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**Official Report
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Thursday 3 April 2014

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Jeudi 3 avril 2014

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 3 April 2014

Jeudi 3 avril 2014

The committee met at 0830 in room 151.

MEMBERS' PRIVILEGES

Le Président (M. Shafiq Qadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, M. André Duval, représentant la Police provinciale de l'Ontario. Yes?

Mr. Steven Del Duca: Sorry, Mr. Chair. I was under the impression we were going to deal with this particular motion regarding legal counsel that we discussed previously at—

Le Président (M. Shafiq Qadri): Non. Après notre conférence, monsieur Del Duca.

Mr. Steven Del Duca: Why not before?

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Del Duca. That was decided previously.

Mr. Steven Del Duca: That was decided previously by?

The Chair (Mr. Shafiq Qadri): At the last meeting.

Mr. Steven Del Duca: The specific timing of dealing with the counsel was decided previously, at subcommittee?

The Chair (Mr. Shafiq Qadri): Yes.

Mr. Steven Del Duca: Okay.

Ms. Lisa MacLeod: Yes, but nice try.

Mr. Steven Del Duca: I wasn't here for subcommittee. It's always a good morning when I can get a kudos from Lisa.

MR. ANDRÉ DUVAL

The Chair (Mr. Shafiq Qadri): We would now invite Monsieur Duval to please be sworn in by our 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. André Duval: I do so swear.

Le Président (M. Shafiq Qadri): Merci, monsieur Duval. Vous avez cinq minutes pour votre présentation introductoire. S'il vous plaît, commencez maintenant.

Mr. André Duval: Mr. Chairperson and committee members, my name is André Duval. I'm a detective constable with the Ontario Provincial Police anti-rackets branch.

Where I can, I will update you on my role in this ongoing OPP investigation into allegations that records of the government related to the cancellation of the construction of two gas-fired power plants were illegally deleted.

As now-retired OPP Commissioner Lewis has previously testified, I want to ensure clarity on the nature of the OPP investigation. The OPP anti-rackets branch is not investigating the cancellation of the two power plants, just the alleged deletion of records.

I will answer questions you may have on the specifics of any evidence as they are noted in the information to obtain, or ITO, that has recently been made public. This information to obtain represents a full, frank and fair disclosure of the evidence collected so far in this investigation.

But please understand that if you require me to answer questions on specific evidence, I could potentially prejudice the prosecution of any criminal offences that may result from this investigation. There is a significant public interest in preserving the integrity of a criminal investigation, and in ensuring that any persons who have committed offences are ultimately held accountable for their actions before a court of competent jurisdiction. Until that happens, it would be unfair and reckless for me to speculate on the outcome of this investigation or any charges that may be laid. The investigation will go where the evidence leads it.

The speed, flow and direction of the investigation are determined by the case manager. Any police investigation must respect the Charter of Rights and Freedoms of every person, including protection against unreasonable search and seizure, the right to legal counsel and the right to remain silent.

Let me define my role in the OPP investigation into the alleged illegal deletion of records. My role is specific and also limited in scope. As part of the OPP investigative team assigned to this particular investigation, my job is to write information-to-obtain judicial orders like this search warrant.

I take information provided to me by other members of the investigative team to support the ITO. As previously noted, the ITO requires full, frank and fair disclosure of the investigation to obtain judicial authorization to search places and seize evidentiary material. In that role, I do not direct the investigation; nor do I determine the investigative strategy. The investigation is dir-

ected by the case manager, a detective inspector from the anti-rackets branch.

The Chair (Mr. Shafiq Qaadri): Just pardon me for a moment, Mr. Duval. We welcome all members of the press. I'd just respectfully ask you not to actually film the papers that are on the desk. Those are considered confidential.

Please continue.

Mr. André Duval: The case manager has assigned a team of investigators from the anti-rackets branch and other areas of the OPP to conduct this investigation. OPP investigators have conducted interviews with more than 20 people during the course of this investigation to date, which has focused on the greater Toronto area and Queen's Park. This isn't a final number by any means, nor is it a complete list of who may be interviewed. Again, the case manager determines the speed, flow and direction of the investigation. It is my understanding, however, that the OPP has received co-operation from senior government officials in this matter.

As you are probably aware, the OPP executed a search warrant on February 19, 2014, in which 24 computer workstation hard drives were seized. OPP computer forensic experts from the technological crime unit are examining these exhibits for items of evidentiary value. This forensic analysis is a lengthy and complex process, but a thorough review of these exhibits is essential for a proper and complete investigation.

Again, it would be unfair and reckless for me to speculate on when the investigation will be finished or whether charges will be laid. It is our practice that investigators take the time they need to follow the evidence to its logical conclusion and then take appropriate action. With your consideration of my concern respecting the integrity of the investigation and my specific role in this investigation, I will answer questions you may have.

En considérant ma préoccupation sur l'importance de sauvegarder l'intégrité de l'enquête et mon rôle spécifique dans le cadre de cette enquête, je suis à votre disposition pour répondre à vos questions. Merci. Thank you.

Le Président (M. Shafiq Qaadri): Merci, monsieur Duval, pour vos remarques introductives. Maintenant je passe la parole au NPD. Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Mr. Duval, for being here with us this morning.

I just want to take a second to inform the Chair that at the end of this testimony, I'll be putting forward a resolution asking for the report of the cyber security branch's investigation that they did on this matter, the OPS cyber security branch.

The Chair (Mr. Shafiq Qaadri): You're certainly welcome to do so, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Duval, the warrant indicated that the OPP had had reason to believe that David Livingston committed a breach of trust. Is the investigation limited to David Livingston, or can it expand?

Mr. André Duval: For now, I can tell you that, based on the information to obtain that I produced, it's centred

on the actions of Mr. David Livingston only. We follow the evidence. We follow the information that the investigation produces. If there are more people down the road who are involved in other criminal offences, these leads will be followed and investigated to the fullest.

Mr. Peter Tabuns: Okay. Have more warrants been executed than this?

Mr. André Duval: No.

Mr. Peter Tabuns: Do you expect to be seeking more warrants?

Mr. André Duval: That's a decision that the case manager and the leading investigator will make. For now, I am not aware of any more search warrants being produced.

Mr. Peter Tabuns: Okay. To your understanding, what is the Ontario public service cyber security branch? You cite them a number of times in your warrant.

Mr. André Duval: This is a section of the Ontario public service that basically deals with any issues with the employees of the Ontario public service. I was told that sometimes, if there is a complaint about harassment or computers being misused within the Ontario government, they will conduct an investigation on those specific employees.

Mr. Peter Tabuns: How did you become aware of the investigation conducted by the cyber security branch?

Mr. André Duval: This was upon the request of the OPP. The OPP requested that the cyber security branch conduct some form of examination.

Mr. Peter Tabuns: Can you tell us about the investigation conducted by Shawn Truax and the cyber security branch?

Mr. André Duval: The OPP, as I mentioned in the information to obtain—I assume most of you have read the document.

Mr. Peter Tabuns: Yes.

Mr. André Duval: I might refer to it once in a while.

The OPP requested some very specific information from the cyber security branch. We were made aware that there were 52 workstation hard drives in the premier's office. The first thing we asked the cyber security branch was if they were able to determine, among those 52 workstation hard drives, how many were accessed by the username of Wendy Wai—and the username was "waiwe"—between February 6, 2013 and March 20, 2013. The reason to specify that exact timeline is that we know, from this investigation, that this is the timeline when that password was active. This is the first thing we asked of the cyber security branch, and the result from their examination was that 24 out of 52 workstation hard drives had been accessed by that username within that time frame.

Mr. Peter Tabuns: Did they investigate beyond the request that you made to them?

Mr. André Duval: The next thing we asked from the cyber security branch was if they were able to determine dates and times when those 24 workstations were accessed. They replied to us that—if you allow me, Mr. Tabuns, I would like to provide you with the exact loca-

tion in the information. If you go to line 1,200, it specifies that they were able to determine dates and times for four work stations. It is page 23, and you'll see there are numbers 1 to 4. They were able to determine for four workstation hard drives the dates and times, so four out of the 24.

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Mr. Peter Tabuns: For the other 20, they were not able to determine date of access?

Mr. André Duval: They were not able to at this time. Again, I'm far from being a computer expert myself and I have to rely on what the cyber security branch told us. It's not because this data was deleted; it's just that it concerns the Windows operating system. As new logons were made on each work station, the oldest logon is simply deleted. That's just because of the Windows operating system.

Mr. Peter Tabuns: So it may be difficult to find out exactly when the other computers were accessed. It may not be impossible, but it could be very difficult.

Mr. André Duval: This will be part of the OPP forensic examination of those 24 hard drives.

Mr. Peter Tabuns: At this point, a determination that the computers were only accessed on that limited number of dates reflects what you were able to find in the computers, not a definitive statement as to when the access was made. Is that correct?

Mr. André Duval: That's correct.

Mr. Peter Tabuns: Okay. The cyber security branch took custody of a number of the drives on October 8. Do you know why they took custody? What impelled them to? What directed them to do this?

Mr. André Duval: This was basically a request from the OPP.

Mr. Peter Tabuns: Ah, okay. Were you aware of any other report or findings made by the cyber security branch in this matter?

Mr. André Duval: I'm only aware of one that was produced by the cyber security branch.

Mr. Peter Tabuns: Okay. Thank you. My questions go to my colleague Mr. Singh.

Mr. Jagmeet Singh: Good morning, sir.

Mr. André Duval: Good morning.

Mr. Jagmeet Singh: How many interviews were conducted by the OPP thus far with individuals who had some information regarding this matter?

Mr. André Duval: I can only tell you how many I have relied on to produce this document, and I could refer you to—let me just make sure I get the right table here—appendix D of the information to obtain. I can go down the list. Or do you just want a number?

Mr. Jagmeet Singh: Are you aware roughly of how many there are?

Mr. André Duval: Well, about 20 people were interviewed during the course of the investigation.

Mr. Jagmeet Singh: And this is to form the basis for the ITO, or this is subsequent to the ITO?

