



ISSN 1710-9442

**Legislative Assembly  
of Ontario**

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

**Assemblée législative  
de l'Ontario**

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

**Official Report  
of Debates  
(Hansard)**

**Tuesday 28 May 2013**

**Journal  
des débats  
(Hansard)**

**Mardi 28 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 28 May 2013

Mardi 28 mai 2013

*The committee met at 1500 in room 151.*

### MEMBERS' PRIVILEGES

HON. BOB CHIARELLI

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the Standing Committee on Justice Policy to order. As you know, we're here deliberating on the energy infrastructure of Ontario. I invite our first witness, the Honourable Bob Chiarelli, Minister of Energy for the province of Ontario, to be sworn in by our Clerk.

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

**Hon. Bob Chiarelli:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Chiarelli. You know the drill; you have five minutes in which to make your opening address. I invite you start now.

**Hon. Bob Chiarelli:** Thank you. I was sworn in as Minister of Energy on February 11, 2013. With respect to the decision to relocate both the Mississauga and Oakville gas plants, I had no direct involvement in these decisions. I was present at a number of cabinet and treasury board meetings that involved the Oakville or Mississauga gas plants. I am happy to provide these dates to the committee.

In terms of document disclosure, I was not involved with the production of documents for this committee prior to February 2013. On the evening of February 20, I was informed by my deputy minister and chief of staff that the Ontario Power Authority had located additional documents. I was disappointed that these documents were not disclosed originally. I had no prior knowledge that document searches were still ongoing or that more documents were in the possession of the OPA.

I called the chair of the OPA the following morning to receive an explanation on this issue. On February 21, at the first available opportunity, I informed the House that these documents were being tabled immediately.

Following question period on this same day, at my request, the CEO and the chair of the OPA both appeared before the media to discuss the document disclosure. I am tabling a transcript of this media availability to the committee.

During my time as Minister of Energy, I received cost estimates for the relocation of both plants from the experts at the OPA through the ministry. Our office relies on the experts at our agencies to produce these cost estimates.

Through foundational briefings led by ministry staff, I received the \$40-million sunk cost figure for Oakville and the \$190-million sunk cost figure for the relocation of the Mississauga facility. In the interest of transparency, I have also tabled that briefing with the committee.

On March 25, I received a briefing from my chief of staff on the OPA's updated numbers for both the Mississauga and Oakville facilities. At that time, the OPA was working with the auditor as he prepared his report on the Mississauga facility. The OPA provided the government with updated cost estimates to better reflect the perspective the auditor was taking in his calculations.

On March 25, the OPA provided my office with an updated estimate stating that the cost for the Oakville relocation could range from \$33 million to \$136 million. These estimates have previously been released to the committee.

It was also at this briefing that I received a high-level overview of the auditor's draft Mississauga costs. I did not review a copy of the auditor's draft report.

I formally met with the Auditor General on April 11, 2013, to discuss his findings. It was clear that the auditor took a longer-term view of the costs and savings for the relocation of the Mississauga facility. That's why, on April 22, I requested OPA CEO Colin Andersen to come to committee to provide the OPA's updated estimate of the costs of relocating the Oakville plant. I am pleased that he eventually appeared before committee and provided this update.

In the interests of transparency, my office received these numbers just 30 minutes before committee commenced, on April 30.

It's clear that these are complex calculations that continue to change. That's why, earlier, we had asked the Auditor General to expand his work to include the Oakville facility, and we look forward to his report.

In the meantime, I encourage the committee to focus its attention on making recommendations to improve the siting of our large-scale energy infrastructure. On May 6, I asked the OPA and the IESO to report back to the ministry with recommendations on developing a new

integrated regional energy planning process that would focus on how large energy infrastructure projects are appropriately sited across Ontario. I have tabled this letter with the committee as well. The process will take into account recommendations on energy project siting made, or that may be made, by the Standing Committee on Justice Policy.

I'm happy to take your questions.

**The Chair (Mr. Shafiq Qadri):** Thank you, Minister Chiarelli. I invite Mr. Fedeli to please begin. You have 20 minutes.

**Mr. Victor Fedeli:** Well, thank you, Chair; much appreciated. Welcome, Mr. Chiarelli.

Today the privacy commissioner said she was baffled at the fact that the top McGuinty staff were deleting gas plant documents. She goes on to say, "It strained credulity that no one thought maybe they should retain some of the emails, that there are retention obligations and things of that nature." She continues, "Suffice it to say I was not pleased, putting it mildly, and you will see that reflected in the report that comes out."

Do you have any comments about the privacy commissioner's incredulity at the action of the staff of the Premier's office?

**Hon. Bob Chiarelli:** Well, there are rules and requirements with respect to documents, and they're subject to the commissioner's oversight. I'm not aware of the details surrounding that evidence, although, in a sort of higher level, I'm aware that that evidence was given here, and I've been made aware of the commissioner's remarks today.

The issue is where it should be. It's before the commissioner. I think it's clear from her remarks that she will be dealing with it in due course, and the government will be dealing with her report when it is filed.

**Mr. Victor Fedeli:** You say there are rules and requirements with respect to documents. Do you believe that your ministry has followed those rules and requirements accurately from day one?

**Hon. Bob Chiarelli:** I know that my chief of staff is aware of that requirement and has been aware of that requirement. It's my understanding that, through his oversight, our ministry has been compliant.

**Mr. Victor Fedeli:** Can you tell me why we received redacted documents from your ministry, then, in the past?

**Hon. Bob Chiarelli:** No, I cannot tell you that.

**Mr. Victor Fedeli:** Okay.

**Hon. Bob Chiarelli:** I don't know the details around the redactions, and I haven't looked at individual documents.

**Mr. Victor Fedeli:** Do you think the OPA has followed the rules and requirements with respect to the documents?

**Hon. Bob Chiarelli:** I can only take what the OPA has provided to us: certainly, the evidence that they have provided, both at the media availability that they held earlier in February, where they made themselves available for half an hour—unlimited time period to answer all questions from the media. The transcript has

been provided to you. Certainly, Colin Andersen was available to give evidence as well.

**Mr. Victor Fedeli:** Media availability is one thing, but swearing under oath in testimony here is another. We've been told that they have been asked by the Ministry of Energy to remove certain documents. They did indeed acknowledge that they did remove those thousands of documents, and then, on further contemplation, had a second document dump where they fessed up and turned them over to us. What comment would you have on that?

**Hon. Bob Chiarelli:** First of all, I want to repeat that I wasn't minister at the time those events were happening—

**Mr. Victor Fedeli:** I understand.

**Hon. Bob Chiarelli:**—and any answers that I give would be based on information that I've received second-hand, not first-hand, from people briefing me from evidence that has been before this committee. So I really can't comment in detail on that.

1510

**Mr. Victor Fedeli:** So after me telling you of their sworn testimony, where they told us they removed documents at the request of the Ministry of Energy—

**Hon. Bob Chiarelli:** Can you tell me who gave that evidence?

**Mr. Victor Fedeli:** Several.

**Hon. Bob Chiarelli:** Could you give me their names, please?

**Mr. Victor Fedeli:** There were several.

**Hon. Bob Chiarelli:** Could you give me their names?

**Mr. Victor Fedeli:** I'm asking the questions here. There were several of them who gave us that testimony, and that's sworn testimony—if you stick around for the next hour and a half, you might get a little bit more information, because there's another witness coming in, one of the lawyers.

**Hon. Bob Chiarelli:** I appreciate that advice. Thank you.

**Mr. Victor Fedeli:** So let me ask you: You suggested that we ask the AG to expand the scope to include Oakville. Can you tell me who "we" was?

**Hon. Bob Chiarelli:** My understanding—

**Mr. Victor Fedeli:** It was in your opening statement.

**Hon. Bob Chiarelli:** Sorry?

**Mr. Victor Fedeli:** It was in your opening statement.

**Hon. Bob Chiarelli:** It was the government.

**Mr. Victor Fedeli:** Let me tell you who the "we" was. We, the members of the PC Party, and we, actually the members of the NDP, fought before prorogation to have the Auditor General look into the Oakville plant. It was you, the Liberal government, who thwarted that all day long on the last day of committee, who, up until only minutes, bare minutes, before the clock ran out, for the committee to sunset—we, the opposition, were told that unless we accept only Mississauga and not Oakville, that they would have another recess, which would run the clock out, and we would get neither. How do you square that?

**Hon. Bob Chiarelli:** Did I understand you to say that it was requested by the Liberals?

**Mr. Victor Fedeli:** No. I'm suggesting to you that it was requested by the PCs and by the NDP, by the opposition members, that we have hearings by the Auditor General for both Oakville and Mississauga, and that if we didn't remove Oakville from the hearings, we would not get Mississauga hearings; we would get none. Do you acknowledge that? Do you remember that occurring?

**Hon. Bob Chiarelli:** No, I can't acknowledge that, and I don't remember that.

**Mr. Victor Fedeli:** I'll provide that to you. We've asked for that Hansard—

**Hon. Bob Chiarelli:** Thank you. I would appreciate that.

**Mr. Victor Fedeli:** —to come to us at the committee. We have received it, and I'll make sure that our office forwards that to you.

Sadly, we didn't win that day. The Liberals thwarted us getting to the truth of Oakville back then. So here we now wait for those numbers.

Let me ask you, then: On March 20, 2013, you stated, "We have accepted the fact that it was a political decision to relocate those gas plants." What did you mean by that?

**Hon. Bob Chiarelli:** What I meant by that was that on September 24, 2011, for example with respect to Mississauga, the Liberal Party issued a press release stating that the plant will be relocated if they're re-elected as government. It was an election promise. It was a political decision. We have acknowledged that and the Premier has acknowledged that.

**Mr. Victor Fedeli:** Okay. So you would disagree then—when Dwight Duncan was in estimates, when he said that the decision to cancel the Mississauga plant was inherently political because it was done in a campaign at the time when you were down in the polls. So you disagree with what your former energy minister and former finance minister said?

**Hon. Bob Chiarelli:** I think it's a matter of public knowledge that in the 2011 election campaign, three political parties made commitments to cancel the gas plants. I don't think there's any evidence to the contrary.

**Mr. Victor Fedeli:** So you disagree with Mr. Duncan. I watched him as he said that, that, "We were down in the polls, and it was done in a campaign." So you disagree with his comment about that.

**Hon. Bob Chiarelli:** The three parties made promises in the election campaign.

**Mr. Victor Fedeli:** So do you agree with Premier Wynne or with Mr. McGuinty and Minister Sousa? The Premier says it was political. Mr. McGuinty and Mr. Sousa argue that it wasn't. Which one was it?

**Hon. Bob Chiarelli:** I actually haven't been parsing all the evidence that's coming before this committee. What I'm trying to do as minister is move the ministry in significant directions which require action. Quite frankly, I have not been reading the transcripts and I have not been following all the evidence, so asking me to confirm or not confirm what other people have said—you know, I

probably can't give you very accurate answers. I can tell you what I know from my knowledge.

**Mr. Victor Fedeli:** So you don't think these gas plant scandal hearings need action?

**Hon. Bob Chiarelli:** Absolutely. I think that all parties have agreed that there are serious issues in the system with respect to siting energy infrastructure. As minister, I'm taking action as quickly as I can to correct those. The Premier has said and acknowledged as well that there have been siting problems, and regrets that those existed. I can say that, over the course of the last seven or eight years, there have been tremendous successes in the energy sector, and there have been some bumps in the road. Certainly one of the bumps in the road has been the issue of siting energy infrastructure.

**Mr. Victor Fedeli:** Yes, a billion dollars is a pretty big bump.

You also said in the House, "We have nothing to apologize for." If that's the case, Minister, then why did the Premier feel it was necessary to publicly apologize?

**Hon. Bob Chiarelli:** Well, I answered that, I believe, in a scrum. I understood the question to be, would I want to apologize?

**Mr. Victor Fedeli:** So you wouldn't?

**Hon. Bob Chiarelli:** It's a decision for the government to apologize; I don't speak for the government. The Premier has spoken for the government on that issue.

**Mr. Victor Fedeli:** So you don't apologize?

**Hon. Bob Chiarelli:** I concur, as I've said in the past, personally. I regretted that the decisions had to be made because of bad siting, but it has always been in the context that all three parties had made the promise to cancel and relocate the gas plants.

**Mr. Victor Fedeli:** Well, I would find it unusual to hear the sentence from you that the Minister of Energy doesn't speak for the government.

Excuse me, Clerk. Are our documents handed out?

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

**Mr. Victor Fedeli:** If you look at document number 1, it's an order in council document. Do you see it there?

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** Do you see your name on it?

**Hon. Bob Chiarelli:** Tell me where my name is. I'm having trouble picking it out.

**Mr. Victor Fedeli:** "The membership of the Management Board of Cabinet and the treasury board (b) as follows:"

**Hon. Bob Chiarelli:** What page is that on here?

**Mr. Victor Fedeli:** PC doc 1. It looks like this.

Let me see the cover of the one you have, if I may, Minister. No, that's later on testimony from the next person. It should be the other stack.

**Hon. Bob Chiarelli:** A different stack of documents?

**Mr. Victor Fedeli:** One is for the next witness—

**The Chair (Mr. Shafiq Qadri):** Your staff gave us both stacks, and so we distributed both stacks.

**Mr. Victor Fedeli:** Thank you. I appreciate that.

So you see the one that's the order in council? Do you have that document, Minister?

**Hon. Bob Chiarelli:** Yes, I'm looking at it now.

**Mr. Victor Fedeli:** Do you see your name on it?

**Hon. Bob Chiarelli:** Yes, I do.

**Mr. Victor Fedeli:** And what does it say beside your name?

**Hon. Bob Chiarelli:** "Vice-chair."

**Mr. Victor Fedeli:** Can you read the entire list of members who are the Management Board of Cabinet?

**Hon. Bob Chiarelli:** I'd prefer you read them.

**Mr. Victor Fedeli:** I'm sorry?

**Hon. Bob Chiarelli:** I'd prefer you read them.

**Mr. Victor Fedeli:** I'm asking you to read them, Minister.

**Hon. Bob Chiarelli:** No, I'd prefer you read them.

**Mr. Victor Fedeli:** Chair, it's a simple question to ask the minister to read a document.

**The Chair (Mr. Shafiq Qadri):** And I believe he's entitled to say he prefers—

**Mr. Victor Fedeli:** That he doesn't want to answer.

**Hon. Bob Chiarelli:** I'll answer.

**The Chair (Mr. Shafiq Qadri):** You have to ask him.

**Mr. Victor Fedeli:** I'm sorry?

**Hon. Bob Chiarelli:** No, I'd prefer you to read it.

**Mr. Victor Fedeli:** I've asked you to read the names of the Management Board of Cabinet. It's a simple request, Minister. It's a very simple request.

**Hon. Bob Chiarelli:** You know the answer.

**Mr. Victor Fedeli:** I'm asking you to read them for me.

**Hon. Bob Chiarelli:** You know the answer.

**Mr. Victor Fedeli:** Chair, I'm asking you to ask the witness to—

**The Chair (Mr. Shafiq Qadri):** Mr. Fedeli, he's here to answer questions, not read text—

**Mr. Victor Fedeli:** Here we go with a Liberal Chair and a Liberal witness. It's no wonder we can't get to the bottom of this scandal when a witness can't even answer a simple question. Chair, I'm asking you to ask him to answer a simple question and read the members.

**Mr. Bob Delaney:** You haven't asked him a question.

**Mr. Victor Fedeli:** I'm not talking to you. I'm talking to the Chair, and I've asked a simple question here.

**The Chair (Mr. Shafiq Qadri):** Mr. Fedeli, with respect, the Chair, Liberal or otherwise, is informing you of committee procedure—

**Mr. Victor Fedeli:** Well, there is no respect here, Chair, when the member doesn't even want to—are you that embarrassed of your own fellow caucus members' names that you can't answer a question.

**Mr. Bob Delaney:** Mr. Chair, on a point of privilege.

**The Chair (Mr. Shafiq Qadri):** Mr. Delaney, on a point of privilege.

**Mr. Bob Delaney:** Mr. Hudak also refused to read that sort of thing—

**Mr. Victor Fedeli:** I've asked a question of this member.

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

Please continue.

**Mr. Victor Fedeli:** I've asked for an answer from—are you that embarrassed to read their names? Are you that embarrassed, Minister, to read your fellow members' names?

**Hon. Bob Chiarelli:** I'm not embarrassed to read those names—

**Mr. Victor Fedeli:** I understand if you're—I can appreciate that.

**Hon. Bob Chiarelli:** They're elements in a document—

**Mr. Victor Fedeli:** So will you answer this question: Were you the vice-chair of treasury board from November 9 until—when?

**Hon. Bob Chiarelli:** I guess till the last election—yes.

**Mr. Rob Leone:** "I guess till the last election."

1520

**Mr. Victor Fedeli:** It's going to be tough to get honest answers again.

When did the discussion of the Oakville gas plant cancellation first come to treasury board?

**Hon. Bob Chiarelli:** I don't know the first date. I really don't know that date; sorry. You can remind me.

**Mr. Victor Fedeli:** Do you remember any discussion at treasury board of the cancellation of gas plants?

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** Okay. What was the nature of that discussion?

**Hon. Bob Chiarelli:** The nature of the discussion was at a high level, that we had made a commitment to cancel, and they were in the process of negotiating. They were negotiating mandates that were discussed with respect to the cancellation of both of the gas plants. There were, on occasion, report-backs to committee—and I can remember the debate at a high level. I didn't take notes. There were 30 or 40 items on every meeting agenda, so I can't give you detailed dates at this particular point.

**Mr. Victor Fedeli:** When was treasury board first made aware of the additional costs associated with the gas plant cancellations?

**Hon. Bob Chiarelli:** I'm assuming—I don't know the date, but I'm assuming it's somewhere around the time that the ministry received information from the Ontario Power Authority with an estimated cost. I think that date is somewhere around March 25, when I was briefed by my chief of staff on updated OPA numbers for Oakville—a range of \$33 million to \$136 million. Also, at the same time, I had received some information about the draft report of the Auditor General on Mississauga. So probably somewhere in advance of that, by a month or two, there probably was discussion at treasury board.

**Mr. Victor Fedeli:** So a month or two before March it would have been discussed at treasury board.

**Hon. Bob Chiarelli:** I would say probably.

**Mr. Victor Fedeli:** One or two months.

**Hon. Bob Chiarelli:** I don't know when we received that information. I only know the date that I was briefed on it.

**Mr. Victor Fedeli:** Now we're into January 2011.

We'll switch to Mississauga. When did treasury board first discuss the Mississauga cancellation?

**Hon. Bob Chiarelli:** I don't know that date.

**Mr. Victor Fedeli:** Would Mississauga have been discussed in treasury board?

**Hon. Bob Chiarelli:** Mississauga likely was discussed in treasury board. I have provided you, and tabled—so I guess we can both refresh our memories, because you might already know the answer. Cabinet Treasury Board Timeline is a document that I've tabled. September 24, 2011: As I mentioned, the Liberal Party issues a press release stating that the plant will be relocated.

“October 20, 2011: New cabinet meets, and a high-level discussion confirming the government's plan to move forward on the commitment to relocate the Mississauga plant.

“October 24, 2011: Minister Bentley writes a letter to the OPA requesting that they commence discussions on a priority basis with Greenfield South Power Corp.

“November 21, 2011: Cabinet minute walk-around, signed by Wynne, Takhar, Chan and Murray, approves a \$10-million settlement with Eastern Power.” I think that's already in the record somewhere.

**Mr. Victor Fedeli:** Okay, thank you, Minister.

**Hon. Bob Chiarelli:** “November 24: The Minister of Energy provides cabinet”—

**Mr. Victor Fedeli:** Minister, I was referring to the first time, so I appreciate that.

**Hon. Bob Chiarelli:** May 17 is the first reference I have to treasury board here—May 17, 2012.

**Mr. Victor Fedeli:** In speaking on the MOU with TransCanada, you've said that it's a contract between the proponent and the OPA. The contract is \$40 million in sunk costs, and it goes on to discuss the details.

**Hon. Bob Chiarelli:** What are you reading from now?

**Mr. Victor Fedeli:** I'm just talking about your conversation in the Legislature about sunk costs and additional calculations.

When did you first learn that there were more than just the sunk costs for both Mississauga and Oakville?

**Hon. Bob Chiarelli:** Again, I just want to repeat what was in my opening remarks. On February 12, 2013, I received a foundational briefing on gas plants, and the document is here for you to look at it.

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

**Mr. Victor Fedeli:** But you didn't hear about Oakville or Mississauga before you became the Minister of Energy?

**Hon. Bob Chiarelli:** I'm talking about as minister. You referred to comments I made in the Legislature; I would not have made comments in the Legislature unless I had been Minister of Energy, so I assume the time frame you were referring to was my time frame as Minister of Energy.

**Mr. Victor Fedeli:** In the remaining seconds, then, I would only say that you talk about the fact that you haven't been reading the transcripts, but in announcing your regional energy plan process you say you'll be

relying on recommendations from this committee. So I'm hoping that as we go forward you will indeed be paying attention to the important work that this committee is doing. Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. The Liberal Chair now passes the floor to the members of the NDP. Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Mr. Minister, thank you for being here this afternoon. You've presented us with this briefing that you were given by the Ministry of Energy when you became the new minister.

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** Were you given any other briefings by the Ontario Power Authority about the cancellation costs of the Oakville plant before Colin Andersen gave his testimony here?

**Hon. Bob Chiarelli:** I don't recall any.

**Mr. Peter Tabuns:** None? Did you ever reach out to him and say, “Mr. Andersen, your board reports to me. Can you please come and fill me in on this?”

**Hon. Bob Chiarelli:** I was very cautious to keep my communications with Mr. Andersen and the OPA to a minimum because there were a lot of discussions about the influencing of the OPA by political staff and perhaps ministers. I kept as much distance as I could and I relied on the ministry.

If I wanted something done, I would work through the ministry and the ministry, for example, would have requested him to come to committee. That was initiated by me. As I said in my opening remarks, the information that I received with respect to the updates that Colin gave at that committee I did not see until an hour or two before committee because I did not want to come to this committee and have people say that I was influencing them or that I influenced them. So I kept my distance.

**Mr. Peter Tabuns:** So between the time that you were sworn in as minister and the time that Colin Andersen gave his testimony, you had no discussions with Colin Andersen?

**Hon. Bob Chiarelli:** No, that's not correct. We had—

**Mr. Peter Tabuns:** Okay, I want to be clear: You had no briefings from him and you asked him no questions on this?

**Hon. Bob Chiarelli:** Not on the power plants. I had multiple briefings and meetings on other issues.

**Mr. Peter Tabuns:** But you specifically avoided asking him any questions on this and he did not volunteer.

**Hon. Bob Chiarelli:** If there were any communications with the Ontario Power Authority, it was communicated from my office through to the deputy's office and through to the OPA.

**Mr. Peter Tabuns:** And then it would come back as well, I assume.

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** And so using that chain of communication, did the OPA give you an assessment of what was going on with the cost estimates prior to Colin Andersen's testimony?

**Hon. Bob Chiarelli:** Yes, and I've referred to that. I indicated that on March 25, the ministry—the deputy—had been provided with information from Colin Andersen and the OPA, and I was subsequently briefed by my chief of staff on updated OPA numbers for Oakville and also an update on what was in a draft report of the Auditor General with respect to Mississauga. On that March 25 briefing—staff would have received it sometime before that; not a long time before that—I was provided with the \$33-million to \$136-million range.

**Mr. Peter Tabuns:** Could you please table that briefing from your staff that you received?

**Hon. Bob Chiarelli:** Yes. I have tabled it already.

1530

**Mr. Peter Tabuns:** You have and it's been—

**Hon. Bob Chiarelli:** I've got a copy of it here.

**Mr. Peter Tabuns:** No, that's fine. If you can give it to the Clerk—

**Hon. Bob Chiarelli:** Okay.

**Mr. Peter Tabuns:** —she will circulate it, and then we'll come back to it.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Was that it?

**Hon. Bob Chiarelli:** That's it, yes.

**Mr. Peter Tabuns:** Okay. That one, the relocation of gas plants; it says February 2013. You just said March 25 to me.

**Hon. Bob Chiarelli:** No. The foundational briefing I received from the ministry was on February 13.

**Mr. Peter Tabuns:** And is that this?

**Hon. Bob Chiarelli:** No. There are two different documents. There's a relocation of gas plants briefing, in which they indicated the costs: \$40 million sunk costs for Oakville and a \$190-million total relocation cost for Mississauga. Then, subsequent to that, we received an update from Colin Andersen at the ministry and the ministry briefed my chief of staff and my chief of staff briefed me on March 25, and that updated report on the numbers indicated a \$33-million to \$136-million range.

I might add that that was approximately one month before Colin Andersen came to committee, and by the time he came to committee his estimate of \$33 million to \$136 million had changed again. So he brought a higher number to committee one month later. He also brought with him an expert opinion—

**Mr. Peter Tabuns:** Yes, I know. I've read that.

**Hon. Bob Chiarelli:** —which had a different number, and at that same 90-minute session, a different number was put on the table by a Conservative member, estimating what the cost was. So at the same meeting, the committee members were looking at four different numbers on the cost, which underlined something I had been saying every time I answered a question in the Legislature: We have to wait for the Auditor General to report on the numbers, because we still have yet another number to receive and that number will be the number from the Auditor General. We're talking about numbers here that are changing, and they're going to change one more time, I'm sure, when the auditor presents his report.

**Mr. Peter Tabuns:** I'm very sure, too.

On February 25, you said, in response to a question, "We asked the Ontario Power Authority to provide us with the cost of the relocation. They provided us with the \$230 million—the \$40 million for the relocation of Oakville." But clearly, you knew that it was going to be higher than \$40 million, that there were other costs involved. Even this document you've provided us with shows a variety of costs—\$210 million for gas turbines, yet-to-be-concluded costs on gas contract management and delivery—and yet, when you're in the House, \$40 million, no talk about other costs that were going to be coming down the pipe. Why?

**Hon. Bob Chiarelli:** I said on a regular basis that we would have to wait for the auditor's report. I mentioned in one of my scrums after question period that the cost could be higher. I mentioned in the Legislature that the cost could be higher, but it could be the same, because we didn't know. It was a moving target.

Particularly with respect to Oakville, it's really important—and I refer you to the actual deck—

**Mr. Peter Tabuns:** No, I—

**Hon. Bob Chiarelli:** —the briefing note. I refer you to page 5—sorry, page 10.

**Mr. Peter Tabuns:** Yes. That's the one I was just citing to you.

**Hon. Bob Chiarelli:** The briefing talks about costs. So I think you're on the right page, in terms of raising issues of costs, and it's referred to in this deck. The OPA was able to negotiate a lower contract cost with Trans-Canada Energy for the power produced at the new site. The NRR for the Lennox facility is \$15,200 per month, down from \$17,000 per month for the original Oakville location. So I don't think anybody calculated at that time—

**Mr. Peter Tabuns:** Mr. Minister, you don't actually have to read through this. When I would ask you questions in the House, I'd be told \$40 million, and there would not be reference to a variety of other costs.

**Hon. Bob Chiarelli:** Well, you were told more than \$40 million.

**Mr. Peter Tabuns:** Pardon?

**Hon. Bob Chiarelli:** You were told \$40 million—

**Mr. Peter Tabuns:** Forty million.

**Hon. Bob Chiarelli:** —and there were different questions that were asked on different days, and they were answered differently depending on the question. Number one, we knew—the deputy minister knew and I knew—on the date of this briefing note what the sunk costs were—

**Mr. Peter Tabuns:** Yes.

**Hon. Bob Chiarelli:** —the sunk costs. What we also knew on the Oakville calculation was that the contract itself—I brought the MOU on that with me, and I actually read a very lengthy paragraph from this into Hansard in answer to one of the questions in terms of how complex the calculation was to have taken that out—

**Mr. Peter Tabuns:** Minister, I'm going to come back to that. If you could set that aside for the moment.

When Ms. Wynne, the Premier, was here, she was asked about the numbers and who knew what when. She said, "I have ... had conversations with my Minister of Energy, and I know that he is in close contact with the OPA." Is that true or not? Were you in close contact?

**Hon. Bob Chiarelli:** Through the ministry, as I indicated earlier.

**Mr. Peter Tabuns:** So you were in pretty constant contact with them through your deputy minister.

**Hon. Bob Chiarelli:** Occasionally, on the gas plants—occasionally in touch with them through the ministry.

**Mr. Peter Tabuns:** Gee, based on what the Premier had to say, you were in close contact with the OPA.

**Hon. Bob Chiarelli:** I was in close contact with the Premier, and the information I was sharing with her was the information that I got from the ministry.

**Mr. Peter Tabuns:** It doesn't seem to be what she said, but I will set that aside for the moment.

Can you give us records of those interactions between you, your deputy minister and the OPA on matters related to the price or the cost that people in this province were at risk for?

**Hon. Bob Chiarelli:** We've tabled those documents—

**Mr. Peter Tabuns:** And that's it?

**Hon. Bob Chiarelli:** Well, really, as far as any information that I received as minister on the cost, having been appointed Minister of Energy, I received a briefing from—let's be fair, here. The time periods were very, very tight. I was appointed minister on February 11. So we had between February 11 and March 25 to move from sunk costs to the updated estimate. We're talking four or five weeks, here; that's the time frame we're talking about.

**Mr. Peter Tabuns:** When we asked you about the cost beyond the \$40 million in sunk costs, you answered the question with, "That contract identified sunk costs and also contemplated a wide range of other costs. That was there for the whole world to see in September 2012.

"The Auditor General, in his Mississauga report—it was very, very clear from that that these are very complex calculations...."

So which is it? Was the number there for everyone to see or was it too complex to calculate?

**Hon. Bob Chiarelli:** What you just read was intended to communicate that there were complex, difficult-to-establish numbers. That's what my answer was intended to communicate, and that is a fact. As a matter of fact, if anybody, particularly the two critics, would read the memorandum of understanding that was posted and try to calculate the cost—I defy you to calculate the cost accurately.

My understanding is that it went on well into a number of months, and they may still not have finalized the final calculations on the Oakville plant. The memorandum of understanding and the contract referred to formulas to calculate, and knowing that it would be different to

calculate, it went on to say that if there's a differential or they can't agree, they would go to arbitration on the calculations.

It's very, very difficult to say specifically and it's very difficult to be clear in answering questions, because it is complex.

**Mr. Peter Tabuns:** What did your ministry staff tell you that these extra costs were going to come in at? What was the range that you were told? Because clearly, you knew, we knew, that \$40 million was the beginning, not the end of these costs. What were you being told?

**Hon. Bob Chiarelli:** What we were being told was that the Auditor General on Mississauga used an approach to calculate the costs which was not an approach that the OPA used or would typically use. In other words, they looked at the long term; they looked at line losses, that type of thing. Some of those same types of calculations would apply to Oakville. We can only guess what the Auditor General is going to do with respect to Oakville because he's still working on it, and he hasn't reported. He will look at similar types of costs. It's after the OPA communicated the draft report numbers to the ministry from Mississauga that the ministry and others realized that using those calculations would probably change the Oakville calculation as well. Those calculations are still ongoing with the Auditor General.

**1540**

**Mr. Peter Tabuns:** So what were the internal calculations that you had? Your government signed a memorandum of agreement. There was \$40 million of sunk costs in it. There were all these gas management charges. You had paid \$210 million for turbines; you were going to get some sort of deal back on that. What was the number you were working with? You knew that \$40 million was the beginning, not the end.

**Hon. Bob Chiarelli:** I wasn't working with any number until March 25, when the OPA came in with an adjusted estimate of a range of \$33 million to \$136 million. Keep in mind the short time frames here, okay? From March 25 to the date Colin Andersen came to committee—he came to committee on April 30. From March 25 to April 30, the OPA changed its number from \$33 million to \$136 million to \$350 million plus or minus.

We're relying on the OPA to provide numbers to us. They have the expertise; they have the in-house knowledge. They're providing information to us, the best information they have. The best information they had with respect to—again, having seen the draft report on Mississauga, they upped the number from \$33 million to \$136 million.

Then between that date and April 30, when Colin Andersen came to committee with a new number—I saw Colin Andersen's new number for the first time an hour before committee. That's the first time I saw the new number that went to committee.

**Mr. Peter Tabuns:** Minister, did you ever speak with Chris Bentley about this issue before or after his resignation and your swearing-in?

**Hon. Bob Chiarelli:** Never.

**Mr. Peter Tabuns:** So you never asked him about the costs?

**Hon. Bob Chiarelli:** No.

**Mr. Peter Tabuns:** Is that customary, that you don't talk to your predecessor?

**Hon. Bob Chiarelli:** I would talk to my predecessor; there may have been discussions that took place in front of treasury board or at cabinet, but no, I don't talk to every one of my fellow ministers on every one of their files. Otherwise, we'd spend all of our time talking.

**Mr. Peter Tabuns:** No, I imagine that's true. But you came into a ministry that was dealing with a huge crisis—

**Hon. Bob Chiarelli:** I didn't think it was wise for me as a new minister to come in and have discussions with Minister Bentley, given the issues that were before this committee. I had advice, which I concurred with, that I should not be having conversations with Mr. Bentley.

**Mr. Peter Tabuns:** Who gave you that advice?

**Hon. Bob Chiarelli:** My staff.

**Mr. Peter Tabuns:** Is it your staff who are running the response to this crisis?

**Hon. Bob Chiarelli:** No. I—

**Mr. Peter Tabuns:** Who is?

**Hon. Bob Chiarelli:** Well, when my office makes a decision, such as coming to this committee, it's my decision.

**Mr. Peter Tabuns:** Is it your practice, when signing cabinet documents, to read them?

**Hon. Bob Chiarelli:** Most always.

**Mr. Peter Tabuns:** Do you ask about cost implications?

**Hon. Bob Chiarelli:** Occasionally.

**Mr. Peter Tabuns:** Minister, you're asked to sign off on things, and effectively you turn over a blank cheque?

**Hon. Bob Chiarelli:** I don't sign off on cabinet documents.

**Mr. Peter Tabuns:** Okay.

**Hon. Bob Chiarelli:** There are decisions that are made, and then there are minutes, which are recorded. The decision is represented in a minute. That minute is approved, and then it goes to Cabinet Office. I don't sign, and ministers don't sign, cabinet decisions.

**Mr. Peter Tabuns:** Well, actually, we've heard testimony about what's called a walk-around, where—

**Hon. Bob Chiarelli:** Well, a walk-around is a different issue. When I have a walk-around, I will read it. I want to know what it is.

**Mr. Peter Tabuns:** I would hope you would read it. Do you ask about the cost implications?

**Hon. Bob Chiarelli:** If it's appropriate, I ask about the cost implications.

**Mr. Peter Tabuns:** I guess if it's a non-monetary item, but for something like this, would you ask for cost implications—

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

**Mr. Peter Tabuns:**—if someone was, say, cancelling a billion-dollar contract?

**Hon. Bob Chiarelli:** Well, I mean, that's a hypothetical situation—

**Mr. Peter Tabuns:** Unfortunately not.

**Hon. Bob Chiarelli:** You're talking about a billion dollars. A billion dollars was used before, and a billion dollars is used now. There's possibly a \$500-million error in the comment, and it's used very lightly.

**Mr. Peter Tabuns:** So do you ask about cost implications when you're presented with signing off on a document that may in fact risk several hundred million dollars?

**Hon. Bob Chiarelli:** I actually can't recall signing a walk-around for cabinet, but certainly—

**Mr. Peter Tabuns:** You'd think it's good practice to ask these questions.

**Hon. Bob Chiarelli:** Sorry?

**Mr. Peter Tabuns:** You'd think it's good practice to ask.

**Hon. Bob Chiarelli:** Depending on the circumstances. Depending on the circumstances.

**Mr. Peter Tabuns:** Given that there might be a lot of money at risk, you'd think it would be a good idea to ask.

**Hon. Bob Chiarelli:** If it's something that—

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. To the government side: Ms. Albanese.

**Mrs. Laura Albanese:** Did you want to finish the sentence? Please go ahead, if you just wanted to finish that.

**Hon. Bob Chiarelli:** There are a lot of issues that are before cabinet that are 98.9% finalized. Something has to be checked or whatever, and it's brought around and somebody says, "We verified this or that," and it's signed. Whoever is walking it around will let you know what happened to that particular item or part of the answer.

You don't go back, necessarily, and read the whole report that went to cabinet. It usually occurs reasonably soon after a cabinet meeting that has dealt with that issue. There's not a lot of separation in time. So it depends on the circumstances.

**Mrs. Laura Albanese:** I just thought it would be suitable for the minister to finish.

Thank you so much for being here this afternoon, Minister. I would like to start by asking you: When you were invited to testify before this committee today, was that the first invitation that you had received?

**Hon. Bob Chiarelli:** Yes.

**Mrs. Laura Albanese:** Okay. And you are not, obviously, the first member of the government to appear before this committee after a first invitation. We have a long list that includes Premier Wynne, former Premier McGuinty, Minister Duguid, and former Minister Bentley as well. What does that say about our government's approach to this file? Would you say that the government is being open and transparent?

**Hon. Bob Chiarelli:** I've said that in the Legislature on a number of occasions. I think you judge that record on its merits in terms of what the opposition was saying and what our government was saying.

I certainly respect the Premier for her transparency and her openness, which she has repeated in detail often in the Legislature. I think people believe her and trust her.

**Mrs. Laura Albanese:** I believe that the fact is, our government has taken several steps to be open and transparent as much as possible in regard to these two locations—

**Hon. Bob Chiarelli:** As minister, I'm happy that we initiated an expansion of the mandate of the committee to include finding better ways, or recommending better ways, to site energy infrastructure. I'm hoping that the committee will get to that and will put some substantive effort into it, including witnesses, moving forward.

Certainly, she opened up the documents to all ministries and the Premier's office, something that had not been requested. It was volunteered by her. She volunteered at the earliest possible time to come here as a witness, and she has.

As the new Minister of Energy, I've been as open and transparent as possible. I indicated in my opening remarks that I received information about new documents the evening that the Legislature came back, and I initiated tabling those documents before question period the very next day. In the spirit of openness, I asked the chair, Jim Hinds, to have himself and Colin Andersen come to Queen's Park that very same day. There was no way I could answer to the Legislature why that happened or how it happened, and as a minister with accountability, the only way I could communicate accountability was to have the people who gave that information to me, who conducted the searches, come and publicly answer those questions. I think that was extremely transparent to do.

1550

**Mrs. Laura Albanese:** Yes, I agree. It was, after all, a government motion that significantly expanded the scope of this committee and not only dealt with a matter of privilege but also brought in the issue on the relocation of the gas plants, and similarly, government members of this committee put forward a motion requesting documents government-wide for an expanded time frame, which unfortunately the opposition at the time voted down. Nevertheless, there have been numerous document production motions that have been passed in this committee with the support of government members.

So, given this openness, what do you think about the opposition allegations that we are involved in some sort of cover-up?

**Hon. Bob Chiarelli:** Well, you know, there's been a lot of comment—

*Interjection.*

**Mrs. Laura Albanese:** You'll get your turn. This is my time.

**Hon. Bob Chiarelli:** —and I provided a transcript of Colin Andersen's and Jim Hinds's answers in public—

**Mr. John Yakabuski:** We're wasting time in this committee asking questions like that, Chair. That's ridiculous. You've got 20 minutes; you should actually ask some real questions.

**Hon. Bob Chiarelli:** With respect, you know—

**Mr. John Yakabuski:** Bob, that's craziness.

**Hon. Bob Chiarelli:** With respect, I'm not interrupting you, so please don't interrupt me, Mr. Yakabuski.

So the answers that were given in open press availability were as follows: This one went to Colin Andersen, "At any point during these searches—we are talking about all of them, not just this one"—this is a question from the media—"did you feel that you were under a great deal of political pressure to either produce or not produce records?" Colin Andersen's answer is, "No."

To Jim Hinds: "So the opposition has accused the government today of a cover-up. Would you say that is an accurate assessment of what has happened here?" Jim Hinds: "I don't think cover-up is the right way to describe it. We messed up some search terms, and we're trying to get them cleaned up, so I'm not sure what this has to do with the government. This is all us"—referring to the OPA.

Another question to Colin Andersen: "Did you have communication with the Liberal election team?" Colin Andersen's answer: "No."

Another question to Colin Andersen: "How often did you go talk to political staff and minister's staff and the ministry know you are coming in and you are given direction? Does it happen daily? Every week?" Again, that's a question from the media, I want to repeat. Colin Andersen's answer: "No. In our discussions, we are with the deputy's side of things and the bureaucrats that were dealing with it."

Again, when Colin Andersen was at committee, Colin Andersen said, "When all was said and done, it was our decision." Mr. Del Duca said, "The OPA was responsible for your own document search and had final signoff on what was provided to the Clerk. Would you agree?" Mr. Andersen said, "Yes," under oath.

**Mrs. Laura Albanese:** Thank you, Minister, for that presentation.

I want to ask you now about the decisions made to relocate these two plants. You were not the Minister of Energy at the time these decisions were made, and you were not involved in the files at the time, but yet you've said that you support these decisions. Why is that?

**Hon. Bob Chiarelli:** I support the decisions partly in acknowledgement that we have a deficiency in the system in terms of siting strategic energy infrastructure. That's number one. Number two, very strong cases were made from elected officials and community leaders from Oakville and Mississauga, and they supported the cancellation and the relocation of the power plants. At the same time—and I often look across and I look at Mr. Bailey who represents the Sarnia-Lambton area, and he's smiling and he takes credit in Sarnia for having created jobs and bringing the facility from Oakville, and I understand there is significant host approval in Lennox for the other plant. So there are four communities that are happy with the outcome.

The unhappy part of the outcome, given that the three parties recommended relocating and promised to re-

locate, is the cost involved. None of us knew the cost, and when we got into it, the cost was higher than anticipated, and now we're paying a financial price and a political price for doing that. But it was something that we all promised to do. We implemented promises that the three parties made moving into the election.

**Mrs. Laura Albanese:** Speaking about that, the decision to relocate the plants has been described as political. That was mentioned even earlier. When asked about that characterization, Premier Wynne explained that energy experts were responsible for siting the plants and that the role of the elected officials was to listen to the communities and make sure that local voices were being heard. 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."

You would agree with that characterization—

**Hon. Bob Chiarelli:** I would agree with that characterization.

I would say that I'm in the process of taking some very significant steps to remedy that situation. There are two energy areas that involve siting. One of them is renewables—wind turbines, solar and so forth—and the other is larger infrastructure; for example, gas plants. We've taken initiatives on both fronts. With respect to the large infrastructure such as gas plants, I issued a direction to the OPA and the IESO to report back to me by August 1 with a consultation plan and a process to create regional energy plans and to include processes that would engage municipalities in a way that this type of situation would not occur again.

The other type of siting has to do with the renewables, and within the next week or so, I'll be making an announcement with respect to feed-in tariff and also with respect to the impact on municipalities, and I believe it will be well received.

**Mrs. Laura Albanese:** Minister, going back to these plants: If it wasn't for politicians, would you agree that these two plants would have been built on those sites even though all three parties opposed them and even though the communities didn't want them?

**Hon. Bob Chiarelli:** Absolutely. That's a fact.

**Mrs. Laura Albanese:** Okay. As a minister, I assume that you pay close attention to the policy positions of your counterparts in the opposition.

**Hon. Bob Chiarelli:** Yes.

**Mrs. Laura Albanese:** So I guess you would know where they stood on the issue of the Oakville plant, of the Mississauga plant.

**Hon. Bob Chiarelli:** I wish I had the time to repeat all the comments our government House leader has made in the Legislature in terms of quotes and other evidence. Certainly, both opposition parties promised to cancel the gas plants and neither did they have cost estimates.

**Mrs. Laura Albanese:** Speaking about quotes, one that I have here is from Ted Chudleigh, the PC member from Halton, who was very frank about his opposition to

the plant. I have a quote from June 1, 2010, from Mr. Chudleigh, who stated, "The people of Oakville have told you they don't want the proposed gas-fired power plant ... and I agree with them."

On October 7, 2010, we have MPP Peter Tabuns, who told Inside Halton, "I don't agree with the Oakville power plant."

Then, on December 2, 2010, MPP Michael Prue stated, "I'm glad the people of Oakville hired Erin Brockovich and did all the things that they did in order to have this killed."

So in your opinion, there's no doubt that both opposition parties opposed the Oakville plant?

**Hon. Bob Chiarelli:** I think there's a lot of evidence supporting that, and I don't think it's deniable, quite frankly.

1600

**Mrs. Laura Albanese:** And in regard to the Mississauga plant, I'm sure you're well aware that during the election, both opposition parties made campaign commitments to cancel the plant, if elected, and that's certainly what the mayor of Mississauga has told us in this committee. She testified and said, "The impression that was certainly given beyond a doubt.... I think all parties would have cancelled it," meaning the Mississauga plant.

**Hon. Bob Chiarelli:** She went further. She told the opposition that they should get on with the business of government.

**Mrs. Laura Albanese:** Okay. So there's no doubt that both opposition parties opposed that plant. So in that case—

*Interjections.*

**Hon. Bob Chiarelli:** You guys are no Hazel. I listen to Hazel.

**Mrs. Laura Albanese:** In that case, what would you make of the PC and the NDP constantly attacking the government in the Legislature and in the media on these two power plant relocations? The government fulfilled the commitments that all three parties made, as you mentioned earlier, the commitments that were made to the people of Oakville and Mississauga. Do you believe that in some way they should take responsibility for those very public commitments that were made, instead of pointing fingers?

**Hon. Bob Chiarelli:** I think the opposition is doing what a lot of oppositions do, and that is, they believe there's no accountability in opposition and their job is to hold the government accountable, so they're working very, very hard to hold the government accountable. We're not going to let the public forget that there has to be accountability also on the part of the opposition.

**Mrs. Laura Albanese:** In regard to the Oakville costs, I would like to ask you a few questions about those relocation costs. Colin Andersen testified to the committee that the government relied on OPA numbers. He said that this is true: "We did provide them with the numbers. That is what you would expect."

Do you agree with that characterization, that the government would have used what was provided and approved by the OPA, and only those numbers?

**Hon. Bob Chiarelli:** The government relies on information it gets from all of its agencies. We receive information from Metrolinx and Infrastructure Ontario. They're complex, detailed, technical. Occasionally, we will ask for outside advice. But we accept their advice.

The opposition, in fact, accepted the information that was received from Colin Andersen when he appeared on April 30 before committee. He came in with a higher price, and they were happy to accept his higher price. I think they suggested it might be higher, but to them it was good news that he came in with a higher price, because it certainly is an issue for us, all of us in the Legislature, that the costs were higher than anticipated when we all promised to cancel and relocate the plants.

**Mrs. Laura Albanese:** Now, following the release of the auditor's report on Mississauga, the opposition asked for an update on the Oakville numbers. In response to this request, you sent this committee a letter on April 22, asking us to invite Colin Andersen to provide the OPA's most updated estimate, as you were mentioning. Why did you take that step? Why did you write to us and ask the committee to invite Colin Andersen?

**Hon. Bob Chiarelli:** I was concerned, and I have been from day one, about how much uncertainty there was with respect to calculating the costs of the relocation. It was a very, very difficult issue.

Having received on March 25 a briefing which included a new range of costs from OPA, from \$33 million to \$136 million, and having seen information as to what was in the draft Auditor General's estimate, it was apparent that costs were changing and information was changing on an ongoing basis, so I thought it was important for the committee to hear the latest and to hear the information directly from Colin Andersen. There's always this perception from the opposition that we're hiding information and not sharing it with them, that we've got information that we're getting from OPA and not sharing.

My philosophy has been, my practice has been and my experience is that when we got information that was unexpected and a surprise—when I was told early in February that there were more documents, I immediately released them, and I had the OPA come and be publicly accountable for it. Given the fact that we had these new estimates which had come in on this, I thought it was important for the OPA to come in and be publicly accountable, under oath, for their numbers, and that's what happened. I think I did the honourable thing and I think I did the ethical thing in both of those instances.

**Mrs. Laura Albanese:** Thank you, Minister. Chair—

**The Chair (Mr. Shafiq Qadri):** It's 10 seconds.

**Mr. Bob Delaney:** Okay, in 10 seconds, Chair, I've just tabled a document showing Mr. Fedeli that declining to read documents—

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

**Mr. Victor Fedeli:** Thank you, Mr. Delaney. Now we have one of those documents, too.

**Mr. Bob Delaney:** Good.

**Mr. Victor Fedeli:** Minister, on April 16, 2013, when speaking of the MOU with TransCanada, you said the following: "It's the contract between the proponent and the OPA and the provincial government. It states in the contract itself: \$40 million are the sunk costs. It states in the contract itself that there are other calculations that are being made. Those calculations relate to reduce power site and to the provision of certain equipment."

That's an interesting statement to me because it's the first acknowledgement on your part, on the part of the government, that there were indeed additional costs. When did you first learn of these other calculations?

**Hon. Bob Chiarelli:** I learned of calculations at some point—obviously after I was appointed Minister of Energy. It would have been within five or six weeks of that particular date. It was when I was provided with a copy of the memorandum of understanding relating to the Oakville settlement.

In fact, in answer to one of the critics' questions—I believe it was Mr. Fedeli—I actually read one of the calculations. I don't think there was anybody in Ontario who could understand what I was saying, reading a calculation that was very, very difficult. So—

**Mr. Victor Fedeli:** So there are indeed additional calculations, then?

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** There are other costs other than the sunk cost of \$40 million? I'm asking you a question. Are there—

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** So there are sunk costs other than \$40 million.

**Hon. Bob Chiarelli:** No. There are sunk costs, and there are other costs.

**Mr. Victor Fedeli:** Yes, so there are other costs in addition to the \$40 million of sunk costs.

**Hon. Bob Chiarelli:** Yes.

**Mr. Victor Fedeli:** When did you first become aware of that?

**Hon. Bob Chiarelli:** When I became aware of the actual document?

**Mr. Victor Fedeli:** No, the fact that there's more than \$40 million to cancel Oakville.

**Hon. Bob Chiarelli:** Well, sometime within that time period—sometime a month or two before answering that question, within a very short time frame. I don't remember the exact date, and I don't think it's relevant.

**Mr. Victor Fedeli:** Well, I think it's relevant, considering that you and others in your party continued to say the total cost—

**Hon. Bob Chiarelli:** The implication is—

**Mr. Victor Fedeli:** —is \$40 million.

**Hon. Bob Chiarelli:** I'm sorry, the implication is that I was misleading the Legislature, and I was misleading you. That's categorically wrong.

**Mr. Victor Fedeli:** So what are the total costs to cancel Oakville?

**Hon. Bob Chiarelli:** The total costs to cancel Oakville are exactly what I've been saying in the Legislature

for several months in answer to your questions. There are sunk costs, and then there are other calculations which are reflected in the agreement that was made public on December 17, 2012, which referred to calculations that, if they were not agreed to—

**Mr. Victor Fedeli:** The word—

**Hon. Bob Chiarelli:** —it would go to arbitration.

**Mr. Victor Fedeli:** —“sunk costs” is kind of a new one for everybody. This is reasonably new, the expression “sunk costs.” Why would your predecessor, then, say, “the bottom line cost”? In fact, I’ll read you his exact quote. “The cost—the bottom line cost—of relocating ... Mississauga ... is \$180 million.” “We know the cost of Oakville is \$40 million.” And: “The only accurate cost to the taxpayer of this relocation is \$40 million.”

Premier McGuinty: “The total cost of the relocation is \$40 million.” Premier McGuinty: “The total cost of that relocation was \$190 million.” And: “On the matter of the cost, Speaker, it’s \$40 million.”

**1610**

Why would these people continue to say a total cost of \$40 million and \$190 million and now you’re saying it’s a sunk cost of \$40 million? Is that a subtle change?

**Hon. Bob Chiarelli:** Well, I think, first of all, we should look at the information that was flowing from the OPA to the Ministry of Energy and from the Ministry of Energy to the Premier’s office or to—

**Mr. Victor Fedeli:** Let me jump to that, then. Let me just jump to that exact theme, because the flow of that information, even after everybody has been saying that the Mississauga plant cost \$190 million—let me tell you what Michael Lyle said, a vice-president and legal counsel at OPA. He testified: “They”—the government—“would have been aware that there were costs that had been paid more than the \$190.” This is in reference to your government continuing to say the plant cost only \$190 million. But he swore under oath the OPA had already paid back in July \$245 million, long, long, long before—months before—you and your government and others in your government continued to say that the total cost of Mississauga was \$190 million. How do you square that?

**Hon. Bob Chiarelli:** I square that—you asked me, first of all, about Minister Bentley and about the Premier saying what the costs were. I was starting to answer the question when you started putting additional facts in, and I’m not sure you’re still asking the same question or not. Are you still asking the same question?

**Mr. Victor Fedeli:** Well, I’m asking about the OPA. You’re saying that they were dealing with figures from the OPA, but the OPA swore here—and let me read you what else they said. They swore that everybody in the government knew that that \$245 million had already been paid, that the cash was already out.

**Hon. Bob Chiarelli:** Which plant are you referring to?

**Mr. Victor Fedeli:** Mississauga. Mr. Lyle also had this to say: “There were ministry representatives at the table ... as well as Infrastructure Ontario representatives.”

You were the minister of that ministry at the time. So there were representatives from Infrastructure Ontario, where you were the minister, representatives from the Ministry of Energy, where you’re now the minister, and somehow you expect us to believe that you were unaware of those additional costs?

**Hon. Bob Chiarelli:** The only information, to my knowledge, that the government had with respect to costs was information that flowed from the Ontario Power Authority to either the Ministry of Energy—

**Mr. Victor Fedeli:** Which was \$245 million.

**Hon. Bob Chiarelli:** No, I’m sorry. The information that was provided with respect to costs was \$190 million in sunk costs and \$40 million in sunk costs. Those were the numbers that were provided at a point in time.

**Mr. Victor Fedeli:** But this is July. This is a long time ago now. This is getting close to a year ago that they told us that \$245 million had already been spent, and that everybody knew. Colin Andersen: \$40 million is only “a portion of the costs.” He’s talking about Oakville in that case.

**Hon. Bob Chiarelli:** When did he say that?

**Mr. Victor Fedeli:** “As signatories”—

**Hon. Bob Chiarelli:** When did he say that?

**Mr. Victor Fedeli:** Under oath here. “As signatories to the MOU ... they were” well “aware” that there were additional costs, from “early estimates fairly early on ... that there were significant costs....”

**Hon. Bob Chiarelli:** Everybody was aware—

**Mr. Victor Fedeli:** Yes, that’s what he said: everybody.

**Hon. Bob Chiarelli:** Can I finish the sentence?

**Mr. Victor Fedeli:** He said “everybody” too.

**Hon. Bob Chiarelli:** Everybody was aware as a result of the memorandum of understanding that was put on the website September 24 and December 17. Everybody was aware that there were sunk costs and other calculations. The other calculations weren’t all costs. Some of them were savings.

**Mr. Victor Fedeli:** So you knew there were other costs.

**Hon. Bob Chiarelli:** Some of them were savings.

**Mr. Victor Fedeli:** Are you saying that you knew of other costs when the MOU was signed?

**Hon. Bob Chiarelli:** And of the savings. But they hadn’t been calculated, so he didn’t know whether it was a net plus or a net negative.

**Mr. Victor Fedeli:** But are you suggesting, then, that Minister Bentley and former Premier McGuinty didn’t know that then? Because they were sticking with the original numbers.

**Hon. Bob Chiarelli:** Yes, but they weren’t making those statements on December 12. They were not making those statements—the memorandum of understanding was actually signed on September 24. Okay?

**Mr. Victor Fedeli:** So are you saying that nobody has given the numbers of \$40 million total cost or \$190 million total cost since that MOU was signed?

**Hon. Bob Chiarelli:** Well, I want to go back to my own briefings. My own briefings—

**Mr. Victor Fedeli:** Yes, but your briefings—with all due respect, Minister, I looked at that briefing. That’s a pretty cozy briefing that they’ve given you. It’s pretty light on details, I might add, considering what we know should have been in there. Minister, they did not put it in there. That’s a very superficial briefing that either was asked for or delivered to you, but I’ve got to tell you, there’s no meat on those bones.

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

**Hon. Bob Chiarelli:** This briefing was provided in February and it was based on a memorandum of understanding that was signed in September and registered at the full contract in December. Okay?

**Mr. Victor Fedeli:** Yes.

**Hon. Bob Chiarelli:** So at that point in time, that memorandum of understanding had not made the calculations of pluses and minuses beyond sunk costs. So I think it’s important that we keep in mind those time frames—

**Mr. Victor Fedeli:** Jenkins, Killeavy, Lyle, Butler and Colin Andersen himself said everybody knew—everybody knew. Other people knew.

**Hon. Bob Chiarelli:** He was referring to the MOU, which stated that there were additional costs and savings, but they—

**Mr. Victor Fedeli:** You were the Minister of Infrastructure Ontario when Mr. Lyle said that there were ministry representatives who were at the table, as well as Infrastructure Ontario representatives, of which you were the minister. Are you implying that you did not know then?

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

**Mr. Peter Tabuns:** Thank you. Minister, you’ve been pushing pretty strongly that people were given this limited information in this briefing, but in front of you is this document, Project Vapour Update, from January 2012. Do you have it? Thank you. Page 6, “Estimating a Settlement Value”—so January 2012, corporate and electricity finance division: “TransCanada Enterprises has been seeking recovery of what it states are its out-of-pocket expenses (\$37 million); cost of turbines (\$210 million); estimated financial value” of the contract, somewhere between \$503 million and \$385 million.

Minister, as of January 2012, your government knew we were talking about a lot more than \$40 million at risk here. When we ask you questions in the House and we’re told \$40 million, which was not a credible figure at any point for total figures, and we see that you’ve been briefed in the hundreds of millions of dollars of costs, then we ask: What on earth is going on? When you and Premiers stand up and say that it’s \$40 million, and we know now that you have these documents that were before you in January 2012 as well as in February 2013 showing much higher numbers, we want to know what you’re doing when you’re talking to the House and giving a figure that doesn’t represent the risk or cost to the people of Ontario.

**Hon. Bob Chiarelli:** I don’t know what this document is, for starters. I don’t know who created it. You’re telling me it’s the OPA? Is it the OPA who created this?

**Mr. Peter Tabuns:** No. Corporate and electricity finance division, Ministry of Finance. It came to cabinet.

**Hon. Bob Chiarelli:** Okay. So it doesn’t say anything in here about lower gas prices, which ended up being part of the memorandum of understanding—a very, very significant component that was included in the memorandum of understanding that was finalized almost a year after this. It took a year between this and the time the document was—the memorandum of understanding was actually finalized and put on the OPA website on December 17. So there was a lot that happened between January and December, including some pretty tough negotiating that went on, including negotiating a lower gas price. And even in the contract itself, they still had not finally calculated the set-offs between lower gas savings and other costs. That might still be ongoing; I don’t know. It might be going to arbitration; I don’t know. We have to await the Auditor General’s report on those issues.

**Mr. Peter Tabuns:** Well, you’re well aware that there may have been lower gas costs. I look forward to seeing those numbers—

**Hon. Bob Chiarelli:** It’s not referred to in here.

**Mr. Peter Tabuns:** Sir, this also is a situation in which the province took over responsibility for the gas distribution and management, and that’s about a half a billion. That’s a lot of money. That is an awful lot of money. Your government was using the \$40-million figure for months when it knew that the risks and categories or buckets of costs were much bigger. You weren’t being straight with us in the House. It’s as simple as that.

1620

On that same document—

**Hon. Bob Chiarelli:** Are you talking about me, personally?

**Mr. Peter Tabuns:** I’m talking about your government.

I want you to go to page 3 of that same document in front of you, the background as the Ministry of Finance, Oakville Generating Station, second-last bullet point. I’ll read it out.

TransCanada Enterprises “was already in force majeure under the OPA contract by October 2010, as it had not obtained the necessary municipal permits, and the contract would have allowed the OPA to terminate on its own by the end of 2011, without penalty.”

You may not have followed the testimony in this committee, but we have. Consistently, when it was a question of looking out for the public interest and making sure that ratepayers were protected or making sure that something was kept under wraps and that we were facing far greater risks with a quick termination because, frankly, there was an election coming, your government, your party, consistently chose your party’s interests ahead of the people’s interests.

You’ve just talked about who was committed to stopping this plant. Well, I believe it was your govern-

ment that sited these plants. Was it not? Was it the Liberal government of Ontario that was in charge when the Mississauga and Oakville plants were sited?

**Hon. Bob Chiarelli:** I think the Premier has been very clear and I have been very clear that the whole issue and the rules and the process around siting energy infrastructure were not as good as they could be. Yes, the government was responsible because we're ultimately accountable. As indicated by one of the other committee members, there were technical people who made that decision and there were political people who cancelled that decision, but—

**Mr. Peter Tabuns:** There were politicians—ministers—who issued directives to site plants in an area. That's the way it works. You get to issue a directive. There was an RFP, and private power companies came forward with sites that worked for them. Your party created this mess. This mess created huge political problems for your party. Your party used public money to bail itself out.

Do you have a different interpretation of that story?

**Hon. Bob Chiarelli:** I'm not going to comment on that sequence of events and the background—

**Mr. Peter Tabuns:** You have been all along.

**Hon. Bob Chiarelli:** What I will do is acknowledge, as the Premier has, that we could do a better job siting. I took the opportunity earlier in my responses to indicate the steps I'm taking as the minister to improve the situation of siting. Two initiatives that are taken—one for renewables, which will be announced very, very soon, and another one, which I indicated two weeks ago that I issued a direction to OPA and IESO to come back by August 1 with the process for consultations and with the process for creating regional energy plans for large strategic infrastructure. There will be a new regimen for the siting of energy infrastructure, and there will be better planning. We have not been planning, across the province, regional infrastructure. If we had regional infrastructure, then the issue of non-willing hosts would not be an issue.

**Mr. Peter Tabuns:** Minister, I don't actually need expansion on that. In the course of these hearings, your government, the Liberal government, has tried to blame the Ontario Power Authority for orders that it gave the Ontario Power Authority, and then acted as if you came in to save the day when in fact you created the problem in the first place.

How do you expect to be credible before us when you don't acknowledge that in fact you created this problem right at the beginning, right at the get-go?

**Hon. Bob Chiarelli:** Well, all three parties could not have made the promise to relocate—

**Mr. Peter Tabuns:** Just a second—

**Hon. Bob Chiarelli:** —and those gas plants would be in place right now.

**Mr. Peter Tabuns:** Which party put forward these gas plants in these locations? Because I have to tell you, Howard Hampton advised you before I was ever on the scene that your drive for privatized power was going to

cause huge problems. When I saw your plans for Trans-Canada in Oakville, I raised it in the House. I pointed out to the Premier, you're allowing a gas plant with less than 500 metres separation from the nearest house. I think you could have figured it out.

**Hon. Bob Chiarelli:** I think I'm correct when I say that the site in Mississauga was zoned for a gas plant already. It would accommodate that.

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

**Hon. Bob Chiarelli:** And then there was a change. After there were a lot of objections raised, my understanding is, there were subsequent bylaws and other regulations that were passed—

**Mr. Peter Tabuns:** You overrode them all.

**Hon. Bob Chiarelli:** —in order to prevent it.

**Mr. Peter Tabuns:** All overridden.

**Hon. Bob Chiarelli:** The reality is that that site was actually zoned for it—

**Mr. Peter Tabuns:** So that was a good site, and you cancelled it? That was a good site—

**Hon. Bob Chiarelli:** We cancelled it on your advice and the other party's advice.

**Mr. Peter Tabuns:** —and you decided, on the basis of your electoral needs, what you were going to do.

**Interjection:** We've got some more advice.

**Mr. Peter Tabuns:** Well, we were giving you advice. We said, "Stop relying so much on gas, and stop privatizing the power system. We're going to get in trouble." And that's what happened. You may have noticed; you got into a lot of trouble. Unfortunately, everyone in this province is paying for the trouble you created.

**Hon. Bob Chiarelli:** For the opposition, these two gas plants were seat-gainer programs. You promised to cancel them in order to gain seats.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Ms. Soo Wong.

**Ms. Soo Wong:** I have a couple of questions for you, Minister. As you're quite familiar with the commercially sensitive negotiations, I have questions related to that piece. What would happen if one party got access to sensitive and confidential information about another party? How would it affect the outcome of negotiations, Minister?

**Hon. Bob Chiarelli:** I think what happened in this particular case—obviously, we were not in a good bargaining position as a government. We had contracts to build two plants; all three parties had promised to cancel them. So when it came time to negotiating, we basically had to ask for amendments or break the contracts and write new contracts. To provide inside information on our calculations and what our strategy was to the opposition would be like playing a game of poker and showing your cards to the other side. It was irresponsible.

**Ms. Soo Wong:** As you know, in May 2012, the estimates committee passed a motion made by Mr. Leone asking for all correspondence within a specific timeline in the Ministry of Energy and the OPA related to the Oakville and Mississauga gas plants. At the time of the motion, there were complex and sensitive negotiations

ongoing with both companies. In your opinion, what would it have meant if the OPA's and the province's negotiating position was prejudiced because a company had access to confidential and privileged information?

**Hon. Bob Chiarelli:** It was really compromising the taxpayers of the province of Ontario. It was taking away the negotiating, bargaining strength from the government and giving it to the proponents, the builders of the gas plant. To the extent that we're involved in negotiating this type of contract, with hundreds of millions of dollars at stake, by showing the other party your hand—in other words, showing them your negotiating position, how far you might be prepared to go etc.—you're undermining your case. As a government, we were at the table, and we were being undermined by members of the Legislature in terms of our bargaining position. They cost us tens of millions of dollars, if not hundreds of millions of dollars.

**Ms. Soo Wong:** Okay. Minister, with regard to the sensitive documents you talked about earlier, what do you think about Minister Bentley's decision to wait to release these sensitive documents until the deals were finalized? Can you share with us your opinion on that?

**Hon. Bob Chiarelli:** Well, I guess I can share my opinion based on my experience. I was regional chair of Ottawa-Carleton and mayor of Ottawa for a period of nine years. We were involved in very large infrastructure projects, including an LRT project in the city of Ottawa. There were provisions in those contracts with respect to confidentiality, items that were commercially sensitive. That is part of doing business.

In addition, governments and Legislatures recognize that that's part of doing business. That's why governments and Legislatures and municipalities, in their access-to-information and right-to-privacy legislation, indicate that you can withhold providing that information if it is commercially sensitive, if it involves legal discussions and negotiations. I had to deal with that as a mayor, and every government has to deal with that on an ongoing basis. So in terms of the principles of dealing with the issue, I can understand why Mr. Bentley was saying and doing what he was doing.

**Ms. Soo Wong:** You know that this committee is currently reviewing the opposition allegations of contempt regarding the document production. Given the fact that Minister Bentley was clearly acting in the best interests of Ontarians, what sort of advice would you give to this committee as we deliberate on the very serious allegations?

**Hon. Bob Chiarelli:** The advice I would give is, given the serious nature of the contempt charge—this committee sits as a judge and a jury. A judge and a jury are supposed to come into the room and look at the issue objectively, and I think any objective analysis would say that it's a normal practice and principle that you withhold that information if there are sensitive discussions, if there are legal implications going on. It's enshrined in legislation to do that, although this committee, as I understand it, overruled the legislation that provided that protection. In my opinion, they did it at our collective peril, because

we ended up having to settle for more money. It cost us money by reason of that.

**Ms. Soo Wong:** Earlier this month, Minister, you announced that the OPA and the IESO would be reporting back with their recommendation on developing—

*Interjections.*

**Hon. Bob Chiarelli:** Chair, I can't hear the question because of the overriding conversation.

**The Chair (Mr. Shafiq Qaadri):** Thank you, gentlemen. If you might let the witness and the questioner proceed.

**Ms. Soo Wong:** Minister, earlier this month, you announced that the OPA and the IESO would be reporting back with their recommendation on developing a new planning process on siting energy infrastructure moving forward. How will our committee work help inform this review?

**Hon. Bob Chiarelli:** In my direction to the OPA and the IESO, in asking them to provide an action plan by August 1 on creating regional energy plans and how we'll consult on them—that they take into account any recommendations that come forward from this committee. So there's still plenty of time, I assume, to deal with the issue. My strong recommendation is that this committee, at an appropriate time, have expert witnesses come in on planning regional energy, on siting projects, and perhaps have some people from other jurisdictions come in, so that we'll have the basis to move forward with objective and good planning in the future.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Delaney, two minutes—three minutes.

**Mr. Bob Delaney:** Thank you, Chair. I believe we're done.

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

**Mr. Bob Delaney:** In between the two witnesses, however, may we request a brief recess for the general comfort of the committee members?

**The Chair (Mr. Shafiq Qaadri):** Fair enough. We'll recess for about five or 10 minutes. I thank you, Ms. Wong, for your questioning, and thank you, Minister Chiarelli, for your presence today. You're respectfully dismissed.

So a five- or 10-minute recess, gentlemen and ladies.

*The committee recessed from 1634 to 1647.*

MS. HALYNA PERUN

**The Chair (Mr. Shafiq Qaadri):** Colleagues, the Standing Committee on Justice Policy is now back in session. Our next witness is Ms. Halyna Perun, legal director, legal services branch of the Ministries of Energy and Infrastructure. I invite you to please be sworn in.

**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?

**Ms. Halyna Perun:** So help me God.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Perun. We'll begin with the five-minute opening remarks, beginning now.

**Ms. Halyna Perun:** Thank you, Mr. Chair. As you've mentioned already, my name is Halyna Perun. I am the legal director of the legal services branch of the Ministry of Energy and the Ministry of Infrastructure. I am a lawyer and member of the Law Society of Upper Canada. I have practised law for 27 years, and have been with the provincial government as a lawyer for almost this entire time.

I came to the energy-infrastructure legal services branch and to this position of legal director on September 13, 2010.

Prior to this position, from April 2007, I held the position of deputy director at the legal services branch of the Ministry of Health and Long-Term Care, where I was part of the management legal team that provided leadership to a staff of 60. In this capacity, I provided legal support in a number of portfolios, including public hospitals, drug reform, mental health, privacy, e-health and regulated health professions.

From 1987 to April 2007, I was counsel at that branch and was instrumental in the development of seminal health legislation, including the Health Care Consent Act, 1996, and the Personal Health Information Protection Act, 2004, which garnered all-party support.

As legal director at energy and infrastructure, I am a member of two senior management tables, and my staff of 22, which includes 11 lawyers, support staff and students, provides legal support on a range of legal issues to both the Ministries of Energy and Infrastructure.

I wanted to take the opportunity to place myself and my lawyers into a broader context for you. We are employees of the Ministry of the Attorney General and are part of the MAG legal services division. As MAG counsel, we are "seconded" into client ministries, and some offices are centralized, such as the office of the constitutional law branch and crown law office-civil, which you've heard here called CLOC. All counsel in my branch report through me and the portfolio director to the assistant deputy attorney general, legal services division. Across the division, the branches function as a single law firm.

1650

I'm here at the invitation of the committee. As a lawyer, I am obliged to protect my client's privileged information. I have been authorized to respond to any questions put to me by the committee that might reveal the contents of privileged communication. Further, I may discuss the documents previously sent to the committee for the purposes of testifying before you and without waiving the privilege which otherwise attaches to these documents and the discussions relating to them.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Perun, for your introductory comments. I now invite the NDP to begin, and feel free, gentlemen, to turn off the electronic devices there.

**Mr. Peter Tabuns:** Thank you, Chair, and thank you, Ms. Perun, for being here with us this afternoon. When

did you first become involved with the cancellations in Mississauga and first involved with the cancellations in Oakville? Let's go with Mississauga first.

**Ms. Halyna Perun:** So, first of all, with Mississauga, my first involvement was shortly after the election.

**Mr. Peter Tabuns:** So that would be October 2011?

**Ms. Halyna Perun:** That's right.

**Mr. Peter Tabuns:** Okay.

**Ms. Halyna Perun:** And with respect to Oakville, shortly after I arrived to the branch, there was an announcement in respect of the cancellation of the plant. So I was involved around—in terms of knowing about it, shortly after I arrived to the branch.

**Mr. Peter Tabuns:** And you arrived, again?

**Ms. Halyna Perun:** September 13, 2010.

**Mr. Peter Tabuns:** Okay. Do you have any recollection of when you first came across referral to Project Vapour or Project Vapour Lock?

**Ms. Halyna Perun:** With respect to Project Vapour, my first recollection is a meeting or a class that I was invited to—a meeting—at the end of 2011—the very end—

**Mr. Peter Tabuns:** Sorry. When in 2011?

**Ms. Halyna Perun:** December, I believe, 2011. With respect to Vapour Lock, I honestly don't recall exactly when that started, but that would be also around some time in the fall of 2011.

**Mr. