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(Hansard)**

Tuesday 20 August 2013

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des débats
(Hansard)**

Mardi 20 août 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 20 August 2013

Mardi 20 août 2013

The committee met at 0900 in room 151.

MEMBERS' PRIVILEGES

MR. WILLIAM BROMM

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy to order. We have our first witness. Please come forward, Mr. William Bromm, legal counsel and special adviser, office of the secretary of cabinet.

Welcome, Mr. Bromm. I invite you to be sworn in by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): 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. William Bromm: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bromm. Your five minutes of opening address begin now.

Mr. William Bromm: Good morning. I am William Bromm. I am currently the legal counsel and special adviser to the secretary of the cabinet, a position that I've held since April 2011. Prior to that I was the executive assistant and legal counsel to the deputy Attorney General.

As Cabinet Office legal counsel, my main role is to provide support to the secretary of the cabinet on a wide range of issues, including government and cabinet operations, orders in council, and election and transition planning. I also assist the secretary in providing advice on these issues to the Premier's office and other ministries. I also provide advice to ministries and the Premier's office on the operation and authority of the Legislative Assembly.

I understand the operation of parliamentary privilege gives the committee the authority to request information from me that is otherwise protected by privilege or confidentiality. I just want to confirm for the committee that I've received authorization to discuss any matters of interest to the committee even if the information is privileged. The government does not, of course, waive that privilege as it relates to any matters outside of the committee.

So with that, I would be happy to answer your questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bromm. Mr. Fedeli, the floor is yours.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Mr. Bromm. Thank you for being here today.

Mr. Bromm, it's clear from the documents that—you know, we've been at this a little while now. It's clear from some of the documents that cabinet and Cabinet Office have been heavily involved in both the gas plant cancellation and all of the "happenings," if you will—I'll try to use a pleasant word—sort of the happenings since then. Can you walk us through your role in this whole gas plant debate?

Mr. William Bromm: I can try. It's hard because of the volume of records, and I'm sure the members who have gone through the records have seen my name and many other names on a large volume of records.

Mr. Victor Fedeli: Yes, about 3,500; you're in about 3,500 of them.

Mr. William Bromm: Exactly. So it's hard for me to—I wouldn't want to leave anything out, but I can speak primarily to my role in the secretary's office. I would provide advice on machinery of government issues.

For example, when I joined the office in April 2011, it was in anticipation of the general election coming up in the fall, and I was brought in to assist the secretary in preparing the traditional transition materials we always prepare for a general election. As part of that role, because I was in the office and the office is very small—there are only three people in the office—I would have had occasion to be copied on or receive documents related to the gas plant transactions. Early on it was, of course, the Oakville transaction, but I wasn't legal counsel on those files. I was simply in the secretary's office.

On occasion, I would be asked to provide some advice on issues coming to the secretary, but largely my role at that time would've been to see the email. We're all copied on everybody's emails because we're very small. I would go to the secretary and say, "Have you seen that email? Is there anything that you need?" She would say, "No, I'm good." I would step out of the picture and go back to the work I was there to do.

Mr. Victor Fedeli: Okay.

Mr. William Bromm: But if you have any particular questions about documents, obviously, I'd be happy to answer them.

Mr. Victor Fedeli: Yes, I've got maybe a dozen or so. Right off the bat—you have our documents there now?

Mr. William Bromm: Yes.

Mr. Victor Fedeli: So document 1—

Laughter.

Mr. Victor Fedeli: Exactly; you're chuckling.

It says you're "not going down alone." You're talking about the gas plant, the justice committee—

Mr. William Bromm: Yes.

Mr. Victor Fedeli: —and you say, "I'm not going down alone honey and I'm not above naming names."

So, will you name some names this morning?

Mr. William Bromm: Thanks for starting with some levity. This is just a joke between Halyna and I. Halyna was very stressed out about the idea of coming before the committee, as any of us would be. We're sort of choreographers behind the scene; we never like to be called up to the stage. This was just a moment of levity between Halyna and I saying, "I don't know why I'm on this list, but you are," knowing that she was nervous. That's really all that's about.

Mr. Victor Fedeli: If it was anybody other than you I'd probably say, "Mr. Bromm, this is no laughing matter," but we'll keep this in a pleasant tone this morning because I really think that we've got some pretty serious questions to ask you.

Mr. William Bromm: Absolutely.

Mr. Victor Fedeli: We'll get through to them. I do appreciate your comments to Halyna. I thought you'd enjoy starting that way as well.

Mr. William Bromm: At least you didn't bring up the one that has "gas" in it.

Mr. Victor Fedeli: Yes, exactly; we were selective.

You were definitely involved in the arbitration negotiations between the government and TransCanada. Am I correct in that?

Mr. William Bromm: Actually, no. I did have a very small role, and you might have seen some records related to that. So when a decision had been made that the government wanted to proceed and enter into negotiations and an arbitration agreement, there was discussion between the secretary of the cabinet, the Deputy Attorney General at the time, Murray Segal, and Chris Morley, as to who could actually sign the arbitration agreement. I'm not aware of the background to that, but the primary discussion was whether or not the minister or the deputy should sign the agreement, and there was some back and forth.

What I provided advice on was the operation of the Electricity Act to those particular circumstances. That act requires the minister to sign certain agreements, or somebody else like the deputy minister on direction of the minister. So I provided the advice that the deputy could not sign the agreement unless he was directed to do so by the minister. I was then asked to prepare that direction letter, and I did. But in terms of the actual arbitration agreement or the negotiations, I was not at all involved. In fact, to prepare that opinion in the direction letter I

didn't even need to know the contents of the arbitration agreement.

Mr. Victor Fedeli: Okay, that's fair. In document 2—this is from David Lindsay with energy. It's to yourself, at cabinet; it's to Chris Morley, in the Premier's office; David Livingston, at the time at Infrastructure Ontario; Shelly Jamieson, cabinet; Murray Segal, justice; Emily Marangoni, Premier's office; and Jennifer Wismer, energy. It's sort of multi-ministerial. The topic is the 8:30 a.m. call on Vapour.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: So you were familiar with Project Vapour, then?

Mr. William Bromm: Yes.

Mr. Victor Fedeli: You understood what that was?

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Okay. When did you learn of the so-called additional costs for Project Vapour; that is to say, the two sets of costs, one being for the ratepayer and one being for the taxpayer?

Mr. William Bromm: I don't have a particular recollection of when I would have learned, but it would have been around the same time that those issues were being discussed in the Legislature or at the committee, because the costing of the project was just not something I was ever involved in.

Mr. Victor Fedeli: So that document 2, then, was August 4, 2011.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Would that have been around the time, then, that you would have understood the two sets of costs existed?

Mr. William Bromm: Absolutely not. In fact, although I'm on the "to" line, one of the things I would point out is this is because of my reference before of us being a small office—

Mr. Victor Fedeli: Okay.

Mr. William Bromm: —and I was in the secretary's office at that time. I actually didn't attend many of the Vapour meetings at all because I was doing a different project for the secretary, so I wouldn't even have known the contents of those calls or whether they had even gotten to the point of discussing anything related to the costs that early in the project.

Mr. Victor Fedeli: Okay. Document 3, then, from Chris Morley—he's talking about the cabinet document that was signed: "I've now spoken with 4 who have been briefed and are willing to sign necessary docs on Vapour.

"Bentley, likely via long pen

"Duncan, via long pen

"Duguid

"Wynne, who is down at Queen's Park for an event...."

So, would you agree, then, if he's saying he has spoken with the four who have been briefed and who are willing to sign, that those four people understood what they were signing?

0910

Mr. William Bromm: I assume that they would understand what it is that Mr. Morley spoke to them about, but I wouldn't know the content of that particular conversation.

Mr. Victor Fedeli: It's next. It's page 2 of 3, and this is the "Private, Confidential and Commercially Sensitive." This is the arbitration discussion on reasonable awards, costs, award, overview, "reasonable damages to the loss of anticipated value" of Oakville. "The award may become a risk of the province." That is basically what the arbitration details and terms were. That's our document 3.

So when would cabinet have learned about this arbitration agreement?

Mr. William Bromm: Well, I'm not really sure because of the way this particular approval process would have worked, because it's only four ministers, and I believe the former secretary, Shelly Jamieson, and Peter Wallace, the current secretary, spoke of this.

This particular package was a walk-around. It was outside of the normal cabinet process, so four ministers signed as the quorum of cabinet, and then two weeks after this, which is the normal practice, the item would be reported into cabinet. Often, that item would just be reported as an information item. Between meetings of cabinet, a decision was made to proceed with arbitration with TransCanada Enterprises. That might have been the whole content of the conversation, but that's entirely speculation on my part because I don't attend cabinet.

Mr. Victor Fedeli: Okay. Document 4 brings you in just a bit deeper than maybe you suggested. I asked you about August 4, if you would have known by then. But this August 5 document—this is from David Lindsay—says, "Okay. I've just read the arbitration agreement here in Stratford"—that's the one I just referred to—"and had my office read the minister's letter of authorization drafted by William Bromm and the supporting cabinet minute. Based on this authorization I have signed the arbitration agreement." So he's signing this based on a letter that you crafted on August 5.

Mr. William Bromm: Yes, and that's the direction letter that I referred to that was simply direction from the minister to the deputy to execute the arbitration agreement with TransCanada Enterprises.

Mr. Victor Fedeli: So at that particular time, when you crafted the authorization letter on August 5—if you crafted that letter on August 5, would cabinet, or those four members, have understood, then, the fact that they were signing an arbitration with two sets of costs?

Mr. William Bromm: I'm sorry, and I certainly don't want to frustrate you, but I just wouldn't know what any of the members who signed the documents understood because I wasn't part of any of the discussions with them.

Mr. Victor Fedeli: So when I asked you when did you know there were two sets of costs—can you try to narrow down a bit more about a date? I know it's hard, and this was a while ago, but I'm just trying to get a handle—

Mr. William Bromm: For me, it wouldn't be a while ago. It would really have been when the issues were first coming up, either in the Legislature or at this committee, when you were particularly talking about the costs of the transactions and more information was coming out. Prior to that, I just wasn't involved in the negotiations of the deal or any aspects of what the costs would be.

Mr. Victor Fedeli: On document 4 again, this one that talks about the letter of authorization—I'm going to read you this letter: "This letter will confirm the basis upon which Her Majesty the Queen in Right of Ontario (the "crown") and the Ontario Power Authority (the "OPA") have agreed to divide between themselves responsibility for the payment of any award made under an arbitration agreement ... entered into between TransCanada ... the crown and the OPA...."

Does that tell us that there are two sets of costs: one for the OPA, which are the ratepayers, and one for the crown, which are the taxpayers? Is this not definitive back as early as August 5, 2011, that there were indeed two sets of costs?

Mr. William Bromm: One, I would point out that's not the letter that I wrote. The letter I wrote would have been from the minister to the deputy. So I don't really know a lot about the content of the letter. Is that letter actually in your package?

Mr. Victor Fedeli: Yes, the draft is document 3 and 4 of 5. The actual letter from Minister Brad Duguid to the deputy minister—this is the letter that the minister wrote to the deputy minister. He's saying that the liability is between the crown and the Ontario Power Authority. I'll ask you, then, as a lawyer, can you tell me if that signifies to you there were two people paying for this?

Mr. William Bromm: When I read that opening paragraph, in particular, it says to me—and this is again a quick reading—that there are a set of costs, and those costs will be divided between the OPA and the crown, formally—

Mr. Victor Fedeli: You may be the first person in that seat that has ever said that, by the way, and I thank you for that.

Mr. William Bromm: Well, I'm happy to shed some light on some—

Mr. Victor Fedeli: Well, you are, and I knew you would shed some light today.

Mr. William Bromm: I see it as one set of costs, and they're being divided between two parties. I don't necessarily see that as saying that there are two separate sets of costs.

Mr. Victor Fedeli: No, no, we'll call it one set of costs—the cancellation costs—but paid for by two groups.

Mr. William Bromm: Right, yes.

Mr. Victor Fedeli: The sad part, and why I bring this up, is that the government—even today, if you look at Minister Bentley's testimony and many others who have repeated this—"I want to draw your attention"—I'm paraphrasing—"You're going to hear a lot of numbers over the next year; I want you to remember one number:

The total cost of cancellation is \$40 million.” The total cost of cancellation is \$190 million. Actually, there are two numbers to remember and two discussions.

The government continued to claim that the Mississauga cancellation was \$190 million. They were right; that was the cost to the taxpayer, but what they failed to acknowledge or admit to is that there was a second cost paid and borne by the OPA, which is the ratepayer, which brought Mississauga to \$275 million. With this letter, signed on August 5, it’s very clear that there was one cost but borne by two parties, to paraphrase your own words again.

The Oakville transaction—the government continues to say there’s only one number you need to hear, and that’s \$40 million. That’s the total cost. It’s sort of, you know, cute by half, right? The total cost bracket to the taxpayer is \$40 million, but the total cost to the ratepayer, the one that they’re not talking about, may be \$300 million, \$400 million or \$500 million by the time we’re done. That’s what this letter absolutely and unequivocally proves this morning. That’s why I bring this up, Mr. Bromm.

You wrote a pretty good timeline. I have to admit that we use that constantly. On March 8, 2013, you wrote Oakville.doc and Mississauga.doc, and it is the timeline—

Mr. William Bromm: We all work in Her Majesty’s service.

Mr. Victor Fedeli: Well, you know, I’ve got to be honest with you, we genuinely appreciate this timeline because it’s pretty revealing, actually. We use it almost as our bible. We’ve expanded on a few things and maybe put a few salacious words here and there just to colour it a bit. We might use the word “scandal” once in a while—sorry, Chair, I was trying to be good today—but your basis is there. Very clearly, your March 8 timeline states that there would be two sets of costs—or one set of costs borne by two people: the ratepayer and the taxpayer. Can you, in your estimation, understand or shed some light to us on why the government has never revealed, until the Auditor General’s report on Mississauga, that there were indeed two sets of costs? You knew it. You’re pretty clear in here that there are two sets of costs. Can you give me any indication as to why they would not have told us?

Mr. William Bromm: I’m sorry. I can’t shed any light on the information the government would have given about cost because I wouldn’t have been involved in those issues at all.

Mr. Victor Fedeli: But they had this. You sent this to a Shannon Fuller at Cabinet Office. Who else, do you think or would you have understood, would have received this set of timelines?

Mr. William Bromm: I prepared that particular set of timelines—is it in here?

Mr. Victor Fedeli: Yes, it’s doc 5.

Mr. William Bromm: I suspect that it’s the set of timelines that we prepared in anticipation of the secretary’s appearance before the committee. So those documents would have gone to the secretary, for example, and

to other individuals who were getting ready for the committee’s proceedings. So it would have been shared with a small circle of people. This was not a document that I prepared for the government, for example; it was really internal to our office.

0920

Mr. Victor Fedeli: Okay, but it is very clear that there are two sets of documents.

The—I’ll call it the now infamous July 29, 2011, cabinet minute; this is document 6. We know, then, that Chris Bentley, Kathleen Wynne, Brad Duguid and Dwight Duncan were aware then, by signing this document and understanding the subsequent letter that came out of this document on August 5, seven days later, that there were two sets of costs. Why would you think that neither of—any of these four people would acknowledge that there are indeed two set sets of costs, other than, now, the letter that we have from Brad Duguid that says there are two sets?

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

Mr. Victor Fedeli: Why do you think they don’t acknowledge that?

Mr. William Bromm: It’s a question you would have to direct to the individuals you think—

Mr. Victor Fedeli: But I did. I asked Premier Wynne 30 times here, “When did you know there were two costs?” But she won’t answer that question.

Mr. William Bromm: I’m sorry. I can’t shed any light on that either.

Mr. Victor Fedeli: Do you suggest, then, that they’re misleading the Legislature or the province by not telling us that there are two sets of costs?

Mr. William Bromm: I would appreciate the position you might be coming from, but that’s not language that I would use or any information I would have.

Mr. Victor Fedeli: What language would you use, then, respectfully, to suggest that they know something and won’t admit it or won’t tell us?

Mr. William Bromm: That’s really not something I think I’m in a position to comment on at all.

Mr. Victor Fedeli: Okay, but I have asked the Premier 30 times here and maybe over 100 times in the Legislature, and we can’t get an answer of when. Why would you think she can’t answer that question?

Mr. William Bromm: Again, I couldn’t say.

Mr. Victor Fedeli: Thanks.

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

To the NDP side, Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Chair. Mr. Bromm, thank you for being here this morning.

You may have touched on some of this, but just so I can set up my questions properly, what was your role in managing Project Vapour for Cabinet Office?

Mr. William Bromm: I actually had very little role; in fact, I would say I had no role at all in actually managing Project Vapour. As I mentioned, I was brought in to the office in April 2011 to prepare the transition materials for the election. Those materials are voluminous and that

was primarily my full-time job. But on occasion, because of the nature of our office—it's very small—and also because, at the time, the executive assistant to the secretary was moving to another position, I was sort of doing both my job and filling in for the executive assistant. My main role, as I mentioned, would have been to say, "Do you have what you need for today's meeting? Did you see the email from the deputy?" or "Did you see the email from Chris?" But it wasn't a substantive role at all—more air traffic control than anything.

Mr. Peter Tabuns: So you had other primary responsibilities. From time to time, you would prepare documents related to Vapour.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Can you remember when you first did work on that file?

Mr. William Bromm: I think the first time I did anything substantive would have been around the time of the direction letter that I talked about, in seeing the exchange between the deputy, the former secretary and Chris Morley about who could sign the agreement. And then, because I had information about that, I was able to weigh in, clarify how that had to be worked out, and write that letter.

Mr. Peter Tabuns: Given that you were there in 2011 in the pre-election period and you're still here today, were you involved in any way with Vapour-lock?

Mr. William Bromm: Absolutely not, actually. I mean, I was certainly aware that Vapour-lock existed as a project within the office, but it was not something that I was involved in at all.

Mr. Peter Tabuns: Okay. How many documents, or cabinet minutes, did you draft related to the cancellation of the gas plant?

Mr. William Bromm: None. As legal counsel in the secretary's office, I would rarely draft a cabinet minute, and would actually rarely be involved in something going to cabinet unless there was an issue around how it was working, because we have a whole machinery in Cabinet Office, the executive council office, that works with the line ministry that's bringing forward the item to draft the minutes. The only time I might be involved is if there's a question around, for example, a minister is not in the area to sign: Who are the minister's delegates? Can someone sign by fax because they're not available? So I would answer machinery-of-government legal questions to ensure that cabinet is truly authorizing something, but I wouldn't be involved in drafting the actual minute.

Mr. Peter Tabuns: Okay. Who asked you to draft that minister's letter of authorization again?

Mr. William Bromm: I can't actually remember who asked but I'm assuming that since I waded into the water, it was either the deputy, the secretary or Chris Morley who said, "Well, can you draft us a letter?" At the time, my recollection is, they were working under quite a fast timeline to try to execute that arbitration agreement and this was like a little bump in the road, and rather than going back to the ministry and saying, "William Bromm says you need a direction letter," and then the ministry

calling and saying, "Can you clarify what you meant by 'needing'?" it's just easier for someone to say, "Just draft the letter. You seem to know what you're talking about," and so I drafted the letter.

Mr. Peter Tabuns: You and Halyna Perun were in communication about all of these matters.

Mr. William Bromm: Not during the actual—a lot of the negotiation, but Halyna and I were in a lot of communication during the tail end of the estimates committee proceedings, yes.

Mr. Peter Tabuns: Sorry; during the tail end of the estimates committee proceedings?

Mr. William Bromm: Yes, when the estimates committee had passed its motion asking for documents and the ministry was working through that process, Halyna and I were in contact. Prior to that, we had some contact, but it was mostly for me to gather information for the secretary at various stages of the project, but I wouldn't say we were in frequent contact on the file.

Mr. Peter Tabuns: And what sort of information were you gathering for the secretary from her?

Mr. William Bromm: My recollection—again, it was some time ago and a large volume of records. If I pull one up in my mind, it would be "Can you just give me a status of the discussions?" or something like that, and Halyna would send an email, and I would make sure that it went to the secretary.

Mr. Peter Tabuns: And can you tell us about the role of the two of you, which became more intense once the estimates committee had put forward its motion and was looking for documents?

Mr. William Bromm: Yes. Well, it wasn't early days, but it was still early days in the issuance of motions from committees for the production of documents. Not everyone is familiar with the operation of the assembly and how committees work, and so at a certain point in time, people would have reached out for information about how this process works, and then I would become more involved at that point, not just with energy but other ministries that are involved as well.

Mr. Peter Tabuns: So did you advise on the preparation of, assembly of and production of documents?

Mr. William Bromm: It depends on what you mean by "advise on." I was not involved in determining how their search should work or what their search terms would be or anything like that. I would have been at the 10,000-foot level in terms of saying, "This is how a committee motion works and this is how you respond to a committee motion," your options for presenting information to the committee, those sorts of things, but not the actual details of a search.

Mr. Peter Tabuns: Tiffany Turnbull indicated that you reviewed her statement before she came before this committee.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Why was that your role?

Mr. William Bromm: Well, Tiffany was a former member of Cabinet Office, and one of the roles I have assumed with committee proceedings is assisting govern-

ment witnesses appearing before the committee. So as a former member of the government—when Tiffany was called, she asked for some assistance, like many individuals not at all familiar about how committees work, not familiar at all about the operation of our oath of office in relation to the operation of parliamentary privilege and also not familiar with how to answer certain questions—what about cabinet confidentiality? A lot of my role had to do with making sure people understood how a committee operated, how parliamentary privilege operated and what our responsibilities were as public servants in terms of co-operating with a committee of the assembly and how to respond to questions.

Mr. Peter Tabuns: And do you still have that role today?

Mr. William Bromm: Yes.

Mr. Peter Tabuns: So there have been witnesses who have come before us who have had an opportunity to talk with you before they sit down with us.

Mr. William Bromm: Yes. I would say primarily that it relates to public servants.

People are not required to meet with me before they come before the committee, and I certainly don't meet with all of the witnesses who have come before the committee.

0930

Mr. Peter Tabuns: But if a former member of the Premier's office or Cabinet Office is coming here and they request your assistance, you've been directed to give it.

Mr. William Bromm: Usually, with respect to any appearances by a public servant—I have not been involved in preparing any individuals from the former Premier's office, for example. That's sort of the separation of church and state; a lot of work for the Premier's office members would have been done by other individuals. I don't know who they would be. I would be involved mostly on the public service side.

Mr. Peter Tabuns: And just out of curiosity: You're familiar with the Archives and Recordkeeping Act?

Mr. William Bromm: Yes.

Mr. Peter Tabuns: And could you say that you follow that act?

Mr. William Bromm: I would say that I hope I follow that act. Yes, I would say that I follow the act.

Mr. Peter Tabuns: Okay. Are you the person in Cabinet Office who is managing this file right now for the secretary of cabinet?

