the middle of the request.

Ms. Laura Miller: I don't think that's—

Mr. Victor Fedeli: So let's look at that email, though, the five-page email. You talked in your opening sentence about the fact that the Tories are threatening the integrity of a very honourable man, Mr. Bentley, but let's just read in those five emails something that Chris Morley said: "Suspect Bentley is her source." He's speaking about Karen Howlett from the Globe and Mail. I won't read you what he says about her in front of that because it's foul language, but he suspects Bentley is her source. Is that this honourable man, Chris Bentley, that Chris Morley, your co-worker, is suspecting?

Mr. Steven Del Duca: Chair, are these questions within the scope of the committee?

Mr. Victor Fedeli: I would think so. Do you want to answer that?

Mr. Steven Del Duca: They actually seem well outside the boundary. He's now talking about the former chief of staff's conversation regarding a reporter in the gallery. They're not even close to being within scope, from my perspective.

Mr. Victor Fedeli: So is her source, the source he's talking about, the source of gas plant scandal documents—

Mr. Steven Del Duca: Can I get an answer on this?

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Mr. Victor Fedeli: He's talking about managing the gas plant issue, and he suspects Chris Bentley, the Minister of Energy, is the source to the Globe and Mail. You're telling us that we're threatening his integrity by discussing something that he would not do for the Legislature that he was ordered to do, yet you're going behind his back, talking, having a cute discussion about him being a source to the newspaper?

Ms. Laura Miller: I'm sorry. I said that he was a source?

Mr. Victor Fedeli: It's to you. It's from Chris Morley. I don't see you defending him in the next email. The next email says, no, it's probably "Butts now that I think about it"—

Ms. Laura Miller: Who said that?

Mr. Victor Fedeli: —referring to somebody else.

Ms. Laura Miller: Did I say that?

Mr. Victor Fedeli: This is from Don Guy. I don't see you defending anybody in here. Yet you sit here talking about Chris Bentley.

Ms. Laura Miller: Chris Bentley is a very, very honourable man.

Mr. Victor Fedeli: We should pass that on to Chris Morley and Don Guy, who think that he's the source of a leak to the Globe and Mail.

I wanted to ask you, what did you mean when you said you were putting the Speaker "on notice"?

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

Mr. Victor Fedeli: I've asked you a question.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, that is apparently not in the scope.

Mr. Victor Fedeli: Did you or Mr. Gene threaten the Speaker?

Mr. Steven Del Duca: Chair.

The Chair (Mr. Shafiq Qadri): Disallowed.

Mr. Victor Fedeli: What did you mean by "we need better" of him?

The Chair (Mr. Shafiq Qadri): Disallowed.

Mr. Victor Fedeli: Do you understand the significance of his role?

I asked you a question.

The Chair (Mr. Shafiq Qadri): Disallowed.

Mr. Victor Fedeli: Do you understand the gravity of the situation: Mr. McGuinty's senior staff attempting to intimidate the Speaker? Do you know how serious an issue this is?

The Chair (Mr. Shafiq Qadri): Disallowed.

Mr. Victor Fedeli: Well, let me ask a question to the Clerk or to Peter, if you don't mind. What is the appropriate forum to look at pressure on the Speaker, then, if not here today?

Mr. Peter Sibenik: It's a matter that could potentially be raised on a point of privilege in the House, if a

member is so inclined. But it's certainly not within the purview of the current mandate of the committee.

Mr. Victor Fedeli: Is there any qualification for that? We can raise this as a point of privilege in the Legislature?

Mr. Peter Sibenik: If you wish—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Fedeli. Just to continue your point, I think that our legal counsel is directing you appropriately that, should you have concerns with regard to (a) the ruling and (b) its mechanics, that should be raised formally, probably in writing, with the Speaker's office and the table officers of Parliament.

The floor is now with the NDP. Monsieur Tabuns.

Mr. Peter Tabuns: Thank you, Chair. I'm sure that we'll have more extensive discussions about your ruling on whether or not we can actually ask questions of the witness.

I'll take a different tack for the moment. I'm sure others will have an opportunity to ask questions, as well.

Ms. Miller, it's clear you were involved in how best to handle Dalton McGuinty's resignation. You were involved in the discussions the weekend before he made his announcement.

Ms. Laura Miller: Yes.

Mr. Peter Tabuns: Did you discuss the gas plant file with Mr. McGuinty that weekend?

Ms. Laura Miller: No.

Mr. Peter Tabuns: Why didn't you discuss it with him?

Ms. Laura Miller: It wasn't relevant to our discussions. He had called me on Saturday—I don't recall the date, but Saturday, October something—to let me know that he had made a decision to announce his resignation, and any subsequent conversations we had were about the best way to do that. He was insistent that caucus and the public hear it at the exact same time. He wanted to communicate it on his way out. That was his choice. He was the Premier; he had served 10 good years, 22 years as MPP, 16 years as the leader of our party. We all respected that, and so that's what we were working towards on the weekend.

Mr. Peter Tabuns: You're saying that the gas plant controversy, scandal, was not a factor in his decision to go?

Ms. Laura Miller: No.

Mr. Peter Tabuns: Why were staff in the Premier's office, people like Don Guy, so concerned with the story Karen Howlett was preparing to write for the Globe and Mail, which in fact talked about discussions regarding the gas plant leading up to the resignation and prorogation?

Ms. Laura Miller: I can't speak to why other people would be concerned, but I can speak to why I would be concerned.

Mr. Peter Tabuns: Why were you concerned?

Ms. Laura Miller: Because it was categorically false. She said that she had a source, and she was looking for confirmation. It was a very close group of people who knew about this, who were part of those discussions.

There were no other deliberations, no other discussions, about his announcement to resign. I think there was generally concern because, obviously, if someone had told her that, they were feeding her misinformation.

Being a journalist is pretty powerful, in that whatever you report can be taken as fact, whether it is 100% accurate or not, so I think that was the concern. That was the reason why I did call her that evening: to have a conversation with her to let her know that, as someone who was part of the discussions during the entire weekend, I could tell her that, whoever she was talking to, that was not the case.

Mr. Peter Tabuns: So if it wasn't that—

The Chair (Mr. Shafiq Qadri): Mr. Tabuns, I would just advise you that you are kind of grazing the boundary, but go ahead.

Ms. Laura Miller: Grazing?

Mr. Peter Tabuns: Thanks.

Mr. Gilles Bisson: Boy, this stinks.

Mr. Peter Tabuns: Yes. We'll continue to push the boundary as much as we can, Mr. Chair; it's our job. We're supposed to be asking these questions.

So if it wasn't that weekend, in the lead-up to the prorogation, was there no discussion about the gas plants and their impact, and your administration's need to get away from all of this?

Ms. Laura Miller: How do you mean?

Mr. Peter Tabuns: That, in fact, you needed to shut down the inquiry. You needed to shut things down.

Ms. Laura Miller: Well, there was definitely a conversation about prorogation. Prorogation was an option that surfaced more than a few times since the election in terms of it being a tool that was at the Premier's disposal if he chose to use it. I feel that he felt—and he said this publicly—that it was getting very heated around here. It was very venomous, and he thought that a cooling-down period would result in a better outcome, a more fair outcome, and better deliberations for the committee.

Mr. Peter Tabuns: Better deliberations for the gas plant inquiry committee?

Ms. Laura Miller: I just think, in terms of being able to bring the temperature down, that perhaps we would be able to have more—what would be the word? When things get heated, people say things; you don't always get to the root of the issue, and I think that he felt that if the temperature was down, perhaps it would be more productive. I guess that's the best way of putting it.

Mr. Peter Tabuns: There was a very different take from Dave Phillips, who was in the government House leader's office. He sent an email on October 1 to you and to David Livingston talking about prorogation and the fact that the ongoing investigations of Ornge and the gas plant would dominate the months to come. He speculates that the 2013 budget was a time when the government was possibly going to fall, and thus, how were we going to spend our time? He was talking about how the Liberals would be consumed by these scandals. He talked about Yasir Naqvi's work life for the next two and a half months; if we don't prorogue, from mid-October to mid-

November he will have to spend all his days during the weeks as our lead member on the committee looking into the gas plants. Mr. Naqvi apparently drew a different straw, but it seems pretty clear to us that your government wanted to shut this down. You wanted to prorogue, and I think that was the tenor of the questions that were being put to you and the tenor of the assessment made by journalists watching all of this.

Ms. Laura Miller: Right. So, with respect to the email that Dave Phillips sent, I don't believe I responded to that. He was entitled to his opinion on what he thought we should do moving forward.

I think in terms of—I'm sorry; there was a second part, something that you said. I should have written that down.

Mr. Peter Tabuns: That it seemed pretty clear from outside observers that you were looking for a way to shut down this inquiry—

Ms. Laura Miller: Right.

Mr. Peter Tabuns: —that you wanted to prorogue the House because there were very substantive questions—that still have to be asked, Mr. Chair—that you wanted to shut down for a number of months.

Ms. Laura Miller: Well, Mr. Tabuns, I think as well that in the batch of emails that were released from me, at some point I did write that the only way to shut this down and to stop this line of inquiry was to have an election. I think we all know that prorogation was not going to stop this from bubbling back up, was not going to stop the motion from coming back forward and was not going to stop the committee from this work, but it was going to allow for the temperature to cool quite a bit.

Mr. Peter Tabuns: May I say, Ms. Miller, that that was recognized in Mr. Phillips's email. It was pretty clear that it wouldn't be the end of it; it would just give you a respite in the expectation that there wasn't a lot of time left before the next election. Did you want to spend all of it in committee? His argument was no.

In a different direction, why was it that Chris Bentley and Mr. Butts, the former principal secretary, were suspected of being the sources for the Globe and Mail on all of this?

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Ms. Laura Miller: I'm not sure. I think you'd have to ask the folks who put that in writing.

Mr. Peter Tabuns: I'm looking forward to that opportunity.

You have no insights for us, then, as to why they would be seen in a bad light by the senior leadership in the Premier's office?

Ms. Laura Miller: No. For all I know, Mr. Guy and Mr. Morley were being sarcastic or were joking or anything like that. You'd have to ask them what their mindset was or what their intention was with those comments.

Mr. Peter Tabuns: When did the Premier's office first start talking about proroguing? When were you first involved in those discussions?

Ms. Laura Miller: The first conversation I had about prorogation was with Robert Benzie, who brought it to

my attention that a lot of people were saying we were going to prorogue. This was sometime in the spring.

Mr. Gilles Bisson: So it's Benzie's fault?

Ms. Laura Miller: It's Benzie.

Mr. Peter Tabuns: It's the Toronto Star?

Ms. Laura Miller: The Toronto Star.

Mr. Gilles Bisson: Why do you guys always blame the media—

Ms. Laura Miller: So that was the first time, because it hadn't been raised before. His advice at the time was not to do it, which obviously was advice well taken. I think, in terms of when we started to talk about it in and around the motion, it was probably—it was definitely after we released the documents and the PCs indicated that they were still going to pursue this motion against Chris Bentley. I have to underscore that I don't think it was right then, and I still don't think it's right today, that they would threaten his livelihood, his integrity, even his liberty—

Mr. Peter Tabuns: That actually isn't relevant to my line of questioning, but your comment there was interesting. So you started looking seriously at prorogation once the gas plant documents were put out in public. That really is the association. Once we, the public and the oppositions, started to get a chance to actually look at what was going on, that's when it kicked into high gear to shut things down so that the hearing could be postponed.

Ms. Laura Miller: But you still had an opportunity to review the documents. You still made hay of those documents in the fall, and you continued to work those documents and additional documents that have come out. So I don't actually think that having a cooling-down period was the worst thing.

Mr. Peter Tabuns: Well, in fact, I would say that it's very consistent with what Mr. Phillips was arguing: that you wanted to shut down this committee so you folks wouldn't be caught in committee.

As you're well aware, when the committee's sitting—

Ms. Laura Miller: But, Mr. Tabuns—

Mr. Peter Tabuns: No, just one second. When this committee is sitting, we have the documents—

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

To the government side: Monsieur Del Duca.

Mr. Steven Del Duca: I'm just going to begin by finishing off the quote that—the last round, the clock ran out on me, so I just want to finish the quote from the Deputy Minister of Government Services referencing what occurs with respect to searches. He wrote in his letter, "It is not unusual to have discrepancies between an individual's search of their desktop computer using keywords and a systemic search using an electronic discovery search tool. The electronic discovery process could include a number of folders that users may not be aware of."

I think that's actually quite important context, given the line of questioning that you've received here at committee today, particularly from the PC caucus, and also as

it relates to a number of the not so much questions you received today, but some of the commentary and editorializing on the part of the member from Nipissing.

I think it's important to note that over 130,000 documents have now been released to this committee; that from day one, Premier Wynne and our government have done everything to respond to the various motions that have come forward from this committee; and that we continue to provide documents as they are requested. I think that's extremely important instead of some of the fiction that's being propagated by folks across the way.

With respect to email retention, I want to ask you a few questions about record-keeping. There's actually been a lot of discussion recently, obviously, here at committee and elsewhere, about the requirements of members of government and their staff with respect to retaining and archiving records. The opposition has been particularly critical of our government's email retention record, and yet it seems to me that while some of them talk the talk, I'm not sure that they actually walk the walk.

So, for example, the recent FOI to the town of North Bay confirmed that no emails were archived from MPP Vic Fedeli's time in municipal government as mayor from 2003 to 2010. In fact, the deputy city clerk clarified the emails—

Mr. Victor Fedeli: Point of order, Chair. I don't think there were any gas plant scandal emails in there, and I can't control what the city of North Bay does with my email after I retire from my office as mayor.

The Chair (Mr. Shafiq Qaadri): It's not a point of order, but thank you for that information.

Mr. Steven Del Duca: In particular, the deputy city clerk of North Bay clarified that emails in that particular municipality that Mr. Fedeli used to run as mayor are only kept for a 30-day period as a standard practice.

Mr. Victor Fedeli: Point of order.

Mr. Steven Del Duca: So would you have to agree that the opposition seems—

Mr. Victor Fedeli: Mr. Chair, thank you very much for acknowledging—thank you very much for giving me the floor. I can't control—

Interjections.

Mr. Victor Fedeli: Thank you very much. I can't control what the city of North Bay does with my email once I leave the office of mayor. I kept my email while I was employed there.

Mr. Steven Del Duca: So you would have to agree that the opposition, particularly Mr. Fedeli, seems to only care about email retention, scoring cheap political points etc., when it does apply to us? Would you agree with that?

Mr. Victor Fedeli: Point of order, Chair.

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

Mr. Victor Fedeli: Thank you, Chair, for recognizing me. May I also add again that none of those emails had to do with the gas plant scandal brought on by the Liberal Party?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, that's not a point of order, but thank you.

Mr. Steven Del Duca: So you'd have to agree that Mr. Fedeli in particular, but that entire caucus, generally speaking, doesn't really seem to actually want to walk the walk when it comes to government record-keeping.

Interjections.

Mr. Steven Del Duca: Well, 30 days. They were only kept for 30 days under his leadership. Lots of hypocrisy coming from that member.

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca, for a cascade of reasons, that line of questioning is likely irrelevant, so I would invite you to please rephrase and continue.

Mr. Steven Del Duca: Would you agree that the opposition seems to only care about email retention when it doesn't apply to them?

Ms. Laura Miller: I think that for governments of all stripes and at all levels, whether it's municipal, provincial or federal, there are some real challenges with record-keeping. With the advent of email, BlackBerrys, all of our communication really happening online, all governments need to take a look at how documents and emails are managed. I think there was a presentation here that basically said that we feel that sunshine is the best disinfectant, and we need to have transparency and accountability and openness so that all emails—it doesn't matter if you're in the Liberal caucus, the PC caucus, the NDP caucus or in the government—should be opened up. I think that's an interesting idea.

I just think what's important is that whatever decision is made, whatever the rules are, they be made clear to the staff. Having left the Premier's office now twice, I can tell you that I was given no instruction when it came to documentation, when it came to emails. I treated my departure in February 2013 the same way I treated my departure in July 2010.

Mr. Steven Del Duca: Thank you. When did you start working at Queen's Park?

Ms. Laura Miller: I started working in Queen's Park in May 2002. I started as an intern in opposition.

Mr. Steven Del Duca: May 2002.

Ms. Laura Miller: Yes.

Mr. Steven Del Duca: Okay. You may or may not be aware of this: I actually spent some time working here at Queen's Park a number of years ago as a staff person to a couple of members of provincial Parliament. I certainly have recollections, from my time working here as an opposition MPP's staff member, with respect to a number of fairly important and fateful decisions made by a previous government, the PC governments of both Mike Harris and Ernie Eves, on issues that came up from time to time, really serious issues, challenges and scandals that came up relating to issues like what took place at Walkerton, what took place at Ipperwash, the sale of Highway 407—and there's a long list there.

