



**Legislative Assembly  
of Ontario**

Second Session, 40<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 40<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Tuesday 8 April 2014**

**Journal  
des débats  
(Hansard)**

**Mardi 8 avril 2014**

**Standing Committee on  
Justice Policy**

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Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
Salle 500, aile ouest, Édifice du Parlement  
111, rue Wellesley ouest, Queen's Park  
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Publié par l'Assemblée législative de l'Ontario

## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 8 April 2014

Mardi 8 avril 2014

*The committee met at 1502 in room 151.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Welcome, colleagues. Before inviting our first witness to present, I will now rule on the motion presented previously by Ms. Thompson. The ruling is as follows:

I have had the opportunity to carefully study the motion moved by Ms. Thompson at the last meeting of the committee and will now rule on the orderliness of the motion. First, the motion refers to the "legislative securities branch," which does not exist, and to "any legislative building," which is vague and confusing. If passed, this motion would likely be problematic to fulfill.

Second, the information that is being sought is not relevant to the committee's mandate, which, let us recall, is to consider the Speaker's ruling of September 13, 2012, in the matter of the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants. With respect to the committee's consideration of the Speaker's ruling, whether any of the named individuals were merely present in the legislative precinct during the first 89 days of 2013 has no bearing on how decisions were made regarding the May 2012 request for documents by the Standing Committee on Estimates. With respect to the decisions concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants, it is not relevant to those specific matters whether the individuals named in the motion were present in any part of the legislative precinct many months after those decisions were made.

To be clear, the OPP investigation into the allegation of deleted emails and cleared hard drives is not the mandate of this committee, nor is the committee competent or authorized to be in the business of forensic auditing, tracking or surveillance of people's movements, and this is important. The Chair does recognize your legitimate request for documents that are responsive to the committee's mandate and that may have resided or existed on the allegedly erased hard drives, and should any documents eventually be recovered that are responsive to previously passed motions of this committee, the committee is absolutely entitled to those documents without delay.

I therefore find Ms. Thompson's motion to be beyond the scope of this committee's authority, and rule it out of order.

Considering this ruling has reminded me that the limitations on the committee's authority and jurisdiction apply not only to the documents and information it can seek to have produced but also to the oral testimony it can seek from witnesses. In short, this committee cannot give itself rolling authority to widen its mandate, and I will be continuing to help the committee maintain the relevance of its questions to and from witnesses.

This is a ruling. It is non-debatable. We will now move to our first presenter of the afternoon.

## MR. DAVID NICHOLL

**The Chair (Mr. Shafiq Qadri):** Mr. David Nicholl, I welcome you in your capacity as corporate chief information and information technology officer in the Ministry of Government Services, and you will now be sworn in by our highly able 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. David Nicholl:** I do.

**Le Président (M. Shafiq Qadri):** Merci, monsieur Nicholl. Vous avez cinq minutes pour vos remarques introductoires. S'il vous plaît, commencez maintenant.

**Mr. David Nicholl:** Thank you, Mr. Chair. My name is David Nicholl. I am the corporate chief information officer for the Ontario public service. I've been working for over 35 years, and have been in the public service for over 12. I take great pride in overseeing the delivery of critical IT services to the people of Ontario.

In my opening statement, I feel it is important to confirm that I have co-operated fully with the OPP investigation. I've participated in an interview, provided supplementary information and notes of relevant events, and have overseen the provision of technical support to the OPP investigators.

I'd next like to respond to suggestions in the media that I have a personal friendship with Mr. Livingston, the former Premier's chief of staff. I have never had a personal friendship with Mr. Livingston. From 1985 to 1992, I held an IT position at TD Bank; in those years,

Mr. Livingston was an executive of the bank. I never worked in his department, but did participate in a number of meetings concerning IT issues around two of the business areas with which Mr. Livingston was associated. We had no other contact.

I next encountered Mr. Livingston approximately 15 years after I left TD Bank, when he was appointed the CEO of Infrastructure Ontario. In my role as CIO of the OPS, I met with Mr. Livingston and IO staff on a number of occasions to discuss the projects we had in common, including the building of our new data centre in Guelph, the creation of a new business model supporting IT services across the broader public sector, the potential privatization of ServiceOntario, and the procurement options around providing public safety radio services to the OPP and other emergency services. I never met with Mr. Livingston outside of work.

As you are aware, Mr. Livingston then became the chief of staff to the Premier.

Prior to the phone call requesting the admin rights, I had two interactions with him. The first was the conversation referred to in my previous testimony concerning the deletion of email accounts and the deletion of emails within an account. The second was a brief appearance I had in the Premier's office to discuss the inclusion of IT content in the 2012 fall economic statement.

On January 25, 2013, I received a call from the Premier's chief of staff. He first requested information about decommissioning email accounts for departing members of the Premier's staff. He then asked for administration rights to PCs used by staff in the Premier's office to enable the cleanup of hard drives prior to the new team coming in. I advised him that I did not have the authority to grant the administration rights for Premier's office staff. I referred him to speak with the Cabinet Office.

On January 30, the Cabinet Office called a meeting, which I attended. We discussed determining which staff in the Premier's office had existing admin rights, and we discussed the granting of new admin rights to the computers in the Premier's office. I did not leave the meeting with any direction to implement administration rights, but I did meet with technical staff to determine who had the admin rights already in the Premier's office, and to make sure the team were ready to implement the admin rights if so directed by Cabinet Office.

The next morning, I was directed by Cabinet Office to proceed with implementing the admin rights for Premier's office computers, and to expect a call from the Premier's chief of staff at 2 p.m. that afternoon. Over the next few hours, in preparation for the 2 p.m. call, I received from the Cabinet Office a detailed legal memo that I was to deliver to the chief of staff. At 2 o'clock, I received the call from the Premier's chief of staff and I read the contents of the memo to him and was joined for the call by my ministry legal counsel.

Following this call, as directed, I sent the memo to the Premier's chief of staff in the form of an email. I attached the Premier's office records schedule, which establishes the disposition process of records in the Premier's office.

The memo clearly states the requirements to preserve business records as well as any records for an FOI or litigation hold, for all of the Premier's office email accounts and computer hard drives. Only after proper record retention can hard drives be wiped for new users. The chief of staff assigned his executive assistant to be the contact point with IT technical staff to implement those admin rights. Thank you, Mr. Chair.

1510

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Nicholl. To the PC side: Ms. MacLeod, 20 minutes.

**Ms. Lisa MacLeod:** Mr. Nicholl, this is the third time you've been to this committee. Right?

**Mr. David Nicholl:** It is.

**Ms. Lisa MacLeod:** And each time you come, we find out different information, but you're here now because of what we've learned through the media and through an ITO, an information-to-obtain, from the OPP.

I've got to give you credit: Of the four big players in this ITO—what looks like a Canadian version of House of Cards—you're the only one to have actually spoken to the OPP. I will give you credit for that.

I have spent a lot of time looking at transcripts from this committee. I was here. I actually wished you well last time you had appeared here. You told me the only time you spoke with the OPP—it was ongoing, but it was because they were clients of yours. You didn't indicate to this committee that you had spoken to the OPP for the ongoing investigation.

Previous to that, before I arrived at this committee, you spoke with my colleague Mr. Vic Fedeli, who I will credit as the person responsible for this OPP investigation—along with Mr. Leone. You decided to tell him the difference between what an admin right was and an email account. Then I read in the OPP ITO on page 12—you said that they can't coexist to Mr. Vic Fedeli back when you had arrived here a year ago, and then we realized that the administrative right requested by David Livingston would, however, allow a person to see the data saved by the other users on the hard drives of the desktop computers. It would also allow the person to delete or add software or delete any file from the local drive of the desktop computer without leaving a footprint behind. That was what was eventually given to Miss Wendy Wai, who had no computer skills whatsoever.

If I look a little bit frustrated on behalf of many members of this committee, it is because you are now here for a third time on a serious matter before the people of Ontario, and we very seldom get responses to our questions and then we find this very salacious ITO for an ongoing criminal investigation into somebody who you used to work for.

Now, you stated that you weren't that close. I would like to know if you could shed any light for us on what type of interview you would have had and what your relationship would have been with Mr. Livingston and how you may have described him to the OPP. Could you do that for us?

**Mr. David Nicholl:** Sure. So this is when I would have met with the OPP for my first interview. I had

actually gone to the interview to talk about, as I have with you many times before, our email system. I'll be very honest: I was very unprepared to talk about the activities on the admin rights.

When they asked about my experience—they looked up, I think, my LinkedIn account. They saw that I had worked at TD. As I mentioned in my opening statements, there were a couple of crossing paths. I was, frankly, a fairly junior IT person within the system's research and development area of the TD Bank. I had worked on the Green Line Investor Services piece of business at one time—it's discount brokerage. We had set up a call centre, and Mr. Livingston had a role within Green Line Investor Services. He was just a name at that time. I had no interaction with him during the GLIS time.

**Ms. Lisa MacLeod:** Over the past number of years, would you have considered him somebody you admired?

**Mr. David Nicholl:** In all honesty, there was such a long gap, from TD until now—I left there in 1992. It's a long, long time. I wouldn't have thought of him in 15, 16 years. In all honesty, I just wouldn't. I wasn't even in the country for some of the time, to be honest, so I really wouldn't.

**Ms. Lisa MacLeod:** But was he somebody that you would have done anything for, given your relationship and how you worked with him?

**Mr. David Nicholl:** Absolutely not. When the call came in, when he did call me, following being directed to me from the secretary of cabinet, my first reaction, as I said in my opening, was, "I don't have the authority to do that." Actually, two things: "I don't have the authority to grant those rights. You need to talk to Cabinet Office, because I don't have the authority to grant"—

**Ms. Lisa MacLeod:** But then you did grant the rights.

**Mr. David Nicholl:** Cabinet Office granted it. I set our guys to implement it.

**Ms. Lisa MacLeod:** Who in Cabinet Office granted it?

**Mr. David Nicholl:** To me, it came from the secretary of cabinet's executive assistant—

**Ms. Lisa MacLeod:** And who is that, for the record?

**Mr. David Nicholl:** Steen Hume—and the deputy of policy, Scott Thompson. They were the ones who actually picked the phone up, as I said in my opening remarks, and said, "You have the go-ahead to go and do this. Please do. Expect a phone call at 2 p.m."

**Ms. Lisa MacLeod:** So that was your change of heart. So Peter Wallace didn't tell this committee everything that he knew—

**Mr. David Nicholl:** I don't know.

**Ms. Lisa MacLeod:** —because what you're explaining is a bit different. In the report on the ITO, in paragraph 440, it was Mr. Livingston who had first approached you to ask for these administrative rights to clean the hard drives.

