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Wednesday 11 December 2013

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des débats
(Hansard)**

Mercredi 11 décembre 2013

**Standing Committee on
Estimates**

Ministry of Finance

**Comité permanent des
budgets des dépenses**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
ESTIMATESCOMITÉ PERMANENT DES
BUDGETS DES DÉPENSES

Wednesday 11 December 2013

Mercredi 11 décembre 2013

The committee met at 1631 in room 151.

COMMITTEE BUSINESS

The Chair (Mr. Michael Prue): We'll call the meeting to order. Before we begin the meeting, there was a statement that everybody has on their desk—

Interjection.

The Chair (Mr. Michael Prue): Oh, they don't have it on their desk. I will have it distributed. The statement is from the researcher, and it answers the questions that were asked yesterday during the committee about parliamentary privilege. It basically says—I don't want to read it all, but you'll have a chance to read it yourselves—that the members are protected through parliamentary privilege for the freedom of speech, codified in section 37 of the Legislative Assembly Act; therefore, any questions that are asked and any actions that are taken are covered, and members cannot be fined or sent to jail for what takes place in the committee. So everybody understands they are free to do what they want.

MINISTRY OF FINANCE

The Chair (Mr. Michael Prue): Having said that, we have invited the deputy minister and his staff here today to answer any questions that the members may have. I am open to anyone who has questions of the deputy minister or the staff about the release of the documents. Are there any questions?

Mr. Mike Colle: I'm just wondering, are we to go in camera?

The Chair (Mr. Michael Prue): No. We have to stay open unless somebody asks about specific documents. If it is a general question about documents, like whether documents can be released that are only political in nature or whether documents must be held in trust that are of a confidential nature related to deals that have been signed, those kinds of things, no; but if you have a question about a specific document that you refer to, yes, we will have to go in camera.

Mr. Mike Colle: Okay.

The Chair (Mr. Michael Prue): So are there any questions, first of all, that do not require in camera? Mr. O'Toole.

Mr. John O'Toole: If I may, I'm subbed on the committee. I'm just wondering, is it strictly on Ontario Northland?

The Chair (Mr. Michael Prue): The first questions that we will ask pertain to the motion that we have before us on Ontario Northland. After that, we're going to have a vote on Ontario Northland. I have asked the deputy minister and his staff to stay here until 6 o'clock to answer questions on any other motions that may be made.

Mr. John O'Toole: Does it have to be a motion? Or can you just ask some questions on the auditor's report?

The Chair (Mr. Michael Prue): You can ask any question you want, but we only have one motion before us.

Mr. John O'Toole: Yes, I understand.

The Chair (Mr. Michael Prue): It's about the release of the documents related to Ontario Northland.

Mr. John O'Toole: There's damning information in there. I'd just like that on the record, in front of the deputy, as well.

The Chair (Mr. Michael Prue): Okay, are there any—Mr. Dickson.

Mr. Joe Dickson: Chair Prue, I just want to ensure that when a question is asked about a specific item that these gentlemen, or staff, are able to answer it without divulging information, because I would probably assume that a lot of it is extremely confidential—if they can give you, Mr. Chair, an answer without going into detail.

The Chair (Mr. Michael Prue): Well, I mean, I think—

Mr. Joe Dickson: Or do I leave that to—

The Chair (Mr. Michael Prue): I think that these men and women who are in this audience are probably the finest professionals we have in this country, and they will know how to answer a question without divulging information which they cannot divulge. They know when to say that.

Basically, if I can, because I'm not hearing questions from the members: The question that was being asked the other day is that the documents in question related to the Northland do not involve a private company; they involve a government agency. I'll ask the question on behalf of the committee, if I might: Is there anything that precludes the documents from Ontario Northland being released? Is there anything that cannot be divulged due to some kind of contract?

Mr. Steve Orsini: My name is Steve Orsini, Deputy Minister of Finance. I'll start off. With me is James Sinclair, director of legal services.

Thank you for the opportunity to speak to this question. We worked really hard to ensure that we, to the best of our ability, complied with the motion and produced the documents within the time frame that we could deliver them within. One of the things that we did ask—we do appreciate the opportunity to speak to it—is that before commercially sensitive information, if the committee decides, were to be released, we'd have an opportunity to speak to that, so we appreciate that opportunity.

We've established a very rigorous process to decide which ones are deemed to be commercially sensitive. We actually retained an outside law firm that is skilled in court discovery, and we asked them to look at these topics that we believed were in the midst of negotiation—I won't be specific as to a name—to enable a discussion.

We had a list of these things that were actually in some type of commercial negotiations, labour negotiations or one of the factors, because if any information, as the lawyers are looking at it, would signal in one way or the other the government's intent or position—what they thought the costs or benefits would be—it might influence in one way or the other the outcome of those discussions.

We assigned that task to an arm's-length group to assign what they believe based on the criteria that we provided, to look at the information, and then to decide if that is commercially sensitive based on the criteria. I'll ask Jim Sinclair to elaborate a bit further.

When we produce this information, if conditions were to change, we would welcome an opportunity to revisit that, but at the time that we made these submissions the view was that we're in the midst of negotiations. It could be a subpart of an organization, or it could be a broader labour negotiation. Any type of negotiations that were deemed to be commercially sensitive, the law firm redacted.

We made sure, though, in the interest of being forthcoming to the committee, to also include an unredacted version so that you, the committee, on a confidential basis, could double-check, look at it and raise questions where you feel that maybe it shouldn't be redacted. We're pleased to be here to speak to that.

Jim, I don't know if you want to elaborate a bit more. We can go to further questions.

Mr. James Sinclair: I could talk about the commercially sensitive information and the kinds of screens that were used. When we retained the outside law firm, one of the things we talked to them about was what would be the appropriate guidelines for redaction.

Commercially sensitive information was such where there might be confidential third party information that had been provided to us. The province might be subject to a confidentiality agreement, which we felt bound to honour. There might be information, as the deputy indicated, respecting negotiations, contracts, litigation, arrangements with third parties, labour negotiations—that sort of thing that might be prejudicial to the commercial position of the third party or the province with respect to

those arrangements. So those are the types of things that were screened as commercially sensitive.