I don't know, because of when you arrived at Queen's Park, whether or not you have any particular recollections during the transition period—because you just said you arrived here when the Liberals were still in opposition, before the election was won in 2003. Do you

have any recollections at all with respect to document retention, what was taking place on some of those issues as a PC government was outgoing and a Liberal government was coming in?

Ms. Laura Miller: At the time, I was in the Liberal caucus, and I continued on in the Liberal caucus, so I wasn't part of any of the transition discussions or conversations that took place. But I can tell you that my office was on the first floor of Whitney. It faced Wellesley, so I guess I was facing north. I do recall, after that election, after we won that election, coming into the office, and every day for about a week and a half there was a large shredding vehicle parked outside on Wellesley with documentation that was accompanied by Cabinet Office. I can only guess that this was the outgoing administration's documentation that was being shredded. I imagine that's how they managed their documents.

Mr. Steven Del Duca: I think I'm going to wrap up with respect to talking about what has been taking place in the energy sector, generally speaking, over the last decade or so, and specifically about your experience from the time at which the Liberal government came back to office in 2003.

I think as everyone here knows, our government inherited an energy crisis from the outgoing PCs back in 2002-03. At that time, there frankly wasn't enough generation to power the province on a day-to-day basis. No one knew if the lights were going to stay on. People and businesses of our province were facing rolling brown-outs. There were blackouts. Energy infrastructure was in desperate need of investment, and dirty coal, frankly, was burning right across the province, with serious health implications for the people of Ontario.

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Since 2003, our government has successfully built a clean, modern and reliable electricity system. I think that's part of the story that has actually been missing from a lot of the work taking place here at the committee. I'd like to make sure that we keep this committee's work in context as we go forward, trying to improve the way in which we site energy infrastructure in particular.

From your experience, what are the major differences in Ontario's energy sector from 2003 to the present day?

Ms. Laura Miller: I don't think it's a secret that under the McGuinty government, we renewed 80% of the system: new generation, new transmission, new green energy—a very focused effort on that—nuclear refurbishment, a big push on conservation, smart meters. So I would say it's night and day. When you're renewing 80% of the system—I understand it was a \$96-billion price tag. Of the 17 gas plants that were sited, two of them we got wrong, in Mississauga and Oakville. I think it's really important—and I know that the former Premier spoke to this—that recommendations are made to the Ministry of Energy and to the OPA in terms of how they site plants moving forward and community involvement.

I will say, as someone who is an asthmatic, that I've noticed a huge difference in air quality since we shut down the coal plants, and we continue to do that. What

we did in terms of environment, the greenbelt, I think, makes a huge difference. At the end of the day, do my parents notice those things? They know the lights come on, but they don't really—

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

Ms. Laura Miller: —pay much attention to how we got to that. But I know it was a lot of hard work, and it was the vision and leadership of Premier McGuinty that this was something that we need to do, and it didn't matter that it wasn't sexy and that people didn't understand it. It was a real need, because for years and years and years, the previous governments just chose to ignore it. So I'm pretty proud of our record when it comes to what we've done on energy, for sure.

Mr. Steven Del Duca: I'm done with questions. I'm not sure if there's anything else you want to add to your testimony here today.

Ms. Laura Miller: No. I really appreciate the opportunity to come here, and I thank you all for your time. I know it's the Tuesday after a long weekend. For the record, I wanted to answer questions, and I tried to.

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

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Thanks, Ms. Miller, for your presence. Thank you, Mr. Bisson, for your veiled praise. The Chair appreciates it.

We will, if required, take a few minutes' break.

Mr. Peter Tabuns: Yes, for sure.

The Chair (Mr. Shafiq Qaadri): Please, five, 10 minutes, max.

The committee recessed from 1042 to 1104.

MR. CHUCK ROTHMAN

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. Mr. Rothman, I invite you to please come forward and be seated. I invite you to be sworn in by the Clerk.

The Clerk pro tem (Mr. Katch Koch): Mr. Rothman, 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. Chuck Rothman: Yes, I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rothman. You have five minutes opening—

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

The Chair (Mr. Shafiq Qaadri): Mr. Del Duca. Yes?

Mr. Steven Del Duca: I couldn't help but overhear out in the hallway earlier, just as various folks were out there scrumming: Resulting from the testimony given by Ms. Miller earlier today, there were a lot of comments made regarding the ruling with respect to what was taking place around the Speaker—a lot of suggestions that, somehow, the decision of the Chair was a partisan one. I just wanted to clarify—

The Chair (Mr. Shafiq Qaadri): Right. Likely not a point of order, but I'd invite you to bring that up later.

Mr. Steven Del Duca: I just wanted to clarify for the record that that wasn't a partisan decision on the part of the Chair. That is correct, right?

The Chair (Mr. Shafiq Qaadri): That is correct; it's also not a point of order.

Mr. Rothman, you now have five minutes.

Mr. Chuck Rothman: Thank you.

The Chair (Mr. Shafiq Qaadri): Please, go ahead. The floor is yours.

Mr. Chuck Rothman: My name is Chuck Rothman. I am a professional engineer. I've been licensed in the province of Ontario for 26 years. For the past 15 years, my focus has been on computer forensics and electronic discovery.

Electronic discovery is the process of identifying, preserving, collecting, reviewing and producing relevant information that originates from digital storage devices such as computers. My role in electronic discovery is from the technical aspect; I'm not a lawyer, I don't make legal decisions, but I advise lawyers and their clients on the technical aspects of digital information.

I have authored a book on electronic discovery. I have written numerous papers and articles. I have spoken at many conferences and I have taught electronic discovery and computer forensics to lawyers and law clerks. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rothman. Beginning with the NDP, Mr. Tabuns.

Mr. Peter Tabuns: First of all, Mr. Rothman, thank you very much for coming in today. We all appreciate it.

You met with people from the Ministry of Government Services, MGS, in the course of Ms. Cavoukian's inquiry into the destruction of emails. Is that correct?

Mr. Chuck Rothman: No, it is not.

Mr. Peter Tabuns: Okay. Can you tell me if you had any interaction with MGS, the Ministry of Government Services?

Mr. Chuck Rothman: In association with the privacy commissioner?

Mr. Peter Tabuns: Correct.

Mr. Chuck Rothman: Not directly.

Mr. Peter Tabuns: Can you tell me how you were informed of their practices and how you assessed their practices?

Mr. Chuck Rothman: I was provided with a report that was given to the privacy commissioner from the Ministry of Government Services describing their email system, their backup policies. I believe the report was in response to the privacy commissioner's questions about the email system and backup, and whether emails could be recovered. I reviewed the report and discussed it with the privacy commissioner, and provided the privacy commissioner with some additional questions to ask. I was then subsequently provided with the answers to those questions, and I assisted the privacy commissioner in writing a section of her report.

Mr. Peter Tabuns: Okay. In her July 23 letter to the deputy minister of the Ministry of Government Services, Ms. Cavoukian states that she is "disappointed with the number of inconsistencies," with the Ministry of Government Services' "overall failure to take full responsibility" for the information provided to her office.

What's your take on the Ministry of Government Services' response to Ms. Cavoukian when she pointed out that she had not been served with the attentiveness that she should have been, given her investigation?

Mr. Chuck Rothman: Well, my only knowledge of anything subsequent to the report is an article that appeared in the Globe and Mail. I didn't have any discussion, subsequent to the privacy commissioner issuing the report, with the privacy commission. From what I could gather in the Globe and Mail, subsequent to the report, the Ministry of Government Services did find some information.

Mr. Peter Tabuns: I'll go back to an earlier point in your involvement in all of this. Were you surprised when you were told that emails had been deleted in very large quantities?

Mr. Chuck Rothman: Surprised? No. I mean, I didn't have an opinion one way or another.

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Mr. Peter Tabuns: Okay. From a technological perspective, is it easy to delete emails, to erase them from the records?

Mr. Chuck Rothman: It all depends on how the system is configured. From the information that I was provided by the Ministry of Government Services, it appeared that the way their systems were configured, once an email was deleted, it was unlikely that it could be recovered.

Mr. Peter Tabuns: Did they make you, or, through their written statements to Ms. Cavoukian, make her aware that they had Symantec systems that had this apparent vault or secondary memory system?

Mr. Chuck Rothman: No, I wasn't aware. That was one of the questions that I had asked after I read their report—whether they had an archiving system—and I was told that the response to that was no, they don't.

Mr. Peter Tabuns: You were told that by the Information and Privacy Commissioner?

Mr. Chuck Rothman: Yes.

Mr. Peter Tabuns: Based on your experience with other companies, with other organizations, is it normal practice for organizations to simply delete emails and erase accounts of former staff?

Mr. Chuck Rothman: It varies all across the board. A lot of it depends on their records management and how well the records management is actually implemented and enforced. Then a lot of what I see is just up to personal practices. I've seen instances where people keep every single email they receive, including all the spam and ads and everything, and I've seen instances where mailboxes are relatively empty.

Mr. Peter Tabuns: According to Ms. Cavoukian's letter to the Ministry of Government Services, she was

told explicitly that no backup tapes for emails existed. When you met with her and you provided supplementary questions, did you ask the Ministry of Government Services whether any backup tapes existed? What were you told?

Mr. Chuck Rothman: Yes, I did. The Ministry of Government Services report indicated that they back up daily and after 24 hours they overwrite the tapes. Then they also have month-end backups, and at the end of the year they overwrite those tapes.

Based on my experience, I know that additional backups are sometimes created for various special things. So one of the questions I asked was, has anybody checked to see whether there are backup tapes that exist from that period of time, rather than just assuming based on the practice? The answer that I received from the privacy commissioner was, “No additional tapes exist.”

Mr. Peter Tabuns: If you had known that the Ministry of Government Services had relied on Symantec software, you would have known, then, that they had this secondary backup system?

Mr. Chuck Rothman: Yes. The Symantec archiving system makes a copy of the—essentially, it moves the email from the email server into a separate area. If I had known that that existed, I would have had a number of additional questions to ask. Just that knowledge alone wouldn’t tell me whether emails existed, but it would lead to additional questions.

Mr. Peter Tabuns: According to the Ministry of Government Services, to now retrieve the backup tapes that they discovered, they’d have to hire an outside third-party vendor at a cost of up to \$3.5 million. Does that seem reasonable to you?

Mr. Chuck Rothman: Without having more details on the types of tapes and their backup software and various technical details like that, I couldn’t comment on the cost. Generally, it’s doubtful that the Ministry of Government Services would have the facilities to restore those tapes themselves. Especially in terms of efficiency and cost, it would probably be more efficient and more cost-effective to have a third-party vendor that specializes in backup tape recovery do that work.

Mr. Peter Tabuns: Okay. Based on your experience with the Ministry of Government Services so far, what advice would you give government officials on how they can improve the retention of important emails in the future?

Mr. Chuck Rothman: The fact that an archiving system does exist tells me that they have the tools in place. It’s just a matter of either configuring them so that they automatically archive emails that need to be retained, or else it’s up to individuals to follow whatever the practices are to retain emails.

Mr. Peter Tabuns: If we wanted to find out, could we determine when emails were actually deleted by someone?

Mr. Chuck Rothman: It may be possible. It’s a complicated process. Generally, the way that I go about doing that is to look at backups. If emails are backed up onto

tape but they’re deleted from the mailbox, then I can see at what point the emails are no longer being backed up onto the tape, and so I know when it was no longer in the mailbox. Apart from that, there may be a way to determine it through email logs. The email server that the Ministry of Government Services uses creates logs of activity, but those logs generally are not kept for more than a few days or maybe a few weeks at most, just because they take up a lot of room and there’s limited storage space.

Mr. Peter Tabuns: Does the fact that an Enterprise Vault or this secondary storage system actually captures emails—does it capture emails that are captured on a daily basis?

Mr. Chuck Rothman: It all depends on—well, it doesn’t capture deleted emails. But what it does is, if an email is—it can be configured in different ways. It can be configured so that every email that is received or sent is automatically copied to the archive and it’s completely out of the user’s control, or it can be configured so that after a certain period of time, a certain number of days that an email resides within the mailbox, it automatically gets moved to the archive system. So it really depends. For the second process, the email needs to still exist within the mailbox on that day that it’s scheduled to be moved. If it’s deleted prior to that, it would never be moved into the archive system.

Mr. Peter Tabuns: Just so I’m clear, there are various ways to configure this secondary storage or secondary filing system, and one is that every email that comes in is automatically stored in this secondary storage; another would be to say, “Every 30 days, we store everything that’s still active, live, in the email system.” I imagine there are other variations on that.

Mr. Chuck Rothman: Yes.

Mr. Peter Tabuns: Okay. Can you just describe for me again how this secondary storage works? Is it a whole separate computer system? Would it be backed up on this server system in Guelph? Would there be another storage location?

Mr. Chuck Rothman: It could be any of those, and I don’t have the details on how it’s configured.

Mr. Peter Tabuns: So it could be stored on the computer itself, on the hard drive of the computer that someone is operating.

Mr. Chuck Rothman: No. Oh, no. It’s a server. It would be stored—and generally, it’s a separate physical storage, but it doesn’t have to be a separate storage device. It could be the same storage device that the email mailboxes are stored on, but it is a separately contained system from the email storage.

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I don’t know whether it’s stored at the facility in Guelph or whether it’s stored at some other facility, and I don’t even know if it’s on the same storage device or a separate storage device, but it’s not on individual workstations; it’s a centralized server system.

Mr. Peter Tabuns: And this backup or secondary filing system or storage system, does it have limited capacity?

Mr. Chuck Rothman: I'm sure it does. Every storage system has limited capacity.

Mr. Peter Tabuns: Is it more limited than the main storage system?

Mr. Chuck Rothman: I don't have that information.

Mr. Peter Tabuns: So it would be dependent on the configuration and the decisions of those who are running the system as a whole.

Mr. Chuck Rothman: Correct.

Mr. Peter Tabuns: Okay. I don't have further questions at this point.

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: Good morning, Mr. Rothman. Thank you for coming in. I have a couple of questions just to clarify some of the things you've already said to Mr. Tabuns.

You reviewed the information and evidence provided by MGS IT staff.

Mr. Chuck Rothman: Yes, the information provided to the privacy commissioner.

Mr. Bob Delaney: Okay, but that was all the information you reviewed. Was that information provided by Ministry of Government Services staff to the Information and Privacy Commissioner?

Mr. Chuck Rothman: Correct.

Mr. Bob Delaney: And you told Mr. Tabuns that you didn't meet directly with MGS staff.

Mr. Chuck Rothman: That's correct.

Mr. Bob Delaney: So just for clarification: Your role was more to look at the information provided by the Ministry of Government Services and presumably to help some of the staff within the Office of the Information and Privacy Commissioner understand it? Could you finish that thought for me? What was it that you were doing with the Information and Privacy Commissioner's office?

Mr. Chuck Rothman: That's correct. I was helping them to understand the technical side of the information that they were given. It was essentially all technical information. Just to elaborate on some of the technical terms that were used in the report and explain it to them—

Mr. Bob Delaney: Such as?

Mr. Chuck Rothman: Well, they talked about things like the rotation period for backup tapes. The report discussed whether it would be possible to recover the deleted emails directly from the storage system hard drives. I discussed the process with them. The report basically said, in that aspect, that theoretically it would be possible, but it would be extremely expensive and the likelihood of finding anything would be very low. I agreed with that assessment and explained to the Information and Privacy Commission people why that's so.

Also, in reviewing the information, I had some additional questions. There were things that I thought they

could elaborate on, and so I provided questions that I understand they provided back to the Ministry of Government Services.

Mr. Bob Delaney: You didn't go on-site at the Ministry of Government Services?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: Or any other ministry?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: You didn't conduct a personal physical review? You didn't put your hands on anyone's keyboard?

Mr. Chuck Rothman: No.

Mr. Bob Delaney: And in your career, you've not worked in the Ontario public service?

Mr. Chuck Rothman: In my career?

Mr. Bob Delaney: Yes. Have you worked in the Ontario—

Mr. Chuck Rothman: Prior to working with the Information and Privacy Commissioner, no.

Mr. Bob Delaney: Okay. Did you get any sort of briefing regarding the Ontario public service email and network systems as a whole?

Mr. Chuck Rothman: Just from the report that I was provided with.

Mr. Bob Delaney: Are you aware of either how or when backup tapes are used?

Mr. Chuck Rothman: According to the report, what it said was, information is backed up daily, and after 24 hours those tapes are overwritten and reused.

Mr. Bob Delaney: When we speak about tapes, what medium are we talking about here? I know you can say "tape," but make it a little bit more technical and specific.

Mr. Chuck Rothman: "Backup tapes" is technical. I can't tell you specifically what kind of backup tapes or what kind of backup software they used, because that information wasn't provided. Backup tapes are essentially larger versions of cassette tapes. You store digital information onto them. A single instance of a backup—one day's backup—would encompass many backup tapes.

Mr. Bob Delaney: What would be the capacity of a backup tape—gigabytes? Terabytes?