Then you go to paragraph 450, just down further on the page. Your first reaction was to refer him to your boss, Peter Wallace. Now you're telling us that Peter Wallace's staff were the ones who actually gave the go-

ahead, yet the ITO is quite clear that Peter Wallace was uncomfortable with that request.

Later, in paragraph 570, we see a transformation of your participation from the original request for a super password to be created for Livingston to what we now know to be something that's part of a breach-of-trust investigation.

Then, in paragraph 660—and I know I'm going very fast here, and I do hope you have the ITO in front of you—you began to grease the skids, moving things more quickly. We know, for example, that some of your subordinates within your department were confused that you were visiting them in their office. It would be akin to Tim Hudak walking into our receptionist's office and wanting to find out exactly how they're logging every single call. That's sort of how that happened with you.

I just want to know, can you explain for this committee, and everybody who's watching at home, how you went from a vast discomfort at this request by David Livingston to actually granting this super password?

**Mr. David Nicholl:** Let's just clear up a couple of technical things first, as far as the granting of admin rights, and it's a really, really important point. There are two types of admin rights. There is no such thing as anything "super" or anything like that. There are only two: There is an individual administration right, and there is a group administration right. The individual administration right is probably what you all have at home, where you can go on and do stuff to your PC. You can load software and all the stuff you said.

The group admin right allows a single person access to multiple computers—

**Ms. Lisa MacLeod:** And is that what the seven individuals had in the Premier's office?

**Mr. David Nicholl:** They had individual admin rights. There was no group at that point. Once you have logged onto the machine, the ability is identical. There is no difference whatsoever in your capability.

The reason to go for a single group administration right was a serious desire to ensure—

**Ms. Lisa MacLeod:** That all the hard drives could be deleted.

**Mr. David Nicholl:** —that the line of accountability goes directly to the chief of staff. That was so important, because when that legal memo came from Cabinet Office after the call with the approval, it was really, really important that—I had to read it out. I physically read the memo out to the chief of staff, and then I sent it to him by email with the enclosed Premier's records schedule, because it was so important that he understood, "You're responsible. You're accountable. You've got to take it."

**Ms. Lisa MacLeod:** But Wendy Wai was responsible. You gave her the administrative rights. Why did you choose her? As a stooge?

**Mr. David Nicholl:** No, he proxied her as him. Still, he had the accountability; he never got rid of that. He could appoint anyone he wanted, but—

**Ms. Lisa MacLeod:** Including Peter Faist, who had no criminal background check.

**Mr. David Nicholl:** He still carries the accountability; he cannot get away from it.

**Ms. Lisa MacLeod:** Did you ever, at any point in time, when you had granted this to Mr. Livingston, understand that there was going to be somebody not from the public service or the Premier's office accessing all of those sensitive materials and those documents, as well as those computers?

**Mr. David Nicholl:** No, I did not.

**Ms. Lisa MacLeod:** And you never thought to ask?

**Mr. David Nicholl:** I never thought to ask.

**Ms. Lisa MacLeod:** You thought Wendy Wai, who had limited computer skills, was going to do this?

**Mr. David Nicholl:** No. There were already seven people within the Premier's office who actually already had administrative rights. They would know—

**Ms. Lisa MacLeod:** But not the same; you've just explained that there's a difference between individual and group rights.

**Mr. David Nicholl:** Only when you're logging on. The minute you're on, they're identical, absolutely identical. In fact, somebody coming from home—seriously, somebody coming from home—who has loaded software on their PC at home could come in and load software—

**Ms. Lisa MacLeod:** But this isn't home. This is the Premier's office of the largest province in one of the best democracies in the world—

**Mr. David Nicholl:** Absolutely, but we're talking about knowledge.

1520

**Ms. Lisa MacLeod:** You allowed a password to be created for an individual who then passed it off to another individual to allegedly wipe hard drives and emails clean in probably one of the largest political scandals in this province's history. You're the guy who did that.

**Mr. David Nicholl:** And we very, very carefully ensured that the accountable person is the chief of staff.

**Ms. Lisa MacLeod:** So you think that he should be charged with breach of trust, then.

**Mr. David Nicholl:** The accountable person is the chief of staff. The memo I sent went to the chief of staff. It didn't go to 75 individuals in the Premier's office. It didn't go to some guy. That's not what we did. We made sure that the chief of staff was the accountable person.

**Ms. Lisa MacLeod:** As the head of the cybersecurity unit and now a person who's involved here with this ITO and the OPP investigation, obviously, there are a lot of eyes on you. I'm going to be honest with you: The ITO doesn't look good for you. I'm glad that you're here and I'm glad that you're taking our questions.

But I want to talk a bit about the Information and Privacy Commissioner of Ontario. Ann Cavoukian released an initial report stating that documents in the Premier's office had been destroyed. In your role in cybersecurity, you would have someone in charge of that, but you are ultimately responsible. Did you at any time initiate an internal review on those destroyed documents?

**Mr. David Nicholl:** I'm going to have to be a little more careful.

**Ms. Lisa MacLeod:** I would start with telling the truth.

**Mr. David Nicholl:** The IPC were looking at emails specifically. We certainly worked with the IPC on some of the logic or the process and the format behind that. It wasn't till you guys here started to ask for the emails—that's when we actually got into using our cybersecurity people to go and find them. We actually found the emails for you to gather.

**Ms. Lisa MacLeod:** Okay. Did you ever tell Ann Cavoukian it was you who provided this super-access password?

**Mr. David Nicholl:** I didn't. I got the direction from Cabinet Office to implement their desire to meet the needs of the Premier's office's records schedule. That's what I did.

**Ms. Lisa MacLeod:** Why didn't you tell that to us, the committee, or to Ann Cavoukian at any time? Why would you withhold that information from not only the Information and Privacy Commissioner but also this legislative committee that has had you in now for a third time?

**Mr. David Nicholl:** I'm actually trying to remember the conversations that we had with the commissioner. There definitely was conversation with the commissioner on a phone call. I remember in her testimony I think she mentioned the fact that there had been a call from the Premier's chief of staff. I'm just going by memory here, so don't hang me if I'm wrong.

**Ms. Lisa MacLeod:** I'll try not to.

**Mr. David Nicholl:** I'm almost sure she did, that we did talk about this, Ms. MacLeod. Honestly, I am. I'd need to go back and check, but I'd like to almost believe that I did, and there was a good discussion on it. Without a doubt, I'm sure that caused her to ask more questions.

**Ms. Lisa MacLeod:** Okay. Let's go back to the ITO for a moment, because I do have a question I need to ask you with respect to timing. On March 19, 2013, Emily Marangoni, the deputy director of human resources, informed one of your staff, Thom Stenson, the manager of information technology services, to remove special administrative rights for Wendy Wai after they were given to her—a delegated authority, according to you. How did she know that Wendy Wai had administrative rights, how did she know to have them removed and why did she do that on March 19?

**Mr. David Nicholl:** I have no idea.

**Ms. Lisa MacLeod:** Why?

**Mr. David Nicholl:** I would have had no involvement with the Premier's office.

**Ms. Lisa MacLeod:** If you gave the administrative right, why wouldn't you know—

**Mr. David Nicholl:** I would have no involvement with the Premier's office. I would never have been involved in that. That would have all been done through Cabinet Office. That's not my—

**Ms. Lisa MacLeod:** So who in the Cabinet Office would have been responsible? Peter Wallace?

**Mr. David Nicholl:** No, I doubt very much if the secretary of cabinet would have been involved in that.

Typically, the control for all of the PCs in the Premier's office—that's why I don't have the authority to touch them—would always go through the CAO within Cabinet Office. Sometimes through transition times the CAO of Cabinet Office very much controls what we do as—

**Ms. Lisa MacLeod:** Right. But Peter Wallace is basically saying in the ITO that he was surprised that you granted this access and it went ahead. Are you the fall guy for Peter Wallace in this?

**Mr. David Nicholl:** I don't think so at all. I think that it's very, very clear in the—I have not gone through this.

**Ms. Lisa MacLeod:** It's probably a good thing for you to do that.

**Mr. David Nicholl:** Maybe someday I will. Maybe I'll just let it sit for a while, just to let some of the rawness leave, to be quite honest with you.

**Ms. Lisa MacLeod:** I'll just paraphrase a few things here. You've got a couple of your colleagues—

**Mr. David Nicholl:** I'd like to answer first.

**Ms. Lisa MacLeod:** —both your subordinates and your—

**Mr. David Nicholl:** Can I answer first, on the Peter thing, on the secretary of cabinet question?

**Ms. Lisa MacLeod:** Yes, please. Go ahead.

**Mr. David Nicholl:** There is, to me, a very, very clear line of actions that happened that end up in us delivering the admin rights to the Premier's office. It starts with the phone call that I had from Cabinet Office on the 31st, the morning, informing me that the rights will be provided and that I am to receive a phone call at 2 p.m. in the afternoon from the Premier's chief of staff. That's what I'm told.

Over the next couple of hours, I received a couple of emails from Cabinet Office legal counsel with the legal memo that I am to both read out to the chief of staff and then to actually send to the chief of staff. Then, at 2 o'clock, he called me; the chief of staff actually called me. I didn't set that meeting up with the chief of staff, so clearly there was a meeting set up with the chief of staff to call Nicholl, Nicholl knew it was coming, so I had actually booked my meeting myself and I asked my ministry legal counsel to come and sit with me. I think he had been involved also in helping to craft that legal memo. I read out the memo and I sent the memo.

**Ms. Lisa MacLeod:** Okay. I've got two seconds left, I think.

**The Chair (Mr. Shafiq Qadri):** You have three minutes, Ms. MacLeod.

**Ms. Lisa MacLeod:** I have three minutes.

**The Chair (Mr. Shafiq Qadri):** Three and a half.

**Ms. Lisa MacLeod:** Okay. I appreciate how difficult this must be for you, but I must say, I need to read this into the record. It is on page 18 of the ITO and it says this: "David Nicholl, the corporate chief information officer, also claimed that he was not aware of the distinction between the global administrative right assigned to Wendy Wai and the usual local administrative right."

This is you: "Admin rights are something more than we have just as ordinary users. It gives you a bit more

ability um was there a difference between the admin rights that the "six (6) or seven (7) had versus the one (1) I would say no," it's not "the same thing."

The OPP says this: "I believe that this comment is misleading since Mr. Nicholl is the one who approached Thom Stenson and Rolf Gitt, from the information technology services, and described the administrative right required by David Livingston. Even though Mr. Nicholl denied making such request to the above individuals, Mr. Stenson and Mr. Gitt both confirmed that the meeting occurred. They even explained to Mr. Nicholl that the request was unusual and difficult to implement."

You said one thing to the OPP. You've now said several different things in this committee and you have two of your staff effectively going to the OPP with an alternative story to the one that you have presented to them. I'm sorry, but you're in charge of the cybersecurity unit of the IT services here at Queen's Park and that is very incredibly important. How are we supposed to trust you in that job on a go-forward basis?

