



**Legislative Assembly
of Ontario**

Second Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 40^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 7 May 2013

**Journal
des débats
(Hansard)**

Mardi 7 mai 2013

**Standing Committee on
Justice Policy**

Members' privileges

**Comité permanent
de la justice**

Privilèges des députés

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
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
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Tuesday 7 May 2013

Mardi 7 mai 2013

The committee met at 0828 in room 151.

MEMBERS' PRIVILEGES

MR. DALTON McGUINTY

Le Président (M. Shafiq Qadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochain présentateur, le député de l'Assemblée législative pour la circonscription d'Ottawa-Sud et l'ancien premier ministre d'Ontario, the Honourable Dalton McGuinty.

Mr. McGuinty, I would invite you to please be sworn in by our 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. Dalton McGuinty: I do.

Le Président (M. Shafiq Qadri): Merci, monsieur McGuinty. Comme vous le savez, vous avez cinq minutes pour vos remarques introductives. Je vous invite à commencer.

Mr. Dalton McGuinty: Merci, monsieur le Président. Good morning and thank you for this opportunity. I wanted to appear before you this morning to tell you why I made the decision to relocate two gas plants and how I came to realize that the communities of Mississauga and Oakville were right and that our government was wrong.

I've always believed that leadership is about trying to do what's right in any situation. That ultimately is what the people of Ontario elect all of us to do. That's what leadership means to me. Whether it's tax reform like the HST or energy infrastructure like gas plants, Ontarians should be able to count on us to do the right thing.

In Oakville and Mississauga, we were faced with a circumstance where gas plants were sited right next to schools, condominium towers, family homes and a hospital. That wasn't right. All parties agreed on that, and we needed to fix it. We all agreed on that too. Most importantly for me as Premier was to acknowledge our mistakes and fix them. We got 17 gas plants right, but we got Oakville and Mississauga wrong, so we needed to fix that.

Moving two gas plants cost more than any of us would have liked, and in return, for the next 20 years children won't be going to their neighbourhood school in the shadow of a smokestack, a polluted airshed won't be-

come more polluted and we'll still have enough electricity to power our homes and economy.

There are two developments which, for me, dramatically changed the public policy environment that governs acceptable locations for gas plants. First, in 2009, our government brought in some of the toughest rules in the world relating to wind turbines. Our new law in Ontario requires that wind turbines not be located within 550 metres of a residence. But at that time, no mandatory setback was introduced for gas plants, and we still don't have one. In the case of the Oakville gas plant, this meant that in a location that could not legally accommodate one wind turbine, we were planning to install a 900-megawatt gas plant—that's one of the biggest in North America—400 metres from the nearest home, 320 metres from the nearest school and 65 metres from the closest offices.

The second change in our public policy environment happened in 2010, when a private member's bill gained unanimous support for creating mandatory setbacks for gas plants. MPPs were rightly giving expression to new public expectations, and leadership required that I make the right decision based on our new laws and our new expectations. That's why, in the fall of 2010, I decided it was right to move the Oakville plant—a decision supported by all parties. In 2011, we were again presented with a difficult choice: a gas plant project in Mississauga that had been dormant for over five years had come to life. An evaluation was undertaken by the Ministry of the Environment to determine if environmental approvals should be rescinded. But it was determined that the minister had no ability to rescind approvals, despite the fact that this gas plant was to be located near a hospital, in a residential community and where two new condominium towers were being built. Again, not a single emission-free wind turbine could have been built on that site. This all happened in the run-up to the election campaign. When the campaign began, the people of that community repeated their argument that the plant didn't belong there, and we all listened. All three parties recognized the people of Mississauga were right and that my government was wrong. And all three parties promised to cancel the plant, if elected.

I made the decision to relocate two gas plants because it was the right thing to do. I want to acknowledge that the cost to move these plants is higher than anyone would have wanted. Our government's ability to get the right numbers out in a timely way has been less than stellar.

And we have struggled to produce documents in a timely way. All of this is true. But I strongly believe that locating these gas plants in those communities was wrong, and relocating them is right.

I'm pleased to take your questions.

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

I would now offer the floor to the PC side: Mr. Fedeli, 20 minutes.

Mr. Victor Fedeli: Thank you very much, Chair. Good morning, Premier.

Mr. Dalton McGuinty: Good morning.

Mr. Victor Fedeli: You have acknowledged that it's your decision to move the gas plants and I must say that, Premier, while you may have masterminded the heist, your henchmen committed the crime and drove the get-away car.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, I would once again invite you to use parliamentary language, particularly in this case, as we have a sitting MPP before us.

Mr. Victor Fedeli: Let's talk about the commitment of this scandal. If you look at your documents, page 5 of PC document 1, we're going to get to the people involved with you in the execution of this act. Do you have PC doc 1, page 5, there: "The following members of the executive council ..."?

Mr. Dalton McGuinty: Yes, I do.

Mr. Victor Fedeli: Could you read the members listed there who signified approval on July 29?

Mr. Dalton McGuinty: I'm reading from a cabinet document, I believe, Mr. Chair, and I'm pleased to say that this was made available by me at the request of the committee. The ministers mentioned in the document, of course, are Ms. Wynne, Mr. Duguid, Mr. Bentley and Mr. Duncan. This, as I recall, was to give life to a commitment made by all parties to proceed with the cancellation of the Oakville gas plant.

Mr. Victor Fedeli: Again, you masterminded this, but let's talk about the people who were involved with you in implementing this act. The first name that you mentioned was Ms. Wynne, our current Premier. Let me read from her testimony here: "I was part of the cabinet, and so I was part of implementing that decision and that meant that the document that I signed was part of that implementation of that decision."

So let's look a little deeper at her involvement that she testified to recently. On July 29, 2011, she signed the cabinet minute. On August 10, 2011, she reported in to cabinet; October 3, 2012, the report back from the treasury board re negotiations on the mandate approved for TransCanada; and October 20, 2011, a high-level discussion on the Mississauga cancellation. There are four more—on November 21, 2011, a \$10-million settlement for Keele Valley. November 24, 2011, the Minister of Energy provided a high-level update on the ongoing discussion between the OPA and Eastern Power. This is all the involvement of Premier Kathleen Wynne. Two more: May 30, 2012, involved in the update on the treas-

ury board negotiations to settle with EIG; and August 15, 2012, report on treasury board—order the approved \$180-million for Greenfield South and \$10 million for Keele Valley.

The next person you had mentioned was Mr. Duguid. His involvement we'll skip over for a moment, and go down to Minister Bentley, at the time the energy minister. Here's his testimony: "Over the coming days and weeks you will read and hear lots of numbers related to the cost of the plant relocation. The only accurate cost to taxpayers for this relocation is \$40 million."

The final one you mentioned was then-Minister Duncan. Here's his exchange in the estimates committee with NDP member Gilles Bisson. He asked what compensation was provided to Eastern Power, and Mr. Bisson talked about \$180 million. Then Mr. Duncan went on to say, "Oftentimes, there are variances on a project of that order of magnitude: it could come in at \$178 million; it could come in at \$182 million." Mr. Bisson asked him, "What about ... penalties?" Mr. Duncan's answer is, "Not that we're aware of." Mr. Bisson said, "So you're not expecting anything else other than minor variances over the \$180 million on Mississauga?" Mr. Bisson went on to ask, "Do you expect any additional claims or penalties?" The answer from Mr. Duncan was, "No. The \$180 million should cover all of that. That was part of the comprehensive agreement.

Finally, we have one more accomplice. That would be Mr. Colin Andersen. I asked him, "So you knew there were other costs—other than the \$40 million sunk costs—presumably in the hundreds of millions?" Mr. Andersen replied, "We all knew that those were going to be there and that they were going to be significant, yes." I asked him, under oath, "The government knew that the total cost was more than \$40 million," and his answer was, "Absolutely, yes."

So I say to you, Premier, when did you know and when did your cabinet know that the costs of Mississauga were more than \$180 million—\$190 million, as later reported—and more than \$40 million for Oakville?

Mr. Dalton McGuinty: Mr. Fedeli, you've provided me with a lot of information, and I understand that there's a certain narrative that you favour, but let me say this: Somebody once said, "We shouldn't try to outsmart the truth, we should just let it breathe." The truth of the matter is, I made a commitment to relocate two gas plants because I thought that was the right thing to do. I believe we all share the opinion that it would be entirely inappropriate to locate in any of our ridings large gas plants immediately adjacent to schools, homes, hospitals and offices. That would be inappropriate; it would be wrong. It's out of keeping with our modern-day standards of law and our expectations.

We have worked hard, sincerely, earnestly, as a government to deliver on those commitments. Have we done so perfectly? We have not. There has been, notwithstanding your intimations and direct allegations—subterfuge, conspiracy or malfeasance. There has been some stumbling along the way. There has been some ineffect-

iveness on our part. We have a government and a bureaucracy and an Ontario Power Authority that consists exclusively of people, with all their noble strengths and all of their human frailties.

0840

So you can lend whatever complexion you want to it, but at the end of the day, what we're talking about is a government that was working as hard as it could to deliver on a commitment to relocate gas plants that were wrongly located in the first instance.

Mr. Victor Fedeli: Premier, let me ask you the question again, then.

Mr. Dalton McGuinty: I regret that we did not locate those plants properly at the outset. I regret that it took us so long to move on these decisions, but those are the facts.

Mr. Victor Fedeli: Let me ask you the same question again, then. When did you know and when did cabinet know that \$40 million was not the number, and \$190 million was not the number?

Mr. Dalton McGuinty: We always relied on the \$40 million and the \$190 million. I can speak for myself. In my office, we don't have the capacity to make calculations associated with these kinds of contractual arrangements, or to make these kinds of estimates as to what ultimate costs might be. I knew going into this that when I said that we were going to relocate gas plants, I did not have at my hand the costs associated with that, that we were going to have to rely on the Ministry of Energy, and that there was going to have to be negotiations aided by the Ontario Power Authority, which would help us ultimately land on a particular figure. So the only figures that I used were those provided to me by the Ministry of Energy. Those were \$40 million. At one point I was told \$180 million. I think the following day I was told, "No, our new number is \$190 million." So I went out and said, "No, the number's not \$180 million, it's \$190 million."

I know there's been a tremendous amount of confusion around the numbers. Our primary source for these numbers has been the Ontario Power Authority.

Mr. Victor Fedeli: But Premier, the Ontario Power Authority has told us, under sworn testimony, "The government knew that the total cost was more than \$40 million." They also told us that it was your staff that was interfering in the negotiations.

So how can you say that they didn't know the cost was \$40 million, when it was indeed they who were doing the negotiating? And how can you say they didn't know it was \$190 million when it was indeed they who were interfering, as the OPA has said under sworn testimony; that your staff continued to interfere in the negotiations? They have sworn under testimony here that in July 2012, you would have known that the OPA had already paid \$245 million at the time of the \$275 million. That's sworn testimony that your office would have known that, and that your office would have known it was more than \$40 million.

I asked Premier Wynne 20 times in 20 minutes when did she know and when did cabinet know, and never got

an answer. With my caucus member Ms. MacLeod, we asked a total of 32 times in 30 minutes, the same question that you're evading.

When did you know and when did cabinet know that \$40 million was not the right number?

Mr. Dalton McGuinty: Any number that was publicly expressed by either the Ontario Power Authority or the Ministry of Energy that was different from \$40 million, I would have learned when you would have learned; when those numbers were made public.

Mr. Victor Fedeli: What you're saying is, your staff didn't tell you that they were negotiating all along with TransCanada and with Greenfield? There's sworn testimony—

Mr. Dalton McGuinty: No, there was no negotiation—

Mr. Victor Fedeli: There's sworn testimony—

Mr. Dalton McGuinty: My staff was not negotiating.

Mr. Victor Fedeli: There's sworn testimony that they were interfering.

Mr. Dalton McGuinty: My staff was not negotiating with TransCanada.

Mr. Victor Fedeli: So when the OPA told us that your staff was interfering in negotiations, that's not correct?

Mr. Dalton McGuinty: I had a couple of staff members who were screened out—

Mr. Victor Fedeli: Yes.

Mr. Dalton McGuinty: —for good reasons. But as I recall very distinctly, Mr. Jamison Steeve came to see me because he had received an overture from TransCanada, which basically said, "Can we chat about this?" My specific instructions to Mr. Steeve were: "Yes, okay, I think it's a good idea. Let's keep the lines of communication open, but you're there to listen. You can't enter into negotiations."

Mr. Victor Fedeli: So when Colin Andersen said that everybody in the government knew it was \$40 million, when you and your cabinet were involved in the signing of an MOU—the memorandum of understanding—that pegged this at more than \$40 million, you're still sticking to that \$40 million.

I'll ask you again: When did you know that the total number was higher than \$40 million and that the total number was higher than \$190 million?

Mr. Dalton McGuinty: When the auditor told us, and when the OPA changed its figures.

Mr. Victor Fedeli: Yet the auditor told us that you knew back in July that the OPA spent at that point—months before the announcement, they had already spent \$245 million, yet your ministers were out there swearing in estimates that it was \$190 million.

Mr. Dalton McGuinty: We were using the numbers that we were told were accurate.

Mr. Victor Fedeli: But you negotiated the memorandum of understanding that pegged it at more than \$40 million.

Mr. Dalton McGuinty: I didn't have access to those numbers. The numbers that I used—

Mr. Victor Fedeli: So your staff did.

Mr. Dalton McGuinty: The numbers that I used were the same numbers that Premier Wynne has used, that were made available to us by the Ministry of Energy. I can tell you that as a matter of practice, if I ever go out to a scrum to chat with the media about any particular number, I have the same question that I always have for my staff: “Are we sure of this number?” I mean, there’s a lot of interest in this particular issue, to say the least, so when they said, “It’s going to be \$40 million,” I said, “Are we sure of this number?” And the same with respect to the \$180 million. But then I learned later on that in fact we were not sure of the \$180 million, that it was then \$190 million.

Now, back to the OPA—

Mr. Victor Fedeli: So did anybody know what was going on?

Mr. Dalton McGuinty: Back to the OPA, if we might. At one point in time, we were told it was \$40 million. Then, I understand, more recently we were told, actually, by the OPA that it could be anywhere between \$33 million and, I think—

Mr. Victor Fedeli: And now \$310 million. Actually, \$1.1 billion minus \$700 million in savings. But Colin Andersen testified under oath last week—and I’ll quote: “Everybody” knew “including the minister,” that the Oakville tab would be more than \$40 million. That would include you and cabinet. Was Colin Andersen lying under oath?

Mr. Dalton McGuinty: My sense of what Mr. Andersen was saying in that—because I did not know and caucus did not know and cabinet did not know; I can assure you of that—was that perhaps the production of documents that had been made available, the memorandum of understanding itself and the contracts, somehow might have made this clearer.

One thing I did note with interest is that you had Minister Bentley here, I believe it was just recently; I reviewed his transcript in some detail. There were 12 pages devoted to the issue of costs. It appears to me that there are a number of different ways to in fact calculate these costs.

Mr. Victor Fedeli: Look, the auditor told us how we’re going to calculate this, so we’ll know that at the end. But let me repeat his one sentence: “Over the coming days and weeks you will read and hear lots of numbers related to the cost of the plant relocation. The only accurate cost to taxpayers for this relocation is \$40 million.” Your government continued to stand by the \$40-million number, even though you and your government knew that number was not true, because you and your government signed the MOU.

Mr. Dalton McGuinty: I don’t doubt Minister Bentley’s sincerity in making that statement then—

Mr. Victor Fedeli: But what about accuracy?

Mr. Dalton McGuinty: —but if you take a look at his testimony—

Mr. Victor Fedeli: I was there.

Mr. Dalton McGuinty: Right. And I read the transcript.

Mr. Victor Fedeli: Believe me, he sticks by the \$40-million—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, please allow the witness to answer at some point.

Mr. Dalton McGuinty: And what he’s saying is—

Mr. Victor Fedeli: Well, I’d like an answer to the question. I’ve asked the question several times: When did you know and when did your cabinet know the \$40 million and the \$190 million were not true?

Mr. Dalton McGuinty: When those were made public by the auditor.

Now, I want—

Mr. Victor Fedeli: Even though you negotiated the memorandum of understanding.

Mr. Dalton McGuinty: I want to return to the issue—

Mr. Victor Fedeli: But I’d like an answer for that.

Mr. Dalton McGuinty: I understand that.

Mr. Victor Fedeli: You negotiated the MOU that said it’s going to be higher than \$40 million. When did you know it was going to be higher?

Mr. Dalton McGuinty: You’re asking me a series of questions—

Mr. Victor Fedeli: One question: When did you know?

Mr. Dalton McGuinty: No—and you want to be selective in terms of which I answer. I’d rather answer them in order. So I want to come back to Minister Bentley and the sincerity with which he presented the information before this committee more recently. He talked, as I understand it—and you folks would have more expertise in this now than I, because of your opportunity to sit at this committee—about dividing the costs into two categories. One was essentially the sunk costs, for which there was no value received and returned. That would be, for example, the \$40 million. The other cost, he said, would form part of, I think his language was “a commercially reasonable new contract.” That’s how he divided those. So was the new contract more expensive than the old one? Yes, it was. And that’s how he divided up those costs.

The auditor obviously brings a different approach. I think at the end of the day, you and I should be relying on the auditor, and I’m pleased and proud of the fact that Premier Wynne has invited the auditor to take a look at both gas plants.

0850

Mr. Victor Fedeli: We asked your deputy minister—I asked him—Serge Imbrogno, did the minister know the full cost, the more than \$40 million full cost? Mr. Imbrogno’s answer, under oath, was, “We would have informed the minister of all ... components of those costs.”

You’re the one in the Legislature who continued to say, and in the Toronto Star wrote, “total cost,” not “sunk cost,” not, “There’s going to be more.” You, your minister, all your other people that were involved in this continued to say “total cost.” Now we know that that total cost is not true. I want to know, when did you know that total cost was not true, knowing that Serge Imbrogno

from your energy ministry and Colin Andersen from the OPA and dozens of other witnesses have sworn under oath that you and your cabinet would have known considerably earlier that that's not accurate? I want to know from you, what date did you know?

Mr. Dalton McGuinty: Now, you've asked me this question a few times. I'm going to give the same answer. Again, you keep saying that I'm not giving you an answer, but perhaps you don't like the answer. But—

Mr. Victor Fedeli: No, no. I don't believe the answer, to be perfectly frank. I don't believe your answer. We have sworn testimony from the most senior possible government officials that tell us you knew the answer earlier, yet you're sticking to the September 24 date.

Mr. Dalton McGuinty: Again, this may not accord with your narrative—

Mr. Victor Fedeli: Or the facts.

Mr. Dalton McGuinty: —but we shouldn't try to out-smart the truth.

Mr. Victor Fedeli: The truth of the sworn—are you telling me, Premier, that all—

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli, you've asked the question. I would invite you to please allow the witness to answer.

Mr. Dalton McGuinty: We should just—

Mr. Victor Fedeli: But I would like an honest answer. We've got a dozen witnesses who say one thing and the Premier—

The Chair (Mr. Shafiq Qaadri): That's also un-parliamentary and unbecoming for this committee, particularly with this witness, Mr. Fedeli.

Mr. Victor Fedeli: But we have a dozen witnesses who are swearing under oath to one thing and this Premier telling us another. I'm trying to get to the bottom of this, Chair.

I'll ask you again: When did you know and when did your cabinet know?

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

Mr. Dalton McGuinty: I knew of the latest number, which has now been made public by the auditor, when he made that number public. I knew of the differentiation from the \$40 million when the OPA changed its number for the, I guess it was, fifth time.

Mr. Victor Fedeli: But the OPA told us that there were buckets of costs, and Mr. Livingston told us that that memorandum of understanding was ratified by cabinet. That's before the public declaration of the \$40 million, so you and your cabinet must have known. According to Mr. Livingston, it was ratified. When did you know?