Mr. William Bromm: It depends on what you mean by "managing" the file, but I certainly play a coordinating role in the government: monitoring the committee's proceedings, monitoring the motions that you pass and making sure ministries that are named in the motion understand their obligations. We've been named in motions—by "we," I mean Cabinet Office; I need to make sure that we produce our own records. So, coordinating the government's response to the committee, yes.

Mr. Peter Tabuns: And you brief the secretary of cabinet on what's going on?

Mr. William Bromm: Yes. I try to, yes.

Mr. Peter Tabuns: Do you brief anyone in the Premier's office on what's going on in committee?

Mr. William Bromm: I don't think they need me to brief them on what's going on in the committee. I think they're watching closely.

Mr. Peter Tabuns: Yes. I'm just looking up so they can see me on camera.

The cost of the Mississauga cancellation and its division between ratepayers and taxpayers—you weren't aware of this until there was testimony in committee?

Mr. William Bromm: No, actually; I wasn't. I might have seen some email in passing or heard some passing discussion about discussions around the province and the OPA, but because it wasn't a file I was involved in, I wouldn't have weighed in. I wouldn't have paid much attention to those emails or those discussions at all.

Mr. Peter Tabuns: In reference to an earlier question from Mr. Fedeli about the conference calls on Project Vapour: You were copied and notified that the meetings were taking place.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: You were involved from time to time. When were you drawn in? What were you drawn in about?

Mr. William Bromm: Again, mostly I would be copied on them because I was in the secretary's office. Then, because I saw the meeting and it would be in my calendar, I would be able to go to her and say, "Do you have what you need? Is there any material that you need? Do you need me to sit in?" If the answer to all of the above was "I'm fine. I don't need anything" and "No, I don't need you," then I would step aside. So it would have only been on particular points in time—like the minister's direction letter—that I would actually become involved.

Mr. Peter Tabuns: And were there any other points you can remember when you were drawn into these teleconference meetings?

Mr. William Bromm: No particular points in time come to mind. The direction letter is the one that stands out the most to me because it's something that I actually wrote.

Mr. Peter Tabuns: Okay. Were you aware of the freedom-of-information request which included the Project Vapour Outlook records or request?

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Did you find it odd that no one claimed to have any records at all about this?

Mr. William Bromm: I didn't have a particular reaction. I know about a range of FOI requests that are coming forward to Cabinet Office and the Premier's office because I would be copied on the FOI request, particularly if we need to do a search within the secretary's office, and I would be copied on the responses to the request. But unless I'm asked to actually give an opinion on the FOI request or how to interpret a particular request, I wouldn't otherwise have weighed in on it.

Mr. Peter Tabuns: In looking through the documents, TransCanada Enterprises reserved a right to sue Ontario even after the arbitration agreement had been signed.

Mr. William Bromm: Yes.

Mr. Peter Tabuns: Can you tell us about that?

Mr. William Bromm: I can tell you about that because I think there's an email that's been produced where I make some mention of being "sorted" out.

Mr. Peter Tabuns: Yes.

Mr. William Bromm: At the time that the arbitration agreement was being executed—and not being an expert in commercial negotiations—our understanding within the secretary's office was that at the time they actually executed the arbitration agreement, the lawsuit would be set aside. That was our understanding.

Then, at the time it was actually going to be executed, we learned that they would not actually sign off on the lawsuit unless the arbitration or the settlement discussions came to a successful conclusion, so we looked into that. Of course, the explanation made perfect sense once we looked into it because the party would say, "I have a bird in the hand. You're offering me another bird; I don't have it yet, yet you want me to let this one go. So I'm going to hold on to my lawsuit. We'll have our settlement discussions, and if that works, then I won't sue you. But don't ask me to give this up if there's no guarantee of a successful outcome here." From a commercial perspective, it made perfect sense to me. I emailed the secretary to say, "I'm sorted out," and that was the end of the matter.

Mr. Peter Tabuns: Just so that I'm clear, TransCanada entered into an arbitration agreement with the province but didn't, in signing on to that, give up its right to sue?

Mr. William Bromm: That's right. The example I would give is, if you're going to sue me for \$100, and I say, "Don't sue me. Let's leave the room and let's chat about settling this as gentlemen," and you then say, "Great; I'm going to sign a document promising not to sue you, waiving my right to sue you," and we leave the room, and I say, "Yes, I'm kind of done," you've lost your recourse. But if you say, "Great; I'm happy to leave the room, as a gentleman. Keep in mind; I still have option B. Let's pursue option A. If it works, great; option B will be dropped. But if it doesn't work, I have my option B."

Mr. Peter Tabuns: Maybe I misunderstood this, but once Ontario signed on to the arbitration agreement, and once TCE signed on to the arbitration agreement, did not that bind them at that point?

Mr. William Bromm: It bound them to a process, but what TCE was saying—in my understanding again, not a commercial expert at all—was, "I'm agreeing to the process, but I reserve the right to the outcome that I expect and to be able to pursue it in the manner I want. So let's try to settle this. No one wants to be engaged in a lawsuit. Let's focus on this path, but I'm not abandoning the other road."

Mr. Peter Tabuns: Okay. On August 3, 2011, you wrote to Chris Morley about the cabinet minute. You said that if a deputy were to sign the minute, the minister should give an explicit instruction to the deputy or acting deputy, especially if they have a "fiscal limit." Was a hard ceiling on cost authorized by the cabinet minute?

Mr. William Bromm: I think that's an email that precedes the minister's direction letter that I've talked about. The reference to the fiscal limit in there is the normal fiscal limit that exists across the government for how much any deputy can sign for. It wasn't with respect to the particular transaction; it was, "Keep in mind that a deputy can only sign up to a certain amount. In addition, because we're dealing with a matter under the Electricity Act, the deputy can only sign anything on the minister's direction."

Mr. Peter Tabuns: Okay. Were you in contact with Colin Andersen on a regular basis?

Mr. William Bromm: No.

Mr. Peter Tabuns: You exchanged emails with Chris Morley and David Lindsay on August 5: "Colin good with idea of letter w no change to agreement language. He knows timing...." That was your only exchange with Colin Andersen?

Mr. William Bromm: My recollection, again, just a recollection some time ago, was that the secretary at the time—Shelly Jamieson, not Peter Wallace—and Colin had a conversation. She would have relayed the information to me, and I was relaying it to Chris Morley and David Lindsay.

Mr. Peter Tabuns: You didn't have contact with Andersen other than that, then?

Mr. William Bromm: Not that I recall. I can't recall any direct contact with Colin—unless he called the office looking for the secretary and I happened to pick up the phone because I would see it's ringing and someone's not around, that sort of idea. I don't recall any content conversations on either project with him.

Mr. Peter Tabuns: Were you consulted by Shelly Jamieson when political staff were screened from participation in the TransCanada discussions?

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Mr. William Bromm: Yes, I was.

Mr. Peter Tabuns: What did Shelly Jamieson ask you about this matter?

Mr. William Bromm: Basically, the secretary had received some information from the Ministry of the Attorney General—it was fairly early in our involvement in the process—that there had been some discussions between TransCanada and members of the Premier's office. At the time, having been given a notice of a potential lawsuit against the crown, she wanted to talk about what steps needed to be taken because of that notice. Then we talked about implementing a screen, because they would have then been potential witnesses to any lawsuit, to ensure that they were not involved on any ongoing basis with discussions with TransCanada and to keep them out of the file.

Mr. Peter Tabuns: So what kind of risk did their discussions with TransCanada pose to Ontario's position?

Mr. William Bromm: From my perspective in cabinet office, I wouldn't have looked at it—

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

Mr. William Bromm: —from the position of any risk. It was from the perspective of, you know that there are potential witnesses in a possible lawsuit; they should be screened out and set aside, both for their own interests and the interests of the province. But it had nothing to do with an assessment of any risk. That wouldn't have been something I would be involved in. I would simply be advising the secretary, "You are aware of some potential witnesses. You need to set them aside."

Mr. Peter Tabuns: The preservation of the records of those witnesses, would that have been of consequence to you?

Mr. William Bromm: Had I received a preservation notice, then it would have been of consequence to me.

Mr. Peter Tabuns: Should those witnesses have preserved all of their records?

Mr. William Bromm: My recollection is that there was no formal preservation notice given as a result of the notice of intent. It wasn't an actual lawsuit at that point; it was simply a notice of intent. A notice can be given and no lawsuit actually filed, and so an actual preservation order wasn't done at that time.

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

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Delaney.

Mr. Bob Delaney: Chair, just before I begin my questioning of the witness, on a point of privilege: I have heard the opposition trying to advance the theory that somehow, the government was trying to hide costs, and has used the term "two sets of costs." In the committee's work so far, I think it's important to hold forth some clarity around this. The testimony before the committee and the emails tabled to date show that the \$40 million and \$190 million numbers were provided to the government by the OPA. In terms of long-term costs, the Auditor General looked at the cost of operating the relocated plants over 20 years, not just the sunk costs. Using those same formulas, the OPA has come to this committee to update their estimates on the Oakville relocation.

Chair, all of this has been done openly and transparently in front of the committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. We'll accept your comments. It's not a formal point of privilege, which apparently our committee does not entertain, but please proceed.

Mr. Bob Delaney: Thank you.

Good morning, Mr. Bromm. Good to see you.

Mr. William Bromm: Good morning.

Mr. Bob Delaney: As counsel in the cabinet office—and I'm just going to recap some of the things that I think I've heard you say—you've worked with various ministries as they respond to the requests made by this com-

mittee for documents. Do you have any idea how many motions have been passed by this committee to date to produce documents?

Mr. William Bromm: I think about 32.

Mr. Bob Delaney: Okay. Would you know approximately the number of records or pages that have been produced?

Mr. William Bromm: I've heard various numbers. I haven't counted them, so I wouldn't want to say. I can't absolutely tell you that there have been X number; I can tell you, based on the ones that I myself have had to read, that there have been thousands of pages of documents given to the committee.

Mr. Bob Delaney: Just to clarify, these requests have all been separate and distinct from the original estimates committee motion, which at the time asked for documents—just documents—within a specific date range from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority, with very different terms and date ranges than those dealt with by this committee, correct?

Mr. William Bromm: That's my understanding, yes.

Mr. Bob Delaney: What are some of the challenges that ministries and the cabinet office face when responding to these motions?

Mr. William Bromm: You're going to make me cry.

They've been very difficult for a number of reasons. Although the government is in the document production business, on many occasions—and the secretary of cabinet has spoken to this—the powers of the committee is an added overlay that a lot of people are just not familiar with in terms of how we provide documents, whether or not you can redact documents and the decision about whether or not something is responsive.

The other added overlay is, when we have an FOI request or a court proceeding, we know with absolute certainty that we only provide material—we'll just call it responsive material, for the ease of reference. But, for example, if you ask for information about subject matter X, then subject matter Y and Z is out; and in a court proceeding or under FOI, that is clear, but the problem that we have is, in the government, we have what I'll call many mixed-use documents. We'll prepare materials that will talk about three different topics—cabinet agendas have a wide range of topics—and when a committee asks for a document related to the gas plant, it's easy when the document is only about the gas plant; it's much more difficult when the document is about the gas plant and four other things. Someone has to make the decision about, can we redact the other information? Can we sever? If we have five attachments and only one of them is about the gas plant, can we leave out the other four? Those are things that have been subject to a lot of discussion within the government, and the interpretation of the motion in and of itself is subject to a lot of discussion. When there are a list of code names, do we supplement the code names? What are the other code names that you use when you ask for documents and correspondence? What's the difference between a document and correspondence?—

many, many issues that are involved, with the overlay of a small period in which to respond.

We always want to give the committee the documents it requests, but in a small amount of time and with the operation of privilege, at the end of the day, we always err on the side of interpreting purposefully and broadly, and producing broadly. I think that has been difficult at times because of the volume.

Mr. Bob Delaney: Can this sometimes descend into the theatre of the absurd in terms of what is and isn't responsive?

Mr. William Bromm: Well, I wouldn't call it the theatre of the absurd. I think, though—fortunately there are only a few, but I do know of examples of documents that are voluminous that have one reference to a gas plant in an appendix, and therefore we produce the entire document, absent any authorization to actually redact the document or withhold everything but the appendix. Sometimes it's difficult to make a decision to only produce the appendix because then it loses all context as well, and then what do we do? Do we create a new document for the committee to explain what we've done in order to produce only a small portion of a document? I wouldn't call it the theatre of the absurd, but I would certainly say it's the theatre of the difficult.

Mr. Bob Delaney: Okay. If a staff member were to send someone from whom the committee has requested documents an email that said something to the effect of, "On the way home, I need to stop and get some gas. Plants need watering in your office," would it end up being accidentally caught?

Mr. William Bromm: Well, it might be accidentally caught, but the hope is that I've screened that out. Because we use keyword searches and electronic searches, if you enter the term "gas" or you enter the term "banana," for example—which is one of the legitimate terms the committee has asked to be searched—you would get many records that have nothing to do with a gas plant or Project Banana. I, myself, have had to read hundreds of banana bread recipes; I've had to read hundreds of apple pie recipes, because one of the keywords is "apple," but I try my best to make sure—

Mr. Gilles Bisson: Any good ones?

Mr. William Bromm: Not so far—too much cinnamon.

I try to weed them out, and when I send out my own search requests within Cabinet Office I try to say, "Please don't send me banana bread recipes. Please don't send me apple pie recipes." But because of the volume, it's entirely possible that by accident a document that we know for sure is completely non-responsive will be in there.

The documents that concern me more, and that I know concern the secretary more, are the documents that we know have responsive content but have other content that is not responsive. And what do we do with it? We're the public service. We support the committee. We support the government. It's not really up to us to necessarily say, "That's not for your eyes."

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Mr. John Yakabuski: Point of order, Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, on a point of order.

Mr. John Yakabuski: I fail to see the relevance to our mandate in asking questions of our witness regarding how difficult it is to do record searches. Our mandate is not about how difficult their job can be. Our mandate is about getting to the bottom of a Liberal Party campaign scandal and how it affects the people of Ontario. While it can be entertaining to find out—perhaps we will get some good apple pie recipes out of this—but I don't think that that's the work of this committee. The work of this committee is far more serious than that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. We appreciate your failure.

Please continue.

Mr. Bob Delaney: What seems to be the work of the committee, Chair, is that Mr. Bromm has pointed out a very strong need for the committee to give some direction on what should and should not be done with material that is clearly not responsive to an information request—and I think that's probably the subject of a future sub-committee meeting, and I thank him very much for some very relevant testimony.

When he testified before this committee, the Deputy Minister of Government Services explained that his ministry's search for records in response to this committee has been—and he has echoed some of your own terminology—complex and time-consuming. To use his own words, he said, "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"—that's probably you—"to identify those with responsive content. The records were also separately reviewed by the external law firm"—and he named them. Based on this account, it sounds like a lot of resources are going into responding to these committee requests.

Can you give us a sense of how the volume and scope of the requests impacts the various ministries involved?

Mr. William Bromm: There is significant resource that goes into it. It's part of our obligation as the public service. We support the government. We also support the Legislative Assembly. So I don't think anyone resents the time and resources that have gone into it, but they are significant, and they're significant when there is a large volume.

Also, because of the added overlay for the government services motion, because it was a motion that they actually searched for records not within their own ministry but in another office—it actually turned out to be a political office where we don't normally go—and also to conduct an electronic search only, which gives a high volume of records that you do have to sift through. That's what we have to do.

Mr. Bob Delaney: Would it be useful to you, in your role, to get more fine direction from the committee over what to do with information that forms part of a docu-

ment in which—a part in which a small portion of the document is responsive to the committee’s request but many portions of the document are clearly not responsive to the committee’s request? Would you like to have any better direction from the committee on what to do with those portions of documents that are not responsive to either the committee’s mandate or to the request?

Mr. William Bromm: First, I would start by saying it certainly wouldn’t be my responsibility to tell the committee how to do its work. You’re all experts in your field. But I can tell you that there would be a sigh of comfort across the government if there were to be, for example, a clear articulation that, “The committee does not want, and no issues will be raised about the removal of, an unresponsive attachment to an email, as long as we get the material that’s responsive to our request.” That would satisfy a lot of debate that goes on.

We can have those discussions internally to the government, of course, and make those decisions. We have many senior people who can make those decisions. But it would always be easier if you knew, when you’re producing a document, that there will be no issues with it.

Mr. Bob Delaney: Such clarification, then, would provide the committee all of those things responsive to document requests, but only those things responsive to document requests; correct?

Mr. William Bromm: Yes. I’ve never heard anyone ever talk about not wanting to give information responsive to the committee’s mandate.

Mr. Bob Delaney: Okay. Thank you.

There has been a bit of debate over what records should and shouldn’t be kept. In looking at the Archives and Recordkeeping Act, it explains that transitory records are not required to be retained, and the common records series defines these transitory records as “records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.”

In fact, when we asked Secretary Wallace about his personal experience with transitory records, he said, “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. John Yakabuski: Point of order, Mr. Chair.

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski?

Mr. John Yakabuski: I really have to object. I don’t think that the witness was brought here this morning to offer his opinions on how the Archives and Recordkeeping Act might be improved or changed. That’s not

the work of this committee, and I think we should stick to our mandate.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Yakabuski. I believe that within the issue of production of documents, that qualifies.

Mr. Delaney.

Mr. Bob Delaney: To be clear, Chair, I have not done what Mr. Yakabuski has said.

Would you like me to reread the question, sir?

Mr. William Bromm: I don’t think that’s necessary.

It’s certainly my understanding of a transitory record, according to the documents I have in my own Cabinet Office schedule.

Mr. Bob Delaney: I thank you for that. I think clarification around this issue is very important because, in fact, there’s a wide misconception, wilful or not, that every piece of paper needs to be kept unless it’s something like an invitation to go have coffee or lunch. But I think you would agree that it’s not the purpose of either the freedom-of-information or the archive legislation to keep every single piece of paper. Correct?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: In fact, the common records series outlines a number of records that should be deemed transitory, which would include, for example, duplicates, draft documents, records of short-term value, things like that?

Mr. William Bromm: Yes.

Mr. Bob Delaney: Okay. Could you describe for the committee what your record-keeping practices are? How do you determine if a record is transitory?

Mr. William Bromm: I don’t think you want to use me as an example for the committee, because I keep a high volume of documents, going back many years, because of my particular role. I’ve been caught in circumstances where I have said, “No, no, I advised you of that,” and then, “No, you didn’t.” That might have been a transitory record, and had I deleted it, then that would be the end of the matter. So I actually have a volume of information that would probably not impress the archivist because it’s not information that he wants. However, when it comes time to actually look at records that are older and the project is finished, I can then weed that out. But on an ongoing basis, I’m not the model of record-keeping, because I err on the side of keeping it all.

Mr. Bob Delaney: Let’s try it a different way, then. From the records that you’ve seen turned over to date, could a large fraction of them be deemed transitory in nature?

Mr. William Bromm: Absolutely, some of them would have been transitory records: “I’m not available at 4 o’clock. Can we do 5 o’clock?” Those sorts of emails, no question, are transitory.

There would be many emails where, I’m sure, if you asked three lawyers if they were transitory, you’d get five opinions. It’s difficult sometimes.

Mr. Bob Delaney: The common records series also discusses a category of records deemed as private, which would include personal records as well as constituency

and party records. In fact, the Information and Privacy Commissioner described the class of records held by a minister as follows: “There are two general categories of records in the office of a minister and the Premier: (1) public records and (2) personal, political, and constituency records. The requirement” under the Archives and Recordkeeping Act “to have records retention policies in place applies only to the first category of records, and not to the second”; in other words, only to public records and not to personal, political and constituency records.

I just want to be clear on what these distinctions mean. My understanding is that there are certain records that are not subject to the Archives and Recordkeeping Act or to the freedom of information and privacy act. Is that correct?

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Mr. William Bromm: That’s my understanding.

Mr. Bob Delaney: Okay. I’d like to clarify the issue, then, of IT deleting email accounts. We’ve learned from some of the staff who have come here that the practice of deleting accounts after a staff person leaves the government, on both the political and the public service sides, is a common administrative exercise. Is that also your understanding?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: Secretary Wallace confirmed to us, 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 ... 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 ... within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down...”—again, just to confirm that the deletion of email accounts is standard practice government-wide, correct?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: Okay. From what I understand, the email accounts of 50 of the former Premier’s office staff—

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

Mr. Bob Delaney: —were preserved during transition, in light of an ongoing FOI appeal, which is why they were able to be searched in response to a committee request for documents, correct?

Mr. William Bromm: Yes, that’s correct.

Mr. Bob Delaney: Okay. Chair, I think I will stop there.

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

Mr. Victor Fedeli: Thank you, Chair. I only have one question before I turn it over to my colleague Mr. Leone. I want to thank you, by the way, for your diligent record-keeping. Your 3,500 records truly were a great source of information. We knew that when we needed a document, we could always search through your name and the documents would be there. We’re grateful for that.

I want to go back to that August 5 letter. It was document 5 of 5. It’s the letter from Brad Duguid to David Lindsay.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Were you the author of this letter? I misunderstood your earlier comment.

Mr. William Bromm: The direction letter: Yes, I was.

Mr. Victor Fedeli: So you authored this letter.

Mr. William Bromm: Yes.

Mr. Victor Fedeli: Okay, now I understand. It does say there’s a determination of liability between the crown and the power authority. In this letter, it acknowledges there were two groups going to pay for the one set of costs.

Mr. William Bromm: Yes, there were two things that needed to be covered in the letter: (1) the direction to execute the agreement, and (2) the agreement between the crown and the OPA.

Mr. Victor Fedeli: So back on August 5, 2011, you were aware, then, that there were going to be two sets of payers, if you will.

Mr. William Bromm: Yes, I was aware that whatever the costs were—and again, as I indicated before, for me, I always see it as one set of costs that is divided between two parties; that there would be one set of costs and they’d be proportioned—

Mr. Victor Fedeli: I just needed to clarify that for the record. Thank you. I’ll turn it over to Dr. Leone.

Mr. Rob Leone: Thanks, Mr. Fedeli, for that.

Interjection.

Mr. Rob Leone: I was going to say something else, but I’m not going to go there.

The Chair (Mr. Shafiq Qadri): Mr. Leone, please—

Mr. Rob Leone: Are you ruling that out of order, Chair? I’m not really sure.

The Chair (Mr. Shafiq Qadri): I’d be very pleased if committee members would be addressed as “Doctor,” but that’s not the procedure here, Mr. Leone.

Mr. Rob Leone: Sorry, Doctor—Mr. Chair.

Mr. Bromm, the secretary of cabinet met with David Livingston in the summer of 2012 to talk about document disclosure. Do you recall preparing information for the meeting with the secretary of cabinet, for that meeting?

Mr. William Bromm: Actually, no.