Mr. André Duval: No, this is before the ITO was produced. It's part of the investigation. It's a normal process.

Mr. Jagmeet Singh: Okay. After the ITO and after the search warrant was executed, have there been any other interviews now conducted?

Mr. André Duval: Not to my knowledge.

Mr. Jagmeet Singh: Where were these interviews conducted?

Mr. André Duval: I was not part of those interviews. They were conducted by other investigators. But to my knowledge, they were in Toronto and at Queen's Park.

Mr. Jagmeet Singh: In Queen's Park?

Mr. André Duval: Yes.

Mr. Jagmeet Singh: Do you know if they were conducted during regular business hours, 9 to 5, during the day? Or would they have been done after hours, in the evening?

Mr. André Duval: I believe the majority of them—I have to remember the dates and times, but they were conducted between business hours.

Mr. Jagmeet Singh: Business hours?

Mr. André Duval: Yes.

Mr. Jagmeet Singh: Okay. They were done at Queen's Park, during business hours. Was there a facility, like an office, that was provided to investigators where they would conduct the interviews? Or was it just at the desk of—

Mr. André Duval: I think there were different locations. Sometimes we would be in the office of that specific individual and sometimes there would be a room reserved for the interview, depending on who it was.

Mr. Jagmeet Singh: Okay, that's fair. Who coordinated setting up a room for you to have the interview?

Mr. André Duval: I don't know.

Mr. Jagmeet Singh: If there is anything in addition to the ITO, would you be able to provide a list of folks that have been interviewed?

Mr. André Duval: I would venture to say that in appendix D, the list you have, except maybe for very few individuals, is pretty much a complete list of the people we interviewed so far.

Mr. Jagmeet Singh: Okay.

Mr. André Duval: Just for your own benefit, these people provided, in my opinion, the best evidence so far. That's why other people were not included on the list.

Mr. Jagmeet Singh: I understand. Are you able to indicate how many times they were interviewed? Was it one time or were there multiple times?

Mr. André Duval: Some individuals were interviewed twice.

Mr. Jagmeet Singh: Okay. Can you provide a list of anyone—or first of all, did anyone refuse to provide an interview from Queen's Park?

Mr. André Duval: To my knowledge, some people refused to provide a statement. Mr. David Livingston declined to speak with us, Ms. Laura Miller declined to speak with us, Mr. Peter Faist declined to speak with the investigators, and Ms. Wendy Wai declined to speak with the investigators at this time.

Obviously, a word of caution: In my experience, sometimes people change their mind as the investigation

is ongoing, but as far as I know, as of today, these people have declined.

Mr. Jagmeet Singh: Okay. Is there anyone else in addition to those four people who declined to provide an interview?

Mr. André Duval: Not to my knowledge.

Mr. Jagmeet Singh: Okay. In order to reach out to these folks, the people you interviewed, what was the process to do that? How did you reach out to them? Did you send them a letter, was it a phone call, did you show up?

Mr. André Duval: Again, I refer to my opening statement. As the affiant, my role is very specific in this investigation: It's to write search warrants. I was not part of the process of how these people were contacted. In my experience, sometimes it's a phone call, sometimes it's—on most occasions, it's just a phone call.

Mr. Jagmeet Singh: Are you aware of what criteria were used and why the investigators decided to speak to the particular people who are in appendix D; why they chose those folks?

Mr. André Duval: I would say that first we received a complaint through the commissioner's office, and based on that, a list of individuals was produced. We always follow the evidence, so as we go down the list, other people who we believe could provide some valuable information are added to that list. These people would be addressed, saying that there is an ongoing OPP investigation—I guess this was public knowledge; it was nothing new—and they would be asked for a statement, without any further details.

Mr. Jagmeet Singh: Okay. I'm just going to give you a little bit of a summary of some things, and let me know if this is accurate.

As of now, there is a criminal search warrant that is executed. You were the affiant on the information to obtain this search warrant and, right now, the criminal allegation that is being investigated is a breach of trust.

Mr. André Duval: That is correct.

Mr. Jagmeet Singh: Right now, the breach of trust is specifically in relation to David Livingston, who was the chief of staff for the Liberal Premier of Ontario?

Mr. André Duval: That is correct.

Mr. Jagmeet Singh: The previous Premier.

Mr. André Duval: The former Premier.

Mr. Jagmeet Singh: Have you considered section 430 of the Criminal Code, which is "Mischief," and specifically related to "Mischief in relation to data"?

"(1.1) Everyone commits mischief who wilfully

"(a) destroys or alters data;

"(b) renders data meaningless, useless or ineffective;

"(c) obstructs, interrupts or interferes with the lawful use of data; or

"(d) obstructs, interrupts or interferes with any person in the lawful use of data or denies access to data to any person who is entitled to access thereto."

Have you considered, instead of the breach of trust element, which you've focused your investigation on, also including this as grounds, in light of the fact that

data have been allegedly deleted and destroyed, that it could make out the offence of mischief in relation to data? Has that entered your discussions or your consideration?

Mr. André Duval: It did. Obviously, we have to consider any criminal offence. As of today, 3 April, 2014, based on the evidence that we have, the offence of breach of trust, I felt, was the best offence so far. As the investigation is ongoing and we're still following the evidence, we're still following leads, we're hoping to get more witnesses. As I said, there's a potential that other criminal offences might be considered in the future, but I'm not prepared today to say which one it is because it's ongoing.

Mr. Jagmeet Singh: That's fair. It's fair that you've considered it and at this point in time you can't say one way or the other, and I appreciate that.

I'm just going to turn your mind back to the interviews. In the course of the interviews, when you were investigating and looking into information surrounding the deletions, in light of pursuing an investigation around the breach of trust offence, did the issue of Ornge ever spill into this? I know the OPP is also investigating Ornge. In the midst of this investigation around these deletions, did Ornge come up in your investigation at all?

Mr. Bob Delaney: Chair, on a point of order on that one.

The Chair (Mr. Shafiq Qadri): Point of order, Mr. Delaney.

Mr. Bob Delaney: Mr. Singh will have to ask that question in a different committee. That matter is not before this committee.

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The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. Your point is well taken. Mr. Singh, I would respectfully request you to please return to the focus and mandate of this committee.

Mr. Jagmeet Singh: I would respectfully disagree. It's a discussion regarding allegations of a criminal offence, and an investigation. Comments made around Ornge could be insightful into the nature of the discussion and the nature of the interview regarding the deletion of emails. It's simply just—

The Chair (Mr. Shafiq Qadri): Mr. Singh, it's not actually a court of law. This committee and the Chair supersede that. I'd ask you to please return to the focus of the committee. Remarks referring to Ornge are out. Thank you.

Mr. Jagmeet Singh: I will note my disagreement with what you are saying and continue.

Sir, in the course of your investigation, were there grounds that came up in terms of a criminal investigation and the laying of criminal charges—were there other areas, or other information that was provided to you, that could form the basis for other criminal offences outside of the scope of what you started with, and that may require another search warrant or another criminal allegation?

Mr. André Duval: As of today, no. This is the evidence we have. I think the information to obtain is quite detailed on the evidence we have. As of today, I would say no.

Mr. Jagmeet Singh: Okay, thank you. Are you aware of when Peter Faist's and Wendy Wai's access was revoked—an exact date or a rough approximation of the date?

Mr. André Duval: I do, and this is based on witness interviews. We know that what we will call the special global administrative password that Ms. Wai was assigned was probably given to her on the 4th of February, 2013, and it was revoked on the 20th of March, 2013.

Mr. Jagmeet Singh: And for Mr. Faist, was that also the case? Your understanding is that his access ended on the 20th as well?

Mr. André Duval: What I can tell you is that this password assigned to Ms. Wai was valid during that time. When it was provided to Mr. Faist and when he decided not to use it anymore—I don't have that information right now.

Mr. Jagmeet Singh: Sure. Do you know why, or were you provided with any reasons why, this pass was revoked on the 20th? Was there any reason provided by any of the people that you interviewed?

Mr. André Duval: I believe that Ms. Wai was not part of that Premier's office at the time, on the 20th of March. That's why the special admin password was removed.

Mr. Jagmeet Singh: Okay. To date, have any of your investigators been able to speak with or meet with Mr. Faist, or did he provide his denial or—the fact that he did not want to speak with investigators—was it provided to you by another means or did you actually speak to him face to face and have that communicated to you?

Mr. André Duval: I know that the lead investigator did communicate with Mr. Faist to see if he was prepared to provide an interview, and he politely declined.

Mr. Jagmeet Singh: Okay. Would members of your team be able to provide contact information to the Clerk of this committee in order for us to make contact with Mr. Faist?

Mr. André Duval: If I'm aware of that?

Mr. Jagmeet Singh: Yes, if you're aware of it.

Mr. André Duval: No, I'm not.

Mr. Jagmeet Singh: No, are you able to? I'm asking, or requesting, if you are able to provide that contact information to the Clerk of this committee—if there is any additional contact information that you are aware of, that the Clerk is not—so that the Clerk may be able to make contact with Mr. Faist.

Mr. André Duval: I'm sure that could be arranged.

Mr. Jagmeet Singh: Okay. Thank you. Are you able to confirm one way or another—and if you're not able to, that's fine—whether or not Mr. Faist did not return after February 7? Is there any way to confirm that he did not come to the office after February 7? Or you're not able to say what dates he was there, exactly?

Mr. André Duval: I cannot confirm, after the 7th, when he returned to the office.

Mr. Jagmeet Singh: Okay. I'm going to turn your attention to paragraph 1,555.

Ms. Lisa MacLeod: What was that again—1,155?

Mr. Jagmeet Singh: One-five-five-five. The police believe that 24 computers were accessed between the 6th of February and March 20. Why do you believe that there were only 24 computers? What are your grounds for that belief?

I'm going to read further. The paragraph doesn't access what was possible, but it indicates that: "I have reasonable grounds to believe that a forensic examination of the aforementioned 24 workstation hard drives will confirm that the special global administrative right assigned to Wendy Wai was used to access the 24 desktop computers of the Premier's office between the 6th of February 2013 and the 20th of March 2013."