Mr. Chuck Rothman: Likely gigabytes. It depends. I don't have details on specifically what kind of tapes they used.

Mr. Bob Delaney: A few questions about your firm in general, the work that you use—I'm just trying to put some of it into context. When I read about your firm, I thought your firm was pretty unique. It provides a set of very specialized skills related to electronic discovery and information technology. I assume that one of the reasons that a firm like yours exists is because this is an area that's, quite frankly, very complex and, for an individual, very difficult to navigate if you don't deal with that type of minutia all the time. Does that encapsulate things?

Mr. Chuck Rothman: Yes.

Mr. Bob Delaney: Okay. So it wouldn't be unusual, then, for individuals and, in fact, even senior decision-makers who may not have your day-to-day, hands-on familiarity and the expertise of the resources in your firm

to perhaps make mistakes when it comes to properly executing an electronic-discovery type of search.

Mr. Chuck Rothman: I don't know about whether it would be usual or unusual, but I have seen instances where mistakes have been made.

Mr. Bob Delaney: Would it be reasonable to expect that a user, even a fairly sophisticated user, would have ever heard of the term "Enterprise Vault"?

Mr. Chuck Rothman: I don't know.

Mr. Bob Delaney: Is that a term that's unique to Symantec? Would, for example, a different software vendor have a different term for such a procedure?

Mr. Chuck Rothman: Yes.

Mr. Bob Delaney: What would some of the other terminology be?

Mr. Chuck Rothman: "Archiving system" is the generic term. "Enterprise Vault" is what Symantec's archiving system is called. There's another company called EMC—that's a good question. What is theirs called? They changed the name a few years ago.

There are a number of different software vendors who make archiving systems, and Symantec's archiving system is called Enterprise Vault.

Mr. Bob Delaney: From the vantage point of the vendor, and also from the vantage point of the user, at the time that they reach an agreement to use the service, what is the expectation of the user that the system would be used for, and what scope would the vendor offer, bearing in mind that quite often the users don't use the full spectrum of functionality within a particular piece of software or a system? What would a user of such a system anticipate, and what would the vendor offer, assuming it's a superset of what any one client asks?

Mr. Chuck Rothman: I'm not sure I understand your question.

Mr. Bob Delaney: Okay. From the vantage point of a client who licenses Symantec's Enterprise Vault, if you take on that service, it's kind of like an insurance policy. From the perspective of the client, what are you insuring yourself against?

Mr. Chuck Rothman: I'm not sure that it's necessarily an insurance policy. There are a number of reasons why an organization would put in an archiving system. The main reason that I see a lot is just to make the information storage systems more efficient. Essentially, by using an archiving system, you can move information from the primary storage system that's accessed by everybody every day to a secondary storage system that's not accessed as often, so it doesn't have to be as robust. So it's just an efficiency issue.

Another reason why archiving systems are used—and this is something that is becoming more and more prevalent—is for retention purposes. In that respect, different archiving systems are configurable differently or they have different features that assist in implementing information retention.

Mr. Bob Delaney: So from what you're describing, then, the existence and functionality of the secondary archiving system should be transparent to the user. The

user should know whether the information resides on this one or that one.

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Mr. Chuck Rothman: Generally, yes. I know with the Symantec system, when an email has been archived, it still appears within the user's mailbox, but depending on the email system, whether it's Microsoft Outlook or whatever, it may have a different icon beside it and retrieving that email may take longer because it has to pull it from a secondary storage system rather than the primary storage system. And, depending on how the archiving system is configured, the user may not be able to delete it.

Mr. Bob Delaney: If something is stored on a tape, which means that it's physically removed from the system, does it stand to reason that, depending on the case, either the user may not be aware that the archived deleted email exists, or if it does, may not be able to affect whether it can be accessed, deleted or amended?

Mr. Chuck Rothman: I'm a bit confused. If it's stored on tape, you're right, it's completely removed from the system, and generally users do not directly interact with backup tapes. That's handled by IT staff. Users may be aware that there are backup tapes, especially if they accidentally delete something and they need to recover it. That's generally, from the information that I got from MGS, why they create the backup, so they can restore things if they have to.

But the information that's stored on the archive is separate from information that's stored on backup tapes.

Mr. Bob Delaney: Okay. So the mechanics of the archives, the backups, the tapes, the systems and the servers—any of us who understand some of the mechanics of that would have trouble explaining it to people who aren't in the computer business, but for the average person to understand, wouldn't that be a bit of a stretch?

Mr. Chuck Rothman: Yes, it is a technical process.

Mr. Bob Delaney: Okay. I want to talk a little bit about the cost of doing the kind of work that you've been describing. In the background information that we were provided you've written and spoken about reducing the costs associated with e-discovery. Is that because you've recognized that, as a result of your experience, accessing archived records can be very costly?

Mr. Chuck Rothman: Generally, accessing archived records is probably easier just because most of the archiving systems, including the Symantec systems, are designed with some sort of interface that lets you search through the archived storage system.

The email system that MGS now uses, Microsoft Exchange 2010, also has that facility to be able to search, but in prior email server systems, it was more complicated to search the actual email server and it was easier to search the archiving system.

Mr. Bob Delaney: When we talk about search, and particularly if emails have been archived, would you have to create a virtual machine? Would you have to create a mirror site? Can the records themselves be accessed? Walk me through that briefly.

Mr. Chuck Rothman: To search the archiving system? You would basically log into the archiving system. You would be provided with a screen and you could enter search terms and specify a range if you only want to search specific mailboxes, and then it would search through all the emails that have been archived and give you a list of all the emails that have those search terms in them.

Mr. Bob Delaney: Okay. So in other words, it would find anything and everything in which, in the search string, the search terms existed and, obviously, wouldn't place a value judgment on whether it was important or significant; it would simply yield the existence or non-existence of the search terms.

Mr. Chuck Rothman: Correct.

Mr. Bob Delaney: What role is your firm playing in assisting the Ministry of Government Services in responding to this motion from the committee right now?

Mr. Chuck Rothman: I'm not involved in that project myself, but my understanding is that, subsequent to my work with the Information and Privacy Commissioner, Wortzman Nickle was retained to review information that the Ministry of Government Services provided to us.

Mr. Bob Delaney: Has your review involved, in any way, working with political staff?

Mr. Chuck Rothman: I don't know. I'm not involved in that at all, so I can't answer that.

Mr. Bob Delaney: Okay. Let's see. Who are some of the clients of your firm? Can you give us an idea?

Mr. Chuck Rothman: The types of clients?

Mr. Bob Delaney: Yes.

Mr. Chuck Rothman: Other law firms, corporations—large corporations, small corporations. That's pretty much it. That's our clients.

Mr. Bob Delaney: It strikes me that, by virtue of using an enterprise system, you've got to be at least a threshold size, so I would be very surprised if I'd heard you say "a range of small businesses."

What are some of the policies on retention among some of the other firms you work with?

Mr. Chuck Rothman: The details of the retention policies?

Mr. Bob Delaney: In general; what type of parameters do organizations that you typically work with have for document retention?

Mr. Chuck Rothman: They vary. The retention periods are determined by a review of business practices and regulatory requirements. I don't get involved in actually determining retention periods because that generally becomes a legal issue. The practices are generally that individuals are responsible for retention of their records, the ones that they have control of. Where I've seen successful retention periods, there is some sort of auditing process to make sure that people are actually following the requirements.

Mr. Bob Delaney: In what fields would you typically find that type of a policy?

Mr. Chuck Rothman: I've seen it in a number of different corporations: in the entertainment industry; in food

services. I see it mostly where an organization is subjected to a lot of litigation or regulatory issues and they want some way to put some order to their records so that when they are faced with producing something, they can find it very easily.

Mr. Bob Delaney: Chair, at this time, I think I'm done.

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

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Rothman. Thank you very, very much for being here. I know you're a private citizen with a company, and it takes time for you to be here. We really appreciate that.

On the 10th of July, I received a phone call in North Bay, my home town, from Dr. Ann Cavoukian, the privacy commissioner, and I took notes. I just want to go through some of those. We were two non-technical people speaking about a very technical issue. I scribbled notes as she was talking. I just want to maybe put some meat on the bones of some of these, if I may.

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She said, "Yesterday afternoon," referring to the 9th, "new records were found." She said that it was a result of my motion on the 25th of June asking for Craig MacLennan email by the 9th of July, and MGS was basically asked to "look under the hood." This is what she's telling me. She says she hit the roof when she got the meeting or a phone call—I didn't write down how it came—from MGS, the deputy minister, the CIO and a lawyer. Here's what I wrote down. I just need some direction on this. She said she was told—so this is all sort of third down the chain. MGS told her that active emails, when deleted, go into a bucket, not the RAID system—as we were earlier told, everything was through this RAID software—but an Enterprise Vault. Give me more meat on the bones. It goes into a bucket called an Enterprise Vault. How would you have described that? Again, she's remembering what she was told. She told me. I'm trying to take some notes. I'm just trying to get to the meat of this.

Mr. Chuck Rothman: I'm not sure that that's entirely correct. Deleted emails don't go into the vault. Depending on how the vault is configured, either every email goes in there, or emails, after a certain period of time, that are not deleted and that are still within a user's mailbox will be moved into the vault.

Mr. Victor Fedeli: The next sentence I wrote down just says "30 days." I don't know, what would I have been referring to or what would I—

Mr. Chuck Rothman: That probably means that after an email resides in a user's mailbox for 30 days, it's moved from the email server storage into the vault storage.

Mr. Victor Fedeli: Okay. The next sentence I wrote down: "If you don't do a double delete, it goes into this vault." Does that make any sense? Again, I'm not questioning the privacy commissioner; I'm questioning my own writing.

Mr. Chuck Rothman: I actually have no idea what that means.

Mr. Victor Fedeli: Okay. When I wrote my next sentence, I wrote, “When staff leaves, the whole thing is decommissioned.” Do you understand any—

Mr. Chuck Rothman: The whole thing?

Mr. Victor Fedeli: Well, I don’t know what “the whole thing” was. These are my notes from a month ago to myself. She said, “Craig”—I presumed MacLennan when I wrote this—“was decommissioned on September 12.”

Mr. Chuck Rothman: Are you talking about his mailbox?

Mr. Victor Fedeli: Yes.

The Chair (Mr. Shafiq Qadri): As opposed to himself.

Mr. Chuck Rothman: If you’re talking about his mailbox—I guess I wouldn’t have used the term “decommissioned,” but perhaps that’s what you’re talking about.

Mr. Victor Fedeli: Okay. Then the next one was the most striking sentence. This is what she was apparently told by MGS and/or the CIO: “There can be an odd ‘orphan vault’ that escapes the system and doesn’t get wiped.” Do you know what we’re referring to in that sentence?

Mr. Chuck Rothman: Well, my understanding of what an orphan vault is—

Mr. Victor Fedeli: So there is such an expression as “orphan vault”?

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: Okay.

Mr. Chuck Rothman: If you delete a user’s mailbox from the Microsoft Exchange email system, the information that has been archived may not automatically get removed at the same time. Depending on how they have the system configured, you may have to actually do a separate step to delete the information in the archive. That may be what the double delete that you’re talking about is. If you delete the mailbox but you don’t delete the archive, then the information in the archive will still be there. It’s just that an end user could not access it. IT people would be able to access it, but an end user wouldn’t because the mailbox that it was linked to no longer exists.

Mr. Victor Fedeli: When Craig MacLennan said here, under oath, he deleted his email, what does that mean, then? Does that mean he hit the “delete” button?

Mr. Chuck Rothman: He would probably be using Microsoft Outlook on his computer. So deleting the email would mean selecting the email and either pressing the “delete” key or however you delete it. Actually, what that does in Outlook is it just moves the email from his inbox—or sent box or whatever—into the deleted items box.

Mr. Victor Fedeli: Okay. So when you delete the deleted items box, what happens?

Mr. Chuck Rothman: The email is actually removed from the email server and, depending on how the archive system is configured, if the email has been archived, it

will be removed from the archive system as well, but that all depends on, first of all, whether the email was archived and how the archiving system is configured. I don’t have the information on that, so I don’t know.

Mr. Victor Fedeli: So you delete your email, then you delete the deleted. Does that go into this Enterprise Vault?

Mr. Chuck Rothman: No. The Enterprise Vault doesn’t have anything to do with the deletion of emails. The Enterprise Vault is just another area where intact, undeleted emails get stored.

Mr. Victor Fedeli: Wait; tell me that again.

Mr. Chuck Rothman: The Enterprise Vault is another storage area for intact emails. If an email exists within the user’s mailbox, it may be stored on the email server’s storage device or it may be stored in the archiving system storage device.

Mr. Victor Fedeli: On that day, on the 9th, I think both the privacy commissioner and I were under the impression that this Enterprise Vault was where the records were found. Is that accurate or not accurate?

Mr. Chuck Rothman: Well, I don’t have any direct knowledge of that, but from what I read in the Globe and Mail, it said it was on a secondary storage device. What I understand now is that there’s this Symantec vault, which is generally a secondary storage device, so that makes sense.

Mr. Victor Fedeli: Is that the Enterprise Vault?

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: But these are deleted emails. I just can’t quite get it straight—

Mr. Chuck Rothman: Well, no. It’s another copy.

Mr. Victor Fedeli: Oh, okay. So when you have an email, a copy of it goes into that vault? If you’re over on the other hand, deleting the email, they don’t get deleted from the Enterprise Vault? I’m just trying to put this in English. I truly don’t understand it.

Mr. Chuck Rothman: It’s not a copy. Essentially what happens is, when an email moves from the email server into the vault—

Mr. Victor Fedeli: And it does that automatically?

Mr. Chuck Rothman: Well, you said 30 days, so automatically. If an email is in the person’s mailbox at the 30-day point, the physical email—and, I guess, its attachments, if there are any—is moved from the hard drive that the email server uses to the hard drive that the vault uses.

What happens on the email server is that a little placeholder is created; that’s generally called an email stub, but it’s just a little placeholder. It doesn’t have the actual contents of the email. If you look at that placeholder by itself it’ll just say, “This email has been archived,” but what the user sees when they go into their mailbox is the actual email, because behind the scenes what happens is this placeholder says, “No, I’m not the real email. Go over here to get the real email.”

From what you’re describing to me, when his mailbox was deleted, all these placeholders were deleted, but the actual emails that had been moved over to the archiving

system were no longer deleted. It's just that you didn't have the placeholders anymore.

Mr. Victor Fedeli: I understand that. Believe it or not, I actually do.

So when Dr. Cavoukian said that a lot of records were found and a significant number are responsive to the gas plant, I believe and I understood that she was talking either about the Enterprise Vault or the orphan vault that escapes the system and doesn't get wiped. Where am I on that assumption?

Mr. Chuck Rothman: It's the same.

Mr. Victor Fedeli: The same?

Mr. Chuck Rothman: Yes. You can essentially consider it to be an orphan area within the vault.

Mr. Victor Fedeli: Okay. Because it's off-site, if you will, from the original email—the Outlook email, the deleted email—or off-server?

Mr. Chuck Rothman: Perhaps an easier way to understand this is: If you remember, in libraries they used to have card catalogues. You would go to the card catalogue, and there would be a little card that described the book, and the book was on the shelf somewhere. In this case, the card catalogue points to an email which is stored somewhere else. If those cards get destroyed, the book is still on the shelf somewhere; it's just that you can't find it because you don't have the reference to it anymore.

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In this case, what happened was, the email stubs or the cards that pointed to the emails got deleted when the mailbox was deleted, but the actual emails stayed there. They stayed on the shelf.

Mr. Victor Fedeli: Would MGS or the CIO have known of these Enterprise Vaults, in your opinion? Would they know of their existence or how they function?

Mr. Chuck Rothman: MGS?

Mr. Victor Fedeli: Ministry of Government Services.

Mr. Chuck Rothman: Yes. I would think they'd have to. They're the ones who run it.

Mr. Victor Fedeli: Okay. Dr. Cavoukian says that no one ever told her committee, her group, that there was such a thing as an Enterprise Vault. You were involved in a portion of the report writing. Would that have ever been discussed?

Mr. Chuck Rothman: Yes. When I got MGS's original report, that was one of the questions I asked: whether there was any archiving system associated with the email system. I was told the answer to that question was, "No, there isn't."

Mr. Victor Fedeli: You were told by the Ministry of Government Services that there wasn't.

Mr. Chuck Rothman: I was told by information and privacy, who, I understand, posed the question to the Ministry of Government Services.

Mr. Victor Fedeli: And the question was, "Is there an archiving system?"

Mr. Chuck Rothman: Correct.

Mr. Victor Fedeli: This RAID: Would that be an archiving system?

Mr. Chuck Rothman: No. RAID is just a physical storage device; essentially a big hard drive.

Mr. Victor Fedeli: So it's not that that they were referring to. This is the Enterprise Vault.

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: Dr. Cavoukian told you that they asked about an archiving system and were told, "There isn't any."

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: Okay. And is the Enterprise Vault an archiving system?