Mr. Rob Leone: Okay. In document 7 of the package that Mr. Fedeli had released, there is an email that suggests—and the attachment to the email is what I’m really interested in, frankly, where you are part of an email chain to Jennifer Rook. On page 10 of that document—the title of the document is Briefing Note: Office of the Secretary of the Cabinet. In the email, it suggests that there are “three notes we did for the secretary’s discussion with David Livingston.” You have a briefing note attached to that. Do you see that?

Mr. William Bromm: Yes, I’m sorry. You’re correct.

Mr. Rob Leone: So you do—

Mr. William Bromm: I did prepare that information, yes.

Mr. Rob Leone: You did prepare that? Okay. On the last page of that document 7, page 10 of 10, the top-of-line issue is, “What are the legal requirements related to the retention, deletion and subsequent search of government records?”

Mr. William Bromm: Yes.

Mr. Rob Leone: At the time of Mr. Livingston’s and the secretary of cabinet’s discussion, information was relayed from the bureaucracy towards the government’s obligation to retain records.

Mr. William Bromm: Yes.

Mr. Rob Leone: Now, in your view, and given the Information and Privacy Commissioner’s report, do you believe that the government had followed the advice that you had set forth?

Mr. William Bromm: Oh, I would leave that to other people to have an opinion on.

Mr. Rob Leone: All right. So I’ll say not.

Mr. Livingston knew about the Archives and Record-keeping Act as early as the summer of 2012. My question to you is this: The government therefore knew last summer, a whole year ago, that they had responsibilities under this act, yet we’ve had many witnesses before this committee stating countless times that they did not know about their obligations under the Archives and Record-keeping Act, which I find very interesting, because clearly you had informed the government of its obligations way back a year ago, in August 2012, that they should follow the procedures in doing that.

So if I were to ask your expectations—first of all, do you believe or do you buy the line that simple staffers in the Premier’s office and the ministry offices wouldn’t have known about the obligations under the Archives and Recordkeeping Act?

Mr. William Bromm: I think it would be unfair for me to comment on what an individual within an office might know or not know. I can certainly comment on the memo and what the intention was here, but outside of that, I couldn’t comment on it.

Mr. Rob Leone: Clearly David Livingston knew about this a year ago, you would say. I’m sure you would agree that—

Mr. William Bromm: He received the note, yes.

Mr. Rob Leone: He received the note. And we have email documentation as late as January 2013 where he goes about asking about the deletion of documents from the secretary of cabinet and so on and so forth. What I find peculiar about this, (a), is the timing: August 2012, which is about two months before the Premier decided that he was going to resign and step down. But in addition to that, there seems to be a lot of information that has been shared, with this document and others that we’ve seen, that ministry offices and political staffers simply did not follow.

What is the process, on the bureaucracy side, of understanding the obligations of the Archives and Record-keeping Act? Do you have any information that you

share? Do civil servants understand the requirements of the act?

Mr. William Bromm: Well, we certainly hope so. There is information available. We’re really not in a paper environment anymore, but the public service itself has a website; ministries have their own websites. They would all have links to record-keeping requirements, and the expectation would be that individual ministries, who all have records managers, would be communicating their obligations to their individual employees under the act and making sure they’re aware of where information is available.

Mr. Rob Leone: Were you at all suspicious that the government was inquiring about the retention and deletion of information?

Mr. William Bromm: Suspicious? No.

Mr. Rob Leone: No. Okay. That’s interesting. I’m suspicious; I’ll tell you that.

Can you tell me how long before the last election the Premier’s office staff, Mr. Morley, had been discussing with you about the relocation of the Mississauga gas plant? Were there discussions prior to the election?

Mr. William Bromm: Yes, there were. They weren’t actually related necessarily to the relocation of the gas plant, but there certainly were some discussions regarding the Mississauga plant.

Mr. Rob Leone: Okay. Now, what were some of the considerations that were going through in conversations you had with Mr. Morley, perhaps?

Mr. William Bromm: Well, I think the former secretary spoke about this a bit. The government was aware in the summer, and prior to that, of course, of local opposition to the siting of gas plants—not necessarily connected directly to Mississauga, but obviously that was a very live issue. And there were some discussions going on in the summer about siting options: whether or not there could be changes to the siting policies for gas plants, what were the siting policies, what were the differences between the siting policies of a gas plant, for example, and a nuclear facility, or a gas plant and a wind-mill operation. So there were policy discussions around siting issues from a broader policy perspective. There might have been discussions about what, then, the impact would be on the change of that policy to Mississauga, but they weren’t necessarily focused on Mississauga alone.

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Mr. Rob Leone: I’m just looking for the email right now; I don’t really see it in front of me—all right; I do have it. The government, as late as August 31, 2011, which was about a week before the election was called, asked you about elevating the Mississauga issue to a full environmental assessment. Do you recall that conversation?

Mr. William Bromm: Yes, and I believe I gave the bad news that that wasn’t an option.

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

Mr. Rob Leone: All right. So in essence, what you were trying to get through to them was that a full environmental assessment was not permitted; you

couldn't do that because of a number of reasons. Could you share those reasons?

Mr. William Bromm: I'm happy to look at it if you can refer me to it, but I can, in my mind, see that email. I think the primary reason was that they were finished. They were already through their process, they had gotten their permits—the sort of idea that they were done that assessment process.

Mr. Rob Leone: Right. You said that in 2008 the minister reviewed the environmental assessment and could have stopped it, but the minister said no in 2008.

Mr. William Bromm: That's right. It's hard to—

Mr. Rob Leone: —reopen a decision you've already made.

Mr. William Bromm: —reopen what has been decided, yes.

Mr. Rob Leone: So that is actively the ministry saying, "This is going forward no matter what," and now we have, a week before the election is called, questions about blowing this up so that they could delay the cancellation costs?

Mr. William Bromm: Yes, and that was, obviously from the content, specifically about Mississauga, as opposed to the other discussions I refer to and policy questions around siting in general.

Mr. Rob Leone: Clearly they were worried, leading up to that election, about this Mississauga relocation.

Mr. William Bromm: I wouldn't know whether they were worried.

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

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Thank you, Chair. Just a few items to clean up, Mr. Bromm. Just for me to be clear again on this arbitration matter: The government of Ontario decided—agreed with TransCanada—to engage in a binding arbitration process to resolve the conflict over the Oakville plant. The TransCanada position was to preserve their right to sue. I imagine that, if they didn't like the outcome of the arbitration, they would go forward with a lawsuit. Is that correct?

Mr. William Bromm: That's sort of my general understanding. I'm probably not the one to try to shed the clarity that you need, not being a commercial expert, but that was sort of my general understanding, that it was normal commercial practice that they would not waive the lawsuit until the end of the optional proceedings.

Mr. Peter Tabuns: Okay. The screening-off of political staff—if there had been a lawsuit and if those staff had been called as witnesses, what was the threat or problem for the Ontario side of the lawsuit?

Mr. William Bromm: We would not have approached it as a threat or a problem; we would have approached it from the perspective that once you're a witness in any proceeding, you need to be set aside from any further discussions about that same proceeding. It's a routine step within the government, and there are many screens that exist in the government. Someone who has been involved in one aspect of a file should not become

involved in the continuation of the file if there is a lawsuit and they may be a witness.

Mr. Peter Tabuns: After action had been taken to cancel the Mississauga plant, was there general notice given out to ministers and political staff to stay away from all of this?

Mr. William Bromm: By general notice?

Mr. Peter Tabuns: Sorry. Did the secretary of cabinet at that point, having gone through Oakville, take steps to ensure that no political staff were going behind the OPA or behind the Minister of Energy to make their own deal with Eastern Power developers?

Mr. William Bromm: There was nothing in writing, but if I remember correctly from the former secretary's testimony, she did have discussions with the Premier's office, saying, "If we're going to follow the model that we followed with Oakville, this is the route we're going; there can be no side conversations."

Mr. Peter Tabuns: And did she see that there were problems with the side conversations that had existed the first time around?

Mr. William Bromm: Well, I think from her perspective it was that you need to serve one master. If one person is leading the negotiations—if they're being coordinated through one direction—there can't be things happening somewhere else this person doesn't know about.

Mr. Peter Tabuns: The questions from my colleagues in opposition about discussions with Mr. Morley about the Mississauga plant prior to the 2011 election: You said that at that point, you weren't discussing relocation. Were you discussing simple cancellation of the contract?

Mr. William Bromm: I don't recall whether or not there was any discussion about the cancellation of the contract. The discussions I recall mostly were the policy discussions I referenced—and then obviously, once the email was mentioned, I recalled that more particular conversation. It was about dealing with Mississauga particularly. But I don't recall discussions about relocation.

Mr. Peter Tabuns: Okay. With regard to the production of documents at the request of this committee, did people understand that it was legally binding for them to turn over documents, whether it was politically inconvenient or not?

Mr. William Bromm: I guess it depends on what you mean by "Did they understand?" I can only speak to what my role would be in communicating to the individuals—

Mr. Peter Tabuns: Were they informed that they had to turn over the documents?

Mr. William Bromm: I think it was never as "Yes or no?" a question as that. From my role as legal counsel, if I'm involved with someone talking about a motion of a committee, I would be explaining the operation of parliamentary privilege, the request for documents—that you can request anything you want and anything that exists—and that at a point when there is a document that might have a sensitivity attached to it, it's always open to you to go before the committee and seek its accommodation, whether it's to not release or to redact or to go in camera

or to have some side proceeding. But at the end of the day, when the committee decides, “We understand your request. We’re interested in those documents,” then there are risks attached to proceeding in certain ways, and you can mitigate your risks by proceeding in other ways.

Mr. Peter Tabuns: And were members of cabinet and others like Chris Morley aware that the motions were binding and that there were consequences for not complying?

Mr. William Bromm: I can’t speak to what other individuals know. I can only speak to the individuals I might have been involved with.

Mr. Peter Tabuns: Which individuals were you involved with?

Mr. William Bromm: My discussions would have been primarily with individuals within the government, other deputy ministers when they were having motions. I certainly would have been involved in some discussions at various points in time with the Ministry of Energy, for example, on the estimates motion.

Mr. Peter Tabuns: Any other ministries?

Mr. William Bromm: The Ministry of Finance, the Ministry of Health, within Cabinet Office, I think those are the primary targets—I shouldn’t say “targets”—the subject matter of most of the motions passed by the committees.

Mr. Peter Tabuns: And did you consult at any point, or were you consulted by, the OPA on this matter?

Mr. William Bromm: No. They would have their own independent counsel. There might be some discussions going on with other parties just in terms of how document production is going, but I wasn’t involved in any of those discussions.

Mr. Peter Tabuns: Did cabinet, the Premier’s office listen to your advice on production of documents?

Mr. William Bromm: I personally never provided any advice to cabinet or the Premier’s office on particular document issues. Certainly within Cabinet Office I give my advice to the secretary on what the motion means, what our options are for producing the records. I would have some discussions with members of the Premier’s office on what a motion might mean. With respect to the current motions, I think they understood what the motions call for.

Mr. Peter Tabuns: Do you have a question?

Mr. Gilles Bisson: Yes.

Mr. Peter Tabuns: Go ahead.

Mr. Gilles Bisson: Did you ever have any interaction with Dave Phillips from the government House leader’s office?

Mr. William Bromm: Yes.

Mr. Gilles Bisson: With regard to the release of the documents?

Mr. William Bromm: Not with respect to the release of documents per se. My interaction with him would have been in relation to the operation of parliamentary privilege, those sorts—

Mr. Gilles Bisson: That’s right.

Mr. William Bromm: —but that’s higher level than the release of a certain document.

Mr. Gilles Bisson: No, but the discussion around the right of the committee to request documents?

Mr. William Bromm: Absolutely.

Mr. Gilles Bisson: You’ve had that. And what kind of advice did you give him—that in fact, the privilege of the committee was pretty well absolute?

Mr. William Bromm: That would have certainly formed a portion of my advice. I would have given advice on—

Mr. Gilles Bisson: When did you tell him that?

Mr. William Bromm: We were having discussions during the summer of 2012, following the passage of the estimates motion, but I would out of fairness want to make it clear that I would never, at any point in time, have said, “You must produce these records.”

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Mr. Gilles Bisson: No, but he would have asked; you would have answered the question. In fact, when a committee requests documents, you have to produce.

Mr. William Bromm: Or, “These are the options available to a minister who wants to raise issues about a document”—

Mr. Gilles Bisson: Did you ever talk about options of being able to partially release the documents?

Mr. William Bromm: I can’t recall any specific conversations, but it would make sense for us to have had discussions about, “Do you have discussions about all your documents? Are there documents that can be released and documents that can’t?”

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

Mr. Gilles Bisson: Okay, so just for the record, you did have discussions in regard to the right of the committee to request those documents back in July 2012.

Mr. William Bromm: By July, although I couldn’t remember the exact date, I would certainly say we would have been having discussions about that.

Mr. Gilles Bisson: Are there any briefing notes? Did you get any briefing notes from Mr. Phillips on that case, or did you give him any briefing notes?

Mr. William Bromm: We exchanged a fairly high volume of documents and we’ve produced quite a number of those documents. I would have provided some notes and also press—

Mr. Gilles Bisson: In regard to the matter of privilege requesting the documents.

Mr. William Bromm: Absolutely, yes.

Mr. Gilles Bisson: Were those given to the committee?

Mr. William Bromm: Yes.

Mr. Gilles Bisson: They were? All right.

Mr. Peter Tabuns: In my remaining seconds, these briefing notes that you provided to Peter Wallace were the basis for his discussion with Livingston on what had to be preserved?

Mr. William Bromm: They were having some general discussions at the time, but I wasn’t—

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair.

I have some final questions around the government's actions on the openness and transparency that we've discussed here this morning.

As I'm sure you'll recollect, after Premier Wynne was sworn in, she brought the House back exactly according to the legislative calendar and then reconstituted committees, including this one, the Standing Committee on Justice Policy. Can you speak to the committee's mandate with regard to the original allegations with which it was charged and any changes in that mandate that have occurred?

Mr. William Bromm: If I understand your question, you just wanted to know if I was involved in any of the discussions about changing the mandate of the committee?

Mr. Bob Delaney: No, about the broadening of the mandate of the committee.

Mr. William Bromm: I am aware there were discussions, because obviously at the start of the second session, with the revival of the point of privilege, it would have been focused solely on the point of privilege related to the production of documents by the Ministry of Energy, and there were discussions about the interest in having a committee look at more than just the point of privilege, but actually the gas plant transactions.

Mr. Bob Delaney: Okay. Well, that sort of squares with some of the testimony that we've heard, because of course the Premier called in the Auditor General to review the Oakville relocation. The Premier herself has testified at the committee, along with several other members of the current and former government. And the government has provided more than 100,000 documents in response to committee motions, including more than, I gather, 30,000 from the Premier's office itself.

A number of the materials that have been disclosed included documents from Cabinet Office. Could you confirm to the committee that your office has acted in good faith to turn over documents according to committee requests?

Mr. William Bromm: Oh, absolutely. My perception would be that we, yes, turned over everything we thought we had that the committee requested.

Mr. Bob Delaney: Thank you. A question, then, about the Premier's office responses to the issues raised by the Information and Privacy Commissioner. Could you comment on the reaction of the office of Premier Wynne to the Information and Privacy Commissioner's report and the steps taken to ensure that staff are aware of their responsibilities under the Archives and Recordkeeping Act and the Freedom of Information and Protection of Privacy Act?

Mr. William Bromm: I wasn't involved directly, but I know that following the discussions with the commissioner, they talked to Ministry of Government Services individuals about training sessions on record-keeping

obligations for political staff. I didn't prepare the materials or present them, but I know that they took place.

Mr. Bob Delaney: Okay. Let's go back to some of your work at Cabinet Office. I want to talk about some of the negotiations between the government, the OPA and TransCanada Energy.

We've heard a lot about the possibility of these negotiations ending up in arbitrations if discussions broke down. I believe Mr. Tabuns explored that a little bit. What was the actual outcome of the negotiations?

Mr. William Bromm: The matter was settled.

Mr. Bob Delaney: So it didn't have to go to arbitration?

Mr. William Bromm: They were in arbitration proceedings. Again, because I was unable, I think, to satisfy Mr. Tabuns's questions, I may not be the person to actually respond to this, but my understanding is, they were in arbitration, they suspended, they went back to settlement discussions—resolved it through settlement discussions, not through formal arbitration. That's my recollection.

Mr. Bob Delaney: In the end, people of good faith worked it out reasonably.

Mr. William Bromm: As far as I know, it's resolved.

Mr. Bob Delaney: Okay. Chair, I think that's all I have to ask. I want to thank you very much, Mr. Bromm.

The Chair (Mr. Shafiq Qadri): Thank you very much, Mr. Delaney.

Thanks to you, Mr. Bromm, for your testimony and presence.

We'll take a five- or 10-minute recess. Gentlemen?

Interjection.

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

The committee recessed from 1026 to 1037.

The Chair (Mr. Shafiq Qadri): Colleagues, I call the committee back into session. We have our next witness, Mr. David Phillips—

Mr. John Yakabuski: Chair—

The Chair (Mr. Shafiq Qadri): Mr. Yakabuski, yes?

Mr. John Yakabuski: Before you swear the witness in, because I do not want to affect the time available to the committee for the witness and the three parties for the questioning, I would like to request some clarification with respect to the discussions last week surrounding your ruling concerning the questioning of witnesses pertaining to the attempt to influence the Speaker by Liberal operatives. You ruled that that would not be allowed at this committee. As you're aware, subsequently House leaders have made it clear that they will be tabling motions to take further action when the House reconvenes.

But I do want to raise the issue of the discussions. I was not here on August 6, when that matter was first discussed, but I was here last week, and I raised the issue with Mr. Sibenik concerning why other questions that had absolutely nothing to do with the mandate of this committee have been allowed continuously before this committee. He implied very clearly in his answer to me

that those questions were allowed because there was no objection to them being asked.

I couldn't question Mr. Sibenik's position on that at the time because I wasn't here on August 6, but I have subsequently looked at the Hansard from August 6. On August 6, at the very opening of the meeting, Mr. Chair, once you brought it to order, you made the ruling at that time that there would be no questions. If I can read the important part: "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 apparent, most likely, as the day proceeds."

The implication from Mr. Sibenik was that the tipping point was that there were no objections to questions previously. Chair, there were no objections to asking these kinds of questions of witnesses before the committee because if there was an objection, that would have been part of this Hansard. So members of the government did not object to that line of questioning; members of the third party did not object to that line of questioning; and certainly, members of our party did not object to that line of questioning. So I would need some clarification as to why that explanation was given to me, as a member of this committee, that objections had something to do with the ruling.

There was no subcommittee meeting prior to the August 6 meeting explaining to us that that would not be allowed. There was no communication from the committee Clerk telling us that that line of questioning would not be allowed. So I'm really concerned that I was given an answer that speaks very clearly that objections were a part of the decision. There was no objection to asking witnesses before this committee about their knowledge of attempts by Liberal Party operatives to influence the Speaker of the Legislature.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. While I will not comment particularly on what you've just raised right now, I believe the Chair, in consultation with the table officers following due parliamentary procedure, with weighing in by our legal representatives here, have given you as much information as we possibly can. I am directed, in consultation with my colleagues here and table officers, that should you object to that ruling you are entirely free to appeal it at the appropriate time. I will entertain no further debate, with respect, Mr. Yakabuski, on that particular ruling.

If you'd like me to actually read for you precisely why I'm enabled to do so, I have an entire two pages of documentation, and I'm happy to distribute that to you.

Mr. John Yakabuski: I have no doubt you have the authority, Chair.

The Chair (Mr. Shafiq Qaadri): And, as I say, just from my own perspective, we have ruled, in due accordance with parliamentary procedure, given the mandate as

it stands, and those are the last words that I will be executing on that.

Mr. John Yakabuski: No clarification? No explanation on why that was—

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

MR. DAVID PHILLIPS

The Chair (Mr. Shafiq Qaadri): I will now invite Mr. Phillips to please be sworn in.

The Clerk of the Committee (Ms. Tamara Poman-ski): 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. David Phillips: I do.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Phillips. Welcome. You have a five-minute opening address and questions to follow.

Mr. David Phillips: Good morning, Mr. Chair, Madam Clerk and committee members. My name is David Phillips, and until January of this year I was the chief of staff to the government House leader and the director of legislative affairs in the Office of the Premier. It's an honour to appear before you today.

I got my start at Queen's Park in the spring of 1999 as a 19-year-old, first-year, University of Toronto student working in the office of the opposition environment critic and my hometown MPP, Jim Bradley, as a volunteer.

Over the next four years I had the privilege of working in opposition at the Legislature and being mentored and influenced by two esteemed members who are highly regarded on both sides of the aisle: Minister Jim Bradley and Sean Conway.

In the fall of 2003 I attended law school at Western and thereafter articulated and practised law in the national labour and employment practice group at McCarthy Tétrault in their Toronto office.

Following the 2007 election, I returned to Queen's Park to serve as senior policy adviser to then-Attorney General Chris Bentley, in the areas of criminal and human rights law policy. I went on to become chief of staff to Minister Bradley, serving at the Ministries of Transportation, Municipal Affairs and Housing, and Community Safety and Correctional Services.

Following the 2011 election, I was asked to take on the position of chief of staff to the government House leader and director of legislative affairs in the Office of the Premier. I had three areas of responsibility. I was the government's principal staff-level representative in the Legislature and political adviser on parliamentary law and procedural matters. In this capacity I was responsible for providing advice to the government House leader and caucus on a wide range of legislative matters, and worked closely with Cabinet Office, the Premier's office,

ministers' offices, the Office of the Clerk, and opposition members and their staff.

In addition, my staff and I supported the government House leader in shepherding legislation through the House and its committees. Finally, our office served as lead advisers on parliamentary law and procedural matters to the government caucus with respect to contentious committee and House proceedings, including the public accounts committee investigation into ORNGE air ambulance.

I think it will be helpful for the committee if I detail my involvement in the matters falling within its current mandate. I provided extensive advice on the legislative aspects of this issue throughout 2012, including the estimates committee hearings between May and July and the House's consideration of Mr. Leone's point of privilege and subsequent referral motion during the fall session. I was not engaged, however, in the government's decisions to not proceed with the Oakville and Mississauga facilities and the subsequent negotiations and proceedings regarding settlement and relocation, nor was I engaged in the Ministry of Energy and Ontario Power Authority's efforts to search for, identify, and vet records that were responsive to the estimates committee's motion of May 16, 2012.

Finally, I would like to inform the committee that, at my request, the Clerk kindly provided me last week with an electronic version of the over 1,900 pages of records that I saved and catalogued in my email account and hard drive, that were present on my computer when I left Queen's Park earlier this year, and that have since been produced to the committee in response to a motion for production. I have reviewed these records in preparation for my appearance here today. I believe the records provide a first-hand account of the work that I performed and the analysis that I provided on this matter throughout 2012 and into the early weeks of 2013.