**Mr. David Nicholl:** I don't even know how to approach this. I absolutely had a meeting with my tech guys following the meeting with Cabinet Office on that 30th morning. There's no issue I had a meeting with them.

When I got the question initially from the OPP, the interview was—I'm going to be brutally honest with you. It was reasonably jumbled for me in that I was coming in to talk about the email system and I ended up talking about admin rights. I hadn't prepared at all, so I completely admit I was probably a bit of a babler and I did not do a particularly good job.

The very next day I called the OPP back and said, "Guys, I did a horrible job yesterday." I've got a notebook. I kept all this as I went along—

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

**Mr. David Nicholl:** I did have the meeting, I absolutely had the meeting with my technical staff, and we talked about what the requirement was—

**Ms. Lisa MacLeod:** So you told the OPP to change their document, that you actually acknowledge—

**Mr. David Nicholl:** I can't tell them to do that. All I can do is give them supplementary stuff. I told them, "Look, here's the order of"—

**Ms. Lisa MacLeod:** I just have 30 seconds left. I'm sorry, I appreciate it, but this is a pretty serious committee. You are under oath here. This is not only a message to you but anybody else who has appeared before this committee: We take our work very seriously—

**Mr. David Nicholl:** As I do.

1530

**Ms. Lisa MacLeod:** You are under oath. I would expect that people wouldn't try to perjure themselves to keep us from getting to the truth—and I'm not just speaking to him.

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

**Mr. David Nicholl:** Please do not assume—I am not perjuring myself here in any way, Ms. MacLeod—not at all.

**The Chair (Mr. Shafiq Qadri):** Thank you. Thank you, Ms. MacLeod, for your questions.

I'd just respectfully remind all committee members that we don't generally engage in any forms of threat—and/or hanging, by the way—by this committee.

I now present to the NDP. Mr. Tabuns, you have your 20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. I'll be sharing my time with my colleague.

Mr. Nicholl, welcome back.

**Mr. David Nicholl:** Thank you.

**Mr. Peter Tabuns:** Your phone meeting with David Livingston on January 25: What exactly did he ask you for, again?

**Mr. David Nicholl:** Right. He talked about deleting email accounts, so it goes back to the previous testimony I gave here. He had asked very specifically about—he was concerned that when people left a Premier's office, email accounts were left on, and then they'd return two years later and the email account—remember, we had that discussion.

**Mr. Peter Tabuns:** Yes, I remember that.

**Mr. David Nicholl:** The second piece of emails he talked about was—actually, no. In the January 25 call, that was it. He didn't go on to the email deletions, because he did that the previous time.

The second bit of his call was concerning that he wanted administration rights for Premier's office PCs so he could clean out the hard drives.

**Mr. Peter Tabuns:** So he was asking for access so he could not only delete email accounts, so that he wouldn't get what he expressed was this problem with email accounts still accumulating email, but he also wanted to delete other records on the hard drives. Is that correct?

**Mr. David Nicholl:** Correct. You need to split those two up. Again, as I said before, email accounts and admin rights—not connected. Email accounts are done through a process in the back office. We would take a request through the Cabinet Office CAO and they would be accountable for looking after email accounts. There is no admin right/email account connection at all. Where the admin right is required is to go in and clean the hard drives, yes.

**Mr. Peter Tabuns:** So clear out all records, all documents, on the hard drive. You've got 20 folders, you can go through and just clear them all out.

**Mr. David Nicholl:** Absolutely, yes. If you had saved emails to a file folder on your hard drive, that would be included.

**Mr. Peter Tabuns:** Correct.

**Mr. David Nicholl:** But typically, your emails are stored back on the exchange server.

**Mr. Peter Tabuns:** So he was asking you for access to these computers to wipe out all documents—to give him the power to wipe out documents, the power to clean out any file folders that might have archives of older emails. At the same time, did he say to you, “I need you in back office to discontinue these email accounts”?

**Mr. David Nicholl:** Yes. When it comes to email accounts, I would have directed him right to the Cabinet Office CAO, because they are the ones who look after the whole process. Managing Premier's office email accounts is with the Cabinet Office CAO.

**Mr. Peter Tabuns:** Did he explain why he needed this special access?

**Mr. David Nicholl:** He explained that he wanted to wipe hard drives.

**Mr. Peter Tabuns:** And?

**Mr. David Nicholl:** In order to prepare for the new team coming in. He wanted to leave—he didn't want—that's what he said.

**Mr. Peter Tabuns:** All right.

**Mr. David Nicholl:** I would be guessing what the reason would be, so I shouldn't do that.

**Mr. Peter Tabuns:** And did this seem strange to you?

**Mr. David Nicholl:** I'll be very honest with you. In isolation, it's a perfectly normal thing to want to clean your drawers out before you go—absolutely, totally normal. But honestly, having read the secretary of cabinet's points around some of the discussion that he had—the timing, what was going on—I think what the secretary of cabinet said was, “You might want to think about how this comes across.”

But I didn't have—that's not my thinking.

**Mr. Peter Tabuns:** It did not seem strange to you at the time, but in retrospect, you could see there were a lot of overtones?

**Mr. David Nicholl:** I think that is very true.

**Mr. Peter Tabuns:** Okay. That's fine. So is this special access something that's normal in a transition? You had said, in answer to earlier questions, that the Cabinet Office normally takes tight control when there's a transition.

**Mr. David Nicholl:** Definitely.

**Mr. Peter Tabuns:** So what's the normal process that we should be aware of?

**Mr. David Nicholl:** Great question. In fact, one of the questions I have pushed at a little bit was what happened in 2003—

**Mr. Peter Tabuns:** Yes.

**Mr. David Nicholl:** —because I was just kind of curious to know, did we go through this in 2003? Now, in fairness, in 2003 things probably weren't quite as electronic as it would be today. In 2003, to the best of my knowledge and what I could find out, the hard drives were actually removed from the machines and actually stored in a cupboard for eight years.

Now, we don't know what happened to the hard drives before they were taken out, so I cannot comment on whether somebody wiped the hard drives before; I have no idea. But I know that, physically, the drives were taken out of the machines, they were stored and then they were destroyed.

There are machines you have for destroying hard drives. It's just like a big hammer and it drives a bolt right through the middle of the hard drive. I believe, from

what I can understand, that's what would have happened in 2011 to destroy the 2003 hard drives. That's the only parallel I've got.

**Mr. Peter Tabuns:** Would you have expected that it was the IT staff employed by the Ontario public service who would actually do any work on hard drives?

**Mr. David Nicholl:** I think I would.

**Mr. Peter Tabuns:** I'm sure you must have had requests from people who left a position as a minister, moving on to another ministry. Did they come to you or did their chief of staff come to you and say, "We're moving on. We need to have things cleaned up"?

**Mr. David Nicholl:** They would go through their deputy's office to do that, honestly. Similar to the Premier's office records schedule, there are ministers' office records schedules. They have to be very careful as well to ensure that they are keeping the records they need to keep of government. That's what this is all about. That's why they do it.

**Mr. Peter Tabuns:** I think what I've established is that when there's a transition, typically, civil servants employed in information technology are given the responsibility for dealing with all of the hardware and software.

**Mr. David Nicholl:** More the hardware than software. The actual records management typically would reside and would be based on records schedules, but actually more likely performed by a deputy minister's office, working with the minister's office staff.

**Mr. Peter Tabuns:** You didn't have outside people—it was not normal practice for outside people to come into a minister's office and wipe out the hard drives?

**Mr. David Nicholl:** No.

**Mr. Peter Tabuns:** Okay. There's a point you were referring to, and it didn't follow my flow of questions, but I just want to go back to it. You had talked with Mr. Livingston prior to the 25th about clearing out emails. I believe, in an earlier testimony, he had asked you about backup tapes and just making sure things were gone.

**Mr. David Nicholl:** Yes.

**Mr. Peter Tabuns:** Can you just refresh our memory on that?

**Mr. David Nicholl:** Yes. This was in August 2012. I was sent to the Premier's office, and I met with—actually, it was the name that Ms. MacLeod just mentioned. I think the name of the person—

**Mr. Peter Tabuns:** Steen Hume?

**Mr. David Nicholls:** No, no. Emily, I think, was the name—

**Mr. Peter Tabuns:** Marangoni.

**Mr. David Nicholls:**—who was an administration person, I think, within the Premier's chief of staff office. I met with the chief of staff. He asked me—this was the conversation about, first of all, "Email accounts are still around after people have left. For goodness' sake, why can't we get a process that gets rid of those email accounts?" That was very much a cabinet office CAO function, and they cleaned all that up.

But then he did ask, "How do I delete an email?" We had that discussion on an email—you delete an email, it

goes into the deleted folder; you delete the email in the deleted folder and, in theory, it's deleted. His backup in the Premier's office at that time—it's changed now, but at that time it was a daily backup kept for two weeks. If he did the double-delete overnight, we would capture the backup that night.

**Mr. Peter Tabuns:** And he was curious to know how to ensure that it was absolutely deleted? Is that correct?

**Mr. David Nicholl:** I think that's why he asked.

**Mr. Peter Tabuns:** Okay. One question before I turn it over to Mr. Singh. The Information and Privacy Commissioner, in her initial report, Deleting Accountability, wrote:

"Indeed, when it became apparent that the former Premier's office was preparing to decommission the email accounts as part of the transition, I was advised that the" Ministry of Government Services "IT group took immediate steps to secure the email accounts in the former Premier's office to ensure that the records in those accounts, as of that date, were preserved." Is that correct?

**Mr. David Nicholl:** Yes, at the request of Cabinet Office.

**Mr. Peter Tabuns:** So all of those emails were preserved?

**Mr. David Nicholl:** Anything that was left at that time was preserved, yes.

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**Mr. Peter Tabuns:** Sorry, left after the computers had been wiped? Before January 31 or after February 7?

**Mr. David Nicholl:** I don't know. But don't forget, the wiping of the hard drives would not affect the email and the email accounts. The email accounts are on a server, an exchange server. Admin rights have no connection back to a server at all. They couldn't delete emails using an admin password unless it was locally stored.

**Mr. Peter Tabuns:** So everything that was stored centrally was preserved?

**Mr. David Nicholl:** Yes. I think I'm safe in saying yes.

**Mr. Peter Tabuns:** Everything that was on those computers before January 31 was preserved?

**Mr. David Nicholl:** I think we need to get our—I don't know the dates. Honestly, Mr. Tabuns, I don't know the dates when the Cabinet Office would have held them, but I'm sure we can get those dates. I think it was in prior testimony; I'm almost sure it was. I just don't know what it is.