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

Mr. Jagmeet Singh: I highlight the fact that you have grounds to believe and that this will confirm that. What specifically gives you the belief that they were accessed between those dates?

Mr. André Duval: First of all, as I mentioned earlier this morning, the OPP had asked the cyber security branch to verify, of those 52 workstation hard drives within the Premier's office, how many were accessed for that username. We were told there were 24 between that timeline of the 6th of February and the 20th of March 2013.

We have two witnesses, two individuals, who worked in the Premier's office—Ms. Lauren Ramey and Mr. Jason Lagerquist—who witnessed—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Singh. I pass the floor now to the government side, to Mr. Del Duca.

Before I do so, I'd just like to inform the committee members that the Clerk has received communication from Mr. Faist's lawyer, so there is now a contact route established there. In any case, just to let you know.

Mr. Del Duca, the floor is yours.

Mr. Steven Del Duca: Good morning, Constable Duval.

Mr. André Duval: Good morning.

Mr. Steven Del Duca: Before I get started regarding some of the questions that I wanted to ask this morning, I did want to make sure that I put some other stuff on the record. I'm sure you are probably aware of most of this, but I think it's important to make sure, in terms of providing some context.

This particular committee has been sitting for just about a year now—around a year now. Some of what has occurred at the committee thus far, since it began, might provide you with some insight on the work that has been taking place here at the committee regarding getting to the bottom of the issue that we are actually tasked with and the mandate that we have.

To date, this committee has been provided 391,707 documents, including 30,000 documents from the Pre-

mier's office. We have re-struck and expanded the mandate of the committee itself. We've heard from 85 witnesses. There have been 36 motions for government documents that have passed and have been complied with. The current Premier of Ontario has appeared at this committee twice. The former Premier has appeared at this committee twice. The Minister of Energy has appeared twice. Our government has accepted the costs outlined in two reports generated by the Auditor General. As we sit through, at this particular moment, what I believe is about our 127th hour of this committee, we welcome you as our 86th witness.

I understand, and you did mention this at the outset in your opening remarks, that you are limited or constrained with respect to what you can discuss with the committee during an ongoing investigation. I know I speak for everyone on the government side when I say that none of us wants to do anything to jeopardize an ongoing investigation. I have confidence that the members opposite—as we've seen so far, for the most part—would also have that same degree of respect for not doing anything to jeopardize or put at risk an ongoing investigation—

Interjection.

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

Mr. John Yakabuski: With all due respect to Mr. Del Duca, the detective has come here to speak to the committee and answer what questions he can with regard to the investigation that he is currently conducting. I don't think we need a blow-by-blow description of the wonderful things that Mr. Del Duca wants to talk about—how hard the government has worked to try to clear the air on this. We all know that's not the case. Why don't we ask the detective questions that are pertinent to his part in this investigation?

The Chair (Mr. Shafiq Qaadri): We thank you for your remarks, Mr. Yakabuski. I'm sure you've inspired Mr. Del Duca.

Go ahead, please.

Mr. Steven Del Duca: "Inspired" is not the word, Mr. Chair.

Though I was interrupted, and I'd like to go back over what I just said a second ago to make sure it is clearly understood, I will not do that. I don't think it's necessary.

With respect to the ITO—which as you mentioned, I believe, everyone here on the committee probably has a copy of, or should have a copy of—under section 12, you specifically cite a series of reasons with respect to why you thought that it would be necessary or advisable to keep all documents in the custody of the courts. I want to quote just a few sections here.

Paragraph 2140 reads, "I believe that potential witnesses might be reluctant to provide information to police due to the media attention and the sensitive political nature of the investigation."

Paragraph 2145 reads, "This investigation is ongoing and I believe that the disclosure of this information would impede police investigators from following viable leads, identifying new witnesses and interviewing them."

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Paragraph 2160 reads: "The role of other persons, involved in the attribution of a special global administration right ... might have an impact on their professional profiles. The majority of the individuals are active employees of the Ontario public service and the disclosure of their identity could potentially have an adverse impact on their current employment and their personal lives."

Finally, paragraph 2165 reads: "I believe it is important in this instance to protect the integrity of this police investigation." This paragraph finishes with, "For these reasons, I am requesting a sealing order be granted. This sealing order may only be required during the ongoing police investigation so as not to jeopardize the investigation and preserve the administration of justice."

So if I can ask, what do you believe has been achieved by releasing these documents, and are the concerns that you listed, that I just read, in section 12 of the ITO still concerns you have as you sit here with the committee today?

Mr. André Duval: I would answer yes, it's still a concern. I guess, as an investigator, we have a tendency to keep the investigations close to us. It's not because we don't want the public to be aware of it; we just want to make sure that the investigation is complete and conducted in a timely fashion.

Yes, of course, the disclosure of the information to obtain was a concern for me in the sense that it's always a concern that future potential witnesses or other people of interest who could be identified as the investigation continues—if their names would be published or known to the media, would those individuals decide to cooperate with us or not? It's always a concern.

However, as I've said before, we will follow the evidence, we will follow the information that we have, and we will contact anybody who we feel can provide valuable information to this investigation.

Mr. Steven Del Duca: Thank you. I'm wondering if the committee could hear your thoughts, generally speaking, regarding the OPP's relationship with government and with politicians, sort of in a general sense, and the need for independence in circumstances such as this. I'm wondering if you can shed some light, from your professional background, with respect to where you see that line being drawn.

Mr. André Duval: As I said in my opening statement, we had good co-operation from the government officials. It's never been an issue. I believe that everybody over here today acknowledges that the OPP has to remain independent, impartial from any political party, and I think this has been achieved so far. I am confident that our group of investigators will lead this investigation properly and we will get to the bottom of it.

Mr. Steven Del Duca: I'm guessing you probably do know that former OPP Commissioner Chris Lewis testified at this committee a few weeks ago, and from my recollection, he agreed or he suggested that appearing in a legislative committee while an investigation is actually ongoing is out of the ordinary. I want to quote from his

testimony: “This is a rare case ... that I would testify ... during an ongoing ... investigation.... It’s a very difficult situation for us because it runs a very high risk that it’s going to hurt the potential co-operation of other witnesses....”

I’m just wondering if you can perhaps reflect on what former Commissioner Lewis said.

Mr. André Duval: I’ve been an officer for 17 years. It is an unusual request for a detective or an investigator to testify on the evidence that we’ve uncovered as we’re doing the investigation. It is very unusual.

Mr. Steven Del Duca: Have you ever appeared at a legislative committee yourself regarding an ongoing matter while an investigation is ongoing?

Mr. André Duval: No. It’s the first time.

Mr. Steven Del Duca: When the ITO was originally made public, Premier Kathleen Wynne responded by saying—and I think it is important to get this on the record here today at committee. She responded by saying that when she learned of the allegations against the former Premier’s former chief of staff she was disturbed and she recognized that this was not the way a government should operate nor the way a Premier’s office should conduct itself. She affirmed that this is not the way her office operates and that the individual currently under investigation does not work in her office or in her government. To your knowledge, is this true?

Mr. André Duval: That’s correct.

Mr. Steven Del Duca: Premier Wynne was also fairly clear or quite clear about having confirmed with OPP investigators that you have been working with a federal crown attorney from the Public Prosecution Service of Canada and that the investigation has been completely independent. Can you also confirm this is true?

Mr. André Duval: That’s correct.

Mr. Steven Del Duca: The opposition is continuing to press on regardless of what you said a second ago, that both of these statements are true, and have made a number of serious allegations, claiming at various times—for example, March 27, 2014, from the Ontario PC caucus website, “We know that since this has happened during her time in the Premier’s office, she oversaw and possibly ordered the destruction of documents during the cover-up.”

There are allegations of serious criminal activity in the current Premier’s office, again allegations emanating from opposition caucuses, opposition members: “There are serious allegations of criminal activity in the Premier’s office.” Implicit—in fact, not even implicit; explicit—in the PC references are the Progressive Conservative references regarding the current Premier’s office, including that the OPP and the anti-rackets squad are in fact investigating Premier Wynne. Are these conclusions that are in any way, shape or form reached in the ITO?

Mr. André Duval: No.

Mr. Steven Del Duca: To be clear, if an individual’s name is listed in this ITO, does that necessarily mean that they have committed a crime or that they have in any way engaged in any wrongdoing?

Mr. André Duval: No.

Mr. Steven Del Duca: I noticed, when reviewing the ITO and looking at the list of names, that in fact even members of the PC caucus and the NDP caucus are listed in the ITO. Just out of curiosity, why are their names listed in the ITO?

Mr. André Duval: Some of them were witnesses for this police investigation.

Mr. Steven Del Duca: Thank you very much. Regarding the specific area or the specific topic of co-operation—as the investigation is unfolding—from the government, I also want to refer back again to the testimony we heard from Chris Lewis when he appeared at committee. He confirmed that—and you’ve said this today on a number of occasions—there’s been good co-operation from senior government staff. Mr. Lewis said the following when he was here: “I am told by our investigators that the OPP is receiving good co-operation from senior government officials in this manner.” He said there was full co-operation.

He confirmed that he’s not aware of any interference from government and that he would have been made aware had any interference occurred. He also confirmed that the OPP investigation has not seen any roadblocks and no interference, and again that there has been full co-operation. Is this consistent with your experience?

Mr. André Duval: To my knowledge, it is.

Mr. Steven Del Duca: Again, to your knowledge, have there been any roadblocks which have prevented the investigators assigned from doing their jobs?

Mr. André Duval: To my knowledge, no.

Mr. Steven Del Duca: Can you confirm today whether or not your office has had any interference from any Liberal member or staff, I should say?

Mr. André Duval: To my knowledge, no.

Mr. Steven Del Duca: Again, to your knowledge, has there been any interference from other members of this Legislature while this investigation has been ongoing?

Mr. André Duval: To my knowledge, no.

Mr. Steven Del Duca: Thank you for confirming all of that.

