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Thursday 4 April 2013

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Jeudi 4 avril 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 4 April 2013

Jeudi 4 avril 2013

The committee met at 0930 in room 151.

MEMBERS' PRIVILEGES

The Vice-Chair (Mrs. Laura Albanese): Good morning, everyone.

Mr. John Yakubuski: Good morning, Madam Chair.

The Vice-Chair (Mrs. Laura Albanese): Thank you. I call this committee of the justice policy to order.

MS. JESSE KULENDRAN

The Vice-Chair (Mrs. Laura Albanese): We are continuing our hearings, and this morning we welcome Ms. Jesse Kulendran. I hope I pronounced that correctly.

Ms. Jesse Kulendran: That was pretty good.

The Vice-Chair (Mrs. Laura Albanese): To begin with, as we do with all witnesses, we would ask you to swear an oath, which I would invite our Clerk to administer.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm 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?

Ms. Jesse Kulendran: I do.

The Vice-Chair (Mrs. Laura Albanese): You will have five minutes for your opening remarks, and after that we'll go in rotation. Each party will have 20 minutes, and after that, another rotation of 10 minutes. We will be starting with the NDP side since you are a witness who has been called by the NDP.

You may start your opening remarks at any time.

Ms. Jesse Kulendran: Thanks, Chair. Good morning. My name is Jesse Kulendran. I'm grateful for the opportunity today to provide some clarity on my role at the ministry and to respond to any questions that you may have.

I would like to begin by sharing a little bit about my background. Following four years as a part-time legislative usher in the House, I began working for a member of provincial Parliament in September 2005. In August 2006, I moved on to work for a now retired minister. I worked as a political staffer for just over three years in total.

In December 2008, I had an opportunity and joined the Ontario public service. For the past four years, I have had

the opportunity to work in various areas of the Ministry of Energy, from the communications branch to the deputy minister's office; and then in the renewables and energy efficiency division.

In December 2009, I was asked to temporarily assist the minister's office to support an interim minister. I assisted that minister's office for three months and returned to my position in the public service at the ministry in February 2010.

As a public servant in the Ministry of Energy, I have had the privilege of working on a number of files in various capacities, including assisting with the ministry's preparation and attendance at the Standing Committee on Estimates in May 2012.

In June 2012, I took on my current position as the acting manager for conservation policy at the Ministry of Energy. Since that time, I have been asked on a couple of occasions to assist the deputy minister's office, and in late August, I was asked by the deputy minister's office to assist with the preparation to release documents related to the cancellation of the Oakville and Mississauga gas plants, as requested by the Standing Committee on Estimates. As a result, I spent roughly a week at the end of August working in the deputy minister's office before returning to my current position.

Thank you for allowing me this time to provide some background, and I welcome any questions that the committee may have.

The Vice-Chair (Mrs. Laura Albanese): Thank you very much for your presentation. I will now turn it over to Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Madam Chair, and good morning. Thanks, Ms. Kulendran.

First question: Can you provide us with your calendar or your business diary for August 22, 2012?

Ms. Jesse Kulendran: I can absolutely, if that is the request by committee, provide that information.

Sorry, you meant my calendar?

Mr. Peter Tabuns: From that date—your appointments and notes of meetings that you had on August 22, 2012.

Ms. Jesse Kulendran: Certainly.

Mr. Peter Tabuns: Okay. Thank you. Did you meet with Kristin Jenkins and Ziyaad Mia on August 22, 2012?

Ms. Jesse Kulendran: I did.

Mr. Peter Tabuns: How long was that meeting?

Ms. Jesse Kulendran: The meeting began at 11 a.m. and was roughly, I believe, two hours in length.

Mr. Peter Tabuns: So 1 p.m., okay. You should have a document there—

Ms. Jesse Kulendran: I do.

Mr. Peter Tabuns:—a memo dated October 3, 2012, to Colin Andersen, head of the Ontario Power Authority, written by Kristin Jenkins, who is vice-president of communications for the OPA. She wrote: “Jesse directed the OPA to exclude attachments where the correspondent itself was not responsive ... it is also clear that Jesse directed us to exclude SWGTA”—southwest GTA, Oakville documents. “I have the documents and can show them to you.” Are you aware of this memo?

Ms. Jesse Kulendran: I became aware of this memo in January.

Mr. Peter Tabuns: In January.

Ms. Jesse Kulendran: I became aware of the allegations in the fall of last year.

Mr. Peter Tabuns: Okay. I’m going to go through some of this, but can you tell me first the subject of the meeting that you had with Kristin Jenkins and Ziyaaad Mia?

Ms. Jesse Kulendran: Certainly. The objective of the meeting was to review the Ontario Power Authority’s non-privileged materials related to the Oakville gas plant. Those materials were in fact a small subset of all the materials that they had prepared for release. They were roughly, I would say, half the size of a banker’s box. The documents had been flagged for potentially non-relevant information.

So the meeting was, in fact, arranged by our legal services branch, and Ms. Jenkins and Mr. Mia attended. Unfortunately, legal counsel from the ministry was not able to attend, but I attended the meeting. The objective of the meeting was simply to discuss the 15 or 20 documents that had been flagged within that subset as potentially not relevant.

Mr. Peter Tabuns: And who was the legal counsel who was supposed to be present?

Ms. Jesse Kulendran: It was our director of legal services, Halyna Perun.

Mr. Peter Tabuns: Okay.

Ms. Jesse Kulendran: And I believe another counsel was to join her as well.

Mr. Peter Tabuns: So neither counsel was present. Why was it necessary to have counsel there? Why was it thought necessary to have counsel in the first place?

Ms. Jesse Kulendran: I think the benefit of having counsel there was to ensure that any discussion, or any documents that were flagged—if there were any questions raised, they could provide advice on what was required by committee and what was required by the Legislature.

Mr. Peter Tabuns: And the 15 or 20 documents—can you tell us the nature of those documents?

Ms. Jesse Kulendran: Yes, I can indicate based on my recollection. They were documents, if I recall correctly, that were entirely not relevant to either gas plant. So

in some cases, I believe, there were documents included perhaps inadvertently on, I think, Atikokan coal plant, if I recall correctly; there was a letter and there was a document, I believe, on Lambton—sorry, not Lambton; Thunder Bay. I believe there were some transition materials, but largely they were not related to either of the gas plants.

Mr. Peter Tabuns: Did you take any notes in this meeting?

Ms. Jesse Kulendran: I did. At the meeting, Ms. Jenkins and Mr. Mia brought a copy of their own documents—again, Oakville non-privileged, so it was just a small box. I worked from the ministry’s copy of the documents. The notes that I had were on the documents themselves.

Mr. Peter Tabuns: Can you provide us with a copy of that?

Ms. Jesse Kulendran: I wish I could. Unfortunately, those documents were left with the deputy minister’s office, and all of the ministry’s copies of OPA materials were returned to the Ontario Power Authority, I believe by the deputy’s office, at some time in the latter part of October last year.

Mr. Peter Tabuns: I would ask, Chair—when we’ve finished with the witness, I’ll have a motion requesting the OPA provide us with those documents.

The Vice-Chair (Mrs. Laura Albanese): And we shall deal with that.

Mr. Peter Tabuns: Thank you.

Did you instruct the Ontario Power Authority to not disclose certain documents?

Ms. Jesse Kulendran: I did not. I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents.

The conversation on August 22 was about sharing observations that had been made through the minister’s office’s review of the documents, but it was not to provide any direction.

Again, at the beginning of the meeting, and throughout the meeting, I reminded Ms. Jenkins and Mr. Mia that while we were discussing potentially not relevant documents, it was their obligation to return and discuss with senior management and their senior legal counsel to make the decisions about what they felt was responsive and relevant.

0940

Mr. Peter Tabuns: The document—or the memo—suggests that you were directing them.

Ms. Jesse Kulendran: I understand that and, under oath, I will tell you that I did not direct them to remove any documents. In fact, as we discuss documents: Based on my recollection, when we discussed, for example, the Atikokan letter that was likely inadvertently included, Ms. Jenkins put a Post-it on her copy of the documents. The Post-it had the word “check,” because we did not discuss the removal of those documents at that time.

Mr. Peter Tabuns: Can you give any explanation as to why these things would have been said about your behaviour in that meeting?

Ms. Jesse Kulendran: Unfortunately, Mr. Tabuns, I can't speculate as to why Ms. Jenkins made these accusations. I can say for certain that there were conversations with Ms. Jenkins in the couple of days following this meeting. A couple of points: Our review was only of the non-privileged documents. The Ontario Power Authority then undertook a review of its privileged documents, and Ms. Jenkins's explanation for this was, in fact, that she—the power authority did not have a chance to review the documents before providing a copy to the ministry. They had outsourced the search and, as a result, did not review it prior to providing it to the ministry.

In fact, in the couple of days following this meeting, Ms. Jenkins did call, and she asked about some banking information that was found in the privileged set of documents that they were undertaking a review of on their own. She asked whether that banking information could be excluded because it was confidential. I indicated to Ms. Jenkins that there were no exemptions from what the committee had requested. In fact, on August 24, Ms. Jenkins sent me an email indicating that the power authority had decided to remove that document and that there were some other issues that legal counsel would speak to legal counsel about or that the CEO would speak to the deputy about. I do have a copy of that email if you would like it.

Mr. Peter Tabuns: I would like that, if you could provide it to the committee.

Ms. Jesse Kulendran: Sure, absolutely. I have copies.

Mr. Peter Tabuns: In this meeting, what was your capacity?

Ms. Jesse Kulendran: My capacity was to—from the ministry's perspective, so from the public service perspective—simply share with the Ontario Power Authority some of the observations that had been made on the Oakville non-privileged documents. It was from the minister's office's review of the documents, so, as I indicated, there were 15 or 20 flags. The objective of the meeting was simply to focus on the 15 or 20 flags but, in fact, it was Ms. Jenkins—and I realize that here she says contrary—who asked for a page-by-page review of the documents, because she felt it would be helpful, because they had in fact outsourced the search of their documents and had not had a chance to review at the power authority before providing a copy to the ministry.

Mr. Peter Tabuns: And you say you were observing observations on the non-privileged material. What sort of observations?

Ms. Jesse Kulendran: From my recollection, it was largely about relevance. As I said, again, there were Post-its, so 15 or 20 Post-its on certain documents in that stack. The notes made reference to the relevance of a certain document. I vividly remember an Atikokan letter, I vividly remember a document on Thunder Bay, and I believe there was some transition material that was attached to, I think, an email from Ms. Jenkins that also

did not relate to either of the gas plants; that's from my recollection.

Mr. Peter Tabuns: Okay. So when you would contact Kristin Jenkins in the lead-up to this meeting, who would you tell her you were calling on behalf of?

Ms. Jesse Kulendran: I actually did not contact Ms. Jenkins, nor did I arrange the meeting. The meeting was arranged by our legal services branch calling OPA's legal.

Mr. Peter Tabuns: Okay. How would you generally characterize your meetings with OPA staff?

Ms. Jesse Kulendran: That meeting specifically or other meetings?

Mr. Peter Tabuns: That meeting specifically, and then others.

Ms. Jesse Kulendran: That meeting was productive. It was very amicable. At no point during that conversation did Mr. Mia or Ms. Jenkins raise any concerns regarding some of the discussion that happened. It was a productive meeting. It was roughly two hours.

Mr. Peter Tabuns: Did you have other meetings with them on documents?

Ms. Jesse Kulendran: No, that was the only meeting that I had with the OPA.

Mr. Peter Tabuns: Okay.

Ms. Jesse Kulendran: There were phone calls, Mr. Tabuns, in the couple of days following.

Mr. Peter Tabuns: And those were just a follow-up for a discussion of those particular documents, or were there other matters discussed?

Ms. Jesse Kulendran: As I mentioned, Ms. Jenkins asked that question around banking information that they had discovered in their privileged material. She had indicated to me and kept me abreast of what the OPA was doing in terms of them undertaking their own review of the other materials, which was the larger portion, which was the privileged materials.

Mr. Peter Tabuns: Were you involved in the production of documents from the ministry and from the minister's office?

Ms. Jesse Kulendran: Yes, I was assisting in the coordination of the search back in May.

Mr. Peter Tabuns: If you were assisting in the coordination, you were part of a larger team?

Ms. Jesse Kulendran: Yes, I believe that is how it could be characterized. I assisted in sending out the request for the search. I did not collect the materials physically, so I also did a search myself.

Mr. Peter Tabuns: And who was on this team that was pulling together the documents?

Ms. Jesse Kulendran: The documents were searched by individuals in the appropriate divisions that were on this file. Our FOI coordinator assisted in gathering all the information together.

Mr. Peter Tabuns: Can you tell us who that FOI coordinator is?

Ms. Jesse Kulendran: Sure. Alma Beard.

Mr. Peter Tabuns: Alma Beard?

Ms. Jesse Kulendran: Yes. She was providing assistance and gathering everyone's information. There were a couple of questions that she had had—whether or not certain documents were considered privileged or not privileged. Legal services branch from our ministry did provide assistance in clarifying some of that for her. So, yes, it was a discussion with legal.

Mr. Peter Tabuns: Who ran this overall?

Ms. Jesse Kulendran: I'm not sure. In terms of—

Mr. Peter Tabuns: Who gave you your instructions?

Ms. Jesse Kulendran: My instructions came from discussions with the deputy minister.

Mr. Peter Tabuns: And that was?

Ms. Jesse Kulendran: Serge Imbrogno, and the legal director, which was Halyna Perun, as we discussed.

Mr. Peter Tabuns: Did they give you a set of written instructions on how to proceed in this matter?

Ms. Jesse Kulendran: Together, we drafted an email that required public servants in the ministry to search their records, and we again sent an email later, clarifying what the committee was asking for—for the first search I'm speaking of—and again providing the parameters of what the committee had asked for.

Mr. Peter Tabuns: And would you have access to those emails in which you sent out instructions to staff?

Ms. Jesse Kulendran: Yes; this was for the first search.

Mr. Peter Tabuns: Would you commit to providing us with copies of that?

Ms. Jesse Kulendran: Absolutely.

Mr. Peter Tabuns: Noted, Madam Chair?

The Vice-Chair (Mrs. Laura Albanese): Noted. Duly noted.

Mr. Peter Tabuns: Was there an overall plan for production of documents?

Ms. Jesse Kulendran: I'm sorry—in terms of the strategy?

Mr. Peter Tabuns: My apologies. Yes, did you have a step-by-step plan for going through the Ministry of Energy, the minister's office, to get those documents?

Ms. Jesse Kulendran: I worked on the Ministry of Energy's public services documents. We were informed by the minister's office that they did not have responsive records that—

Mr. Peter Tabuns: Sorry, the minister said they had—

Ms. Jesse Kulendran: Not the minister; the minister's office indicated that they did not have responsive records.

Mr. Peter Tabuns: None at all?

Ms. Jesse Kulendran: That is my understanding, yes.

Mr. Peter Tabuns: And that was communicated to you in writing?

Ms. Jesse Kulendran: I do not believe it was, no.

Mr. Peter Tabuns: Do you know who communicated that to you?

Ms. Jesse Kulendran: I do, yes. It was Ryan Dunn.

0950

Mr. Peter Tabuns: Ryan? R-Y-A-N?

Ms. Jesse Kulendran: Yes.

Mr. Peter Tabuns: So, going back, the overall plan for production of documents—I know you sent out a memo to staff telling them, "Please assemble these documents." Between you and Serge Imbrogno and Halyna Perun, did you have a plan for getting documents?

Ms. Jesse Kulendran: I don't believe that I would be in the best position to provide that answer. I think that would be better directed to the deputy. I did assist in the search and I assisted in supporting the deputy's office and the minister's office, but I did not work on the strategy for the releasing of the documents.

Mr. Peter Tabuns: So you weren't provided with a copy and you weren't aware of it; is that correct?

Ms. Jesse Kulendran: Did I keep a copy of the ministry's documents?

Mr. Peter Tabuns: No. Were you given a copy of the plan, the strategy, for assembly of documents?

Ms. Jesse Kulendran: No, and I don't believe there was a documented strategy.

Mr. Peter Tabuns: Okay. Was any consultant hired to help with the document search and production at the Ministry of Energy?

Ms. Jesse Kulendran: During my limited involvement, no, I do not believe the consultant—no, we did not hire a consultant.

Mr. Peter Tabuns: Okay, so it was all in-house.

Ms. Jesse Kulendran: It was in-house.

Mr. Peter Tabuns: What was your role at the Ministry of Energy when this search was taking place?

Ms. Jesse Kulendran: As I mentioned in my opening, I was back supporting the deputy's office in May because the ministry had been called to the Standing Committee on Estimates with, I think, eight days' notice. I was there providing support for the preparation for the minister's, the deputy minister's and assistant deputy minister's appearance at committee. That involved all the briefing materials, all the follow-ups from committee etc. That was my involvement. I was there again until mid-June. So, I was there as the committee motion was introduced and the debate took place. But, in June, I did take on my current position.

Mr. Peter Tabuns: And that current position is?

Ms. Jesse Kulendran: Acting manager for conservation at the Ministry of Energy.

Mr. Peter Tabuns: Okay, and even though you'd been put back into the public service as this acting manager, you were drawn back into the document aggregation process?

Ms. Jesse Kulendran: But that was as a public servant as well.

Mr. Peter Tabuns: No, no, I understand the distinction. I'm just trying to follow the sequence.

Ms. Jesse Kulendran: Right.

Mr. Peter Tabuns: So, you didn't go back into the minister's office, you didn't go into any political position, but you were taken and you were seconded to document search. Is there a reason you were seconded for document search?

Ms. Jesse Kulendran: In August? Is this what you're speaking of?

Mr. Peter Tabuns: Yes.

Ms. Jesse Kulendran: I was asked to come back in August to assist because I had some of the knowledge of the file at that time. So it was for, I guess, carry-over. I was asked to help because I knew about the parameters of the motion and I knew about the document production. I was there for roughly a week.

Mr. Peter Tabuns: Roughly a week. Which political staffer in the minister's office did you work with in document production, if you did at any point?

Ms. Jesse Kulendran: It was Ryan Dunn.

Mr. Peter Tabuns: Ryan Dunn. What was his status or his position within the minister's office?

Ms. Jesse Kulendran: I do not know for certain but I believe at that time he was policy adviser.

Mr. Peter Tabuns: Okay. Did you have any involvement with the Premier's office in the course of producing these documents?

Ms. Jesse Kulendran: I did not.

The Vice-Chair (Mrs. Laura Albanese): Thank you, Mr. Tabuns. We'll have to wait for the second round.

Mr. Peter Tabuns: I'll come back. Thank you, Chair.

The Vice-Chair (Mrs. Laura Albanese): I shall pass it over to the government side. Mr. Delaney?

Mr. Bob Delaney: Good morning, Jesse. Thanks for coming to the committee today.

Ms. Jesse Kulendran: Good morning.

Mr. Bob Delaney: I understand you moved back and forth within the Ministry of Energy. So, just to clarify it for myself, I'd like to just quickly recap your various roles. You worked as a political staff member to former minister Gerry Phillips, right?

Ms. Jesse Kulendran: That's correct.

Mr. Bob Delaney: Do you remember the dates?

Ms. Jesse Kulendran: Yes, it was from August 2006 to December 2008, and when Minister Phillips resumed an interim role as the Minister of Energy and Infrastructure in December 2009, I supported the minister's office for the three months.

Mr. Bob Delaney: Okay. So, for the majority of 2008 and 2009, you were in the civil service within the Ministry of Energy?

Ms. Jesse Kulendran: Correct.

Mr. Bob Delaney: Okay. All right.

Ms. Jesse Kulendran: And then, following February 2010, I was again in the public service.

Mr. Bob Delaney: Okay, and since 2010, you've remained in the civil service?

Ms. Jesse Kulendran: I have.

Mr. Bob Delaney: Okay. So, just to clarify the timing: You've been working on the civil service side for just a little more than two years prior to Minister Bentley's appearance at estimates committee?

Ms. Jesse Kulendran: Correct.

Mr. Bob Delaney: Okay. So, at the time of the estimates committee hearings—this would be May 2012, last year—

Ms. Jesse Kulendran: That's right.

Mr. Bob Delaney:—you were working in the deputy minister's office.

Ms. Jesse Kulendran: In May 2012, I was actually in the renewables and energy efficiency division. I was asked to return to the deputy minister's office to assist with the ministry's preparation for estimates.

Mr. Bob Delaney: All right. Okay. In other words, it's not uncommon for staff to be called into the deputy minister's office to work on special projects when that type of special project may be labour-intensive or require a lot of attention?

Ms. Jesse Kulendran: I don't know if it's common, but that is my home position, so it was quite fair for me to be called back to assist.

Mr. Bob Delaney: Okay. The secretary of cabinet was here to offer some testimony a couple of weeks ago, and he spoke to the scope of the production motion passed by the estimates committee in May 2012. He described some of the difficulties that the motion presented in terms of compliance. Could you just briefly describe for us the amount of work and the effort that went into pulling together a response to the committee's request, and perhaps what your role in that process was?

Ms. Jesse Kulendran: Certainly. For a ministry that had never done this type of work before, it was quite a new process for us. Throughout the process, I know that we acted in good faith, trying to respond to the request of the committee. It was labour-intensive—not personally, but for the whole ministry—because it was about going back a couple of years and looking for documents that one might have. In pulling all of that together, it is understandable that there may have been some items that were missed, and those were caught in the second search.

Mr. Bob Delaney: Okay. All right. In your experience working for the Ministry of Energy, have you ever seen such a large request for documents in such a short period of time?

Ms. Jesse Kulendran: I've never actually seen such a search for documents in my limited political career—or my public service career.

Mr. Bob Delaney: Okay. What sort of challenges would either you or the ministry face in conducting this type of a search?

Ms. Jesse Kulendran: I can't truly speak to the entire ministry's challenges.

Mr. Bob Delaney: How about you—

Ms. Jesse Kulendran: I'm not in the best position to do so. But it was a learning experience, certainly, in terms of the scope of a search like that and the amount of resources that it required.

Mr. Bob Delaney: Okay. The committee has also heard from a number of witnesses in the OPA and the Ontario public service that there were significant risks in disclosing commercially sensitive documents before negotiations with the two companies had been resolved. Can you shed any light on that?

Ms. Jesse Kulendran: Yes. I had heard of the discussions about the risk to litigation etc., and the risk in dis-

closing privileged materials. In fact, I believe that that was the content of the minister's letter to committee in May 2012. But to truly assess the risk and speak to that risk, I would have to refer the question to the legal services branch.

Mr. Bob Delaney: Okay. So, despite all of these challenges, in your opinion, was the document search conducted in good faith?

Ms. Jesse Kulendran: It was absolutely conducted in good faith.

Mr. Bob Delaney: You're aware that there was more than one document release to respond to the committee's request. As the volume of documents came together. If there were errors and omissions, what did you learn about the errors and omissions, and how did you go about, in subsequent passes, making sure that you'd rectified them?

1000

Ms. Jesse Kulendran: I don't think I'm in the best position to answer that question, simply because I was there for limited periods of time throughout the search. I think it became aware that we had to search the records of employees who had moved to different positions or had perhaps departed the public service. Those areas were then highlighted and, I believe, addressed in the second search. But again, I cannot speak to that, because I wasn't there for the continuous period of time.

Mr. Bob Delaney: That's fine. Mr. Tabuns talked to you a little bit about the meeting with the OPA officials on August 22. Just to recap, who was at that meeting?

Ms. Jesse Kulendran: That was Mr. Mia and Ms. Jenkins.

Mr. Bob Delaney: Did any of those individuals actually report to you?

Ms. Jesse Kulendran: Neither of those individuals reported to me, in fact.

Mr. Bob Delaney: And by extension, then, you didn't have the authority to either direct them or tell them what to do?

Ms. Jesse Kulendran: No. The Ontario Power Authority was responsible for making decisions and complying with the committee's motion. The meeting was not about providing direction. It was about providing observations on the power authority's documents. I repeatedly indicated to both Mr. Mia and Ms. Jenkins that they had a responsibility to have that discussion with their senior management and with their legal counsel on what was and was not responsive to the committee's motion.

Mr. Bob Delaney: In other words, you didn't direct the OPA to exclude anything.

Ms. Jesse Kulendran: I did not direct the OPA to exclude any documents.

Mr. Bob Delaney: Okay. In his testimony, Peter Wallace shared with the committee that he had directed legal counsel in the Ministry of the Attorney General to investigate the claim made by Kristin Jenkins at the OPA that you had provided—and I'm going to use their word—"inappropriate" direction regarding the document search.

I understand that legal counsel conducted a series of interviews with you and with the other individuals who were involved. True?

Ms. Jesse Kulendran: Yes. I'm not sure about whether there were a series of interviews with others, but I do know that I was interviewed twice by the Ministry of the Attorney General.

Mr. Bob Delaney: Mr. Wallace testified, and I'm going to use his words: "Counsel returned to me with a verbal report indicating that they had not been able to find any concrete evidence to substantiate the allegation, that the witness, the individual involved, appeared to be truthful, that she appeared not to have, in her own mind, offered specific and highly inappropriate direction to the power authority."

Do you stand by the comments you made during that investigation, that you didn't provide inappropriate direction to the OPA?

Ms. Jesse Kulendran: I did not provide inappropriate direction to the OPA. Again, I say that I did not have the authority to direct the OPA.

Mr. Bob Delaney: Did you discuss the scope of the motion and what the Ministry of Energy considered to be responsive in the context of the search?

Ms. Jesse Kulendran: We did discuss the scope of the motion and advice that we had received on what was responsive, yes.

Mr. Bob Delaney: Right. Did you provide any suggestions in terms of additional search terms that the OPA may have missed?

Ms. Jesse Kulendran: In fact, actually, I did. During the review of the documents, the Oakville non-privileged materials, I noticed that they had bundled it by employees, so there were specific bundles for employees whose documents had been searched. The title page on that bundle, I believe, was "Southwest GTA," and then the name of the employee.

In reviewing the documents, it became apparent that it seemed that the firm that they had hired had searched the term "SWGTA," and as a result, it captured documents related to issues in the area but not related to the gas plant. I indicated to Ms. Jenkins that perhaps they may have missed the terms "Oakville" and "Oakville generating station."

It is my understanding that the memo that I was provided, in fact, had an attachment of Q&As at some point, and that too indicated that the Ontario Power Authority missed those terms in their first search.

Mr. Bob Delaney: Okay. What was the OPA's reaction after the meeting?

Ms. Jesse Kulendran: After the meeting, Ms. Jenkins did call from time to time. She indicated that the power authority was going to undertake a review of all of their documents, because that had not been done prior to that meeting, and that they were going to review for non-responsive material.

Mr. Bob Delaney: Okay. Do you know if that review took place?

Ms. Jesse Kulendran: My understanding is that it did; I don't know for certain.

Mr. Bob Delaney: Did the OPA agree with you in your recommendation?

Ms. Jesse Kulendran: It is my understanding that they did. In fact, I have an email from Ms. Jenkins on September 20. This was significantly after that meeting. A line of it, again, speaks to it. So if I could ask for that to be shared as well.

Mr. Bob Delaney: What you're describing then is an exchange between both the OPA and the ministry, so it sounded like you were comparing notes and discussing a proposal. Would it be fair to say it was not a one-sided discussion?

Ms. Jesse Kulendran: It was not a one-sided discussion. As I point to the email that I just shared, this was an email to another colleague at the ministry summarizing the copies of documents that had been shared with the ministry. It indicated, "After this, OPA and ministry staff met to discuss how the documents were screened. It was agreed that some adjustments needed to be made. OPA made these adjustments...."

So it is the OPA that made the adjustments. It was the OPA in this case—Ms. Jenkins's email indicates that the conversation we had and the observations that were shared in that meeting were agreed upon by the OPA.

Mr. Bob Delaney: So ultimately it was the OPA that was in charge of the final documents that were released.

Ms. Jesse Kulendran: Absolutely.

Mr. Bob Delaney: Okay. As a ministry staff member, you would have had discussions with the OPA on the motion and on the search process at the meeting—no, I've covered that.

Following the meeting, though, did you get a call from any superior regarding what had transpired at the meeting?

Ms. Jesse Kulendran: No, I did not. I kept the deputy and our legal director apprised of what had happened at that meeting.

Mr. Bob Delaney: All right. Was there any complaint or comment from the OPA that you had done anything that they either weren't pleased with or that might have been inappropriate?

Ms. Jesse Kulendran: It was not until October, I understand, that an allegation was made that they felt that there had been inappropriate direction.

Mr. Bob Delaney: I guess it's our turn to circulate a document here. The Clerk is going to hand you a questions-and-answers document that was prepared by the Ontario Power Authority on October 1. In fact, this particular document was used by Mr. Leone during his January 30 news conference where he made some allegations about your involvement in the OPA's document search. I'll wait until you've had a chance to look at it.

By the way, have you had a chance to see that one before?

Ms. Jesse Kulendran: Yes, I believe I saw this because I believe this was released with the memo on January 30.

Mr. Bob Delaney: Question 2 at the bottom of page 1 asks, "Did the government ask you to leave out these documents?" And the answer is, "No." On page 2, it asks, "What was the direction provided by the government?" And the answer is, "The documents needed to be correspondence from September 1, 2010, to December 31, 2011, that referenced the cancellation of the Missis-sauga and Oakville power plants."

So what this questions-and-answers document written by the OPA is saying is that the government did not tell them to withhold documents, and the direction the government gave to the OPA as they conducted their search was to ensure the documents were responsive to the estimates committee motion. Would that be an accurate description of what happened?

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Ms. Jesse Kulendran: I can speak to my conversations with the Ontario Power Authority, and I can confirm that that would be accurate to my conversations with the power authority.

Mr. Bob Delaney: There were some allegations made about your conduct. How have those affected you personally?

Ms. Jesse Kulendran: It's unfortunate.

Mr. Bob Delaney: Okay. In a news conference here at Queen's Park earlier this year, Jim Hinds was asked by the press gallery if the additional documents that were turned over by the OPA were the result of a—and I'll use the word used at the time—cover-up. He said no. He said, "We messed up some search terms." That's all. From your experience in having participated in the exercise, would you agree with that assessment?

Ms. Jesse Kulendran: I would agree. In fact, Ms. Jenkins, in that meeting on August 22, had indicated that they had not searched the records of an employee who had departed the Ontario Power Authority. That is consistent with my understanding, that they did miss search terms and searching an employee who had departed.

Mr. Bob Delaney: You've been painting a picture here where the OPA and the ministry are not normally asked for searches of this scope and depth. You've described how everyone did their best to try to find the responsive documents and that, as you learned that there were documents that you might have looked for, you went back and you found them. Right?

Ms. Jesse Kulendran: Again, I can't speak to the entire search process, but is consistent with the ministry's approach.

Mr. Bob Delaney: Okay. You did a good job with Mr. Tabuns in clarifying some of the redactions. I'd just like to make sure that we didn't miss anything here.

I understand some documents were redacted by both the Ontario Power Authority and the ministry. Obviously, you'll only be speaking on behalf of the ministry and during the time that you were there. Who would be responsible in the ministry for identifying responsive and non-responsive information when it came to the document disclosure?

Ms. Jesse Kulendran: I'll deal with the two parts of that question separately. The redactions: I assume that you mean the sections of the documents that were blacked out. Is that the redactions?

Mr. Bob Delaney: Yes.

Ms. Jesse Kulendran: During the time that I was there, I was not involved in redacting any documents. I understand that those decisions were made after my involvement in August.

As for whether or not documents were responsive, as in responsive to the motion that was presented by the committee on estimates, again, legal had an opportunity to screen the documents. As well, our FOI coordinator helpfully assisted for a period of time to review the documents that had been provided to her by employees of the ministry.

The Vice-Chair (Mrs. Laura Albanese): About 30 seconds.

Mr. Bob Delaney: Okay. Chair, I'll pick up here during the next round.

The Vice-Chair (Mrs. Laura Albanese): We'll then turn it over to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much. I too want to spend a couple of minutes on your opening comments where you provided clarity, as you called it. You worked as a Liberal staffer in 2005?

Ms. Jesse Kulendran: I did.

Mr. Victor Fedeli: For who, again?

Ms. Jesse Kulendran: I began with Linda Jeffrey, when she was a member of provincial Parliament prior to her becoming a minister. In August 2006, I began working for Minister Phillips.

Mr. Victor Fedeli: So you worked as a Liberal legislative staffer in 2005 to 2006, in that area?

Ms. Jesse Kulendran: Correct.

Mr. Victor Fedeli: And then you moved on as a Liberal political staffer to the Minister—of Energy, was it? I just have “minister” here—for about three years, in 2006?

Ms. Jesse Kulendran: Minister Phillips had a number of portfolios during that period of time. I worked for Minister Phillips from the Ministry of Government Services to Ministry of Energy.

Mr. Victor Fedeli: I too want to talk about the document that Mr. Tabuns presented. It's also in our docs as document 1, but let's just refer back to the same one that Mr. Tabuns had. I want to go down to the last sentence. You characterize it as, “We've asked her to take out some emails or some correspondence that had to do with Atikokan or Thunder Bay.” You've mentioned that a couple of times, actually. Why would you remove Atikokan or Thunder Bay, just out of curiosity?

Ms. Jesse Kulendran: I did not ask her to remove those documents. We flagged documents that were not relevant to the committee's motion on the Oakville and Mississauga gas plants. The letter, I believe, that was included on Atikokan was not responsive and in relation to the motion that the committee had provided the ministry.

Mr. Victor Fedeli: Who would have made that decision, considering that Atikokan or Thunder Bay are possible solutions to the dilemma created when Mississauga or Oakville was cancelled? They're listed elsewhere as potential solutions, so who would make that decision to pull those documents out?

Ms. Jesse Kulendran: In the end, the Ontario Power Authority would have made that decision. In my recollection of those documents, they were not in relation to being potential sites, etc.; they were in relation to their own service as generation plants.

Mr. Victor Fedeli: In the Kristin Jenkins memo to Colin Andersen, she ends the sentence with, “It is also clear that Jesse directed us to exclude” southwest GTA. “I have the documents and can show them to you.” What do you have to say about that sentence?

Ms. Jesse Kulendran: I'd like to deal with both parts of that sentence. I did not direct the Ontario Power Authority to exclude any documents. The discussion was about, again, observations that were made on a small subset of their documents. I did not direct the Ontario Power Authority to exclude documents with “southwest GTA”—the acronym. In fact, we had discussed the fact that it seemed that the Ontario Power Authority had searched for “southwest GTA” instead of other words like “Oakville generating station” and “Oakville.”

I understand that to be consistent with the Q&As that were distributed with this memo that Mr. Delaney provided: that the Ontario Power Authority had in fact missed searching those search terms. In searching for “southwest GTA,” it seemed that documents had been included about other issues in the region, because the Ontario Power Authority deals with a variety of planning issues as well as conservation, etc. That was my observation.

Mr. Victor Fedeli: So—

Ms. Jesse Kulendran: As for the second part—sorry—about, “I have documents I can show you”: I understand that Ms. Jenkins is likely speaking to the documents that she worked from during that meeting—the Post-it Notes that she would have added to her set of documents. I was not responsible for what she wrote on those documents or the Post-its that she added, and I do not know if those have been altered since.

Mr. Victor Fedeli: So let's be clear. She says that, in her words, “Ministry staff now say that they did not instruct OPA staff to exclude documents.” That's what you're suggesting as well?

Ms. Jesse Kulendran: I don't know who she's referring to in that line, because I did not discuss that with her after.

Mr. Victor Fedeli: But that is what you contend as well: that ministry staff now say they did not instruct OPA staff to exclude attachments, etc.?

Ms. Jesse Kulendran: I absolutely support the fact that I did not direct the OPA to take any action—

Mr. Victor Fedeli: And you did not direct them to exclude “southwest GTA,” as she claims in this letter?

Ms. Jesse Kulendran: I did not direct the Ontario Power Authority, under any circumstance, to exclude documents. That discussion was about sharing observations; it was not about making decisions for the Ontario Power Authority.

Mr. Victor Fedeli: It says here, “It is also clear that Jesse directed us to exclude” southwest GTA. You say that that is not accurate.

Ms. Jesse Kulendran: That is not accurate.

Mr. Victor Fedeli: Okay. And she says she has the documents and can show them to us, which I presume we’ll get around to doing with her.

Let’s just go to this document that you handed out on September 20, 2012. It says here—first paragraph, “Hi Michael.” The last sentence says, “The OPA made these adjustments”—so they’re talking about how they found a new set of documents, that kind of thing. “The OPA made these adjustments and sent new, revised packages.” So the packages they’re saying they have are Southwest GTA Non-Privileged, Southwest GTA Privileged and Greenfield Site Privileged.

So, “made these adjustments and sent new revised packages.” Who would the packages be sent to?

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Ms. Jesse Kulendran: It was sent to the ministry on August 24.

Mr. Victor Fedeli: Okay. You said, just when you testified to Mr. Delaney, that the OPA was in charge of final documents that were released.

Ms. Jesse Kulendran: Correct.

Mr. Victor Fedeli: So you weren’t suggesting they were in charge of the final documents that were released to the committee. They were in charge of the final documents that were released to the ministry.

Ms. Jesse Kulendran: No, these were—

Mr. Victor Fedeli: Well, you just said that a moment ago when I asked you—

Ms. Jesse Kulendran: I don’t believe so. In fact, copies—

Mr. Victor Fedeli: I asked you, “OPA made these adjustments and sent new, revised packages.” I asked you, “To whom?” and you said, “To the ministry.”

Ms. Jesse Kulendran: They were copies of the documents that the OPA had. The OPA was responsible and maintained a master copy of all of their documents. Copies were provided to the ministry.

Mr. Victor Fedeli: I asked you a minute ago who the OPA made these adjustments and sent new, revised packages to, and you told us, “The ministry.”

Ms. Jesse Kulendran: That is correct.

Mr. Victor Fedeli: Okay.

Ms. Jesse Kulendran: They sent copies of revised packages to the minister—

Mr. Victor Fedeli: But that’s not what you said. I asked you who—the OPA made these adjustments and sent the revised package. You said “the ministry”—not “the committee”; “the ministry.” You didn’t say “the ministry as well”: “Oh, they were copies that went to the ministry, that went to the committee.” Are you saying the

OPA directly supplied the committee with the documents?

Ms. Jesse Kulendran: When the documents were disclosed to the committee, my understanding is the Ontario Power Authority directly disclosed them to the committee on August—

Mr. Victor Fedeli: Not to the ministry.

Ms. Jesse Kulendran: On August 24—

The Vice-Chair (Mrs. Laura Albanese): Mr. Fedeli, the witness is under oath—

Mr. Victor Fedeli: I understand.

The Vice-Chair (Mrs. Laura Albanese): —and we should allow her to answer fully your questions.

Mr. Victor Fedeli: I appreciate it. I’ll take care of my questioning, thank you.

Ms. Jesse Kulendran: Sorry. On August 24, copies were provided to the ministry of the following documents.

Mr. Victor Fedeli: So you’re suggesting, then, that not only did the OPA send the ministry the documents; they also sent the committee directly?

Ms. Jesse Kulendran: I don’t remember exactly when the Ontario Power Authority provided committee directly with those documents, but copies of those documents were provided to the ministry on August 24 for the ministry’s review, and that’s all. It was not disclosure at that time.

Mr. Victor Fedeli: So down at the end it says, and this is that September 20, “All that to say, the ministry has two sets of unredacted documents for SWGTA and Greenfield South. I am sure ... Jesse Kulendran can let you know where the documents are.”

Ms. Jesse Kulendran: I believe it says, “I am sure Halyna or Jesse Kulendran can let you know”—

Mr. Victor Fedeli: Yes, so you know where the documents are.

Ms. Jesse Kulendran: Those documents were delivered to the ministry on August 24. They were kept in the ministry at that time. This—

Mr. Victor Fedeli: Unredacted at that time?

Ms. Jesse Kulendran: Correct. As I understand, that’s Ms. Jenkins’s note. This email was September 20. At that point, Mr. Fedeli, I was not in the deputy minister’s office. The documents were delivered to the ministry and they were kept at the ministry as a copy, but I don’t know where they were on September 20.

Mr. Victor Fedeli: Where were you on September 20?

Ms. Jesse Kulendran: I was in my current position as the acting manager for conservation policy.

Mr. Victor Fedeli: Why would they think that “Jesse Kulendran can let you know where the documents are”?

Ms. Jesse Kulendran: Because I was there when the documents were delivered on August 24.

Mr. Victor Fedeli: Okay. So the ministry at this time has the two sets of unredacted documents?

Ms. Jesse Kulendran: Yes. On August 24, the ministry received two copies of unredacted documents.

Mr. Victor Fedeli: Okay. What happened to those copies? Do you know?

Ms. Jesse Kulendran: I do not know for certain, so I'm not in the best position to answer this, but my understanding is that at some point after the ministry's review, once the documents had been tabled with committee, the copies were in fact returned to the Ontario Power Authority.

Mr. Victor Fedeli: Okay. You characterized yourself a couple of times in the discussion as "the OPA decided" or "I didn't do it" or "I had limited involvement" or "my involvement was minimal"—that type of thing. Yet there are literally hundreds of documents with your name on them, many of them originating from you. I would characterize that you had a little bit more involvement than "limited." Some of them, you're actually directing the discussion.

On document 2, from you to the Halyna that you mentioned: "We have a very small circle working on this—you, Rick, Garry and three people from the OPA."

Continuing on document 2, by the looks of it, there are more confidential documents, again issued from you to other people, such as David Lindsay or Rick Jennings, these other types—Halyna. They're from you. You're the point person in all this.

If you look at document 7—again, this is from you. This is a very detailed one. You're in control here of these documents and the content of some of them as well. The middle of it, where you've sent an email to Ryan King and Doug MacCallum and others—this is PC doc 7: "Should we perhaps add one more row to this comparison—what percentage of the time was/is the plant expected to operate (i.e. X% of hrs/year)." That's pretty detailed, to be right in the midst of all of these documents. You're in the middle of all this. You're controlling some of the content that went into some of the documents here on Greenfield versus Oakville. I'm just not sure that your earlier characterization of "limited involvement" or "on the fringes" is accurate.

Ms. Jesse Kulendran: I'm happy to respond to that. My characterization, Mr. Fedeli, was related to my involvement in the document search for the period of time that the committee motion was being processed and the ministry was working to produce documents for the committee. So that was my characterization of my involvement in that period of time.

As I did say in my statement, I did work for the deputy minister's office in 2010, and during that role—I'm happy to discuss my responsibilities at that time. At that time, as a policy coordinator in the deputy minister's office, I did coordinate documents, minister's office's request communications material and a number of those things. So, as I said, my involvement in the document search was limited. I did not provide any direction to the power authority. But what these documents represent is a different period of my career and my position in the deputy minister's office in 2010.

Mr. Victor Fedeli: So if we look at document PC 5—the third page of the document. This is one of the docu-

ments that we received that has been redacted. On page 3: "Are you moving the gas plant back to Mississauga? Or elsewhere in the GTA?" The answer has been redacted. Do you recall what the answer to that would have been or why it would have been redacted or who did the redaction of that one? Do you have that document there?

Ms. Jesse Kulendran: I do have the document. I'm looking at page 3.

Mr. Victor Fedeli: So you see the black lines I'm referring to?

Ms. Jesse Kulendran: Correct. This is a document from 2010. Unfortunately, I'm sorry; I do not remember the answer for that question 6. I did not redact this document, and I'm not certain as to who did the redactions of documents—

Mr. Victor Fedeli: You sent this. This is from Jesse Kulendran to a Maryanna Lewyckyj. There's one of the documents in there. You've obviously sent this on to somebody. Can you undertake to provide the original document from your email?

Ms. Jesse Kulendran: Certainly, I can work with the ministry to do that. I believe this document was provided by Carolyn Calwell—at the top of it. So I can undertake to work with the ministry to provide this document.

Mr. Victor Fedeli: But you're on it as well. It's in your computer.

Ms. Jesse Kulendran: Again, I would have to go and confirm that I still have it, but I'm happy to do that.

Mr. Victor Fedeli: Okay. Can we set that up at the end of this session as well, Chair?

1030

The Vice-Chair (Mrs. Laura Albanese): Yes, we can.

Mr. Victor Fedeli: On PC document 6, it talks about Project Oak. What's Project Oak? That's a new word for us today.

Ms. Jesse Kulendran: Sorry—

Mr. Victor Fedeli: PC document 6.

Ms. Jesse Kulendran: Are we looking at—oh, okay, the title of the email. I believe that was a reference to Oakville as well.

Mr. Victor Fedeli: You're in this document as well.

Ms. Jesse Kulendran: Yes.

Mr. Victor Fedeli: "How are we doing with the 'Project Oak' piece?"

Ms. Jesse Kulendran: This was during my tenure in the deputy minister's office in 2010.

Mr. Victor Fedeli: This document talks about the \$200 million that's going to be needed to be incurred by Hydro One, including costs in Oakville, to connect the transmission line. Is that not correct?

Ms. Jesse Kulendran: If you're referring—

Mr. Victor Fedeli: Page 2 of that one.

Ms. Jesse Kulendran: Page 2 of Mr. Jennings's email? Yes.

Mr. Victor Fedeli: PC document 6, Project Oak. If you go to the next page, it says: "How are we doing with the 'Project Oak' piece?" Then it talks about the fact—

there's a table comparing options etc. Do you see that? Do you have that one there?

Ms. Jesse Kulendran: I do.

Mr. Victor Fedeli: The second sentence: "In summary, if the Oakville plant is not built, transmission costs of \$200 million will need to be incurred by Hydro One," etc. Is that your understanding as well?

Ms. Jesse Kulendran: I was not the policy person on this file. This email is from Mr. Jennings.

Mr. Victor Fedeli: Why are you included in it?

Ms. Jesse Kulendran: I was copied because of my responsibilities in the deputy minister's office. My responsibility was a policy coordinator. I wasn't providing advice or information.

Mr. Victor Fedeli: If you go to—how much time do I have, Chair?

The Vice-Chair (Mrs. Laura Albanese): You have less than two minutes.

Mr. Victor Fedeli: Okay. You do understand why we're here; right?

Ms. Jesse Kulendran: Absolutely.

Mr. Victor Fedeli: The Speaker has found a prima facie case of a breach of privilege. We're here to determine whether there's a contempt of Parliament. Basically, we're here to find out two things: how much this is going to cost the taxpayer and who ordered the cover-up. We're trying to find out who's responsible. To be quite frank, you're in a lot of these documents and we're trying to determine your role. You characterize it as minor, yet you're directing some of these things. We're very concerned that—

Ms. Jesse Kulendran: I'm happy to speak to my role, Mr. Fedeli, in the deputy minister's office in 2010.

Mr. Victor Fedeli: I haven't asked a question yet, but I'm going to get around to it in a second.

Ms. Jesse Kulendran: Sorry.

Mr. Victor Fedeli: It appears that you're in the centre of a lot of these things, especially the Kristin Jenkins original email where she claims that it's clear that you "directed us to exclude" the southwest GTA. That's still a very concerning document where she claims to have the documents backing that up and can show us those documents. I'll ask you again: How would you characterize Kristin Jenkins's email to you?

The Vice-Chair (Mrs. Laura Albanese): You'll have to hold on to that thought and pass it now on to the NDP side, Mr. Tabuns.

Mr. Peter Tabuns: Thank you, Chair. Ms. Kulendran, the documents that you were shown on August 22—you have clear recollections of being shown documents relating to Atikokan?

Ms. Jesse Kulendran: Correct.

Mr. Peter Tabuns: And another related to Thunder Bay.

Ms. Jesse Kulendran: I believe so.

Mr. Peter Tabuns: You were meeting with two senior members of the Ontario Power Authority. They were talking about whether documents were relevant or irrelevant. I may be wrong, but I would think that they would

have known already if a document like that was irrelevant. Why were they bringing it to your attention?

Ms. Jesse Kulendran: They were not bringing it to my attention, Mr. Tabuns. As I had indicated, the Ontario Power Authority had not done a review of these documents, as Ms. Jenkins indicated to me. The documents were reviewed by the ministry, the minister's office, and at that time the ministry was asked to meet with the Ontario Power Authority to share some of the observations that were made. I assume that, had the Ontario Power Authority reviewed the documents themselves before that meeting, they would have also noticed documents that weren't relevant—potentially not relevant.

Mr. Peter Tabuns: In the email from October 3, Kristin Jenkins writes, "As you are aware, both Ziyaad and I have been clear that this is in fact what Jesse Kulendran told us to do at the meeting on August 22"—that is, exclude documents, exclude attachments where the cover email didn't mention Oakville or Greenfield South. Why would they lie about this?

Ms. Jesse Kulendran: I can't speak to why Ms. Jenkins wrote this memo. I can continue to speak to the fact that I did not direct the Ontario Power Authority. The meeting was about sharing observations that had been made in their documents. It was not about providing any rules or any direction to them to exclude or include anything. In fact, the review of documents presented that most of the documents were relevant. There were 15, 20 documents that had some question marks, and those were discussed with the Ontario Power Authority, but the Ontario Power Authority, as I circulated in that email on September 20, did make its own decisions.

Mr. Peter Tabuns: Well, if they were discussing documents with you and they came across a document that had to do with Atikokan and nothing to do with either Greenfield South or southwest GTA, my assumption is that they didn't need to discuss it with you.

Ms. Jesse Kulendran: That would be correct. But again, my understanding, when Ms. Jenkins joined the meeting with me, is that they had not reviewed the material that they had provided to the ministry. So at that time, it was the ministry that had reviewed the material—the minister's office reviewed the material—and we provided a few observations. They probably would have come to that conclusion had they reviewed it, but at that time, they had not.

Mr. Peter Tabuns: If I remember correctly, you said that there was about a half banker's box of documents, and there were roughly 15 that had been earmarked. That's your representation of the facts?

Ms. Jesse Kulendran: Yes. Those were the Oakville non-privileged documents. It was half the size of a banker's box. I believe the privileged documents were much more. There were about 15 or 20 documents that had been flagged, and that's based on my recollection.

Mr. Peter Tabuns: So if there were only 15 or 20 documents, I would have thought that they would have figured it out, if these documents were irrelevant. They didn't need to talk to you.

Ms. Jesse Kulendran: Had they undertaken the review, they would have figured it out. And in fact, I think they went back and reviewed their whole set of documents from beginning to end, and probably likely found other documents that may not have been relevant to the motion. I do not know that for certain; we simply reviewed one subset.

Mr. Peter Tabuns: Yes, but your testimony is that these documents were already marked. What you've said to us earlier is that there were 15 or 20 documents that had Post-it Notes. Yours is a very different version from what they have to say.

Ms. Jesse Kulendran: Correct.

Mr. Peter Tabuns: The ones that you remember clearly referred to Atikokan and Thunder Bay.

Ms. Jesse Kulendran: Those were two examples of what I remember, yes.

Mr. Peter Tabuns: Yes. So if they had already gone through and they had noted that, I expect they would have understood on their own that these were irrelevant.

Ms. Jesse Kulendran: Had they reviewed them on their own before that meeting, I expect that they would have understood that they were not relevant.

Mr. Peter Tabuns: And since they have fairly senior positions, my sense was that in fact they would have known they were not relevant. So I'm very puzzled as to why they would discuss it with you at all.

Ms. Jesse Kulendran: The genesis for the meeting, again, was the fact that the minister's office had reviewed the documents, had indicated that they had noticed there were some non-relevant documents included and had asked the ministry to have this meeting with the OPA. I did not make the call to set up that meeting, but in indicating to the Ontario Power Authority that we noticed some non-responsive documents were included, they came because they had not done a review of their documents at that time. So at that time, they sought our observations. Then my understanding is, Ms. Jenkins and Mr. Mia went back and in fact did undertake a review of the documents.

Mr. Peter Tabuns: Kristin Jenkins writes, "After our meeting yesterday, I followed up with Ziyaad, who reminded me that at the August 22 meeting, Jesse requested that we go page by page through OPA's non-privileged Oakville documents. During this page flip, Ziyaad and I put Post-it Notes on the documents based on the direction Jesse was giving us during the meeting." In fact, what she's saying is directly contrary to what you're saying, and—

Ms. Jesse Kulendran: Unfortunately, yes.

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Mr. Peter Tabuns: Are you saying that she's lying, that she's putting forward a false statement in this email?

Ms. Jesse Kulendran: I am not sure why Ms. Jenkins characterized the meeting as she did, but I am saying that I did not provide direction to the OPA.

In fact, it was not myself who asked to go page by page. When we began that meeting, Ms. Jenkins and Mr. Mia sat down, and she indicated to me that the Ontario

Power Authority had outsourced the search to a third party. She indicated to me that they had not reviewed the materials before providing a copy to the ministry. In fact, she asked if we could go page by page, as it would be helpful to her. I had no objective for going page by page; I had 15 or 20 flags that were my responsibility to share with the OPA. That was the end of my responsibility. It was Ms. Jenkins who sought to go page by page.

Mr. Peter Tabuns: She writes, "Not only is it apparent from the Post-it Notes that Jesse directed the OPA to exclude attachments where the correspondence itself was not responsive, it's also clear that Jesse directed us to exclude SWGTA." That's a pretty substantial statement.

Ms. Jesse Kulendran: I understand that, and I understand that Ms. Jenkins put the Post-it Notes on the documents herself, that those Post-it Notes at that time would have been reflective of the conversation we were having.

Now, I did not direct the OPA. I did not make any blanket rules for the OPA. I do not have the authority to direct the OPA to exclude documents. It is unfortunate that Ms. Jenkins made these allegations. They are inconsistent with the two emails that I provided earlier, which indicated that the Ontario Power Authority made these decisions on their own. In fact, her allegations are also inconsistent with the Ontario Power Authority's Q&As that were provided—I can't remember by whom—dated October 1.

Mr. Peter Tabuns: No, I've seen the OPA Q&As. That's going to be substance for another line of questioning and another witness.

This meeting was fairly substantial given the political pressure surrounding it. Why didn't you reschedule the meeting for counsel to be present?

Ms. Jesse Kulendran: Absolutely. When I was notified on the morning of the 22nd that counsel was not able to be present at that meeting, I was encouraged by counsel to proceed with the meeting and advise the OPA that, should they require any clarity, any follow-up questions—anything at all—they should, in fact, contact our legal services branch. It was about a time constraint at that time. So I was encouraged to go ahead with the meeting, indicating, of course, that these were the ministry's observations as had been marked by the minister's office and that this was not about providing direction, and should they require any clarity or any follow-up that they should seek advice from our legal services branch.

Mr. Peter Tabuns: Can you tell me who prepared you for today's testimony?

Ms. Jesse Kulendran: Absolutely. I did have a couple of meetings with the Ministry of the Attorney General—

Mr. Peter Tabuns: Who?

Ms. Jesse Kulendran: Sorry. It was Chantelle Blom and Walter Myrka—I can't remember his last name; I can clarify. It was about my requirements at committee, my obligation under oath and how to ensure that I was articulating my thoughts—

Mr. Peter Tabuns: Anyone from the Premier's office or Cabinet Office?

Ms. Jesse Kulendran: No.

Mr. Peter Tabuns: Any other staff that you worked with? Anyone from the Liberal Party? Anyone else who prepared you for this?

Ms. Jesse Kulendran: I did not get prepared by the Liberal Party. I did not get prepared by fellow staff. I got lots of helpful advice, but no preparation, no.

The Vice-Chair (Mrs. Laura Albanese): We will now turn it to the government side.

Mr. Bob Delaney: Okay. A few points that I think we just want to clarify and clean up on.

In a letter to the Clerk on October 12, the Deputy Minister of Energy wrote the following: “The only redactions in the September 24 disclosure package and the documents attached to this letter pertain to information unrelated to the cancellation of the Mississauga or Oakville power plants that is unresponsive to the May 16 motion of the committee.”

I’ve heard my colleagues opposite claim repeatedly that responsive information was redacted, yet the deputy himself affirmed that this was not the case.

In your recollection, was material responsive to the request of the Standing Committee on Estimates redacted?

Ms. Jesse Kulendran: I was not there at the period of time that any redactions to documents took place.

Mr. Bob Delaney: Well, let’s try it another way. What would be an example of something that would be non-responsive?

Ms. Jesse Kulendran: I imagine if it had to do with another matter that the Ministry of Energy was working on. Perhaps it was a renewables file, etc.

Mr. Bob Delaney: Okay. Although you’ve said this before, who had the final say and the final decision-making authority on something in a document being responsive or non-responsive?

Ms. Jesse Kulendran: In the ministry’s documents?

Mr. Bob Delaney: Yes, in the documents that you were looking at at the time.

Ms. Jesse Kulendran: So this is not the Ontario Power Authority’s documents; it’s about the ministry’s.

Mr. Bob Delaney: In the ones that you were looking at during the time period in question, who would have had the final say and decision-making authority on something in a document—

Ms. Jesse Kulendran: I’m not sure, because I wasn’t there for the final period of time. I know for certain that I did not personally make any decisions on documents that were or were not responsive.

Mr. Bob Delaney: Okay. Again, just to clarify: I heard Mr. Fedeli directly say that you actually controlled the content of the documents rather than searching for documents that responded to the estimates committee’s request. Although you’ve clarified it before, would you clarify it again?

Ms. Jesse Kulendran: I’m sorry. Could you repeat that question? Sorry.

Mr. Bob Delaney: Okay. Mr. Fedeli suggested that you actually controlled the content of the documents

rather than searching for documents that responded to the estimates committee’s request.

Ms. Jesse Kulendran: Correct. During the period in August, I did not directly control any content. In 2010, when I was in the deputy’s office and when the decision was made on Oakville, yes, there are records where I was in the deputy minister’s office and helping share materials that were being prepared.

Mr. Bob Delaney: Okay. And just toward the end of your comments with Mr. Tabuns, you said that you had some helpful advice. What do you mean by “helpful advice”?

Ms. Jesse Kulendran: “Stay calm. Speak clearly. Sit up straight. Speak loudly.” That’s one I always get reminded about.

Mr. Bob Delaney: Well, I’d have to say you took that helpful advice.

Ms. Jesse Kulendran: Thank you.

Mr. Bob Delaney: Chair, I think we’re done.

The Vice-Chair (Mrs. Laura Albanese): Thank you, Mr. Delaney. We’ll now turn again to the PCs. Mr. Leone?

Mr. Rob Leone: Thank you. Ms. Kulendran. I want to ask you some questions about your past involvement with the Liberal Party. You stated that you were a staffer in a member’s office and a minister’s office. Were you ever a member of the Liberal Party?

Ms. Jesse Kulendran: During the term of my employment, I believe I did have a membership.

Mr. Rob Leone: Have you ever donated to the Liberal Party?

Ms. Jesse Kulendran: Prior to my joining the public service, yes, I have.

Mr. Rob Leone: And would you characterize that you maintain a close relationship with people in the Liberal Party today?

Ms. Jesse Kulendran: I have a number of colleagues who have left the Liberal Party whom I worked with at that time, that I maintain contact with occasionally.

Mr. Rob Leone: So only people who have left the Liberal Party, you’ve maintained contact with? No one who is still part of the government? You don’t meet them for—

Ms. Jesse Kulendran: For dinner?

Mr. Rob Leone: —cocktail hour or dinner?

Ms. Jesse Kulendran: I don’t recall.

Mr. Bob Delaney: Chair, what does this have to do with the subject under discussion?

Mr. Rob Leone: I’m allowed to ask these questions. I think this is—

Mr. Bob Delaney: You’re not allowed to go beyond the scope of the discussion.

Mr. Rob Leone: And we are establishing questions, and I think this time is totally out of order.

Mr. Bob Delaney: In this case, the witness’s personal life is her own life. You can ask her about the documents but not about her personal life.

Interjections.

The Vice-Chair (Mrs. Laura Albanese): It's within the scope of the motion.

Mr. John Yakabuski: Sit down, Bob, and shut the hell up. We're wasting our time.

The Vice-Chair (Mrs. Laura Albanese): Let's not be unparliamentary. Let's all be respectful.

Mr. John Yakabuski: He plays this game all the time, Chair.

The Vice-Chair (Mrs. Laura Albanese): Let's be respectful.

Mr. Rob Leone: We are totally within the rights of asking this question.

Jesse, your testimony today, what we do know of it—we know that you are a former Liberal staffer. We know that you attended, as you've mentioned, a meeting that the legal services branch organized yet no person from the legal services branch attended, so essentially you attended alone.

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You were, in many ways, selected to be the point person on this file, particularly with respect to the documents and the disclosure of documents. You've suggested that there has been no documented strategy on the release of documents. That's something that you said earlier today. You stated that you chatted with Ryan Dunn—and who is Ryan Dunn again?

Ms. Jesse Kulendran: He was a minister's office policy adviser.

Mr. Rob Leone: Minister of Energy?

Ms. Jesse Kulendran: Yes.

Mr. Rob Leone: All right. And you've stated that you've communicated something—you had conversations with him but nothing was put in writing, I believe is what you stated earlier.

Ms. Jesse Kulendran: I believe that was in response to whether the minister's office had any records, and yes, that was a verbal discussion. There was no written record of that.

Mr. Rob Leone: So there's nothing documented in writing at all.

Ms. Jesse Kulendran: In relation to that discussion, correct.

Mr. Rob Leone: At all? I mean, period, between you and Ryan Dunn?

Ms. Jesse Kulendran: For the course of my employment with the deputy's office?

Mr. Rob Leone: With respect to the issue we're dealing with here, with the disclosure of documents.

Ms. Jesse Kulendran: I don't know. I know that in relation to the request about whether or not the minister's office had records, I do not have a written record of that.

I did work with Mr. Dunn for the ministry's appearance at estimates committee, so there would be emails from the ministry's preparation for estimates committee at that time.

Mr. Rob Leone: Right. Did you know Ryan Dunn prior to this?

Ms. Jesse Kulendran: Prior to his employment at the Ministry of Energy? No.

Mr. Rob Leone: Prior to your discussion with him with respect to document disclosure.

Ms. Jesse Kulendran: I worked with him at the Ministry of Energy, yes. He was in the minister's office for a period of time.

Mr. Rob Leone: You've contradicted a written memo—well, obviously, you contradicted—a memo by Kristin Jenkins that we've had a lot of discussion about today. Mr. Tabuns asked if you think Ms. Jenkins is lying, but the fact remains that there's a contradiction between what Ms. Jenkins has written and what your testimony has provided today. We also know that you were under investigation when Secretary Wallace was here. He stated such, and you've confirmed that you are under investigation as well with respect to some of your involvement in the allegations that have been made.

The point that I'm trying to make here—and to address Mr. Delaney's interjections—is the fact that we have someone who's a known Liberal contradicting the written memo by the Ontario Power Authority, the arm's-length body that is supposed to be dealing with this matter. We are, as a committee, set to determine who, in fact, we should believe: Ms. Jenkins, who I'm sure will be testifying to the comments that she has made, or you. If your links to the Liberal Party are as strong as I believe they are, that does affect the currency we effectively place on your testimony today because we're putting your word against, frankly, Ms. Jenkins's. So who are we to believe? Are we to believe Ms. Jenkins or you?

How do you react to what I have just said?

Ms. Jesse Kulendran: Certainly, I am currently under oath and testifying before this committee under oath, committing to you to provide the truth about my recollection with the meeting with Ms. Jenkins on August 22.

As to my former ties to the Liberal Party, I was a political staffer for three years. During that time, I was involved in the Liberal Party. Since 2008, I have been a public servant and have maintained the values of the public service. I have acted in good faith, and this is not about my political experience in the past.

Mr. Rob Leone: But, again, you were the person selected to be the point person on this document search.

Ms. Jesse Kulendran: Again, Mr. Leone, I was there for a period of time, so I do not consider myself the point person on the document search. I helped in May, when the document search began, and again in August as there was preparation for the release of documents. I was there for roughly a week. I understand that the documents were released in September and again in October, and I was not involved in either of those.

Mr. Rob Leone: But again, we go back to the written memo from Ms. Jenkins, who states that, "Jesse directed the OPA to exclude detachments where the correspondence itself was not responsive ... it is also clear that Jesse directed us to exclude SWGTA," southwest GTA. So we are now again at a crossroads here with your testimony and with what we have seen here. We are again, I guess, questioning the credibility that you have in terms of your

word being simply against Ms. Jenkins. The fact is that even given your testimony, there's a lot that's put on your shoulders with respect to this.

As Mr. Fedeli was pointing out in his concluding remarks in the last 20-minute session on our round, this is a serious discussion that we're having with respect to contempt of Parliament. We're investigating whether contempt does in fact exist. Anybody could be subject to such a charge. It's not simply the minister; it could be any individual who effectively directed the exclusion of documents or in fact the cover-up of these documents, and you're right at the centre of that.

Ms. Jesse Kulendran: Again, I can say that I do not have the authority to direct the OPA. In fact, the two emails that I circulated, dated August 24 and September 20, indicate that the Ontario Power Authority made its own decisions. In fact, the Ontario Power Authority's Q&As also indicate that they made their own decisions. So I did not direct the Ontario Power Authority to exclude any documents, Mr. Leone. We did discuss observations that were made in a small subset of their documents, but that was a joint discussion. In fact, in that meeting, Ms. Jenkins sought to take out a document that was potentially relevant and of a personal concern to her related to an HR matter. Now, we never actually saw that document so it was not a point of discussion, but I can say that I acted in good faith in that meeting and I did not direct the Ontario Power Authority to remove any documents.

Mr. Rob Leone: At the end of the day, again, you're at the centre of this conundrum—

The Vice-Chair (Mrs. Laura Albanese): You have about a minute.

Mr. Rob Leone: —and we are again tasked with doing this.

You attended a meeting that was, again, organized by the legal services branch without someone—a lawyer, essentially—with you. Do you think that that was a mistake?

Ms. Jesse Kulendran: In hindsight, certainly, it would have been better for a legal counsel to have been there in light of the false allegations that have been made against me, absolutely. However, I was asked to proceed with that meeting.

Mr. Rob Leone: And at the end of the day you did proceed with that meeting, and an investigation was commenced, as secretary Wallace has suggested. He also stated in his testimony that nothing conclusive was found either to disprove or prove the allegation. So, again, this is about your word against the word of the OPA. I guess I don't have enough time to ask a question with respect to that, but this is the conundrum that I think you're in.

Ms. Jesse Kulendran: I understand.

The Vice-Chair (Mrs. Laura Albanese): Time is up. Ms. Kulendran—

Mr. John Yakabuski: Chair, I would like to raise a point of order.

The Vice-Chair (Mrs. Laura Albanese): I would just like to officially dismiss our witness. Thank you for appearing before the committee today. Thank you for your time.

Ms. Jesse Kulendran: Thank you, Chair.

The Vice-Chair (Mrs. Laura Albanese): Yes, Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much. Chair, Mr. Delaney seems to be bent on repeatedly interrupting the course of questioning on the part of us, the official opposition, when he seems to think—he must think he's a lawyer—that he's defending the witness before the committee. I have yet to see one occasion where his interjections have been ruled in order. I would expect, Madam Chair, that if he continues to do this, that any time being used—I think it is reasonable to ask that that be added to the time of the party that's being interrupted because it's just a little game that he continues to play, acting like he has some legal knowledge about what we can or cannot do, which every time he's wrong. Every time, he's ruled that he's not in order.

Mr. Bob Delaney: Chair?

The Vice-Chair (Mrs. Laura Albanese): One at a time. Mr. Yakabuski, you mentioned that it was repeatedly; I do not find that. It was only once that we were called on that today.

Mr. John Yakabuski: Once today.

The Vice-Chair (Mrs. Laura Albanese): And I can also say that you were unparliamentary beforehand, so I would—

Mr. John Yakabuski: Fine, Chair. I apologize for that. That's got nothing to do with my request about muzzling Mr. Delaney.

The Vice-Chair (Mrs. Laura Albanese): It's not a point of order, and I would like to move forward.

Interjection.

The Vice-Chair (Mrs. Laura Albanese): Yes, that's exactly where I was going. The Clerk was saying, "Encourage all members to be honourable." That's what I would like to do and then move forward.

First of all, we need to deal with a motion that was put forward by Mr. Leone. It was moved on March 21. It had been deferred, and Mr. Leone would like to know how we'd like to deal with that.

Mr. Rob Leone: Madam Chair, I'd like to withdraw that motion until we've adjusted it for a proper re-presentation.

The Vice-Chair (Mrs. Laura Albanese): Thank you. That's duly noted.

We'll now move to a motion by Mr. Tabuns. I believe we all have a copy of that. This is before the floor.

Mr. Peter Tabuns: If I can move it.

The Vice-Chair (Mrs. Laura Albanese): Yes. You have to move it.

Mr. Peter Tabuns: I move that the Ontario Power Authority produce the documents annotated by Jesse Kulendran in her meeting of August 22, 2012, with Kristin Jenkins and Ziyad Mia.

If you will remember, Chair, I asked Ms. Kulendran for a copy of her notes from that meeting. She said that she had inscribed notes on documents that were no longer in her possession, if I remember her comments correctly. Those documents had been turned over to the Ontario Power Authority, and they are the appropriate body to produce them to us.

The Vice-Chair (Mrs. Laura Albanese): Any debate? So we'll then proceed—

Mr. Bob Delaney: Chair?

The Vice-Chair (Mrs. Laura Albanese): Mr. Delaney?

Mr. Bob Delaney: A 10-minute recess, please.

The Vice-Chair (Mrs. Laura Albanese): The committee is recessed for 10 minutes.

The committee recessed from 1101 to 1113.

The Vice-Chair (Mrs. Laura Albanese): We have a motion on the floor, presented by Mr. Tabuns. It is in order. Any discussion?

Mr. Bob Delaney: Chair, just a recorded vote.

Ayes

Cansfield, Delaney, Fedeli, Leone, Schein, Tabuns, Yakabuski.

The Vice-Chair (Mrs. Laura Albanese): I declare the motion carried. The motion is carried.

I believe that that's it for today. This committee will reconvene on Tuesday, next Tuesday, April 9, at 8:30 a.m. Adjourned.

The committee adjourned at 1114.

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