**Mr. Peter Tabuns:** Okay. I'll turn it over to Mr. Singh, and I'll be back.

**The Chair (Mr. Shafiq Qadri):** Mr. Singh.

**Mr. Jagmeet Singh:** Thank you, sir. How much time do I have, sir?

**The Chair (Mr. Shafiq Qadri):** About 10 minutes.

**Mr. Jagmeet Singh:** Thank you.

Sir, thank you for being here today. I just want to go back to the last point, on what was stored in the computer. I think what you said was—and correct me if I'm wrong—that emails are stored on the exchange server. So

if emails are kept locally, those would be destroyed or deleted if they were on the hard drive and stored locally, but the emails that are stored on the exchange server would still be on the exchange server.

**Mr. David Nicholl:** Correct.

**Mr. Jagmeet Singh:** Is that what I understand?

**Mr. David Nicholl:** Yes.

**Mr. Jagmeet Singh:** Are you aware if there is a way or there is a method of deleting emails from the actual exchange server?

**Mr. David Nicholl:** Yes. So, again, basically, your email system has two parts: the client and the exchange server. When you tell the client to delete, it's actually working with the exchange server at the back.

**Mr. Jagmeet Singh:** Right.

**Mr. David Nicholl:** If you do a double delete and it doesn't get caught in a backup tape, it's gone. It's gone on the exchange server as well.

**Mr. Jagmeet Singh:** And the backup tape—was that the system you talked about where, after a certain period of time, some emails automatically get dumped into a secondary storage, and when they're in a secondary storage, even if they're double-deleted, there would still be a copy of them. Is that correct?

**Mr. David Nicholl:** Not quite, sorry. We just have to get really accurate on it.

**Mr. Jagmeet Singh:** Sure. Get accurate.

**Mr. David Nicholl:** Again, the first 30 days are primary storage on your email account. Then it automatically drops into secondary storage—cheap storage, effectively. It's not tape; it's not archive. It's just literally all the emails. It's just a cheaper place to store it. It's not connected to backup tapes at all. Okay?

**Mr. Jagmeet Singh:** Got it. But that secondary storage is still available, still retrievable?

**Mr. David Nicholl:** Absolutely. Oh, yes. It's on your email. That's what you see when you go to your email. More than 30 days, it's coming from the secondary vault.

**Mr. Jagmeet Singh:** Okay. I'm going to ask you some questions now about Mr. Faist and Ms. Miller. I think you said this already, but let's just make sure it's clear. Do you know who Mr. Faist is?

**Mr. David Nicholl:** I do not.

**Mr. Jagmeet Singh:** Okay, but you've heard about his name, obviously, through these discussions and through the newspapers now.

**Mr. David Nicholl:** I have really been trying not to read the newspapers recently but, yes, I have heard his name mentioned.

**Mr. Jagmeet Singh:** Fair enough. So if you don't know him, you've never met him before. Is that correct?

**Mr. David Nicholl:** Never.

**Mr. Jagmeet Singh:** Okay. Have you ever had an opportunity to meet Ms. Laura Miller?

**Mr. David Nicholl:** To the best of my knowledge, no.

**Mr. Jagmeet Singh:** Okay. I'm going to take you back. I want to understand what happened when you were approached by Mr. Livingston. When Mr. Livingston made this request to you, you said that you

were not in the position to do this—you did not have the authority to make this decision—and the decision was then put to the secretary of cabinet, Mr. Peter Wallace. Is that correct?

**Mr. David Nicholl:** It went to Cabinet Office, yes.

**Mr. Jagmeet Singh:** It went to Cabinet Office, and you're not sure who it went to, specifically. You said you were not in a position to deal with that request.

**Mr. David Nicholl:** Correct.

**Mr. Jagmeet Singh:** Now, after that was there anyone else that you spoke to about the fact that Mr. Livingston had come to you with this request? Did you speak to any of your colleagues? Did you speak to any of your friends? Did you say, "Hey, listen, this is a bit odd. Mr. Livingston came to me and asked me for this password, something that I didn't have the authority to do. That was a bit odd." Do you remember speaking to anyone about that?

**Mr. David Nicholl:** I don't.

**Mr. Jagmeet Singh:** But did you feel it was odd, when he came to you?

**Mr. David Nicholl:** I had only received probably one or two calls ever from a Premier's chief of staff, so—yes. I don't normally get calls from the Premier's chief of staff.

**Mr. Jagmeet Singh:** Okay, so it struck you as something that was maybe not profound but something that was quite serious or quite significant, because it's not a call that you would get every day.

**Mr. David Nicholl:** It was something—I felt very comfortable in saying, "I have no authority to do this. You need to go to talk to Cabinet Office." I was very, very comfortable doing that.

**Mr. Jagmeet Singh:** But do you recall speaking to anyone else about that, the fact that you got a call from the Premier's office?

**Mr. David Nicholl:** No.

**Mr. Jagmeet Singh:** You don't? Okay. As an acting deputy of government services, how often do you speak with Minister Milloy?

**Mr. David Nicholl:** I'm no longer acting deputy—

**Mr. Jagmeet Singh:** Right. At the time.

**Mr. David Nicholl:** We met once a week to go through any kinds of issues that we had.

**Mr. Jagmeet Singh:** Okay.

**Mr. David Nicholl:** I probably would have had—I think I was there for maybe three or four weeks, so I could have had three meetings with him.

**Mr. Jagmeet Singh:** Okay. Do you have interactions with other staff from the Premier's office or staff from the Cabinet Office as well?

**Mr. David Nicholl:** I would definitely have interactions with Cabinet Office staff, for sure, yes. I definitely do not have contact with Premier's office staff, unless—look, there's been a couple of instances in the past where usually it's that we're not doing something quick enough, and you may get a call saying, "Hurry it up." But it's very seldom—very, very seldom.

**Mr. Jagmeet Singh:** So specifically having a call from the chief of staff was quite significant, but anyone else from the Premier's office staff, generally speaking—did you receive communications from them?

**Mr. David Nicholl:** No.

**Mr. Jagmeet Singh:** Okay. You mentioned that you didn't necessarily recall speaking to anyone about Mr. Livingston's request to you. That being a big deal, you didn't talk to anyone about it. But did you ever discuss this notion of an administrative right or a special administrative right? Did you ever discuss that with any of your colleagues or anyone in the workplace?

**Mr. David Nicholl:** No. At that time, we didn't. It was only—because to be honest, I didn't know what was going to come of this. It could have disappeared and never been heard of again. What he was asking for was a requirement. He wanted to be able to wipe hard drives. We had a requirement, which is a much clearer thing than to say, "Okay, how does that translate?" But no, I didn't, because honestly, I really didn't know what was going to happen with it.

**Mr. Jagmeet Singh:** Okay. You mentioned before that you've interacted with the OPP as your clients.

**Mr. David Nicholl:** Yes.

**Mr. Jagmeet Singh:** You were also interviewed by the OPP in relation to this information—

**Mr. David Nicholl:** Yes, I was, which I felt very uncomfortable talking about last time, as you know.

**Mr. Jagmeet Singh:** That's fine. Did you speak to anyone about that, that you were interviewed by the OPP when—first, did that happen at your office?

**Mr. David Nicholl:** Yes, it did.

**Mr. Jagmeet Singh:** Did they come in in plain clothes or did they come in as officers in uniform?

**Mr. David Nicholl:** Just to be clear, when they came, I was all g'd up to do a full email presentation to them, so I was a little—I'll be honest: I was a little surprised by launching into the admin right discussion. That's what I said. That's why I went back the next day and said—

**Mr. Jagmeet Singh:** Sure, no problem. How did they arrive?

**Mr. David Nicholl:** Plain clothes.

**Mr. Jagmeet Singh:** Plain clothes. Okay.

**Mr. David Nicholl:** Absolutely, yes.

**Mr. Jagmeet Singh:** And they identified themselves with a badge or appropriate identification?

**Mr. David Nicholl:** Oh, yes. Absolutely, yes.

**Mr. Jagmeet Singh:** And after that, were you by yourself when you were having that discussion with the OPP investigators or did you have someone with you?

**Mr. David Nicholl:** No, I was all on my own.

**Mr. Jagmeet Singh:** Okay. Afterwards, did you speak to anyone about that, the fact that the OPP had asked you some questions and had interviewed you?

**Mr. David Nicholl:** No, but honestly, I literally called them the next day and said, "I really don't like what I—I'm not sure what I told you was very good and very clear"—

**Mr. Jagmeet Singh:** Which is fine.

**Mr. David Nicholl:**—and I actually said, "Can I send you—I've got notes. I've written notes as I went along through this process. Can I send you those notes and say, 'Met this person, met this person, met this person?'" So I literally—

**Mr. Jagmeet Singh:** I'll get to that. I'm more than happy to hear about that. But the day that the OPP came in and spoke to you, did you afterwards say to one of your colleagues, did you say to anyone, "Hey, I was just interviewed by the OPP and that was really stressful. That was a big deal. Wow, I didn't expect it to come out that way." Just, you know—

**Mr. David Nicholl:** I told my wife how stressful it was, and that's probably the only person I should speak to about it.

**Mr. Jagmeet Singh:** No, no. Of course. That's fine. But anyone in the office—did you mention it to anyone in the office?

**Mr. David Nicholl:** I don't believe so.

**Mr. Jagmeet Singh:** Would anyone in the office have noticed you going into where those two individuals—how many individuals were there, actually, who came to interview you?

**Mr. David Nicholl:** There were three.

**Mr. Jagmeet Singh:** Three. And I'm assuming they were all men, three men?

**Mr. David Nicholl:** Yes.

**Mr. Jagmeet Singh:** Three men came into your office—

**Mr. David Nicholl:** Well, we had a boardroom.

**Mr. Jagmeet Singh:** You had a boardroom. The three men came into your boardroom. Did anyone make note of asking who they were or did they notice that there were three of them, that they came in together?

**Mr. David Nicholl:** From?

**Mr. Jagmeet Singh:** Your staff or anyone in your office in general?

**Mr. David Nicholl:** Oh, I'm sure my—the admin staff might have seen them. But don't forget, I had already talked to some of them before because I was kind of involved a little bit already—

**Mr. Jagmeet Singh:** Sure.

**Mr. David Nicholl:**—because I was actually helping to coordinate some of the stuff for them. I actually knew their names. I talked to the inspector before. It wasn't cold.

**Mr. Jagmeet Singh:** I don't think I have enough time for my next series of questions, so I'll wait till the next round.

**The Chair (Mr. Shafiq Qaadri):** Oh. Thank you, Mr. Singh. To the government side: Mr. Del Duca.

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**Mr. Steven Del Duca:** Thanks very much, Mr. Chair, and good afternoon, Mr. Nicholl. Thank you for being back here before the committee for a third time.

There's been a lot of information that's obviously been shared throughout the questioning today, lots of dates, so I'm going to go over some stuff that in some cases may seem like we're going back over some familiar

territory. If I get anything wrong—because there has been so much information—feel free to let me know.