Mr. Chuck Rothman: Yes.

Mr. Victor Fedeli: And this occurred around when? What months? To the best of your memory.

Mr. Chuck Rothman: I believe it was in May—

Mr. Victor Fedeli: Was it May or June?

Mr. Chuck Rothman: No, it was in May. It may have been either the end of May or beginning of June.

Mr. Victor Fedeli: Not in April.

Mr. Chuck Rothman: No, it wasn't in April.

Mr. Victor Fedeli: In May?

Mr. Chuck Rothman: Yes. Actually, I'm sure it was in May.

Mr. Victor Fedeli: In May, Dr. Cavoukian told you that MGS told her, in response to her question, "There is no archiving system."

Mr. Chuck Rothman: Oh, that was probably the beginning of June.

Mr. Victor Fedeli: June. That's fine.

Mr. Chuck Rothman: It was just before the report came out.

Mr. Victor Fedeli: But not in April.

Mr. Chuck Rothman: No.

Mr. Victor Fedeli: So she says that—Dr. Cavoukian, I should say, said that no one told her there was this system. You're telling us in fact that question was indeed posed to MGS: "Is there an archiving system?"

Mr. Chuck Rothman: I assume that the Information and Privacy Commissioner asked MGS that question.

Mr. Victor Fedeli: Because you asked her.

Mr. Chuck Rothman: Right.

Mr. Victor Fedeli: And her answer to you was?

Mr. Chuck Rothman: It was no.

Mr. Victor Fedeli: Okay. I'm fine, Chair. Thank you very much, Mr. Rothman; appreciate it.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. To the NDP side. Monsieur Bisson.

Mr. Gilles Bisson: So, essentially, the way the system works is pretty simple. You write an email, it goes to the exchange server and, at one point within 30 days, a backup is made. Right? Essentially, that's the way—

Mr. Chuck Rothman: It's not a backup. The email is moved from the email server to the archiving system. It's not another copy.

Mr. Gilles Bisson: So automatically it'll move off the exchange server and go to the backup system?

Mr. Chuck Rothman: Well, to the archiving system.

Mr. Gilles Bisson: Oh, archiving.

Mr. Chuck Rothman: Because “backup” means a different thing.

Mr. Gilles Bisson: What’s the reason for that? Just because the exchange server would become overloaded?

Mr. Chuck Rothman: Generally, yes.

Mr. Gilles Bisson: That’s why they do it.

All right. So you hit “delete” on your email, on your computer; it will delete whatever happens to be sitting in the exchange server but not necessarily what’s on the backup, as I call it.

Mr. Chuck Rothman: That depends. That’s what I’ve been saying: that it depends on how the archiving system is set up. It may actually delete the email in the archiving system when you press “delete” on your computer. Or it may not let you delete the email.

Mr. Gilles Bisson: So let me just back up. After 30 days that an email is sitting on the exchange server, it goes to this—what is it called again?

Mr. Chuck Rothman: Archiving system.

Mr. Gilles Bisson: You’re calling it “archive”; I call it “backup,” but it’s not. Okay, no, I’ve got you.

So it goes and sits on the archive, so when I go looking, and I want to read that email, it just directs it to the archiving system.

Mr. Chuck Rothman: Correct.

Mr. Gilles Bisson: Is there a backup to the archive?

Mr. Chuck Rothman: I don’t know.

Mr. Gilles Bisson: Excuse me? I didn’t hear you.

Mr. Chuck Rothman: I don’t know.

Mr. Gilles Bisson: Okay. So when the people were saying they had deleted their emails, would they have known that the archiving system was there?

Mr. Chuck Rothman: I don’t know.

Mr. Gilles Bisson: So it’s either they knew and didn’t tell us and withheld the information or they were ignorant that there was—and I don’t mean that in a negative turn, but they didn’t know that it existed. Okay.

The Chair (Mr. Shafiq Qadri): Monsieur Tabuns?

Mr. Peter Tabuns: As you may tell, most of us don’t deal with this stuff on a regular basis.

Mr. Gilles Bisson: Well, some of us.

Mr. Peter Tabuns: Most of us; some of us apparently do. Most of us don’t.

Mr. Gilles Bisson: I knew what the RAID system was.

Mr. Peter Tabuns: I’m glad.

Mr. Gilles Bisson: It’s not the can of spray that you kill the bugs with.

Mr. Peter Tabuns: If someone is deleting all their emails at the end of every day, should any emails show up in the archives?

Mr. Chuck Rothman: If the archive is configured to move it after 30 days, then the answer is no.

Mr. Peter Tabuns: Okay. But if the archive is configured so that every email is saved in the archive, then even if you cleared your inbox every day, the archive would maintain a copy.

Mr. Chuck Rothman: Yes.

Mr. Peter Tabuns: And when a person’s email is deleted from the system, typically the tech people would go and clean out the archive as well.

Mr. Chuck Rothman: If that’s their process.

Mr. Peter Tabuns: It depends on the process and the company. Some people would just simply keep that archive as a permanent record; they might.

Mr. Chuck Rothman: Yes, it’s possible. They may be using the archive as a retention area and so they wouldn’t delete those emails even if they deleted the person’s mailbox.

Mr. Peter Tabuns: And just again, if emails were stored in the archive, when they were deleted on the computer, when the stub was deleted, would there be a record of the deletion of that stub kept anywhere other than the logs that you referred to earlier? Would it show up in the archive that the connection had been severed?

Mr. Chuck Rothman: That’s a good question. I don’t know the answer to that.

Mr. Peter Tabuns: Okay, fair enough. I think Mr. Bisson has a question.

Mr. Gilles Bisson: Yes. I just want to make something clear. The archive, is it on a RAID hard drive?

Mr. Chuck Rothman: Yes. Well, generally, yes.

Mr. Gilles Bisson: We hear and read about the backup tapes. What are those?

Mr. Chuck Rothman: Okay. Those are a completely separate storage system. The information stored on the RAIDs, for lack of a better term—

Mr. Gilles Bisson: The archives.

Mr. Chuck Rothman: —is directly accessible. You can go into your mailbox and pull in the email. The information that’s stored on backup tapes is completely removed from the system, and if you want to recover something that’s on a backup tape—

Mr. Gilles Bisson: You have to ask for it.

Mr. Chuck Rothman: —you have to put the tape back into the tape reader—

Mr. Gilles Bisson: So the process to end up on a backup tape is done from the exchange server or done from the RAID archive system?

Mr. Chuck Rothman: Well, my understanding—the information I got from MGS is that it was the email server that was backed up, but at that time—

Mr. Gilles Bisson: That would be the exchange server.

Mr. Chuck Rothman: The exchange server. But at that time, they didn’t tell me anything about the archiving system, so I don’t know whether that included the archiving system as well.

Mr. Gilles Bisson: So how often are the backups of the exchange server done on tape?

Mr. Chuck Rothman: Daily.

Mr. Gilles Bisson: Okay. So then there would be no need to back up the archive because you’ve already got it from the exchange server, right? Presumably.

Mr. Chuck Rothman: Yes.

Mr. Gilles Bisson: Some of the documents that we have that we're speaking about now are actually from the backup tapes; they're not from the archives.

Mr. Chuck Rothman: Well, I don't know. Actually, there would be a good reason to back up the archives as well because—

Mr. Gilles Bisson: That wasn't my question. Let me get back to that—

Mr. Chuck Rothman: Okay.

Mr. Gilles Bisson: —make a point. The documents that are being discussed as of late, this latest dump of documents, are actually on backup tape; they're not part of the RAID system, the archive.

Mr. Chuck Rothman: No, that I don't know, because I don't know if the archive is being backed up.

Mr. Gilles Bisson: Okay.

Mr. Chuck Rothman: But the tapes are—the primary purpose of the tapes is disaster recovery.

Mr. Gilles Bisson: Yes, I understand.

Mr. Chuck Rothman: Okay? So it would make sense to back up the archive as well because if something happens to the archive system, you want to be able to restore it.

Mr. Gilles Bisson: Okay, but the point is, there's the exchange server to which the daily work of emails is stored and sent and all that stuff; then presumably there's some sort of automatic everything-goes-to-the-archive for space requirement issues, which is essentially on the RAID drives. But then there's a backup made, either from the exchange server, maybe in conjunction with the archive, but there's a backup tape.

Mr. Chuck Rothman: Yes.

Mr. Gilles Bisson: And that backup tape exists, of all the documents.

Mr. Chuck Rothman: For that day.

Mr. Gilles Bisson: That's right.

Mr. Chuck Rothman: Yes.

Mr. Gilles Bisson: And that is where some of these documents that we're talking about currently reside, on the backup tapes, right?

Mr. Chuck Rothman: I don't have any knowledge of that, but—

Mr. Gilles Bisson: Because they keep on referring to tapes in the articles and some of the documents. They keep on referring to tapes, so it's actually from the backup tapes.

Mr. Chuck Rothman: What I read was that the emails were found on a secondary server.

Mr. Gilles Bisson: I guess somewhere along the line somebody started using the word "tapes." That's why I'm asking the question.

Mr. Chuck Rothman: Well, I don't know.

Mr. Gilles Bisson: Can somebody from research or whoever actually let us know just clearly—I understand that you've got the exchange server; I understand that you've got the archive and what the function of those two are, but the backup tapes themselves, if that's where some of these documents are coming from. And are they backed up only from the exchange server or both the

archive and the exchange server? That would answer that question.

In your work, most people know there are backups to most things that we do in life, so it would be safe to assume that those people who were deleting their emails would have known there was some form of backup out there.

Mr. Chuck Rothman: I think it's becoming relatively general knowledge that there are backup systems, and especially anybody who's accidentally deleted an email and called up IT, the first thing they'll say is, "Well, I'll have to restore it from the backup tape." So probably a lot of people know about it.

Mr. Gilles Bisson: So when the privacy commissioner was going through the exercise with MGS, at that point they had said there were no backups. MGS had told her there were no backups?

Mr. Chuck Rothman: Well, what MGS told us originally was that backups were made daily and after 24 hours those tapes are overwritten, and then there are also month-end tapes that are overwritten after a year. One of the questions I asked, or I gave to the Information and Privacy Commissioner to ask MGS, was, has anybody actually physically checked to make sure that there's no additional backup tapes? Because in my experience, I find if you look in the desk drawer, you find a whole bunch of tapes that everybody forgot about. The answer to that question was, "No, there's no additional backup tapes."

Mr. Gilles Bisson: But it turns out there was.

Mr. Chuck Rothman: That I don't have any knowledge of.

Mr. Gilles Bisson: It's kind of odd that they would think that there's no—it just seems odd to me that MGS would say, "No, there's no backups," when in fact there was. What the heck was that all about?

Mr. Chuck Rothman: Actually, it's not that surprising to me.

Mr. Gilles Bisson: Really?

Mr. Chuck Rothman: In dealing with a lot of IT people, they tend to think that, "Well, if this is the process, everybody follows it," and they don't even think—

Mr. Gilles Bisson: IT people wouldn't know that there's backups?

Mr. Chuck Rothman: Well, there may be one IT person working in some cubicle who knew about the tapes, but the senior people probably just assumed that everybody follows the process, and so the tapes never existed.

Mr. Gilles Bisson: In your questions, was there any evidence that the Liberal staffers tried to get the backups deleted?

Mr. Chuck Rothman: No—well, I didn't discuss anything directly with MGS.

Mr. Gilles Bisson: Okay.

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

Mr. Bob Delaney: Well, I think between Mr. Bisson and I, we've asked all of our techie questions. Quite

frankly, Chair, Mr. Rothman has been very helpful and forthright in his responses, and I just want to thank him for his time. We have no further questions.

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

Mr. Victor Fedeli: Mr. Rothman, a couple of witnesses ago, when I asked a question on a repeat visit, I said, “Why didn’t you tell us that the first time you were here?” and he said, “You didn’t ask me.” So I’m going to ask you a very general question. Is there anything else you want to tell this committee today? Is there anything we’ve left out? Is there anything you felt was a salient point and you’re surprised we haven’t asked you? Is there anything you want to say before we leave?

Mr. Chuck Rothman: No, I can’t think of anything.

Mr. Victor Fedeli: Okay. I appreciate your time. Again, being a private citizen and an entrepreneur, I appreciate you taking your time to be here today.

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

The committee is recessed until 1 p.m.

The committee recessed from 1204 to 1301.

MR. KEVIN COSTANTE

MR. DAVID NICHOLL

The Chair (Mr. Shafiq Qadri): Thank you, colleagues. I call the meeting of the Standing Committee on Justice Policy to order.

I welcome our next presenters: Mr. Kevin Costante, Deputy Minister of the Ministry of Government Services, associate secretary of cabinet, and Secretary of the Management Board of Cabinet; as well as Mr. David Nicholl, corporate chief information officer, also of the Ministry of Government Services. They will be alternately affirmed and sworn in, with Mr. Costante to be affirmed.

The Clerk pro tem (Mr. Katch Koch): Mr. Costante, do you solemnly affirm that the evidence you shall give to this committee touching the subject of this present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Kevin Costante: I affirm.

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

The Clerk pro tem (Mr. Katch Koch): Mr. Nicholl, do you solemnly swear that the evidence you shall give to this committee touching the subject of this present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. David Nicholl: I do.

The Chair (Mr. Shafiq Qadri): Thank you. Gentlemen, we have five minutes between the two of you, beginning now.

Mr. Kevin Costante: Thank you, Chair. My name is Kevin Costante. I am the Deputy Minister of Government Services. I have been with the Ontario public service for 25 years, and I have served in a number of deputy minister positions.

As mentioned, with me today is David Nicholl, who is Ontario’s corporate chief information officer.

I also wish to confirm for the committee that I was not directly involved in any of the gas plant transactions, so I will focus my comments on my ministry’s role in responding to the committee’s motion of June 25, 2013.

As you are aware, the committee requested that the Ministry of Government Services, or MGS, provide all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent or received by 13 named individuals. The motion further identified and requested that specific keywords be used in identifying responsive documents.

In responding to the committee’s motion, we were in a position unique from other ministries. The first unique aspect of the motion was the direction for my ministry to search for the records of members of cabinet and their political staff. This is something which is normally done directly by those offices, because of the separation between the Ontario public service as compared to staff in political offices.

Another unique aspect was that the individuals listed in the motion were not employees of the Ministry of Government Services, and many of them had departed from the public service. In addition, none of the records sought by the committee are MGS records.

Our search, therefore, is an electronic discovery exercise, using electronic search technology.

The government of Ontario’s email system is one of the largest in Canada, and we maintain more than 94,000 email accounts. Each day, more than one million emails are sent and received on our system.

To conduct our search, we first located any accounts assigned to the listed individuals. Once those accounts were located, a keyword search was conducted of their entire account. This search identified thousands of pages of records, many of which had no direct or indirect connection to the Oakville or Mississauga transactions. All of those records were reviewed by ministry counsel, to identify those with responsive content. The records were also separately reviewed by the external law firm Wortzman Nickle. The search was therefore very complex and time-consuming.

So far, we have provided to the committee two disclosure packages totalling about 4,700 pages. These disclosures consist mainly of records found in the primary and secondary email accounts accessible in our IT system. Our search for responsive records is an ongoing process. I want to assure the committee that we take the motion very seriously and are making every effort to identify and provide remaining records as quickly as possible. We hope to disclose a third batch of records to the committee later this week or early at the beginning of next week.

On the issue of backup tapes, the OPS maintains backup tapes of electronic records for disaster recovery purposes. These tapes are not a complete archive of records created, sent or received by an individual and are

not considered a normal part of our record-keeping environment.

We do not normally include backup tapes in our legal document disclosure protocols. However, in light of the specific context of the committee's motion, my ministry has assessed where potentially relevant backup tapes may exist and the time and costs associated with restoring and searching those tapes. The existence of backup tapes does not mean that those tapes contain responsive records to the committee's motion. That information cannot be verified until the tapes are restored and have been searched. We await your direction on how you wish us to proceed with that aspect of our search.

As you know, the Information and Privacy Commissioner has expressed concerns with the information the ministry provided her office during her investigation. I wish to confirm for the committee that we fully respect the commissioner's role as an officer of the assembly and sought to co-operate fully with her investigation. I have apologized personally and in writing to the commissioner for the mistakes made in assisting her investigation. We are continuing to work with her office.

Mr. Nicholl and myself would now be happy to answer any of your questions.

The Chair (Mr. Shafiq Qadri): Thank you, gentlemen. To the government side. Signora Albanese.

Mrs. Laura Albanese: Thank you, Mr. Chair.

Thank you very much for being here today. I would like to start by asking you about the Information and Privacy Commissioner's recent report on record-keeping.

On page 6 of the report, Dr. Cavoukian states, "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."

When she testified before this committee, she told us, "This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming, and any co-operation we needed was there."

Could you speak a little more in detail about the support and the co-operation you provided to the IPC and her office throughout this investigation?