In particular, these records establish two sets of facts that are critical and highly relevant to this committee. First, throughout 2012, the government's primary objective was to facilitate the release of the papers requested by the estimates committee, but in a way that reconciled two important public interests: preserving the integrity of the confidential and sensitive commercial negotiations and proceedings relating to the settlement and relocation of the Oakville and Mississauga facilities, and protecting the sanctity of the constitutional principle of solicitor-client privilege, which has been recognized by the Supreme Court of Canada and the Afghan detainee panel as sacrosanct and worthy of the utmost protection, including by parliamentarians.

In addition, the records demonstrate that in the early days of the fall 2012 session, the government was highly concerned about the dysfunctional and extreme circumstances confronting the Legislature, most notably the unprecedented pursuit of contempt charges against the Minister of Energy and the associated threats in the House and media of incarceration and disbarment.

Until January of this year, I was an adviser to the government House leader and the Office of the Premier and, as such, my advice incorporated political deliberations as is appropriate within our parliamentary democracy. In this respect, I always approached my role as being a pursuit of that place where good public policy, good parliamentary law and procedure, and good politics meets. With that, I am here to help the committee in whatever way I can. I look forward to all of your questions.

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

Mr. Tabuns or Mr. Bisson, you have the floor.

Mr. Gilles Bisson: Well, thank you for that. It gets to a couple of the questions I wanted to ask, at the very least. You explained your role in regard to both your job in the government House leader's office and the job that you had as the director of legislative affairs in the Premier's office. Is it fair to say that the Premier's office was completely aware of what was going on strategically when it came to what—the request that the estimates committee had put forward? Did you, in your role, inform the Premier and the Premier's office of what was going on in detail?

Mr. David Phillips: Given the sheer pace and volume of issues that are being dealt with by senior staff in the Premier's office on a day-to-day basis, I think it's very safe to say that, in the early days of the estimates committee proceedings, there was very little to no discussion of the proceedings. But, as we moved forward, I would say the tensions increased, and it became very clear from the standpoint of the government House leader's office that there was going to be limited, if any, flexibility on the part of the opposition parties with respect to some of the positions that we were putting forward; there was increased awareness within the Office of the Premier.

Mr. Gilles Bisson: But it's fair to say that your role was not only to advise the Premier in regard to what was going on in the strategy, but they would have been pretty well aware of what was going on. It's pretty fair to say.

Mr. David Phillips: My involvement with respect to the Premier's office: First of all, I reported directly through the chief of staff to the Premier, not to the Premier, so the extent to which I personally engaged with the Premier on these matters was limited. My role, for the most part, until we got very far down the road on this, was to keep folks in the loop, and—

Mr. Gilles Bisson: And you were acting as liaison between the government House leader's office and the Premier's office in that role, essentially.

Mr. David Phillips: And the Minister of Energy's office.

Mr. Gilles Bisson: That's right.

Mr. David Phillips: With the Minister of Energy at all times issuing the directions.

Mr. Gilles Bisson: Who was it that initially made the decision not to allow the documents to be released as per the request of the committee on estimates?

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Mr. David Phillips: I don't say this to sound cute in any way, but I think it's safe to say that, first of all, it's very important to indicate from the outset—and I think the records that you have from me clearly show that it was the Minister of Energy at all times, with respect to the Ministry of Energy records at least, who was providing the final direction on these matters. But there was no decision on the part of anyone not to release the records. Again, I don't say this in any way to be cute, but I say it in a way that—the documents, which provide a very good first-hand account, demonstrate that at all times we were trying to find a reconciled solution.

Mr. Gilles Bisson: In fairness, you were centrally involved in what the machinations of the estimates committee were in regard to trying to not allow the motion that was put forward by the opposition to release the documents. Clearly, it was not in your interests, and neither was it your desire, to release those documents that were requested.

Mr. David Phillips: I just point to the evidence, and the evidence is that on the day that the Mississauga matter was settled, the documents were released, except those documents that were covered by solicitor-client privilege. That evidence speaks to the fact that there was no effort for no documents to come out. There was an effort to have these documents come out in a way that, first and foremost, protected the sanctity of these negotiations and also protected the Constitution, quite frankly.

Mr. Gilles Bisson: It's clear to me, because as the House leader for the third party, I was dealing with your office at the time, and you guys were integrally involved in trying to find a way not to allow that motion to go forward. I guess the question becomes, where did you get under the impression that you didn't have to release those documents in the way that the committee wanted? Who did you talk to? Who gave you the advice that, somehow or other, the right of the committee to request documents and people, persons or things, which is a right of the committee—where did you get the idea that in fact, somehow or other, solicitor-client privilege trumped that?

Mr. David Phillips: If you'll indulge me just for one moment, I can tell you what my thinking is—and that's all I can tell you—and that is that this was the first minority Parliament that Ontario had had in decades, a true minority Parliament; I wouldn't count the 1985-87 situation in that category. Obviously, none of us had a good sense as to how relations would be in the Legislature, particularly when it came to requests for documents. But we did have precedent to go by, and if you look at the Afghan detainee matter, while it was certainly a pressure-filled situation, ultimately a reconciled solution was reached.

We knew from the start that Parliament had an absolute right to these documents; that was the rule and that was the law. But we also knew that there was a long-standing parliamentary tradition not only in this place, but in every single Parliament across the Commonwealth, where when public interest considerations are raised by

means of a red flag by a minister, there is a good-faith effort on all sides to find a way to reconcile those interests. We weren't clear, going into the estimates committee process, on whether or not that was going to take place. What my records show was that from May right through to October, the government, through debate and amendments, and then ultimately through a series of proposals, was trying to put forward a series of solutions to both opposition parties that would facilitate the release of the documents but in a way that didn't torpedo the negotiations.

Mr. Gilles Bisson: All right, okay—used enough time.

Listen, it's pretty clear what Milliken did. He essentially said that the committee had the right to those documents. There was never any question as to the right of the committee to have the documents. In fact, he said that “procedural authorities are categorical in repeatedly asserting the powers of the House in ordering the production of documents. No exceptions are made for any category of government documents, even those related to national security.” Certainly to God, if national security doesn't trump the right of the committee to get those documents, solicitor-client privilege doesn't trump it either.

I guess when we look at the evidence in regard to the trail of emails that you have, it's pretty clear, dating back to July, that in fact you knew that, and you've so much as admitted to it. We take a look at July 4, in regard to the document you provided the Premier's office. You said, “Motion compels the government to produce documents relating to both Mississauga and Oakville, meaning we will potentially be compelled to produce Oakville documents prior to resolution” of those negotiations. We then go and take a look at a document on July 19, where it's essentially the same. It says, “In the gas plant matter, the committee report will likely not be found to be deficient....” That is with regard to when you were thinking of actually trying to challenge this.

You were pretty clear at that point that you had to release the documents. I guess the question is, who gave the order to try to drag out the process to release the documents, or try to control those documents in some way? Who gave the order? Who was the person in charge who wanted to do that?

Mr. David Phillips: Again, the benefit for the committee in this, with respect to my evidence, is that you have nearly 2,000 pages of my emails. I've got the emails here; I brought them for you. I'm happy to hand them out at the conclusion, if you want. What it demonstrates in one case, an email that was just shortly after this memorandum that you just referred to, which was before we came back to the July 11 estimates committee hearing—it's an email from me providing a recommended option to the Minister of Energy's office, in which I clearly say, “This is for the minister's consideration.” The minister's staff gets back to me and says, “We'll run this by the minister”: clear evidence that the Minister of Energy

throughout this period of time was providing the direction.

I can say very clearly, from dealing with his office throughout this period, that the Minister of Energy was clearly conflicted by the fact that he had some obligations that were competing with one another. He had the obligation to the House with respect to the production of records, but he also had a duty as a member of the executive council of Ontario and as a very long-standing and highly reputed member of the Law Society of Upper Canada to serve his duty to the financial interests of the people of Ontario and to the constitutional principles that define privilege—

Mr. Gilles Bisson: But you knew, in these emails—I can go through and read all your memos and read all your emails for the record, but that would just take more time than we have here today. You were pretty clear and you were pretty categorical in your advice to the government that in fact the committee had the right to those documents and in fact solicitor-client privilege didn't trump that right. But yet the government continued to stymie both the committee on estimates and, further, into the House, the process of releasing those documents. There were tons of ministers getting up in the House at that point and saying, "Due to solicitor-client privileges, we don't have to release those documents," when clearly they knew that wasn't the case.

Mr. David Phillips: Right.

Mr. Gilles Bisson: So the question is, who was orchestrating that particular attempt to not release those documents? Was it the minister? Was it the government House leader's office? Was it the Premier? Who was trying to stymie the release of the documents?

Mr. David Phillips: The way that it worked from the House leader's office, from my perspective, was that I was very clear on who the directing authority was with respect to these matters, and that was the Minister of Energy as the individual who, at the end of the day, was responsible for producing these documents. It was important to me that I was clear on what the Minister of Energy's preference was. Then it was our job, as I indicated at the outset, to be the lucky individuals who became learned in parliamentary law and procedure for the purpose of deploying a strategy that would attempt to achieve the objectives.

But the very critical thing here—I'm concerned that you mischaracterize what it was that the government was trying to do here. My records show from start to finish that this was not an effort to not have these records come out. It was an effort, through debate and amendment at estimates and then through negotiations in July and October, to find a halfway-house solution—

Mr. Gilles Bisson: The Speaker found a prima facie case of contempt of the minister not releasing the documents.

Mr. David Phillips: That's correct.

Mr. Gilles Bisson: So, clearly, the Speaker is convinced that there was a case that in fact you guys were

not releasing the documents as per the request of the committee.

Mr. David Phillips: Right, and my records—

Mr. Gilles Bisson: And my question to you, Mr. Phillips, is, if the government knew that in the end they had to give up these documents, who is it that directed the people within the government and essentially the committee members to try to stymie the process and not release the documents? Was it the Premier's office? Was it the government House leader's office? Was it Mr. Bentley's office? Or was it a combination of all three?

Mr. David Phillips: First of all, I fundamentally disagree with your use of the phrase "stymie," because, again, that's not what I—

Mr. Gilles Bisson: So the Speaker just made all this up; this whole ruling of a prima facie case is just—

Mr. David Phillips: No, no. Mr. Bisson—

Mr. Gilles Bisson: The Speaker just decided one day to do that for something to do?

Mr. David Phillips: You've got a series of fairly formal memoranda that I drafted throughout this period of time, and what I think it shows is that the government was aware—that I was certainly aware, and it was the advice that I was providing to the different parts of the political offices of government—that the House and the committee had an absolute right to these records. But it also was pointed out that there is a long-standing tradition around this place for parliamentarians to work together when a public interest is raised. The interesting thing that I found throughout this exercise is that nobody in the opposition has suggested that the public interest that the Minister of Energy and others were raising was illegitimate. Nobody has suggested that the protection of these negotiations was not an important thing. It just hasn't been addressed.

Mr. Gilles Bisson: I think what is being suggested is that it was in the government's interest and the Liberal Party's interest not to release those documents because they knew that the amount of money that was suggested it would cost for cancelling was a lot higher than you guys had been saying. There was all kinds of political motivation for you guys not to do this, so you choose not to answer the questions in regard—

Mr. David Phillips: Well, if I could—no? Okay.

Mr. Gilles Bisson: Okay, I've asked the question two or three times and you didn't.

It's clear at one point that you guys were actually looking at a third-party judicial challenge to releasing the documents. I go back to the July 13 memo that you sent back, I believe, to the Premier's office. It says in here, "If a third party was to judicially challenge a request by a committee for the production of documents it is likely that the third party would be unsuccessful in court. The courts have found that pursuant to the Constitution Act, 1867, the House is presumed to possess the privileges necessary for the proper functioning...." And it goes on to say, essentially, in a very long next page, that the committee has the right to have those documents, and you can't trump that.

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So, again, I go back to you. The problem I have with you is twofold: On the one hand, what you were doing publicly, and what you were doing to this committee, or the estimates committee, in regard to release of the documents, was trying as best as you can to make it that the committee didn't have to release those documents, both within the estimates committee and then what went on in the House around the debate. But then, when we look at the emails and the background, it was pretty clear that you guys knew you had to give them up. So your public discourse was one thing, where you were trying to hide behind solicitor-client privilege, but your actions—not your actions, but your advice in the background was, in fact, that you guys had to give them up. So why didn't you just give them up in the first place?

Mr. David Phillips: There are two things. Do you want me to deal with both—

Mr. Gilles Bisson: You can deal with them any way you want.

Mr. David Phillips: Okay. So I'll deal with the last question—I'll deal with the court reference issue thereafter.

Mr. Gilles Bisson: How much time, Chair?

The Chair (Mr. Shafiq Qadri): Seven minutes.

Mr. David Phillips: The very first amendment that was moved in the estimates committee process when this motion was moved was for the motion to be amended, strictly to incorporate two principles: the protection of solicitor-client privilege and the protection of—

Mr. Gilles Bisson: But you know there was no solicitor-client privilege. You knew that according to your own documents. So what was the game here?

Mr. David Phillips:—and the protection of the negotiations. If those amendments had been adopted, the motion would have passed and the documents would have come out at the appropriate time.

Mr. Gilles Bisson: You knew that both those things were trumped—

Mr. David Phillips: From the very start of the process, we were willing to release them.

Mr. Gilles Bisson: But you knew, at that point, that both those things were trumped by the right of the committee and this Legislature.

Mr. David Phillips: No—

Mr. Gilles Bisson: So why, then, did you guys run contrary to what you knew was the fact?

The Chair (Mr. Shafiq Qadri): Gentlemen, one individual speaking at a time is our preference.

Mr. Gilles Bisson: That's right, Chair.

Mr. David Phillips: Again, I go back to the very first amendment that was moved by the government, and a series of amendments thereafter, was fundamentally focused on reconciling these two interests. There are emails that were produced as part of my 1,900 emails, and I've got them here, and I can give you copies of them if you want. Some of them are emails with your opposition staff. What they are is, before that July 11 estimates committee meeting came back—it was us providing a

proposed revised motion that would have facilitated the release of the Mississauga documents.

Mr. Gilles Bisson: I accept that. I know what you did, and it was pretty clear that you were trying to find a way to release the documents in a way that was better for you. I understand that—

Mr. David Phillips: No. It was better for the people of Ontario.

Mr. Gilles Bisson:—but the point is that you knew you had to release the documents, and the advice that you were giving them behind the closed doors was very different than the actions your government took. You guys were trying to stymie the release of the documents in any way, shape or form, while you knew that, in fact, the committee had this right. So who overrode you? Who is it at the end who said, "No, no. We're going to follow this other track"?

Mr. David Phillips: Again, I'll just say that the records that you have in front of you are being, I would say, grossly mischaracterized in terms of what you say was being communicated—

Mr. Gilles Bisson: You're the one who wrote the memos.

Mr. David Phillips: That's right; I did write the memo, and what the memo said was that Parliament has an absolute right to these documents, that there is a long-standing tradition for parliamentarians to reconcile these public interests, just like they did in Afghan detainee—

Mr. Gilles Bisson: That's right.

Mr. David Phillips:—just like they did back in the Martel inquiry in 1991, where they brought in Justice Eleanore Cronk, who is still on the Ontario Court of Appeal, to deal with some of these very tricky legal issues. But for some reason, in this case, from May until October—and these records show it—there was no willingness to negotiate on the part of the opposition parties, and it was frustrating; I can say that.

Mr. Gilles Bisson: Did you have discussions with the Clerk or the Speaker in regard to trying to get them to intercede in some way and to some sort of way of releasing the documents that would be better, more to your keeping?

Mr. David Phillips: No.

Mr. Gilles Bisson: Why, then, do we—okay. Well, then in "General Approach," in the document dated September 19, there are a couple of passages here where you say, "We need to get the opposition House leaders in front of the Clerk and the Speaker—if we don't, the discussion will never get past rigid, positional negotiation by the opposition." That's on your September 19 memo. So it's clear that part of the advice that you gave—if you followed up on it, I don't know. You gave advice that, in fact, you have to get the Clerk and/or the Speaker involved in the negotiations on the release of the documents. Did you have those discussions?

Mr. David Phillips: I didn't have those discussions. If I was to speculate, not being able to recollect exactly what was informing that view, you'll recall that Speaker Levac sent a letter to all three House leaders a few days

after the ruling, offering to essentially facilitate the discussion between the three parties. It was my view that that was a constructive thing to do, largely because of the hostilities that were present between the three parties at the time, that the Clerk and the Speaker could potentially find a role in facilitating a solution, especially when the Speaker had said in his ruling that the reason that he suspended the ruling for that week was because he recognized these competing public interests and recognized an opportunity to get these documents out in a way that didn't torpedo these completely sensitive negotiations. It was in his ruling, and I thought that the Clerk and the Speaker could potentially play a role.

Mr. Gilles Bisson: My colleague has some questions.

Mr. Peter Tabuns: Thank you. Mr. Phillips, you wrote an email on October 1 to Laura Miller and David Livingston setting out the case for prorogation. You write, right at the beginning, "My ... rough views on prorogation ... I was [going to give them] more formally ... but thought I'd accelerate and shorten under the circumstances."

What were the circumstances that caused you to write this more quickly than you might otherwise have done?

Mr. David Phillips: I'm very glad that you asked that question. The circumstances are actually found, maybe cryptically, in the email, and those are the date and the time that the email was written. This email was written on October 1, 2012, at 7:43 p.m., and that was the evening of the day that the opposition made the decision to pursue contempt charges against Minister Bentley, in the immediate aftermath of some very unprecedented threats being made against his liberty, including incarceration and disbarment. What fundamentally influenced me drafting this email was that, if we reflected upon the previous 12 months of minority government in Ontario—

Mr. Peter Tabuns: That's all.

Mr. David Phillips: Okay.

Mr. Peter Tabuns: I understand the circumstances now. What you've outlined, though, in this recommendation is shutting down the Legislature, effectively so that you could stop the hearings from going forward and provide the Liberal Party with two and a half months of time to campaign around Ontario in anticipation that there would be an election in 2013.

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

Mr. Peter Tabuns: This was effectively setting aside this investigation for your political advantage. What on earth were you thinking? How can you put that forward? These were significant matters. The Premier wasn't saying, "We're shutting things down so that I can campaign for the next while in anticipation of an election." We were told it was to cool things off. The reality is, you were making a very cold calculation that this inquiry had to be out of the way, the Premier had to be spared being brought before it, and you guys had to go around the province barnstorming in the event that there was an election in 2013. So why was the Premier telling us that this was about a cooling-off period, and not what you

were actually talking about: shutting down this inquiry and doing your campaigning?

Mr. David Phillips: Three things. First of all, I don't see the word "campaign" anywhere within the document. Second—

Mr. Peter Tabuns: Oh, really? Go on.

Mr. David Phillips: I don't see the word "campaign" in the document, but if you can find it—

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

To the government side. Mr. Delaney? Madam Albanese?

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

Thank you so much for being here today. I know you have detailed your involvement in your presentation at the beginning, but just to confirm: Following the 2011 election and up to the past February, you served as both director of legislative affairs and chief of staff to the government House leaders. Correct?

Mr. David Phillips: That's correct.

Mrs. Laura Albanese: And did you play any role in the decisions to relocate the two gas plants or in the negotiations that were taking place, or did you focus more on the legislative agenda, the committees and the negotiations with the opposition?

Mr. David Phillips: No. Prior to 2011, I was chief of staff at ministries that didn't have any involvement with energy policy, so I didn't have any involvement with respect to Oakville prior to the 2011 election. Thereafter, my job was exclusively focused on the Legislature, the House and its committees, so in that respect there was no involvement on my part with respect to the process of negotiating, no.

Mrs. Laura Albanese: You had a unique insight, I would say, from your position in the legislative environment during that period of time. I want to start by asking you about then-Minister Bentley's appearance at the estimates committee. We all know that on May 16, Mr. Leone moved a motion for correspondence from the Ministry of Energy and the OPA regarding the two gas plants. At that time, sensitive commercial negotiations were ongoing with both companies.

In response, Mr. Bentley wrote to the committee outlining that the motion was requesting documents subject to solicitor-client privilege and litigation privilege. He warned that these documents were highly commercially sensitive and cautioned the committee that their release would impact ongoing negotiations.

Can you speak to those issues raised by Mr. Bentley to the estimates committee at the time?

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Mr. David Phillips: Certainly. Maybe I'll do so by way of a story.

For those that were on the estimates committee process, and I think some folks here were, back in May 2012, you'll recall that the Minister of Energy, the Ministry of Energy, was given I think maybe 72 hours' notice before they were to start their appearance. So as you can imagine, there was a degree of scrambling on the

part of the ministry to get ready for the significant range of issues that could be discussed at the estimates committee.

There was certainly awareness on the part of the House leader's office and everybody that the gas plants were going to be the source of some discussion, and probably some contentious discussion, once the estimates committee came up. I believe it was the day before estimates, maybe two days before estimates, that there was a meeting that I was invited to at the very last minute just so that I could essentially have a sense as to the advice that was being provided to the minister, so that it could be passed on to government committee members for the purpose of the strategy that was being deployed.

I went to a meeting at the Ministry of Energy. I walked in about maybe a quarter to halfway through, and it was Minister Bentley receiving a briefing from a significant number of officials from the Ministry of Energy and counsel from the Ministry of the Attorney General. The meeting, I think, lasted for a good hour to an hour and a half. The entire meeting—and this was a major preparatory session for the minister going into the estimates committee—was him asking questions about solicitor-client privilege and him asking questions about these negotiations and what he could say and what he could not say.

The reason I say that is that it's a clear indication of the fact that the minister was very seized of his duty, going into the estimates committee process, of ensuring that he was fulfilling his responsibility, as a member of the executive council and as a member of the Law Society of Upper Canada and former Attorney General of Ontario, to protect the interests of the people of Ontario and of the Constitution at the same time as he was trying to find a way to respond and be accountable to the Legislature.

Mrs. Laura Albanese: Well, I guess I would say that these concerns were, even in your words, extremely founded, the fact that there were these competing interests that were being seriously considered. We have had a number of witnesses who have testified under oath at this committee about these very issues.

The former secretary of cabinet, Shelly Jamieson, had this to say about the potential release of confidential information: "It would have harmed the negotiations for sure. Nobody likes to ... have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves."

Deputy Minister Serge Imbrogno testified, "We were being sued by EIG for ... \$300 million," and if they were able to get information that would have made their case stronger, it would have "put us at risk there. Again, negotiating with Greenfield," if they could have used this information to get leverage in negotiations, it would have put us in a bad situation. "So, it's hard to quantify," but there were risks to the taxpayer.

When the Auditor General was here to testify, he acknowledged that similar issues arose when he testified in public accounts. He said he would be reluctant to put this type of information in the hands of the parties at that time. He also likened it to not wanting to tip your hand.

Do these expressions of concern mirror in some ways the concerns you yourself had or the minister had?

Mr. David Phillips: Certainly. I can speak from my own perspective and also on the basis of conversations that I would have had with the minister's office staff and from time to time with the minister.