I know that your previous appearances before this committee were by virtue of your assistance at the time with Mr. Costante.

**Mr. David Nicholl:** Yes.

**Mr. Steven Del Duca:** We did have an opportunity on those other occasions to ask you a lot of questions, and I'm frankly not planning to spend any time revisiting the questions that you've already been asked.

When the Premier appeared before this committee—Premier Wynne, that is—she shared with us that under her watch she has opened up government to an unprecedented degree. A big part of this particular mandate includes new training practices for political staff, issued under the direction of the Premier, and these new training practices were directly impacted by what the Information and Privacy Commissioner had to say in her report. The Ministry of Government Services, of course, will serve as a broad overlay to these new training mechanisms and document retention practices.

As was confirmed last time and through a number of correspondences, a number of letters etc., with this committee, as well as with the integrity commissioner herself, the Ministry of Government Services acknowledged that there were some unforeseen circumstances that resulted in the failure to recover some responsive emails, not as a result of political interference per se but rather because of a technical oversight which was not known at that time. We also know that as soon as the issue was identified, the Ministry of Government Services staff worked very hard to remedy the situation and ultimately turned over all documents that had fallen into what was referred to last time as the Enterprise Vault. I think I—

**Mr. David Nicholl:** Orphaned.

**Mr. Steven Del Duca:** Sorry?

**Mr. David Nicholl:** The orphaned Enterprise Vault.

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

During Mr. Costante's first appearance here at committee, he said:

"There was no intention to mislead or not inform the privacy commissioner. I met with the staff who provided information and asked them that very question. I was assured by all of them that there was no intention to mislead her.

"Having said that, we have taken responsibility for the mistakes."

Then, in response to how the staff had responded based on the policies and procedures that were in place at the time, he said, and again I want to quote, "There were records, and when we then looked into the system, as a result of the motion from this committee, we found them. Obviously, that was a mistake on our part. We should have verified, not just responded on the basis of what our policy was. That's, again, why we've apologized to the privacy commissioner. We should have done more." That was Mr. Costante.

So can you confirm for the committee today that, to your knowledge, during the ongoing IPC investigation

the Ministry of Government Services never intentionally left out any information that was relevant to the work of the integrity commissioner on this particular issue?

**Mr. David Nicholl:** I can absolutely confirm that. It was a really dark day for us, frankly, when we found that we had missed informing her of the role of the Enterprise Vault, and whenever we'd find I believe it was the Minister of Energy's chief of staff's emails in an orphaned vault, it caused quite a lot of consternation and immediate phone calls to the IPC and to the OPP, and certainly we had lots of briefing notes to write for our deputy, yes. But it was an incredibly genuine oversight.

You know, when you put a serious techie in front of perhaps people who aren't as technical, the questions from the non-technical people don't necessarily draw out what you need to do to get the full picture, and it's a problem with question-and-answer as opposed to presentation. That's why, frankly, we spent a full day in Guelph with nine staff members from the IPC, and we said, "You can ask questions, but only as we present." We literally spent a day presenting, "What does our email environment look like?" and that's how we got to all of the detail behind some of the crazy things that happen inside Microsoft Exchange that, frankly, unless you're living and breathing it every day, you're just not going to know. We've talked about that here. We talked about things like synchronization folders. Who knew there was a ton of emails sitting in synchronization folders? No one would ever have volunteered that.

**Mr. Steven Del Duca:** Right.

**Mr. David Nicholl:** So I do think it was a very, very genuine oversight. We apologized profusely for it. We still do. But when you guys come along and ask us to go and find the emails for person X, we literally go technically and look for, "Give me all the emails for person X." That's why we found, for instance, the energy chief of staff's orphaned Enterprise Vault at that time: because it actually found it on the disk. It was just a different approach, a very different approach.

**Mr. Steven Del Duca:** Thanks very much for that answer. I'd like to talk to you a little bit now about the ITO in which your name, among many other names, including members of the opposition caucuses, has been mentioned. Last week, Constable Duval testified before this committee and discussed this document in detail. While he was here, he confirmed the fact that when an individual's name is listed in an ITO, this does not mean that they have committed a crime or that they have engaged in any wrongdoing. In fact, Constable Duval made it very clear that the investigation was into allegations against the former chief of staff to the former Premier. He stated that the investigation is centred on the action of Mr. David Livingston only.

In addition to fully co-operating with the OPP and their investigation into Mr. Livingston, this is the third time, as I've said, that you have voluntarily appeared before this committee. Constable Duval also commented on the full co-operation that individuals in the government have provided to the OPP. He stated, "It is my

understanding, however, that the OPP has received co-operation from senior government officials in this matter.”

Can you just confirm with the committee—you may have said it earlier in testimony or in your opening statement—that you have fully co-operated with the OPP investigation?

**Mr. David Nicholl:** I have absolutely fully co-operated with the OPP investigation. In fact, I think I’ve gone further in that I’ve actually helped them run parts of their investigation when it was back within the OPS.

Can I just say also that my relationship with the OPP is very, very deep. I have had the privilege to work with those guys now for 12 years. I very proudly stood with one of the previous commissioners, Commissioner Chris Lewis, when we fought through some pretty tough stuff on their current radio system. He taught me very clearly the importance of radio systems when it comes to police officers, which I would have never known otherwise: “When they press a button on their radio, it has to work, Dave.” There is no room for error.

As we’ve gone through this latest—I mentioned in my opening notes that we’re just starting this absolutely ginormous replacement of the public safety radio network. It is a huge project. It’s the largest project that we will do in government by far. Through probably now four or five appearances at treasury board and, in fact, at full cabinet, I’ve had the OPP right beside me doing that. I have a full-time OPP officer working for me on the public safety radio network system. I just want to say, I’ve got serious respect for these guys. They are the best.

**Mr. Steven Del Duca:** Thank you for that.

According to the ITO, you were approached by Mr. Livingston in January 2013 and asked if the Premier’s office could obtain an administrative right to clean hard drives. I think we’ve gone over that territory a bit. Was Mr. Livingston the only individual to make this request?

**Mr. David Nicholl:** Yes, he was.

**Mr. Steven Del Duca:** What was your understanding of why Mr. Livingston requested this access?

**Mr. David Nicholl:** My understanding was that he wanted to wipe clean hard drives to prepare for the new Premier’s office team coming in.

**Mr. Steven Del Duca:** So at the time Mr. Livingston made the request, he was chief of staff to the former Premier, Dalton McGuinty. Is that correct?

**Mr. David Nicholl:** Yes.

**Mr. Steven Del Duca:** So when he made that particular request, it was not on behalf of Premier Kathleen Wynne or the current Premier’s office. Is that correct?

**Mr. David Nicholl:** I can only say it was him calling me. Honestly, he didn’t go into—I’d be speculating; I can’t.

**Mr. Steven Del Duca:** Just to be clear, though, he was the chief of staff in the former Premier’s office at that time.

**Mr. David Nicholl:** Yes, he was.

**Mr. Steven Del Duca:** Okay. Thank you very much.

I do understand that there was a meeting on January 30, 2013, in which Mr. Livingston’s request was discussed and that you have a different recollection or interpretation, whatever the case may be, of the decision that was made during that meeting.

**Mr. David Nicholl:** Can I comment on that?

**Mr. Steven Del Duca:** Sure. Please.

**Mr. David Nicholl:** Honestly, there is no misunderstanding whatsoever. I am hoping, in a way, that it was a miscommunicated quote, but what I said was that we talked about approving the admin rights. I did not walk out of there, as I said in my opening statement, with any idea that I had been directed to go and do it—absolutely not, not at all.

**Mr. Steven Del Duca:** That’s fine, and I appreciate you clarifying that.

I’m wondering, can you say definitively that the information that may have been removed from the computers in question was responsive to the request for documentation made by this committee?

**Mr. David Nicholl:** I have no knowledge whatsoever—none—to add to that. I just cannot—I have no clue.

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**Mr. Steven Del Duca:** Okay.

**The Chair (Mr. Shafiq Qaadri):** I’d also just remind committee members that these hypotheticals and speculatives are (a) generally not tolerated, and (b) obviously the witness can answer as he sees fit.

Go ahead.

**Mr. Steven Del Duca:** Thanks, Mr. Chair.

Even though you commented that you try to avoid reading newspapers, or that at least at the current time you’re avoiding that, as I’m sure you’re aware, the opposition has alleged that your actions were motivated by a supposed friendship with Mr. Livingston. I know you’ve gone over this terrain already here today. I think it is important to make sure that this is very clearly understood. In fact, at a recent press conference, Ms. MacLeod alleged that you had “David Livingston’s best interests in mind, not the public’s interest.”

Those are very serious allegations. I just want to give you the chance again to respond to these statements and this notion of the friendship with Mr. Livingston—the alleged friendship with Mr. Livingston.

**Mr. David Nicholl:** Honestly, the best I can do is refer you back to my opening notes. I spent a fair bit of time in making sure that I put honesty on the page. Honesty is the best way through this. There was no friendship at all.

**Mr. Steven Del Duca:** So no friendship, and I know you’ve said that multiple times today, which is great, but I’m just wondering whether or not whatever relationship you may or may not have had with Mr. Livingston—has any of that ever affected any of the actions or decisions that you’ve ever made as an employee of the OPS?

**Mr. David Nicholl:** No. Look, when he called, my answer was, “I do not have the authority to do that. Go talk to Cabinet Office.”

**Mr. Steven Del Duca:** If it's not too difficult for you, could you perhaps discuss with committee what the impact has been of the attacks that you've received over the last couple of weeks, what that's meant for you?

**Mr. David Nicholl:** It's not been overly—look, I'm an IT guy. IT guys don't normally get—we kind of hide behind business and then business is upfront. You guys come first, business comes second and we're third. So yes, it's a pretty unusual occurrence for an IT guy to be out front. It is.

**Mr. Steven Del Duca:** Sure. What kind of an impact has that had on you, being out front and being attacked the way that you have?

**Mr. David Nicholl:** Well, I don't know if I've been attacked because, seriously, I really haven't read the stuff, but there's been some impact, yes. I was the interim deputy for a while and they brought the new deputy in a little quicker. There have been some changes made as far as my responsibility is concerned. So yes, of course it's had an impact on me. Yes, it has.

**Mr. Steven Del Duca:** Thank you. I want to talk to you and ask you some questions about what the routine is like when you're dealing with emails, documents etc. after a change in employment. I want to start by saying that with respect to the issue of IT deleting of email accounts, the practice of deleting accounts after a staff person leaves government on both the political and the public service side, that's not new. That's not a new phenomenon, is it?

**Mr. David Nicholl:** No.

**Mr. Steven Del Duca:** No. And with respect to electronic devices, I would assume that it would be common practice to clear those devices after staff depart so that they are ready to be used for new and incoming staff?