Mr. Kevin Costante: Yes, I can. Throughout her investigation, there were two meetings with ministry staff where we answered questions and provided information. They were both about an hour long, I understand. Those took place in late April and early May. Following those meetings, there was a series of questions back and forth between the privacy commissioner's staff and staff at the ministry. Most of it was directed through our legal counsel, and we responded to the questions that we were asked. That was the nature of the interaction.

Mrs. Laura Albanese: Thank you. I think that these are important points to get across and get on the record, because some people have been rather quick to point fingers and question the integrity of our public service.

We should be thanking you for all the hard work that you do on a daily basis, so thank you.

I want to fast-forward to June 25, when this committee passed a motion asking your ministry to search for all documents and electronic correspondence related to the gas plant relocations sent or received by a list of 13 individuals, I believe. Was this an unusual request for your ministry?

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Mr. Kevin Costante: It's the first committee motion that this ministry has had. I think all the other motions were to specific ministries: the Ministry of Energy, the Ministry of Finance, Cabinet Office. It was our first motion.

Mrs. Laura Albanese: Given that this request was unprecedented for the Ministry of Government Services, what sort of challenges did it present? What challenges did you have to face searching for the responsive documents?

Mr. Kevin Costante: Upon receiving the motion, a group of knowledgeable staff got together the next day to kind of map out the approach. Obviously, it was going to be an electronic search because we don't actually have the records, other than on our servers and our backup tapes.

One of the debates that went on was the issue of backup tapes. As I mentioned in my opening address, it's not something that we normally use. But we looked at the committee records for that day, when the motion was passed, and it had to do with the privacy commissioner's report, and backup tapes were mentioned in that. The backup tapes are a potential source of additional emails, and therefore when I did respond initially to the committee's motion, we indicated that we were doing the search of our email system and that we had backup tapes and we would be, on the committee's direction, happy to search through them as well.

Mrs. Laura Albanese: Thank you. During the process of responding to the June 25 motion, you wrote that, "Staff in our infrastructure technology services division conducted a forensic review of our servers and have located part of the email account assigned to Mr. MacLennan while he was employed in the office of the Minister of Energy."

Then you go on to say, "IT staff discovered and confirmed this discrepancy on June 28, after they were asked to verify that email accounts assigned to certain individuals named in the motion, including Mr. MacLennan, were deleted in their entirety. A forensic search of our servers revealed that Mr. MacLennan's secondary storage had not been deleted."

Can you take us through what happened here and why these emails were discovered as part of a response to the June 25 motion, but not during your work with the IPC?

Mr. Kevin Costante: Yes, I'll do my best. When the IPC asked about emails for Mr. MacLennan, the response went back that his emails had been deleted. His email account had been deleted in December 2012, and I

believe Mr. MacLennan had left the public service in August of that year. Is it 2012 or 2011? Sorry.

Mr. David Nicholl: It's 2012.

Mr. Kevin Costante: It's 2012. When we were asked whether there were emails, a response went back that said we had deleted his account.

Now, if I step back a bit—and I think from the previous person who testified at the committee earlier today, you'll know that our email accounts consist of a primary and a secondary, or the secondary can also be called the Enterprise Vault. The policy should be, when the email account is deleted, that both the primary and secondary should be deleted. When we went and actually verified—actually went into the system and looked—we found that his primary account had been deleted in September, but the secondary account, the Enterprise Vault, had not been deleted. When we started doing our work on behalf of this committee, we found that secondary vault with emails in it, and that's when we made it known to the privacy commissioner, to the OPP and to this committee.

Mrs. Laura Albanese: As soon as this was discovered, I understand that you met with Commissioner Cavoukian to explain the situation. She responded in a July 12 letter that she was “left with the impression that far less vigour was brought to bear in responding to the inquiries made during my investigation.” You wrote back on July 22 and stated, “I wish to communicate my regret that we did not provide your office with all the information necessary to assist your investigation.” You went on to say, “Our work on the justice policy committee motion has subsequently shown that we had exceptions to our normal protocols regarding deletions of email accounts and the retention of backup tapes that should have been identified and reported to you as part of your investigation.”

Let me ask you: At any point did your office ever intentionally leave out information that was relevant to the IPC's investigation?

Mr. Kevin Costante: There was no intention to mislead or not inform the privacy commissioner. I met with the staff who provided information and asked them that very question. I was assured by all of them that there was no intention to mislead her.

Having said that, we have taken responsibility for the mistakes. We should have told the privacy commissioner and given her a broader explanation of how our email system works and that there's a primary and secondary account. She was informed about backup tapes, and you'll see that in her report.

As well, when we responded to questions, we responded from a policy perspective, and we should have gone in and verified that the reality was the same as the policy. The policy would have been, as I mentioned earlier, to delete both primary and secondary, and that should have happened.

Unfortunately, only the primary account for Mr. MacLennan was deleted, and the secondary was left there in, I think it was called earlier, an orphan vault. That's

what we found when we actually went into the system as a result of the committee's motion coming out of the privacy commissioner's report. We found that secondary vault still in existence, and that's when we made it known, subsequently searched it and provided this committee with the records.

Mrs. Laura Albanese: However, despite the letters and the meetings, it appears that the privacy commissioner was still upset with the mistakes made during this process. I know that in an interview on July 24 on CFRA radio in Ottawa, Ms. Cavoukian said that she felt that she didn't think these oversights by your ministry staff were accidental.

I know that your office has a good working relationship with the commissioner, and perhaps you can chalk her comments up to a sense of frustration, rightfully so. But still, it's a pretty serious allegation. Would you like to respond to that in any way?

Mr. Kevin Costante: I can only respond with what I said earlier. There was no intent on the part of the ministry, and I was assured by the ministry staff who were dealing with the privacy commissioner and her staff that there was no intent, to mislead. Having said that, we made some serious mistakes, and we have taken accountability for those.

Mrs. Laura Albanese: I'd like to ask you about what has been disclosed to the committee so far in response to the June 25 motion. On Monday, July 22, your ministry tabled a package of records from Mr. Chris Bentley, Minister Brad Duguid and Craig MacLennan. The Clerk's office then delivered those records to committee members on July 23. Then on July 26, you provided the Clerk with responsive records from the accounts of the remaining individuals. Is that correct? Is that right?

Mr. Kevin Costante: That's correct. Yes.

Mrs. Laura Albanese: The opposition has alleged that the government was withholding the records because of the by-elections. As we all know, those by-elections took place on August 1, two weeks after these disclosures. So not only are those accusations inappropriate, but I guess they're also incorrect, you would agree.

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You mentioned in your July 9 letter to this committee that “as a result of the complex and time-consuming steps necessary to search for responsive records, the ministry finds it necessary to provide the requested records in stages and commits to produce responsive records as soon as they become available.”

Can you speak to the timing of the disclosures and the plan, moving forward, to respond to all of the remaining parts of the motion?

Mr. Kevin Costante: Just to be clear, I'm going to hand this part, to talk about the timing and the process, to Mr. Nicholl to respond.

In my letters, though, I was clear about the things that we are still looking into. There were some emails that were password-protected that we needed to get into. There were some home and shared drives that we are still in the process of searching. Obviously, we haven't

searched the tapes yet, as well. There were still some accounts from some of the named 13 that we're still looking in, so that will be coming soon.

I'll turn it over to Mr. Nicholl.

Mrs. Laura Albanese: Thank you.

Mr. David Nicholl: That was pretty well it. Basically, password-protected files are a little more difficult for us to actually get into, and quite often we'll actually pass it out to an external firm to do that.

Also, we have two types of file shares. We have your personal file share that you store on a server, and then you have shared files that you can actually share as a group.

Searching for your personal share on a server is relatively straightforward, because we've got your name and we can go and look for it. Searching for a shared-drive folder is actually quite difficult and complex because, literally, we need to check every single one to see if you've got the rights to read or write to it. So those will take us a little while.

As far as the tape backups are concerned, it's volume. It's a pure volume business. We don't typically restore anywhere near that number of tapes. Over the past 12 months, we've probably restored 12 tapes. This is, obviously, in a very different scale, and we'll need to look very carefully at how we do that and how long it's going to take us to do.

But it's a process to go through. It's not difficult; it's just processes and it's time.

Mrs. Laura Albanese: It has now been six weeks since the motion passed and that your staff has been working to comply with the committee's request. Could you provide us a larger understanding of the resources, the time, the cost, to conduct all of the search?

Mr. David Nicholl: We have not done a costing as far as what we've spent at all.

I can take you through the general process that we take to look for emails. What we do is we actually go in and take a look at—we get the respondents; we get the date range. We go and look, first of all, at our primary storage email system and we pull down any emails—any email accounts—for matched names. We go to the secondary storage and we pull down any—you've now learned about the Enterprise Vaults. We pull down out of those Enterprise Vaults for the same named people.

We then pass those over to our corporate security branch, and our corporate security branch then take the terms that you've given—the gas plants, Mississauga, Oakville, all the names that you've got that you're looking for—and they basically run that through software and they pull out responsive records.

We produce those responsive records. We pass them over to our legal services branch, and our legal services branch basically go through every single email and every attachment, to determine whether it's a responsive record or not, and that's what takes the time.

Mrs. Laura Albanese: Well, thank you very much for that explanation. I will turn it over to my colleague MPP Delaney.

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

Mr. Bob Delaney: Thank you very much, and welcome. Thank you for coming this afternoon.

You started to talk about the backup tapes that you referenced in your July 22 letter to the committee. You said that, to use your words, "MGS has accessed where potentially responsive records may be located on backup tapes of the email accounts of named individuals" and provided a list of the number of backup tapes that had been identified for each individual.

I note that the existence of these backup tapes was used by the opposition, I think, inaccurately. In fact, although the allegation has been made that they're full of—I'm going to say "Liberal"—gas plant emails, my understanding is that the content of these backup tapes is actually unknown. Is that correct?

Mr. Kevin Costante: That's correct.

Mr. Bob Delaney: Okay. So there's no way of knowing at this juncture if there are any responsive records, let alone how many, on these tapes. Correct?

Mr. Kevin Costante: We haven't searched them. I can't say one way or the other.

Mr. Bob Delaney: No, that's fine. That's just what I wanted to clarify.

You state in your letter that backup tapes contain a snapshot of the contents of an email account at one point in time—which, of course, is the definition of a backup—so, accordingly, they're not a complete archive of the records created or sent or in fact received by OPS employees.

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

Mr. Bob Delaney: Why do the backup tapes exist? What is the purpose that you intend to use them for?

Mr. Kevin Costante: The main purpose is for disaster recovery. If, for some reason, we had a failure of our servers, we would be able to quickly restore and get our email system back up and running again. I don't know if David may want to add some technical points to that, but that's primarily the reason.

Mr. Bob Delaney: So, substantially, to be able to return an employee to the point that they can do useful work.

Mr. Kevin Costante: Correct.

Mr. Bob Delaney: Okay. Thanks, Chair.

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

Mr. Victor Fedeli: Thank you, Chair. Thank you for being here, gentlemen. I know that Ms. Albanese started off by reading the excerpts from the commissioner's letter, talking about co-operation and whatnot, in her first report. I would like to then enter a couple of sentences from her letter, her statement, on the discovery of email.

It begins with, "I was dismayed to learn that my office had been misinformed by Ministry of Government Services staff regarding the existence of records that would have been relevant to the special investigation report that I had released on June 5—Deleting Accountability: Records Management Practices of Political Staff."

She goes on to say, “I am appalled that we were provided with incorrect information during the course of my investigation, that was misleading. I am, however, very pleased that these records have now been found. After receiving a full accounting from the Ministry of Government Services, I will be issuing an addendum to my report. I have also written to the Deputy Minister of the Ministry of Government Services asking him to take action to ensure that there is no further destruction of any records whatsoever for any other members of the Premier’s office whose emails were thought to be destroyed.”

In her letter, she feels appalled, dismayed, misinformed and misled.

Earlier testimony, just after 10:30, talked about how in June, MGS—well, I’ll give you the chance to answer that. The gentleman that was here before you asked a question, whether there were archives, and the answer to him by the privacy commissioner was, “I asked MGS and they said there were no archives.” Was that accurate?

Mr. Kevin Costante: I think we were asked, as I understand it from staff—I wasn’t at that particular meeting, and it may have been in a follow-up question after the meeting—whether there was an auto-archiver—that was the question that came to us—which meant that the email system was configured to save all emails. Some organizations do do that.

Our email system is not configured to save all emails; we do not have an auto-archiver. So we responded to the privacy commissioner’s office’s specific question about whether we have an auto-archiver. We do not employ an auto-archiver.

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Having said that, Mr. Fedeli, we should have talked to them further about the Enterprise Vault, and that was a fault on our part. I have to say, the Enterprise Vault, the secondary storage, is an integral part of our email system; we treat it as one. I think we sent a technical deck to the committee, and you’ll see that when most staff turn on their email system, both show up. Both the primary and the secondary are there on the screen, and I think the gentleman this morning talked about that.

Mr. Victor Fedeli: So if it’s an integral part of the email system, when the privacy commissioner asked specifically about archiving, why would no one have told her there is a primary and a secondary archive? What would the—

Mr. Kevin Costante: We should have. I think it was perhaps such an integral part that we didn’t—I can’t speak for the staff who didn’t do that.

I can understand that you’re upset—

Mr. Victor Fedeli: Well, of course I’m upset.

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: When she called me in North Bay on the 10th of July, she said she was very upset at the latest turn of events, that new records had been found and she felt misled. She said your ministry was asked to look under the hood with respect to my June 25 motion,

looking for emails specifically about Craig MacLennan and others.

Here’s how she described it. This Enterprise Vault was discovered. There can be the odd “orphan” vault that escapes the system and doesn’t get wiped. She was under the opinion that day, according to my notes that I took—I took five pages of notes on the phone call—that this was a recently discovered vault. How do you describe that?

Mr. Kevin Costante: My understanding of the progression is that the ministry received the motion on the 25th; on the 26th, there was a meeting, as I said, to discuss how we were going to approach addressing the committee’s motion. Questions began to be asked by our legal counsel, frankly, about the technicalities of our system. Our staff knew about both the primary and the secondary, obviously. The legal counsel asked, “Is the secondary system, the Enterprise Vault, stored on the same server as the primary?” The answer was no.

I then followed up—one question does lead to another—whether, when they deleted Mr. MacLennan’s account, “Are we sure that both the primary and the secondary were deleted?” At that point, staff checked and found that Mr. MacLennan’s primary account had indeed been deleted as per protocol, but the secondary hadn’t and it still existed. At that point, we didn’t know what was in the account. It could have been full of press clippings, for all we know. They had to go through the account, and then it had to be searched using the search terms. I understand—

Mr. Victor Fedeli: Excuse me. Is this the tape again or are these emails—

Mr. Kevin Costante: No, this is an email account.

Mr. Victor Fedeli: Okay. So these are emails.

Mr. Kevin Costante: This is not tapes. This is a regular email account. It’s the secondary account.

That was made available—I understand the IT component of that was done by the Friday. Legal counsel started looking through the account Sunday, Monday, found responsive emails, and that’s when we began alerting people.

Mr. Victor Fedeli: What took so long, then, if that Sunday and Monday the responsive emails were found? What took so long to get them to us?

Mr. Kevin Costante: I believe that was a primary view of the piece: We had to go through all of them. I don’t know if Dave knows more about that. Sorry, I don’t know that I know the specifics of that piece. Obviously, when we disclosed later that month, we provided more than just Mr. MacLennan’s; we provided Mr. Duguid’s and Mr. Bentley’s—

Mr. Victor Fedeli: Well, there were two pages from Minister Bentley and one page from Minister Duguid and 3,000 pages from—so let’s not confuse those three.

Mr. Kevin Costante: We do have a process, once our legal counsel goes through it, of having the external legal counsel, Wortzman Nickle, actually also look through it to verify that we have it correct.

Mr. Victor Fedeli: Who else looks at these emails, in your opinion? Would you know?

Mr. Kevin Costante: Yes, I would. As per normal protocol in terms of releasing public documents, political staff from Minister Milloy's also—

Mr. Gilles Bisson: I didn't hear you; sorry.

Mr. Kevin Costante: Sorry. Political staff from Minister Milloy's office also reviewed the email packages going out.

I should be clear at this point that the decisions made as to what was responsive or not were done by ministry legal counsel. They did not influence, nor did they ask us to take anything out of the package that was going to be disclosed, nor did they influence the timing of disclosure. They tended to review the records after we had done our legal reviews.

Mr. Victor Fedeli: Our experience, of course, with document distribution is very different than that. When we asked for the original tranche of documents, we received 36,000 and were indeed told, "This is all the documents." Several dozen people stood up—more than two dozen people stood up in the Legislature and said, "You have all the documents." Yet only two weeks later, we received 20,000 more, and it came to light here through sworn testimony that why we have 20,000 more is, those documents were withheld purposefully on the instruction of Ministry of Energy personnel to the Ontario Power Authority. So I'll ask you: Do you believe that all of the email were distributed to us, or were any held back like they were in the past?