I don’t want to delve into speculation in any way or to get into the specifics, but more or less from the standpoint of providing clarity here at the committee today, I want to make sure you understand—and I’m sure you do, but I just want to make sure it’s clear—the mandate of the committee, and the mandate of this committee is a review of the matter of the Speaker’s finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

Reading from an excerpt from the ITO itself under paragraph 1805, it reads, “In September 2011, a provincial election campaign began and the Liberal Party of

Ontario, as did the other parties, promised to cancel the construction of the plant in Mississauga if elected.”

I’m just wondering what would have led those involved with the investigation to believe that alongside the Liberal Party, the other two parties, the Ontario NDP and Ontario PCs, would have cancelled the plant in Mississauga had they been elected?

Mr. André Duval: If I remember correctly, this was coming from a newspaper article that we read during the investigation.

0910

Mr. Steven Del Duca: Thanks very much. Is there anything else you’d like to add at this time on this round of questioning?

Mr. André Duval: No.

Mr. Steven Del Duca: Thank you very much.

The Chair (Mr. Shafiq Qaadri): The government cedes its time?

Mr. Bob Delaney: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Del Duca. Just before I offer the floor to the PC side, we’re just debating over here whether we’ll adopt parliamentary procedure that if cellphones go off, we actually seize them. So if you might just shut them off; that might be advisable.

Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Constable Duval, for coming in at the request of the New Democrats. I appreciate you doing this. I understand the difficulty that you have in answering some of our questions. I’ll ask you some questions today, obviously. But I think the best venue for this is probably a closed meeting with the assembly people who are here, so I think at the end of this I’ll ask for an invitation back, to go in camera with the rest of the committee.

I do have a couple of questions that I’ll start with, based on my observations and some of the questions that my colleagues brought to you.

What I’m unclear on is—and perhaps you can clear this up—is it possible that Peter Faist could have accessed the remaining 20 computers up until March 20?

Mr. André Duval: It is possible.

Ms. Lisa MacLeod: It is possible that he could have accessed them. Okay. That’s important to me, because it states that the 24 desktop computers in the Premier’s office were accessed between February 6 and March 20, 2013. Can you just again confirm to us how you know that information?

Mr. André Duval: We know for sure, from the examination that the cyber security branch did on our behalf, that 24 workstation hard drives from the Premier’s office were accessed with the user name of Wendy Wai.

We know for sure that two workstation hard drives among those 24—one belonged to Ms. Lauren Ramey and the other one to Mr. Jason Lagerquist. They were employees, staff at the Premier’s office. These two individuals witnessed Mr. Peter Faist accessing their computers. The investigation revealed that during the time

Mr. Faist was there, the user name of Ms. Wai was used to gain access to those two computers.

Based on that, knowing that Mr. Faist used the user name of Ms. Wai to access the computers of Ms. Lauren Ramey and Mr. Jason Lagerquist, I believe that the same process was used for the remaining 22 hard drives.

Ms. Lisa MacLeod: You cannot confirm that this all happened in the middle of February. It could have extended possibly to March 20.

Mr. André Duval: I don’t know that right now.

Ms. Lisa MacLeod: Yes, but it’s possible.

Mr. André Duval: It is possible.

Ms. Lisa MacLeod: Okay. I think that’s very critical for the work of this committee. Your investigation will take it where it goes.

My next question is, in the ITO, it states that on March 19, the deputy director of human resources in the Premier’s office, Emily—and I apologize to her if I butcher her name—Marangoni advised the manager of information technology to remove the special administrative password rights of Wendy Wai.

The question that I think is logical in the public’s mind is—this individual was working for the Premier, and there had been a change in the transition period. Is it possible that someone in the current Premier’s office would have known about the special password and the administrative access that Wendy Wai would have had?

Mr. André Duval: I don’t have that information at this time.

Ms. Lisa MacLeod: Okay. It just seems to me there would have been that transition.

I want to talk about something that is on page 30, and it’s stated a few times throughout the ITO. It’s of particular interest to me, and it is the link to the Dell computer program that seems to have been accessed on both of the desktops and possibly others. I believe you say you “have reasonable grounds to believe that the forensic examination will reveal if the Dell tool used by Peter Faist”—I’m not sure how you say his name—“on the work stations of Lauren Ramey and Jason Lagerquist was also downloaded on the remaining 22 work station hard drives. I believe it will also reveal the function of the Dell tool and why it was used on the work stations of Lauren Ramey and Jason Lagerquist, and any of the other 22 work station hard drives it is located on.”

Toward the bottom of page 30, at 1575 or just a little bit after that, “The deleted files or file fragments may exist for an extended period of time on the computer system, due to the design of Microsoft Windows. The files that have been deleted by the user are not physically erased. Rather, the operating system marks the area of the storage disk where the file was stored as available to be reused in the future.”

Then you go on, further down on page 31: “The Dell tool used on the work stations of Lauren Ramey and Jason Lagerquist might fit that description.”

I’m wondering if you can enlighten not only the committee but also the people who are watching this committee as to what this Dell tool really means, because

many of us are not computer technicians. What was the purpose of this Dell tool? What was the name of this Dell tool? Can you state for the record where one would find this Dell tool?

Mr. André Duval: The reason we know this is because the workstation hard drives of Lauren Ramey and Jason Lagerquist were examined by Mr. Rolf Gitt. Mr. Gitt is a senior technician for the information technology service, and this was prior to the OPP getting involved in this investigation. It was, in fact, on the 14th of February, 2013, so it's about seven days after those two computers were accessed by Mr. Faist. Mr. Gitt noticed that this link to the company Dell was downloaded on both workstation hard drives. I can tell you that investigators have contacted the company Dell, and there is an ongoing investigation on this. We are looking into it. The function of that Dell software, so far, is not known. We're hoping that with the forensic examination that the OPP is doing right now, we're going to know exactly what that software was doing. That's pretty much as much as I can tell you right now.

Ms. Lisa MacLeod: Who would have had administrative access to that? Who would have registered that Dell tool? Would it have been somebody in the Premier's office? Did Peter Faist purchase that Dell tool directly and have it downloaded? Those are some of the questions that I have, because you've mentioned it several times. I'm just trying to wrap my head around who would have paid for this: the public service, the Legislative Assembly, the Liberal Party or Peter Faist himself.

Mr. André Duval: What I can tell you is that we know for sure that this software was downloaded on those two workstation hard drives when Mr. Peter Faist was working on those hard drives using the password of Ms. Wendy Wai. How he obtained the software and who paid for it, I don't have that information right now.

Ms. Lisa MacLeod: Is that part of the discussions you're having with Dell? Or is that something—

Mr. André Duval: I'm hoping that, with the forensic examination that the OPP is doing right now—these officers are experts in that field—they're going to be able to tell us exactly what that tool does, when it was downloaded and what its function is.

Ms. Lisa MacLeod: Okay, so you don't have that information at this time; you just know, simply, that it was on the two computers of Ms. Ramey and Mr. Lagerquist, and you expect that it has been on the other computers.

Mr. André Duval: Yes, I do expect that the same software was downloaded on those remaining 22 workstation hard drives, but again, we have to wait for that forensic examination to be completed.

Ms. Lisa MacLeod: Now, just correct me if I'm wrong: You're suggesting in the ITO that it was used to disguise data.

Mr. André Duval: It is possible. It could disguise data. It could erase data. It could maybe transfer data from one computer to another. Again, the forensic examination will determine that.

Ms. Lisa MacLeod: Okay. You mentioned 24 computers within the premier's office. Are you aware of any other computers that may have been accessed remotely by Mr. Faist anywhere else in the government or within the Liberal Party?

Mr. André Duval: No, we're not.

Ms. Lisa MacLeod: You're not.

In terms of the time frame, I understand the issues you have not only with trying now to restore those hard drives, but then to get the data off those with respect to the gas plants. That's going to be a lengthy process. Do you have a time frame? I don't expect it's going to happen next week, but will it be within the next five to six months or beyond?

Mr. André Duval: I had a conversation with our forensic expert from the OPP just yesterday, and the examination is ongoing. As I said in my opening statement, it is very lengthy and complex. We are looking at probably many months before we have a final report on the examination of those 24 hard drives.

Ms. Lisa MacLeod: I know this might be putting you in a difficult spot, but in your opinion, does the OPP have the resources necessary in order to complete this task in a timely manner?

Mr. André Duval: Again, I have to repeat, I guess, my specific role in this—

Ms. Lisa MacLeod: I see that the deputy commissioner perked right up.

Mr. André Duval: As a detective constable and being far away from the duties of the commissioner, it would be the case manager who would determine if there are enough resources, or even the commissioner.

0920

Ms. Lisa MacLeod: Okay. I just want to go back to technology for a moment, and then I think I'd like to take a different turn. The ITO mentions physical workstations. I noticed in the ITO that some people had multiple workstations under their names, which makes me question if they actually were the person that was assigned to that desktop. For example, Wendy McCann had a couple of workstations. I think that was quite interesting, but what I did notice that wasn't there were laptops, cell-phones and BlackBerrys. Were any of those seized as well, as part of this search warrant?

Mr. André Duval: If I remember correctly, I believe there were two workstation hard drives coming from laptops that were seized.

Ms. Lisa MacLeod: And that was included in the 24?

Mr. André Duval: Yes.

Ms. Lisa MacLeod: Okay. Who did those belong to?

Mr. André Duval: I believe one of them was Miss Wendy McCann, which is number 24. I wouldn't venture on the other one, Ms. MacLeod. I'm sorry, but I'm pretty sure number 24 was one laptop. I would have to review my notes on that.

Ms. Lisa MacLeod: Okay. Thank you for that.

I'd like to ask you a quick question about Peter Wallace, the cabinet secretary. He features prominently in this ITO.

Mr. André Duval: Yes.

Ms. Lisa MacLeod: It is very clear that on a number of occasions he was raising some red flags and offering his position that they were treading down a path that had never been treaded down before. At what point, in your opinion based on your discussions with him, would he first have been aware that there would have been a destruction of documents, either with public service records or with Legislative Assembly records?

Mr. André Duval: I think he was advised of such by the OPP investigators when he was providing a statement.