**Mr. David Nicholl:** Yes, it is, though it's important to note—and it's the same thing as we talk about in the Premier's office records schedule. It's really, really important that staff, as well as political staff, understand that they've got the same responsibilities that anyone else does, that you guys have. It's really important that especially for things like outstanding FOI requests or outstanding litigation holds, records are not deleted, if those exist.

Records management is a science; let's be honest. It's a continual education for people to understand what they need to do. I think that's a constant challenge, both educating political people as well as educating professional OPSers—spending a lot of time on it, an awful lot of time on it.

**Mr. Steven Del Duca:** Okay, so let's explore that a little bit more and let's talk about the new rules that exist now for record-keeping and other open government initiatives.

Obviously, having worked for the Ministry of Government Services for some time, I think it would be fair to say that you've seen a series of significant changes over the last number of months respecting how the government will now handle the processes and the practices of document management and retention going forward—that science that you referred to a second ago.

Since your last appearance, a number of current Liberal staffers have been called to testify before the committee. We have consistently asked them whether or not they've been trained on these new initiatives under the new government. We've received, I think, very positive feedback from the IPC, and she's been quoted as having said things like, "This government, with respect to my investigation and the work that we have done with the government, has been very forthcoming." She also said, "Any co-operation we needed was there." She also said, "We've had very good feedback from the government."

After all is said and done, the changes that this government is implementing today and over these last number of months will impact the future to ensure that government doesn't find itself again in the same situation. I want to ask you if you could reflect with the committee today on some of the changes you're aware of and what your thoughts are regarding those changes with respect to the new approach to the Open Government initiatives that have been established.

**Mr. David Nicholl:** I chatted with Ms. MacLeod on the need to draw a line to accountability: Who is accountable for change; who is accountable to ensure that things are done properly? I think the biggest change that has come in is the fact that the Premier's chief of staff has actually taken accountability for the whole of the political side, and then each minister's chief of staff is responsible within their own office.

I think that driving accountability typically changes—absolutely, no matter what subject we're talking about, if you give people accountability, they suddenly realize, "I'm now accountable for this. I'll make it happen." There has been a lot of good work done on taking a look at the records schedules. For instance, the Premier's records schedule that Mr. Livingston was living under, and that should have been his bible, was actually written in 1999. It's quite old, and probably refers back to—even though there's everything in here about going ahead and getting your hard drives wiped and looking after email accounts, it probably needs a refresh, to be honest. I think there is a lot of work going into ensuring that we get a good, refreshed set of records schedules that are perhaps a little bit more current to today's age as opposed to a bit more of a paper age back in 1999. But honestly, the biggest difference to me, the most powerful difference, is to drive accountability, and that's what has happened.

**Mr. Steven Del Duca:** A few weeks ago, both the Premier and the Minister of Government Services announced that they would be introducing legislation that, if passed, would strengthen political accountability, enhance oversight and increase transparency across government and within the broader public sector. The proposed legislation would build on the province's Open Government initiative and continue to demonstrate that the new government is looking forward when it comes to accountability for the people of Ontario. I understand that this legislation has been in the works for some time, and so I just want to finish off, I guess, in the time we have

left, by asking you a bit more about the initiatives that the government has undertaken to open up government completely and become one of the most open and transparent governments in Canada.

This legislation also includes proposed amendments to FIPPA that would prohibit the wilful destruction of documents and implement a maximum fine of \$5,000. Speaking from your own experience—and I mean this in a sort of broad, higher-level way, keeping in mind that the legislation has not been formally introduced just yet—I'd like to get a sense from you regarding how you see the impact and what the impact would be of an unprecedented level of openness and transparency in government.

**Mr. David Nicholl:** My area of interest and expertise is, frankly, more around the area of open data and open information. That's really what my background would serve. There's no question whatsoever that there will be a dramatic culture shift across many governments as a default happens for data. Today, there's still a sense that data belongs to an organization.

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

**Mr. David Nicholl:** Going forward, what we're looking at is a really exciting change where the data actually belongs to the people of Ontario. I don't think Ontario has been particularly swift to get there, to be very honest. Some other governments are way ahead. The US has been doing this for a long, long time; the UK has been doing it for a long time. The feds have even done some of it. We started quite slowly. We released our first data sets back in October 2012. We did it really carefully, because we weren't sure what people wanted, to be honest. What we had seen in previous exercises was just this ginormous mass of data going out there that, frankly, no one knew what to do with. What we wanted to do was try to take a different approach and come at it a lot more scientifically and say, "What kind of data would you like? What would you use? If you're a not-for-profit, what data would you like to use to actually?"

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

To the PC side: Mr. Yakabuski, 10 minutes

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**Mr. John Yakabuski:** Thank you very much, Mr. Nicholl, for joining us today.

Now, in the questions from Mr. Del Duca, there seemed to be an implication that it's a pretty routine thing to remove records, or wipe out records, when someone leaves. You implied that it was as well. But there are some pretty serious restrictions on what records might be wiped out. Correct?

**Mr. David Nicholl:** Absolutely, yes.

**Mr. John Yakabuski:** Now, the Archives and Recordkeeping Act was passed by the current government, the McGuinty government—the McGuinty-Wynne government—in 2006. So that changed, and I think it updated, the reality of the electronic age we're living in today. I mean, having someone remove their files and wiping out the entire contents of 24 hard drives—we're talking about two different acts here, are we not?

**Mr. David Nicholl:** There is absolutely—people have to understand that there is a requirement to keep data when it's relevant. Absolutely.

**Mr. John Yakabuski:** Right. So the wiping out of 24 hard drives, I mean, that is every bit of—I'm not an IT guy, but as I understand it, if you take a hard drive and you wipe it clean, whatever was there is gone. There's nothing left.

**Mr. David Nicholl:** Correct. But if you've done what you should have done, which is you've gone through that hard drive—

**Mr. John Yakabuski:** Oh, yeah. Okay. These hard drives, according to Detective Constable Duval, have been wiped clean.

**Mr. David Nicholl:** Which is maybe okay.

**Mr. John Yakabuski:** No, I'm not asking you that. I'm asking—they've been wiped clean. Okay? So that is quite unusual, to be taking hard drives—as you say, maybe it's okay. We're going to try to find that out. But 24 hard drives in the Premier's office have been essentially eliminated. They're gone. You compared it to the destruction of hard drives from a previous administration, that they'd been physically destroyed. But you have no idea what was on or not on those hard drives.

**Mr. David Nicholl:** No.

**Mr. John Yakabuski:** So let's be clear: Those hard drives could have contained information that was pertinent at the time that has now, by statute, been determined to allow those hard drives to be destroyed.

**Mr. David Nicholl:** Absolutely.

**Mr. John Yakabuski:** Okay. I just wanted to clear that up.

Now, when David Livingston asked you for this unfettered access to these computers and what we understand, at least from the part of Linda Jackson, who is, and I want to read this right, the chief administrative officer of corporate planning and services, and also Steen Hume and Scott Thompson—this was a powerful new tool. You may disagree, but they certainly thought this was something special. When he asked for this special access, why didn't you just say no? He's not an IT guy.

**Mr. David Nicholl:** I did say no. In fact, I said, "I have no authority to grant that." I said, "You've got to go talk to Cabinet Office."

**Mr. John Yakabuski:** That's not "no." That's saying, "I have no authority to grant that." But you continued to lobby for Mr. Livingston, according to the testimony of others, to see that he got that. In fact, you brought up what would—

**Mr. David Nicholl:** I have no authority to lobby, honestly. In fact, I didn't even—post phone call, the first time I spoke to them was—

**Mr. John Yakabuski:** Well, I suggest that you don't need authority to lobby.

**Mr. David Nicholl:** —the 30th of January.

**Mr. John Yakabuski:** You don't need authority to lobby, sir. Please. We do it all the time. Nobody has given me any authority either.

But you introduced what might be considered Canada's new group of seven: David Bailey, Eric Dilane and

Adrian Chan; then, later in this meeting on January 30, the names of Barry Strader, Martha Maloney, Henry Malhi and Bradley Hammond. You introduced them at that meeting, saying that they already had this special administrative key, if you want to call it that.

**Mr. David Nicholl:** Individual.

**Mr. John Yakabuski:** Individual, but according to Peter Wallace and Steen Hume, their interpretation of it was that they had this unfettered access, not an individual access, but unfettered access, the kind that David Livingston was looking at, or looking for.

**Mr. David Nicholl:** No, we would never have done that.

**Mr. John Yakabuski:** Well, those are the—I don't know why you wouldn't have read the ITO, because your name is all over it. These are the kind of insinuations that are being made by other members of the government; the secretary of cabinet; his secretary, Steen Hume; Mr. William Bromm, the legal counsel. There seems to be a differing view about what was being asked for and what that which was being asked for actually was, what kind of powers it granted to Mr. Livingston. He then put them in the name of Wendy Wai and transferred them by proxy to someone who wasn't even in the public service.

You say that you never knew of Peter Faist. You don't know him?

**Mr. David Nicholl:** Nope.

**Mr. John Yakabuski:** You don't know Laura Miller?

**Mr. David Nicholl:** No.

**Mr. John Yakabuski:** To your knowledge, you've never met her?

**Mr. David Nicholl:** No.

**Mr. John Yakabuski:** I could ask you if you only work nights, but I'm not going to do that, because it doesn't seem to me that you ever meet anybody—

**Mr. David Nicholl:** I meet tons of people, but I do not meet people in the Premier's office.

**Mr. John Yakabuski:** Okay. Well, you're meeting us today.

You're the chief of—what do we call it?

**Mr. David Nicholl:** CIO.

**Mr. John Yakabuski:** Yes, that's the guy, CIO, chief information officer. When did you find out that Peter Faist was the guy going into the Premier's office and wiping these hard drives clean? When did you find that out, and what was your reaction to that? This is your job. You're the guy who is kind of the caretaker of this information, right?

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, point of order.

**Mr. Bob Delaney:** Chair, that is an allegation, and the member is asking it as if it were a fact. It is an allegation in the ITO, and it should be kept in that context.

**Mr. John Yakabuski:** It doesn't matter what it is. I'm asking him a question: When did he find out when Peter Faist went into that office?

**The Chair (Mr. Shafiq Qaadri):** Thank you. Your point is well taken. If you can just couch your language—"allegedly," etc.

**Mr. David Nicholl:** I'm fine answering.

**Mr. John Yakabuski:** Yes. Thank you.

**Mr. David Nicholl:** I think it was the Monday after I saw the story—I think he was let go on a Sunday, and it was in the paper on the Monday.