Mr. Kevin Costante: I don't think we've held any back. As I mentioned in my—

Mr. Victor Fedeli: After the first batch?

Mr. Kevin Costante: —two correspondences with the committee, I was very clear that we're doing these on a rolling basis. It's quite a heavy workload, and we're working through it. I mentioned also in my opening statement that we have a third disclosure package that is being put together, and I hope to get it out later this week or early next week.

I think one of the things, Mr. Fedeli, that we've struggled with is, at what point do we disclose? Do we give you a package every day? Every week? What we've tried to do is give it to you in groupings. The first grouping was staff from the ministry who were involved with the Ministry of Energy. The second grouping was primarily the Premier's office. In this next tranche of records, we will report on, I think, everything that we've found in the primary and secondary, including any orphan vaults. We are also hoping to get through all of the home shared files. I think we can give you the numbers of emails that are password-protected or are distorted in some way that require some additional time. That's what we're hoping to have in this next package. We're trying to group it so that I'm not dribbling it to you every day, because I've also heard criticisms of the dribble. That's what we're attempting to do.

Mr. Victor Fedeli: You can appreciate our skepticism and our frustration when this all started with a very simple question from my colleague Rob Leone, the member from Cambridge: How much did it cost to cancel

the Mississauga gas plant? How much did it cost to cancel the Oakville gas plant? Two very simple questions; could have been answered and moved on. Sadly, we allege, and it has borne fruit, the continuation of emails that are redacted, missing, removed, deleted, deleted-deleted. You have to appreciate our frustration that you sit here and tell us we're going to get more info when we have several Liberal caucus members, including nine cabinet ministers, standing up and saying, "You have all the information," very indignant, pointing their fingers at us, saying that we had everything, back when we had 36,000, when we'd have an email from Fred to Tom, and we'd get Tom's answer back, which included an email from Janet, but there's no trail of Janet's emails, if you know what I mean.

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Here we are, a year later. We still don't know the fundamental answer to the fundamental question: How much did it cost to cancel the Oakville power plant? Here we are, a year later. You have to appreciate our genuine frustration and our genuine lack of trust and our skepticism. Each week we go by, thinking this could be the week we're going to settle it all down, and something new pops up, some latest cover-up, if you will, towards this scandal, this ongoing scandal.

I've said this many times: Much like Richard Nixon and Watergate, the cover-up now is far greater than the original issue—far greater now. This has so many layers.

You didn't tell the privacy commissioner about the Enterprise Vault when she asked about archives. I'm concerned about that. I'm hearing from you that it's a simple miscommunication or a simple "We forgot to tell her" or "We didn't think it important to tell her." Can you just give me, one more time, why?

Mr. Kevin Costante: I think in my letter to her, and part of the apology as well, we were very—we should have done a very in-depth end-to-end review of our system. It is very complicated, and I think you heard that from the gentleman this morning, how absolutely complicated it is. That was one thing—

Mr. Victor Fedeli: Part of what we heard from him too was that there are no archives.

Mr. Kevin Costante: We use secondary storage. As I understand it, and Mr. Nicholl can help me, some organizations, through the use of their Outlook system, actually enable a copy to be made of every single email, and it is kept in what's called an auto-archive. That's what we were asked about, and that's what we responded to. We do not enable that. We do have a secondary vault, which is—

Mr. Victor Fedeli: The Enterprise?

Mr. Kevin Costante: Yes. Emails go to that secondary system after 30 days.

Mr. Victor Fedeli: And nobody thought to talk about that to her or maybe have a peek in it—look under the hood—in that file?

Mr. Kevin Costante: I think we responded in general terms. We should have, and again, I think that was—

Mr. Victor Fedeli: Is this a popular account or a popular drive or a popular archive to be talking about or looking into?

Mr. Kevin Costante: It's on the email system of most civil servants. In the technical deck that—

Mr. Victor Fedeli: So nobody came forward and said, "Well, hang on a second." There's a lot of employees there. Nobody, not one employee, ever said, "Hey, heads up. We've got this Enterprise." She told me, she being the privacy commissioner, Dr. Cavoukian, that this was kind of just discovered.

Mr. Kevin Costante: I don't think the Enterprise Vault was just discovered. I think Mr. Craig MacLennan's orphaned Enterprise Vault was just discovered. I think that's what she was telling you—

Mr. Victor Fedeli: So nobody thought to look in that, in an Enterprise Vault, for his email.

Mr. Kevin Costante: No.

Mr. Victor Fedeli: Nobody thought to?

Mr. Kevin Costante: We had a record that his email account, which to us would have meant both the primary and the secondary, had been deleted on September 12. We assumed it was both; we were wrong. We should have checked, and that was a mistake on our part.

Mr. Victor Fedeli: When we've been searching for the past year for email or correspondence or Outlook calendar, is anybody ever looking in the Enterprise Vault for things?

Mr. Kevin Costante: Yes, because the Enterprise Vault is on people's email accounts, so they would be searching through that as well.

Mr. Victor Fedeli: But nobody looked in the Enterprise Vault for—

Mr. Kevin Costante: The primary would have been gone. I think the gentleman this morning said there were no links to it. They had all been deleted. So this thing sat on the shelf but "wasn't in the card catalogue" was, I think, the thing that he said—

Mr. Victor Fedeli: Why? Because he deleted his email?

Mr. Kevin Costante: Because his primary account had been deleted, as per protocol. When people leave the Ontario public service, after their responsibility to maintain their records—which we've all been very clear about—they're supposed to delete their email account.

Mr. Victor Fedeli: I understand.

Mr. Kevin Costante: So we deleted his account. We should have deleted both his primary and his secondary. They deleted his primary—

Mr. Victor Fedeli: Who is "they"?

Mr. Kevin Costante: Our MGS staff. We get direction from the ministry and we delete on that basis.

Mr. Victor Fedeli: So how does deleting the primary and the secondary archives meet with the archiving requirement for five years? Where would that get archived, then, if the primary and secondary—

Mr. Kevin Costante: So, before there's a deletion, staff are supposed to keep whatever business records they're supposed to—get rid of transitory records,

personal records, that sort of thing. So they are supposed to keep those. They are supposed to put them on a shared drive perhaps or provide them somehow to their managers so that they're available once they leave.

Mr. Victor Fedeli: Is part of your protocol to ask whether the archive has been established properly before deleting the primary and secondary archive?

Mr. Kevin Costante: I don't believe it is.

Mr. Victor Fedeli: So you hit the delete of the primary and you hit the delete of the secondary, trusting that somebody kept their email?

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

Mr. Victor Fedeli: Thanks, Chair.

Mr. Kevin Costante: We are trusting that they follow the policy where it is very explicit that they're supposed to. But, no, MGS staff do not go and check.

Mr. Victor Fedeli: Okay. The privacy commissioner also said, in my handwritten notes, that no one ever told her about this other archive. That is accurate? Nobody told Dr. Cavoukian there is a secondary—

Mr. Kevin Costante: That was my understanding. We did not mention or talk to her about the Enterprise Vault.

Mr. Victor Fedeli: So the Enterprise Vault is a popular discussion except when it came to the privacy commissioner? It's discussed, it's used, it's understood?

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: Except when she asked for archives, and the answer was, "There are none."

Mr. Kevin Costante: I think our staff interpreted it differently. We interpreted that it was about the auto-archiving function of Outlook, which we do not use.

Mr. Victor Fedeli: That's a pretty narrow interpretation, when she's asking about archives and is told that there aren't any—

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

Mr. Victor Fedeli: We'll pick it up.

The Chair (Mr. Shafiq Qadri): To the NDP side: Monsieur Bisson.

Mr. Gilles Bisson: Yes, I just have a couple of questions, so I'll leave the bulk of the time to my colleague. Do you at any time brief political staff in regard to how the email system works as far as deleting emails, archives and all that kind of stuff? So I'm a new staffer—

Mr. Kevin Costante: Do I personally?

Mr. Gilles Bisson: No, you're MGS. I'm a staffer hired in the Premier's office, the minister's office or whatever. Does anybody from government services or anybody in the entity of government brief the minister's staff or the chief of staff or someone how your email system works and how things are deleted?

Mr. Kevin Costante: On how the email system works, they may call a helpline to get that—

Mr. Gilles Bisson: It's not what I'm asking.

Mr. Kevin Costante: I don't think we do regular briefings unless individual ministries are asked to do that. I assume they would help political staff—

Mr. Gilles Bisson: So Bob Delaney is made a new minister, right? Bob Delaney is now minister of whatever, finally. Does anybody go sit down with him or his staff—

The Chair (Mr. Shafiq Qadri): Mr. Bisson, I need a formal motion for that, please.

Interjection.

Mr. Gilles Bisson: I may not get a seconder; that's the problem.

So my question is this: I'm a brand new minister. I've got brand new political staff that have just come on board. At any time does MGS or some entity from government sit down with the minister or his or her staff and say, "This is how the email system works. This is how backups work. This is what you should be aware of"?

Mr. Kevin Costante: I would assume that if a minister asked for it on behalf of his staff, people likely from the ministry, perhaps from government services, would go and provide them with a briefing, a demonstration about how it works.

Mr. Gilles Bisson: I understand if it's asked. I'm asking, is it a natural reflex of MGS or somebody in government to brief a minister and his or her staff, once their newly minted ministers are announced, how this system works? Does anybody do that automatically?

Mr. Kevin Costante: I think on how it works, I can't say there's a lot of attention paid on how to delete and all the intricacies that we're talking about here in terms of Enterprise Vaults and backup tapes. I doubt that anyone would get into that level of detail.

Mr. Gilles Bisson: So if I'm a political staffer and I'm about to hit "delete" on my computer thinking I'm deleting everything, do I have a sense that there's a backup out there? I would certainly think there is, and I'm just a member of the lowly opposition.

Mr. Kevin Costante: It's hard for me to generalize the whole political staff. Some of them will have greater IT knowledge than others.

Mr. Gilles Bisson: So you don't have a proactive approach to—

Mr. Kevin Costante: No.

Mr. Gilles Bisson: No? That's interesting.

Mr. Kevin Costante: The one thing that we do do, though, in transition binders, we do provide information about proper recordkeeping and the responsibility to keep records under the Archives and Recordkeeping Act.

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Mr. Gilles Bisson: To the Chair, I would request—I move a motion that we get a copy of those briefing binders.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Bisson. We will undertake that.

Mr. Gilles Bisson: Afterwards, yes? Okay.

Okay, second question: Is there still data on the archive that has not been released?

Mr. Kevin Costante: Data on the—

Mr. Gilles Bisson: On the archive. So I write an email. It goes to the Enterprise, then it goes to, essential-

ly, the RAID drive, which is the bulk storage for archiving.

Mr. Kevin Costante: Yes.

Mr. Gilles Bisson: Is there still information on the auto-archives that has not been released?

Mr. Kevin Costante: I think that in our third package we will finish talking about the primary and secondary, if that's what you're meaning.

Mr. Gilles Bisson: Yes. That's what I'm talking about, yes.

Mr. Kevin Costante: We will complete that in this next package.

Mr. Gilles Bisson: So by the next package we will have everything—

Mr. Kevin Costante: We should be done for these 13 individuals for these search terms.

Mr. Gilles Bisson: —off the primary and the secondary, but there would still be stuff—

Mr. Kevin Costante: That's right, and the orphan vaults.

Mr. Gilles Bisson: Yes.

Mr. Kevin Costante: There will still be tapes that we haven't searched yet—

Mr. Gilles Bisson: But the tapes are the backups.

Mr. Kevin Costante: Tapes of the primaries.

Mr. Gilles Bisson: Yes. They're backups.

Mr. Kevin Costante: The backup tapes.

Mr. Gilles Bisson: Yes, that's right.

Mr. Kevin Costante: The backup tapes, we haven't looked at yet.

Mr. Gilles Bisson: Okay, which brings me to my—

Mr. Kevin Costante: And we haven't looked at some of the emails that were password-protected or were corrupted somehow—that need to be broken into, if you will—and we haven't completed our work on home and group-shared drives, so that's all the work to come.

Mr. Gilles Bisson: So when you said everything that's password-protected—we all have passwords. They're all password-protected. Explain that a bit.

Mr. Kevin Costante: Sorry. Sometimes for an individual document, you can password-protect it.

Mr. Gilles Bisson: I see. If you want to protect an email or a document, it's in an effort—

Mr. Kevin Costante: Correct.

Mr. Gilles Bisson: Okay, gotcha. So, anyways, in retrieving the data off the backup tapes, we hear this number banded around of \$3.5 million for pulling the information off of the tape. They're essentially backups. The backups can be restored to a drive and a search query can be put on the drive in order to get the information off. It's not all that complicated.

Mr. Kevin Costante: That's correct.

Mr. Gilles Bisson: Why are you guys making it all that complicated? Or, who's making it complicated? That should be my question.

Mr. Kevin Costante: It is time-consuming and resource-consuming. Each tape—I think I reported this in my—

Mr. Gilles Bisson: How many tapes in total for backup?

Mr. Kevin Costante: For the 13 individuals, for the time period, 3,200 and change.

Mr. Gilles Bisson: Tapes?

Mr. Kevin Costante: Tapes, yes.

Mr. Gilles Bisson: So that means to say that you've already looked at the tapes and you've found those names in them.

Mr. Kevin Costante: No, no. We found tapes for the 13 individuals for the time period. We haven't searched those tapes to see if there are responsive records yet.

Mr. Gilles Bisson: But it's as simple as—

Mr. Kevin Costante: As we said, we only use these tapes usually for disaster recovery—

Mr. Gilles Bisson: I understand. Yes, they're backups.

Mr. Kevin Costante: —and they're snapshots, right?

Mr. Gilles Bisson: I know. They're backups, but all of the data that existed on that day would be on that backup tape, and it's as simple as transferring it to a hard drive, doing a search query and getting the information off, right?

Mr. Kevin Costante: I can have Mr. Nicholl describe the process if you wish.

Mr. Gilles Bisson: No, but basically that's what you're doing.

Mr. Kevin Costante: I'm not a technology person.

Mr. Gilles Bisson: I don't need the long version, because I've got limited time, but essentially that's what you do, right? In order to get that information, you drop it off to—

Mr. Kevin Costante: Yes. We have to put it into something that's searchable, and then we have to search it.

Mr. Gilles Bisson: Last question, because my colleague has got a series of questions. Earlier, you were just responding to questions and you were saying, essentially, that the privacy commissioner asked you if there was any information that was part of the auto-backups, and you said no.

Mr. Kevin Costante: The question that came to us was backup tapes for Mr. MacLennan. The normal protocol for backup tapes is that we keep one at the month end, and we keep them for 12 months, and then they're overwritten. The privacy commissioner also asked us for backup tapes for the period up until December 31, 2011. She was asking these questions in April, May 2013. Staff responded that there were no backup tapes because, by our protocol, they would have all been overwritten by that point.

Mr. Gilles Bisson: But is it a question—you only offered—

Mr. Kevin Costante: Again, if I can use Mr. Fedeli's words, we didn't look under the hood. When we looked under the hood, we found a backup tape for December 2011 for Mr. Craig MacLennan.

Mr. Gilles Bisson: Well, the first thing is, it seems to me that it's a question of you only offered up the answer

that she asked, but you didn't provide her the information she was looking for, if you follow where I'm going. So you can ask a question. This is like the old Yes, Minister—

Mr. Kevin Costante: I'm not denying—we should have went and verified. I fully acknowledge that we should have went and verified and we didn't. We responded on what our policy was, and we didn't verify. That was our mistake, and that's—

Mr. Gilles Bisson: I'll let Mr. Tabuns pursue that. My last question—I know I said it was the last the time before, but I forgot one. When you said you checked with Mr. Milloy's office, you're talking about Mr. Milloy the minister, or Mr. Milloy the House leader?

Mr. Kevin Costante: I'm sorry?

Mr. Gilles Bisson: You said that you checked with Mr. Milloy's office on the release of documents; you check in with his office.

Mr. Kevin Costante: No. I said that staff for Minister Milloy's office viewed the documents before we released them to the committee.

Mr. Gilles Bisson: And is that "staff" of him as the House leader or as MGS?

Mr. Kevin Costante: I believe it was both.

Mr. Gilles Bisson: Oh. Thank you. That's interesting.

Mr. Peter Tabuns: It is.

Just so I'm clear: The auto-archive setting on the secondary record-keeping, or the vault, does not save every-day.

Mr. Kevin Costante: I'm going to turn it over to—

Mr. Peter Tabuns: That's fine.

Mr. David Nicholl: Okay. The auto-archiver is actually a feature of Outlook. That's your client on your PC. You, as an individual, can either switch that on or switch that off. We have it off within our environment. No relation to Enterprise Vault; no relation to secondary storage.

Mr. Peter Tabuns: Okay. So how does the Enterprise Vault work? Every email that comes in: Is it automatically stored on the Enterprise Vault?