Mr. Dalton McGuinty: I'm telling you again, we found out about these numbers when they were made public by the OPA and when they were made public by the auditor. Prior to that time—

Mr. Victor Fedeli: So Shelly Jamieson is wrong; JoAnne Butler is wrong; Livingston is wrong; Imbrogno is wrong; Andersen is wrong. They're all wrong.

Mr. Dalton McGuinty: Prior to that time, the only numbers that I used were numbers that were given to me.

They were given to me by the Ministry of the Environment. I assumed they would go in concert with the OPA.

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

Mr. Tabuns, the floor is yours. Twenty minutes.

Mr. Peter Tabuns: Mr. McGuinty, good day.

Mr. Dalton McGuinty: Hello.

Mr. Peter Tabuns: The Oakville decision: Your story that you present is very different from what people in Ontario understand and certainly what we've come to understand as we've gone through documents. A private company brought forward a plan. They ran into huge difficulties dealing with Oakville. They came to you. It was clear that what they wanted was to have you overrule Oakville's municipal bylaws—pretty clear testimony from staff in your office. This posed huge political problems, problems related to your fortunes in the Oakville seat. Why did you, really, gamble on a billion-dollar expenditure in Oakville to protect the seat of one member?

Mr. Dalton McGuinty: Thanks for the question, Mr. Tabuns. I'm trying to be very clear that my motivation, both with respect to Oakville and Mississauga, had to do with the appropriateness of foisting gas plants into communities and in locations which threatened the health and well-being and environment of those communities. You would have heard, as I, from people living in the community. There were strong representations made. We were talking about, in the case of Oakville, a 900-megawatt gas plant being located on a site which could not lawfully accommodate a single wind turbine. Nine hundred megawatts would be one of the biggest gas plants in all of North America. It was going to be located near schools, offices, homes. That was unacceptable. You're very—

Mr. Peter Tabuns: You knew that already.

Mr. Dalton McGuinty: You're very familiar with the Clarkson airshed; you're very familiar that that was one of the most stressed airsheds in Ontario. You may even be familiar with the fact that the highest rate of childhood asthma is found in that community, in that airshed.

Mr. Peter Tabuns: Mr. McGuinty—

Mr. Dalton McGuinty: So when representations were made by the community, I didn't speak to the issues associated with the economic complexities and business issues associated with this; my concern was for those people and the fact that we had wrongly located a plant on that site.

Mr. Peter Tabuns: Well, when we go through the emails, when we go through the correspondence within your staff, we get a very different story. What we see is we've got this problem because the city's blocking this plant, and we don't want to get into the kind of fight that you would need to overrule them. In northern York region, you put down a plant in a flood plain, with a huge public outcry. It didn't appear to have affected your assessment. In my riding, Toronto-Danforth, south Riverdale has had historic huge air quality problems. There was a huge outcry there, a big mobilization. It didn't stop you. Oakville—that's a Liberal seat. There,

we had a very different approach to the whole question of rejection.

I'm going to go on, though. Why did you tell Mr. Steeve to negotiate with TransCanada? Why didn't you take the normal route, go to the Ontario Power Authority, go to the Ministry of Energy, and say, "We have a problem here. See if you can deal with it"? Why was it your cabinet staff, your Premier's office staff, who were engaged in these discussions?

Mr. Dalton McGuinty: First, I want to come back to something you said, because you've left the impression that somehow I was motivated by private economic interests, and that somehow influenced my decision on Oakville. I just want to make it perfectly clear that the only reason I decided that we should be relocating the Oakville plant and the only reason we should be relocating the Mississauga plant was because those plants were wrongly sited and would compromise the health and well-being of people in those communities.

As to the question of Mr. Jamison Steeve and whatever mandate he had, it did not consist of negotiations. His job and Sean Mullin's job—I know Mr. Mullin's been before this committee as well—was to help me interact with stakeholders of all varieties right across the province on a whole bunch of different files. I simply could not meet with all these people. It was impossible. So their job was to reach out and to continue to keep an open dialogue. That was office policy. "Whatever happens, keep talking," is one of my mantras.

So we did that, and in one particular instance, I do know that TransCanada invited Mr. Steeve to enter into a conversation. I said, "All right, you can do that, but there are no negotiations to take place. Sit down and listen, and let's see what it is that they want to talk about."

Mr. Peter Tabuns: In fact, when we see the notes, we see TransCanada talking about needing to be made whole, discussion about how letters are going to be provided, what's going to be in those letters. There seemed to be deep involvement in making sure—the letters that actually got TransCanada to back off, got them to not go to court, were tied up with your staff. There's no question in my mind, having gone through that.

Mr. Dalton McGuinty: My understanding of the "keep whole" language is that comes exclusively from the other side, and if I was on the other side, that's language that I would certainly want to use. When I sit down with a government and we're going to enter into a negotiation subsequently, I would certainly want to be "kept whole." I can understand why they're using that language. But that's not language that we used.

Mr. Peter Tabuns: Well, in effect, the letter that you provided to TransCanada on October 7 in order to keep them from going to court set aside all of the legal defences that the OPA would have used to make sure that the people of Ontario were kept whole. Were you aware, were your staff aware, that the OPA had said, "You can cancel this quickly at high cost or you can approach this very slowly and it will cost you an awful lot less"? Were you aware? Did you ignore that advice?

Mr. Dalton McGuinty: Sorry. Is this the OPA you're saying said this?

Mr. Peter Tabuns: Yes.

Mr. Dalton McGuinty: No, I would not have had—

Mr. Peter Tabuns: Did no one in your—

Mr. Dalton McGuinty: I would not have had that kind of communication. I would expect that the ministry would be doing that and that the ministry, from time to time, would report in to cabinet. But in terms of the specifics of any ongoing negotiations, we were only kept current at a very high level.

0900

Mr. Peter Tabuns: So your staff weren't talking to the OPA about the risks that we were facing and that we would be taking on?

Mr. Dalton McGuinty: My staff did not enter into negotiations because they were not allowed to enter into negotiations, and ultimately, when we got down to the short strokes, as I recall, Shelly Jamieson screened out Mr. Steeve and Mr. Mullins and perhaps one other because negotiations were going to begin in earnest and that was the best way to manage that. Ms. Jamieson reported that in to me and I thought that was a smart thing for her to do.

Mr. Peter Tabuns: Actually, as I listened to her, their presence in this file became increasingly problematic. Their presence in this file created risk for the government of Ontario. It created risk for them personally as well. I thought she was smart to protect Ontario. That's what she was acting to do, something that your government hadn't done. When we asked Jamison Steeve if you knew what it was going to cost to cancel the Oakville plant, he said you made a decision without knowing. You leapt into the dark.

Mr. Dalton McGuinty: When I made the decision to relocate both those plants, I did not have access to information which would lead me to understand how much, at the end of an extensive period of negotiation, this would cost. That is true. But I felt—

Mr. Peter Tabuns: So if you took on a risk that was unquantified—

Mr. Dalton McGuinty: But I know that I had the support of all three parties. But that was not the deciding factor in this. I just want to make that clear.

Mr. Peter Tabuns: Slow down for a minute.

Mr. Dalton McGuinty: That was not the deciding factor.

Mr. Peter Tabuns: You knew we opposed your plant. I made that clear the year before, and you hadn't listened to me. You hadn't listened to our party. We told you that these private power deals were extraordinarily risky, that you were going too far into gas and at some point you'd run into real problems. Well, you did. You got Ontario into trouble with this plant, without a doubt. And then, when you had political problems, you were willing to spend anything to get out of this.

Mr. Dalton McGuinty: We got 17 right when it comes to gas plants, more or less right.

Mr. Peter Tabuns: I would debate that.

Mr. Dalton McGuinty: I'm sure you would. But we got two, I think, very, very wrong. I know there have been some serious challenges associated with these relocations. The costs have been greater than anyone would have liked. We've learned a lot about the production of documents along the way, and we have struggled to deliver in a timely way. I think, to be fair to everybody, everybody acted in all honesty and forthrightness dealing with those kinds of things.

But I could not fathom the location of those gas plants of those sizes in those communities, and I thought the right thing for us to do—that was given expression to a number of times by a number of parties, by a number of candidates, a number of leaders, perhaps in different ways along the way, but there was a strong sense that my government had made a mistake in locating those plants in those particular locations.

Mr. Peter Tabuns: And you made us all pay for them.

Mr. Dalton McGuinty: And we had a responsibility—

Mr. Peter Tabuns: I'm going to turn my questions over to Mr. Natyshak.

Mr. Dalton McGuinty: And we have a responsibility to do them well.

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

Mr. Taras Natyshak: Thank you, Mr. McGuinty. I appreciate your testimony here today before the justice committee. I also appreciate your opening statement. It's somewhat of a mea culpa and it is the first time in my time in this Legislature, in 18 months, that I've heard you say that you were wrong, that your government was wrong in siting the plants where they were, that your government was wrong in its lack of consultation with the community, that it was wrong in cancelling those plants without due diligence, without knowing even an estimate, even a ballpark figure of the costs, of what it was going to cost taxpayers in the province. You were also wrong in not listening to opposition members from the outset, when they had identified quite easily and quite clearly that the plants were sited in the wrong area.

I want to know if you think that proroguing the Legislature in the timeline that you did for the reasons that you did—as we were ultimately getting close to initiating committee hearings, we were trying to look into the numbers and the documents, trying to get documents related to the cancellation of the Oakville and Mississauga gas plants, you shut down this Legislature quite cynically. Do you think that was wrong to do?

Mr. Dalton McGuinty: I can't agree with everything you've said, but let me just—

Mr. Taras Natyshak: Just the last part. I want to know if you think the last part was wrong.

Mr. Dalton McGuinty: And I can't agree with that.

Mr. Taras Natyshak: Do you think it was right, then?

Mr. Dalton McGuinty: Yes.

Mr. Taras Natyshak: You do?

Mr. Dalton McGuinty: Yes. It was appropriate, in my judgment, and I say so on the basis of 23 years' ex-

perience as a legislator and bringing that perspective as to the level of rancour and dysfunction that characterized the Legislature.

Mr. Taras Natyshak: I disagree. I don't—

Mr. Dalton McGuinty: I understand that.

Mr. Taras Natyshak: Actually, I came to the Legislature with all good intentions and good faith to get down to the bottom of the issues that this province faced. You characterizing the opposition parties' need to get those questions answered as “rancour” and “dysfunction” is an affront to the democratic process in this Legislature.

Mr. Dalton McGuinty: It was—

Mr. Taras Natyshak: Now we are at a point—

The Chair (Mr. Shafiq Qaadri): Once again, I would invite you to allow the witness to answer, please.

Mr. Taras Natyshak: I'm going to move on to my second question. We're at a point now where we are starting to get answers because of the formation of this committee post-prorogation. We're getting some answers. As you had already stated earlier, we are now well versed in the circumstances. Yet you cancelled Mississauga without knowing the cost. You had just had a huge amount of risk and exposure in Oakville the year before. Had you learned anything from that process? Did you know that ultimately Mississauga was going to cost an enormous amount? And did you boldly go ahead with that regardless of the cost?

Mr. Dalton McGuinty: Just to return to the issue of prorogation, I knew that there would be an opportunity for all of us to cool down and enjoy whatever benefits might be had from a time out and an opportunity for this committee to resume, for these issues to be raised, for me to be here today and to appear before you. I think we've enjoyed some success in renewing better relationships inside the Legislature.

No, I did not know with any degree of certainty what the costs associated with relocating Mississauga might be. I did know that it would be a complicated issue. I knew that the best approach on our part would be to see if we might negotiate a new contract in a new location as opposed to simply paying out an existing 20-year contract in its entirety. I'm very pleased that we were able to enter into that kind of a negotiation and that we ended up with that kind of a result, which minimized some of the consequences—

Mr. Taras Natyshak: Thank you. All the meetings against the plant happened in the communities long before the cancellation. Why did you wait—

Mr. Dalton McGuinty: Mississauga you're talking about?

Mr. Taras Natyshak: In Mississauga, yes. Why did you wait until the last minute before the election before doing the right thing? If you now, with hindsight, realize that it would have been the right thing to listen to the community, why did you wait—

Mr. Dalton McGuinty: I should have done it sooner—

Mr. Taras Natyshak: You would have done it sooner?

Mr. Dalton McGuinty: I should have done it sooner.

Mr. Taras Natyshak: You should have listened to the opposition members who said—

Interjection.

Mr. Taras Natyshak: No, in hindsight, you should have listened to the opposition members who said, “Mr. McGuinty, Mr. Premier, you are making a massive mistake here. You are going”—

Mr. Dalton McGuinty: Let me—

Mr. Taras Natyshak: Here’s the question—

Mr. Dalton McGuinty: Can I answer this, because there are a number of questions here?

Mr. Taras Natyshak: Sure.

Mr. Dalton McGuinty: You’re right. I should have cancelled it sooner and, in fact, in June, I had publicly mused, you may not recall, but in June, I publicly mused—as reported in the Toronto Star, as I recall. I said it’s never too late to do the right thing.

I’ll tell you what I was struggling with. The fact was I was struggling with reconciling the decision I made with respect to Oakville and the proposed location of that plant and that Mississauga site. It was very difficult to distinguish the facts one from the other. Both were cases where residential communities were going to be made unwilling hosts to major gas plants in stressed airsheds near schools and hospitals and offices and homes.

Mr. Taras Natyshak: As Mr. Tabuns pointed out, the same scenario existed in northern York region, but your intervention didn’t apply in that region. Quite conveniently, that region was held by a Conservative member of Parliament.

You’re saying that we were right. We were right in counselling you to not build the plants in the first place.

Mr. Dalton McGuinty: Yes. We should have acted sooner.

Mr. Taras Natyshak: You, obviously, during the context of the election campaign, would have been monitoring all party leaders, all campaign promises throughout the campaign.

0910

Mr. Dalton McGuinty: I was fed information of that nature from time to time, yes.

Mr. Taras Natyshak: You’ve indicated that all parties agreed that you should cancel the gas plant.

Mr. Dalton McGuinty: That’s correct.

Mr. Taras Natyshak: You would have then seen at that point that our leader, Andrea Horwath, clearly stated that without knowing the full cost of cancelling the gas plants, she could not commit to arbitrarily cancelling gas plants. You are fully aware of that, I would assume.

Mr. Dalton McGuinty: No, I’m not.

Mr. Taras Natyshak: Why not?

Mr. Dalton McGuinty: Well, I don’t know.

Mr. Taras Natyshak: So you were monitoring party leaders, but you are being selective about what you want to apply to their campaign promises.

Mr. Dalton McGuinty: No. What I was aware of was that there was strong opposition to the location of the plant in Mississauga—

Mr. Taras Natyshak: Initially, from the outset.

Mr. Dalton McGuinty: —and that opposition could be found among all political stripes and among all candidates. You’re telling me that Ms. Horwath had a more nuanced position with respect to how this might—

Mr. Taras Natyshak: It wasn’t nuanced; it was quite clear.

Mr. Dalton McGuinty: Well, I’ll accept that; I understand that. She made her call; I made my call. My call was, it’s wrong to put that plant in that community.

Mr. Taras Natyshak: Your call was cancellation without any information. Your call was cancellation at all and any cost. Am I correct?

Mr. Dalton McGuinty: No.

Mr. Taras Natyshak: Well, you didn’t know.

Mr. Dalton McGuinty: I knew that it was not going to be “at all and any cost.” We were going to work as hard as we could—

Mr. Taras Natyshak: So there was a threshold. Was there a threshold that you weren’t prepared to cross?

Mr. Dalton McGuinty: We were going to work as hard as we could to minimize those costs.

Mr. Taras Natyshak: Had you identified a top-end margin for cancellation costs that you weren’t ready to cross?

Mr. Dalton McGuinty: We’ve spent a lot of time in this committee talking about those costs, but I think parents attach a pretty high price to the health and well-being of their children. I hear some mutterings and musings that that’s not easily quantifiable and not worthy, perhaps, of our consideration, but I think it’s important for all of us to take into account.

So, yes, there are costs associated with relocating these plants, and we’ve got to offset those against the right of families in those two communities and going forward—because this is bigger than just Oakville and Mississauga. Going forward, we’re now saying—I’m pleased with the announcement made by the Minister of Energy just yesterday—that we are not going to do this kind of thing; we’re not going to wrongly locate these kinds of plants in those communities, not in that way, shape or form, ever again.

Mr. Taras Natyshak: Mr. McGuinty, I agree that parents want the best for their children, but what parents want from their leadership is just that: leadership that has foresight, leadership that understands that governments shouldn’t put their communities in economic or environmental peril. Your lack of concern initially on the siting of those plants is a failure in leadership from the outset. It’s a failure in listening to the opposition members who quite clearly indicated that you were making a mistake. But you decided, your government decided, along with the ministries that were applicable, to boldly charge into the unknown, and it has cost us dearly.

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

To the government side: Mr. Delaney.

Mr. Bob Delaney: Good morning, Premier. Good to see you again.

Mr. Dalton McGuinty: Good morning. It's not "Premier."

Mr. Bob Delaney: I think if it's good enough for Mr. Fedeli, I can try one or two as well.

I want to ask you a few questions about some of the things that led to the decision to relocate the Oakville plant. Testimony before the committee has shown that there were some real issues with the siting of this plant. You've mentioned some of those issues as well. Frank Clegg of Oakville, from Citizens for Clean Air, testified that the plant would contribute to the existing air pollution in what you've already discussed as the overtaxed Clarkson airshed, and that there were no buffer zones to ensure the safety of residences, even though it would have been located only 400 metres from homes and a school.

I'd like you to elaborate a little bit on the concerns that you heard and how they contributed to the decision to relocate the Oakville plant.

Mr. Dalton McGuinty: Absolutely, if I could just back us up to the big picture for a moment. As you know, when we formed the government, we had a serious challenge relating to—you might call it an energy infrastructure deficit in Ontario, so we put in place a long-term plan. It extends over 20 years. It's amended on an ongoing basis. It will involve over \$100 billion in costs. We've been working hard to renew transmission and power generation.

One of the complexions we wanted to lend to our new plan was to make for cleaner and greener electricity in the province of Ontario. So we decided, and I believe rightly so, to eliminate coal-fired generation. We would have liked to have gotten that completed sooner, but nonetheless, we're making tremendous progress on that file. We introduced energy from renewables as well: the sun, the wind. We expanded hydroelectric capacity. We're refurbishing some of our nuclear plants and we're putting in place gas plants.

To come back to the specifics of your question, there was a need for us to put in place more generation, and the thinking was that we should put a plant in Oakville, because at the time, it would be needed there and in that way. I heard from Mayor Burton, I heard from Citizens for Clean Air, I heard from Kevin Flynn. These were ongoing concerns. As Premier, while you're juggling 100 balls at any one time, you try to reserve in your mind a space for things where you think, "We're not getting it right; something doesn't seem to fit." And that's how Oakville, when I began to consider that issue, struck me, and in fact it occurred to the newly appointed Minister of Energy. One of the first things that Brad Duguid—in one of our first meetings after I asked him to serve as Minister of Energy, he said, "Would you mind if I brought"—his words—"fresh eyes to this file, Oakville?" I said, "By all means." Minister Duguid took a look at it, and he came back with a recommendation, which I supported, and it was certainly in accord with my instincts. It was an admission, again, that we got that siting wrong. It wasn't in keeping with modern-day expectations, it wasn't in

keeping with the new legislative environment, where we couldn't even have located a single wind turbine there. So it became quickly apparent that we didn't get that right.

What became equally apparent, at least to me, was that getting out of this was going to be complicated and that there were going to be costs associated with that. But I'd much rather be here today talking to members of this committee rather than ducking the people of Oakville and Mississauga over the course of the next 20 years as we put in place gas plants that never should have gone in there.

Mr. Bob Delaney: We've also heard testimony that as the long-term energy plan was being updated in the summer and early fall of 2010, it became clear that a plant was no longer required for the Oakville area because demand had changed. It was also determined at around that time that a transmission solution was possible. Could you describe how those findings and that realization contributed to the eventual decision to relocate the Oakville plant?

Mr. Dalton McGuinty: Yes. One of the things that we do as part of our long-term energy plan is there is a legislated requirement that it be reviewed on a regular basis, because it's one thing for us to make projections today on the basis of information we have today about our needs tomorrow, but data and assumptions, those kinds of things, change over time.

It became apparent, according to the Ministry of Energy, working with the OPA, that the original plant dealing with Oakville and the plant to be located there in fact had additional flexibility that arose because of new circumstances—changes on the demand-and-supply equation. So that created a real opening for us to act and to do the right thing. Not only did it accord with my instincts, but it made it, from an electricity perspective, feasible for us to do the right thing.

Mr. Bob Delaney: Before the committee we've had expert testimony that the bylaws brought forward by Oakville would have been overturned in court. In fact, TransCanada Energy testified that they really would have stopped at nothing to fight the bylaws, and all three parties agreed that this plant was wrongly located. So I'm not entirely sure what Mr. Tabuns was representing when he talked earlier about the bylaws.

But we've also heard testimony from Mr. Clegg and from Mayor Burton that they had received commitments by both opposition parties that they would cancel the plants. At the time, were you aware of the opposition's position on the Oakville plant?

Mr. Dalton McGuinty: My sense was that there was a lot of—I mean, I didn't have specific wording as raised by a member of the committee here on the opposition side, but my sense was that there was tremendous concern raised by the opposition parties, but more importantly, the people living in the community. I think that if any of us wanted to do justice to this, we would all say that it would be inappropriate and wrong to locate plants of these sizes in those communities in those contexts, given

the stressed airsheds and the proximity to homes, hospitals and schools. I think we all knew in our heart of hearts that this would be the wrong thing to do.

0920

Yes, we can find some support in what the opposition said, and we can be motivated by what the people living in the communities said. But I think at the end of the day, it comes down to our personal judgment, and that's, to me, what leadership is all about.

Sometimes exercising leadership and doing what you think is the right thing is popular. Sometimes doing what you think is the right thing to do, like bringing the HST to Ontario, is unpopular. But the common thread that should be woven throughout those kinds of decisions is, are you doing what you honestly think is the right thing to do? Relocating those plants, to me, is the right thing to do.

Is it challenging politically for us to relocate those plants and be here today and deal with this committee? Absolutely. It's still the right thing to do.

Mr. Bob Delaney: Okay. I'd like to move to some of the meetings that were held with TransCanada Energy. We've heard that, in the lead-up to the October 2010 announcement that the Oakville plant would not go forward, members of your staff met with TransCanada Energy for discussions on the Oakville situation. Just in general, is it common for members of the Premier's staff to meet with stakeholders?

Mr. Dalton McGuinty: Very much so. In fact, they were charged with that responsibility, and I would repeat to them now my little story, some of the best political advice I got from my mother on my wedding day. That advice is, whatever happens, keep talking. I charged my staff with having open lines of communication, an ongoing dialogue. When people ask to speak to you, it's important that you create an opportunity to meet with them and to engage them. I can't see everybody; I'll see as many as I can. So it's their responsibility to meet with these folks.

Mr. Bob Delaney: So not just in this case, but Premier's staff met with other stakeholders on other matters on other occasions.

Mr. Dalton McGuinty: That's their job.

Mr. Bob Delaney: Okay. Sean Mullin and Jamison Steeve testified that they did not negotiate directly with the company and made no offers, but rather had exploratory discussions. Is that your understanding of what happened?

Mr. Dalton McGuinty: That's exactly my understanding. Some of the gentlemen here in opposition raised the issue, I believe, of the screening. Basically, the point I want to make is that, from time to time, there will be these kinds of informal conversations which can become a little bit more strained and possibly even become litigious. That doesn't mean we stop talking to people. Every once in a while, we may have to say, "We're going to pull back now because things are getting a little heated." Nonetheless, it's important that we can identify ways to reach out to these stakeholders and chat

with them. If it becomes necessary that we stop talking because of the risk of litigation, then we need to do that, too.

Mr. Bob Delaney: Earlier, Sean Mullin indicated that he wasn't authorized to engage in negotiations. I believe some of the words he used were, "We did not engage in any negotiation." Jamison Steeve called the meetings "exploratory" in nature. Members of the opposition have been critical of both of these members of your staff and have, in fact, cast aspersions on their reputations, so I'd like to ask you if you can comment on those two individuals and their contributions as public servants.

Mr. Dalton McGuinty: We are all blessed with incredible, hard-working, devoted staff who are inspired by the noble ideal of public service in all our offices. I couldn't be more proud of people like Mr. Steeve and Mr. Mullin and the contribution they made in my office. They worked as hard as they could and did their very best every day. These are young people of integrity and commitment, and I was proud to serve with them.

Mr. Bob Delaney: To the Oakville renegotiations then: All sides of this issue have said that the best path forward after the decision was made not to move ahead with the Oakville plant was to renegotiate an alternative site with TransCanada Energy. Many people have testified that this was the better path, as opposed to ripping up the original contract and paying damages without any new power being produced. In your view, why was it important to approach the negotiations in this way?

Mr. Dalton McGuinty: I think the combined value of the two contracts that were in place, calculated over the full 20-year terms, would be close to \$5 billion. Obviously, that would be an unacceptable cost. We thought from the outset that the best way for us to approach this in the greater public interest was to see if we might relocate the plants, enter into new agreements, repurpose much of the equipment, for example, from the original sites to the new sites and to keep the amount of money which we're paying for nothing, effectively, as low as possible. That was the best advice that we received from folks at the OPA and from within the ministry as well. I'm pleased that we've been able to land on that.

Mr. Bob Delaney: Throughout the hearings, we've heard a lot of witnesses be concerned about the ramifications of litigation between TransCanada Energy and the government. They've said throughout that the best efforts were made to avoid a lawsuit. I'm wondering if you could elaborate a little bit on the risks of litigation and what it would have meant for Ontarians if TransCanada Energy had undertaken legal action against the province.

Mr. Dalton McGuinty: I think we all understand that if this thing gets into the hands of the lawyers and the courts, the outcome becomes very difficult to predict. We wanted to keep as much control over the evolution of this file as we possibly could. We made a sincere effort from the outset to take this down a path which would lead towards negotiations and ultimate resolution which kept costs as low as we possibly could.

Mr. Bob Delaney: Moving to the Mississauga decision: a couple of questions about the decision to relocate

the Mississauga plant. There was obviously community opposition. In fact, the committee has heard from a number of leaders, including my constituent Mayor McCallion, that there were serious health and environmental risks for the Mississauga and Etobicoke areas. Some of the concerns you heard. Elaborate, please, on how they contributed to the decision to relocate the plant.

Mr. Dalton McGuinty: Of course, I heard from the inimitable Mayor McCallion. I had mused publicly, and deliberately so, in June 2011 that it's never too late to do the right thing. I was concerned about the plant.

For a long time, Mr. Delaney, I was under the impression that the plant was dormant and that there was a real possibility that it was not going to move ahead. I think that the contract had originally been let back in 2004. For much of my tenure as Premier, nothing seemed to be happening on that file.

Then it came to life and became very heated. I believe that after that June public comment that I made, the ministry and the OPA hosted a meeting. They didn't expect that many people to attend. In fact, many attended. The hall was overrun; the police were called. So I knew it was becoming a more urgent issue in the community.

Of course, the election brought it to a head. That was an opportunity for all the parties to weigh in, and I thought that it was appropriate in my capacity as leader of our party to make a commitment to relocate this plant.

Mr. Bob Delaney: The commitments that all three parties made, during the 2011 election campaign to relocate the plant have been described as political. I actually have a couple of NDP quotes on the Mississauga plant where Mr. Tabuns said on September 26, "We wouldn't build it," and I'm not sure if he ever indicated a cost to that. Etobicoke—Lakeshore NDP candidate Dionne Coley also pledged to fight the plant. That was reported by the Toronto Star. The National Post reported that local NDP candidate Anju Sikka had issued statements concurring with the then-new Liberal cancellation of the plant.

Premier Wynne explained to this committee what she felt that meant. She said, "There was advice that was given, there was siting expertise, but ... the consideration of the impact on community and the voices of community were not taken into account. So politicians in the end made the decision to relocate the gas plants."

Would you comment on that characterization, that energy experts are in fact responsible for siting plants, but that the role of elected officials is to listen to the communities and make sure that our local views are taken into account?

0930

Mr. Dalton McGuinty: I couldn't agree more with that statement. The fact of the matter is that if it were not for the politicians, of all political stripes, those plants would be going in there, and that would be wrong.

I know much has been made of the decision as being political. This is how representative democracy works. We have a special responsibility as elected representatives to listen to our constituents, to engage them and to

understand their concerns, and if we feel that they are legitimate, that they are authentic and that they are real, we've got a responsibility to act.

It's one thing for any of us to say in the context of a campaign that we would have done this. I've been criticized for not keeping promises; this is the first time I've been criticized for keeping a promise. We're doing what we said we would do, notwithstanding the complexities and political challenges associated with that. I'm pleased to be here before this committee today to talk about what we did and why we did it but, more than anything else, what I want to say is it's the right thing for us to do. It's bigger than just Oakville and it's bigger than just Mississauga.

What I hope we're saying collectively here, notwithstanding the challenges associated with the way we're executing this particular commitment—I hope what we're saying to all Ontario communities is that never again will we locate a gas plant in that way. I was so pleased to hear again that Minister Chiarelli announced yesterday that we're going to develop a meaningful process that allows us to site these things in a way that's respectful, in accordance with our modern expectations and our new legislative environment.

Mr. Bob Delaney: Last July, in 2012, when the Mississauga relocation arrangement was finalized, you said earlier that the cost was first announced at \$180 million, and then corrected to \$190 million. When he appeared before the committee last week, Colin Andersen testified that—and I'll use his words—"We did provide them with the numbers. That is what you would expect."

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

Mr. Bob Delaney: In your final comment, would you talk a little about the degree to which you relied on the OPA to provide accurate numbers?

Mr. Dalton McGuinty: Well, we relied very heavily. I didn't rely directly on the OPA; I relied more on the Ministry of Energy. I don't believe I ever used numbers that had not already been made public by the Ministry of Energy, whether that's the \$40 million or the \$180 million or the \$190 million, but I know that the Ministry of Energy, given their limited capacities and given the complexities of these kinds of calculations, relied heavily on the Ontario Power Authority.

Premier Wynne indicated her frustration; she received four or five different numbers for one gas plant alone from the Ontario Power Authority. I'm very pleased that the auditor is bringing his independent oversight to this and providing us with some estimates. He'll say himself that they are estimates, but at least we'll have something that we can all understand.

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

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

To the PC side: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair, and thank you, Premier, for joining us this morning.

I think it should be pointed out that while you said that without the political work of all three parties, these plants

would have been built, there was only one political party that contracted to build these plants, and that was the Liberal Party.

Mr. Dalton McGuinty: I accept that.

Mr. John Yakabuski: Now, Premier, I first ran in 2003, and I remember during that campaign and through all my time here since then how you talked incessantly about children and air quality. Today you use that to try to change the narrative around these gas plants. All of those conditions that you talk about—childhood asthma, stressed airsheds—they all existed when the plant was first sited in Oakville, for example, in 2004-05. They existed. It took you until October 2010 to cancel the plant, when we were on the eve—within a year—of a provincial election, and it looked very much the case that Kevin Flynn, your member in Oakville, could be in serious trouble. So the plant was cancelled within a year of that election, and now you're citing that your decision was based on air quality, children, schools and proximity to those institutions. Yet the current Premier, Premier Wynne's, Dwight Duncan's while at committee last year at estimates, and your own story during the Mississauga cancellation was that these gas plants were cancelled for political reasons—the one in Mississauga on the eve of the 2011 election. So you're giving us a different story today, Premier, and quite frankly I think you've got at least 585 million reasons to change the story today, because we know now that at a very minimum, based on the testimony of the OPA, these cancellations are going to cost at least \$585 million.

You said all along that you would not be swayed by NIMBYism when you proceeded with the long-term energy plan for Ontario. Scores of meetings took place between 2005 and 2010 in these communities, telling you exactly what you're using as your reasons today for cancelling them in Oakville, and subsequently in Mississauga; telling you that those plants should not be built there for those very reasons. Yet today, you say that that's the reason you cancelled the plants, even though the current leadership of your party and the government says they were cancelled for political reasons.

Who's giving us the straight goods on this one?

Mr. Dalton McGuinty: Well, I can only speak for myself, Mr. Yakabuski, and my personal motivations. I think we've made it clear throughout my administration how committed we were to the environment. I think we made some real progress bringing online clean energy, shutting down coal-fired generation, protecting green space here in the Toronto area and up in northern Ontario, dealing with everything from pesticides to endangered species protection—all those kinds of things. That's important to me.

All I can tell you is that my personal motivation in the matter of those two gas plants has been the health and well-being of people and families living in those communities. Others can engage in speculation and conjecture; I'm okay with that. But I'm here today to tell you what I know and what I feel.

Mr. John Yakabuski: Thank you. Well, it took you five years to come to that conclusion. Maybe you should

have talked to your mother somewhere in that period of time. You might have gotten to it a little sooner.

Mr. Dalton McGuinty: She's watching, John. Be careful.

Mr. John Yakabuski: Yes, I'm sure she is. Good morning, Mrs. McGuinty.

Is it not quite true, Premier, that in both these cases, you were presented with the polling, you were presented with the facts, you were presented with the research of your party that said, "We got it. Shut these things down"? My question to you—that is a question, but also, how many hundreds of millions of dollars would we have saved, from where we are today at a minimum of \$585 million, if you had actually made those decisions sooner not to go ahead with the Oakville plant and to cancel the Mississauga plant before it was at least a third or so built? If those decisions were made for your reasons, as you say—the altruistic reasons you cite; no pun intended with the word "cite"—if you used that reasoning and cancelled them earlier, how many hundreds of millions of dollars would we have saved the ratepayers and the taxpayers of Ontario?

Mr. Dalton McGuinty: I can't say. But I can say you make a good point in that the costs would have been lower had we acted sooner. And sometimes—

Mr. John Yakabuski: So you do know, then.

Mr. Dalton McGuinty: Sometimes, it takes us longer to do what we know we should be doing.

I always understood that getting out of Oakville and getting out of Mississauga was going to be complicated, that there were going to be real costs associated with that and that there were going to be political challenges created by that. I understood that.

Mr. John Yakabuski: You understand those things, though.

Mr. Dalton McGuinty: I understand that.

Mr. John Yakabuski: I appreciate your answer. Thank you. You understand those things, then. So if somebody would have come to you and said, "It's going to cost us—full, total cost—\$40 million to cancel this plant in Oakville," which, if you look at the contract that would have been in place, at 17,000, is about a \$6-billion deal over the 20-year term with the power costs and the stand-by costs and everything else. So it's a huge deal. And you're going to say that you accepted that \$40 million would be the total cost to cancel that plant? You were Premier for 10 years. You were leader for many years before that. You're a lawyer, you're an educated man, you're a smart man. You can't tell me that you believed those numbers, that \$40 million was going to be the total cost. You would have asked: "I need more information."

Mr. Dalton McGuinty: A couple of things: What we're talking about, of course, is not the cancellation of the contract, but rather the replacement of one contract with another and repurposing as much as we possibly could costs into the new agreement, and that there would be some outstanding costs for which we would be paying and have no value in return. So that puts the \$40 million, I think, in a slightly more reasoned context.

0940

The numbers that I use were the numbers that I was given by the Ministry of the Environment.

Mr. John Yakabuski: Okay. Thank you.

Interjection.

Mr. Dalton McGuinty: Sorry—the Ministry of Energy.

Mr. John Yakabuski: You've said on several occasions here that you took your information from the Ontario Power Authority; you based your numbers on the Ontario Power Authority's information. And your testimony—

Mr. Dalton McGuinty: The Ministry of Energy in turn relied on the OPA.

Mr. John Yakabuski: —and your statements in Hansard, to the media: This is \$40 million. That's it. Full stop.

Well, if you could go to document 2, Premier, and you have that paper in front of you, go to the last page, PC document 2. I'll just read a couple of—

Mr. Dalton McGuinty: I'm not sure I have, Mr. Chair, document 2.

Mr. John Yakabuski: It's the same one that the memorandum of understanding was on.

Mr. Dalton McGuinty: Okay, got it.

Mr. John Yakabuski: You know, that one that the cabinet knew that it would be more than \$40 million? That's the one. Same group of pages—and it's just on the back page.

So it says here, and this is part of the OPA presentation—Ontario Power Authority: “OPA was instructed by the government to make a second counter-proposal to the TCE proposal of 10 March 2011.” Next point: “This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of \$712 million.” Next point: “On 29 April 2011, TCE rejected the government-instructed counter-proposal.” And the last point: “TCE also served the government”—served the government—“with 60-day advance notice of its intent to sue the crown pursuant to section 7(1) of the Proceedings Against the Crown Act.”

So the OPA is making it very clear that they were being instructed by the government. They would be instructed by you. You were the head of the government. The buck stops with you, Premier, and now the new Premier, she holds that office. The government was driving the bus. Why do you say that you were taking your information from the OPA?

And I'm going to ask you one last time, because we're going to be out of time: You knew this was more than \$40 million. You knew all along it was more than \$40 million. When did you know, when did your cabinet know, and why haven't we been given that answer?

Mr. Dalton McGuinty: I think I've answered that several times. The first time I found out about numbers that were different from the \$40 million or the \$190 million was when you found out about those.

The \$712-million number: I see here it says it had an “effective financial value,” so I assume that they are

numbers that were brought together to total up to \$712 million. The first time I heard about that number was through testimony before this committee. I was not aware of that number having been—and the other thing that's kind of perplexing to me is, why are we talking about \$712 million—

Mr. John Yakabuski: This is very perplexing to us, too.

Mr. Dalton McGuinty: —when it's been settled for \$310 million?

Mr. Victor Fedeli: Oh, no, it has not.

Mr. John Yakabuski: It hasn't been settled. It hasn't been settled, but you're hoping.

Mr. Dalton McGuinty: Sorry, the cost estimated by the auditor was \$310 million.

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

To the NDP: Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Mr. Natyshak.

Mr. Taras Natyshak: Did Ms. Wynne, as campaign vice-chair, ever ask about the costs of cancelling the gas plants as a campaign promise?

Mr. Dalton McGuinty: No.

Mr. Taras Natyshak: Did she ever ask about the costs of cancelling the gas plants, as a cabinet minister?

Mr. Dalton McGuinty: Not that I can recall.

Mr. Taras Natyshak: Did she ever ask about the costs of cancelling the gas plants, as leader-elect? And did you and your transition team ever brief her on what the costs related to the cancellations would be?

Mr. Dalton McGuinty: I don't know the answer to that.

Mr. Taras Natyshak: Did she ever ask, in any of her various capacities, why the numbers the government had were so different from the numbers that everyone else had?

Mr. Dalton McGuinty: I certainly could tell by her expressed frustration at her appearance before this committee that she had some real concerns. I never talked to her about that, but she certainly expressed she had some real concerns about the changing numbers that she was receiving from the Ontario Power Authority.

Mr. Taras Natyshak: So you didn't brief the Premier as a transition between your office—

Mr. Dalton McGuinty: It may very well have been that as a result of interactions between my staff and her new staff, there might have been discussion about that particular file, yes.

Mr. Taras Natyshak: But you, as an individual, did not sit down with Premier-elect Wynne?

Mr. Dalton McGuinty: No, I did not.

Mr. Taras Natyshak: Not on any file?

Mr. Dalton McGuinty: No. We had a general, as you might imagine, kind of a hand-off meeting; “Good luck,” those kinds of things.

Mr. Taras Natyshak: How is it that—I mean, her testimony is similar to your testimony. In fact, it's almost identical. She has stuck for a very long time to the same figures that you have, to the same narrative—essentially,

to the same lines that you have. It would seem as though—

Mr. Dalton McGuinty: It could be that we're telling—

Mr. Taras Natyshak: Was she coached or is she just a quick study?

Mr. Dalton McGuinty: It could be that we're both relating the truth.

Mr. Taras Natyshak: Okay. Mr. McGuinty, Mr. Delaney characterized the costs of cancellation as akin to the moon landing: ostensibly, to boldly go where no government has gone before. Was there a cost that you, as Premier, weren't willing to pay in order to secure the support of the communities of Mississauga and Oakville? Was the sky the limit?

Mr. Dalton McGuinty: For me, it was about doing the right thing and it was about ensuring that we could make a statement, not only to these two communities but to all Ontario communities and all Ontario families, that we were not going to locate these kinds of gas plants in these kinds of ways ever again.

Mr. Taras Natyshak: If the right thing cost a billion dollars, would you have been prepared to do that?

Mr. Dalton McGuinty: I'm not going to engage in speculation when we already have some more reliable numbers before us. But what I can say was yes, I was absolutely committed to doing what I thought was the right thing in these circumstances, which was to relocate these gas plants.

Mr. Taras Natyshak: If they would have told you initially from the outset, "You're looking at upwards of a billion-dollar price tag," you would have said, "Let's forge ahead"?

Mr. Dalton McGuinty: I'm not going to engage in that kind of speculation.

Mr. Taras Natyshak: At the moment you made the decision, would you have liked to have had those figures, even if they would have been a billion dollars and upwards of a billion dollars? Would you have appreciated those figures while making the decision?

Mr. Dalton McGuinty: Yes, in an ideal world, but we don't live in that world; we live in this one—and of course, it was not possible to find out what a negotiated settlement was going to be at that time.

Mr. Taras Natyshak: Thank you.

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

Mr. Peter Tabuns: Thank you. Mr. McGuinty, when New Democrats filed a freedom-of-information request for documents about Project Vapour from your office, we were told that none existed. When the Ministry of Energy and the OPA released documents, there were pages and pages of documents from the Premier's office about Project Vapour. Why was your office covering this up?

Mr. Dalton McGuinty: I'll surprise you: I don't accept that characterization.

What I can say in terms of documentation is the following: Secretary Wallace phoned me recently and said, "The committee is looking for some cabinet documentation," and you may not know that at the very last

cabinet meeting at which I sat as Premier—one of the last things they do for an outgoing Premier is they give you authority, effective custody over cabinet documentation. That was developed during the course of your administration. He said, "The committee was looking for some of the cabinet documents." I said, "Well, give them whatever they're asking for." That was the end of that. So you're aware of my co-operation in this regard.

Ministries have a responsibility to abide by the law with respect to documentation and information. I can tell you again that in my office, for example, I did not have an office computer; I did not use a government email. My interaction overwhelmingly was verbal in nature with my staff. It was, I'd get on the phone, talk to my assistant, bring some people in, let's talk about this right now—

Mr. Peter Tabuns: I understand that, but I'm talking about your staff. When we appealed the freedom-of-information request, we were told that Jamison Steeve's email account had been deleted; so was Chris Morley's; so was Sean Mullin's—and somehow, it seemed to happen all around the same time that we were asking for documents. Why was your office destroying important information and, in fact, not following the laws of Ontario?

Mr. Dalton McGuinty: I have no reason to believe that my staff were not following the laws of Ontario. I have every expectation that they would comply with requests received from this committee and that they're doing everything they're supposed to do.

0950

Mr. Peter Tabuns: When we had Craig MacLennan in, who was chief of staff to the Minister of Energy, he reported that he deleted all his emails, which was contrary to the Archives and Recordkeeping Act. Your staff seemed to have deleted everything that they had. As we understand it, that's contrary to the law. Was there no one in your office who was ensuring that your staff were following the laws of Ontario?

Mr. Dalton McGuinty: My staff were fully expected to be both aware of the laws and to be following those laws. Again, I have no reason to believe that they did not do so.

Mr. Peter Tabuns: We will see, as that's investigated.

The signing off on documents: Do you think that it's appropriate, do you think that it's responsible, to sign off on documents without fully understanding their costs or their implications?

Mr. Dalton McGuinty: You're going to have to be a bit more specific.

Mr. Peter Tabuns: Do you think that signing off on arbitration agreements with TransCanada Enterprises, when the scale of risk was unknown, was a responsible thing to do?

Mr. Dalton McGuinty: We found ourselves in a difficult circumstance.

Mr. Peter Tabuns: That you had created.

Mr. Dalton McGuinty: That we had created, I accept that. Again, I still feel to this very day the right thing for

us to do was to deliver on that commitment, not just for the purposes of these families in those communities, but we're making a statement provincially that's we're not going to locate gas plants in that way ever again. In fact, I'd like to say that no party is ever going to locate gas plants in that way ever again.

So we found ourselves in a difficult circumstance: trying to negotiate, trying to use arbitration and to keep costs as low as we possibly could. It was challenging, as I think has become very apparent.

Mr. Peter Tabuns: Last question: As in Oakville and Mississauga, northern York region opposed the siting of the power plant. In that case, your cabinet passed regulations to ensure the plant went ahead—in a flood plain, might I add. The only difference was that this was a Conservative, not a Liberal riding. Why were you listening to people in Liberal ridings and not in opposition-held ridings?

Mr. Dalton McGuinty: Again, I just can't—I can't claim to be as familiar with that particular file as with the others. I don't recall it being the subject of as much profile as before—

Mr. Peter Tabuns: May I say to you that there were public meetings? The local mayors opposed it. You had full-scale upset in that whole region on this.

Mr. Dalton McGuinty: Okay. Well, it just wasn't as high an issue in my mind, maybe because it didn't achieve the media extent at that time, but I'd like to think that we're finally getting it right, and that, going forward, hopefully with the benefit of some support and assistance from this committee, we'll get some great advice about locating these kinds of plants in the future.

Mr. Peter Tabuns: Do you remember who suggested passing the regulations to move the York Energy Centre forward in northern York region?

Mr. Dalton McGuinty: No.

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

To the government side, to Signor Del Duca.

Mr. Steven Del Duca: Thank you very much, Mr. Chair. Good morning, Premier. It's good to see you here this morning. Thank you for being here.

Before I get into some questions, I did want to provide a little bit of context because of some of the stuff that we've heard today from members opposite. In particular with respect to the York region example that Mr. Tabuns has been stressing today, I think it's important to make sure that people understand that there was a very different situation there. In fact, the OPA testified here at committee very clearly that the circumstances in that part were very different than in Oakville. Northern York region was either at the brink or they had passed the point of meeting reliability standards, so they were much more in need of a very immediate solution than the circumstances that existed in Oakville. I think it's very, very important to make sure that's understood clearly.

The other thing: In the final round of questioning from Mr. Yakabuski, there was a discussion around the \$712-million item that appears in an OPA deck. I think it's

extremely important to make sure folks understand that that \$712-million figure included the value of a new project, an alternative plant in the Kitchener-Waterloo area, and I think it's extremely important, given the sensitivities here today, that we have the context we need so that we can move forward with these kinds of things.

It's obvious; you've heard it a bit here today, and I know you've heard it in the weeks leading up to today—the opposition critiques regarding the costs associated with the relocations: I wonder if you find it a bit odd, considering the commitments that we heard from both the NDP and the PCs that they would cancel these plants—do you find it odd that they are this critical of how things unfolded with respect to costs?

Mr. Dalton McGuinty: I understand how it works. They've got a responsibility. They were vying for government at one particular point in time and they were making commitments that they would have presumably delivered on in government. I have no reason to doubt that.

Now we find ourselves in government and they find themselves in opposition. Our responsibility is to deliver on this commitment. Their job is to point out imperfections and failings on our part, and they've got to do that job. I accept that. I spent a long time, from 1990 to 2003, serving in opposition. It's an important job, so I can understand it.

I guess what I'm hopeful will emerge at the end of the day from this is a number of lessons. We've talked about those with respect to locating gas plants.

I think the other thing we didn't get a chance to talk about is document production—something we didn't talk about here today. There have been allegations and innuendo associated with the government perhaps not being as forthcoming. Those are without foundation. My sense is that everybody acted with integrity and worked as hard as they possibly could, whether in the OPA or the Ministry of Energy, to produce those documents in a timely way. The burden that was placed on them was massive and without precedent. I think it was the largest document production ever called upon to be made by the government of Ontario in its history, and there are challenges associated with that. Maybe we can draw some lessons from that when it comes to asking for documents again in the future.

I think we need to look at both siting of plants—that advice emerging from this committee would be helpful. We may want to give some thought to how we ask for documents again in the future so that we can get it right.

Mr. Steven Del Duca: Thanks for that.

You talked about the siting. One thing that seems to have been a bit lost in all of this is the positive impact on the communities where the plants will now be built. Can you recall the reaction from those communities with respect to what were those new sites when they were announced?

Mr. Dalton McGuinty: It was night and day in comparison to where they originally tried to be located. The sites are so much more suitable to the location of these

plants. I believe they both had pre-existing energy infrastructure there. They're much more removed from homes, schools, hospitals and those kinds of things. It's a great example of the right place. These are what they call willing host communities. They're eager for the jobs, eager for the long-term economic opportunities and feel that their airsheds, quality of life and health standards will not be compromised.

We can do these things the right way. It's just unfortunate that we didn't get it right the first time.

Mr. Steven Del Duca: Thank you. As you know, in May 2012, the estimates committee passed a motion by Mr. Leone asking for all correspondence within a specified time frame from the Ministry of Energy and the OPA related to Oakville and Mississauga. At the time the motion was passed, complex and sensitive negotiations were under way with both companies.

In your view, what would it have meant if the OPA and the province's negotiation position was prejudiced because the company had access to confidential and privileged information?

Mr. Dalton McGuinty: You know, if there's one common thread that has been universally supported by every person to whom you have put that question before this committee—they've all said the same thing: To release that kind of information would have compromised the negotiating position of the government and ultimately would have cost taxpayers more. It would have prejudiced the government's position.

I want to take the opportunity to commend once again Minister Bentley, who has acted at all times with integrity. He was caught between two competing principles. He was trying to honour both of those. He wanted to comply with the request put forward by the committee, a very legitimate request, and at the same time, he wanted to protect the interests of Ontario taxpayers. He struggled with that. As he said over and over again, the question is not whether or if he provides this documentation, it's when. I think that he did a fabulous job in that regard. He struggled with those two competing principles and ultimately he was able to provide the documentation.

Mr. Steven Del Duca: Thank you. I have a quote that I want to read to you. It's actually from a letter that you wrote to both opposition leaders in September 2012, the day after the Speaker's ruling that the three parties come to an agreement on the release of the documents, and in that letter you state, "I would like to express my disappointment over the insistence of Ontario's opposition parties to play politics with this sensitive issue." I'm wondering if you can expand on that just a little bit.

Mr. Dalton McGuinty: Well, you know, I don't want to become partisan. I know that that—this is too important an issue. I've tried to come here today and tell you about some of my inner motivations, about what I did and why I did it. I regret that we didn't move sooner. I knew it was wrong to locate those plants there. At the end of the day, I came to understand that in the most intimate way possible. I knew it was going to be difficult getting out of this, that there were going to be costs

associated with that and it was really difficult to get your arms around what those costs were going to be, but I knew that there was a fundamental underlying principle: We could not put those plants in those communities. To do that was the wrong thing. I think everybody sensed that. Everybody sensed that.

We earned the privilege of serving Ontarians as their government, so we've been called upon to deliver on this. That's what we are doing, and it has been challenging. Notwithstanding all those challenges, what would have been wrong would be for us to say to those people in those communities, "It's too difficult. The plants are going in and there's not a thing that we can do about it." I think we had to demonstrate that we have the conviction and the courage now to deliver on commitments which are hard to deliver on.

I think one of the upsides to this, notwithstanding the benefits that the communities there will enjoy, is that we will draw powerful lessons going forward, all of us, so that we will not be locating these plants in those kinds of communities ever again.

Mr. Steven Del Duca: Thank you. I think you know that part of this committee's job is to review the opposition's allegations about contempt against Mr. Bentley. I'm wondering if you could please share with this committee your views on these allegations.

Mr. Dalton McGuinty: Well, the contempt element, to my way of thinking, is exceedingly partisan—

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

Mr. Dalton McGuinty:—and I talked about Minister Bentley struggling with two competing principles and how he found a way to resolve that and how he worked throughout with integrity and honesty.

My advice to the committee is to find a way beyond that and turn your minds to any advice that you might offer with respect to the cost issues, document production and locating plants in the future. I think those are very important issues that will serve all Ontarians well.

Mr. Steven Del Duca: Thank you very much, and thanks for being here today.

Mr. Dalton McGuinty: Thank you for inviting me.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Del Duca, and thank you, Mr. McGuinty, not only for accepting the committee's invitation, but for your continued representation of the people of Ottawa South, which you've done ably since 1990, the stewardship of your party for 16.5 years, as Premier of the province of Ontario for nine-plus years, and, if I might for a moment, on a personal level, for your personal grace and integrity. On behalf of this committee and on behalf of the people of Ontario, I thank you.

The committee is recessed.

The committee recessed from 1004 to 1500.

ONTARIO POWER AUTHORITY

The Chair (Mr. Shafiq Qadri): Colleagues, I call the meeting to order. As you know, justice policy is meeting about energy infrastructure. I'd invite our next

presenter to please come forward, Mr. Michael Lyle, general counsel and VP, legal, aboriginal and regulatory affairs, Ontario Power Authority.

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

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Michael Lyle: I do.

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

The Chair (Mr. Shafiq Qaadri): I apologize that there's not as much press scrutiny as there was for this morning's presenter, but in any case I invite you to make your opening remarks for five minutes.

Mr. Michael Lyle: I assure you I'm not disappointed, Mr. Chair.

My name is Mike Lyle. I am vice-president and general counsel at the Ontario Power Authority. I am a member of the executive team and I am responsible for the legal, aboriginal and regulatory affairs division of the OPA.

Prior to joining the OPA as general counsel in 2005, I was counsel with the Ontario Energy Board. I've also worked as counsel in various government ministries, including the Ministry of Energy. I obtained my law degree in 1987 from the University of Toronto and was called to the bar in Ontario in 1989. Since that time, I have been a member of the Law Society of Upper Canada.

OPA's legal department is responsible for legal, regulatory and aboriginal affairs. Currently we consult and foster relationships with Ontario's aboriginal communities as it relates to energy planning. On the regulatory side we provide supporting evidence before the Ontario Energy Board on matters related to generation, transmission and distribution. We are also responsible for managing the legal aspects of the thousands of energy contracts the OPA has entered into across the province. In addition to contracts for electricity generation, which are at issue here, we have contracts related to conservation. Finally, our department addresses corporate governance and compliance issues. I am proud of the role the OPA and my team have played in the energy sector in Ontario.

As general counsel, I became involved in issues surrounding the Oakville and Mississauga gas plants around the dates of the announcements that these projects would not proceed. Thereafter, I was involved in the renegotiation and relocation of the contracts along with external counsel, members of our contract management team, government-appointed negotiators and our CEO.

I note that the Auditor General, in testifying before this committee on his report into the Mississauga power plant, acknowledged that the OPA attempted to get the best deal it could, but did not have the upper hand in negotiations.

We were also negotiating under tremendous pressure on Oakville. The OPA was motivated in negotiations on

the Oakville plant to get the best deal it could under difficult circumstances. In the end, a commercially reasonable deal was reached for the relocation of the Oakville plant to Napanee.

I was also responsible for responding to the disclosure request made by the estimates committee in May 2012, which occurred while we were in the process of re-negotiating both contracts.

As you have heard from Ms. Jenkins and others, the document disclosure request was unprecedented in terms of size and scope. Given the work that was being done on the relocation negotiations, the legal department was ultimately assisted by Ms. Jenkins and members of her team in responding to the motion. The documents requested by the committee were disclosed as a result.

I note that I am the first witness who was a practising lawyer at the time of the relocation negotiations to appear before the committee. As a lawyer, my professional obligations require me to maintain the privilege and confidences of my client, the OPA. As the committee is aware, in a letter from Colin Andersen, the OPA has waived the privilege for the purposes of my testimony at this committee, should the committee consider that necessary.

I would be happy now to answer any questions that you may have.

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

To the NDP: Mr. Tabuns, 20 minutes.

Mr. Peter Tabuns: Thank you, Chair, and thank you, Mr. Lyle, for being here this afternoon. Did you review the contract with Greenfield prior to the government's announcement that they would cancel the project?

Mr. Michael Lyle: I'm not entirely sure I follow the question, Mr. Tabuns. Do you mean immediately prior to the—

Mr. Peter Tabuns: Immediately prior to.

Mr. Michael Lyle: I don't recall specifically reviewing that contract immediately prior to the government's announcement.

Mr. Peter Tabuns: Did you review it after the government's announcement?

Mr. Michael Lyle: Yes.

Mr. Peter Tabuns: Did you know of anyone, prior to the government's announcement, assessing the complications that would attend cancelling that contract?

Mr. Michael Lyle: Not to my knowledge—I'm sorry; I should say I believe there were some discussions that went on in the summer prior to the cancellation. They were not discussions that I was particularly involved in, but there were discussions, I believe, with our electricity resources division around the fact that the plant was now being constructed and that there was community opposition.

Mr. Peter Tabuns: Okay. One of the elements that came out both in the emails and in the study by the Auditor General was the side deal on the Keele Valley landfill generation agreement with Greenfield. You were involved with that matter?

Mr. Michael Lyle: Yes, I was.

Mr. Peter Tabuns: And who instructed you in this matter?

Mr. Michael Lyle: It would have been Colin Andersen. I should add, though, Mr. Tabuns, that Mr. Andersen was in regular contact with senior government officials as those negotiations progressed.

Mr. Peter Tabuns: Okay. So you were in discussion with him, and he was in discussion potentially with the Minister of Energy and potentially with the Deputy Minister of Energy?

Mr. Michael Lyle: Potentially, I believe he also may have been having discussions with Cabinet Office and other senior government officials.

Mr. Peter Tabuns: Do you know who in Cabinet Office he would have been in discussion with?

Mr. Michael Lyle: Giles Gherson.

Mr. Peter Tabuns: Okay. “Other senior government officials”: Can you be specific?

Mr. Michael Lyle: There was a regular meeting that was convened on sort of a weekly but as-necessary basis which would have had representatives—Mr. Gherson, Mr. Lindsay at the time, the Deputy Minister of Energy; there would have been a representative from Ontario Electricity Financial Corp. I’m trying to recollect. David Livingston as well would sometimes attend those meetings, or participate in those meetings; they were generally by teleconference.

Mr. Peter Tabuns: Okay. So in fact, quite a few people knew about the side deal with regard to Keele Valley.

Mr. Michael Lyle: I can’t speak specifically to that. I would anticipate that that was the case.

Mr. Peter Tabuns: When did you learn that the Oakville gas plant would be cancelled?

Mr. Michael Lyle: I learned on Tuesday, October 5. As I was reviewing my notes, I noticed that I got the date wrong; I think I said Tuesday, October 4, but it’s actually the 5th.

Mr. Peter Tabuns: Okay. Who told you?

Mr. Michael Lyle: Colin Andersen told me that he had heard from the government that they intended to announce the decision not to proceed with the Oakville facility on that Friday, which was the original scheduled date for the announcement, October 8.

Mr. Peter Tabuns: Okay. Didn’t they announce it on October 7?

Mr. Michael Lyle: Yes, they did.

Mr. Peter Tabuns: Was there a reason they moved it up?

Mr. Michael Lyle: I don’t know. We were informed, I believe on the 6th, that they were going to announce it the next day.

Mr. Peter Tabuns: In this case, prior to the cancellation, were you asked to assess the contract and look at costs and legal options that would allow the cancellation to proceed in a way with the least damage to the government and the people of Ontario?

Mr. Michael Lyle: No, to my knowledge, no. There was an opinion that was prepared, which I believe is in the disclosure that the committee has. It was from Aird and Berlis and discussed issues related to options and issues related to force majeure. There was a brief note that was prepared by a member of my staff; it was really only a one-page note. That would have been—

Mr. Peter Tabuns: Who was that person on your staff?

Mr. Michael Lyle: That would have been Susan Kennedy.

Mr. Peter Tabuns: Susan?

Mr. Michael Lyle: Kennedy.

Mr. Peter Tabuns: Can you outline just briefly what they touched on in that brief?

1510

Mr. Michael Lyle: I think they just explored the fact that there was no right to terminate the contract, that the proponent had all the necessary approvals and permits and was entitled to proceed, to continue constructing; I think it also indicated that the damages could be significant.

Mr. Peter Tabuns: Do you remember the range of damages that were identified at that time?

Mr. Michael Lyle: I think, as I recall, the discussion at that time was just—people had kind of put the upper limit on it, which was basically, if you were to pay out the entire revenue stream of the contract, what would that be? That was something in the range of about \$1.4 billion.

Mr. Peter Tabuns: One point four billion—

Mr. Michael Lyle: That obviously is very much on the high side because that’s not profit; that’s purely the revenue—

Mr. Peter Tabuns: The total revenue stream.

Mr. Michael Lyle: Yes.

Mr. Peter Tabuns: And what was the lowest estimate for the range?

Mr. Michael Lyle: I believe there’s another document, which was not that document, where the number zero may have been discussed.

Mr. Peter Tabuns: Did anyone ever think it would be zero?

Mr. Michael Lyle: Well, it’s difficult to assess.

Mr. Peter Tabuns: Okay. Did you have regular contact with the minister’s office? There should be the document package in front of you: “I think we got that from the call with Craig.” Did you keep the minister’s chief of staff and others up to date on a regular basis?

Mr. Michael Lyle: I was not directly reporting on a regular basis to the minister’s chief of staff.

Mr. Peter Tabuns: But did you have discussions with him on a regular basis, even if you weren’t reporting?

Mr. Michael Lyle: I would not say on a regular basis. There’s maybe one phone call that I had on Oakville prior to the decision not to move forward with Oakville, and I believe once the notice of proceedings against the crown was issued in late April 2011, I was involved in a

meeting that I believe Mr. MacLennan was in attendance at.

Mr. Peter Tabuns: All right. We're you involved in putting together the final memorandum of understanding?

Mr. Michael Lyle: Yes; I was involved in those negotiations.

Mr. Peter Tabuns: And were you aware, in the course of those negotiations, that there would be costs beyond the sunk costs of \$40 million?

Mr. Michael Lyle: Yes, I was.

Mr. Peter Tabuns: Do you believe the ministry knew there would be more costs than \$40 million?

Mr. Michael Lyle: There were ministry representatives at the table. Just to give you some context, essentially the negotiations went on pretty much non-stop through the 22nd and the 23rd. People didn't get much, if any, sleep that weekend. There were ministry representatives who were at the table as well as Infrastructure Ontario representatives.

Mr. Peter Tabuns: Can you name the ministry representatives or can you tell us how senior they were?

Mr. Michael Lyle: Yes. There was Michael Reid, who is an assistant deputy minister, and Halyna Perun, who is the legal director.

Mr. Peter Tabuns: So they would have been aware that, for instance, the gas management costs are costs that were assumed by the OPA in the course of the negotiation.

Mr. Michael Lyle: That would have been my understanding, yes. It's spelled out in the MOU.

Mr. Peter Tabuns: Right. And we feel the same way, that there are a lot of elements in the MOU that would have been visible to anyone who had worked on it and, frankly, it would have been brought to the attention of anyone who would have been briefed on it.

Did you have a sense at that point what the range was for the costs that were being assumed in this relocation?

Mr. Michael Lyle: That really wasn't my focus. We were really focused on the language, as the lawyers. First of all, of course, at that time we were really talking about the commercial deal, not talking about other costs such as the cost of transmission in Oakville or the cost of new replacement capacity for the fact that that plant would not come into service as early as originally thought.

In terms of the costs that relate to the actual deal, I believe there was a number around GD&M that I can't recall, but it was still a significant number, perhaps smaller than the number that's estimated today, but still a significant number.

Mr. Peter Tabuns: So, in fact, the team that was involved in the negotiations knew that the only cost that had been identified with clarity to that point was the sunk cost and that there were other, as it has been called, "buckets of costs" that were either to be finalized or yet to be developed.

Mr. Michael Lyle: Yes, I think that's a fair characterization.

Mr. Peter Tabuns: Okay. So anyone who would talk reasonably about this would say, "We have this identified clear cost and we know there are other costs that are coming and will be clarified."

Mr. Michael Lyle: Yes, that would have been my understanding.

Mr. Peter Tabuns: Okay. Were you acting under the direction of the government in negotiation of the memorandum of understanding?

Mr. Michael Lyle: There were three parties from the government side at the table and we were working together as a team: the ministry representatives, ourselves and Infrastructure Ontario. But ultimately, certainly the expectation was that the minister would be approving any ultimate deal.

Mr. Peter Tabuns: So who would you turn to for guidance when you had questions about the direction of the negotiations?

Mr. Michael Lyle: Certainly I would be reporting to my CEO, but my CEO was, I believe, in contact with the deputy minister on a regular basis.

Mr. Peter Tabuns: When the Oakville gas plant was cancelled, you wrote to Colin Andersen and Ben Chin that "The OPA acknowledges that the supplier is entitled to compensation from the OPA as a result of such termination...." Did anyone ask you what range of compensation we were talking about?

Document 3, here.

Mr. Michael Lyle: Oh, I'm sorry. Thank you.

So that was some work we were doing in response to a letter that we had received from, or a proposal we'd received from, TransCanada.

Mr. Peter Tabuns: Right.

Mr. Michael Lyle: And that's the evening of October 6. So just to give you some context for that, when Colin Andersen spoke to me about the government's decision not to move forward with the Oakville facility, he told me that the government was looking for a letter and TCE had requested a letter. We weren't really clear at that time what the nature of that letter was to be, and so we drafted up something that was more what we would call a standstill agreement, which essentially says everybody's obligations under the contract are on hold while we have some negotiations to see how we're going to come to a settlement on these issues.

Ultimately we sent that letter out, although that was after a prior letter had been received from TCE. Ben Chin and I then had a conversation on the evening of the 6th with I believe it was Chris Breen and John Cashin. At that time, they told us that our letter was insufficient, that they had been promised already that they were going to be kept whole, and that's what they were looking for.

Mr. Peter Tabuns: And who did they say gave them the promise that they were going to be kept whole?

Mr. Michael Lyle: In my recollection, it was the Premier's office.

Mr. Peter Tabuns: Any particular individual in the Premier's office?

Mr. Michael Lyle: I don't recall them specifically naming an individual in the Premier's office. There was a previous email that went out under Sean Mullin's name. Our first letter went out under Sean Mullin's name. That was the letter where it was essentially just a standstill agreement.

Mr. Peter Tabuns: Okay. In your email of October 6 to Colin Andersen, your first line is, "This is awkward and I would advise against it. I will call Ben." What do you mean?

1520

Mr. Michael Lyle: I don't have a specific recollection of this particular one, but I think probably I was referring to the clause in the second paragraph, which was my attempt at a draft and which may form all or part of the compensation. It was to some extent, I think, a drafting issue, but it was also this issue about—there was the thought, even at this stage, of the compensation being addressed through an alternative project.

Mr. Peter Tabuns: At this point, your understanding of the range of cost risk was still somewhere less than \$1.4 billion?

Mr. Michael Lyle: Yes. We had not done or been able to do any sort of significant analysis on that.

Mr. Peter Tabuns: So that was about the only figure that you had, the total value of the revenue stream.

Mr. Michael Lyle: Yes. I do think it's important, though—and maybe we can get to this at some stage—to understand the different numbers because that was an estimate of lost profit and, of course, in the final deal we did not ultimately pay lost profits.

Mr. Peter Tabuns: No, I understand that. But at the time you were negotiating this letter, you were aware, very roughly, of extraordinarily large costs that could be a risk for the province of Ontario coming out of this.

Mr. Michael Lyle: Yes.

Mr. Peter Tabuns: Okay. You wrote an email on September 22, 2011—I think it's number 4 in your package there—in which you write to Kristin Jenkins and JoAnne Butler, and you're talking about commentary to the media about the Oakville contract:

"Thinking about this some more, it might be better to fudge who is actually engaged in ongoing negotiations with TCE by just starting with 'Discussions are ongoing'." Is that because the government was engaged in negotiations?

Mr. Michael Lyle: That's because Infrastructure Ontario was leading the negotiations and we were playing a support role during that period of time.

Mr. Peter Tabuns: So this was September 2011. Why did you feel that it was necessary to be imprecise and not just say, "Infrastructure Ontario is involved in this?"

Mr. Michael Lyle: I don't recollect. I imagine Infrastructure Ontario wouldn't have been particularly happy about that. I don't think it was known at the time that they were involved in the negotiations.

Mr. Peter Tabuns: Why would they be unhappy? They were directed by the government to do this.

Mr. Michael Lyle: I'd only be speculating as to why they'd be unhappy, but—

Mr. Peter Tabuns: I apologize; I have to ask you to speak a bit more loudly.

Mr. Michael Lyle: I'm sorry. I'd only be speculating as to why they'd be unhappy, but the role that Infrastructure Ontario—

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

Mr. Michael Lyle: —was playing in the negotiations was not something that was publicly known at the time, to my knowledge, anyway.

Mr. Peter Tabuns: It wasn't publicly known, but why were you being pressed to keep that out of the public eye?

Mr. Michael Lyle: I honestly don't know that I can say that we specifically were being pressed to keep it out of the public eye; it's just something that had not been discussed publicly.

Mr. Peter Tabuns: Infrastructure Ontario was involved. The Ontario Power Authority was involved. Was there any other body that was involved?

Mr. Michael Lyle: Ontario Power Generation would have played a role at one period of time. There was thought being given to an arrangement with TransCanada whereby there would be some form of a joint venture with OPG in developing—

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

To the government side, Ms. Albanese.

Mrs. Laura Albanese: Thank you, Mr. Chair, and good afternoon, Mr. Lyle.

Mr. Michael Lyle: Good afternoon.

Mrs. Laura Albanese: Welcome to our committee.

I want to start by asking you about the negotiations to relocate both Oakville and Mississauga. Could you elaborate for a second on the OPA's mandate during these negotiations and if they would have been to ensure that a deal was made in the best interests of the ratepayers of Ontario, all other factors considered?

Mr. Michael Lyle: Certainly that's what we would be attempting to do.

Mrs. Laura Albanese: And did you want to elaborate further on the mandate?

Mr. Michael Lyle: As I say, we were in the circumstance of Greenfields where the government had made a decision to not move ahead with the Mississauga project and we had a difficult problem because they were already constructing and continuing to construct, and we did not have any mechanism to make them stop construction. We commenced negotiations with them with the goal of meeting the stated desire of the minister that the project not move ahead in Mississauga and to attempt to see if we could relocate the project to another site. Obviously we wanted to try to do that at the lowest cost we could under the circumstances.

Mrs. Laura Albanese: I understand that both contracts were ultimately renegotiated and not torn up, and I assume that the OPA decided to go this route because it

would have been much more expensive to just tear the contracts up and get tied up in the courts.

Former Deputy Minister David Lindsay testified at this committee a few weeks ago and he said that, “Paying costs and getting no electricity would not be a very good business decision.” Would you agree with his comment?

Mr. Michael Lyle: I think, generally, I would agree. There’s obviously a value in being able to use the equipment in a new location as opposed to it going at salvage value and having to pay damages related to that equipment, so there are some definite advantages in negotiating for a new project and relocating the projects.

Mrs. Laura Albanese: And when the OPA chose to renegotiate over tearing up the contracts, were you also concerned about maintaining good relationships with these energy suppliers?

Mr. Michael Lyle: Certainly it was always something of concern to the OPA that we treat our counterparts fairly and that people continue to have confidence in investing in generating facilities in Ontario.

Mrs. Laura Albanese: From what we’ve heard, I guess I can say that it was a difficult process overall, but the OPA balanced their responsibility to the ratepayers with their responsibility to provide reliable energy to the system. Would you say that’s correct?

Mr. Michael Lyle: Certainly we recognized that there was value in continuing to have plants because there’s still reliability issues and still a need for these plants in the midterm going out to the 2017-18 time period.

Mrs. Laura Albanese: Okay. I understand that in both cases these were very difficult and complex negotiations. In the case of the Mississauga plant, construction, you just mentioned, had already started and that added to the pressure to get a deal as soon as possible. When he testified before this committee, the Auditor General confirmed that the longer the delay to halt construction, the higher the sunk costs would be. He said, “basically, you’d be putting money into the ground,” and for almost no reason. “Then you’d have to reimburse the supplier.” Would you agree, therefore, that it was important to get a deal with Greenfield as soon as possible in order to minimize the sunk costs?

Mr. Michael Lyle: Yes, I would.

Mrs. Laura Albanese: And in terms of Oakville, we’re all aware that there was strong local opposition and that the municipality had enacted bylaws to try and stop the construction of the plant. Chris Breen from TCE was here to testify a couple of weeks ago and he told the committee about all the channels that they would have used to deliver on their obligation to build the plant. He said that they were confident that they would eventually get the bylaws overruled, either at the OMB, the Ontario Superior Court, Divisional Court or whatever court they needed to go to.

1530

If TCE had successfully overturned the bylaws and building permits were issued, would the sunk costs have been higher if the government decided to cancel the plant after the construction had started?

Mr. Michael Lyle: I would imagine so. If, in fact, the government let the Oakville project go to the extent that they actually commenced construction, then yes, there would be additional sunk costs. If the government then decided to cancel the project, there would be liability for those sunk costs.

Mrs. Laura Albanese: In terms of the negotiations process with TCE, I would imagine that there were a number of offers back and forth. But as you said the goal was to renegotiate a new plant, not to write a cheque and walk away with no electrons produced, I guess we could say—I’d like to ask you about a specific offer that we’ve discussed a number of times here in the committee, and it was an offer from the OPA to TCE dated April 21, 2011, valued at \$712 million. When Chris Breen from TCE was here, he was asked about this offer, and he replied, “The offer that I’m aware of is Colin Andersen’s letter to Alex Pourbaix proposing that we go ahead and build a peaking natural-gas-fired plant in the Kitchener-Waterloo area.”

When we asked Mr. Andersen about that, he said, “We were talking about a number of different plants, in some cases, in different locations; in some cases, it was actually a package of plants or other things that could essentially get TransCanada equivalent value of one sort or another. In the end, a like-for-like project was what we were striving for.”

My question to you is, this \$712-million offer wasn’t just a blank cheque to the company. It would have included the value of a new power plant. Is that right?

Mr. Michael Lyle: I’m not sure that that’s my understanding, and I confess I was not directly involved in negotiations during that time frame. I would have had information from being on the executive team and being at the board. It wasn’t until the notice of proceedings against the crown came the next week that I got more directly involved.

The original idea was that a plant would be developed in Cambridge. It would be a smaller plant than the Oakville facility. The long-term energy plan had called for a plant in Cambridge. The intention was to incorporate the value of the lost profits into the price that would be paid under the contract for the Cambridge plant. What we ended up doing—and Mr. Andersen may be referring to a number of different time periods, because this changed over time. In April 2011, the focus was on a Cambridge plant. The focus later shifted. As I said, there were some potential joint ventures with OPG and ultimately a like-for-like plant, which we ended up with. As a result, because it’s a 900-megawatt plant, just as it was in Oakville, there was no need to provide for lost profits in the payments under the contract.

Mrs. Laura Albanese: Cost estimates: I understand from Colin Andersen and JoAnne Butler’s testimony before this committee that the cost estimates for both relocations are complex and difficult to calculate, would you say?

Mr. Michael Lyle: I’m certainly not the expert on the numbers, but I believe that’s a fair statement.

Mrs. Laura Albanese: How long did the Auditor General work with your office on the Mississauga file?

Mr. Michael Lyle: I think they came along in September or early October, as I recall.

Mrs. Laura Albanese: Why would you say it took him and his office so long to come up with the calculations?

Mr. Michael Lyle: Well, a few reasons. Obviously, as the committee is well aware, there's a very detailed and complex record of documentation around this file. It is difficult, because of the different components, because of the different assumptions that go into a calculation, because so many of them are based on estimates—it is a difficult exercise.

Mrs. Laura Albanese: Now, in regard to Oakville, we know that the numbers have been changing, have been evolving, and in the past month we've heard here at the committee at least about four different numbers. Mr. Andersen provided us with the OPA's latest estimate last week, as well as an estimate from an independent report. The OPA produced a document on March 20 which estimated the cost for Oakville to be between \$33 million and \$136 million.

Would you agree that this really speaks to the complexity of calculating these numbers?

Mr. Michael Lyle: I think that's part of it. The numbers evolve as we get more information. There are a number of assumptions that are baked into calculating any of these numbers. Generally, they are estimates going forward and they don't just relate to the plant itself, but they also relate, as I've said before, with issues like line losses, with cost of transmission upgrade, with the cost of replacement power. There are a number of different components that go into the calculation.

Mrs. Laura Albanese: And they vary, from what we hear.

I want to turn for a moment to the document disclosure. As you're aware, there was a document disclosure motion that was passed at estimates committee in May 2012. Who oversaw the document search and disclosure process at the OPA?

Mr. Michael Lyle: As I indicated in my opening statement, I played the lead role during the earlier part of that back in May. At some point in time, as I became more embroiled and the negotiations with respect to the Oakville relocation heated up, Kristin Jenkins played the lead role.

Mrs. Laura Albanese: Now, as we know, the OPA had three separate document disclosures and your chair, Jim Hinds, said in a press conference following the third release of documents that mistakes had been made but the search was done in good faith. He said that the OPA is in the business of producing power, not documents.

What I take from that is that the document search process was quite a departure in terms of the normal activities engaged in by the OPA.

Mr. Michael Lyle: We had never experienced anything of that scope and scale. Obviously, we respond to freedom-of-information requests, but, as others have said, it was quite unprecedented for a committee request. We know, of course, that other entities have struggled

before with these large-scale document disclosures. It's a difficult thing to get right and, yes, we had some struggles.

We've put in place a new protocol. We have new software and we've used those tools in the search that we did with the Auditor General in their work on the Mississauga facility, and that went well.

Mrs. Laura Albanese: At that same press conference, when asked about opposition attacks that this was all a government cover-up, Mr. Hinds responded, "I don't think cover-up is the right way to describe it. We messed up some search terms, and we were trying to get them cleaned up. So I'm not sure what this has to do with the government. This is all us."

So would you agree with Mr. Hinds's statement that there was no orchestrated cover-up?

Mr. Michael Lyle: I certainly don't have any evidence to believe there was any sort of orchestrated such thing.

Mrs. Laura Albanese: Both Kristin Jenkins and Colin Andersen testified before this committee that the OPA was responsible for your own document search and had final sign-off on what was provided to the Clerk. Mr. Andersen told us, "When all was said and done, it was our decision." Would you agree with that?

1540

Mr. Michael Lyle: I would generally agree, but I would note that it was important to Mr. Andersen and to the ministry that we have a coordinated approach. I think ultimately all of the documents were disclosed to the committee to assist the committee with its work.

Mrs. Laura Albanese: And I understand that you, as legal counsel, would have provided some advice into what went in the final decision?

Mr. Michael Lyle: I'm sorry, when you're referring to the final decision, could you be more specific?

Mrs. Laura Albanese: To what documents would be handed to the Clerk from the OPA.

Mr. Michael Lyle: From May? I was involved in working on the search for May, working with my staff around the search. Subsequently, it came to light later in September and early October that there were other documents that we should have been searching, and at that time, we moved forward to do those searches and provide those documents.

Mrs. Laura Albanese: Okay. Well, thank you. I will pick up later. Thank you.

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

To the PC side: Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair. Good afternoon, Mr. Lyle. Thank you for being here.

Mr. Michael Lyle: My pleasure.

Mr. Victor Fedeli: I have a question for you on the actual cancellation, then. Who ordered the OPA to cancel the Oakville contract?

Mr. Michael Lyle: As I indicated in answering Mr. Tabuns's questions, I was told by my CEO, Colin Andersen, on October 5 that the government had decided it didn't wish to proceed with the Oakville project.

Mr. Victor Fedeli: So who told Colin Andersen?

Mr. Michael Lyle: I'm assuming it was the Premier's office because we subsequently would have had an interaction with Sean Mullin in the Premier's office, and as I indicated to Mr. Tabuns, Mr. Mullin was the email where the first proposed letter went out from.

Mr. Victor Fedeli: And who would have ordered the OPA to cancel the Mississauga gas plant contract?

Mr. Michael Lyle: Well, that was once again a decision by the government. As you know, it was a campaign promise, and then after the government took power, there was a discussion internally in the government as to how to move this forward. Then finally, there were a couple of letters from the Minister of Energy where he expressed the government's desire, expectation that the project not move forward in Mississauga.

Mr. Victor Fedeli: Mr. Lyle, under what legislation, regulation or statute did the government have the authority or power over you to tell you to cancel that contract?

Mr. Michael Lyle: Government did not have express authority under the Electricity Act. However, our board decided that in the circumstances, without government support for those two projects and in light of the community opposition, those projects would not be able to move forward.

Mr. Victor Fedeli: On our package of information, there's doc 5—whether you have it there. There's a letter from Halyna Perun to a long list of people that says, "We have advised Deputy Lindsay that the Minister of Energy does not have clear legal authority to direct the OPA to take any significant commercial steps in relation to the contract." She goes on to talk about the risks and that type of thing. This is from Halyna Perun of the legal services branch.

If they don't have any clear legal authority, why would your board proceed with cancelling a contract?

Mr. Michael Lyle: Well, as I indicated, the minister wrote two separate letters to our board—I believe the second one was November 14—and stated the government's clear policy decision that the project would not move forward in Mississauga.

Mr. Victor Fedeli: But they don't have any right or any ultimate power over your board. Am I correct in that?

Mr. Michael Lyle: That's true, but I think our board recognized that the government ultimately has the tool of legislation.

Mr. Victor Fedeli: So your board would have discussed this, Mr. Lyle?

Mr. Michael Lyle: I don't recall in what detail they discussed that. I think there was a recognition that, without government support for the project, the project would not be able to successfully move ahead.

Mr. Victor Fedeli: Do you sit on the board?

Mr. Michael Lyle: I attend board meetings. I don't sit on the board.

Mr. Victor Fedeli: Mr. Andersen told us there was debate at the board on this. It didn't sound like there was

all one-sided debate, either—that there was a discussion about it.

Mr. Michael Lyle: I don't actually recall.

Mr. Victor Fedeli: Would you undertake to turn over to us all of the board minutes related to any and all discussions with respect to the Oakville and Mississauga cancellations?

Mr. Michael Lyle: Can that be the subject of a motion?

Mr. Victor Fedeli: If you'd like it to be; if you insist, I can make it a subpoena.

Mr. Michael Lyle: There may be privileged information, and it would be of assistance if it was the subject of a motion.

Mr. Victor Fedeli: Then we will, at the end, Chair, make a motion. So if our staff will have that written out, we'll have that ready. If that's the direction you expect us to go, we can certainly accommodate you for that.

Why did the government cancel the Oakville power plant?

Mr. Michael Lyle: I don't have any other insight other than what one reads in the newspapers.

Mr. Victor Fedeli: In your letter to Mr. Ben Chin on October 6, you said, "In recognition of Ontario's ongoing need for power generation...." and you go on to talk about another project.

Mr. Michael Lyle: I'm sorry. Is this in your package?

Mr. Victor Fedeli: That's actually in the NDP package.

Mr. Michael Lyle: Oh, it is. Okay.

Mr. Victor Fedeli: I don't know what number it is in ours, but it's their fourth page. It was just easier to pull that one.

Let me read you the Toronto Star. It's not in the package; it's been here many, many times. This is former Minister Brad Duguid in his Toronto Star interview of October 7. He says: "Since then, changes in demand and supply ... have made it clear this proposed natural gas plant is no longer required." So he's telling the public one thing, that the power plant is no longer required because of supply and demand, that we don't need the power; yet on the day before, you wrote to Mr. Chin and said to him that there's an "ongoing need for power generation and your desire to generate power in Ontario" and you want to work. Which one is accurate? Was there a need for power or not?

Mr. Michael Lyle: Sorry. I'm still struggling to see the email that you're referring to.

Mr. Victor Fedeli: It's the fourth page from the NDP package.

Mr. Michael Lyle: Okay.

Mr. Victor Fedeli: It's to Ben Chin and Colin Andersen. It's the second-last paragraph. It begins with, "In recognition...."

Mr. Michael Lyle: Yes.

Mr. Victor Fedeli: So again, on October 7, then-Minister Duguid said, "Since then, changes in demand and supply ... have made it clear this proposed natural gas plant is no longer required." But you say to Mr. Chin from TransCanada the day before, "In recognition of

Ontario's ongoing need for power generation and your desire to generate power in Ontario ... " and you go on. Which one is true?

Mr. Michael Lyle: I think they're actually both true.

Mr. Victor Fedeli: You need the power, but you don't need the power?

1550

Mr. Michael Lyle: As I understand it, they're discussing two slightly different things. I'm not a power system planner, so I may get out of my depth here quite quickly. But essentially there was an overall Ontario system need for power and there's local reliability needs, and the original decision was to locate a plant in the southwest GTA to address both of those needs and, in doing so, be able to defer transmission investments. What had transpired was that there was no longer—the anticipated need in southwest GTA—

Mr. Victor Fedeli: It doesn't say that here. It just says, "In recognition of Ontario's ... need," and the other one says—

Mr. Michael Lyle: Yes. So as I say, this letter is talking—and it's reflected ultimately in the October 7 letter as well. But this letter is talking about Ontario's overall needs. I think the government's announcement was related to the fact that now a transmission solution was possible because the timelines had changed for local reliability needs.

Mr. Victor Fedeli: Yes. That's not quite what it says, but we'll move on to the \$712-million offer.

There are slides—I don't know if they're included in your package or not, but being part of the Ontario Power Authority, I'm sure you're quite familiar with the ones that say that OPA was instructed by the government to make a second counter-proposal—this government-instructed counter-proposal. On April 29, TCE rejected the government-instructed—who in the government instructed you to make a proposal and a counter-proposal?

Mr. Michael Lyle: I don't know. I was not involved in those discussions. I wasn't heavily involved in the negotiations at that particular time frame.

Mr. Victor Fedeli: In your opening statement, you said you became involved in Oakville and Mississauga around the dates of the announcement. "Thereafter, I was involved in the renegotiation and relocation of the contracts along with external counsel, members of our contract management team, government-appointed negotiators and our CEO." But you weren't involved in that one negotiation?

Mr. Michael Lyle: I was less involved from the period of October 8 on until the notice of the proceedings against the crown was issued against the government, which was April 27. So I would have had some knowledge, and there would have been discussions at our board about the counter-offer, but I wasn't so deeply involved in it that I would have known where that might have come from.

Mr. Victor Fedeli: So on another slide where it talks about the fact that—this is from the government, the Premier's office. It goes on to say that they're looking for a negotiated solution not to exceed \$1.2 billion and that

no cheque be issued to TransCanada. Are you familiar with those criteria as well?

Mr. Michael Lyle: I'm sorry, can you—

Mr. Victor Fedeli: It was in a slide, an Ontario Power Authority slide.

Mr. Michael Lyle: I wouldn't have detailed knowledge of that.

Mr. Victor Fedeli: In your opening sentence, again, you had said that you were involved in the renegotiation and relocation. As you were involved then, you would know what numbers the government was provided with? Can you tell us what the government knew and when they knew? Is that something you can tell us?

Mr. Michael Lyle: I can speak to, as I think I have spoken to, the \$40 million.

Mr. Victor Fedeli: I'm sorry?

Mr. Michael Lyle: I can speak to the \$40 million of sunk costs, which I have spoken to—

Mr. Victor Fedeli: So let me ask you specifically then about that, because I have asked the current Premier 21 times when she knew or when cabinet knew of that number. My colleague the member from Nepean—Carleton asked another 10 times—over 30 times in 30 minutes. We're trying to find out when. If they won't tell us when, can you tell us when the MOU was signed, who you negotiated with from the government, and when it was signed, specifically?

Mr. Michael Lyle: So, it was signed on September 24, and we negotiated with government representatives over the course of the weekend.

Mr. Victor Fedeli: Including?

Mr. Michael Lyle: As indicated, Michael Reid, who's an assistant deputy minister at the Ministry of Energy, and Halyna Perun, who's the legal director at the Ministry of Energy; as well, as indicated, there were representatives of Infrastructure Ontario.

Mr. Victor Fedeli: So they would have all been aware by September 24, or actually quite some time in advance of that, that we're not talking about \$40 million in sunk costs only; we're talking about buckets of costs?

Mr. Michael Lyle: The negotiations really heated up toward the end, so it may actually have been not necessarily some time in advance of that.

Mr. Victor Fedeli: But before September 24?

Mr. Michael Lyle: But by September 24.

Mr. Victor Fedeli: By September 24. The Mississauga settlement was announced in July 2012. The OPA had already spent more than \$245 million by that time. That's what the auditor had told us, that by the time the—I'm sorry, the \$245 million had been committed by the OPA by July 2012, even though the announcement wasn't for some months. Who in the government would have known of that \$245-million expenditure?

Mr. Michael Lyle: There would have been a number of people in government, I assume. The OPA did provide numbers to the government—

Mr. Victor Fedeli: Let me go back, then. Just to interrupt you for one second, you were aware that the auditor told us there was \$245 million spent by July 2012.

Mr. Michael Lyle: Yes, but I do think it's important to understand what each of those categories was about. There were gross costs, which related to all the payments that had been made to Greenfield South, its secured lender and its creditors, suppliers; and then there was a deduction made in order to get the net number, because there were costs that were going to be able to be used—sorry, there were categories of equipment etc. that could be reused at the Lambton site, and that's where the \$190-million number comes from.

Mr. Victor Fedeli: So there were costs of \$245 million agreed to by the OPA by July 2012, months before the announcement, and there would have been members of the government who were aware of that number.

Mr. Michael Lyle: As I say, they would have been aware of that number—well, I don't know if it was precisely that number they would have been aware of, but they would have been aware that there were costs that had been paid more than the \$190 million. However, it is also true—

Mr. Victor Fedeli: Let me just get that. You just finished saying they knew there were costs that were paid that were above \$190 million back in July.

Mr. Michael Lyle: That is true. But it is also true that they were seeking to report the net relocation costs, because those other elements could be reused at the Lambton facility.

Mr. Victor Fedeli: I completely understand.

We've only got about four more minutes. I want to ask you about this Colin Andersen doc 7. It's the Kristin Jenkins email to Colin Andersen, you and Ziyaad Mia. This is where she says that Jesse Kulendran instructed them to remove all of the SWGTA documents. She says, "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 is also clear that Jesse directed us to exclude SWGTA. I have the documents and can show them to you."

Where do you weigh in on who's telling the truth, Mr. Lyle, about the Jesse Kulendran involvement in the Ministry of Energy instructing OPA to withhold documents on that first document dump? Where do you come in on this story?

Mr. Michael Lyle: I have not spoken to Ms. Kulendran about the matter. I don't know her very well. I have worked for several years with Ms. Jenkins and Mr. Mia, and I know them to be truthful.

Mr. Victor Fedeli: So when Kristin Jenkins tells you that she was instructed to remove documents, and we have sworn testimony—I don't have it in front of me; well, I do somewhere in my file here—that there were 4,000 to 6,000 documents removed in the first document dump, but replaced in the second document dump—are you familiar with what I'm talking about?

Mr. Michael Lyle: I'm familiar with what you're talking about, yes.

Mr. Victor Fedeli: Were you the one who told them, "Put those documents back in"? I believe somebody had a moment of consciousness and ordered those documents put back in. Would that be you, Mr. Lyle?

Mr. Michael Lyle: No. It was Mr. Andersen.

Mr. Victor Fedeli: Mr. Andersen ordered those documents that were withheld the first time to be put back in in a second document dump?

Mr. Michael Lyle: It became clear to us that there were other documents that should be given to the committee, and Mr. Andersen ordered that. That's where we end up with all of the documents going to the committee.

Mr. Victor Fedeli: But you acknowledge, then, that documents that the committee was entitled to were actually consciously withheld in the first document dump, but put in the second document dump.

Mr. Michael Lyle: No, I don't acknowledge that there was a conscious decision to withhold.

Mr. Victor Fedeli: Okay. How do you term that, then?

1600

Mr. Michael Lyle: From my understanding of the events, we had been told at the meeting on August 22 that this was the ministry's interpretation. This was a strict interpretation, but this was the ministry's interpretation.

Mr. Victor Fedeli: And then the ministry didn't follow that themselves, I understand?

Mr. Michael Lyle: And they did not, but Mr. Andersen, as I understand, did follow up with the deputy minister on several occasions and received assurance that the legal department in the ministry was in charge of things, that the approach that they were using had been run through their freedom-of-information people.

Mr. Victor Fedeli: Do you acknowledge there were documents withheld from the first batch that should have been in there?

Mr. Michael Lyle: I acknowledge that it would have been preferable in hindsight if all of those documents had been given on September 24, but ultimately they were.

Mr. Victor Fedeli: Thank you. How much time, Chair? Am I in the last seconds?

The Chair (Mr. Shafiq Qadri): One minute, more or less.

Mr. Victor Fedeli: Oh, there is more than one minute?

I can't find my numbers handy. I apologize for that. But we are talking about documents in the thousands. Other than documents that said, "SWGTA," do you know which documents were actually withheld in the first batch?

Mr. Michael Lyle: I don't know specifically.

Mr. Victor Fedeli: Do you believe that Jesse Kulendran told Kristin Jenkins to withhold those documents—to exclude the documents entitled "SWGTA"?

Mr. Michael Lyle: I believe what Ms. Jenkins and Mr. Mia reported back to us is an accurate representation of what they were told.

Mr. Victor Fedeli: So you believe that Jesse Kulendran told them to exclude those documents?

Mr. Michael Lyle: I believe Jesse Kulendran would have—my understanding from Mr. Mia and Ms. Jenkins—told them that that was the approach that the ministry was taking and that that was their interpretation.

Mr. Victor Fedeli: Do you believe that's the right approach?

Mr. Michael Lyle: As I said, in retrospect, I think it would have been better if all of those documents had been disclosed.

Mr. Victor Fedeli: We'll pick that up—

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

To Mr. Tabuns, 10 minutes.

Mr. Peter Tabuns: Thank you, Chair. Mr. Lyle, there was a provision in the contract with TransCanada Enterprises that protected the OPA from liability for lost profits. I think section 14—

Mr. Michael Lyle: Yes. Article 14.1, yes.

Mr. Peter Tabuns: Article 14. That section was effectively set aside in the course of these negotiations. I don't know if it was set aside in the initial letter or set aside later in the arbitration. But in any event, it was set aside. Why did the government direct you to abandon that part of the contract, which would have protected the OPA and Ontario against very substantial costs?

Mr. Michael Lyle: This goes back to the discussions that we had with the government in the October 5 through October 7 period. Ultimately, I don't know what motivated the government to insist that the letter be written so that it provided TCE with the financial value of the contract. The only thing I can tell you, Mr. Tabuns, is that I understood from Mr. Chin that he had communicated what TCE was saying about the commitment that they had received and that it was confirmed by the Premier's office that we should go ahead with the letter, as had been discussed with TCE, and that would have been on the morning of October 7.

Mr. Peter Tabuns: I'm assuming the Ontario Power Authority posed this position because it exposed us to great vulnerability, but the government continued to push back and say, "You have to give them what they want."

Mr. Michael Lyle: I think if you see the record of the email exchange that was in the Ministry of the Attorney General package that was provided to the committee, you will see there was a back-and-forth where we attempted to narrow what TCE was requesting, and we did succeed in part in narrowing what they were seeking to push for.

Mr. Peter Tabuns: They were pushing, but the government was pushing in their direction as well when it came to dealing with you; correct?

Mr. Michael Lyle: As I indicated, Ben Chin did check with the Premier's office because we had been told by TCE that they had been promised to be kept whole, and that's why they were putting the language in their drafts that they were putting in. Through Mr. Chin, I was advised that the Premier's office was comfortable with the letter in the form as discussed.

Mr. Peter Tabuns: Okay. In the document package from us, number 5, if you go a few pages in, you come across an Ontario Power Authority slide deck, "Winding Up of the Oakville Generating Station Contract: Board of Directors." The next page is "Status." What we have here is, "Meanwhile, TCE met with government to express concerns over our proposal and more threat of litigation.

"TCE's approach of 'divide and conquer' has worked as government is now integrally involved and being" heavily—well, heavily—"lobbied by GR rep from TransCanada."

Next point: "Government verbally directed us to send counter-proposal which puts us in a position of weakness, i.e. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal."

What's interesting to me is that I've listened to testimony from many people sitting in the seat you're in right now, from the government side, saying it was the OPA that was not being open with them about numbers; you knew the numbers. But, in fact, at every stage, what I see is the Ontario Power Authority trying to fight in the interest of ratepayers and being pushed back by the government. Were you constantly being pushed back and away from a posture in which you could protect ratepayers?

Mr. Michael Lyle: I think, during this time frame, we were bargaining hard at the table. It's certainly true that TCE went to the government and expressed their displeasure with us. I think there's some notes in the disclosure that talk to that as well.

Mr. Peter Tabuns: Yes, that's correct. There was consternation on the part of TCE that Colin Andersen was being too hard-nosed. Those aren't their words. "Stubborn" may be closer to the sense they were giving.

Mr. Michael Lyle: Yes, that's my recollection.

Mr. Peter Tabuns: Did this cause dismay at the OPA, that you were being undermined in your negotiations with TransCanada?

Mr. Michael Lyle: I don't think we were terribly happy.

Mr. Peter Tabuns: Okay. In terms of Oakville, what was your assessment of the prospects for having that plant actually built and operated, given the interim control bylaw and the air quality bylaw that had been put in place by the municipality of Oakville?

Mr. Michael Lyle: That's a hard one to judge. I don't know of a specific assessment as to the probability of it being successful.

Mr. Peter Tabuns: Sorry. I'm not clear in your answer. You haven't seen an assessment as to whether or not TransCanada would be successful in building, or an assessment as to whether or not Oakville would have been successful in blocking the plant?

Mr. Michael Lyle: I think they're two sides of the same coin, but I'm not aware of any such analysis that we had done.

Mr. Peter Tabuns: That the OPA had done?

Mr. Michael Lyle: Yes.

Mr. Peter Tabuns: All right. In October 2010, you had an email exchange with JoAnne Butler regarding negotiations with Mitsubishi saying you needed to wait for instructions from the government. What kind of instructions was the government providing with regard to Mitsubishi at this time, and how were they doing it?

Mr. Michael Lyle: Sorry. Is that in your package?

Mr. Peter Tabuns: No, it is not.

Mr. Michael Lyle: Sorry. This is an email exchange involving me?

Mr. Peter Tabuns: You and JoAnne Butler in October 2010 regarding negotiations with Mitsubishi, the turbine provider.

Mr. Michael Lyle: I may be getting the wrong period. There were discussions with Mitsubishi because, if the plant project was going to be developed in Cambridge, it was going to be a different type of plant, so the turbines would need to be modified and there would need to be discussions with Mitsubishi, the turbine supplier, around making modifications to the turbines.

Mr. Peter Tabuns: So nothing really interesting or—tangential.

Mr. Michael Lyle: Without seeing the email, it's difficult for me to get a better sense of the context.

1610

Mr. Peter Tabuns: Okay. Were you involved in the drafting of Colin Andersen's letters in response to any of the matters regarding this cancellation?

Mr. Michael Lyle: Any of the matters—you're talking about letters to the committee?

Mr. Peter Tabuns: Letters between Colin Andersen and the government, letters about document provision.

Mr. Michael Lyle: Quite possibly. There may be many I was involved in. Without giving me a specific instance, I wouldn't know whether I was involved or not—

Mr. Peter Tabuns: Was there any point at which you would draft a letter for Mr. Andersen about the role of Jesse Kulendran in document preparation?

Mr. Michael Lyle: No, I did not.

Mr. Peter Tabuns: Okay. Did you speak with Kristin Jenkins at any time about Jesse Kulendran and the documents matter?

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

Mr. Michael Lyle: Yes, I would have from time to time.

Mr. Peter Tabuns: And did you have a sense that the OPA was being steered down a blind alley on its document preparation?

Mr. Michael Lyle: I wasn't heavily involved, as I indicated, in the documents aspect of things. I did have some concern at the August 22 meeting about the ministry's involvement that had been described to us.

Mr. Peter Tabuns: And what was your concern?

Mr. Michael Lyle: My concern was their interference, essentially.

Mr. Peter Tabuns: The interference in particular telling you that the southwest GTA documents shouldn't be included and taking a very narrow interpretation of whether an email did or did not qualify—

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

To the government side: Ms. Albanese?

Mrs. Laura Albanese: Thank you, Mr. Chair. I would like to start with a clarification with regard to some comments that MPP Fedeli made with regard to the Mississauga costs, because I think it's important to remind the

committee that Mr. Andersen testified here and said, "We did provide them"—meaning the government—"with the numbers. That is what you would expect." In an email that we have tabled with this committee a number of times, Mr. Andersen confirms to the ministry that the sunk cost for Mississauga was \$180 million, which then changed to \$190 million a few days later.

Back to you, Mr. Lyle.

Mr. Michael Lyle: I think that's consistent with my testimony.

Mrs. Laura Albanese: I wanted to ask you a couple of questions with regard to the commercial sensitivity of the documents that were disclosed to the estimates committee. I'm talking to the motion that was passed in May 2012. At the time those requests were made, you were obviously aware that pretty sensitive commercial negotiations were ongoing with Eastern Power and Trans-Canada?

Mr. Michael Lyle: Yes.

Mrs. Laura Albanese: Mr. Andersen wrote to this committee on May 30 in response to that motion, and he said that while "the OPA respects the authority of the committee and its interest in receiving this information," there were also serious concerns about the release of documents before the negotiations were finalized.

The letter states, "The provision of correspondence to the committee related to these two matters would disclose material which is legally privileged and has been provided by other parties in confidential, without prejudice negotiations. Such disclosure is likely to significantly prejudice the position of the OPA and the province in the ongoing highly commercially sensitive negotiations and in the current litigation."

Is it fair to say that, potentially, releasing documents to the public at that point in time may have increased the costs to Ontarians and the OPA, and that the Minister of Energy had a responsibility to protect ratepayers while also being open and transparent?

Mr. Michael Lyle: I'm not the person to comment on the Ministry of Energy's responsibilities, but—

Mrs. Laura Albanese: And as part of the OPA?

Mr. Michael Lyle: I would say there was a significant concern, and I think it has also been discussed by a number of other witnesses, including the Auditor General, who talked about showing your cards at the poker table. There was a significant concern that it would undermine our negotiations and undermine the ongoing litigation as well.

There's also a concern about solicitor-client-privilege documents as well. That's an area of sensitivity for a lawyer, because that's an important legal principle. And I think there's an ongoing concern that parties who are dealing with the Ontario government or its agencies have some comfort that when they're having confidential, commercially sensitive negotiations with those governmental entities, their documents will be kept confidential.

Mrs. Laura Albanese: More recently, on March 18 of this year, Mr. Andersen wrote to this committee with respect to further document disclosure, and he raised the

issue of material that was privileged and confidential and his concern for the public interest. Specifically, he wrote that “if privileged and confidential information is disclosed publicly, Ontario will face difficulties in its dealings with investors and counterparties, current and future, who will not be willing to participate in competitive tenders if there is a risk that proprietary information will be released publicly in a committee process.”

Could you expand on these concerns and explain to us why they’re so significant in your particular industry?

Mr. Michael Lyle: As I already mentioned, it is an area of concern because parties who are participating in the energy sector and other sectors and who are dealing with governmental entities may be less likely to participate in Ontario’s market if they have the concern that their commercially sensitive information, which would undermine their competitive position potentially in other markets, would be publicly disclosed in Ontario.

Mrs. Laura Albanese: Thank you for that. I will now pass it on to my colleague, MPP Delaney, if that’s okay.

The Chair (Mr. Shafiq Qadri): Mr. Delaney.

Mr. Bob Delaney: Thank you, Chair.

I think it’s important that we repeat some testimony made earlier about the August 22 meeting between the ministry and the Ontario Power Authority. The witness in question, Jesse Kulendran, testified here under oath, and she told us, “I do not have the authority to direct the OPA to exclude documents,” and she said, “I did not direct the OPA to withhold documents.” The Deputy Minister of Energy defended her and said to the committee, “I have no reason not to believe what Jesse has said.” As well, Colin Andersen and Kristin Jenkins have both testified that the OPA was responsible for its own search and for what was disclosed to the committee.

Just this final question, sir: Does that fit with your recollection?

Mr. Michael Lyle: I agree with Mr. Andersen and Ms. Jenkins’s testimony in that regard. I think there’s a recognition that—

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

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

To the PC side—

Mr. John Yakabuski: Excuse me, Chair. Can he not finishing answering the question if he wants?

The Chair (Mr. Shafiq Qadri): I believe he’s capable of doing it, but it will be on your time, Mr. Yakabuski.

Mr. Fedeli.

Mr. Victor Fedeli: I’ll ask the witness to complete the sentence before I turn it over to Mr. Leone.

Mr. Michael Lyle: It may have gone out of my head, Mr. Fedeli. I’m sorry; it has. Perhaps we can come back to it if I can recollect.

Mr. Rob Leone: Sir, thanks for attending today.

Earlier in your testimony today, you talked about how you believed that Kristin Jenkins’s testimony with respect to Jesse Kulendran was accurate, that you felt that she essentially suggested that Jesse Kulendran directed

the OPA to withdraw documents. Was that not your testimony?

Mr. Michael Lyle: Yes, it was—well, to frame it. She instructed the OPA that this was the approach that the ministry was taking; that the ministry saw this as a narrow interpretation of the motion.

1620

Mr. Rob Leone: And the OPA, at that time, considered that to be the direction of the ministry?

Mr. Michael Lyle: As I understand it, after that, Mr. Andersen had several conversations with Mr. Imbrogno on this subject, and received assurance from those conversations—ultimately it appears it was a miscommunication, but received assurance from those communications that the approach that the ministry was taking had been endorsed through the freedom-of-information people, that the legal branch had the lead responsibility on documents, and that Mr. Imbrogno was comfortable that the correct approach was being taken.

Mr. Rob Leone: Subsequent to that, the Ministry of Energy didn’t even follow through with what they had told the OPA. That’s the chronology, essentially.

Mr. Michael Lyle: Well, and I think that’s where it appears there might have been some confusion or some broken telephone. I can’t obviously speculate on who spoke to Ms. Kulendran, but it appears that the ministry was not taking that approach. So I’m not sure how it ended up that Ms. Kulendran gave those instructions to the OPA.

Mr. Rob Leone: This whole episode tarnishes the reputation of the Ontario Power Authority to some degree, where now they are in a position of not releasing documents and withholding documents, under the presumption that this was the ministry’s direction. What’s the Ontario Power Authority’s reaction to that kind of scenario?

Mr. Michael Lyle: As I said, I think, in hindsight, it’s regrettable that not all of the documents that ultimately were provided to the committee were given to the committee on September 24. The OPA, through further due diligence, identified that there were further documents, and disclosed those documents. Now the committee has all of the documents that it needs and has asked for in order to do its work.

Mr. Rob Leone: Did the OPA board discuss document disclosure and this lapse between what happened within conversations that occurred between Ms. Kulendran, the Ministry of Energy and the Ontario Power Authority? Were there any conversations that the board had with respect to this? This obviously affects the reputation of the Ontario Power Authority.

Mr. Michael Lyle: The OPA board has had conversations related to document disclosure and related to what we would do in order to do it better going forward in the future.

Mr. Rob Leone: And what were the conclusions of those discussions?

Mr. Michael Lyle: I believe there was a letter that was forwarded to the committee. There was a motion

with respect to whether the OPA had undertaken an investigation of Jesse Kulendran's activities, and the answer to that was no. However, the OPA had undertaken a review, and that review was undertaken by our external council and that was provided to the committee in a sealed envelope.

Mr. Rob Leone: Would you care to table any of the minutes associated with the documents disclosure discussions that occurred at the OPA board level?

Mr. Michael Lyle: Many of these discussions happened in camera so I actually don't know to what extent there are minutes in that regard. But if the motion is brought then we would comply with the motion.

Mr. Rob Leone: Okay, well we're going to bring forward a motion. I think Mr. Fedeli has prepared one that will hopefully shed some light on this for us.

I want to move to this whole notion of who actually is driving the bus with respect to decisions of energy policy in the province of Ontario. When we talk to the government—you know, everything that's good about energy policy, it's the government that's putting it forward and when there's something that has gone terribly wrong they basically say it's the OPA's fault, and you get thrown under the bus.

I've heard testimony from OPA officials where they have stated quite frankly that they have been providing the government with numbers associated with costs, and, at the end of the day, the government chose to ignore those numbers. I think the famous \$40-million figure of Oakville has been largely discredited by almost every witness that is not associated with the caucus or the cabinet of Dalton McGuinty or Kathleen Wynne. Even the bureaucrats in the Ministry of Energy have suggested that everybody knew exactly the costs that are associated with this.

This, I think, speaks to the overall credibility of the Ontario Power Authority. You have consistently been thrown under the bus with respect to bad decisions with respect to energy policy, whether it's the siting of gas plants, whether it's not being forthright with cancellation costs, even though you have been. How does the OPA react to these kinds of suggestions from the government?

Mr. Michael Lyle: I don't agree with the characterization that you make in your question.

Mr. Rob Leone: But this has come from testimony, sir. I'm not suggesting anything that we've—I might have reframed it a little, but this is exactly what we've heard in this committee. Whether it's the OPA testifying, or the Ministry of Energy people, whether it's government staffers, whether it's people who were supposed to be negotiating for the government who actually weren't because they got screened out and so on and so forth, this is exactly what we've heard in this committee.

Mr. Michael Lyle: There's no doubt that the OPA is a challenging place to work. There are many competing pressures on the work that we do. There's no doubt that there is ongoing and expansive communication between the OPA and the Ministry of Energy.

Mr. Rob Leone: Were you involved with the memorandum of understanding with respect to the cancellation of the plants—Oakville?

Mr. Michael Lyle: The September 24 MOU, yes.

Mr. Rob Leone: Who was provided with the information regarding the additional costs associated with that MOU?

Mr. Michael Lyle: As I say, there were ministry representatives at the negotiating table. I don't know who was briefed within government after that. I believe the minister was briefed on the morning of the 24th by Mr. Andersen.

Mr. Rob Leone: So you agree with the assertions by folks from the OPA we've had testifying at this committee that the government was fully aware that there were additional costs, more than what they had been telling the people of Ontario?

Mr. Michael Lyle: Certainly there were a number of representatives of the government who would have been aware that there are other categories of costs over and above the \$40-million sunk costs.

Mr. Rob Leone: Everyone?

Mr. Michael Lyle: I can't really speak to that. I don't know who was briefed within government.

Mr. Rob Leone: Colin Andersen said everyone knew.

Mr. Michael Lyle: He did, and I think what he meant was people who were in the loop within government and who were involved in this issue. I'm not sure how far that goes within government.

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

Mr. Rob Leone: I'll take that as everyone.

My final question, sir—Hazel McCallion made mention that when she talked to Dwight Duncan about cancelling the Mississauga gas plant, he told her that there was no possibility that he could have done that in 2005 or anytime after that, yet just at the eve of an election the government made a decision and the OPA followed through. As you say, the board talked about it, they were written a letter and they agreed that they couldn't proceed with the project without the government's backing. Would the same thing have happened in 2005-06, at any earlier stage? Would the OPA have reacted the same way, avoiding most of the costs associated with cancellation?

Mr. Michael Lyle: I can't speculate on how our board would have reacted at that time.

Mr. Rob Leone: But they did react in the way that I've suggested, which is, they would follow the government's direction at the end of the day.

Mr. Michael Lyle: Ultimately, you're correct; they decided that without government support for the project, it could not move ahead.

Mr. Rob Leone: All right. That's basically what—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Leone, and thanks to you, Mr. Lyle, for your presentation. You are officially dismissed. Thank you for coming to the committee.

Mr. Michael Lyle: Thank you, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli has furnished the committee with a cascade of motions. I invite you to begin presenting them, Mr. Fedeli.

Mr. Victor Fedeli: Thank you. While Mr. Lyle is here, let me read you the first motion that affects them most. This is the one involving the Ontario Power Authority, if I can find that one.

I move that the Standing Committee on Justice Policy requests the following documents from the Ontario Power Authority within two calendar weeks of the motion passing: all minutes, electronic or otherwise, taken at meetings of the Ontario Power Authority's board of directors between January 1, 2010, and May 7, 2013, related to the cancellation and relocation of the power plants in Oakville and Mississauga, including, but not limited to documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana, Project Fruit Salad, and that the documents be provided in a searchable, electronic PDF.

1630

The Chair (Mr. Shafiq Qaadri): Thank you. The motion is in order and is before the committee. Mr. Delaney?

Mr. Bob Delaney: Chair, we have no trouble with the request for the documents. We would like to ask Mr. Fedeli, however—in the last sentence he says, “that the documents be provided” to committee “in a searchable, electronic PDF.” In the event that this involves the scanning of a paper document—if you’ve ever done it, it can be a little time-consuming. Would you like to put in some sort of language that in the event that this involves a large volume of documents, you can have it in progressive slices, you can have best efforts—whatever—such that if this involves manual labour to convert paper documents to a searchable electronic document, we can accommodate people who are clearly going to do their best to comply with the motion? We have no trouble with the content of the motion.

Mr. Victor Fedeli: Thank you, Chair. I think the fact that these are their board minutes, we can reasonably assume that there is not a large volume here, according to the testimony of both Mr. Andersen and Mr. Lyle. I would think that in this particular case—while I do understand that—this motion will stand the way it is.

The Chair (Mr. Shafiq Qaadri): I take that as a polite “no,” Mr. Fedeli? Mr. Leone?

Mr. Victor Fedeli: In this particular case.

Mr. Rob Leone: I do believe that every time we’ve asked for documents to be released, we’ve asked for them electronically and in a searchable format. So this is in keeping with the standard that I think we’ve established earlier.

Mr. Bob Delaney: I’m not quarrelling with the act of doing the search. All I’m trying to do is to say that in the event that this turns out to be more work than any of us at this committee can fathom from the distance that we sit, you might want to include enough language to allow them to advise on the status as of the end of two weeks.

Or to produce more documents in separate batches, or—I’ll leave the language up to you, but all I’m trying to do is to say in this and in other similar motions, would you consider language that might take into account the administrative burden of fulfilling the request? We have no trouble with the request.

The Chair (Mr. Shafiq Qaadri): Gentlemen?

Mr. Victor Fedeli: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. We’ll move to the vote. Those in favour of the motion, as read? Those opposed? Motion carries.

Mr. Fedeli?

Mr. Victor Fedeli: I don’t know the order that you have them in, I’ll just read them as I have them.

I move that the Standing Committee on Justice Policy requests the following documents from Cabinet Office and the Office of the Budget and Treasury Board within two calendar weeks of the date of the motion passing: all documentation and correspondence, electronic or otherwise, between April 23, 2012, and May 7, 2013, related to the cancellation and relocation of the power plants in Oakville and Mississauga including, but not limited to, documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Vapour-lock, Project Apple, Project Banana, Project Fruit Salad, and that the documents be provided to committee in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments? Mr. Delaney?

Mr. Bob Delaney: Again, Chair, I’d just like to ask Mr. Fedeli whether or not, given that two weeks is a short span of time, he would be willing to include language that allows the agencies to either do this in batches or to advise on progress or whatever he feels is reasonable in the circumstance. We have no problem with the fulfillment of the request.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. Any further comments, gentlemen?

Mr. Victor Fedeli: Thank you.

The Chair (Mr. Shafiq Qaadri): The motion is now being called for a vote. Those in favour of the motion as just read by Mr. Fedeli? Those opposed? The motion carries.

Mr. Fedeli?

Mr. Victor Fedeli: I move that all documents received by the Standing Committee on Justice Policy throughout the course of its hearings into the Oakville and Mississauga gas plant cancellations be made publicly available by means of distribution to committee members and that all such documents be considered open and unrestricted for public viewing.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Just before I open the floor, there are some documents which I suppose are in a mid-zone here. Do we want to comment on that?

The Clerk of the Committee (Ms. Tamara Poman-ski): There are documents from Infrastructure Ontario, the Ontario Power Authority and Cabinet Office right

now that are asked to remain confidential in terms of distribution. So it's up to the committee to decide on how to deal with them.

The Chair (Mr. Shafiq Qaadri): So, technically, they have been received by the justice policy committee, although they have been sort of guided to only one member per caucus and not to the full committee and, therefore, not to the public yet.

Mr. Victor Fedeli: And this is why, Chair, this motion is here. We want everybody to be able to see all documents now.

The Chair (Mr. Shafiq Qaadri): All right. Does legal counsel need to weigh in on that?

Mr. Peter Sibenik: No.

The Chair (Mr. Shafiq Qaadri): Fair enough. Any further comments on this particular motion? Mr. Delaney?

Mr. Bob Delaney: Chair, I have a problem with it. I find it ambiguous. Does the motion refer to documents already received or does it refer to documents received and moving forward? That's not clear in the motion.

Mr. Victor Fedeli: It says—may I, Chair?

The Chair (Mr. Shafiq Qaadri): Please.

Mr. Victor Fedeli: —“all documents received.” It's past tense, “received.”

Mr. Bob Delaney: Past tense. Okay.

Chair, before we vote on this, I think it's fair to ask staff to clarify what documents are currently sealed. If we're going to make reference to documents that have been submitted in confidence, in order to make an informed judgment I'd like to know what documents—

The Chair (Mr. Shafiq Qaadri): Thank you. A reasonable request. Here it is.

Mr. Bob Delaney: —are currently sealed.

The Clerk of the Committee (Ms. Tamara Poman-ski): As mentioned earlier, we've received documents from Infrastructure Ontario. We also received two sets of documents from the Ontario Power Authority, as well as, recently, late last week, we received documents from Cabinet Office.

Mr. Bob Delaney: Chair, both Infrastructure Ontario and the Ontario Power Authority have written to raise concerns about privileged and confidential information that could potentially damage the public interest. Given that, I would like some comments from legal staff on what are the ramifications to the government and the committee on releasing documents that were provided to the committee in the express understanding that they remain confidential.

Mr. Peter Sibenik: Well, Mr. Delaney, I'm not aware of the contents of the information that has been provided to the committee Clerk. However, the order, if passed, would be an exercise of parliamentary privilege. The committee's entitled to the production, and matters like solicitor-client privilege, confidentiality, litigation privilege, these other kinds of non-parliamentary privileges, must yield to parliamentary privilege. It is open to the committee, however—I might say that if the committee wants to go in camera and hear submissions from

these various individuals who have asked for confidentiality, to hear those concerns, probably in camera, as I suggest, it's open to the committee to take that approach.

The Chair (Mr. Shafiq Qaadri): I would also just add to legal counsel's remarks that in the exercise of parliamentary privilege there is sort of an understanding that these documents, because of their sensitive nature, are certainly meant for the committee, and if they so deem that they keep it either confidential, which is perhaps the hope by the suppliers, or if they absolutely release it to the public, there's a delicate balance there. So while I'm very happy to entertain the motion as presented, I just flag for you that the exercise of parliamentary privilege is a noble act and not to be abused.

Mr. Peter Sibenik: If I could add one further comment, Mr. Chair, I think what happened in the Afghan ruling in the House of Commons in Ottawa is instructive. In that case, there was a near all-party agreement that was reached with respect to how the committee would see these kinds of confidential documents that were before the House of Commons on that occasion, and so there was, in effect, an eminent persons' panel that reviewed the documents to see whether it would be reviewed by the full committee. So there was some accommodation, I guess you could say, to the concerns that were raised by various individuals that these were sensitive, confidential documents. It's up to the committee. There could be a parliamentary process; there could be an extraparliamentary process, I guess you could say. But it's up to the committee to decide that.

1640

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

Mr. Victor Fedeli: Thanks once again, Chair. My question to our counsel is: Please tell us once again which sets of documents are outstanding which are currently in the confidential realm that we are referring to here? Just take us through each of the—are there two or three?

The Clerk of the Committee (Ms. Tamara Poman-ski): So, if you remember, we had requested after David Livingston's presentation—there was a document request, for notes of meetings or emails with Shelly Jamieson, Murray Segal and David Lindsay, with respect to the Oakville gas plant and the status of it.

Mr. Victor Fedeli: So, I just want to do these one by one.

With Oakville, that contract is done; it's signed. We have the paper transferred between each and every one of those people. Again, personally, I don't have any difficulty, which is why I'm bringing this motion—that's a deal that's done. There's nothing commercially sensitive any longer. We're looking for full disclosure to the public.

What's the next one, then?

The Clerk of the Committee (Ms. Tamara Poman-ski): The next one: From the OPA, when the committee had moved a motion that the OPA provide any and all reports and correspondence from their legal counsel in respect of their internal investigation of the conduct of

Jesse Kulendran and her role in the OPA's production of documents. That was asked to be kept confidential.

Mr. Victor Fedeli: If I may comment on that one: Once again, we have two different people, two different groups of witnesses—one on one side and three on the other—stating which area of discussion has been truthful. I think full disclosure in this case—there's nothing commercially sensitive about getting to the truth about which group is telling the truth here or not. I have absolutely no hesitation to bring those documents forward as well.

The Clerk of the Committee (Ms. Tamara Poman-ski): The next one is with respect to when Kristin Jenkins came; there were two documents requests from her. We received a letter from the OPA asking to be confidential. I don't have the exact request.

Mr. Victor Fedeli: Is that the big one-inch package with the arbitration that goes back and forth? Each one of the versions is close to the last, with a few minor changes?

The Clerk of the Committee (Ms. Tamara Poman-ski): I'm not sure, Mr. Fedeli; sorry, I'm not sure exactly what documents—

Mr. Victor Fedeli: This is with respect to Oakville, if I'm not mistaken. So again, both the Oakville and the Mississauga contracts are done. They're out there; they are completed. There should be nothing commercially sensitive that we're not entitled to share in full disclosure and transparency. These are done deals. There is not a pending deal; they've been announced. Cheques have been written: the government wrote a cheque for \$40 million; OPA wrote a cheque for \$210 million. In Mississauga, we paid \$150 million for EIG, the American hedge fund lender. These are cheques that are written, so I have no hesitation to see that contract issued.

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

Mr. Bob Delaney: Chair—

Mr. Victor Fedeli: I wasn't finished yet.

Mr. Bob Delaney: Oh, then please finish.

Mr. Victor Fedeli: Are there any more non-disclosed?

The Clerk of the Committee (Ms. Tamara Poman-ski): Going back to the conduct of Jesse Kulendran, Mr. Wallace also sent documents and asked for it to remain confidential. He provided further information in addition to the OPA providing information.

Mr. Victor Fedeli: I appreciate that. My same comments would stand: that we've got two different parties here. We need to get to the bottom of which group is telling the truth. I think full disclosure is important. Are there any other groups?

The Clerk of the Committee (Ms. Tamara Poman-ski): That's it.

Mr. Victor Fedeli: Then I say there is one more, and that's the interim report. The interim report is also a document that's been received by the Standing Committee on Justice Policy, if I'm not mistaken.

The Clerk of the Committee (Ms. Tamara Poman-ski): We're still in the midst of reviewing it, yes, Mr. Fedeli.

Mr. Victor Fedeli: That would be one of the documents we're referring to as well, then.

The Clerk of the Committee (Ms. Tamara Poman-ski): No, I don't—

Mr. Victor Fedeli: It's a report that was received?

The Clerk of the Committee (Ms. Tamara Poman-ski): No, that's our report.

The Chair (Mr. Shafiq Qaadri): No, technically that's our own.

The Clerk of the Committee (Ms. Tamara Poman-ski): That's our own internal document.

The Chair (Mr. Shafiq Qaadri): It's not really received; it's generated by us.

Mr. Victor Fedeli: Fair enough. Thank you.

The Chair (Mr. Shafiq Qaadri): All right. Mr. Delaney.

Mr. Bob Delaney: Chair, where to start? It is not up to Mr. Fedeli to decide what is and isn't sensitive. In fact, the groups that we've been discussing here—cabinet, Infrastructure Ontario, the Ontario Power Authority—had specific reasons to keep the documents that they shared in confidence with the committee privileged.

What would be reasonable would be to hear from each of those agencies before the committee overrides that and makes what may be a reckless decision, and the point we're trying to make, Chair, is we should do the responsible thing as a committee, and the responsible thing is to hear from the agencies that supplied the documents first. To this end, I'd like to quote, March 18, when Colin Andersen wrote to the committee with respect to document disclosure, and he said, "If privileged and confidential information is disclosed publicly, Ontario will face difficulties in its dealings with investors and counterparties, current and future, who will not be willing to participate in competitive tenders if there is a risk that proprietary information will be released publicly in a committee process."

We need, as a committee, to be very careful here. We have been sent, in writing, very serious concerns about the sensitivity and the value of this information from the head of the Ontario Power Authority, and I put it to the committee that public interest is indeed at risk here and that what we are being asked to do is a reckless course of action. These documents have been flagged as sensitive, and prior to making this determination, I think it's prudent and fair that we hear from the individuals who requested that the items remain sealed as to why they asked the committee to protect that information. We have not heard from them, and we're asked to override that request.

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

Are there any further issues before we consider this?

Mr. Rob Leone: I do have one, Mr. Chair, and a few comments to make with respect to this. Certainly what I'm hearing from people wherever I go is that they're fed up with the fact that they can't get some basic answers to simple questions.

The time to do the responsible thing with respect to document disclosure was when we first asked for documents over a year ago. I think people are certainly eager to get the answers to the legitimate questions that they have, and they're acting through us to get—we're acting through them, I should say, to get those questions answered. The responsibility, I think, certainly lies with this committee to do the right thing when we are tasked with that, and right now, what we're tasked with is getting to the bottom of what happened with the cancellation of two power plants and the cover-up that has ensued. That is our task here, and we're not going to get any further ahead if we're going to spend weeks upon weeks debating whether or not this document should be included or not included, and so on and so forth.

With the greatest respect to the comment that you're hurting the OPA's position to whatever, make other deals and so on and so forth, the province of Ontario's deals, the very fact that you've cancelled contracts has already hurt the province's reputation with respect to doing business with people in the province of Ontario. That is the crux of the matter here, and at the end of the day, what we're faced with are taxpayers footing the bill of \$1 billion, with no power plants being built. That's the issue before us today, and unless we get to the bottom of what happened, who knew what when, how much these things actually cost in terms of the cancellation fees and who ordered the cover-up, we're not going to be able to sufficiently do our tasks here. So let's get to the bottom of it. You've had your opportunity to disclose these in a proper manner. You chose not to do that. You can't come now at the eleventh hour and say to us, "We need some more time in terms of what documents can or can't be disclosed." I just don't accept that.

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

Mr. McNeely?

Mr. Phil McNeely: I'll give it to Mr. Delaney here.

Mr. Bob Delaney: Chair, if this proceeds, we would like to have the opportunity to propose an amendment, but prior to doing that, I have to ask the other side: We are members of provincial Parliament and we have a responsibility as a committee, first and foremost, to protect the public interest. This motion says that members of the Legislative Assembly cannot be trusted not to make sensitive information public, and I think we should recall when the estimates committee moved a motion for documents when negotiations were ongoing. The concern was that those documents, if made public, would hurt our negotiating position, and that fact was borne out in the testimony of people here.

The government's objection to this is that this request would prove that, as members, we are not able to keep sensitive information confidential, and it would show that members of the Legislative Assembly can't be trusted with commercially sensitive information.

I think this action is reckless, and it's done without even asking the agencies that provided commercially sensitive information to come in here and to explain why

they wish to have information that was provided in full, unredacted, to the committee—and to tell us, as members, why should this protected information remain protected. I think it asks us to make an incomplete and uninformed judgment, and it's not a sensible request.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. Are there any further comments before we—

Mr. Phil McNeely: Yes, I have—

The Chair (Mr. Shafiq Qadri): Monsieur McNeely.

Mr. Phil McNeely: I'd just like say that—

Mr. Rob Leone: Mr. Yakabuski wanted to—

Mr. Phil McNeely: I'm sorry.

The Chair (Mr. Shafiq Qadri): Sorry. Who's next?

Mr. John Yakabuski: Go ahead.

The Chair (Mr. Shafiq Qadri): All right. Mr. McNeely.

Mr. Phil McNeely: I'd just like to say that I think with the federal precedent on I think it was the Afghanistan issue, and it was read earlier today, there is a methodology of bringing the facts forward without that risk to undermine the taxpayers' interest in this whole thing. If that works for the federal government, why doesn't it work here at the provincial government? I think that was a good precedent that was set. It was the first time, I think, that was done. It presents the information without losing the confidentiality.

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

Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Mr. Chair. Well, undermining the taxpayers' interest—it's interesting that Mr. McNeely should say that, as Mr. Delaney talked about protecting the public interest as well. Some \$585 million, at a minimum, as the cost of these cancellations and relocations when everybody on your side said, "We had no idea how much it was going to cost when we made those decisions"—that's not protecting the public interest.

Interjection.

Mr. John Yakabuski: That's not protecting the public interest.

The Chair (Mr. Shafiq Qadri): Gentlemen, would you mind if we just returned to the particular motion under consideration? I know all that is in play—

Mr. John Yakabuski: Well, that is part of the motion. They're talking about protecting the public interest. That's exactly why this committee was set up, Mr. Chair. It was to protect the public interest. It is our determination, and our right as a committee, to make the decision as to what documents we will disclose.

The Chair (Mr. Shafiq Qadri): Thank you. I believe we've sounded everyone out on this as much as is necessary.

Mr. Bob Delaney: Chair?

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

Mr. Bob Delaney: I would like to propose an amendment to the motion, please.

The Chair (Mr. Shafiq Qadri): We need it in writing, Mr. Delaney.

Mr. Bob Delaney: Okay. May I have a few minutes to hand-write it out?

The Chair (Mr. Shafiq Qaadri): Fine—a five- to 10-minute recess.

The committee recessed from 1653 to 1704.

The Chair (Mr. Shafiq Qaadri): The committee is back in session. We're awaiting the distribution of Mr. Delaney's amendment, forthcoming. I note "publicly" is correctly spelled in the amendment; that's good.

Mr. Delaney, could you please move the amendment that you just submitted and then we'll make a ruling as to its order of—

Mr. Bob Delaney: Thank you, Chair.

I move that Mr. Fedeli's motion be amended as follows: To insert, after the words "publicly available," "if, after consultation with the provider of documents, who had requested that potentially sensitive information remain confidential, the committee is satisfied that there is no potential damage to the public interest, and that these documents then be made available to the public." And with the remainder of the wording being removed.

The Chair (Mr. Shafiq Qaadri): All right. Amendment to this motion is now in order. The floor is now open for comments, if any.

Mr. Bob Delaney: Chair?

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

Mr. Bob Delaney: Chair, I think this amendment preserves the intent of Mr. Fedeli's motion. What it does is to give the entities that provided the documents to us, and provided them in good faith based upon our signed undertaking that, as committee members, we would keep information given to us in confidence confidential—I think, having provided the information that is responsive to the committee's request in good faith, we should hear from the entities that had provided that information and allow them to come in here and to sit down and walk us through the documents and answer any questions, which could be either in an open session or in an in camera session, which would allow the committee members to raise any particular point about the document package as a whole or about the documents individually and allow each committee member to speak to whoever has provided the documents.

It would allow the committee members to say, "Why did you ask that such and such a document be protected?" and it would allow the committee members to, for example, say, "Okay, in retrospect, we agree with you and perhaps this lot should be and we can agree that this other lot should not be."

Chair, I think this would be a prudent and a responsible and, I would also put it, a respectful thing to do, given that the documents stem from two fairly significant agencies: the Ontario Power Authority and the government itself.

I think this motion is seriously flawed. I respect and the whole government has respected the ability of the committee to ask for any document; indeed, Chair, the government has offered every document across all ministries. In this particular case, the entities that provided the

documents felt strongly that the documents should remain confidential. I have had the ability to sit in on all of the committee's deliberations to date and I do know that we have not asked the providers of the material why it was held protected, why they wished to have it remain confidential.

I would conclude, Chair, by urgently suggesting to Mr. Fedeli that he accept the amendment, which does preserve the original intent of his motion, and that we keep those documents provided confidential.

Just as clarification, Chair, if I said earlier that the supplier of the documents—that should be an in camera session. I'm not sure whether or not I implied that should be an open session, but if we're going to discuss something with the supplier of the documents, that should be an in camera session where the sensitive information remains protected, subject to a discussion and indeed a debate among the committee, if it so chooses. The government would be very flexible in scheduling our time and we urge Mr. Fedeli and his colleagues to accept this amendment.

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

Mr. John Yakabuski: Chair, there is nothing in Mr. Fedeli's original motion that prevents us from chatting with the providers of the documents. Mr. Delaney's amendment would compel us to do that. As a committee, I think we have the ability to make those judgments. I would like to have a vote on the amendment now.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments? Seeing none, we'll now vote on Mr. Delaney's proposed amendment to Mr. Fedeli's main motion.

Mr. Bob Delaney: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote. Those in favour?

Mr. Bob Delaney: Of the amendment?

The Chair (Mr. Shafiq Qaadri): Of the amendment.

Ayes

Albanese, Delaney, McNeely.

Nays

Fedeli, Leone, Tabuns, Yakabuski.

The Chair (Mr. Shafiq Qaadri): The amendment is defeated. We now return to the main motion. Proceed to the vote.

Mr. Rob Leone: Recorded vote.

Ayes

Fedeli, Leone, Tabuns, Yakabuski.

Nays

Albanese, Delaney, McNeely.

The Chair (Mr. Shafiq Qaadri): The motion carries. Mr. Fedeli, next motion.

Mr. Victor Fedeli: Thank you. I want to draw your attention to “Tuesday, May 7.” I move that the order of witnesses be amended on Tuesday, May 14, 2013, so that the Liberal witness slot is scheduled for 8:30 a.m., the NDP witness slot is at 3 p.m. and the PC witness slot is at 4:30 p.m.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? The motion is in order. All in favour of the motion? All opposed? The motion carries.

Mr. Fedeli.

Mr. Victor Fedeli: Chair, I need a 10-minute recess.

The Chair (Mr. Shafiq Qaadri): A 10-minute recess.

The committee recessed from 1712 to 1722.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. The committee is back in session. Mr. Fedeli?

Mr. Victor Fedeli: Thank you, Chair, for honouring my request.

I move that the Standing Committee on Justice Policy requests the following documents from the Premier’s office within two calendar weeks of the motion passing: all documentation and correspondence, electronic or otherwise, between January 1, 2010, and May 7, 2013 related to the cancellation and relocation of the power plants in Oakville and Mississauga, including, but not limited to, documents containing any and all proxy names or code names such as, but not limited to, SWGTA, Project Vapour, Project Vapour-lock, Project Apple, Project Banana and Project Fruit Salad, and that the documents be provided in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. The motion is received. It’s in order, but maybe you might want to specify which Premier.

Mr. Victor Fedeli: The Premier’s office.

The Chair (Mr. Shafiq Qaadri): They are separate now, as you can probably gather.

Mr. Victor Fedeli: To May 7, 2013.

The Chair (Mr. Shafiq Qaadri): You understand, right? They are separate offices, separate staff, separate documents and so on.

Mr. Victor Fedeli: Thank you.

The Chair (Mr. Shafiq Qaadri): All right.

Mr. John Yakabuski: Yes, and we want them both.

The Chair (Mr. Shafiq Qaadri): I’m just telling you.

Mr. Victor Fedeli: We want them all.

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

Mr. Bob Delaney: Well, Chair, this is familiar territory. We have no problem with the committee requesting the documents, but what we would ask, given that the scope of the search spans potentially three years and more than four months, is that the motion allow, perhaps, more than two calendar weeks and ask that in the event that the task cannot be completed within two calendar weeks that the office table a progress report and an esti-

mate of time required for the job to be complete. Would you consider such an amendment?

The Chair (Mr. Shafiq Qaadri): The floor is open. Mr. Fedeli?

Mr. Victor Fedeli: I would look forward to calling the vote, Chair.

The Chair (Mr. Shafiq Qaadri): Fair enough.

Mr. Phil McNeely: Chair?

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

Mr. Phil McNeely: I’d like 10 minutes to consider this. This just landed.

The Chair (Mr. Shafiq Qaadri): Ten-minute recess.

Interjection: Five minutes.

The Chair (Mr. Shafiq Qaadri): A five- to 10-minute recess.

The committee recessed from 1725 to 1730.

The Chair (Mr. Shafiq Qaadri): Committee’s back in session. We have a motion before the floor with reference to the Premier’s office, both current and foregoing, and I think we’re ready to call the motion to order.

Those in favour of this motion? Those opposed? The motion carries.

Mr. Fedeli.

Mr. Victor Fedeli: I have the final motion from our side, Chair.

I move that final submissions of dissenting reports be extended until 9:30 a.m. on Wednesday, May 8, 2013.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. This motion is under consideration by the Chair. I would like to advise you that it is in fact the Chair’s prerogative under standing order 131(d) whether to accept this motion or not, but given the stunning generosity of the Chair to date, he will allow this motion to stand and be accepted and move the deadline, subject to your vote, from 6 p.m. today, but firm deadline 9:30 a.m. tomorrow. Otherwise, I will have to prescribe medication for Mr. Parker and others logistically.

The motion is now before the floor. Any comments? Yes, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, thank you, and I’m sincere when I say thank you for your generosity in accepting this motion for the floor.

The Chair (Mr. Shafiq Qaadri): I’m touched by your sincerity. Thank you.

Are there any further issues before this—

Mr. John Yakabuski: I would speak, but I don’t want to get emotional and start to cry.

The Chair (Mr. Shafiq Qaadri): The committee thanks you specifically for that, Mr. Yakabuski.

All in favour of this motion? All opposed? Motion carried.

Is there any further business before this committee?

Mr. Peter Tabuns: Better not be.

The Chair (Mr. Shafiq Qaadri): I thank you for your endurance. Committee is now adjourned.

The committee adjourned at 1731.

CONTENTS

Tuesday 7 May 2013

Members' privileges	JP-399
Mr. Dalton McGuinty.....	JP-399
Ontario Power Authority.....	JP-414
Mr. Michael Lyle	

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Présidente

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Ms. Teresa Armstrong (London–Fanshawe ND)

Mr. Bob Delaney (Mississauga–Streetsville L)

Mr. Steven Del Duca (Vaughan L)

Mr. Frank Klees (Newmarket–Aurora PC)

Mr. Jack MacLaren (Carleton–Mississippi Mills PC)

Mr. Rob E. Milligan (Northumberland–Quinte West PC)

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Mr. Jonah Schein (Davenport ND)

Substitutions / Membres remplaçants

Mr. Victor Fedeli (Nipissing PC)

Mr. Rob Leone (Cambridge PC)

Mr. Taras Natyshak (Essex ND)

Mr. Peter Tabuns (Toronto–Danforth ND)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Clerk / Greffière

Ms. Tamara Pomanski

Staff / Personnel

Ms. Karen Hindle, research officer,
Legislative Research Service

Mr. Jeff Parker, research officer,
Legislative Research Service