With respect to the minister, yes, absolutely. I think that that was reflected in dozens upon dozens of pages of Hansard from his appearance before the estimates committee, that he was, throughout the exercise, explaining to the opposition and to other members of the committee the concerns with respect to solicitor-client privilege and not jeopardizing his negotiations.

From my standpoint, I obviously shared these views, and I think you have the records before you to show it. One of the documents here in the package that was provided by Mr. Tabuns and Mr. Bisson speaks about a memorandum that I prepared on July 11. This was a political document that I provided to some of my colleagues in the Premier's office. It set out a series of scenarios as to how things could play out at estimates committee the following week based on, for example, whether the Mississauga matter was going to settle or not settle. But most importantly, it's a political document, and the very first strategic objective that is set out in that document is reducing the risk, fiscal and otherwise, of the premature release of these records to ongoing litigation and proceedings. So even in the confidential political records, that is the very first strategic objective that's set out.

Mrs. Laura Albanese: The opposition has alleged that there was an attempt to keep these documents hidden forever, but from your emails and memos it was very clear that that wasn't the case. What's clear is that there were competing interests, as you had mentioned, between the committee's desire for information and the government's responsibility to protect the public interest.

In a memo dated July 4, 2012, you wrote that there was a fiscal risk posed by the production of documents until there was a successful resolution of litigation and other processes related to both gas plants. You laid out several options, depending on outcomes of these negotiations. In every one of these options, it was clear that the requested documents would be provided to the committee. In the words of Mr. Bentley at the time when he testified before this committee, it was not a matter of if, but a matter of when. Could you speak to that, please?

Mr. David Phillips: Yes. So with respect to that memorandum from the week before estimates was to come back on the 11th of July—the first thing, actually, just to back up, that I want to clarify is when I spoke about the fiscal risk and the sensitivities of these documents, that is all information that was provided to me through the Minister of Energy's office. It was purely on

the basis of the advice that was coming through the OPA and the ministry, I assume.

But with respect to that memorandum, that was a document that essentially—my job as an adviser in the House leader's office was to essentially take high-profile and contentious issues that were coming up to the Legislature and apply my understanding of parliamentary law and procedure, and try to kind of break it down for communications staff, issues management staff, policy staff, in terms of the different ways things could play out in the Legislature, based on a number of variables; in this case, for example, whether Mississauga was going to settle or not. That's what that memorandum was doing. It was setting out a series of options.

The most critical thing to note from that memorandum was what actually happened in response to that memorandum, and there are three things that happened over the course of the next few days. Once these options were put to the Minister of Energy and put to some folks in the Premier's office, I sent a subsequent memo to the Minister of Energy's staff for the Minister of Energy's consideration, and the recommendation that I provided was that the government pursue a negotiated solution with the Ontario PC and Ontario NDP caucuses and their staff. It would be a solution that would find a way to get these documents out, again, in a way that both reconciled these public interests and moved the contempt stuff off of the floor.

The next document in these emails shows that the minister obviously took that advice, because the very next day an email went to Ontario PC and Ontario NDP staff in which we're asking for a meeting and putting forward a hard proposal to reach a negotiated solution.

The third email shows, and this was from an email the very first thing on the morning of July 11, after late-night and early-morning meetings—it was me notifying my colleagues in the Premier's office and the Minister of Energy's office that the Ontario PC and Ontario NDP staff had indicated their caucuses had no interest in engaging in discussions.

So those documents, I think, show very clearly that there is a good-faith effort throughout, particularly once we got to that point where the matter started to settle, to get these records out.

Mrs. Laura Albanese: Thank you. We've had a number of neutral individuals that have testified to this committee and have recognized that there were serious risks associated with the release of information. Throughout his testimony to the estimates committee, Mr. Bentley reminded the opposition, I believe and I recall, countless times about the very real risks that existed on releasing commercially sensitive information during negotiations. At the same time, the opposition members of the committee were continuing to press for that type of sensitive information. He was put in a really difficult situation, wasn't he?

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Mr. David Phillips: He was, yes.

Mrs. Laura Albanese: You would agree to that.

Mr. David Phillips: Absolutely.

Mrs. Laura Albanese: The opposition has noted that there is language in records from you related to filibustering. It has been alleged that there was such a strategy employed to prevent them from ever receiving documents. I have read some of the transcripts, and it seems to me that the goal of our members in that committee was to make sure that all members on the committee were truly aware of the risks and to hopefully control the timing of disclosure such that the public interest was protected. Would that be a good interpretation?

Mr. David Phillips: Yes, I think that it's safe to say that, from my recollection, there were two stages of that estimates committee process. I think, if I remember, there were six or seven different amendments that were moved and debated, and then there were some subsequent issues with respect to subcommittee reports and things like that at the tail end. But at the first stage of the estimates committee process, you saw a series of amendments being moved by the government that were designed to essentially find that middle ground and to find a way to get these documents out in a way that protected the sanctity of these negotiations and allow for a process to protect solicitor-client privilege.

As we got to the tail end of the committee process, it became very clear that there was going to be no flexibility shown, at least through the debate and amendment process. There was certainly some sustained and prolonged debate that took place near the end, and that was accompanied by, as my records show, some discussions with staff for the purpose of trying to find a solution.

Mrs. Laura Albanese: I also want to speak to you a little about the Chair's ruling during those proceedings—not our Chair, but the Chair of the estimates committee. On a number of occasions, Mr. Prue, the estimates Chair, made comments such as the following:

“It would appear to me that Mr. Leone has the right to ask the question, but it is also abundantly clear to me that the minister can, as part of his answer, invoke his privilege as to what is happening in the lawsuit, and that can be his answer.... So I would caution Mr. Leone ... that the minister is well within the prerogative of his duties, if he feels it necessary to protect the government of Ontario's position, to simply state so, and the line of questioning may not have the results you are hoping for....”

Did that give you the sense that the Chair was validating the concerns that Mr. Bentley had raised?

Mr. David Phillips: The submissions that the government put forward in response to Mr. Leone's point of privilege clearly made the case that there was some reliance by the government on the statements that had been made by the Chair. In Mr. Prue's defence, I think it's probably safe to say that there was a fairly high degree of confusion and lack of clarity as to what exactly it was that he was saying. It was our view at the time—and there were multiple statements that were made, usually in response to the passage or defeat of amendments or the passage of motions—that we thought it took the form of a ruling by the Chair, and that that was some-

thing that was justifiably relied upon by the Minister of Energy. If that ruling was to be challenged somehow, it would have to go to the House through the usual process. Ultimately, the Speaker, in his decision on Mr. Leone's point of privilege, obviously didn't agree with that, but again, the statements were made.

Mrs. Laura Albanese: I remember that in response to Mr. Leone's document motion of May 16, 2012, Mr. Prue acknowledged the committee's right to ask for the documentation, but he also stated that the minister had the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions. Mr. Prue said, "I would advise that I'm going to allow the motion to proceed, but I would also advise—and I think the minister, being a lawyer himself, knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so."

Again, it must have seemed to you that the Chair was taking a similar approach to Mr. Bentley's in terms of attempting to balance the competing interests at play.

Mr. David Phillips: Right. Again, as I indicated in my previous answer, the submissions that the government provided in response to Mr. Leone's point of privilege clearly indicated that the Minister of Energy had relied on those statements, and in fact appeared in some respects to constitute a ruling that was binding on the committee. That was the view at the time. Obviously, that didn't play out in the decision.

One other point that I'd make is that the initial letter that Minister Bentley provided to the committee in response to the motion of May 16 from Mr. Leone indicated that he was relying on the Chair's ruling. So, at the very least, there was confusion and, I'd say, a lack of clarity about what exactly those statements meant, but I can certainly say, from our standpoint, that there was reliance by the government.

Mrs. Laura Albanese: So you must have been a bit surprised and disappointed, I guess, in terms of the course that things took after Mr. Bentley's appearance at the committee, and in terms of the matter being referred to the House?

Mr. David Phillips: Yes, first of all, in answer to your question, there was a high level of disappointment to the extent that we were going on precedent. As I said, it's the first minority Parliament we've had in a long time, but we were relying on, for example, what had happened in the Afghan detainee matter. We've got some very learned parliamentarians in this room who know most of the parliamentary texts, but you were very hard pressed to find a parliamentary text that doesn't identify the fact that while the Legislature has an absolute right to produce documents there is a tradition amongst parliamentarians to find ways to reconcile public interests that are raised, particularly when they are raised in respect to, for example, constitutional principles and the financial interests of the province.

So the frustrating aspect on our part was twofold. The first was through the estimates committee process and the

debate process, that there wasn't, in our view, a good-faith effort to find a way to reconcile that motion. Secondly, once this started to move toward the end of the estimates committee process and into the House, where both staff and then ultimately the House leaders were having discussions, the government was putting forward a series of solutions and were attempting to engage in good-faith negotiations to try to find a way forward without, for example, a contempt matter moving forward. And there was a degree of frustration that those discussions, for the most part, hit a brick wall.

Mrs. Laura Albanese: I know we only have a few seconds left, but why do you think the opposition refused to negotiate with you?

Mr. David Phillips: I'm very reluctant to speculate on that. I'm sure that they will give you their views. I can't speak for them.

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

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

To the PC side: Mr. Fedeli?

Mr. Victor Fedeli: Mr. Phillips, you outlined your Liberal career when you first started talking today. Can you tell me where you work today?

Mr. David Phillips: I work at the Alcohol and Gaming Commission of Ontario.

Mr. Victor Fedeli: Thank you.

You painted a very rosy picture in your opening statement. You talked about how the government's primary objective was to "facilitate the release of papers requested by the estimates committee." While that's a rosy picture, the emails that we have from you paint an entirely opposite picture, one of obfuscation and—well, you call it also the "opposition's unprecedented pursuit of contempt charges."

You do realize that it's unprecedented, yet the Speaker agreed? So it is unprecedented because you and your government were restricting documents that we were entitled to, followed by deletion and destruction of those documents. That is why it's unprecedented. You do acknowledge that it is unprecedented because of that but the Speaker did rule in our favour that it was a legitimate contempt charge here?

Mr. David Phillips: Is that a question?

Mr. Victor Fedeli: Yes, do you acknowledge that?

Mr. David Phillips: I acknowledge that the matter is unprecedented, but for reasons that are completely different from the reasons you suggest.

Mr. Victor Fedeli: Well, the Speaker ruled along with the reasons that we suggest.

You talk about this rosy picture of facilitating the release. I'm just going to pick up where Mr. Bisson finished off on his document 7. You wrote a very detailed report on July 4 to Laura Miller, John Brodhead, Neala Barton, Wendy McCann and Kevin Spafford. This is a very, very detailed plan. It's headed up "Summary of Options, Standing Committee on Estimates—Gas Plants Motion."

Mr. David Phillips: Yes.

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Mr. Victor Fedeli: And your guiding principles—although you suggest it's co-operation, the guiding principles you wrote here are, "We do have the ability to manage the manner and timing of the release." Your strategic goals were to successfully manage the timing and manner of release of the documents so as to limit negative communications—manage the issues, basically, the issues management impact on the government. Also in your strategic goals is trying to get the minister through his last five hours and avoid having the matter come before the House for a debate.

To me, that doesn't jibe with your opening statement, where you were interested in this glowing release of documents. How do you square that?

Mr. David Phillips: I appreciate the question. What I would say is that you just cited the guiding principles and the strategic goals that influenced this entire extensive memorandum, which, I agree, is very formal and detailed.

Mr. Victor Fedeli: Let me just interject with a quick question. Would you suggest that that's a transitory document, then, or is this a legitimate document?

Mr. David Phillips: I would suggest that this is a substantive document.

Mr. Victor Fedeli: I'm sorry?

Mr. David Phillips: It's a substantive document.

Mr. Victor Fedeli: Okay, thank you.

Mr. David Phillips: My view of a non-transitory document is substantive—

Mr. Victor Fedeli: Yes, I appreciate that. Thank you. Thank you very much, actually.

Mr. David Phillips: But back to your question, you skipped over the first guiding principle and you skipped over the first strategic objective—

Mr. Victor Fedeli: I'm more interested in those ones that talk about how you're going to manage the timing. We've got an issue with that.

Mr. David Phillips: Okay. As I said in my opening statement, my job and the way that I pursued my job every day was to try to find that sweet spot between good parliamentary law and procedure, good public policy and good politics. You see three strategic goals set out here, and I would say that number one is public policy focused, number two is politically focused, and number three is focused on parliamentary law and procedure and getting the estimates committee process moving. I think that is perfectly appropriate, to have political considerations in a document of this nature.

Mr. Victor Fedeli: We learned from the Information and Privacy Commissioner that government emails, documents, are retained for one year on a backup disk before they're overwritten and no longer exist. That's something we've learned in the past months and confirmed today in the privacy commissioner's addendum, which came out just this morning.

The estimates committee was requesting gas plant documents on Mississauga eight months after the decision was made to cancel it. Were you delaying to try to

get in that sweet spot—let four more months go by of delay so that they can be deleted and we'd never see them? Was that your motivation?

Mr. David Phillips: Sir, you have 1,900 pages of my records, going from January of last year to the time of my departure from Queen's Park, and they are political records in many cases; in some cases they are public records, clips and transcripts and things like that. Not a single record suggests, let alone any intention, but any awareness of the fact that this one-year rule—

Mr. Victor Fedeli: So that timing would have been coincidental, that after four more months of delays we never would have seen these emails.

Mr. David Phillips: I would suggest your question is conspiratorial in nature.

Mr. Victor Fedeli: There's a lot of conspiracy here, and you're absolutely right it's conspiratorial.

That email that you sent on the 4th of July to Laura Miller, John Brodhead, Neala Barton, Wendy McCann and Kevin Spafford: You suggested that it's not a transitory document, that it's a responsive document. Many of those people were asked under freedom of information if they had any responsive gas plant documents, and several of them responded, "No responsive documents," yet you have one here. It's in that sweet spot. Again, it's July 4, 2012. Would you have any idea why they did not turn those documents over?

Mr. David Phillips: No, sir. I can't—

Mr. Victor Fedeli: Did you turn this particular document over to the FOI request?

Mr. David Phillips: No, sir, I didn't.

Mr. Victor Fedeli: Why not?

Mr. David Phillips: To cut short, there were three FOI requests that I recall.

Mr. Victor Fedeli: Yes, there were.

Mr. David Phillips: You're probably familiar with the three FOI requests. I had responsive records to one of them; two of them were extremely narrow and I didn't have any responsive records with respect to—

Mr. Victor Fedeli: The one you responded to was very specific about a ministerial briefing note.

Mr. David Phillips: That's right, and there was another one that was asking for Project Vapour and Project Vapour-lock, I believe. Then the third FOI request that I think you're probably talking about was referring to the cancellation/relocation thing—I'm sorry—

Mr. Victor Fedeli: In 2010, 2011, 2012—

Mr. David Phillips: That's right. I don't have—

Mr. Victor Fedeli: It wasn't quite as broad.

Mr. David Phillips: That's right. The bottom line is that my—and I think that I produced about 50 pages of records; most of them were clips and things like that. To be very clear, I sought advice on the parameters, with the civil service and experts, on what the parameters of these FOIs were; you've actually got the email showing me asking for advice on this, and—

Mr. Victor Fedeli: So who told you, then, not to? Who did you seek that advice from?

Mr. David Phillips: Nobody. It was entirely my decision.

Mr. Victor Fedeli: And who did you seek that advice from, specifically?

Mr. David Phillips: I can't remember who I talked to in the FOI office in Cabinet Office. I'm not sure exactly—

Mr. Victor Fedeli: And so, out of the thousand—

Mr. David Phillips: —but just to be clear—

Mr. Victor Fedeli: Yes, please.

Mr. David Phillips: —my involvement, as I've said from the start, was with respect to the legislative aspect of this matter. This FOI was very clearly, in my view, written to deal with the cancellation, the relocation, people who were involved in that aspect of it. There were certainly lots of people who were involved in that; my job was with respect to the legislative aspect of this.

Mr. Victor Fedeli: So even though this has “gas plant” written all over it, several pages, it's discussing what to do about the gas plant documents and whatnot—

Mr. David Phillips: Well, the FOI, for example, didn't ask for a document with the phrase “gas plant” in it. It asked for documents having to do with the relocation, cancellation, tendering and things like that—the actual process of tendering. That was my interpretation.

Mr. Victor Fedeli: So emails from or to you that say “Vapour/Vapour-lock,” you didn't turn over because it didn't say “Project Vapour”?

Mr. David Phillips: I actually think it's in the package. I'm sorry; there was a lot, and I went through them in as much detail as I could, but there was an email that actually said, “Here are your search terms: Project Vapour; Project Vapour-lock.” I would have plugged that into my Outlook, and nothing came up.

Mr. Victor Fedeli: So because it said “Vapour,” you didn't turn it over.

Mr. David Phillips: That's correct. Oh, no; sorry, I shouldn't say that. The search terms that I put in were “Project Vapour” and “Project Vapour-lock,” and nothing would have come up. It wasn't a consequence of me saying, “That's not going in.”

Mr. Victor Fedeli: Yes, because the word “Project” wasn't in front of the word “Vapour.”

Mr. David Phillips: No, because I put in the search terms that I was told to put in. I do notice, Mr. Fedeli, that later on, your motions and your FOIs actually expanded the search terms that you wanted searched.

Mr. Victor Fedeli: Yes, because we kept getting stymied by people who were not turning over the documents. They were just a little bit cute by half. Just—

Mr. David Phillips: Words matter. I'll just say that.

Mr. Victor Fedeli: I can appreciate the fact that words matter. Do you know what else matters? Prices matter; \$585 million to the taxpayer and the ratepayer matters an awful lot.

So let's cut to some of these words. You didn't like when Mr. Bisson said “stymied.” You didn't like that word “stymied,” so let's use your own words. This is an email from you on June 13, 2012; it's gas plant scandal

document 1: “Our members brilliantly filibustered estimates committee for 3.5 hours ... with no fanfare....” So “filibustered” is a better word than “stymied,” but do they mean the same thing?

Mr. David Phillips: Absolutely not.

Mr. Victor Fedeli: They don't?

Mr. David Phillips: No, sir.

Mr. Victor Fedeli: Okay.

Mr. David Phillips: Your question, again, was, do “filibustered” and “stymied” mean the same thing?

Mr. Victor Fedeli: Yes.

Mr. David Phillips: I think that they're separate words in the dictionary, and I suspect that if you were to do a thesaurus, they don't mean the same thing.

Mr. Victor Fedeli: Oh, that's right; I forgot: Words matter. So, you're proud—you're boasting—about how you “brilliantly filibustered” the estimates committee; delayed them, stalled them, kicked it around for another three and a half hours. We were stymied. I was in that room for many of those hearings, and we did not get any answers, which is likely why we're here more than anything.

You were involved in this whole gas plant scandal from the beginning. I understand you didn't cancel the gas plant—you were eloquent with the words you chose in your opening statement—but why were you so determined to filibuster the estimates committee? What was the reason?

Mr. David Phillips: In response to one of the government questions, I indicated there were really two stages of that estimates committee process. In the early stages, we were moving a series of amendments that were attempting to find a way to modify the motion in a way that reconciled these two competing public interests.

Mr. Victor Fedeli: You know, I was here in many of these estimates committee meetings. Mr. Leone finally brought the question about how much the cancellation of Mississauga and how much the cancellation of Oakville cost, and when we couldn't get the documents a year or so later, we're here. In these emails, you boast about the “filibustering.” Was it the Premier's office that directed you to instruct the backbenchers to obstruct our committee's work? I remember it was now-Minister Zimmer that put on quite a show that day. Was it you? Was it the Premier's office that directed you to direct them to stall this?

Mr. David Phillips: It was a coordinated effort on the part of the government, through the deployment of a legislative strategy as well as a negotiation strategy with the opposition parties, to find a way to reconcile these two competing public interests.

Mr. Victor Fedeli: So I'll go back to a question that Mr. Bisson asked: Who ordered you to obstruct the work of the committee?

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Mr. David Phillips: I don't understand the question, to the extent that I never received any order to obstruct anything.

Mr. Victor Fedeli: Was it your choice, then, to filibuster the committee and stop us from getting to the truth? It was your choice?

Mr. David Phillips: No, it was the strategic objective of the government throughout this exercise—

Mr. Victor Fedeli: And who? Who, specifically? Was it David Livingston? Was it Don Guy? Who?

Mr. David Phillips: It's very safe to say that everybody was on the same page.

Mr. Victor Fedeli: Everybody? You called a question from me earlier “conspiratorial,” now you're telling me everybody—this involved everybody in the Liberal government?

Mr. David Phillips: No. The folks that were involved with the legislative aspect of this process: You had, I believe, three, maybe four, government caucus members who were involved; you had the Minister of Energy's office who reported to the ministry; you had me, who reported to the government House leader—

Mr. Victor Fedeli: And they're all in cahoots with this filibuster?

Mr. David Phillips: Again, the language is just not the correct language to use. This was an—

Mr. Victor Fedeli: The language was “filibuster.” It's your own word. You're proud of it. You're boasting about it.

Mr. David Phillips: So at the same time as you've got, again, 1,900 pages—

Interjection.

Mr. David Phillips: Just to be clear.

Mr. Victor Fedeli: Yes.

Mr. David Phillips: At the same time, you see—at the exact same time as this is taking place—there are overtures being made by the government to both of your staffs and, through them, to your caucuses, to find a way to reconcile these competing interests to facilitate a way for these documents to come out. That is the clearest evidence you can possibly have. These are from my emails, political records to show that we are trying to find a way to get these documents out and, as further evidence, the records did come out the very day that Mississauga was settled. The very day that Mississauga was settled, they came out.

Mr. Victor Fedeli: Not quite. You missed 20,000, but we'll get around to that later.

You wrote an email on September 21, and you say here, “If Levac”—referring to the Speaker—“does anything other than find that we've cured the breach and suspend the ruling indefinitely, I think we should need to take some reasonably extreme action in the House.” What did you mean by that?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, before I allow that question to proceed, would you give me a moment?

Mr. Victor Fedeli: Yes; I'm not referring to the Liberal operatives who are intimidating the Speaker.

The Chair (Mr. Shafiq Qaadri): Fine. Please ask your question, and we'll determine after.

Mr. Victor Fedeli: I'm asking you: What did you mean by that?

Mr. David Phillips: Sorry, I'm just looking through the email. Where's this—

Mr. Victor Fedeli: Document 2, last sentence, just above where it says “Dave.”

Mr. David Phillips: In the final paragraph?

Mr. Victor Fedeli: Yes. “If Levac does anything other than find that we've cured the breach and suspend the ruling indefinitely”—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I've been advised by my colleagues here that that question is out of the scope and will not be allowed. Mr. Phillips, you—

Mr. Victor Fedeli: But this is a September 21 email.

The Chair (Mr. Shafiq Qaadri): Let me just confirm that, Mr. Fedeli.