Mr. David Nicholl: No. Basically, what happens is, emails age. They age over a period of 30 days. On the 31st day, if that email is still in your primary account and it hasn't been deleted, it will drop into the Enterprise Vault. It will leave behind a stub. The primary email account will actually refer to it, but the actual storage of the email is moved on to the secondary storage.

The reason we do that, honestly, is purely from a management perspective, and it's cheaper storage. It's less frequent; you don't go to your older emails as frequently as you do to your emails from a week ago. That's really the only reason.

Mr. Peter Tabuns: So if someone cleared all their emails every day, there would be nothing left to go into the Enterprise Vault. Is that correct?

Mr. David Nicholl: If the person had deleted from their primary email account, and then they had emptied their deleted folder—because, don't forget, you've got to delete both from the primary account—it goes into the

deleted folder—and then you’ve got to go and actually delete it from the deleted folder. That can happen in a number of ways: You can delete it individually yourself; you can empty the folder, the way you empty any folder; or you can actually set up your Outlook that, as you log off, it actually empties out that deleted folder as well.

There are a few ways of doing it, but if it’s deleted, it will not appear in the vault. If it’s left inside the deleted folder, for instance—so if you do a single delete, it goes into the folder—it will age in that folder. After 30 days, the folder itself will actually—you’ll see it within the Enterprise Vault. It will have deleted folders—emails inside there. So all the folders age as well.

Mr. Gilles Bisson: So the deleted folders are backed up.

Mr. Peter Tabuns: Yes. So the deleted folders—

Mr. David Nicholl: Don’t think of Enterprise Vault and backup in the same breath.

Mr. Gilles Bisson: No, no. I understand, but—

Mr. Peter Tabuns: But just to understand, then, someone who came here and said, “I delete everything every day”: Unless they went and cleared out their recycle folder, that recycle folder would automatically just have those put into the Enterprise Vault?

Mr. David Nicholl: Yes. If they haven’t emptied their folder, it’ll pop into the vault.

Mr. Peter Tabuns: Okay.

Mr. David Nicholl: Can I just complicate things just one tiny, small bit more?

Mr. Peter Tabuns: Why not?

Mr. Gilles Bisson: You wouldn’t be an IT person without that.

Mr. Peter Tabuns: You’re under oath. Go ahead.

Mr. David Nicholl: Again, I want to tell you everything that we know now, because we’ve learned a lot over the last month, obviously.

We’ve also come across emails that are in a folder called the synchronization folder. Basically, what Microsoft does is, you’ve got your Outlook client, which is what you’re on your PC with. You’ve got Microsoft exchange server; over on the far side is the server. If Microsoft has a problem in communicating between those two pieces—and we’re talking milliseconds here; it’s not like you see it. If there’s any kind of problem between the two, Microsoft actually dumps it into the synchronization folder.

There are two or three different ones. Some of them are more like a log file. But there is one called conflicts, and conflicts exists when it has a conflict actually in connecting between Outlook on your PC and exchange at the back end. It actually takes a copy of the email and pops it in there. Again, within a millisecond, it’s sent and it’s gone, but the copy is actually still sitting inside the synchronization folder.

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Mr. Peter Tabuns: Have you, in fact, looked at those synchronization folders to see if the emails we’re interested in are stored there?

Mr. David Nicholl: Yes, we have. By e-discovery, we have actually searched all folders.

If you’re on Outlook yourself, you wouldn’t go and look there. It’s a system-generated folder. It’s in effect a system-generated email. It is not the email at all; it’s a copy that the system has taken, put into this folder and then sent off, as and when it can actually get that conflict resolved.

Mr. Peter Tabuns: Did the Enterprise Vault have all of the emails from Mr. MacLennan from his time as chief of staff?

Mr. Kevin Costante: The ones that we released here?

Mr. Peter Tabuns: Yes.

Mr. Kevin Costante: I think we’d have to go back and look and find out what folders they had come from. We can undertake to do that.

Mr. Peter Tabuns: If that would be noted, Mr. Chair, as an undertaking to come back and let us know—

Mr. Kevin Costante: Which folders?

Mr. Peter Tabuns: Yes.

Mr. Kevin Costante: And, sorry, do you want to know every email and every folder, or just how many in each folder? I just need to be specific.

Mr. Peter Tabuns: I would like to know if you captured the full period of his tenure as chief of staff for the Minister of Energy. My interest, Deputy Minister, is, did we get a search on the full range of his emails in his time as chief of staff or only a search on part? Because you searched through the Enterprise Vault with the keywords, correct?

Mr. Kevin Costante: That’s correct.

Mr. Peter Tabuns: Was it just one year that was covered, or two years, or three or four? Because he was chief of staff—

Mr. Kevin Costante: We can clarify that for you as well—

Mr. Peter Tabuns: If you could clarify—

Mr. Kevin Costante: —the time period of the emails and the location within each folder.

Mr. Peter Tabuns: How much email was in Mr. MacLennan’s account when it was deleted?

Mr. Kevin Costante: The—

Mr. Peter Tabuns: The primary.

Mr. Kevin Costante: Sorry; I don’t know that. We’ll undertake to—

Mr. Peter Tabuns: Can I ask you to give us an undertaking on that?

Mr. Kevin Costante: I’m assuming you want both the responsive, which we released, and the non-responsive.

Mr. Peter Tabuns: Well, I’d like to know the scale. Ultimately, all I care about are the ones that are responsive, but I want to know that you have checked through the full time period that he was chief of staff for responsive.

Can you tell when his emails were deleted?

Mr. David Nicholl: The only way we’re going to be able to tell when an email was deleted—and this is beyond our capability, by the way, but people can do it—is we’d have to go through the series of backup tapes and

compare month to month, and if something has dropped, then you'll know right in there. We'll have to give that to someone else to do because it's not something that we would do, but it is possible to actually do it that way. You wouldn't get a day; you'd get a month. But you actually could do it month by month to say when that email was deleted.

Mr. Peter Tabuns: Okay. Are there any other orphan vaults that you've come across in your work?

Mr. Kevin Costante: Yes, and I think in my letter of the second disclosure package, on page 2, up at the top, we found other orphan vaults for Jamison Steeve from his period at the Ministry of Health and Long-Term Care; Craig MacLennan from his period at the Ministry of Aboriginal Affairs and the former Ministry of Public Infrastructure Renewal; Mr. Brad Duguid from his time at the Ministry of Aboriginal Affairs and the Ministry of Municipal Affairs and Housing; and Mr. Chris Bentley from his period at the Ministry of Training, Colleges and Universities. We indicated, though, that while they don't appear to be relevant, we are going to search those, and again, we hope to report them in the next package.

Mr. Peter Tabuns: Okay. So you didn't find orphan vaults for the people we're interested in in the periods we're interested in. What you just listed to me were—

Mr. Kevin Costante: My understanding is that was the period that they were in. It's one of those cases where I want to go and verify, sir.

Mr. Peter Tabuns: That would be fine.

Mr. Kevin Costante: Yes.

Mr. Peter Tabuns: What was really shocking me and, I think, the Information and Privacy Commissioner was that there seemed to be a very different standard of search for her request and our request as a committee. As an officer of the Legislature, her request should have had the same weight as this committee's in terms of the scale and thoroughness of search. Why wasn't it the same?

Mr. Kevin Costante: Again, I think the staff responded on the basis of policy, and based on policy, there shouldn't have been records. There were records, and when we then looked into the system, as a result of the motion from this committee, we found them. Obviously, that was a mistake on our part. We should have verified, not just responded on the basis of what our policy was. That's, again, why we have apologized to the privacy commissioner. We should have done more.

Mr. Peter Tabuns: So why did it twig on you that you had to go beyond policy when this committee asked?

Mr. Kevin Costante: Because the committee asked for a number of individuals in your—the only thing you could ask us for was an electronic search because we weren't involved in the gas plants; you weren't asking for us—

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

Mr. Kevin Costante: Our only approach could be an electronic search.

Mr. Peter Tabuns: All right. In terms of the cost of producing emails from backup tapes that were found, how was the costing done?

Mr. David Nicholl: It's very much straight line math. We have around 3,200 tapes. We ran a quick test to see how long it will take us to actually go through the process of getting the tapes down from Iron Mountain, restoring, loading and going through the process. It came out to somewhere between two and four hours because it's completely dependent on how much stuff is on there. We went to our vendor of record, we pulled a price off for a mid-level person who does that kind of stuff, we took it down to an hourly basis, and it came to somewhere around \$500 an hour—or two—

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

Mr. Peter Tabuns: Okay. That's clear. Thank you.

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

Mr. Bob Delaney: Thank you very much, Chair. Just before we get into it, I just have a couple of things that need a little clarification on the record. I notice my colleague Mr. Fedeli may have lost track of the forest for the trees in his suggestion about the numbers of emails. I'd just like to remind the committee that the initial request for documents came from the Minister of Energy, the Ministry of Energy and the OPA and did not include the numbers of documents subsequently requested. I'm sure the member will remember that the next time the—

Mr. Victor Fedeli: Point of order, Mr. Chair.

Mr. Bob Delaney: No, you can do that later. The other thing is—

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, point of order.

Mr. Victor Fedeli: Thank you for recognizing my point of order. The point I made, Chair, is that the original 36,000 that were delivered—

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, clarifications are welcome afterward.

Mr. Victor Fedeli: Certainly we're told by the Liberal cabinet that you have—

The Chair (Mr. Shafiq Qadri): Mr. Delaney, please continue.

Mr. Bob Delaney: To put a quote in here from the Information and Privacy Commissioner herself, she said recently, and I'll use her words, "Our position has consistently been that a system designed to give ministers and senior officials a 'heads up' about the disclosure of potentially controversial" emails "is acceptable. These processes or systems are designed to ensure the timely notice and communication of relevant details of the request and the related records, in order to assist the minister or senior officials when responding to questions in the Legislative Assembly or from the media or members of the public."

I think that also is important.

But to come back to it here, I have a clarification question to ask you. We've done a little bit of discussion here around the Enterprise Vaults. The Premier's office doesn't have Enterprise Vaults; am I correct?

Mr. Kevin Costante: That is correct. We actually have three protocols around—sorry, I should let Mr.

Nicholl respond to this. But we have a different treatment for the Premier's office.

Mr. David Nicholl: Yes, you're right; the Premier's office does not have Enterprise Vaults.

Mr. Bob Delaney: Okay. Are the Premier's office and the Cabinet Office on the same system as the ministries?

Mr. David Nicholl: Yes, they are.

Mr. Bob Delaney: Okay. Let's move on, then, to a few questions about record-keeping. There has been a bit of debate about what records should and shouldn't be kept. Let's see if we can put a little bit of clarity around it.

We know that the Archives and Recordkeeping Act explains transitory records are not required to be retained. The Common Records Series defines these transitory records as follows: "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 we asked Secretary Wallace about his personal experience with transitory records he told us, in his words, "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," from your experience working in government?

Mr. Kevin Costante: Yes, it is. I think the other piece of guidance that is around transitory records is that they're not required to meet legal obligations to document government decision-making.

Mr. Bob Delaney: Okay. Give me an example of that.

Mr. Kevin Costante: Somebody says, "Have you seen the updated briefing note?" and I respond, "Yes." There's really no content in that.

Mr. Bob Delaney: Okay, so in other words, if somebody had said, "Have you seen the updated"—

Mr. Kevin Costante: If I were to send them back comments on the briefing note, if it's a policy-related briefing note, then I think that's more than a transitory document.

Mr. Bob Delaney: Okay. So if somebody says, "Have you seen the updated"—fill in the blanks with one of the search terms—"briefing note?" and somebody sends one back and says, "Yes, I have," or, "No, I haven't; we'll discuss," that's a transitory record.

Mr. Kevin Costante: Sorry, can you repeat that?

Mr. Bob Delaney: Okay. Someone sends an email, for example, to one of you or to someone in the ministry, and says, "Have you seen the updated," and you fill in any of the search terms, "briefing note," or memo or

whatever, and you say, "Yes, I've seen it; we'll discuss." That's a transitory record; correct?

Mr. Kevin Costante: I think some of these judgments are subjective.

Mr. Bob Delaney: I understand.

Mr. Kevin Costante: I think in terms of our search, the electronic search, if it mentioned the Mississauga and Oakville gas plants in any manner, we included it as a responsive record.

Mr. Bob Delaney: Well, really what I'm trying to lead to here is that it would be misleading to state that every piece of paper, every iota of electronic correspondence needs to be kept. Would you agree that that's not the purpose of either freedom-of-information legislation or the archive legislation? Is that correct?

Mr. Kevin Costante: Yes, and I think the act is very clear about what needs to be kept and what doesn't have to be kept. Transitory records, personal records, political records and constituency records don't have to be kept under the Archives and Recordkeeping Act.

Mr. Bob Delaney: So if those transitory records, political records, personal correspondence are deleted, that is not a violation of any of the acts. Correct?

Mr. Kevin Costante: Correct.

Mr. Bob Delaney: Good. But then there's also an important designation for private records. On page 9 of the Information and Privacy Commissioner's report she outlines two general categories of records in the office of a minister or the Premier and they are (1) public records and (2) personal, political and constituency records. On page 10 it goes 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.

Could you explain for us a bit more about these personal and political records and why they are not required under the Archives and Recordkeeping Act to be retained?

Mr. Kevin Costante: I think the purpose of the Archives and Recordkeeping Act is to maintain records of archival value and also maintain records that deal with significant issues of public policy and direction. These were specifically exempt. Some political figures, when they leave office, even though they didn't have to provide these, can voluntarily provide their personal and political and—I don't know this for certain, but I guess even their constituency offices to the archives for future generations to benefit from.

Mr. Bob Delaney: Right. Well, Chair, I'll pass this to the Clerk for photocopying and distribution. It's not material to what we're discussing today, but it serves to illuminate. This is from the archives, and it's entitled "The Fine Art of Destruction: Weeding Out Transitory Records." It says, "I know I need to keep some things. But the rest of the stuff...?" I'll leave this with the Clerk for copying and distribution.

Let's go back to email accounts. Let's talk about what happens to a person's email account when they leave government. The committee has learned that the practice

of deleting accounts after a staff member leaves the government, on both the political and the public service side, is a common administrative exercise. We know how to do that, right?

Mr. Kevin Costante: Correct.

Mr. Bob Delaney: Secretary Wallace, when he was here, said, and I'll use his words, "The wrapping up of email accounts would be a perfectly routine business. It's done in all businesses. There's no expectation in the archives act or anyplace else that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place of employment within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down."

Just to confirm, would you add some clarity to the deletion of accounts as standard government-wide practice?

Mr. Kevin Costante: It is standard government-wide practice. We are a large employer, and we have thousands of people leave each year. The practice is to delete their accounts once they have kept any relevant public documents that they should keep under the archives and records retention act. That is our standard practice. I believe that, in the technical briefing that we provided to the committee, we went through the steps of that deletion process.

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

Mr. Victor Fedeli: Thank you, Chair. Mr. Tabuns talked about the fact that Dr. Cavoukian's request was not handled the same way as this committee's requests in general, and you answered with, "Staff responded on the basis of policy." Would it not have been policy to go through the Enterprise archive in order to satisfy the previous requests, or the request by Dr. Cavoukian?

Mr. Kevin Costante: I don't think we had previous requests.

Mr. Victor Fedeli: The request by Dr. Cavoukian. When you responded in June to Dr. Cavoukian, you did not look in the Enterprise Vault. My question was, is that not part of a normal thing that you would look through to satisfy this?

Mr. Kevin Costante: So when a ministry gets a request—a motion—they would look through the primary and secondary account and provide that information to the committee. If his account had been deleted, and the primary had been deleted, there would be no way—and I'll ask Mr. Nicholl to confirm this—for the ministry to know that that orphaned Enterprise Vault is still sitting on our system somewhere.

Interjection.

Mr. Kevin Costante: I hear him saying that's correct. They would not know that, so only when we went in and searched our system would it have been found. I think that is—

Mr. Victor Fedeli: The question was, isn't that your normal—

Mr. Kevin Costante: If your question is why we didn't do that search when Dr. Cavoukian asked, I think

there was an overdependence on policy. Absolutely, sir, we should have gone in and verified, and we did not do that.

Mr. Victor Fedeli: Would you normally do that for other searches?

Mr. Kevin Costante: This is not normal. This is the first committee motion. For other searches, are you talking about FOI searches or in—

Mr. Victor Fedeli: No, just in general. If we asked another ministry to give us all their documents, would they have done an Enterprise Vault search?

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Mr. Kevin Costante: They would have looked at their primary and their Enterprise. Again, if it had been deleted before you asked, and the primary account was deleted but the secondary vault was still there, they would have no way of knowing that, sir. Only we would know that.

Mr. Victor Fedeli: Only MGS.

Mr. Kevin Costante: Only MGS would know that.

Mr. Victor Fedeli: Well, let me hand this out, then. Clerk?