Ms. Lisa MacLeod: And that would have been in February of last year?

Mr. André Duval: I don't have an exact date. Mr. Wallace provided two statements to detectives. I would have to review my information to obtain—I don't have the exact dates, but it would be during his second statement to the OPP when he was made aware of that possibility.

Ms. Lisa MacLeod: Okay. Are you aware of any internal investigation, either launched by Peter Wallace as cabinet secretary or by Kathleen Wynne as Premier of the government, into the destruction of documents?

Mr. André Duval: I am not.

Ms. Lisa MacLeod: You are not. Will you be interviewing former Premier Dalton McGuinty?

Mr. André Duval: Again, that's up to the case manager to decide. As I mentioned a few times, we're following the evidence. If the case manager believes that Mr. Dalton McGuinty could provide valuable information to this investigation, I'm sure he will be approached.

Ms. Lisa MacLeod: Okay. During your ITO, you indicate that Peter Faist had no security clearance or background check before accessing computers in the Premier's office. Were you aware that he was also working for the Liberal caucus and the Liberal Party of Ontario at the same time?

Mr. André Duval: Not at the time I was producing that document.

Ms. Lisa MacLeod: Are you aware of any background issues Mr. Faist may have had in the past—run-ins with the law or anything like that?

Mr. André Duval: Again, I'm not at liberty to discuss if he had any prior involvement with law enforcement. That would be confidential information—

Ms. Lisa MacLeod: That would be at the Ontario Superior Court?

Mr. André Duval: Yes.

Ms. Lisa MacLeod: Right. Were you aware that a judge had at one time said he was inconsistent in his testimony?

Mr. André Duval: Again, you're asking me to speak on a case over here, and I think it's not fair to answer that question for Mr. Faist.

Ms. Lisa MacLeod: Okay.

The Chair (Mr. Shafiq Qadri): Mr. Delaney, a point of order.

Ms. Lisa MacLeod: I'll redirect. It's fine.

Mr. Bob Delaney: Chair, I would ask that they tread cautiously in trying to cross-examine a witness who has not appeared through a witness who is here, who is reluctant to say something about someone who has not given testimony.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. I think the issue, of course, is the speculative hypotheticals, as you're well aware.

Ms. MacLeod, the floor is yours.

Ms. Lisa MacLeod: Sure. Happy to redirect. I just think it was important to know that there has not been a criminal background check done on Mr. Faist. Did the OPP engage in any criminal background checks for any of the witnesses that they've either spoken with or have tried to speak with?

Mr. André Duval: I think it is a common practice for law enforcement, not only the OPP, but—when you do witness interviews, you prepare yourself, and of course you do a background check on those witnesses.

Ms. Lisa MacLeod: Okay, so you are aware of them. Thank you.

Peter Faist stated on Twitter last November, "The informed among us are aware that users aren't responsible for archiving their emails. Their administrators are." In your professional opinion, who is he referring to when he says "administrators"—government or political staff?

Mr. André Duval: He's probably referring to, I would say, the chief of staff, the people who should be aware of the policy of the government when it comes to document retention—managers and so on.

Mr. Bob Delaney: Chair, I would to add again that the witness has said the word "probably" twice. Ms. MacLeod's question is asking him to speculate on administrative procedures in a government department.

Ms. Lisa MacLeod: To be fair, I did not raise a point of order when your caucus decided to raise a point of order on the same train of thinking.

Mr. Bob Delaney: I don't want to interrupt you. I'd just like you to stay within the scope—

The Chair (Mr. Shafiq Qadri): Just to repeat, for the benefit of the committee as well as for the witness, speculatives and hypotheticals—first of all, you're welcome to deal with them as you see fit, but you're not required to answer. Please go ahead.

Ms. Lisa MacLeod: Okay, thank you. Did Laura Miller and Peter Faist give an explanation as to why they refused to speak to the OPP?

Mr. André Duval: No.

Ms. Lisa MacLeod: Are you aware that Laura Miller's lawyer is at the moment suggesting that she did in fact give a statement to the police for this investigation?

Mr. André Duval: To my knowledge, as of today, 3 April, 2014, she has declined to provide a statement to the OPP investigators.

Ms. Lisa MacLeod: Thank you very much for that confirmation.

This committee is trying to bring Mr. Faist in to the committee for questioning. We have been told that he has

moved, or we are unable to access his contact information. Are you able to provide us with the contact information?

Mr. André Duval: I would be able to. Not right now, but I would be able to provide that information, if you wish.

Ms. Lisa MacLeod: Thank you very much. Perhaps our Clerk will be able to speak with you about that contact information. We appreciate that.

In terms of the location of some of those you've spoken to, perhaps they may have moved outside of the province. Is the OPP able to go to another province to question these individuals, if that's the case?

Mr. André Duval: Yes, we can.

Ms. Lisa MacLeod: Okay. So just to be very clear, if we were to try, for example, to speak with somebody from British Columbia who did not want to testify in front of this committee, we would not have jurisdiction for our Sergeant-at-Arms to get one of them and compel them to testify the same way we would be able to if they were in the province of Ontario. I think that's very important. So you will be able to question individuals even though they're outside of Ontario?

Mr. André Duval: That's correct.

Ms. Lisa MacLeod: And there are no jurisdictional issues with, for example, British Columbia police or Quebec police?

Mr. André Duval: That's correct.

Ms. Lisa MacLeod: Okay. How much time do I have left, Chair?

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

Ms. Lisa MacLeod: Less than four minutes? Well, that gives me enough time to ask the next question, then.

One of the individuals who I think is quite interesting in the ITO is David Nicholl. I notice in a couple of different passages that he had a different story than both his superior and his subordinates. I'm wondering, based on the information that you have and this January 30 meeting that you reference within the ITO, how did Mr. Nicholl's story appear compared to the others? Could you put that on the record for us?

Mr. André Duval: I believe the ITO is quite detailed on that meeting. I'm just going to try to refer to it here. It's at page 10 of the information to obtain.

Basically in that meeting, there was Mr. Peter Wallace, the cabinet secretary; there was Mr. David Nicholl; there was a legal counsel to Mr. Wallace, Mr. William Bromm; there was Ms. Linda Jackson; and I believe Mr. Steen Hume.

The topic was to discuss the request made by David Livingston to get an administrative password to gain access to all the desktops in the Premier's office. From that meeting, Mr. Nicholl was the only one who was under the impression that the approval was made to grant that request by Mr. Livingston, as the other people in that meeting came out with the knowledge that first they had to determine if anybody else had such an administrative password within the Premier's office. I think this is very significant in the investigation.

What we know is that shortly after that meeting, Mr. Nicholl met with Mr. Thom Stenson. Mr. Stenson is the manager of the information and technology service. Mr. Nicholl made a request to create a password on behalf of Mr. David Livingston that would allow a person to have access to all the workstations.

0930

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

Ms. Lisa MacLeod: Okay. Just very quickly, and I'll pick up in the last 10 minutes: It has been reported in the media that David Nicholl and David Livingston had a pre-existing friendship based on a prior professional acquaintance. Did that come up during your investigation?

Mr. André Duval: It did.

Ms. Lisa MacLeod: Okay. So it's true?

Mr. André Duval: The investigation is ongoing. This is one of the, I would say, information we need to do more work on. I'm not at liberty to really go in deep details on that.

Ms. Lisa MacLeod: Okay. Thank you very much. I really appreciate you taking the time with us this morning. I look forward to the last 10 minutes.

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

To the NDP: Mr. Tabuns.

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

Mr. Duval, following on the last question that was asked, do you have any corroborating evidence for the understanding which Peter Wallace, Steen Hume and William Bromm had about their meeting with Mr. Nicholl—any evidence to corroborate their version of events that, in fact, they didn't decide to give these special administrative passwords?

Mr. André Duval: We have statements from all those individuals, and all their statements mention the same details and the same outcome from the meeting. With that, I am satisfied that this was the outcome of the meeting.

Mr. Peter Tabuns: Okay. So you accept their version of events in this matter?

Mr. André Duval: I do.

Mr. Peter Tabuns: Okay. I have minor factual things to address and then my colleague will speak.

You list a number of people involved in your ITO, including Mr. Vic Fedeli, Mr. Rob Leone and myself. I assume that is because we filed complaints. I filed a complaint with the Information and Privacy Commissioner. They filed a complaint with the OPP about destruction of emails. Is that correct?

Mr. André Duval: That's correct.

Mr. Peter Tabuns: Thank you.

Lastly, I'm not sure if you're aware: We in the NDP opposed the building of the Oakville plant before the contract was let and we warned about the Mississauga plant back in 2005. I don't know if you were aware of those realities.

Mr. André Duval: I was.

Mr. Peter Tabuns: Okay. With that, I'll turn it over to my colleague.

Mr. Jagmeet Singh: Sure. Thank you, sir. I'm just going to ask you some questions about access and specifically some of the evidence that you've indicated in your ITO that you expect to be able to obtain. I'll direct some questions around the investigation and then I'll move into the data recovery.

Just with respect to the investigation, before I talk about the data recovery, you indicate this date of March 20. Is it my understanding that the reason why you believe the computers were accessed up to March 20 is because that's the date that that special password was revoked? Is that the reason why you've narrowed in on that date?

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Okay. Is it possible that there was access after the 20th that you're just not aware of at this point in time; that there may have been access through other means?

Mr. André Duval: I don't believe so.

Mr. Jagmeet Singh: Okay. Are you hoping and do you think that the investigators will be able to ascertain exactly when and on which dates Peter Faist and Wendy Wai indirectly accessed the 24 computers? Are you hoping to find the exact dates, and is that something that you anticipate with the specialty of the folks involved, that the data recovery specialists and the forensic specialists will be able to come up with that evidence?

Mr. André Duval: We're hoping they'll be able to recover that data.

Mr. Jagmeet Singh: At this point in time, are you able to provide—and if this you think is something that narrows in on territory that is not appropriate, please feel free to use your discretion—an update on how far along the data recovery is? Based on your previous comment, I think you are confident, but how confident are you that the police will be able to recover data from the wiped machines, and how much?