**Mr. John Yakabuski:** So you never found out, throughout this entire operation, that someone from outside of the Ontario public service was going in—

*Interjection.*

**Mr. John Yakabuski:** —and the OPP—

**Mr. David Nicholl:** Absolutely not.

**Mr. John Yakabuski:** Well, you must have known when the OPP questioned you.

**Mr. David Nicholl:** About Mr. Faist? It never came up, no.

**Mr. John Yakabuski:** So Faist's name never came up during the information to obtain?

**Mr. David Nicholl:** To me, no. During my interview?

**Mr. John Yakabuski:** Yes.

**Mr. David Nicholl:** No.

**Mr. John Yakabuski:** His name never, ever came up?

**Mr. David Nicholl:** No.

**Mr. John Yakabuski:** Okay. So—

**Mr. David Nicholl:** Sorry; to the best of my knowledge—it was a tough day. As well as I can recollect, his name never came up.

**Mr. John Yakabuski:** But he's a central character in this caper.

**Mr. David Nicholl:** This notion that somebody came from the outside did not come up, no. They very much focused on the granting of the admin rights, not what happened later on.

**Mr. John Yakabuski:** We'll just accept this for the time being.

You're the chief information officer?

**Mr. David Nicholl:** Yes.

**Mr. John Yakabuski:** We never heard anything from you until you actually got demoted from Acting Deputy Minister of Government Services. We never heard anything about your reaction. What was your reaction when you found this out? Were you not absolutely incensed that you, as the chief information officer, would have someone going, basically, behind your back, wiping out information—not even a member of the public service? Do you not feel like you were somewhat betrayed by your own people?

**Mr. David Nicholl:** It's not "my people"; I'm part of the OPS. But do I think it's appropriate? No, I do not.

**Mr. John Yakabuski:** No. Do you believe that allowing that to happen, a crime—in your view, do you think that should be considered unlawful?

**Mr. David Nicholl:** I have no comment on the crime or the unlawful part of it. I think it is absolutely incorrect, and I think to have people wandering around is not a good thing at all. I can't comment on whether—I don't know if it's a crime or not.

**The Chair (Mr. Shafiq Qaadri):** Parliamentary language, Mr. Yakabuski. Please resume.

**Mr. John Yakabuski:** There seems to be an unbelievable amount of contradictory statements in the information-to-obtain, and you're central in those, whether—

**Mr. David Nicholl:** Can I just quickly run through it?

**Mr. John Yakabuski:** Well, you haven't read it, so I'm going to tell you what's in it.

**Mr. David Nicholl:** I've got a few bits, and I can really speed it up.

**Mr. John Yakabuski:** Give me a second; you said you haven't read it, so—

**Mr. David Nicholl:** I've got little pieces, so I could really help you with it.

**Mr. John Yakabuski:** Oh, you've got little pieces?

**Mr. David Nicholl:** Yes.

**Mr. John Yakabuski:** Like a sharded hard drive sort of thing, not a completely wiped-out—

**Mr. David Nicholl:** It's pieces that people have kind of pointed out to me. I can go through them really quickly.

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

**Mr. John Yakabuski:** Okay. I've only got a minute, so I'm going to ask you—there seems to be an incredible amount of contradictory statements—

**Mr. David Nicholl:** I don't think there are as many as you think.

**Mr. John Yakabuski:** Hey, I've got a minute; hold on. I really need to know why people as high up as the top civil servant in the government, Secretary Peter Wallace, in several instances here, seem to contradict what you're saying in your statements to Detective Constable Duval.

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**Mr. David Nicholl:** So, honestly, my opinion on this, really quickly—I don't know if my opinion matters, but it's what I truly believe. I will go through the ITO, but I really do believe that when you tie all the points together and you look at the questions that were asked and you look at the context, I personally believe there's a lot less disagreement than people think there is. I know, with my technical staff—

**Mr. John Yakabuski:** Okay. Did you ever believe that David Livingston was actually going to be—you knew that Wendy Wai—

**M. le Président (M. Shafiq Qaadri):** Merci, Monsieur Yakabuski. Je passe la parole maintenant à M. Tabuns. Dix minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Mr. Nicholl, going back to that meeting of January 30, were you invited to present to the other four who were present that day?

**Mr. David Nicholl:** No.

**Mr. Peter Tabuns:** Okay. Can you tell me what the agenda of the meeting was and what the main discussions were?

**Mr. David Nicholl:** It was to talk about admin rights—

**Mr. Peter Tabuns:** Okay.

**Mr. David Nicholl:**—during those five days. You have to be careful—and I don't have good notes between

the 25th and the 30th, so I'm going to have to go a little bit on memory, and my memory sucks, to be quite honest. I know that, which is why I take notes.

**Mr. Peter Tabuns:** Okay.

**Mr. David Nicholl:** But we certainly talked about the fact that—and I think a really important point is the fact that we had already granted—be they individual versus group, but we had already granted admin rights to the Premier's office—may well have had an impact on our ability to continue to say no. I know that that was something in my head because, as an IT guy, I don't like admin rights. They allow people to upset our ordered world, quite frankly, and they just increase our support costs because we don't know what we're going to come across.

I should say—and it's a really important thing for everybody to hear—admin rights are not uncommon in the OPS at all. We have at present, for non-ITS support staff, over 11,000 admin right holders out there—

**Mr. Peter Tabuns:** I appreciate that piece of information—

**Mr. David Nicholl:**—and we have over 2,700 group admin right holders—

**Mr. Peter Tabuns:** Mr. Nicholl, I'm going to take you back to the meeting because that's of greater interest to me.

**Mr. David Nicholl:** Sorry.

**Mr. Peter Tabuns:** So Mr. Wallace expressed concern about this request?

**Mr. David Nicholl:** I think everyone had concern.

**Mr. Peter Tabuns:** And what was Mr. Wallace's concern?

**Mr. David Nicholl:** I think everyone felt that—and as I think as he said at this committee before, there was a difficult time going on. There was a lot of public engagement with what was happening. I can't put words in his mouth, but it must have been a very difficult time for him to go through this. I shouldn't try and paraphrase what he's thinking, but there definitely was—it was kind of, "What do we do with this?"

But the big issue, though, was, there is a records schedule that exists—from 1999, unfortunately—that made it very clear, though, that they do have an accountability to actually do this. Premier's office staff should be actually wiping their hard drives. However, they've got to do it when they follow the full script of the records schedule.

**Mr. Peter Tabuns:** And that was the content of your discussion in that meeting?

**Mr. David Nicholl:** Yes, and I was sent off to find who the seven people were who had the admin rights already.

**Mr. Peter Tabuns:** Okay. But you're saying that at the time you left the meeting, no final decision had been reached?

**Mr. David Nicholl:** Absolutely not.

**Mr. Peter Tabuns:** And so it was later that a decision was reached. You're saying—

**Mr. David Nicholl:** The next day, I got the call.

**Mr. Peter Tabuns:** And you were informed. Okay.

I'm going to turn it over to my colleague Mr. Singh, who will follow up.

**The Chair (Mr. Shafiq Qadri):** Mr. Singh.

**Mr. Jagmeet Singh:** Thank you very much. I'm going to take you through some quick questions. Can you just quickly rhyme off the names of the people who were in that meeting on the 30th? Peter Wallace was there. Who else was there, in your recollection?

**Mr. David Nicholl:** Steen Hume, William Bromm, Scott—and I'm not sure if Linda—Scott Thompson. I think Linda Jackson might have been there. I think she was there.

**Mr. Jagmeet Singh:** Who else would have known that there was an OPP investigation going on in your office?

**Mr. David Nicholl:** Oh, quite a lot.

**Mr. Jagmeet Singh:** A lot of people would have known?

**Mr. David Nicholl:** Not a lot, but we were quite actively involved with them.

**Mr. Jagmeet Singh:** Right.

**Mr. David Nicholl:** We were doing a lot of work around the cybersecurity area.

**Mr. Jagmeet Singh:** Okay. Normally, would you report to a superior? In terms of on a daily basis, is there someone that you report to?

**Mr. David Nicholl:** No.

**Mr. Jagmeet Singh:** There is no one that you report to?

**Mr. David Nicholl:** I mean, I would work for my deputy, but it wouldn't be on a daily basis.

**Mr. Jagmeet Singh:** On a weekly basis, do you report to—

**Mr. David Nicholl:** Yes, absolutely.

**Mr. Jagmeet Singh:** Okay. You would report on a weekly basis about things that would happen, updates on things that were significant. Would this have been a significant thing that you would have reported to your—

**Mr. David Nicholl:** We would have talked about it, for sure, yes.

**Mr. Jagmeet Singh:** Okay, so you would have talked to your—

**Mr. David Nicholl:** To Kevin.

**Mr. Jagmeet Singh:** —to Kevin about the OPP investigation.

**Mr. David Nicholl:** And don't forget, this has been going on through the whole IPC—I mean, this was a big topic for us—

**Mr. Jagmeet Singh:** Sure. Of course it was. And other folks would have known—for example, the receptionist and the other staff members probably would have known that there was an OPP investigation?

**The Chair (Mr. Shafiq Qadri):** Mr. Singh, the committee is finding it not really within the mandate to explore who knew about what in the office. I'd just invite you to return to the mandate.

**Mr. Jagmeet Singh:** The cybersecurity branch: Who oversees that? Which ministry is responsible for that?

**Mr. David Nicholl:** Government services.

**Mr. Jagmeet Singh:** Government services. So when you were a part of government services, you would have direct dealings with cybersecurity?

**Mr. David Nicholl:** Yes, I would.

**Mr. Jagmeet Singh:** Were you aware of the report that they released regarding this issue of email deletion?

**Mr. David Nicholl:** Email deletion?

**Mr. Jagmeet Singh:** Sorry. The cybersecurity branch released a report surrounding information that arose from this committee, looking into the deletion of hard drives and the wiping clean of data.

**Mr. David Nicholl:** Okay. So, really important—our forensics group within cybersecurity quite often will be Chinese-walled from the rest of the organization, and when they—

**Mr. Jagmeet Singh:** Okay, so you didn't read their report, then?

**Mr. David Nicholl:** No, absolutely not. When they get into this—

**Mr. Jagmeet Singh:** Are you aware of the report?

**Mr. David Nicholl:** I'm aware it's there.

**Mr. Jagmeet Singh:** Would you be able to table that report or provide that report?

**Mr. David Nicholl:** No. I don't have a copy of it, so I can't.

**Mr. Jagmeet Singh:** Sure. It was something known throughout the government, that there was an OPP investigation going on surrounding emails. That was something quite well known, in your opinion?

**Mr. David Nicholl:** You know, sometimes you think everyone would know, and maybe they don't. Yes, sure. I just don't know.

**Mr. Jagmeet Singh:** Okay. Was there a widespread problem in regard to this policy of data retention and the proper way to retain data? Do you consider this as a widespread problem, that people weren't aware of the proper procedures of how to store data before wiping clean hard drives, that this was something that was an ongoing, kind of a broad problem?