Back on April 29, there were emails, which MGS was copied on. "Your Enterprise Vault files have been successfully restored." There are about five pages: "To assist with searches in Enterprise Vault"—it's a very detailed search, back in April, and MGS is copied. Ron Huxter from MGS is copied on one; Richard Lee is copied on another. They freely talk about searching. It's a very detailed list on how to search an Enterprise Vault; it's very detailed here. They seem to have spent a lot of time, copied a lot of people, gone into very, very specific—"Go into the Enterprise Vault and search..." "You can restore all items ... from the vault..." They go on and on.

Why would you not have followed any of these instructions—you know the attention that is being brought on this gas plant scandal—when the very privacy commissioner is doing a search?

Mr. Kevin Costante: There is a difference between an Enterprise Vault that is live, that is searchable, and that's what this is about—I haven't read the whole document, but—

Mr. Victor Fedeli: So did you search that live Enterprise Vault—

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: —when it comes to—

Mr. Kevin Costante: If an FOI request came to me personally on a topic, I would search my primary and the secondary, yes, because they both show up on your screen, sir, when you open up your email account. They're both there, so you search both of them.

But there is a difference between these orphaned Enterprise Vaults. They have been deleted. The entryway to those orphaned vaults has been deleted. So they sit on the system, but there's no way for the ministry who is doing the search to get to them—

Mr. Victor Fedeli: So this has to come from you?

Mr. Kevin Costante: —and I believe the expert this morning also testified to that effect.

Mr. Victor Fedeli: The difference between the backup tapes and the Enterprise Vault: Was that explained to Dr. Cavoukian?

Mr. Kevin Costante: I believe we did not talk to Dr. Cavoukian about the Enterprise Vault. There was discussion with her about the backup tapes, and you'll see that in her report.

Mr. Victor Fedeli: I wanted to ask you a question about "transitory." Is a five-page discussion on approaching a Speaker considered transitory—five pages of emails?

Mr. Kevin Costante: I don't think I can comment on that.

Mr. Victor Fedeli: Why couldn't you comment on that? It's a topic. It doesn't seem to be a lighthearted "Do you want to go for coffee?" email. Would that be considered transitory?

Mr. Kevin Costante: I guess it would have to meet the terms that the committee talked about: It was about gas plants, it was in the time period and it was one of the individuals—

Mr. Victor Fedeli: If it said here, "Controversy over the gas plants," "Manage the gas plant issue," five pages of emails back and forth with people, would that—

Mr. Kevin Costante: It sounds like something that is not transitory.

Mr. Victor Fedeli: It sounds like something that is not transitory. Good to know. Thank you.

We've got another set of emails that talk about gas plants—"concerning the Mississauga and Oakville power plants." It's a page-and-a-bit email between people. Would that be something that would be considered transitory?

Mr. Kevin Costante: It's hard for me, Mr. Fedeli, to comment on something I haven't seen.

Mr. Victor Fedeli: "We have just received the attached letter from Jim Wilson regarding the release of documents concerning the Mississauga and Oakville power plants."

Mr. Kevin Costante: Could I—

Mr. Victor Fedeli: And we go back and forth. Would that be something that is transitory—"I'll meet you for coffee"—or is this a transitory document? You've been able to answer comments about transitory before, so I'm hoping you can tell me whether you would consider a page and a bit—

Mr. Kevin Costante: Could I see the documents, please?

Mr. Victor Fedeli: Liberal gas plant scandal document 8—

Mr. Kevin Costante: You're asking me to comment on something I haven't seen.

Mr. Victor Fedeli: I don't have a copy of it here. We had it in the earlier testimony. I'll need it back, if you don't mind.

Mr. Kevin Costante: Yes.

Mr. Victor Fedeli: It's the back page, just where the first email started—

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, if you might allow the Clerk to do this—

Mr. Victor Fedeli: Oh, I didn't know you had one.

Interjection.

Mr. Victor Fedeli: Thanks. I'll give you a copy to keep, then, after.

Is this something, in your opinion, that you might consider transitory, or is this more like the kind of email that maybe we should have had in the committee? It's people talking amongst themselves about—I'll let you think on that, and then I'm going to ask another question here.

How's my time?

The Chair (Mr. Shafiq Qadri): Two minutes.

Mr. Victor Fedeli: Two minutes.

This is page 3 of Dr. Cavoukian's report: "Upon receipt of this complaint, my office immediately launched an investigation.... During our interview with the secretary, he stated that, in January 2013, Mr. David Livingston, the former Premier's chief of staff (Livingston) approached him, seeking administrative computer system passwords and information about how to permanently delete emails and other electronic documents." What's that all about?

Mr. Kevin Costante: I'm going to ask Mr. Nicholl to—

Mr. Victor Fedeli: You've got about a minute.

Mr. Kevin Costante: Be quick.

Mr. Victor Fedeli: Please.

Mr. David Nicholl: Yes, I will. Basically, there was a request from the Premier's office to get admin rights to clean up hard drives before they pass those machines on to new staff coming in.

Mr. Victor Fedeli: So this is permanently deleting emails and other electronic documents. What are "other electronic documents"?

Mr. David Nicholl: No. There's no connection between admin rights and email at all.

Mr. Victor Fedeli: I'm just reading from here.

Mr. David Nicholl: Yes. There's no connection between an admin right and an email account. Admin rights just give you access to your own C:\ drive, your hard drive on your own local PC. The only connection to emails could be if you had actually saved emails to a folder in your own C:\ drive.

Mr. Victor Fedeli: And what are "other electronic documents"?

Mr. David Nicholl: If you had, say, created your own Word document and it was on your C:\ drive. But you can delete that yourself anyway. You don't need an admin right to do that.

Mr. Victor Fedeli: What would he need to approach the secretary of cabinet for administrative computer system passwords for?

Mr. David Nicholl: Why would he?

Mr. Victor Fedeli: What would he need those for?

Mr. David Nicholl: If he wanted to basically restore the PC to its original form.

Mr. Victor Fedeli: So, when he was deleting emails, would they end up in this Enterprise server?

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

Mr. Tabuns.

Mr. Peter Tabuns: Gentlemen—and I will decide between you who answers—at any point, did one of you meet with Mr. Livingston about his interest in deleting either the contents of hard drives or deleting emails when he was chief of staff to the Premier?

Mr. David Nicholl: I had a conversation the previous August, August 2012, where Mr. Livingston wanted to understand the process for deleting email accounts—not records, but accounts. The Premier’s office had a concern that when people left and then came back, their email account was still going. They were concerned that emails would be coming in and no one was checking. That was basically a process issue passed off to Cabinet Office to resolve. It was basically just a matter of getting the right forms filled in and getting email accounts deleted at the proper time.

The January conversation was, just as Mr. Fedeli said, based around issuing an admin right to clean up PCs in preparation for a new office. The admin right doesn’t actually do anything with the email accounts. He again reiterated the issue with email accounts being left open when people leave and how important it was that there was a process to make sure that emails didn’t come in and lie and then didn’t get answered or something.

Those were the two occasions.

Mr. Peter Tabuns: Did you meet with him personally on the second occasion?

Mr. David Nicholl: No. Phone. Phone call and email.

Mr. Peter Tabuns: Did you advise of his responsibilities—

Mr. David Nicholl: Yes, I did.

Mr. Peter Tabuns: How did he respond to your advice?

Mr. David Nicholl: He accepted my advice.

Mr. Peter Tabuns: Really? Okay.

According to Mr. Peter Wallace, typically, email accounts are deleted, decommissioned, extinguished, when people leave. But I gather this past year, when there was a transition, in fact, email accounts were saved for a variety of key people in the Premier’s office. Can you tell us the basis for that decision?

Mr. David Nicholl: I believe that the secretary of cabinet made a decision that there was a lot of activity happening, and that it was prudent to hold on to email accounts at that time. That’s my understanding.

Mr. Peter Tabuns: And in what form do those accounts exist today?

Mr. David Nicholl: Basically, we keep them. We hide them, in effect, so you can’t send emails to them, but they’re there. It’s hidden in the GAL, where you actually go and look at names. You can’t actually go and send emails to it, but the email account still exists. So we can still go and search those email accounts, which is, in fact, what we did for this motion.

Mr. Peter Tabuns: Okay. So you can access them at this point.

Mr. David Nicholl: Yes, we can.

Mr. Peter Tabuns: And I assume that access is fairly closely guarded.

Mr. David Nicholl: Yes, it is.

Mr. Peter Tabuns: All right.

Did you have questions?

Mr. Gilles Bisson: Yes. Just earlier, when I asked you some questions, you had mentioned that Mr. Milloy was involved in the process of how documents are released, that when you had documents that may be commercially sensitive, all that kind of stuff, you dealt with Mr. Milloy. I asked, was that in his role as MGS minister or in his role as House leader, and you said both. Can you explain a little bit what those conversations are about?

Mr. Kevin Costante: I had two conversations with Minister Milloy regarding documents—

Mr. Gilles Bisson: Or his office.

Mr. Kevin Costante: With him, personally.

Mr. Gilles Bisson: Okay, but his office as well.

Mr. Kevin Costante: Let me deal with the minister first.

Mr. Gilles Bisson: Okay.

Mr. Kevin Costante: On July 9, I believe, we informed Minister Milloy that we had found Craig MacLennan’s orphaned email account. So that was one occasion, and he asked for an explanation of that. He expressed his disappointment that we were just finding it then. The Wednesday night—sorry, I forget the date—he called me at home, basically to get a further update. Obviously, we had disclosed at that point to the privacy commissioner and the OPP and here. We chattered about the issue.

The normal process, in terms of—

Mr. Gilles Bisson: What was his concern?

Mr. Kevin Costante: Sorry?

Mr. Gilles Bisson: What was his concern? Why would he call you at home—

Mr. Kevin Costante: His concern, I think, was to understand the circumstances. It’s very complicated, as you’re seeing. We were trying to figure out the circumstances and talk to the various people who had interacted with the privacy commissioner. It took a few days to get clarity, and I believe on Thursday he was leaving on holidays, and he wanted an update as to kind of where it stood at that point. I talked to him for five minutes or so on the phone and gave him an update.

Mr. Gilles Bisson: When it comes to requests for releasing documents from these computer systems, is there anybody—either the minister of MGS and his staff or the House leader—involved in what is released?

Mr. Kevin Costante: I’m sorry; I didn’t hear you.

Mr. Gilles Bisson: Is there any involvement in regard to what is released?

Mr. Kevin Costante: No. They get to see them for issues management purposes, just like other things that come out of government. He is the minister responsible

for government services, so his staff get to see it, and they got to see it at the end of the process.

Absolutely all the decisions around what was released, what was responsive, were done by ministry legal counsel. That was also shown to the Wortzman Nickle legal firm—

Mr. Gilles Bisson: So what's the purpose of giving him that information if they're not influencing the release?

Mr. Kevin Costante: So if they get asked questions, they'll be aware of what has been released.

Mr. Gilles Bisson: So it's strictly a briefing and not looking for permission on your end.

Mr. Kevin Costante: That's correct.

Mr. Gilles Bisson: Okay. You've kind of answered—no, you've answered. I'm okay.

Mr. Peter Tabuns: I have no further questions.

The Chair (Mr. Shafiq Qadri): Thank you. The NDP yields its time? Thank you, then.

Thank you for your testimony to this committee, Mr. Costante and Mr. Nicholl, on behalf of our shared Ministry of Government Services. Thank you, gentlemen.

We have some—yes?

Mr. Jim McDonell: Can we just have a 10-minute adjournment?

The Chair (Mr. Shafiq Qadri): A 10-minute recess. *The committee recessed from 1434 to 1452.*

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qadri): Colleagues, I welcome you back into session. We have a couple of motions, some clarifications and some housekeeping issues. There was a mail-out from July 23 with reference to some commercially sensitive info, and our Clerk will just explain that momentarily.

The Clerk pro tem (Mr. Katch Koch): Thank you, Chair. On July 23, the Clerk of the Committee sent out to committee members a package of documents that was received from the ministry. The deputy minister also flagged some of the documents as commercially sensitive, and the practice in this committee has been to ask committee members for direction on how to handle the commercially sensitive information.

The Chair (Mr. Shafiq Qadri): Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, I was on holiday at the time that those communications were sent. I did not have a chance to review them. I would appreciate it if this could be held down one week to our next meeting.

The Chair (Mr. Shafiq Qadri): Fair enough. Agreeable to the committee members? Done.

Next issue: the July 26 mail-out.

The Clerk pro tem (Mr. Katch Koch): The July 26 mail-out also contains some information that was flagged as confidential by the deputy minister. Again, we need some direction from the committee.

Mr. Peter Tabuns: I would ask the same.

The Chair (Mr. Shafiq Qadri): Agreed. Done.

Mr. Victor Fedeli: Mr. Chair?

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

Mr. Victor Fedeli: Are these the only two that you're dealing with? We were also given a package by the OPA. What date was that? We're still pending some—

Mr. Jim McDonell: Sensitive.

Mr. Victor Fedeli: It wasn't sensitive. They called it something different. Do you guys recall the OPA one?

Mr. Peter Tabuns: No, I don't.

Mr. Victor Fedeli: When we table the July 23 and July 26 next week, can we also table that OPA one? If you have any difficulty in finding what we're talking about, make contact with me, but it was very specific from the OPA. They wanted—

The Clerk pro tem (Mr. Katch Koch): The OPA filing?

Mr. Victor Fedeli: There was an OPA file where we had two, where one was public and one was preferred to be not made public.

Mrs. Laura Albanese: I recall something to that regard, but not the details.

Mr. Victor Fedeli: Yes. We need to nail that one down too. There is a third one.

The Chair (Mr. Shafiq Qadri): That's fine.

Just before we entertain the issue with the motions, there's a matter brought up with regard to tweets and Twitter accounts and so on. If it is felt that any medium such as—what is it, Twitter?—

Mr. Peter Tabuns: Twitter.

The Chair (Mr. Shafiq Qadri): —is being used to intimidate witnesses, then a formal report, or as part of a formal report, goes from this committee as a complaint to the House, and the Speaker does the ruling, not the Chair. I just table that for your information since that was raised at some point.

We now have two motions before the floor. I offer the floor to Monsieur Bisson.

Mr. Gilles Bisson: I move—

Mr. Victor Fedeli: I have a question.

The Chair (Mr. Shafiq Qadri): Yes, just a second. Mr. Fedeli?

Mr. Victor Fedeli: Does that also include former MPPs and former cabinet ministers tweeting?

The Chair (Mr. Shafiq Qadri): I have no idea. In any case, Mr. Bisson?

Mr. Gilles Bisson: I move that the Standing Committee on Justice Policy request that the office of the Deputy Minister of Energy and the secretary of cabinet provide all documents from 2011, 2012 and 2013 relating to guidelines to the minister or ministry staff on the preservation and deletion of electronic records.

The Chair (Mr. Shafiq Qadri): Thank you. Comments before we move on this motion? Seeing none, all in favour of this motion? All opposed? The motion carries. Is that the extent of the motions today, Mr. Bisson?

Mr. Gilles Bisson: That's my motion.

The Chair (Mr. Shafiq Qadri): Nothing with reference with Mr. Delaney?

Mr. Gilles Bisson: You would only wish.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, you have the floor.

Mr. Victor Fedeli: Thank you, Chair. I move that the Standing Committee on Justice Policy request from the Ministry of Government Services, Cabinet Office and the Premier's office all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by the following email address: homeoffice@liberal.ola.org.

The Chair (Mr. Shafiq Qaadri): All right, the motion is in order. Comments or—yes?

Mr. Bob Delaney: Chair, I have a few things on this one. There is no time frame here. I think Mr. Fedeli might want to amend his motion with regard to a time frame. Secondly, we have been used to our ministries searching email accounts that end with @ontario.ca. Would Mr. Fedeli explain why he thinks that this is relevant or in order or whose email address this is? Like, what's this all about?

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

Mr. Victor Fedeli: Thank you, Chair. On February 8, 2013, an email was sent to a group of people but copied to homeoffice@liberal.ola.org. One of the topics in here is “the Premier designate's call to add the Oakville gas

plant to the Auditor General's review drove the media cycle” etc. They clearly are discussing gas plant scandal hearings in this email to that address, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Any further comments before we vote?

Mr. Bob Delaney: He has not provided a time range which—to be reasonable, all other such motions have said “between this date and that date.”

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

Mr. Victor Fedeli: Considering this includes the Oakville gas plant cancellation, which occurred in 2010, let's say 2010 to present, to today.

The Chair (Mr. Shafiq Qaadri): Is that satisfactory, Mr. Delaney?

Mr. Bob Delaney: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): So, those in favour of that time frame amendment? I take it that's in favour. Fine. So now we'll vote on the motion, as amended. Those in favour of the motion, as amended? Those opposed? The motion carries.

Any further business before this committee? Thank you, lady and gentlemen. The committee is adjourned until next week.

The committee adjourned at 1458.

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