Mr. Victor Fedeli: I'm reading it, September 21, 2012. What's wrong with that date? This isn't one where they're trying to get to the Speaker like the last guys.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I appreciate this is now getting into a level of precision which is difficult to juggle, but as I understand it and on the advice I'm receiving from my counsel here, that question is out of the scope of this committee.

Interjections.

Mr. Gilles Bisson: But Chair—

Mr. Victor Fedeli: Look, let me say, Chair, that—

Interjection.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson has a point of order.

Mr. Gilles Bisson: To the point: How do you figure that that question can't be asked? It's his email in regard to what he did to try to stymie the release of the documents.

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

Mr. Gilles Bisson: So what is your logic?

Mr. Victor Fedeli: Will you stop the clock, Chair?

The Chair (Mr. Shafiq Qaadri): Yes.

Thank you, Mr. Fedeli, for allowing us to confer. Mr. Bisson, the ruling stands as I've just said.

Mr. Gilles Bisson: But what's the logic?

Mr. Victor Fedeli: Before you start the clock, would you please explain that?

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, I am being showered with lots of legalese, which I may or may not understand given some more caffeine, but in any case, the ruling stands, as I have said, and—

Mr. Gilles Bisson: On a point of order.

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

Mr. Gilles Bisson: The fact that you don't understand what the rules are shouldn't give you the authority just to disallow a question. You're saying yourself you don't understand why it is the clerks are telling you this, and now you're saying, “Because I don't understand, he can't ask the question.” Come on. You've got to do better than that, Chair.

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

Colleagues, as I've said, there's now getting into a level of juggling and consideration of these points. I'm advised by my legal counsel, by my Clerk, by other table officers who are represented here. I have made this ruling. I believe we are on firm foundation. I have directed you that if you have—

Mr. John Yakabuski: You don't even know the foundation.

Mr. Gilles Bisson: You just admitted you don't know the foundation of the decision.

Interjections.

Mr. John Yakabuski: Explain what part of the question is out of order.

The Chair (Mr. Shafiq Qaadri): The Speaker's finding of a prima facie breach of privilege that forms part of our mandate, and not the process by which that ruling was determined.

Interjections.

The Chair (Mr. Shafiq Qaadri): Gentlemen, thank you.

Mr. Yakabuski?

Mr. John Yakabuski: Explain to us what part of Mr. Fedeli's question is out of order.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. You are welcome to pursue this elsewhere.

The time, if you are ready, Mr. Fedeli, now begins.

Mr. Victor Fedeli: I don't agree with that, Chair, but I am going to rephrase.

What extreme action in the Legislature, in the House, would you have taken?

Mr. David Phillips: So this was drafted on September 21, which is, if I recall correctly, in and around the time that the matter was before the House, the contempt matter was before the House. Is that right? So the important thing to note is that when we came back—

Mr. Victor Fedeli: You wanted "extreme action" in the House. What did you mean by that?

Mr. David Phillips: The important thing to note is that when we came back, the Speaker rose and made a "statement," I think is the proper term. Mr. Leone was entitled to move his referral motion, and the government engaged in sustained debate, so that's what took place.

In terms of what that language means when I say "extreme action," there's any range of, I guess, procedural tools that could be deployed, but the important thing is that nothing actually did take place in response to that.

Mr. Rob Leone: It's a filibuster.

Mr. David Phillips: No. During the debate on your motion? I don't think there was anything of that nature.

Mr. Victor Fedeli: Well, look, this is very disconcerting today. I must say, Chair, this is very upsetting, that our line of questioning has been stymied yet again today. I have to say that. We'll have to change direction here on a simple request about their extreme action.

This tells us there are more people involved in the cover-up than we originally thought. You can call it a conspiracy again or whatever your terminology was—

you like words—but you're deep in this as well. It appears as if you're a central player in this as well, and we can't ask you the questions to fully outline the role that you play in the cover-up and the obstruction. It's going to be very difficult now to continue.

Mr. Rob Leone: Hold on a second. Point of order.

Mr. Victor Fedeli: This is awful.

The Chair (Mr. Shafiq Qaadri): Just before you—the time is stopped.

Interjections.

The Chair (Mr. Shafiq Qaadri): Colleagues, I'm informed that you are able to ask the witness what his role was in the cancellation, but not with reference to the Speaker. Correct?

Interjection.

The Chair (Mr. Shafiq Qaadri): The process of the Speaker—of the Speaker's ruling.

Mr. Leone.

Mr. Rob Leone: Perhaps it would be helpful if we had a three-minute recess so we can get an answer to why these questions are out of order.

The Chair (Mr. Shafiq Qaadri): No, I think—I'm not going to recess. I think the ruling has been made. I appreciate the—

Mr. Rob Leone: I just want an answer.

The Chair (Mr. Shafiq Qaadri): Everyone is seeking the logic chain. I appreciate that. But it stands as it stands.

Mr. John Yakabuski: There is no logic chain.

The Chair (Mr. Shafiq Qaadri): Mr. Bisson. The clock is stopped. You have two minutes—

Mr. Gilles Bisson: So Mr. Fedeli is allowed to ask his question as it relates to Mr. Phillips, and I thought that's what he was doing. So maybe he can retry the question and direct it directly to the—

The Chair (Mr. Shafiq Qaadri): You may retry, and we will listen attentively.

Mrs. Albanese.

Mrs. Laura Albanese: I think—

Mr. Gilles Bisson: No, my point is, he was asking a question as to his role, not as to the motivation of what the Speaker was doing. I thank you for your clarification, and we will continue with the questions—

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The Chair (Mr. Shafiq Qaadri): We'll welcome the question.

Yes, Madam Albanese.

Mrs. Laura Albanese: Mr. Chair, I guess we're all looking for some clarity, because the email was clearly written before the Speaker's ruling. Therefore, it should be within the mandate of the committee. It was written before. Just some clarity on that would be appreciated by all the members.

The Chair (Mr. Shafiq Qaadri): I appreciate that. We've tried to be as clear as possible. I appreciate that there may be questions arising that test those boundaries, and I can only simply say that we allow the questions at least to be posed. Whether they are in order or not will be

determined as they are posed because I don't think we can give a blanket summary, all right?

Mr. Fedeli, are you ready to begin? You have about two minutes left.

Mr. Victor Fedeli: Well, I'll have to try to think of how we can word this—

The Chair (Mr. Shafiq Qadri): Fine. Time begins.

Mr. Victor Fedeli: Thank you. In your September 21 email to Laura Miller and David Livingston, you're trying to game out how this plays out procedurally: "The Speaker suspended the 'remedy' part of the breach finding in order to allow the House leaders to work.... By releasing the documents ... one would"—I'm trying to think of what I can ask here without hearing from you. I'm going to repeat my question. "If Levac does anything other than find that we've cured the breach and suspend the ruling indefinitely, I think we should need to take some reasonably extreme action in the House." Was some of that action instructing Don Guy and Dave Gene to "get to" the Speaker? Is that part of what this was? Is that the extreme action?

Mr. David Phillips: No, sir.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, apparently all of your question, except the last five or six words, was in order.

Mr. Victor Fedeli: Was your extreme action to try to get the Speaker to change his ruling?

Mr. David Phillips: Sir, there is—

The Chair (Mr. Shafiq Qadri): That's out of order, Mr. Fedeli.

Mr. Victor Fedeli: Was your extreme action to order the deletion and destruction of emails so that we don't get to understand the Speaker's ruling?

Mr. David Phillips: No.

Mr. Victor Fedeli: I'm sorry?

Mr. David Phillips: No, sir.

Mr. Victor Fedeli: Did you delete any of your email?

Mr. David Phillips: You've got 1,900 pages of my email in front of you.

Mr. Gilles Bisson: Only 900 pages?

Mr. Victor Fedeli: It's 1,900.

Mr. Gilles Bisson: I've had more than that in one day.

Mr. Victor Fedeli: I'm stymied here on how to ask about this if you're going to cut me off at every turn. How much time, Chair?

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

Once again, before I pass the floor to the NDP, I appreciate the challenges by committee members, but I act on advice from legal counsel, from our table officers, following procedure. As I say, if there are issues with that, there are other forums in which to deal with that, I say to you all with respect.

Mr. Bisson.

Mr. Gilles Bisson: Welcome back.

Mr. David Phillips: Thank you, sir.

Mr. Gilles Bisson: It's pretty clear that the Liberal caucus, the Liberal House leader's office, my office as House leader of the NDP and the House leader's office

for the Conservatives—when it came to the issue of solicitor-client privilege, pretty well everybody came to the same conclusion than you. Who did you confer with in order to determine that you can hide behind solicitor-client privilege in not releasing the documents? Did the Clerk give you that advice?

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: Who gave you that advice, then? If it wasn't the Clerk, was it just—

Mr. David Phillips: I don't have a copy of it with me here today. I wouldn't be surprised if many of you have an opportunity to read it, but Justice Iacobucci, who was brought in to lead up the Afghan detainee panel—in his report, he has two chapters. One deals with national security privilege and one deals with solicitor-client—

Mr. Gilles Bisson: But even in the case of the Afghan detainee issue, national security did not trump the right of the committee to be able to get the documents it had requested. So I ask you again, who gave you the advice to utilize solicitor-client privilege as a reason to not release those documents?

Mr. David Phillips: If you read the Afghan detainee panel report, the second chapter deals—

Mr. Gilles Bisson: So you came up with that advice.

Mr. David Phillips: If you read the second chapter of the Afghan detainee report—

Mr. Gilles Bisson: No, but I've only got 10 minutes, so I'm getting to the point. You looked at the Milliken decision and you came out of it with a strategy to use solicitor-client privilege as a way not to release those documents. So it was your advice to government that precipitated that.

Mr. David Phillips: I certainly conferred with others, in Cabinet Office, for example, and relied on advice from the Ministry of Energy that, in fact, these documents were solicitor-client privileged, was basing it on a lot of precedent out there that solicitor-client privilege is, first of all, a constitutional principle that, especially when it comes—

Mr. Gilles Bisson: No, but listen. It's pretty clear: The Speaker made a decision; our Speaker was clear—Speaker Milliken was clear and made a decision—that there is a responsibility on the part of the government to release those documents when asked by the committee to do so.

I ask you because I know we conferred at the time, and I'm sure that the Conservative House leader's office did the same. We looked at the precedents, we talked to our federal counterparts, we looked and spoke with the Clerks, and all of them came to the same conclusion: that you cannot use solicitor-client privilege as a way to not release the documents. Clearly, the government was trying not to release documents for a reason, which I'll get to later.

I've got to conclude, if you didn't get that information from anybody, essentially, you're the one who gave that advice to the government.

Mr. David Phillips: With respect to both Speaker Milliken and Speaker Levac's rulings, in both cases, they

said that there's an absolute right to the production of these documents, but—

Mr. Gilles Bisson: That's right.

Mr. David Phillips: —but that there are competing public interests, and in both cases suspended the rulings and asked the parties to get together to find a way to reconcile those interests.

Mr. Gilles Bisson: But the Speaker's decision was clear: That could not trump the right of the committee. So don't you have—

Mr. David Phillips: And in the case of the Afghan detainee matter, all parties came up with a panel. Justice Iacobucci headed it, and solicitor-client-privileged documents were not released in almost every case.

Mr. Gilles Bisson: Would you agree that you had a responsibility, as the government, to do the right thing? It was your responsibility?

Mr. David Phillips: Absolutely, and that includes protecting the Constitution.

Mr. Gilles Bisson: I go to the document that you gave to the Premier's office back in July. In there, you talk about strategic goals. You say, "Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government." It's pretty clear that what you were trying to do was to manage the bad news. Isn't that what you were trying to do?

Mr. David Phillips: I'm just pulling up—sorry, which document number is it?

Mr. Gilles Bisson: That's your strategic document dated—

Mr. David Phillips: It's the first document, correct?

Mr. Gilles Bisson: Yes—July 4, on the second page. You say, "reduce the risk—fiscal and otherwise"—which you've already talked to. The second bullet point at the end of "Strategic Goals":

"—Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues."

You were trying to do damage control: Yes or no?

Mr. David Phillips: The strategic goals that I set out are:

"—To the extent possible, reduce the risk—fiscal and otherwise—posed by the production of documents to the successful resolution of litigation and other processes related to both the Mississauga and Oakville plants;

"—Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government;" and

"—Facilitate the Minister of Energy's completion of his final five hours before the committee and avoid having the matter come before the House for a debate/vote."

Mr. Gilles Bisson: So there are two things that happened. You tried, by your own admission in this document, to time the information coming out in such a way that it was less harmful to the government; and you were

trying to avoid this matter coming before the House at all.

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: This was all about damage control—

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: —and that's what prorogation was about as well.

Mr. David Phillips: No, sir.

Mr. Gilles Bisson: The prorogation was about trying to duck out from your responsibility as a government to do what you were charged to do, and that was to release those documents when they were requested. So at the end of the day, it was about your political interests—the prorogation, the whole bit. It was about the political interests of the Liberal Party and not about your responsibility to do the right thing—what you're required to do as a government.

Mr. David Phillips: Mr. Bisson, I don't agree with your characterization, and—

Mr. Gilles Bisson: Well, it's your own words.

Mr. David Phillips: I don't agree with your characterization, and here's why—

Mr. Gilles Bisson: What is "manage the timing and manner of release of the documents"? What does that mean, "manage the timing and manner of release"?

Mr. David Phillips: I don't agree with your characterization, and here's why: The very day after this memorandum was written, I drafted a memorandum to the Minister of Energy's office, and they proposed a recommendation to the minister that we contact your offices and the Ontario PC offices for the purpose of negotiating a solution.

Mr. Gilles Bisson: And we had said no.

Mr. David Phillips: Those negotiations took place—

Mr. Gilles Bisson: That's right, and we had said no.

Mr. David Phillips: —and on the day of the Mississauga settlement, we had a meeting in the morning, in which case your staff said, "We have no interest in negotiating. We have no interest to reconcile in the public interest that you've raised."

Mr. Gilles Bisson: You had a responsibility, sir. Your government had a responsibility to release those documents, as per the law, and it's pretty clear, as you look at this, that your strategic goal was to manage the communications on this thing and, if need be, try to find some way not to have the matter come before the House. It's pretty clear that what you were trying to do was to stymie the release of the documents.

Mr. David Phillips: The Minister of Energy had multiple obligations throughout this period of time, and—

Mr. Gilles Bisson: It looks to me like you were handling the file pretty well at that point.

Mr. David Phillips: Sir, again, I've got the record right here, in which—

Mr. Gilles Bisson: Well, I have the record right here.

Okay, so you were not trying to manage the release of the information in a way that was favourable to the Liberal government.

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Mr. David Phillips: This document sets out public policy, political and parliamentary law and procedural considerations. Does the Premier's office have a communications and issues management department that tries to effectively manage contentious issues? Absolutely. I think that's perfectly appropriate for political considerations—

Mr. Gilles Bisson: I agree, yes. I understand what you're saying but it's clear what the government did. At the very beginning, you tried to do every procedural tactic you could at committee not to allow the motion to come before the House. Why?

Mr. David Phillips: That's not true.

Mr. Gilles Bisson: Well, I was there. I was the third party House leader and you guys were doing everything you can to move amendments to motions, not to allow the motion of Mr. Leone to come before the House.

Mr. David Phillips: We were doing everything—

Mr. Gilles Bisson: Did you or did you not try to filibuster that committee by amendments?

Mr. David Phillips: We were doing everything we possibly could to negotiate a solution—

Mr. Gilles Bisson: You weren't trying to negotiate anything; I was there.

Mr. David Phillips: It's in the record, sir.

Mr. Gilles Bisson: And when you failed and the Speaker found that there was a prima facie case of contempt, then your next trick was, "Well, I guess we're stuck. I guess we're going to have to do something. Oh, let's prorogue the House; maybe we can get around this whole little mess by ducking."

So you guys never had the intent of taking your responsibility to do what was your obligation under law.

Mr. David Phillips: No, throughout this period of time, sir—

Mr. Gilles Bisson: Oh, you try, Peter. Maybe you can get him to say something.

Mr. Peter Tabuns: Why, thank you, Gilles.

Mr. Gilles Bisson: I miss you. I miss you, by the way, Dave.

Mr. Peter Tabuns: I'm just following on what Mr. Bisson had to say. I mean, it's very clear from—

Mr. David Phillips: You weren't like this in House leaders' meetings.

Mr. Peter Tabuns: —the email that we were discussing earlier today. When you were making your recommendations to David Livingston and Laura Miller, you were pretty clear: "We have a chance there'll be an election in the spring of next year. We don't want committee hearings; we want our people out on the road. We don't want to have the Premier to have to go before this committee to answer questions." You were doing everything in your power to ensure that the interests of the Liberal Party were protected, and frankly, that this got swept aside.

Mr. David Phillips: There were two fundamental considerations that were influencing the views that I expressed in this particular memo. Number one—and again,

because of the date, this was the day that the opposition made the decision to pursue unprecedented contempt charges against the Minister of Energy—it was my view—

Mr. Gilles Bisson: It was also unprecedented that you didn't release the documents when it was asked. That was pretty unprecedented, too.

Mr. Peter Tabuns: In fact, you don't mention that in this. You talk about the need to make sure that Yasir Naqvi gets to go out and be a parliamentary assistant and president of the Liberal Party and do on the road what he needs to do, instead of having him stuck in committee. You don't talk about Chris Bentley; you talk about the Premier not having to go to committee. That is your focus. It is, "How are we going to deal with the next two-and-a-half or three months before a possible budget election?" And that's to make sure that you're outside this building campaigning. That's what this is about. How can you characterize it any other way?

Mr. David Phillips: There are two things I'd like to say about that particular document, if you'll indulge me for just a minute, and I promise not to go on too long. Number one, that was a memo that I prepared on that evening in an unsolicited fashion to two colleagues in the Premier's office and thereafter didn't have any further discussion about the memo and was not involved in any discussions that then took place on October 15.

Secondly, if I could, the fundamental considerations that went into those documents dealt with the public policy, political and parliamentary law and procedural aspects of this—

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

To the government side: Madam Albanese.

Mrs. Laura Albanese: I want to go back to the estimates motion and the risk to taxpayers. Over the past six months, I would say the opposition has suggested that they actually would have been quite willing to engage in a compromise solution, but you've been saying today that they weren't. They were not willing to negotiate with you. So which is the case? Did you want to finish your thoughts?

Mr. David Phillips: I can speak from my personal experience, which was that throughout the estimates committee process, which I think went over about eight or nine days, there was a good-faith effort on the part of the government, through debate and amendment, which is perfectly appropriate, to find a way to modify this motion so as to facilitate the release of the records that were being requested by the opposition parties, but to do so in a way that recognized and reconciled the duties and the obligations that the Minister of Energy had: to protect the financial interests of the people of Ontario and to protect the constitutional principle of solicitor-client privilege. As I said to you earlier on, I was in a meeting the day before where that was very clearly a fundamental pre-occupation. It was based on advice that he was receiving from counsel and public officials within the Ministry of the Attorney General and the Ministry of Energy.

Thereafter, once it became very clear that it was going to be difficult to achieve a compromise solution with the opposition parties, we took a number of steps to attempt to propose, proactively and in an unsolicited fashion, negotiated solutions with the opposition parties. The first took place just prior to the Mississauga settlement and the return of the estimates committee on the 11th of July, in which there are a number of emails in my package that show that we were trying to negotiate a solution with the opposition parties. Then, after the Speaker issued his ruling, we put forward two proposals, one that mirrored the Afghan detainee process, for the purpose of trying to find a way to reconcile these two very important public interests, but unfortunately we didn't get anywhere.

Mrs. Laura Albanese: So instead of negotiating and working out a solution, what we saw was the opposition launching a full-scale attack, really, against Mr. Bentley. The Legislature was ground to a halt. We heard insults and threats to the honourable minister. There was talk about getting him disbarred, thrown in jail, ruining his life and his career—

Mr. John Yakabuski: Point of order, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski, on a point of order.

Mrs. Laura Albanese: Could you stop the clock, please, Mr. Chair?

Mr. John Yakabuski: I object vociferously to the allegations being made by Ms. Albanese. At no time was Minister Bentley threatened. She's implying that the opposition threatened him in the Legislature. That is an accusation against members of the Legislature. That is not acceptable.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski. I'll simply, with your direction, just ask all members to please refrain from accusing other members if such was done.

Please, Ms. Albanese, please continue.

Mrs. Laura Albanese: Thank you, Mr. Chair. When former Minister Bentley appeared before this committee, he testified, "I think it would be fair to say that this past year has been one of the most difficult I could ever imagine." He went on to say, "The sacrifices that families make in public life are enormous, far beyond what most people would even begin to think, but the sacrifice and effect that family has had over the past year has been incredible. I'm sorry that I put them through that by effectively doing what I always wanted to do, which was serve the people."

My question to you is, knowing what you know about the former minister, do you believe that he would have put himself and his family through what he did if he didn't truly believe that he was acting in the public interest?

Mr. David Phillips: I could spend all day talking about Chris Bentley. I first worked for him—actually on his campaign for his first election—in 2003 when I was in law school at Western, and then I worked for him for 18 months. I was actually a summer student at the Min-

istry of Labour with him between my first and second year of law school.

But I can tell you that the most significant and impactful years for me were when I worked for him at the Ministry of the Attorney General. I can tell you through that period of time, by the way that he approached his job, that he is not a person who does anything without the highest concern for principle and ethics and the right thing to do.

Throughout this period of time, I had more than a few conversations with his staff and with him directly about the procedural aspects of this matter, and I can tell you first-hand that Minister Bentley was extremely seized of these competing public interests and trying to find a way forward, and relied on those in the House leader's office, to a certain extent, to provide options with respect to the procedural aspects of the estimates committee, and then, once this matter entered into the House. I can say that throughout that period of time that the information that was being delivered to us through the minister's office was that Minister Bentley was very concerned with ensuring that he was meeting both of these objectives, both as a member of the Legislature and as a member of cabinet.

Mrs. Laura Albanese: Thank you. I'm going to pass it over to my colleague Mr. Delaney.

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

Mr. Bob Delaney: Thank you very much. I'd like to follow up from a question you were asked by our colleagues in the NDP, where it seems that you were repeatedly cut off. The Iacobucci panel clearly articulated the importance of solicitor-client privilege. The panel sent back to members a list that set out those documents where the claim of privilege was well founded. What precedent do you think they set when it came to documents subject to solicitor-client privilege?

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Mr. David Phillips: I would actually say that "precedent" may not be the right word, because the Afghan detainee panel was the product of an agreement amongst parliamentarians in which they applied, I would say, perhaps political self-restraint in some respects to come up with a way to reconcile these very important public interests with respect to solicitor-client privilege and national security privilege and set up a process whereby they would rely on experts, including a former Supreme Court of Canada justice, to provide advice on these two very important principles that have been set over and over again through traditional precedent, and take the form of constitutional principles—and particularly where you are a lawyer who is a member of a law society, you have a duty to uphold it at every turn.