Mr. André Duval: I can't speculate on how much we're going to be able to recover. The forensic examination is ongoing as we speak. How far they are, I'm not sure yet. How much we're going to recover, I just can't tell you right now.

Mr. Jagmeet Singh: Okay. And up to this time, in terms of the type of data that has been recovered, so far have you been able to recover emails or are you recovering documents, Word files? What types of documents have you been able to recover thus far?

Mr. André Duval: I can't provide that information right now.

Mr. Jagmeet Singh: Sure. I'm just going to turn your attention to the ITO now and some of the information that you've put in.

In terms of the background—before I talk about paragraph 300—you make mention of the date when Premier McGuinty resigns. On paragraph 300, you note: "On the 11th of February, 2013, Ms. Kathleen Wynne is sworn in as the Premier of Ontario and will lead a minority Liberal government." You noted that in your ITO.

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: These are all for the purpose of providing background?

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: I also note that later on, just below paragraph 475, you have an affiant note which indicates: "Ms. Kathleen Wynne was elected to replace Mr. Dalton McGuinty as leader of the Liberal Party on the 26th of January, 2013. The transition process to a new government started shortly after her nomination." You also included that as an affiant note. That's your addition?

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Okay. I note later on in the ITO that some of the interviewees, or the folks that you have interviewed, indicated that they believed, or they were given the explanation, that Mr. Faist was accessing their computers as a part of the transitioning from the previous Premier to the new Premier. Was that something that came up in the interviews?

Mr. André Duval: In two interviews: one with Ms. Lauren Ramey, and the other one with Mr. Jason Lagerquist.

Mr. Jagmeet Singh: Okay. In those two incidents, they provided that explanation that they thought Mr. Faist was accessing their computers—or they were provided with that explanation, that this was being accessed as a part of the transition.

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Okay. In total, if you can just provide me with a ballpark estimate, how many times were investigators at Queen's Park for interviews or for any other visits?

Mr. André Duval: It would be hard. I would have to look at my list of witnesses. If you could just allow me—

Mr. Jagmeet Singh: Yes, just take a moment, then.

Mr. André Duval: Let's see. If I go down the list—I would say that about 14 times, interviews were conducted in this location.

Mr. Jagmeet Singh: And the 14 times—would that be 14 different days?

Mr. André Duval: No, not 14 different days. We have to be mindful that this unit works from Ottawa, so two or three people would be interviewed in one day.

Mr. Jagmeet Singh: Okay. So approximately, if you give two or three—maybe between seven and five times?

Mr. André Duval: Yes, approximately.

Mr. Jagmeet Singh: Seven to five times.

Mr. André Duval: Yes.

Mr. Jagmeet Singh: So maybe it happened within a week?

Mr. André Duval: No, it would be over several weeks.

Mr. Jagmeet Singh: Over several weeks.

Mr. André Duval: Yes.

Mr. Jagmeet Singh: Okay, fair enough. Over several weeks and perhaps between a range of five to seven visits, actually, to Queen's Park—

Mr. André Duval: Roughly—

Mr. Jagmeet Singh: —and I won't hold you to it.

Mr. André Duval: —reasonable.

Mr. Jagmeet Singh: Yes, reasonable; okay, that's fine.

In your ITO, these are some of the documents that you're hoping to obtain. I understand you're hoping to obtain specific dates and specific computers that were accessed by Mr. Faist. That's some of the evidence that you would like to obtain. Is that correct?

Mr. André Duval: Yes, that's correct.

Mr. Jagmeet Singh: You would like to obtain the presence of emails that were deleted, so you can corroborate that emails were in fact deleted. So you would need to be able to recover emails. Is that correct?

Mr. André Duval: I wouldn't say only emails—

Mr. Jagmeet Singh: No, not only; I was going to go to other documents as well.

Mr. André Duval: The best way to describe that would be government records, which include emails and any other records that would be produced.

Mr. Jagmeet Singh: Sure. What other records would you say that are—

Mr. André Duval: Word documents, Excel worksheets, that type of document.

Mr. Jagmeet Singh: Okay, perfect. The folks who are working on this right now—what would their level of experience be in terms of their expertise around data recovery.

Mr. André Duval: The OPP is very lucky. Our forensic experts are among the best in the country, and they have great expertise to deal with this type of matter.

Mr. Jagmeet Singh: Okay. Are you able to distinguish between the hard drives, or the items that were seized as a part of the search warrant, and the data recovery on those, and any other hard drives or computers that you would need access to? What I mean by that is—

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

Mr. Jagmeet Singh: —my understanding is that the search that you've conducted is for physical drives that were located at a storage facility.

0940

Mr. André Duval: That's correct.

Mr. Jagmeet Singh: Were there any other drives that you were able to seize from the Premier's office itself?

Mr. André Duval: This ITO was basically concentrating on those 24 hard drives, and we managed to recover those 24 hard drives.

Mr. Jagmeet Singh: Okay. In addition to that, are there any other data centres or data facilities that you think might be able to provide you with some more insight, or maybe data recovery tapes that might be able to give you more insight into deleted records?

Mr. André Duval: Well, I can tell you today that there is no other search warrant being prepared.

Mr. Jagmeet Singh: Okay.

Mr. André Duval: But that could change rapidly.

Mr. Jagmeet Singh: Sure. I understand my time is just about up. Thank you very much for your time today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. To the government side: Mr. Delaney, 10 minutes.

Mr. Bob Delaney: Good morning, Constable Duval.

Mr. André Duval: Good morning.

Mr. Bob Delaney: Throughout our conversations with you this morning, you have talked about something being possible or something being probable or likely. Would you explain what you understand is the difference between something that is possible and something that is probable?

Mr. André Duval: Well, I guess something that's possible is—would it be possible that this investigation would reveal more criminal offences? Well, of course, it's possible. Maybe it will not; maybe it will. "Probable" is maybe just a bit higher on that scale. I guess that would be the best way to describe the difference for me, in my opinion.

Mr. Bob Delaney: Right. So in other words, to use a slightly different example, you could say it is possible that the Toronto Maple Leafs could win the Stanley Cup, but it is likely not probable?

Mr. André Duval: I've got to be careful here. I'm from Ottawa.

Interjections.

Mr. Bob Delaney: Hence the reason I did not speculate into the realm of the possible with regard to the Senators.

To come back to our agenda, however, you said earlier, I think, it was possible for Mr. Faist to have had access to computers during the period from the third week of February up until when that password expired, which in my recollection was the 20th of March 2013, that it was possible. Right?

Mr. André Duval: That's correct.

Mr. Bob Delaney: Do you have any evidence that, in fact, Mr. Faist returned to the Premier's office after February 7 or accessed the machines in any way?

Mr. André Duval: Not as of today, no. We're hoping that the forensic examination will reveal that information.

Mr. Bob Delaney: So while it is possible, based upon the evidence that you have, it is not probable?

Mr. André Duval: I didn't say that. I would say that we have evidence from two witnesses that Mr. Faist accessed two workstation hard drives, because they were present during that time. It is an investigative theory that, because he accessed two of those 24 hard drives, he accessed the remaining 22.

Mr. Bob Delaney: What is the make and model of the 24 computers in question?

Mr. André Duval: They vary. I'm not too sure I've put the description in, because most of those workstations' hard drives are identified with a serial number and an evidence number. I don't have that information, Mr. Delaney, as of today. But if that's something that you're interested in, I'm sure we can provide it to you.

Mr. Bob Delaney: The reason I ask is, you have made repeated reference to a Dell tool, so do you know that the machines on which you've talked about the "Dell tool" being used are, in fact, Dell machines?

Mr. André Duval: I would have to review the list of the exhibits to give you a clear answer, but if I recall, most computers are not from Dell.

Mr. Bob Delaney: All right. The interviews that you talked about that occurred at Queen's Park: If an interview occurs at Queen's Park, does that necessarily mean that it is a political interview?

Mr. André Duval: No. This is part of the ongoing police investigation.

Mr. Bob Delaney: So if an interview occurs at Queen's Park, it may have occurred at Queen's Park or in another location perhaps because that's where both parties could agree to meet, or that's where the investigation was occurring. Correct?

Mr. André Duval: If you look in the appendix, the list of witnesses that we have, most of those individuals are working for the Ontario public service. This investigation is no different from any other. We interview people at their workplace on a daily basis. It's just sometimes more convenient for those people to meet with us at their work location than anywhere else.

Mr. Bob Delaney: Okay. So there's nothing special about the fact that an individual was interviewed at Queen's Park. As you said, it just may have been more convenient.

Mr. André Duval: That would be correct.

Mr. Bob Delaney: Okay. In some of the questions, we've talked about an individual accessing someone else's computer. If I use the expression "roaming profile," does that expression mean anything to you?

Mr. André Duval: You would have to define it for me.

Mr. Bob Delaney: Okay. For example, if you're running something like Microsoft Exchange, you would have a roaming profile that would enable you to access, with full security, all of your files on another investigator's computer in a different location, a capability you may or may not have at the OPP. If I talk about a roaming profile, does that mean anything to you?

Mr. André Duval: I would say to you that before making any conclusions like this, we're going to wait for the results of the forensic examination to tell us how those workstation hard drives were accessed.

Mr. Bob Delaney: Splendid. That's exactly where I was headed.

Chair, I think that is all I have to ask the witness. Thank you very much, Constable.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. To the PC side, Ms. MacLeod.

Ms. Lisa MacLeod: Thanks very much, Chair. I appreciate that.

You wrote on page 9, "Affiant note: Ms. Kathleen Wynne was elected to replace Mr. Dalton McGuinty as leader of the Liberal Party on the 26th of January 2013. The transition process to a new government started shortly after her nomination." Can you provide us with a time frame there? What does "shortly" mean? A day? Two minutes?

Mr. André Duval: I would say right away.

Ms. Lisa MacLeod: Right away? Therefore, were you able to speak with anybody on Ms. Wynne's transition team, such as Monique Smith or others; perhaps her current chief of staff?

Mr. André Duval: To my knowledge, no.