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The Chair (Mr. Michael Prue): Further questions? Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. Welcome, gentlemen.

In the entire allotment of documents that we received, in the redacted documents, I can search for "Ontario Northland" and there's not one—not even a mention of their name ever comes up. Every single time the words "Ontario Northland" are in those documents, it's redacted. In the unredacted documents, which I can search now and read, it's all over the place. I can read what's being redacted; it's all over the documents.

I'll ask you, without getting into specifics, in more of a conversation about it, a yes-no kind of thing rather than any specifics—you said that commercial sensitivity would be one of the requirements, or confidential third party information or something that's subject to a confidentiality agreement. Was there anything in the redacted Ontario Northland documents that is even remotely in that qualification, in your opinion? Without the specific one, is there anything?

Mr. James Sinclair: Without having the documents and going through all the references to Ontario Northland, maybe I could talk to you a little bit about the process. That might help you better understand why the documents are the way they are.

Mr. Victor Fedeli: But, Chair, if I may, before you do that, I do want to know: Is there anything in your opinion that meets those criteria?

Mr. James Sinclair: I think that the process might help set the stage for that answer. The process was, because it was a third party law firm and we had an enormous number of pages of documents to go through—I think by the end of August we had gone through 25 million pages. This is a very big task to go through to try to figure out which is confidential and which is not. One of the entities that was determined to have confidential information attached to it, because it's commercially sensitive, was Ontario Northland, because there were discussions about potential divestment. So the process that was used by the firm was that any time there was a reference to that entity, it was redacted. That is why you don't see any reference to ONTC in the redacted documents, because those were completely redacted.

Mr. Victor Fedeli: But I don't understand that, actually. As I look through documents, much of what has been redacted was either already released to us during the gas plant scandal hearings, where we came up with the \$790-million number—we got that; that's in here, but it's redacted. A lot of the information that the Auditor General had, in all her appendices and her data, is here; that's redacted. What would have happened between the gas plant scandal hearings, when we got—27 or 47 boxes? I can't remember which lot that was in, the Ontario Northland, when we were able to read about \$790 million, yet when I look at one particular page, there's

the \$790 million, but it's redacted. What would have happened from the time it wasn't redacted to yesterday, when we got this, and now it's redacted?

Mr. James Sinclair: You have to understand that a lot of the redaction of these documents occurred long before yesterday—

Mr. Victor Fedeli: But long after the gas plant scandal hearings documents that we got.

Mr. James Sinclair: I suppose—

Mr. Victor Fedeli: When were those, Rob? Was that in May?

Mr. Rob Leone: It was before that, even, I think.

Mr. Victor Fedeli: It was quite a long time ago—April, May.

Mr. James Sinclair: For the most part, our disclosures for that committee happened throughout May.

Mr. Victor Fedeli: So May. Now it's November. When were these asked for? September?

Mr. Rob Leone: No, June.

Mr. James Sinclair: June 11.

Mr. Victor Fedeli: So the unredacted documents that we got at the gas plant scandal hearings were May; the new estimates asked in June. Why would we go through it all over again, which we had to do in the first stage in the gas plants—why would we have to go through it all over again to have these unredacted when the Ontario Northland were never redacted in the first place at the gas plant scandal hearings?

Mr. Steve Orsini: Maybe I can speak to that because—

Mr. Victor Fedeli: Yes, please.

Mr. Steve Orsini: I think you're referring to disclosures to the justice policy committee, and under those circumstances there were no redactions at all. That was to deliver on those short-term time frames that were extremely difficult under the circumstances to meet. There were no redactions. There were, I think, communications to say that due to commercial sensitivity and an opportunity—the ministry would be prepared, with the committee's support, to redact. In fact, the committee has acknowledged that and has supplied us back a number of documents to redact, and we certainly appreciate that—not to say that the original one may or may not have been redacted. The fact is, that number had been released by the committee. We're following and the lawyers are following what information is in these documents, and given that these entities—I won't refer to any one of them—there are commercial negotiations; discussions are undergoing right now or labour relations are undergoing right now.

Mr. Victor Fedeli: Excuse me, Chair? Can you just repeat that earlier sentence? Not the labour, the commercial discussions? Can you repeat that?

Mr. Steve Orsini: Some of these—not referring to any one of them, but there are discussions going on to items that have been redacted, that there's some type of commercial transaction of some sort that would—or discussions or procurement or contemplation of a procurement that could put this in the category—and as

the lawyers have deemed, have met the criteria of commercial sensitivity.

Mr. Victor Fedeli: I don't understand that, Chair.

The Chair (Mr. Michael Prue): I just want to be clear. First of all, we are limiting ourselves to the Ontario Northland. Are you saying that this is the case in the Ontario Northland—

Mr. Steve Orsini: I'm saying that—I was making a generic comment because—

The Chair (Mr. Michael Prue): I want you to be specific because we're going to deal with the other items later. On Ontario Northland, is there anything of a commercial or sensitive nature?

Mr. Steve Orsini: Based on the criteria that the lawyers have applied, yes, and that's why it was redacted. Now, since we submitted this, we haven't taken another look at it, given other recent events, but I think this is something that at the time and to our understanding—this particular one met that criteria, as reviewed by the external law firm.

The Chair (Mr. Michael Prue): Mr. Fedeli, back to you.

Mr. Victor Fedeli: Thank you very much, Chair.

I'm still stuck on that particular example, then. In the original documents that we received, we learned that either treasury or finance or cabinet—now, I can't recall which one it was—sent a note to the Ministry of Northern Development and Mines asking them to defer the decision, waiting for more financial information to come.

They went ahead. At that time, Minister Bartolucci went ahead and made the fire sale announcement, regardless of the request to defer. Then we discovered the documents that said, "Here are now the new totals. We're wrong. You won't save \$265 million. We didn't tell you about liabilities, such as \$212 million in pension liability, \$56 million in benefit liability, \$16 million in WSIB liability, several hundred million in wage settlements." All of that was public—

Mr. Mike Colle: Point of order: Now we're getting into some very specific—

Mr. Victor Fedeli: No, no.

The Chair (Mr. Michael Prue): I don't think so.

Mr. Victor Fedeli: No, it's all public.

The Chair (Mr. Michael Prue): All of this is public information.