**Mr. David Nicholl:** I'll split them a little bit. I think records management is an ongoing labour of love that we have to keep doing, because people quite often just don't think of it. Especially in this day and age, with email, where it's just unstructured and it's coming at you—you all get it, hundreds a day—it can be difficult. So a huge part of what we have to do is educate, educate. We've got to keep doing it, and we've been doing it; we really have.

**Mr. Jagmeet Singh:** But do you think it's a problem that the folks are deleting emails, or deleting their data from their computers, when they should be recording them or maintaining a record of them? Is that something that you notice as an ongoing problem?

**Mr. David Nicholl:** I wouldn't call it a problem. I think it's something that we have to keep right in front of people's eyes, to say, "You've got to be thinking about this every day, because emails are piling up in your email box."

It's an unstructured piece of data, and we can do nothing with it. Do we have to do something as far as structuring the way email comes in? Absolutely, we do.

**Mr. Jagmeet Singh:** Have you noticed a change in terms of how records are now being maintained?

**Mr. David Nicholl:** I notice a difference in the discussion around it, absolutely. That's what we're talking about over here. I think there is a very definite focus on accountability and who's accountable for it. That will drive change.

**Mr. Jagmeet Singh:** Sure. And what do you think prompted that? Was it because folks in superior positions recognized—

**Mr. David Nicholl:** The IPC report prompted it.

**Mr. Jagmeet Singh:** The IPC report?

**Mr. David Nicholl:** Absolutely.

**Mr. Jagmeet Singh:** And do you think that your superiors—when you said “quite a lot of people,” would that include ministers and deputy ministers, in terms of quite a lot of people knew about this investigation?

**Mr. David Nicholl:** Honestly, I have no idea how many people knew about it. I really don't.

**The Chair (Mr. Shafiq Qaadri):** Mr. Singh, thanks again for returning to the inquiry of who knew what. Again, return to the mandate, please.

**Mr. Jagmeet Singh:** In terms of the policies now that there has been a change—what prompted it? Was it folks—senior ministers or deputy ministers—who recognized that there was a problem in record-keeping that prompted this change?

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

**Mr. David Nicholl:** No, honestly, I think the commissioner's report really was a catalyst for change. I think we talked about it over here, that there has been a number of initiatives as part of the government's future accountability—I'm not sure I've got the right word or not. But anyway, there's a bill coming—

**Mr. Jagmeet Singh:** Were there other folks who were investigated or who were interviewed, to your knowledge, within your staff or within your organization, related to the OPP investigation?

**Mr. David Nicholl:** Were there other interviews that took place?

**Mr. Jagmeet Singh:** Yes.

**Mr. David Nicholl:** I wouldn't necessarily have first-hand knowledge of that, honestly.

**Mr. Jagmeet Singh:** Sure. What's your second-hand knowledge?

**Mr. David Nicholl:** It really was kept quite confidential at the time and we didn't talk about it at all.

**Mr. Jagmeet Singh:** How many interviews did you have?

**Mr. David Nicholl:** With the OPP?

**Mr. Jagmeet Singh:** Yes.

**Mr. David Nicholl:** I had one formal interview with them.

**Mr. Jagmeet Singh:** One formal?

**Mr. David Nicholl:** Yes.

**Mr. Jagmeet Singh:** And were there any other informal interviews?

**Mr. David Nicholl:** Not interviews; meetings, absolutely. I met with them once a week as part of the overall coordination effort.

**Mr. Jagmeet Singh:** Right, right. But in terms of the investigation specifically, there was—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Singh. To the government side: Mr. Del Duca, final 10 minutes.

**Mr. Steven Del Duca:** A couple of things I'd like to go over: In the last round of questioning from the official opposition, Mr. Yakabuski, I think, kind of implied that the Archives and Recordkeeping Act, because it was passed in 2006—the so-called retention rules wouldn't have applied to the 2003 government transition. This arises, I can only imagine, because in the first round of questioning from Mr. Tabuns you talked about what took place, to the best of your knowledge, from what you were able to find out with respect to records retention between the transition—

**Mr. David Nicholl:** From 2003.

**Mr. Steven Del Duca:** —from the outgoing Conservative government to the incoming Liberal government.

**Mr. David Nicholl:** Yes.

**Mr. Steven Del Duca:** Mr. Yakabuski, from what I could tell, referenced that again, because that particular act passed in 2006—the records retention rules didn't apply to that particular transition. I just want to make sure that we clearly understand.

The Premier's office record schedule, the one that I believe is also included in the ITO or appended to the ITO, is actually dated from 1999, so I can only assume that this particular record schedule and the requirements that are found therein would actually have applied not only to the 2013 transition, but of course to the 2003 transition, as you referenced in your response to Mr. Tabuns in his first round of questioning.

**Mr. David Nicholl:** Correct.

**Mr. Steven Del Duca:** It's important that it's clear that these same rules would have applied to that particular transition as well.

Because of that, I do want to go back over a little bit of the terrain, taking up something that you mentioned in one of your answers to Mr. Tabuns regarding that 2003 transition. Just for the record, so we clearly understand, that's a transition that took place when the outgoing Conservative government of Mr. Eves—that's a government in which Mr. Hudak served as a senior cabinet minister—was transitioning to an incoming Liberal government. If I understand it correctly, what you said here earlier today was that hard drives from Mr. Eves's Premier's office—and possibly, one can only presume, from other ministers' offices as well—were actually physically removed and stored, and that you don't know and perhaps, frankly, at this point, nobody knows, what might have occurred to those particular hard drives from that Conservative Premier's office before they were removed, when they

were removed, as they were being removed and before they were stored. I just wanted to make sure that we clearly understand that that's what you said.

**Mr. John Yakabuski:** Point of order.

**The Acting-Chair (Mrs. Donna H. Cansfield):** Yes?

**Mr. John Yakabuski:** The question is so preposterous. It calls for complete speculation on the part of Mr. Nicholl. He doesn't know anything about those hard drives other than the fact that they were destroyed by statute—

**Mr. David Nicholl:** Stored. They were stored.

**Mr. John Yakabuski:** —stored and destroyed by statute in 2011. Mr. Del Duca should stop wasting the committee's time with this silliness.

**The Acting-Chair (Mrs. Donna H. Cansfield):** Thank you very much, Mr. Yakabuski. The witness may answer as he pleases.

**Mr. Steven Del Duca:** If you can just clarify that that is, in fact, what you did tell us earlier today when you were responding to Mr. Tabuns. You don't know, we don't know if anyone knows at this point when those particular hard drives from that Conservative government were removed. We don't know what happened to them. We don't know what happened to them before they were removed. We don't know if, in fact, the Premier's—

**Mr. David Nicholl:** I have no knowledge at all. All I've got—

**Mr. Steven Del Duca:** We don't even know, at that point in time, whether or not Mr. Hudak and his former colleagues, current colleagues, followed the 1999 Premier's office records schedule—

**Mr. David Nicholl:** I have no knowledge at all, none whatsoever.

**Mr. John Yakabuski:** Point of order.

**The Acting-Chair (Mrs. Donna H. Cansfield):** Yes, Mr. Yakabuski.

**Mr. John Yakabuski:** There is no OPP investigation concerning an alleged scandal in the previous government, destroying information. The scandal is about this government, the McGuinty-Wynne government, destroying information, and people employed by them—

**Mr. Steven Del Duca:** Chair, my point of order back to that member would be: That's not a point of order. It's not remotely close to a point of order. He's dealing with allegations—

**Mr. John Yakabuski:** —in fact, people who were not even employed by them, people who were not even members of the public service coming in and destroying information. If Mr. Del Duca wants to waste the committee's time—

**The Acting-Chair (Mrs. Donna H. Cansfield):** Okay. Thank you, gentlemen. I think I'll make a ruling. It's really out of scope. If you could please move on.

**Mr. Steven Del Duca:** Do you have anything else you'd like to add with respect to some of the—

**Mr. John Yakabuski:** You might as well shut up now, Steve.

**The Acting-Chair (Mrs. Donna H. Cansfield):** Now, now. Mr. Yakabuski, please.

**Mr. John Yakabuski:** It's just that it's getting sillier by the—

**The Acting-Chair (Mrs. Donna H. Cansfield):** Excuse me, sir, I'd like you to—

**Mr. Steven Del Duca:** Actually, Chair, I can understand why Mr. Yakabuski is embarrassed. He opened the door to this line of questioning and now I'm walking through it. I understand that makes him feel uncomfortable—

**Mr. John Yakabuski:** Not at all. You're the one—

**Mr. Steven Del Duca:** Unfortunately, Chair, I understand that makes him uncomfortable.

*Interjections.*

**The Acting-Chair (Mrs. Donna H. Cansfield):** Gentlemen, thank you.

**Mr. Steven Del Duca:** I understand that when the Conservatives are confronted with the truth, it makes them very uncomfortable, Madam Chair.

*Interjections.*

**The Acting-Chair (Mrs. Donna H. Cansfield):** Gentlemen, that's enough. Thank you. Mr. Del Duca, if you'd continue?

**Mr. Steven Del Duca:** Sure. As I was saying, anything else you'd like to add regarding the government of Ontario's initiatives with respect to opening up government as it relates to data?

**Mr. David Nicholl:** Yes. I'll talk for hours on open data.

**Mr. Steven Del Duca:** Please.

**Mr. David Nicholl:** I think it's one of the most interesting and innovative things that a government can do. I think it's great inside government, because we get to share—at the moment, it's kind of tough to get data shared across ministries, even. It's going to allow ministries to share data across lines, but what's really interesting is when we get smart people outside who take some of this data and start doing interesting things with it.

There have been some great examples. When we first launched in October—October 12—within a week we had a really cool app that had been developed by a third party that tied together some water quality data with some StatsCan data, as far as population, with some stuff from the climate side. So immediately you start enabling these people to actually use the data, and it's in a format they can use. It's not in a PDF format or an Excel spreadsheet. It's raw data they can take and actually use. I just think it's a very exciting future for us, and we don't know where it's going.

I think it's going to be interesting for all of you as well, because things will be out there. Knowledge will be known. There won't be, perhaps, as much control as there was in data, so we're just going to have this much more open world. It's going to be quite exciting, actually.

**Mr. Steven Del Duca:** Thanks very much for your answers today, and for being here.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca, and thanks to you, Mr. Nicholl, for your presence. You're officially dismissed.

We'll recess, I think, for a few minutes, and then we'll have a subcommittee meeting. Thank you.

*The committee recessed from 1637 to 1648.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The committee is back in session. We have a motion presented by Ms. MacLeod.

**Ms. Lisa MacLeod:** I'm wondering if I can defer it. I'd like to rework some of the wording.

**The Chair (Mr. Shafiq Qaadri):** You are absolutely entitled to defer it. We'll put it on hold until then.

**Ms. Lisa MacLeod:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Any further business for the committee? Seeing none, the committee is now adjourned.

*The committee adjourned at 1649.*





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