Ms. Lisa MacLeod: You didn't speak with any of them?

Mr. André Duval: No.

Ms. Lisa MacLeod: When they moved into the office, during that transition period, would there have been people in that office from both the previous Premier's and the current Premier's office?

Mr. André Duval: I don't know.

Ms. Lisa MacLeod: Okay. In terms of some of the staff you've identified and spoken with, are you aware that some of them are still employed either directly by Kathleen Wynne or the government House leader or other ministers of the crown?

Mr. André Duval: As the affiant, I'm not aware of that.

Ms. Lisa MacLeod: You are not aware of that. Okay. That, personally, to me, is quite important, and I think it very much signifies that this is still the same government. It is a different Premier. You've stated already today that it is conceivable that those computers could have been accessed up until the 20th of March, 2013.

Mr. André Duval: It is possible.

Ms. Lisa MacLeod: That is important to me.

In terms of appendix D of your ITO, you state—and you've said this to my colleagues on a number of occasions. There is only one person, right now, of significant interest, as you submit in your report. I just wanted to once again confirm that it is conceivable that more individuals could be charged or there could be other search warrants. That is not without the realm of possibility.

Mr. André Duval: As I mentioned a few times today, the investigators will follow the evidence. In the event that more criminal offences are revealed, then we will investigate those matters to the fullest.

Ms. Lisa MacLeod: Going back, if I could, with the short time I do have, I'd like to talk once again about Mr. Nicholl. It's my understanding that an IT manager told the OPP anti-rackets unit that he had been told to create a super all-access password by David Nicholl. In your findings, did he have the proper authority to authorize this super all-access password?

Mr. André Duval: I don't know if Mr. Nicholl had the authority. I can testify today, based on the evidence I have in this information to obtain, that he made the request. I will let other people decide if he had that authority to do that, but that request was made, and the process was started after that request.

0950

Ms. Lisa MacLeod: And the request was actually initially made for Mr. Livingston to have that super all-access code, but that was rejected—instead to give it to Wendy Wai, according to the ITO?

Mr. André Duval: I'd be careful to say that it was rejected. The request was made—

Ms. Lisa MacLeod: But that's his side of the story—David Nicholl's side of the story.

Mr. André Duval: Yes—well, that's what he testified in his interview with the OPP.

What I will say is that the password was created. He was told that a person from Mr. Livingston's office would be assigned the password. That password was later assigned to Miss Wendy Wai, and if I can find the exact line—

Ms. Lisa MacLeod: Yes. You say on page 9, around line 450, "David Nicholl refused to provide administrative rights to David Livingston. He believed that administrative rights should be assigned only to personnel in the Information Technology Service. He advised David Livingston to seek the assistance of the cabinet secretary, Peter Wallace."

Mr. André Duval: Yes.

Ms. Lisa MacLeod: Then, on page 10, Mr. Hume states, "'Peter' was not typical and lacked sophistication: 'It's not typical ... my feelings on that are from the vantage point of that's really stupid it compromises the former Premier the integrity of his office in a way that's which is quite unfortunate but that is a judgment call that they chose to make that is not something we can protect them from.'"

So on the one hand, there was a decision to not grant David Livingston access, then, on the other hand, a decision by Mr. Nicholl to instead grant it to Ms. Wai, and then there were, I guess further on down here, some comments by senior civil servants that, when Peter Faist came in, it lacked sophistication and, in their words, "it was stupid" and that "it compromised the former Premier and his integrity"—in their words, not mine.

I'm wondering, at any point in time did Mr. Hume, Mr. Wallace, Mr. Stenson or Mr. Nicholl know that Peter Faist was going to be accessing that password and at any time in the conversations you had with the civil servants did it appear that Dave Nicholl wanted to bypass David Livingston in order to protect him later on and in order to set up Ms. Wai?

Mr. André Duval: Well, on your first question, if they knew that Peter Faist would be provided with that username and password? I would say no. There's maybe one part of your statement that's missing concerning Mr. Peter Wallace. At one point, Mr. Peter Wallace is advised that there are seven individuals in the Premier's office who have administrative rights—

Ms. Lisa MacLeod: And that there was confusion with respect to those two different types of access—

Mr. André Duval: Exactly. I think it's an important point to raise. That's also in the information to obtain. Those seven individuals had access only to their desktop. I mean—

Ms. Lisa MacLeod: But they were allowed to access other programs. Is that the case?

Mr. André Duval: Yes, but their password was only for one desktop computer. So they could not access the other person's desktop.

Ms. Lisa MacLeod: So Peter Wallace had confusion about what the super-duper, all-encompassing access pass was, compared to this access pass, for example, that Bradley Hammond would have had in the Premier's office in order to download programs?

Mr. André Duval: That's correct. So he was under the impression that it was the same type of administrative rights. So he was not, I would say, advised properly, informed properly, and his conclusion is that, "Well, if there are seven people with passwords, why can I not give another one since it's the same one?"

Ms. Lisa MacLeod: So who would have been negligent in their duty in informing Peter Wallace? Does that come up in your ITO?

Mr. André Duval: I believe it's maybe not in those words, but I think if you read the information to obtain, there was obviously a lack of communication between certain individuals.

Ms. Lisa MacLeod: Which individuals?

Mr. André Duval: Well, I think Mr. David Nicholl should have advised Mr. Peter Wallace that the password that he had requested from Tom Stenson was not exactly the same that the seven other individuals had. I believe if Mr. Wallace would have been provided with that information, the outcome might have been different.

Ms. Lisa MacLeod: Is there any indication, in the discussions you had towards putting this ITO together, of why Mr. Nicholl would have either neglected to follow proper protocol or why there was a challenge in his communications with his superior? Did that reveal itself?

Mr. André Duval: I believe, in the information to obtain, the investigators asked Mr. Nicholl—I'm trying to find the exact quote within here—if there was a difference, in his opinion, between those two administrative passwords. I believe his answer was that he did not believe that they were different. I'm just trying to find for you the—

Ms. Lisa MacLeod: That's a pretty big mistake for an IT officer, the deputy—effectively the chief information technology officer of the province.

Mr. André Duval: Here we go. I'll refer you to line 915 of the information to obtain. It's page 18. This is a quote from the information to obtain, and his statement. This is from Mr. Nicholl: "Admin rights are something more than we have just as ordinary users it gives you a bit more ability ... was there a difference between the admin rights"—

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

Mr. André Duval: —"that the six (6) or seven (7) had versus the one (1)? I would say no it's the same thing."

Ms. Lisa MacLeod: Okay. I don't have enough time to ask you another question. I really appreciate you coming in today. I respect the work that you are doing and I know all my colleagues thank you for coming to our committee today and doing great work. We certainly appreciate the work of the OPP as well. Thank you.

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

Merci, monsieur Duval, pour votre présence et votre présentation. You are officially dismissed.

COMMITTEE BUSINESS

The Chair (Mr. Shafiq Qadri): We have a number of orders of business here for the committee: a subcommittee report, a deferred motion and a closed-session motion from Ms. MacLeod. May I ask somebody—

Mr. Peter Tabuns: Could we have a 10-minute recess? Mr. Chair?

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

Mr. Peter Tabuns: Could we have a 10-minute recess?

The Chair (Mr. Shafiq Qadri): Sure, a 10-minute recess. We're coming up to question period, so I'd invite you to please—

Mr. Peter Tabuns: I understand.

The Chair (Mr. Shafiq Qadri): Okay, 10 minutes. Recessed.

The committee recessed from 0957 to 1010.

The Chair (Mr. Shafiq Qadri): Thank you, colleagues. The committee is now back in session. We have three or four orders of business.

Mr. Yakabuski, I'd invite you please to begin the reading of the subcommittee report.

Mr. John Yakabuski: I have a subcommittee report of the Standing Committee on Justice Policy.

Subcommittee on committee business

Report of the subcommittee

Your subcommittee on committee business met on Tuesday, April 1, 2014, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

Ontario Power Authority

(1) That with respect to the committee's December 5, 2013, motion directed towards the Ontario Power Authority:

(a) That the confidential documents received from the Ontario Power Authority not form part of the committee's public record;

(b) That the Clerk of the committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the Ontario Power Authority.

Ministry of Finance

(2) That with respect to the committee's May 7, 2013, motion directed towards the Ministry of Finance:

(a) That the confidential documents (version 1 and 2) received from the Ministry of Finance not form part of the committee's public record.

(b) That the Clerk of the committee retains the confidential documents (version 1 and 2) for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever

comes first, the Clerk of the committee shall return the confidential documents to the Ministry of Finance.

(3) That with respect to the committee's May 14, 2013, motion directed towards the Ministry of Finance:

(a) That the confidential documents (version 1 and 2) received from the Ministry of Finance not form part of the committee's public record;

(b) That the Clerk of the committee retains the confidential documents (version 1 and 2) for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the Ministry of Finance.

Office of the Minister of Energy and Ministry of Energy

(4) That with respect to the committee's August 27, 2013, motion directed towards the office of the Minister of Energy and Ministry of Energy:

(a) That the confidential documents received from the office of the Minister of Energy and Ministry of Energy not form part of the committee's public record.

(b) That the Clerk of the committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the office of the Minister of Energy and Ministry of Energy.

(5) That with respect to the committee's December 5, 2013, motion directed towards the office of the Minister of Energy and Ministry of Energy:

(a) That the confidential documents received from the office of the Minister of Energy and Ministry of Energy not form part of the committee's public record.

(b) That the Clerk of the committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the committee shall return the confidential documents to the office of the Minister of Energy and Ministry of Energy.

I move that the subcommittee report be adopted.

The Chair (Mr. Shafiq Qadri): Any comments before we accept the subcommittee report, as read?

Mr. Bob Delaney: Just that it was very eloquent reading.

Mr. John Yakabuski: Oh, thank you. It's fairly repetitive.

The Chair (Mr. Shafiq Qadri): All those in favour of the subcommittee report, as read? Those opposed? Okay. The report is accepted.

We now have a deferred motion. Mr. Delaney, I'd invite you just to reread it for the committee, please.

Mr. Bob Delaney: The motion reads as follows: Pursuant to the subcommittee report dated March 5, 2013, I move that the Standing Committee on Justice Policy retain external legal counsel and that external counsel be present during committee meetings related to the orders of the House of February 20, 2013 and March 5, 2013.

The Chair (Mr. Shafiq Qaadri): Comments before we vote on this motion? Mr. Tabuns.

Mr. Peter Tabuns: Mr. Delaney, just for the public record, can you explain why you've made this motion? Secondly, I will have a question for the Clerk about how we actually follow through on implementing this.

Mr. Bob Delaney: Certainly. In fact, I'm kind of glad you asked that, because there are a few things I think we should discuss. I think that the existence of parallel committee proceedings at the same time that we have an OPP investigation probably makes it necessary for this committee to be able to regularly seek outside legal counsel to ensure both the protection of the witnesses who come here and also the integrity of the ongoing police investigation. I think that's something that all of us had said, that in our zeal to ensure that this committee does the right thing, the last thing we want to do is ensure that, either by design or by accident, the police cannot do the right thing.

The other thing is that, from time to time, we may need some legal advice owing to the exact and very unique nature of parliamentary privilege. I think that we may regularly, at this stage in the committee's life, need to be able to ask a legal question of legal counsel. That said, I thought Mr. Singh brought up a very, very good point the other day when he said that we may not need to have our legal counsel present for every witness. But there are some witnesses for whom I think it would be nearly unanimous that we would say, "Yes, I think we should have our legal counsel."

The final point I'm going to make: I want to read a few things; it's not long, so just bear with me for a second. Part of the committee's mandate is to uphold procedural fairness. To that end, on February 20, 2013, last year, Mr. Leone moved—and I'll read just part of it—"That this House directs the Minister of Energy and the Ontario Power Authority to immediately table with the Clerk of the House all remaining documents related to the Oakville and Mississauga Gas Plants ordered by the Standing Committee on Estimates on May 16, 2012." Then he discussed the matter of the Speaker's case of a prima facie case of privilege with respect to the production of documents. His motion dealt with the fact that "the committee shall be authorized to meet at the call of the Chair, concurrently with the House or when the House stands adjourned."

I think one of the operative things in Mr. Leone's motion, when it was passed, was the following amendment: "That, in exercising its authority throughout the committee proceedings, the committee shall adhere to the minimum standards of procedural fairness and the principles of fundamental justice as required by the Charter of Rights and Freedoms." The answer to your question is, in order to comply with the committee's own mandate to uphold the Charter of Rights and Freedoms and to ensure that the committee's work is done without putting any current or ongoing investigation at risk, I think it's essential that the committee be able to consult with external counsel who specializes in these matters.

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

Ms. Lisa MacLeod: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, and then Ms. MacLeod. Or if you'd like to give the floor to Ms. MacLeod—as you like.

Mr. Peter Tabuns: If Ms. MacLeod is going to ask Mr. Delaney a question, then that's fine. My next question is to the Clerk.

The Chair (Mr. Shafiq Qaadri): Fine. Ms. MacLeod.

Ms. Lisa MacLeod: I was just asking if we could call the question to vote. I believe that we've got support for this. It's just that we're so close to question period.

Mr. Peter Tabuns: I will be very quick—

The Chair (Mr. Shafiq Qaadri): That would be a first, but do go ahead, Mr. Tabuns.

Mr. Peter Tabuns: To the Clerk: The process for hiring the lawyer and the fact that it needs to be established now that the lawyer will be selected by the unanimous consent of the committee and directed by three-party support of any direction—is that correct?

The Clerk of the Committee (Ms. Tamara Poman-ski): We can start the process off in subcommittee, as we usually do, and figure out all the logistics and whatever we agree on in subcommittee in terms of hiring a lawyer and picking a lawyer and the mandate of what we'd like them to do. Then we would vote for it in full committee.

Mr. Peter Tabuns: I would like to amend this motion to determine that the selection of a lawyer will be by unanimous consent of the committee.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns, we do need a formal amendment. I think that it's pretty well understood that if any one party has strong objections to the lawyer, we would probably not select that lawyer. If that's an assurance that's good enough for you—if you need it in writing—

Mr. Peter Tabuns: Is that an assurance from all parties that it will be unanimous?

1020

Ms. Lisa MacLeod: Yes.

Mr. Peter Tabuns: Good.

Mr. Bob Delaney: Yes. I have no trouble. In fact—

The Chair (Mr. Shafiq Qaadri): All right. Those in favour of this—okay.

Mr. Bob Delaney: I was just going to say that, moreover, I think the things that—

Mr. John Yakabuski: By the time we agree on this, I'll probably have a law degree, so maybe I'll do that.

Mr. Bob Delaney: I'm just sitting here watching your beard grow, Yak.

I think, as a committee, the things that our counsel can assist with—and I do think it's important to put this on and discuss it. I think we may need assistance with measures to require the attendance of witnesses and/or the production of documents, which certainly we've seen all of us talk about this morning.

It may be necessary for counsel to assist the committee in advising witnesses of what their privileges and duties both are and aren't. I think counsel should be able

to provide advice to the committee, to seek to avoid prejudice to the OPP investigation or to any future criminal proceedings with respect to matters that may be outside the scope of this committee. Some of the time, we tend to wander close to the boundaries, and it may be necessary to find out where those boundaries are.

It may be necessary for counsel to help us with advice to the committee on any objections that are raised by witnesses to questions. It may be necessary for counsel to provide advice to the committee on the legal implications of documents that are produced by witnesses.

Mr. Peter Tabuns: I think that has been a good explanation. We're ready to proceed.

Mr. Bob Delaney: Okay.

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

Those in favour of this legal counsel motion? All in favour? All opposed? Motion carried.

Ms. MacLeod, you have, I believe, two motions?

Ms. Lisa MacLeod: I have a motion I'd like to defer until the next meeting and after the witness appears.

The Chair (Mr. Shafiq Qaadri): The one here?

Ms. Lisa MacLeod: No. That's not mine; that's Ms. Thompson's.

The Chair (Mr. Shafiq Qaadri): Oh, the other one. Okay, fair enough. Which one are we deferring?

Interjection.

Ms. Lisa MacLeod: That's mine, yes.

Interjection.

Ms. Lisa MacLeod: Okay. The one on security is Lisa Thompson's.

The Chair (Mr. Shafiq Qaadri): I see.

Ms. Lisa MacLeod: The one on inviting the deputy commissioner is mine. I'd like to put it on the floor and defer it until after—

The Chair (Mr. Shafiq Qaadri): Fair enough. Please just read it into the record.

Ms. Lisa MacLeod: Okay, I would read it into the record, and I'd like to have discussions with my colleagues about this one: That the Standing Committee on Justice Policy invite Deputy Commissioner Scott Tod to a closed session meeting for the purpose of a discussion regarding the search warrant of February 12, 2014.

The Chair (Mr. Shafiq Qaadri): Fair enough. We will not vote on the motion today, but if you have comments, I suppose we can do that now.

Ms. Lisa MacLeod: Yes.

Mr. Bob Delaney: We know what the motion is. It gives us some time to talk about it, and we'll defer dealing with it until the next meeting.

Ms. Lisa MacLeod: Yes, until after the witness speaks, though.

Mr. Bob Delaney: Perfect. I have no objection to that.

Ms. Lisa MacLeod: Okay. I think that should be a standing standard.

The Chair (Mr. Shafiq Qaadri): Fine. Is that suitable, Mr. Tabuns?

Mr. Peter Tabuns: That's fine.

Mr. Bob Delaney: It's hard enough to get these people here. When we get them here, we want to deal with them.

The Chair (Mr. Shafiq Qaadri): Ms. Thompson.

Ms. Lisa M. Thompson: I move that the Standing Committee on Justice, through the Chair, request that the Legislative Security's branch conduct a report on the activity of Peter Faist, Laura Miller, Wendy Wai, Brian Gower, David Nicholl and David Livingston between January 1, 2013, and March 20, 2013. This report should include the following:

(1) The date and times these individuals entered any legislative building, the purpose of their visit, and who they were accompanied by.

(2) The dates and times these individuals entered the Premier's offices, the purpose of their visit, and who they were accompanied by.

And that this report be delivered to the committee no later than the day that falls seven business days after this motion has passed.

The Chair (Mr. Shafiq Qaadri): That's fine. We accept your motion as read. The Chair will need to defer consideration of this, for various reasons, so I think we'll leave discussion of this, as well, until next time.

Ms. Lisa M. Thompson: Fair enough.

The Chair (Mr. Shafiq Qaadri): Any further committee business? Yes, Mr. Tabuns.

Mr. Peter Tabuns: Just one question: If the Clerk could update us on her efforts to bring our witness Peter Faist before the committee.

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

The Chair (Mr. Shafiq Qaadri): Ms. MacLeod.

Ms. Lisa MacLeod: Thank you, Chair. Just if the Clerk could follow up with Constable Duval, who indicated he does have a fixed address for Mr. Faist.

The Clerk of the Committee (Ms. Tamara Poman-ski): Yesterday I received a call from Mr. Faist—and it's pronounced "feist"; I got it confirmed.

Ms. Lisa MacLeod: Okay. Faist had a heist.

Mr. John Yakabuski: So it does rhyme with "heist."

The Clerk of the Committee (Ms. Tamara Poman-ski): Apparently there's a band, and it's just like the band Feist.

Anyway, Mr. Faist's lawyer contacted my office. I have contact information, and we are going through his lawyer. An invitation was sent out late yesterday afternoon via his lawyer, for next Thursday.

Mr. Peter Tabuns: For next Thursday? Very good. Thank you very much.

Ms. Lisa MacLeod: He'll be here next Thursday?

The Clerk of the Committee (Ms. Tamara Poman-ski): We'll see. I haven't heard back yet.

The Chair (Mr. Shafiq Qaadri): Thank you. The committee is adjourned.

The committee adjourned at 1025.

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Thursday 3 April 2014

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Mr. André Duval	JP-1335
Committee business	JP-1350

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