Mr. Victor Fedeli: All public.

Mr. Mike Colle: But I'm just wondering whether it's in the redacted—

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Mr. Victor Fedeli: No, it's all public.

The Chair (Mr. Michael Prue): All of this was in the auditor's statement, so I don't know how it can—I can't rule. If he's referring to the auditor's statement, it's all public.

Mr. Mike Colle: But I'm just saying, we're trying to clarify what was redacted, what wasn't redacted and what was commercially sensitive, according to the ministry.

The Chair (Mr. Michael Prue): Well, I'm going to allow him to proceed—

Mr. Mike Colle: I don't mind him proceeding. I'm just saying, I'm just trying to get this clarified, about commercial sensitivity.

The Chair (Mr. Michael Prue): If he starts referring to a specific document, then I'm going to go in camera. But if he's just talking about things that are generally known from the auditor's statement, everybody in this room knows what was in there.

Go ahead, Mr. Fedeli.

Mr. Victor Fedeli: Thank you. I appreciate it—

Mr. Kevin Daniel Flynn: Chair, on a point of order: Just so I understand this as we move forward—and I'm not trying to be difficult—how does this relate to the work of the estimates committee right now? If you could explain that to me, I'd appreciate it.

The Chair (Mr. Michael Prue): The estimates committee requested documentation from the Ministry of Finance. The estimates committee agreed, after having met in subcommittee and then again in committee, for a set of recommendations—I think there were five or six of them, which we can pass to you—and agreed that the documents would be forthcoming in two piles, one which was redacted and one which was not, and that if at any time the members of the committee wanted to release the unredacted documents, we'd have to meet again, and we would inform the ministry, who may want to make presentation, as to the propriety of releasing the unredacted documents. The discussion today is whether or not the unredacted documents ought to be released and under what conditions they should remain redacted.

Mr. Kevin Daniel Flynn: Okay. Just so I understand it further, are we talking about the line items in estimates, or are we talking about the auditor's report?

The Chair (Mr. Michael Prue): Neither. The documents—

Mr. Kevin Daniel Flynn: Well, I'm trying to listen to Mr. Fedeli, and that's what I'm getting.

The Chair (Mr. Michael Prue): The documents were requested by the estimates committee. The documents came from the Ministry of Finance. They were released to all three caucuses as per the order of the estimates committee. One of the members—in this case, it was Mr. Leone—asked that some of the documents that had been redacted be released in their unredacted form. We have one motion before us, and it relates only to Ontario Northland.

Mr. Kevin Daniel Flynn: Okay. I'll let it continue, but I'm uncomfortable with it. I just want to put that on the record.

The Chair (Mr. Michael Prue): Okay. If you want a copy of the decision of the committee—

Mr. Kevin Daniel Flynn: No, that's fine.

The Chair (Mr. Michael Prue): —it was unanimously agreed to by every member of the committee. This is the procedure.

Mr. Kevin Daniel Flynn: My understanding from the delegations is that they're bringing forward independent legal advice that protects the interests of Ontario taxpayers. That's what they've said, I think.

The Chair (Mr. Michael Prue): That is what is in the question—but the question that the committee had, that the committee reserved for itself, is the authority to release these documents. If any member of the committee wished to do so, it had to be brought back to the full committee. Mr. Leone acted within the decision that the committee made unanimously.

Mr. Fedeli.

Mr. Victor Fedeli: Thank you very much, Chair. As I was saying, in the earlier released documents, the auditor's document, everything that's the public information today—for instance, the \$790 million, yet that line is redacted in this document. This is what I can't get my head around. Every single mention of Ontario Northland, even if it's a—

Mr. Rob Leone: Casual reference.

Mr. Victor Fedeli: —casual reference—thank you, Mr. Leone—is redacted. I don't quite understand, so I'll boil it down to one simple question: Is there any reason you can give us now, knowing what you know now, today, after the auditor's report, after the documents that were released to the gas plant scandal hearing—is there any reason why we can't have all of these Ontario Northland documents today, in your opinion?

The Chair (Mr. Michael Prue): The question is—we have them all today.

Mr. Victor Fedeli: Unredacted—I apologize. Can we release them? What would hold us up? In your opinion, is there anything commercially sensitive that would stop us from releasing these today?

Mr. Steve Orsini: I'm going to ask Jim Sinclair to speak to this, but one of the things we have to keep in mind is, at least from our perspective, we're not involved in—not to speak to any particular one—any discussions.

I'll refer to another committee that asked us the very same question: Why are these particular items redacted? They asked us to revisit them. When you discuss it with the people who are engaged and responsible for that, the feedback that came back was, "These are the reasons why they're still commercially sensitive," or confidential or the like.

And I think—I'll ask Jim to drill down a little more into that—it means that we will have to double-check with those who are in a position to know that we ourselves may not—we look at the words, the context, the phraseology, and say, "That is new information that could prejudice the negotiating position of the province." So that's why it would be very difficult to us to respond on the spot without doing our due diligence and seeking the proper input.

I don't know, Jim, if you want to—

Mr. Victor Fedeli: I just have a quick question on something you said: It may impact "the negotiating position of the province." With who? I don't know what you mean. I don't understand that.

Mr. Steve Orsini: It depends on the issue. If you're into labour negotiations, it could be applicable. If you're into discussions on any type of procurement, it could be affected, related to that. It really depends on the entity,

the transaction and the timing and circumstance, and the content of the material that has been redacted.

We're not in the position to answer that on the spot, but, in the interests of responding to the committee as soon as possible, we would endeavour to follow up on that, if that was the committee's desire.

Mr. Victor Fedeli: No, I was asking if there are—

Interjections.

Mr. Victor Fedeli: I was asking if there is any reason why we can't release these today. With all the information that we now have, what would be a reason why we could not release this, right this very minute?

Mr. Steve Orsini: Because this is a Ministry of Northern Development and Mines item, we would not be in the position to offer you advice at this time. We would not be—

Mr. Victor Fedeli: Well, this is financial advice, though.

Mr. Steve Orsini: We would not be exercising our due diligence, and acting in the interests of the province, without having proper information.

We want to respond to the committee. We want to fully respect the authority of the committee to compel information and have it produced. What we can't do is, on the spot, give a legal interpretation of things that we may or may not know. I would feel very concerned if I were to put myself and our staff in that position to answer something that we're not in the position to answer, notwithstanding our interest to serve the committee to the best of our ability.

Mr. Victor Fedeli: But these aren't pages prepared by the Ministry of Northern Development and Mines. There's every ministry listed on here. It's a redacted copy here. Only the Ontario Northland ones are blacked out. All the other things are quite readable.

Mr. Steve Orsini: There are other ministries that, I believe, are redacted in that page you're referring to.

Mr. Victor Fedeli: You said that there are commercial discussions going on. Who are their commercial discussions? That was one of the quotes that you said, that one of the things that is stopping us from releasing this is commercial discussions going on. Can you just elaborate on that?

Mr. Mike Colle: I don't know where we're going. Point of order: I just don't understand—

The Chair (Mr. Michael Prue): He's nearly finished. He has 20 minutes. I'm recognizing you next. I'm going to give him some latitude. We've got about a minute left? About a minute left, and then we're over to Mr. Colle.

Mr. Victor Fedeli: Who are the commercial discussions that you're referring to, that would stop us from having these today? I don't understand that.

Mr. Steve Orsini: I'm not referring to any particular commercial discussions—

Mr. Victor Fedeli: But that is what you said. You said, "There are commercial discussions ongoing."

Mr. Steve Orsini: I referenced that those are the criteria that would deem something commercially sensitive.

Mr. Victor Fedeli: So are there negotiations going on, then? If there aren't any, then, to extend your sentence—if there are, that would deem this sensitive. If there aren't, it would make this not commercially sensitive any longer. Are there any negotiations going on? If not, then we should be able to have these.

Mr. Steve Orsini: You are asking something—a response to that question would be considered commercially responsive, and—

Mr. Victor Fedeli: Not if the answer is no. Are you saying that Ontario Northland is still for sale? Is that what I'm hearing from you?

Mr. James Sinclair: No. We're talking, I think, about—

Mr. Victor Fedeli: Is that what I'm hearing?

Mr. James Sinclair: —the redaction of the documents.

Mr. Victor Fedeli: No, no. But he said that the only reason we couldn't redact the documents is if there are—

Mr. Mike Colle: Mr. Chair, let the witness answer the question.

Mr. Victor Fedeli: I've asked him. He said there are commercial discussions.

The Chair (Mr. Michael Prue): It's your last question, so make sure it's a good one.

Mr. Victor Fedeli: Well, your comment was that the only reason we would have to continue with the commercially sensitive is if there are commercial discussions going on. I asked you if there are, and you said to answer that would be commercially sensitive. That tells me, then, that you can't tell me there are commercial transactions going on. You've just told me that there are divisions of Ontario Northland that you're still negotiating for.

1700

Mr. Steve Orsini: So I did, to be clear—

Mr. Victor Fedeli: That will be quite a shock to the north.

Mr. Steve Orsini: I want to be very clear in response to your question that there are a number of things that would deem something to be commercially confidential: commercial discussions, procurement, labour negotiations. Those are all the criteria that would deem something to be commercially sensitive, and I did indicate a number of factors that would encapsulate that term of commercially sensitive confidential information.

The Chair (Mr. Michael Prue): Mr. Colle.

Mr. Mike Colle: What I'm trying to understand from the deputy, from your presentation, is that you would like an opportunity to consult with, whether it be the Ministry of Northern Development and Mines, or with legal staff, the legal department that you consulted with before you came up with the redacted and unredacted documents—that you would like to get that time to do that. And considering the fact that a lot of these figures or numbers or information were released by the Auditor General, that have been made public, are you seeking time to just consult on that before you come back and discern a whole new group of documents that you could have no objection to be made public?

Mr. Steve Orsini: In the interests of supporting the committee in the appropriate manner, I would agree that we would want to consult with those who are privy to any conversations, whether it's labour, commercial, procurement or otherwise—that we'd want to engage them to determine whether this information is still, and continues to be, commercially confidential. So the answer would be yes, we would undertake, on behalf of the committee, and as soon as possible, to seek the necessary experts who are familiar with this to respond back.

Mr. Mike Colle: So just getting back to the process that we had put in place: I think one of the discussions we had in the subcommittee—and I think the subcommittee was in a very complex situation because we were trying to figure out exactly what the parameters of commercial sensitivity were and what the, you might say, recall for us was. I think the subcommittee was wise in asking for you to come back, if we had these questions we have right now before us. So, in essence, that's what we're doing: We're bringing you back to try to clarify for us whether or not this request to make more redacted documents public is a problem for you and the ministry. That's what I want to try to get clear here.

Mr. Steve Orsini: We're not in the position to comment on the status or state of any—or none at all—discussions that may or may not be occurring. So we would have to seek the necessary experts within the areas who are responsible for these initiatives, to seek their direction as to whether or not the material that's in these documents—and we have some of the documents before us, but not necessarily all the documents that you might be referring to, because we can't assume the documents you're referring to. We do have some copies, but it may not be all of them. We would really need to understand what the examples you're referring to are and refer to the experts in the ministry responsible to determine whether or not they're still commercially confidential.

We undertook that on another series of entities on another committee. We went through a process. It was reported back by the two ministries we consulted with that they continue to be commercially confidential, with explanations why. That's why we always do appreciate the committee asking us to come back to explain whether or not they're still commercially confidential, and we need to resort to those who are best in a position to answer that question.

Mr. Mike Colle: We've heard northern development and mines. What other ministries would you have to consult with?

Mr. Steve Orsini: It may be the Attorney General, depending on the topic. I don't know exactly. We would refer to the lead ministry. In this case, it's the Ministry of Northern Development and Mines. We would refer to that lead ministry and give them the lead responsibility to ensure that what other ministries that they would need to consult, they would take the lead for that.

Mr. Mike Colle: So you don't feel comfortable in making a decision right now until you've conferred with

the lead ministry about their feelings about the sensitivity of these documents that we're looking at to be released?

Mr. Steve Orsini: Yes, you're absolutely right. We're not in a position to do that now. If the ministry is of the view they're still commercially confidential, and the committee wants to appreciate maybe the reasons why—and I understand there's a genuine interest to understand why—then maybe on an in-camera basis, the ministry might be in the position to explain why it remains to be commercially confidential. I can't, in my position at this stage, give you that answer one way or the other.

Mr. Mike Colle: Okay. That's all the questions I have.

Mr. Kevin Daniel Flynn: I have some questions, Mr. Chair.

The Chair (Mr. Michael Prue): Okay. I'll put you down. I have Mr. Leone and then Mr. Flynn.

Mr. Rob Leone: Deputy Minister, I was listening to your commentary today, and I appreciate the fact that you're providing some clarity to the discussion. My question is this: Did you talk to anybody about these ONTC documents today? Presumably you would have known yesterday morning that we were in search of the release of the ONTC documents today. This is what we were going to come here to discuss. Did you talk to legal? Did you talk to anyone in the lead ministry, with northern development and mines, as you just mentioned on Mr. Colle's question? Did you talk to anybody about your testimony today, about coming here to talk about the release of these documents?

Mr. Steve Orsini: We had some high-level information exchange in terms of what material is in there and we did not have enough time. We found out late yesterday that we'd be appearing, so we didn't have enough time to do due diligence—whether or not this remains to be commercially sensitive and continues to be commercially confidential or not—and I think we would agree to follow up. If there's a desire, as I understand there is, to have this material unredacted, we would need to consult with them.

Mr. Rob Leone: In the process of those discussions, were any of the parameters that you mentioned with respect to commercial sensitivity, where there's a commercial transaction or labour issues that are going to emerge, a part of your discussion at all in terms of—

Mr. Steve Orsini: We did not get into any specifics. In fact, that's where we would have to refer to them on any specificity.

Mr. Rob Leone: So basically your encounter was with your legal team, I'm assuming, with respect to these documents?

Mr. Steve Orsini: I did meet with our legal team, Jim Sinclair, in terms of reviewing the methodology as to how and process and the criteria used to redact these.

Mr. Rob Leone: So did you talk to the Deputy Minister of Northern Development and Mines today?

Mr. Steve Orsini: Yes.

Mr. Rob Leone: And you had some discussions about what might be in these documents.

Mr. Steve Orsini: I did have a discussion as to the nature of the request. We were not in the position to answer the question you're asking now, as to whether or not—so we explained why they were redacted. We explained the legal process that we engaged in in the redaction. I did want to seek his support, if we were asked to review it, so we would get that support from him.

Mr. Rob Leone: When you had your outside legal team go through the documents to redact them, were there discussions between the different ministries that were affected? I know the ONTC was one aspect that was redacted. I believe aspects related to the Ring of Fire were also involved, horse racing; Samsung might have been part of those things as well.

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Do the lead ministries in these areas tell you that these portions of the documents that you're about to release should have been redacted? How do you decide, at the end of the day, what to keep and what not to keep? Is it a broader discussion in government that suggests that these are the hot-button issues in your ministries that you shouldn't touch or you shouldn't release? How does that initial conversation happen to redact ONTC documents?

Mr. James Sinclair: The conversation was never around, "These are hot-button issues that you shouldn't touch or shouldn't release." We, at the Ministry of Finance legal services branch, were the folks who provided instructions to the outside law firm. It was in connection with certain numbers of names where there were potentially commercially sensitive transactions or negotiations going on. There may have been—and this is some time ago—some very high-level conversations with certain of the legal branches, but, mostly, this was based on our own understanding of the potential for transactions or support or labour negotiations and that sort of thing. So that was the basis for the redaction, and it was a very mechanical exercise that the law firm would have been engaged in.

Mr. Rob Leone: Just to be clear then, when you initially met with the law team, it was the decision that the Ministry of Finance and your branch would have had with that legal team in terms of what to release redacted and the initial stuff. There was a conversation between your branch and the legal team in terms of what you were looking for, the parameters, the search categories, the search terms and that sort of thing.

Mr. James Sinclair: There were discussions within the ministry prior to those discussions happening as to, "What is in any of these documents?" because it was a very, very vast request. The wording of the motion was difficult for us to understand exactly what you guys were looking for, and so we engaged in the exercise of, first of all, coming to grips with what was being asked for, in terms of the nature of the documents and the nature of the requests in each of the four parts of the motion.

Then, once we had a sense of what that might look like, the question was, "Is there anything here that could be commercially sensitive?" Because you have to understand that certain of the commercially sensitive items—

and I'm not talking about Ontario Northland here. There were live conversations going on, and there are, in certain cases, confidentiality agreements that have been entered into. For us to release information that would be contrary to those agreements would be problematic. So we batched together those names, and then the mechanical process of redaction was undertaken. So that was the process.

Mr. Steve Orsini: If I could add one additional point: Commercially sensitive includes labour negotiations. There's a whole number of criteria. Procurement—there may be a procurement process going on. So it could be captured by one of those criteria.

Mr. Rob Leone: The point I'm trying to make here is that in the initial redaction phase of what the ministry had to undertake—the whole undertaking of redacting and going through these documents—there doesn't seem to me, or doesn't appear to be, any conversation with whatever you call it, the home ministry or the head ministry, with respect to what should be redacted.

Now, when we're talking about—we're having a conversation around this table about whether to release the unredacted documents, particularly relating to the ONTC. The request is being made that we actually do talk to the head ministry, northern development and mines, before we make that consultation. I'm kind of confused as to why that might be, given the fact that you've already taken the first part of the project, which is to release these documents—both a redacted copy, which is public, and an unredacted copy, which you've decided to keep confidential—I'm confused as to why you, yourself, cannot make the determination of whether anything, as my colleague Mr. Fedeli had suggested, within the unredacted copies can be released.

Mr. James Sinclair: To answer that last question, Mr. Leone, we, at finance, are in an awkward position in that regard because we're not sure what's in all of the documents. The materials that were provided to us may not be all of the materials, and the information that's captured isn't our information. It's probably true, as Mr. Fedeli and the Chair indicated, that if all of this stuff is in the public domain, there should be no reason why it remains redacted. But we just don't know. For us to commit to release something that isn't our information—the list that is in the materials that have been provided to us is a synthesis of information that has been provided to the ministry. These things are compiled as part of an annual process that the ministry goes through. But while we have the information, we're not the stewards of all of that information and don't know everything that's happening on these files. That's the awkward position that we're in. If you say to us, "Can we release it?", we'd have to check, because we're not sure. There may be no transactions; there may be transactions. But we're not privy to those conversations, so in our view it would be prudent for us to check before giving the committee the go-ahead to make the release.

Mr. Rob Leone: I just want to be clear on this. When the redactions were taking place and when you were

compiling this information, there was a position that there would be a potential sale of the ONTC, which probably would lead to one of the reasons why those documents were redacted. That position has changed somewhat. We've moved from sale to divestment to transformation, which, I would suggest, moves it out of the realm of commercial sensitivity, if that's the path that it actually has taken. So the criteria by which you might have excluded these documents may not currently apply today. Would that be correct?

Mr. Steve Orsini: That's a very valid point. There are a number of criteria. In the time we did look at this, it could have been labour negotiations that could have changed. The transformation may take it completely off the list right now. As you know, the ministry has taken a different approach. That's why we need the indulgence of the committee to go back to the ministry to ensure that all the criteria are no longer applicable under this circumstance. That's why we're asking the indulgence of the committee to give us a bit of time to go back—and maybe that is completely unredacted and open for release, but it may not be. They might be into sensitive labour negotiations.

I think that our advice would be to ensure that we do the proper due diligence and set up this process now, to build the rigour around it to ensure that we protect the provincial commercial interests, and we would ask that you give us a bit of time to follow up with the line ministries and report back to this committee as soon as possible.

Mr. Rob Leone: I have no further questions.

The Chair (Mr. Michael Prue): Mr. Fedeli on a point of order.

Mr. Victor Fedeli: It wasn't a point of order; just a point of clarification on procedure. The deputy minister is asking for some time. The fact that we are scheduled to rise tomorrow—what does that entail, then? Does that mean when we come back in February, or can you give us any other clarification on what that means?

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Mr. Rob Leone: And can we have a date in January?

Mr. Victor Fedeli: That's what I'm asking. How would that happen?

The Chair (Mr. Michael Prue): The committee is not authorized, to date—I heard only one committee was authorized, to date, to meet in that period between the time when we rise and the time that we come back, and that's the committee on—

Interjections.

The Chair (Mr. Michael Prue): The select committee. The select committee is the only one. I heard of several others and I heard noes, including the finance committee and I'm not sure what else. So at this stage, we have no authority—today, right now, as I'm speaking to you, we have no authority to meet until February 18 or soon thereafter.

Mr. Victor Fedeli: So a follow-up to that, then: When we got a disk, did it come from at a meeting, or can we

get a new disk sent to us over the course of the time period? That's what I don't understand.

The Chair (Mr. Michael Prue): I think what they've asked for is time. I mean, you could pose that question to them.

Mr. Victor Fedeli: Technically, can you mail us a disk?

The Chair (Mr. Michael Prue): It is possible to move an amendment to say those things that can be released be released before we come back in February, and the rest, we'll argue about then. If you want to make that kind of motion, you can, and I'm sure they may be amenable to it, knowing that some can be released in the interim period, and for the rest, we may have to wait. But that's up to the members of the committee.

Mr. Mike Colle: That's no problem. That's reasonable.

Mr. Victor Fedeli: Why I'm approaching that is because, quite frankly—and this will sound a little rude; it's not intended to be, but it's my rationale—the Deputy Minister of Finance did not deny that commercial activities are ongoing—

Interjection.

Mr. Victor Fedeli: No, hang on. So, with that—

Mr. Mike Colle: You're putting words in his mouth.

Mr. Victor Fedeli: No, those were his exact words.

Interjection.

Mr. Victor Fedeli: He said he wants to protect commercial interests, so in the protection of commercial interests, I understand where he's going—

Mr. Kevin Daniel Flynn: Chair, this is the longest point of clarification.

Mr. Victor Fedeli: Well, it may resolve this issue for us—

The Chair (Mr. Michael Prue): The clarification has been answered, so I'm now going to ask for further questions. Are there further questions? If not, we'll entertain motions on what to do.

Mr. Flynn.

Mr. Kevin Daniel Flynn: I have questions, Mr. Chair. Thank you.

Steve and James, thanks for coming today. You mentioned in your statements, and it could have been even restated in responses to some of the questioning that came from across the table, an experience you had with another committee that asked for what I understood to be fairly similar information. You were asked if the documents remained commercially sensitive, and you went back and you undertook the exercise that I think you're proposing to take today. You came back with what answer, at the time? What did you come back to that committee and say? Did things change?

Mr. Steve Orsini: We went back on two items. The committee did ask us to confirm or unredact two items that were previously redacted. We contacted the two ministries in question; they were two different ministries. They came back, through their legal departments, and said that they still were commercially confidential. So we wrote to the committee.

I do want to clarify, if I can, the premise that was raised early—that I did not in any way communicate one way or the other that an item is in a commercial transaction. I just want to be clear that I identified a number of criteria that are—it's important to know that one of those criteria could be applicable.

Mr. Kevin Daniel Flynn: Okay. Just so I'm clear—and perhaps, James, you can add to this—had you released the information you've been asked to release unredacted—if you had been asked to do that at the meeting you were at, with the previous experience, would the commercial interests of Ontario's taxpayers have been protected?

Mr. Steve Orsini: If asked, when appearing before them, “Could you make that determination on the spot?”, I could not have. We had to go back to the lead ministry and ask them to explain, through their legal services branch to our legal services branch—because it is a legal term, whether it meets a commercial confidentiality test—whether it still met that criteria, and they reported back in the affirmative. We did write back to the committee to indicate that those particular items remain confidential, for those reasons.

Mr. Kevin Daniel Flynn: Okay, thank you. I think people are trying to get at some of the process that might be employed, and what might follow as a result of us agreeing with the advice you're giving us today that I understand is based on outside independent legal advice but is given in the interest of protecting Ontario's taxpayers from divulging any information that's commercially sensitive. What would be the process that you would undertake specifically, were we to agree with you today? What would follow? I think people are starting to get to the point as to what time it would come back and how long this might take.

Mr. Steve Orsini: To underscore, we appreciate the opportunity to be asked this question, because we want to respond to the committee to the best of our ability while still exercising the legal responsibilities that we are charged with. We'd like to go back with what documents are being asked by the committee to unredact, for which the committee might feel there's no particular reason or it's not clear as to the reason.

The second thing is that we would then share those documents with the responsible lead ministry, ask them to look at it from their legal perspective as to whether or not it meets any one of those criteria—not any one in particular, but any one of them—and then to report back through our legal services branch. I can't give you a precise time, but it would be in a week or two or a few weeks. We'd be able to do that within that time frame.

Mr. Kevin Daniel Flynn: The other day at committee we were talking about it being the holiday season and there was some disagreement as to whether that should be taken into account. We're breaking, ourselves, in a day or two, or perhaps Monday—who knows?—depending on what the House leaders can agree on in the next few days. Christmas follows into the new year, and then things sort of pick up again. You just said you could get it

in a couple of weeks; I just want to be sure that you can. Do you stand by that, given that it's the holiday season?

Mr. Steve Orsini: I'm trying to anticipate—I think you raise a very important point. I said a couple of weeks or a few weeks, meaning that it depends on the availability of the people involved. It might be one person; it might be several different people. I can't give you any assurances as to how long.

Mr. James Sinclair: It depends upon what exactly the committee is looking for. If it's limited to ONTC and we understand what those documents are, that's different than if it runs the gamut of a bunch of other things, because it just makes it more complex to go through the material.

Mr. Kevin Daniel Flynn: Okay. We're talking about our next meeting being, at the earliest, if things go the way they are going, if we follow the normal course of events, on the 18th of February. Would the information be able to be provided before the 18th of February?

Mr. Steve Orsini: I can't see any logistical reason why not.

The Chair (Mr. Michael Prue): It would be the first Tuesday, if possible, after Family Day, which is, I think, the first day back. I think it's the 18th. The 19th would be the Wednesday, so it may have to be the Wednesday. But in any event, one or the other.

Mr. Kevin Daniel Flynn: Okay. Thank you for your answers.

The Chair (Mr. Michael Prue): Mr. Natyshak.

Mr. Taras Natyshak: Thank you for your clarification, although I am still just a bit confused about the process. The decision to redact documents is sent to an outside legal agency from your office, so you contract out that legal decision. They then return their submission as to why they think—or “Here are the documents that should be redacted.” Presumably they would add their opinion on why those issues are redacted or redactable, not simply through the parameters of, “Okay, we've identified this as commercially sensitive.” Would they delve in a little bit deeper and, in order to skip a step, for the sake of this committee and for the sake of the time that we're all discussing now, could we simply have that opinion from that outside legal firm? That's part one of my question.

Part two of my question: When they do send you back that information as to what they've decided or what their opinion is in terms of what should be redacted, do you, at that point, ask them why? Do you question their—

Mr. James Sinclair: Let me clarify a little bit, because I think you perhaps misunderstood and I was probably not that clear. The decision on what should or shouldn't be redacted was a ministry decision. We looked at what might be in these materials and what are the potential reasons for what might be redacted. We created a list of names of entities with which various parts of the government might be involved and where our materials might reflect those names, and so the decision was made within the ministry. It wasn't something that the outside law firm provided advice on. There is no opinion.

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Their role, as I said, was a purely mechanical one: “These are the names. Here are the documents. Can you go through these documents, find the names and do the redactions?” Because they would have no real experience with any of these things, they wouldn’t have been in a position to say, “Well, we think this is commercially sensitive and this isn’t.” They wouldn’t have known. We provided them with the list, and then, because of the number of documents involved—this is technologically difficult to do. They have the technology that facilitates the redaction and the easy review of this stuff, and so—

Mr. Taras Natyshak: They are the redactors.

Mr. James Sinclair: Exactly. That’s exactly it.

Mr. Rob Leone: Can I have a point of order, Chair?

The Chair (Mr. Michael Prue): A point of order for Mr. Leone.

Mr. Kevin Daniel Flynn: I think you invented something.

Mr. Rob Leone: As much as I love the word—it’s going to be in the new Urban Dictionary, “redactor.”

Chair, I’m wondering: On your agenda, you list a number of Ministry of Finance ministry staff. I’m wondering if all of those staff members are present.

The Chair (Mr. Michael Prue): All of them but two. The bottom two, namely Susan Snelgrove and Julia Hancock, are not.

Mr. Rob Leone: And do we have a reason why they’re on the agenda but not present?

The Chair (Mr. Michael Prue): I can’t answer that question. I was just told when we arrived that they would not be coming.

Mr. Rob Leone: Because I think they would answer some of the questions, particularly because they are part of the lead ministry, northern development and mines. If we had them present, they could have given us some answers.

I was just wondering. I wanted to put it on the record, Chair.

The Chair (Mr. Michael Prue): The names were provided to the Clerk. The Clerk, in turn, informed me that the last two would not be here. That’s the only information I have. I don’t know why, nor does the Clerk.

Mr. Rob Leone: May I ask the Clerk if you received email correspondence or phone correspondence on the lack of presence by the two staff members of the Ministry of Northern Development and Mines, one a senior legal counsel and the other the corporate policy secretary?

The Clerk of the Committee (Mr. Katch Koch): I was informed at the start of the meeting that the two persons on the agenda are not present today.

Mr. Rob Leone: And there was no formal reason why?

The Clerk of the Committee (Mr. Katch Koch): No.

Mr. Rob Leone: That’s unfortunate, because I think they could have given us some information that we’re perhaps missing here.

Mr. Joe Dickson: But we don’t know, so don’t use allusions.

Mr. Rob Leone: I said “could.”

The Chair (Mr. Michael Prue): Okay. I don’t have any other speakers, so I want to interject. There is a government motion today that will probably be called at about a quarter to 6 or 10 to 6 for a vote. All members, of course, are free to leave, and at that point we would have to shut down. If you want to make a motion for what is going to happen, I would suggest that we do it sooner rather than later.

Mr. Mike Colle: I have a motion.

The Chair (Mr. Michael Prue): All right, then. Mr. Colle has got the first motion. We’ll entertain his motion. Mr. Colle?

Mr. Mike Colle: I move that the finance officials be given time to go back and consult with the appropriate ministry staff in northern development or other ministries that may give you the input required to make a judicious decision about the release of the documents, and then, as soon as that is done, that the information be released to the committee once that consultation has taken place, by electronic means or whatever means made available to the committee without the committee having to meet.

The Chair (Mr. Michael Prue): Okay. We’ve heard his motion. Perhaps I erred slightly here. We do have a motion in front of us, which is the PC motion. It is simply asking that the documents be handed over.

Mr. Victor Fedeli: Can I amend my own motions?

The Chair (Mr. Michael Prue): I’ve tied myself in a knot—

Interjection.

Mr. Victor Fedeli: So was mine. It’s written, here.

Interjection.

The Chair (Mr. Michael Prue): We don’t have it in writing.

I think there is some considerable goodwill here. Is it possible that we can just recess for about five minutes and have all parties talk about what they want to do and see if we can come up with something that will satisfy everyone, as opposed to trying to argue it back and forth?

Mr. Kevin Daniel Flynn: Good idea.

The Chair (Mr. Michael Prue): So I’m going to do that. I’m going to recess for five minutes. We’ll be back here precisely at 21 minutes to the hour to see if we can come up with something that all parties can agree to so that we can move this forward.

We are recessed for five minutes.

The committee recessed from 1735 to 1747.

The Chair (Mr. Michael Prue): We are resumed. First of all, we need Mr. Colle to read his—and then I have to make a determination whether it is in fact an amendment or not. Go forward with that.

Mr. Mike Colle: Okay.

That the passage of this motion is contingent on the Ministry of Finance officials being given time to consult with other ministries and legal counsel that are affected by the decisions to release redacted documents. Upon consulting with other ministries, proceed to release documents to the committee that have been deemed not com-

mercially or otherwise contrary to the interests of the province of Ontario.

So just basically saying, let them go and consult; once they've consulted, to release the information that they deem is no longer a problem.

The Chair (Mr. Michael Prue): I'm trying to figure out in my own mind, perhaps with the Clerk's advice, whether this is a stand-alone motion or whether it is an amendment. Usually, an amendment says it's amended by adding or removing something to the original motion. It seems to me to be a stand-alone.

I'm going to have to rule that—and the Clerk has advised me, and I agree—this is a stand-alone motion. Given that it's a stand-alone motion, I have to recognize Mr. Fedeli's motion first, which he has already amended. So I'm going to have to recognize Mr. Fedeli's motion. If Mr. Fedeli's does not pass, then we will go immediately to Mr. Colle's motion.

Mr. Fedeli, if you could move your motion into the record.

Mr. Victor Fedeli: I move that the motion be amended by striking out “made public all unredacted documents” and replacing with the following:

“Given that the Auditor General's report on ONTC has been tabled and given that much of the ONTC financial information has also been released, that the standing committee be provided a revised set of unredacted documents at the earliest possible date.”

And that gives, Chair—in my opinion, they can provide the unredacted according to their own opinions.

The Chair (Mr. Michael Prue): Okay. We have Mr. Fedeli's motion in front of us. Is there any debate on Mr. Fedeli's motion?

Mr. Kevin Daniel Flynn: This is an amended motion or it's an amendment or it's just a stand-alone motion?

The Chair (Mr. Michael Prue): It's his original motion. He has amended it in the interim.

Mr. Kevin Daniel Flynn: Okay. So it's an amendment. I just want to be clear.

The Chair (Mr. Michael Prue): It's an amendment. It's an amendment, yes, because he has left a couple of the same words in there.

Mr. Kevin Daniel Flynn: Then we will deal with Mr. Fedeli's main motion after this?

The Chair (Mr. Michael Prue): I don't think there's anything left of the main motion.

Mr. Kevin Daniel Flynn: Well, there's no motion if we don't deal with it.

Interjection.

The Chair (Mr. Michael Prue): Okay. Yes, it's the main motion. Then we're going to go to the main motion,

as amended, but there's not much to the main motion left, after he struck most of it out.

Mr. Kevin Daniel Flynn: I agree with you, Chair. I'm just trying to understand.

The Chair (Mr. Michael Prue): Okay. So we're dealing with Mr. Fedeli's amendment to his main motion. Any discussion on the amendment?

Mr. Mike Colle: We're just trying to clarify. The motion originally presented, this one here, what happens to it?

The Chair (Mr. Michael Prue): Well, most of it has been struck out and is amended.

Mr. Mike Colle: Okay. So he withdrew this—

The Chair (Mr. Michael Prue): All the things that say—striking out “made public all unredacted documents.” So it will read: “I move that the Standing Committee on Estimates, given that the Auditor General's report on the ONTC...” etc.

Mr. Kevin Daniel Flynn: And then we will deal with Mr. Colle's motion, independent of this?

The Chair (Mr. Michael Prue): Independently, should this motion not pass. If it does, then I think Mr. Colle's motion would be redundant.

Mr. Kevin Daniel Flynn: In the interests of goodwill, I'd be prepared to support this.

Mr. Mike Colle: I just want to make sure of the time frame here so they have a reasonable time.

Mr. Victor Fedeli: Earliest possible convenience.

Mr. Mike Colle: Okay. Yes.

The Chair (Mr. Michael Prue): Any further discussion on Mr. Fedeli's amendment? Seeing none, all those in favour of Mr. Fedeli's amendment? That carries.

Mr. Fedeli's main motion, as amended: Any debate? Seeing none, all those in favour of the main motion, as—okay, and that carries.

Mr. Mike Colle: And I'm withdrawing mine.

The Chair (Mr. Michael Prue): All right. Mr. Colle withdraws his, so we have resolution on the ONTC.

The bells have not rung. When I said I anticipated a vote today, I may have been mistaken. Be that as it may, even if they don't, we have a vote in nine minutes.

Is there anything else the committee wishes to deal with today? I know that there were some other—

Mr. Kevin Daniel Flynn: I would move adjournment, Mr. Chair.

The Chair (Mr. Michael Prue): That's always in order, and I have to deal with it first. It's not debatable. I have a motion of adjournment; no debate.

All those in favour of adjourning? That carries.

We are adjourned.

The committee adjourned at 1752.

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