Again, I wouldn't necessarily say that it serves as a precedent. It serves as very strong guidance from a very recent case that has a lot of parallels to this matter as to how you can set up a process to reconcile those interests. What's most notable, I'd say—and the committee has the record, which was the proposals that we put to the opposition party shortly after the Speaker issued his

ruling and suspended it, which very closely mirrored the approach that was agreed to by all parties except for, I think, one in the House of Commons during the Afghan detainee matter.

Mr. Bob Delaney: Okay. In a transition planning memo from January of this year, 2013, you had described in detail that the fall 2011 and the spring 2012 sessions have been mired by endless stall tactics. Again, the words that you use: “The official opposition have exhibited a clear political strategy to delay and stall the government’s legislative agenda as much as possible. Since the 2011 general election, it has taken an average of 52 sessional days to pass a government bill, 35 sessional days longer than the average bill during Bill Davis’s second minority government. The official opposition dragged out debate on straightforward, relatively non-contentious legislation.”

Based on all of this, it seems that you had a real concern about the opposition’s willingness to make this minority Legislature work. You were asked about these—

Interjections.

The Chair (Mr. Shafiq Qaadri): Stop, please. Mr. Yakabuski has the floor. Point of order, hopefully—

Mr. John Yakabuski: What relevance to the mandate of the committee does this question have? I’d like the Clerk to rule on that.

The Chair (Mr. Shafiq Qaadri): Thank you. It’s the Chair that rules, and as far as I can tell, it has not breached the mandate.

Mr. Delaney.

Mr. Gilles Bisson: Point of order.

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

Mr. Gilles Bisson: I would suggest that Mr. Delaney remembers that it was the government and former Premier McGuinty’s idea of the “major minority” that caused this mess in the first place.

The Chair (Mr. Shafiq Qaadri): I’m not sure what sort of point that is, Mr. Bisson, but thank you.

Mr. Gilles Bisson: I just thought I was going to help him with his question.

The Chair (Mr. Shafiq Qaadri): Mr. Delaney, please continue.

Mr. Bob Delaney: Whatever point it is, it isn’t a point of order.

What you did set out was the two months of a bell-ringing and, let’s say it, filibustering campaign by the opposition here. You noted that nine government bills were passed, only following significant obstruction delay by the Ontario PCs or as a result of the government bringing sufficient public pressure to bear on the opposition parties. So you had a real concern about the opposition’s willingness to make this minority Legislature work. Would you like to expand on it?

Mr. David Phillips: The document that I think—I don’t have it in front of me, but I certainly remember drafting it. Once we got into the fall legislative session and the House ground to a halt to deal with the contempt matter regarding Minister Bentley, during that period of time we started to do an assessment as to how the Legis-

lature had been working and what the prospects were for the Legislature work in moving forward.

The analysis that we produced was obviously incorporated into that document, which showed that relative to previous Parliaments, going way back through Bill Davis minority Parliaments, for example, the number of bills that were passing through the Legislature, but most importantly, the amount of time that every single government bill was spending at debate and before committee, was unprecedented and extraordinary. The consequence of that was that there was government legislation that was for the most part just simply not moving, and much of this was non-controversial and non-contentious legislation.

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

Just before I offer the floor to Mr. Fedeli of the PC side, I would just comment for committee members that being relevant or irrelevant is one issue and being out of order or in order are separate issues.

In any case, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I’ll pass the microphone to Mr. Leone.

Mr. Rob Leone: All right. Thanks for the clarification, Chair; I’m glad you cleared that up for us.

I’m going to go back to the email that Mr. Fedeli was trying to get an answer from you about. It states the following: “If Levac does anything other than find that we’ve cured the breach and suspend the ruling indefinitely, I think we should need to take some reasonably extreme action in the House.”

Mr. David Phillips: Right.

Mr. Rob Leone: What were the extreme actions that you were prepared to take?

Mr. David Phillips: First of all, I sent that email and, as you can see from my records, I didn’t follow up with any sort of specifics as to what that meant. If I was to speculate on what I was talking about at that time—you see in the previous sentence in that paragraph that there was an extremely high level of concern and dissatisfaction across the government caucus, as you heard throughout the debate, about the fact that we were trying to negotiate in good faith and find a way to get these documents out and that we were hitting a brick wall.

The Speaker was hamstrung in that he had no choice but to allow you to move the motion of contempt. At the time we saw that as a particularly vindictive, callous and inappropriate use of the Legislature. In terms of the steps that we are going to take—you are very learned in parliamentary procedure—I didn’t populate it, and there was no action taken on it, but it can range from a whole range of different activities in the House that have been deployed over the years.

Mr. Rob Leone: Earlier, you blamed Mr. Bentley for not releasing the documents; you suggested that that was his decision to make, and obviously, he had lots of considerations to make. But I would suggest that—Mr. Fedeli used the word “cahoots,” and you used the word “co-operation” or “collaboration”; whatever the terminol-

ogy is—there was a coordinated effort to not release any information with respect to these gas plants.

On March 7, in public accounts, the Liberals on that committee filibustered Ms. Gélinas's motion to get the Auditor General to look into the gas plant situation. On May 16, in the estimates committee, we started to ask for the production of documents once answers weren't forthcoming. We had to subsequently receive the letters, as was stated earlier today. We went into those motions, and certainly through June and July, we were significantly filibustered.

You have an email from June 13, I guess it's gas plant scandal document number 1, that says, "Our members brilliantly filibustered estimates committee for 3.5 hours yesterday with no fanfare." You continued, throughout the whole process, to not release the documents as stated. You gave active consideration to—if I could provide some of the extreme measures you were prepared to take, which were legal action against the opposition.

You wanted to have a reference case to the Supreme Court to allow us to stop this process from going on. You hoped that you would win the September 6 by-election so that you could reconstitute committees, so that we could engage in this investigation; obviously, that failed. You tried very hard to argue against the motion that we put forward to refer this issue back to committee.

You guys were prepared to go at length. I remember, very distinctly, your government House leader being very disappointed that we actually invoked closure on that to actually get the committees struck. When that happened—after that motion was put forward—guess what? The prorogation of the Legislature took place, further enabling the government to push back the examination of this very issue.

This is a coordinated effort. These are the sorts of extreme measures that you were prepared to take—as the mastermind, because these are the documents that you've prepared—to not allow us to ask very legitimate questions about this gas plant scandal.

I'm perplexed by this, because we're not allowed to ask questions about the intimidation of the Speaker, yet we have all of these bits and pieces of evidence emerging from the documents that you've produced that basically say, "I don't want the opposition to question us on our politically motivated decisions to spend hundreds of millions of dollars of taxpayer money to save some Liberal seats." In essence, that's what your job was throughout this whole process. What do you say to that?

Mr. David Phillips: I would say that I adamantly disagree with your characterization of the documents that you have in front of you. Specifically, the documents that you have in front of you show, from the very start—in particular, there is a series of emails—

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Mr. John Yakabuski: Not in estimates committee.

Mr. David Phillips: You have a series of emails that show a series of attempts by the government to reach a negotiated solution with the opposition. It's very close to what happened in the Afghan detainee—

Mr. Rob Leone: I read the documents, Mr. Phillips, and in the documents you clearly outlined the fact that the opposition probably wouldn't accept these ideas for various reasons, and for good reason, because at the end of the day, the only interest that we have is the truth. We asked the question in estimates. You probably were here. I know you filtered in and out of estimates committee when we were sitting. I wanted to know exactly what these cancellations cost and where in the budget they were located. That's the question that we still actually don't have an answer to more than a year later.

At the end of the day, you have a coordinated effort to block the opposition from getting an answer to that question. That's actually what prompted all of this. This isn't about, in your words, being mean-spirited and vindictive. This is about getting the truth for the people of Ontario, which you still refuse—well, you're no longer a staffer in this administration, but I realize you have a nice appointment with the Alcohol and Gaming Commission of Ontario.

This is just what speaks to everything that has happened and transpired since and before and after your departure. This is exactly what has happened. You've done everything to make sure that the truth has not and will not be known.

Mr. David Phillips: As I indicated before, the very first motion that we moved in the estimates committee was attempting to get the opposition to agree to just slightly modify the motion for the purpose of recognizing these two provincial public interests. Then you've got an email from me in mid-July setting out a series of options for when the committee comes back on the 11th, in which I identify that the very first strategic objective is to reduce the risk to these ongoing negotiations that would result from premature release of these documents. Then you see, in October, two proposals that we provided to the opposition parties, one of which very closely mirrored the Afghan detainees and where we would have a facilitated release of these records in a way that reconciled these two interests. You have a very clear continuum of records from May until October 2012 in which we're going after the same thing from start to finish, and that is to—in government, you've sometimes got competing interests. In this case, the minister had a competing interest of the accountability of the Legislature that he held as an MPP and a minister and his responsibility as a member of the executive council to protect the financial interests of the province through these negotiations.

Mr. Rob Leone: This story and the story that your documents portray go on to the final conclusion, which is part of the Information and Privacy Commissioner's addendum, where she says, "I am left with the inescapable conclusion that they did not take my investigation very seriously. For example, MGS staff did not inform my office about the following essential pieces of information: (1) the existence and the application of the Symantec Enterprise Vault as part of the OPS Enterprise email system; (2) the existence of approximately 30,000 undeleted or 'orphaned' vault accounts"—this is all on page 17.

This goes on to suggest that you deleted emails to try to cover up your evidence. Through the whole investigation we're actually trying to get to the bottom of things. At the end of the day, you did everything to stop that information flow. That was essentially what the task of the Liberal staffers was: to withhold the information from the people of this committee and the people of Ontario, by extension.

Mr. David Phillips: I can only speak from my standpoint, of course, and I would just refer you back to the documentary evidence that you have in front of you. Throughout, I am having discussions about what we're trying to get at here through this process. At no point in time does it speak to what you suggest; for example, concealment and things like that. We're talking about protecting the interests of the people of Ontario.

Mr. Rob Leone: Again, this is the Information and Privacy Commissioner's addendum to the report released I think today, in fact, on August 20, 2013, which then suggests, on page 17, "The provision of inaccurate and incomplete information in my initial investigation is unprecedented during my tenure as commissioner. As a direct consequence of MGS's incomplete response, the public has been misled as to the nature of the OPS Enterprise email system and the ability of MGS staff to retrieve potentially relevant information. We ... know that relevant email records were indeed retrievable through these systems."

Again, Mr. Chair, I would suggest, in closing, that if anything speaks to the ongoing cover-up that we see in this committee, it was released in the addendum report today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone, and thanks to you, Mr. Phillips, for your presence and testimony. Committee will recess until 1:30.

The committee recessed from 1225 to 1333.

DR. ALAN LEVY

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting to order and invite our next presenter to please come forward. Dr. Alan Levy, please come forward and be seated. Thank you, Dr. Levy. I understand you're being sworn in.

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

Dr. Alan Levy: I do.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Levy. You have five minutes in which to make your opening address, beginning now.

Dr. Alan Levy: My opening address is really just a little about me, because I've been directly involved in this subject matter. I started my career as a research scientist in England. Then in 1973, there was the OPEC oil crisis, and the British government recruited PhDs to work on energy efficiency in buildings. I did that for a

few years, and then I emigrated to Canada and set up a research facility in Ottawa at the National Research Council on energy efficiency in buildings.

Since then, I've been involved primarily in the private sector, both starting and running companies. The companies that I started and ran were mostly owned by electric and gas utilities, and generally in the area of energy efficiency in buildings, but also into procurement of natural gas and electricity and some small cogeneration activities.

So the last, I guess, 30 years, I've been consulting. I consult to companies across North America, Australia and Japan in energy efficiency, buildings, utilities. I've consulted to governments in Canada on policies and programs related to energy. But the last 10 years I've been primarily involved in the private sector and assisting them, again, in the general area on the demand and consumption side of energy use.

The Chair (Mr. Shafiq Qaadri): Thank you for your opening remarks.

To our government side: Mr. Delaney.

Mr. Bob Delaney: Thank you very much, Chair.

Good afternoon, Dr. Levy. It's really good to have you here today. I'm sure, given your background, that perhaps the challenge for both me and Mr. Tabuns will be to avoid getting into the minutiae, because we both happen to enjoy that sort of thing.

As you may know, part of the mandate of the committee is going to be to provide recommendations on how we can improve the siting process for large-scale energy projects. We've invited you here today because, as you've pointed out, you've had a very long career working in the energy sector, and your reputation does precede you.

Would you like to expand a little bit more about your career in the energy sector, particularly any experience you may have regarding building and creating companies in the fields of energy and natural gas procurement?

Dr. Alan Levy: Well, in energy and natural gas procurement, you always got into that peripherally, really, when deregulation happened in natural gas, and then subsequently in electricity. If you were dealing with any client on energy efficiency, ultimately the cost of either gas or electricity is price multiplied by use, and so the price part, one got involved with.

I got involved more directly when electricity deregulation was happening. I was a CEO of a company called ENERconnect, which was, at that time, owned by 220 municipal utilities in Ontario. As deregulation was unfolding, our job, we thought, was to buy electricity for the whole province, for the utilities. As it turned out, that's not how the market unfolded. So then we got into settlement services, providing that to the local distribution companies.

Then another company I started and ran was called The Power Connection. That was owned by six large electric local distribution companies. There, just as electricity deregulation happened, we were—by the way, all these companies were non-regulated companies. That

company was primarily assisting the private and the public sector to procure electricity, primarily, just as deregulation happened.

Mr. Bob Delaney: In your consulting business, what type of clients and businesses do you advise, and what does the scale and scope of your services provide?

Dr. Alan Levy: It really is more to the management side of businesses as it relates to energy and use, so companies such as, for example, IKEA Canada, who have two mandates globally. One is to reduce their energy use, each over successive three- or five-year programs, and to ultimately be 100% renewable electricity. So I'm helping the Canadian company achieve those two goals.

I've consulted with the World Bank in setting up what we call performance contracting. I don't know if that's a term the committee is familiar with, but that's where a private company puts up the money to retrofit a building and gets paid out of the energy savings. I have over 50 clients.

Mr. Bob Delaney: You were also one of the founders of the Ontario Energy Association.

Dr. Alan Levy: That's correct, yes.

Mr. Bob Delaney: What's the current role of the Ontario Energy Association?

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Dr. Alan Levy: I'm a member of the Ontario Energy Association. I think its current role is to represent broadly the various stakeholders involved in energy and, on their behalf, lobby and advise the Ontario government as to policy and programs.

Mr. Bob Delaney: The various stakeholders would, I assume, represent a fair number of electricity generating companies?

Dr. Alan Levy: Yes.

Mr. Bob Delaney: Okay. Any names we might recognize?

Dr. Alan Levy: You're testing my memory of the membership, but I know a number of the local distribution companies are involved. I'm not sure if the OPA—

Mr. Bob Delaney: That's fine. I kind of get the idea.

So over the years since you've been in Canada, you've accumulated a fair amount of knowledge about provincial energy issues in Ontario. Could you describe what the energy system might have looked like in the past, say around the time you came and in that first decade you were here? How would you describe the energy system in this province at that time?

Dr. Alan Levy: Well, I think Ontario was always noted to have extremely reliable both gas and electricity systems. In fact, I had a company I was running which was a subsidiary of then-Consumers Gas, which is now Enbridge. Their advice was sought all over the world for building gas distribution systems—all over the world. They had a consulting company doing that.

Sorry, was your question about electricity or gas as well?

Mr. Bob Delaney: Well, let's try it a different way. How does today, in terms of electricity supply and trans-

mission, compare with the landscape as you saw it in the first decade you were here?

Dr. Alan Levy: Okay, I think one of the larger changes is the breakup of the old Ontario Hydro monopoly; along with fewer local distribution companies—I think there were 200 to 300 when I arrived in 1977; no more coal generation; much more renewable; a greater focus on and contribution of conservation and demand management than when I arrived. Of course, the big change was deregulation of electricity and natural gas.

Mr. Bob Delaney: To some extent, the type of future that many of the advocates were urging upon Ontario back at the time that you arrived?

Dr. Alan Levy: Jeez—

Mr. Bob Delaney: I guess I'm thinking particularly about some of the testimony given in that era in the Royal Commission on Electric Power Planning.

Dr. Alan Levy: I haven't looked at that for a long time, but I did participate in that at the time. My vague recollection is there was oscillation between planning for greater demand and then less demand, and views changed as the forecast changed. That's to my vague recollection.

Mr. Bob Delaney: Yes. Bruce Campbell, from the Independent Electricity System Operator, testified before the committee last week. We asked him at that time about the changes in the energy system over the past several years. He talked about the effect that phasing out coal has had on Ontario. He explained that coal is being replaced by investments in natural gas generating plants, in wind and in solar.

As he described it, and I'll use his words, "What we've been doing is putting in place the tools and learning to operate a very differently configured system, one that we can operate just as reliably but one that is very differently configured from what had been the practice for many years—and very low-carbon." Could you perhaps expand on that based on your experience? How has the system had to adapt as a result of the phase-out of coal? What challenges and, most importantly, opportunities have been created from new sources of electricity supply?

Dr. Alan Levy: You're stimulating my memory now. I think the big change was from very centrally planned, large generating plants when I came here, to smaller, because we got into gas-fired generation and diversified. I think there's a certain amount of—you know, the 10-year anniversary of the August blackout—benefit to having a diversified supply instead of relying on very large generators, both from a cost point of view and a risk to the public purse in building very large.

There's been a shift, I guess, in also shifting some of the burden from government, through deregulation, to the private sector, placing some of the risk on them to build generating facilities, but it's brought challenges, because you have to balance the grid. The renewable generation, the more distributed generation, has brought its own challenges in terms of managing the transmission system, balancing the grid and so forth.

Mr. Bob Delaney: You might be aware that our Ministry of Energy is currently consulting with Ontarians on the long-term energy plan. To date, my understanding is that there have been more than 2,000 responses received. Have you participated at all in the consultations?

Dr. Alan Levy: I've read the document, and I've still got time, I think, till September, to submit my comments, which I will.

Mr. Bob Delaney: Yes, in fact, you do. I do hope you put some of your thoughts in writing, because I think we'd like to have them.

Do you think that having a diverse mix—which, by the way, would include conservation planning—is important for the future of our system, and would you expand on that a little bit?

Dr. Alan Levy: I think it's very, very important. I think we have the technology nowadays to manage a diverse supply of generation. It seems to make a lot of sense from an energy security point of view to have a diversified supply of energy, both geographically and in terms of the source.

When I reflect on that, I often think, "We always focus on price." I know when I read the media, it's all about the price of electricity. We haven't yet monetized reliability and we haven't really monetized the environmental effects. I think that's myopic, just to focus on price, because if you haven't got it, you'd pay anything to get it.

Mr. Bob Delaney: All you have to do is go abroad to realize the value that people put upon reliability—in Ontario, the concept of having to have a backup generator just doesn't compute; people don't need to do it, and they've never perceived the need to do it—and, as well, to judge the quality of the air in our cities by comparison with that of metropolises of a similar size.

Through these committee hearings, one of the things we've learned a lot about is current energy infrastructure siting and the process by which we arrive at it. At the moment, as you know, it's led by the Ontario Power Authority. Are you familiar at all with the process?

Dr. Alan Levy: Somewhat. I've never been directly involved.

Mr. Bob Delaney: Well, earlier this spring, Minister Chiarelli wrote to the OPA and to the Independent Electricity System Operator, asking for their recommendations to improve the process. Bruce Campbell from IESO, as I earlier mentioned, was here testifying last week, and he said that they've had 18 meetings all across Ontario. Have you had a chance to read the OPA's and IESO's report at all?

Dr. Alan Levy: No, I haven't.

Mr. Bob Delaney: Okay. When we talked to Mr. Campbell about the major themes that he heard during the course of the consultation, one of the things he said was, "[P]eople wanted" us "to be involved early in the planning for these facilities, that they saw the planning and moving into the siting of facilities as things that should not be separate but, in fact, ought to be quite integrated." In the course of our consideration here,

we've heard much the same feedback from residents of the Oakville and Mississauga communities who came in to offer their testimony. As an example, one lady, Daniela Morawetz from Oakville, told us, "I don't want to be reading that some other community is going through this sort of thing.... It's a gruelling thing to go through; it's a very emotional thing"—"thing" referring to a siting process. She and other witnesses from the affected communities said that there should have been a better consultation process with the residents of Mississauga and Oakville from the very beginning, and as a Mississauga MPP, I'm very much on that page.

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There's a constant theme in the OPA's and the IESO's reports and recommendations, and their recommendations begin, really, with saying that we need to strengthen the processes for early and sustained engagement between local government and the public. Another recommendation would be to provide local governments and communities a greater voice and say in the planning and siting of energy infrastructure.

That's kind of a lead-up. Based on your experience, what role can engaging with the local communities play to better support the siting of energy infrastructure in Ontario?

Dr. Alan Levy: My reflection on that is that, in general, the public hasn't had the opportunity to be well-versed in the whole energy situation. My sense is that it lands on you, as a general person in the public, and then you have to rush around getting up a steep learning curve—because it is a complicated industry—so you're coming at it from a fear basis, not a knowledge basis. I feel that as a society, how we can do that another way is not just to educate ourselves on conservation, which I think is important, but on supply. Most people have no idea how they get their electricity or how they get their gas—not a clue; least of all, they can't understand their bill. It's very difficult to understand your electricity or even your gas bill.

I think collectively, we've got a huge job to do there so that, over the coming decades, when there are serious decisions to be made—particularly if you're going to have a decentralized power supply system, where it is going to be sited near you, whatever it is—we would all benefit by having a decision or emotions less based on fear and more on fact.

Mr. Bob Delaney: Okay. I'd like to actually go down that road a little bit with you. If I say the words "setback" or "buffer zone," we both know what we're talking about?

Interjection.

Mr. Bob Delaney: Okay. In terms of perception and fear, talk to me a little bit about setbacks or buffer zones with regard to energy infrastructure, because it's been one of the things that, in recent years, the province has had to devote some thought to. I think some of the first solid codification of it came out with the renewable energy act, and was only applied after the fact to more traditional forms of power generation where, on reflec-

tion, we realized that there were no hard and fast criteria. Could you talk about that a little bit?

Dr. Alan Levy: Well, I'm not an expert in that—from a wind or a generation point of view, what is appropriate; but I think as a business person, and then as a citizen, I'd look at the risk. Who should bear the risk?

I noticed that in some of the procurement, it was laid onto the private sector. "If you're going to choose a site to build a gas plant, private sector, it's kind of your job." But I've noticed in the years—I've spent most of my working life here in the energy industry—it always comes back to the government. You can talk about nuclear, you can talk about anything; it always lands back at some level of government.

I would start looking at this issue in terms of who bears the risk and who most appropriately should carry the risk. I go back to my other comments: We need to explain that, what we know, what we don't know. I started off as a scientist, which means I know nothing. I know a little bit, and I try to explain things in concepts I know, but I know nothing. That's why I'm a scientist, originally, because I'm humbly acknowledging that. Otherwise, I wouldn't be doing research.

I say that as kind of a philosophical point because nothing is certain. To the best of our knowledge, you, whoever is in power, have to make a decision with the best knowledge you have at that time. You've got to lay that out: "Here are our uncertainties. Here's who is best to absorb the risks with those uncertainties." I think that if you start from that point of view, you can have fewer mistakes, and any corrections we have to make would be based on knowledge.

Mr. Bob Delaney: Okay. Chair, I'm going to stop there.

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

To the PC side: Mr. Fedeli.

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

Dr. Alan Levy: Thank you.

Mr. Victor Fedeli: When former minister Dwight Duncan sat in that very chair at estimates committee, he told us that you can't convert a coal plant to natural gas. Would you have any knowledge of the conversion of a coal plant to natural gas?

Dr. Alan Levy: I have no expertise in that area.

Mr. Victor Fedeli: Okay.

Dr. Alan Levy: I mean, through my general reading, I understand you can. It's a question of cost and so forth. But I'm not an expert in that area.

Mr. Victor Fedeli: Okay. It was just, sort of, funny that shortly after that, the Liberal government had made an announcement about the conversion of the coal plant to natural gas in Thunder Bay. I just found it a bit contradictory, and I was looking for some clarity from you on that.

Were you involved in the cancellation of the gas plant in Mississauga or Oakville?

Dr. Alan Levy: No, I wasn't.

Mr. Victor Fedeli: These are questions I ask almost every witness, so, please. Do you have any knowledge about the costs for the cancellation of Mississauga or Oakville?

Dr. Alan Levy: Only from what I've read in the media and so forth, yes.

Mr. Victor Fedeli: So do you know how much it cost to cancel the gas plant in Mississauga?

Dr. Alan Levy: The Mississauga one was—several hundred million dollars, I think it was.

Mr. Victor Fedeli: Do you know how much it cost to cancel the gas plant in Oakville?

Dr. Alan Levy: I know it was more; north of \$600 million, I think. I've seen numbers. But again, I'm quoting from media.

Mr. Victor Fedeli: Were you involved in any way, shape or form with the cover-up of documents from Mississauga or Oakville?

Dr. Alan Levy: No.

Mr. Victor Fedeli: Okay. Thank you, Chair.

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

Mr. Tabuns, the floor is yours.

Mr. Peter Tabuns: Dr. Levy, thanks for coming today. I know you've got a long history in the energy file: CAESCO, Rose Technology. I was a bit puzzled when you were put on the witness list today.

In the course of the work done by the provincial government, after the cancellation of the Oakville or Mississauga plants, were you ever asked, as a consultant, to assist in analysis of options for the provincial government?

Dr. Alan Levy: No.

Mr. Peter Tabuns: So you've done no consulting on these matters?

Dr. Alan Levy: No.

Mr. Peter Tabuns: You've already made it clear that you're not a person who can give us information on the cost of those cancellations or the cover-up of documents.

Dr. Alan Levy: I'm not that person.

Mr. Peter Tabuns: Then I don't have any questions for you today, but I appreciate your coming here.

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: I'd just like to explore some of your thoughts. We talked earlier on consultation with local communities. There's been some suggestion that, on a regional basis, consultation might include elected officials, elected aboriginal/First Nations, economic development officers, community business representatives. Would you have any thought on talking about siting from the vantage point of consulting regionally or with specific groups within regions?

Dr. Alan Levy: I really don't have any expertise in that area.

Mr. Bob Delaney: Fine, fair enough.

Looking at some of the things that we've heard here today, one of the concerns raised throughout the consul-

tation process—this is something you may be able to comment on—might be a disconnect between provincial planning and local planning. In the scope of your consulting activities, do you have any thoughts on better linking electricity planning and municipal planning?

Dr. Alan Levy: My exposure to that is really on a project basis, and really one looks to the professionals—the qualified engineers—to do their due diligence to make sure that all appropriate permits are obtained and inspections afterwards. But that's the extent of my exposure to that.

Mr. Bob Delaney: Okay, fair enough.

From the consultation sessions, one of the discussion points was the need for better education among Ontarians, something I think you touched on earlier when you talked about the fact that most people really don't know where their electricity comes from or how.

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I was discussing with a group of municipal officials just recently the fact that, over the decades, the computer industry has done a better job of explaining what a gigabyte of storage space is than, in the past century, the electricity system has done in teaching people what a kilowatt hour of electricity is; what its value is and what it does. Thinking along with that, do you have any thoughts you might share on the need for better education among Ontarians for our province's electricity needs and a better understanding of the planning and the siting process?

Dr. Alan Levy: Well, again, you've asked me questions about what's changed since when I came here.

Mr. Bob Delaney: Yes.

Dr. Alan Levy: So our reliance on electricity is exponential compared to when I arrived. That's nothing to do with Canada or me arriving; it's to do with how technology has changed. I would think one has to say—in fact, a former President of the United States said this—that one of the critical security issues facing an industrialized country is their electricity supply system. Forget economics; just security.

I think we underestimate that. I don't think we talk about that. It should start at the schools. It's as important as clean water. It's one of the most important things in any civilized society.

I think if you raise the importance of reliable, inexpensive supply to where it should be in any society, then there will be less rhetoric about electricity prices and so forth and a realization that it's a necessity. We have to value it carefully. We have to plan for it carefully.

Then I think there's a context for all those consultations that you mentioned between different levels because I don't think we're all starting from the same point.

Mr. Bob Delaney: Okay. I think as a metric to measure one of the things that you've said about us being a more electrically intensive society would be to simply count the number of electrical outlets in a house today by comparison with what there were in a house in the era when you and I probably grew up. Would you have any

thoughts on how we could better educate the public and any ideas on how—as you say, it normally lands back in government—government might roll that out?

Dr. Alan Levy: Well, I'd like to see something more done in schools, in the school system. There have been various programs I've seen with children. I think the Toronto District School Board was going to—I don't know if they're still doing it—put solar voltaic on the roofs of their schools, and then there was going to be a program to educate the kids about it. But again, it's not done in a context of what electricity is, how important it is.

I think a great place to start would be the schools, because children embarrass their parents when they come home and ask questions that parents can't answer.

Mr. Bob Delaney: There's an element of education in which each new generation also educates their parents.

I would like to just thank you very much for taking the time to come in here today. I'm sure I speak on behalf of all of my colleagues when I tell you that, as a committee, we appreciate that you've taken some time out of your busy schedule to come in and to share some insight, to answer some open-ended questions and to provide us with some additional food for thought, particularly around the siting and approvals process for energy infrastructure.

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

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Again, Dr. Levy, I must say I quite enjoyed reading your CV today, and I congratulate you on a wonderful career and your knowledge in the industry. I thank you for being here.

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

To the NDP side: Mr. Tabuns.

Mr. Peter Tabuns: No questions, Mr. Chair. Thanks to Dr. Levy.

The Chair (Mr. Shafiq Qadri): Thanks to you, Dr. Levy, for your presence.

I understand we have a motion before the floor.

Fine. We have two motions: Mr. Fedeli and Mr. Tabuns. You're up first, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. I move—*Interjections.*

The Chair (Mr. Shafiq Qadri): Just a moment.

Mr. Victor Fedeli: I move that the Standing Committee on Justice Policy request from the Ministry of Energy, Minister of Energy and the Ontario Power Authority all documentation and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent, received or generated between January 1, 2012, and August 20, 2013; that search terms include any and all proxy names or code names including but not limited to Project Vapor, Project Vapour, Project Vapor Lock, Project Vapour Lock, Oakville project, Mississauga project, Oakville gas plant, Mississauga gas plant, TransCanada, TCE, Project Apple, Project Banana, Project Fruit Salad, that the documents be provided to the committee no later than

September 10, 2013; and, that the documents be provided in an electronic, searchable PDF.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. We've received your motion, and I am advised by my colleagues that we will reserve our ruling as to whether it is admissible, in order or not.

Mr. Victor Fedeli: Excuse me, Chair? Point of order. Why?

The Chair (Mr. Shafiq Qaadri): We need to consult procedural authorities to see whether we will entertain this motion formally.

Mr. Victor Fedeli: So this is something we're doing at this moment, though? Not next week?

The Chair (Mr. Shafiq Qaadri): No. The judgment, or the ruling, will be put forward next week.

Mr. Victor Fedeli: Really? It's almost identical to the original motion that got this started except the date is different. There's virtually nothing different in it. This is an extension of the motion that started this committee.

The Chair (Mr. Shafiq Qaadri): Thank you. While true, my comment stands.

Mr. Victor Fedeli: Well, hang on a second. I don't understand that. I genuinely don't understand you, Chair.

The Chair (Mr. Shafiq Qaadri): All right. Thank you. We'll—

Mr. Victor Fedeli: No, no. Seriously. Hang on a second, please. Please, Chair. Please consult for a moment here, because this has just gone one step too far.

Interjections.

Mr. Victor Fedeli: No, I understand. I want this started now. It's identical to the original motion.

Mr. Bob Delaney: It's not.

Mr. Victor Fedeli: Well, then, let's recess.

The Chair (Mr. Shafiq Qaadri): I am advised, Mr. Fedeli, that I am to accept receipt of this. I am to reserve judgment as to whether it is in order, whether it is admissible—

Mr. Victor Fedeli: Seriously?

The Chair (Mr. Shafiq Qaadri): The intention of my colleagues here at the table is that we will reply to you next week. We're welcome to—

Mr. Victor Fedeli: No. Hang on. One moment, Chair. Point of order here.

The Chair (Mr. Shafiq Qaadri): Just a moment. We are welcome to recess today. We may not get back to you today with reference to this discussion.

Mr. Victor Fedeli: Well, in your deliberation, I would remind both the Chair and the Clerks that this motion has been passed several times. All we're changing is the date here for looking for additional documentation. What, quite frankly, on earth can be so complicated about this one document, other than it may be indeed the one where we finally get to the truth?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. I appreciate your concern and your protest and your suggestions, but what I've said stands.

Mr. John Yakabuski: Could I?

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

Mr. John Yakabuski: Is the issue in question the date, the timing? Did the original motion restrict us to a date?

The Chair (Mr. Shafiq Qaadri): I think, Mr. Yakabuski, before I start answering, or attempting to answer, those questions piecemeal, that is entirely the issue that we're attempting to reserve and get further judgment on.

Mr. Victor Fedeli: Well, may I add one more?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Victor Fedeli: When we do come back next week with your answer, I'm not going to change the date at the end. We'll just leave the ministry one less week to collect our information, because this is information we deserve and that we're going to demand on that date.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Are there any further comments?

Mr. Gilles Bisson: No, I'm going to stay out of this one.

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

So that motion, as I've said, has been received. Its ruling—in order, out of order, admissible, inadmissible—is forthcoming next week.

There is a further motion? Mr. Tabuns.

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

I move that the Standing Committee on Justice Policy direct the office of the government House leader to produce any and all identified paper and electronic files and records related to the Oakville and Mississauga gas plants and the May 16, 2012, motion moved by the member for Cambridge at the Standing Committee on Estimates calling for the production of documents related to the Oakville and Mississauga gas plants, including but not limited to correspondence, briefing notes, emails, PIN messages, BBM messages, SMS messages, memoranda, issue or House book notes, opinions and submissions, and including any drafts of or attachments to those records. Mr. Chair, I'm going to add and that the documents be provided in an electronic, searchable PDF.

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The Chair (Mr. Shafiq Qaadri): All right, Mr. Tabuns. I am advised once again by the collective wisdom of the table, that we are in receipt of your motion but, again, whether it is admissible or inadmissible, in order or out of order—the judgment and ruling on that is pending.

Mr. Victor Fedeli: This is a bridge too far.

Mr. Gilles Bisson: Whoa. Point of order.

The Chair (Mr. Shafiq Qaadri): We appreciate your Hollywood reference, Mr. Fedeli, but the ruling stands.

Mr. Bisson.

Mr. Gilles Bisson: Well, Chair, I was trying as much as possible not to be combative here, but this motion is no different than any other motion that this committee has asked for. It's asking for documents related to what is the mandate of this particular committee. So the committee has—

The Chair (Mr. Shafiq Qaadri): Again, without specifying why, I disagree with you because I think there are some material differences, the precision of which has been pointed out to me by wiser heads.

Mr. John Yakabuski: Well, perhaps they can point the precision out to us.

The Chair (Mr. Shafiq Qaadri): They're not prepared to do that. That's why they're going to confer.

Mr. Gilles Bisson: This is—

Mr. John Yakabuski: That's a bit unfair.

Mr. Victor Fedeli: That's awful.

Mr. John Yakabuski: If they can point that precision out to you, Chair, as a member of this committee and the Chair of it, I think it's only fair that they point that precision out to the other members of the committee who are not Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. I appreciate what you're saying, and I certainly support your request for full information. I think the issue is that the potential issues that have been identified—whether or not that will lead to this being in order or out of order, admissible or inadmissible—are still to be discussed or deliberated upon.

Mr. John Yakabuski: I understand, but they can point those issues out to you, Chair. I don't see how they or you could fail to relay that to us as the members of the committee. You stated that they've given you some information as to matters of precision, but you cannot relay that to us as members of the committee?

The Chair (Mr. Shafiq Qaadri): I appreciate that. I think the work of the Chair is not necessarily to share the process by which these rulings are reached but its product, and we'll need to defer judgment on that.

Mr. Tabuns, et après, M. Bisson.

Mr. Peter Tabuns: I think the disadvantage you put us at is that if there is something that can be corrected in this motion so it can go forward, we're quite willing to look at any correction that's required. But if we have no idea what you see as the weakness or failing, it makes it impossible for us to actually carry forward our business. As Mr. Bisson has said, this is not dissimilar to many requests we've put forward for documents over the last half-year.

The Chair (Mr. Shafiq Qaadri): Thank you, and to be clear, these motions are not being ruled out of order.

Mr. Peter Tabuns: I understand that.

The Chair (Mr. Shafiq Qaadri): We have simply asked that the table be able to confer, with more time, on the exact meanings.

Mr. Bisson.

Mr. Gilles Bisson: Okay, I appreciate that a Chair seeks advice from the Clerks and from other staff that are associated to the committee; that I can appreciate and understand. But it seems to me at this point that it's getting a bit beyond the pale because what's being asked for here is no different than the motion that was asked before. We're asking for stuff related to the Oakville and Mississauga gas plants, which is part of the main motion that was passed in the House. In regard to the issue of

contempt and the non-release of documents, we're asking for information—emails—from the House leader's office. Again, that is not outside of the purview of what the motion of the House was. I'm a little bit miffed here in the sense that, again, you seem to be trying to find a way to say no to things that I think are in order.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Are there any further comments?

Mr. Victor Fedeli: Yes.

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

Mr. Victor Fedeli: Is it the date that's under consideration? These are the same dates that the Auditor General is looking for facts as well. If the Auditor General can have these facts, why can't we?

The Chair (Mr. Shafiq Qaadri): As I say, with respect, the table has asked for time to confer on this. I don't think they are prepared to answer specific questions that you're asking.

Mr. Bisson.

Mr. Gilles Bisson: In fairness, Mr. Tabuns gave you this motion about a half-hour ago. It would have been helpful at that time if either the Chair or a Clerk of the Committee could have come to us and said, "Listen, we have a problem with part of your motion. Here's our concern," at which point we could have tried to address that particular issue, if there is an issue that arises. To all of a sudden be told that we've got to hold off till next week I think is a bit beyond the pale.

The Chair (Mr. Shafiq Qaadri): I accept what you're saying. I'm not sure that it's entirely the Clerk's responsibility to alert you that they need more time. I think that more properly comes from the Chair, and that usually is done only once it is formally presented.

Mr. Gilles Bisson: Can I ask the permission of the Premier? Maybe the Premier would like to give us these documents. Does this direction come from the Premier's office? Where the heck is this coming from?

The Chair (Mr. Shafiq Qaadri): I don't believe it's coming from the Premier's office, but I think—

Mr. Gilles Bisson: Well, you're saying it's not coming from the Clerks. Did I misunderstand—it's not coming from the Clerks. Who's giving you this direction if it's not the Clerks? Did I misunderstand a little while ago?

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Gilles Bisson: Did I misunderstand when you said it wasn't the Clerks who are telling you to do this?

The Chair (Mr. Shafiq Qaadri): Mr. Bisson, the entire process here is through the Chair, but obviously with the advice of our table officers, with legal counsel, with research and with our more senior Clerk in the background. You're welcome to search for other sources of this direction, which I do not think exist, but that's as I—

Mr. Gilles Bisson: So this is being directed by the Clerks. Is what you're saying?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Gilles Bisson: I thought I misunderstood. Again, this is no different than any motion we've had in the past.

The Chair (Mr. Shafiq Qaadri): All right. Thank you. Are there any further issues before this committee? Yes, Mr. Fedeli.

Mr. Victor Fedeli: One more point to make, here, and the only reason I'm going to bring this up is because I don't want to hear a ruling before our side—to at least present some evidence. If it is to do with the date, the Auditor General has an active investigation on the cost of Oakville, up to and including today. We cannot be constrained by a date. The cover-up continues, up to and including today. These are data that we require in those emails. We're asking respectfully that you reconsider. This is information that we require. It is no different than any information we've had in the past.

We've had evidence here that the cover-up continues on a day-by-day basis, and to be quite frank, this only fuels the language of the cover-up when we have these kinds of arbitrary rulings—new to us, unlike the rulings that passed our motions last week, the week before, the week before, the week before, the week before, and probably the ones we're going to bring next week after this.

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

Mr. Rob Leone: Well, first, Chair, I appreciate the fact that you're letting us talk about this, because I think it's a very important matter that we need to deal with. I am, as members have stated on this, deeply puzzled by what has transpired. It seems that the whole approach to this committee changed once we uncovered a document that said the Speaker potentially was intimidated by members of the Legislature, their staff and members outside of the Legislature.

That, I think, is what we're having a lot of difficulty with. Every time we start trying to get information on a different point of view—asking questions, asking for more documentation—it seems that from that point forward, the new MO of what's being advised is simply to suggest that we're going to nip it in the bud before it can actually become public. That is, in essence, what the trouble that we're having, the difficulty that we're having, with this is.

As everyone around this room knows, committees of this Legislature have an unfettered right to persons, papers and things, and we have that responsibility to investigate what was put before us. Since that point in time, we seem to have been stonewalled for mysterious procedural reasons. We haven't actually had an account of exactly why these things are out of order. If you are reserving judgment, which is your prerogative, I would hope that there is a detailed explanation provided to us, precisely detailing why these are out of order. And if that explanation does come forward, it should be backed by procedural rationale.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Leone, just to advise you, neither motion has been ruled out of order, but there are some issues that have been raised, for which more time has been requested by the table.

Mrs. Donna H. Cansfield: Chair?

The Chair (Mr. Shafiq Qaadri): Ms. Cansfield.

Mrs. Donna H. Cansfield: Chair, I'd just like to go on record that if these motions were to come before this committee, we would vote in favour of these motions. I think that that's an important conversation to have.

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

Mr. John Yakabuski: It was on the same line as Mr. Leone. The temperature and the tenor of this investigation and the committee's access to records and information and the ability to even ask questions changed dramatically when it became public—of the issue of the Speaker and the attempts by government operatives—Liberal operatives—to intimidate and/or influence the Speaker.

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We've had innumerable motions before this table. In every other instance that I can recall, and I have not been at every single meeting, but if we brought a motion forward, the table would immediately say it was out of order if it was out of order—and I know you're not saying it's out of order. But there was never an instance where they would say, "We're not saying if it's out of order or if it's in order, but we just want to have a chance to talk about it."

Mr. Rob Leone: For a week.

Mr. John Yakabuski: For a week. So there seems to be—and I'm not one that likes to subscribe to these conspiracy theories, but things have changed and there seems to be some control being exerted from somewhere with regard to the ability of this committee to act freely and unfettered and unhandcuffed by other means.

If you want to say a motion's out of order, so be it. Indicate why. We don't require great explanations, but it can be very minor items, which has been pointed out in the past, but we have never gone through this dissertation where, "Well, we're not saying if it's out of order, we're not saying it's in order, but we need to talk about it."

Mr. Rob Leone: For a week.

Mr. John Yakabuski: For a week.

The Chair (Mr. Shafiq Qaadri): I would just—

Mr. John Yakabuski: With all due respect, there's a change in the way that this committee is operating. We never had two Clerks here before in the past when the House was in session. We never had a situation where Clerks were conferring about whether they'd allow us to even talk about something. It was out of order? It's out of order.

The mandate has been determined by the House. If some power's trying to say, "We want to cut this thing off at the knees" or "We want to slow this committee" or "We want to stop this committee; we want to shut it down, whatever, it's gone on long enough"—I don't know what the thinking is, but we should be made aware of that because the way that this committee is being treated has changed.

Mr. Rob Leone: Big time.

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

Mrs. Donna H. Cansfield: Chair?

The Chair (Mr. Shafiq Qadri): Just a moment.

Just to very briefly say that your suppositions, I think, are generally incorrect on three counts: one, there is usually more than one Clerk present, firstly. They may not always be visible to you; that's a separate issue.

I think on many, many occasions we have deferred issues, including motions, including, for example, receipt of confidential documents, which will, by the way, be the subject of a subcommittee meeting immediately following this meeting.

Thirdly, I would also say that you are entitled, absolutely, before, during and after committee to speak with Clerks on the language, the crafting, the wordsmithing of these motions so that they pass muster immediately. They are available to you and certainly are available, for example, to confer, to edit and to distribute, and to make sure that they are precisely in order before they are even presented here. In fact, I would encourage you to do so in the future.

Now, with that, Ms. Cansfield.

Mrs. Donna H. Cansfield: Thank you, Chair. There has been a fair amount of discussion and some suggestions, and I appreciate that there's—but maybe what we could have is some idea or some explanation from the Clerks why it requires a full week to have a review on something that's been so similar as in the past.

The Chair (Mr. Shafiq Qadri): Ms. Cansfield, I appreciate what you're asking for. Whether they use the full

week or want to get back to you within 48 hours, I would leave that to them. But that's what they've requested.

Yes, Mr. Fedeli.

Mr. Victor Fedeli: Chair, your leader, Premier Kathleen Wynne, has again said one thing in the Legislature and we're seeing a very opposite reaction here as the day unfolds. She has promised us to be able to get to the truth with full and open access to documents, and today this committee has learned that we no longer have full and open access to our documents, and we'll be taking this up.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, I would encourage you to take it up through whatever channel you see fit.

Mr. Victor Fedeli: We intend to.

The Chair (Mr. Shafiq Qadri): I disagree, of course, strongly with your characterization, but in any case—

Mr. Victor Fedeli: Says one thing; does something different.

The Chair (Mr. Shafiq Qadri): Is there any further business? Mr. Delaney.

Mr. Bob Delaney: Chair, it is your prerogative to request time to review a motion, and as such, procedurally, I think you're correct.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. A subcommittee meeting follows this meeting. This committee is now adjourned.

The committee adjourned at 1425.

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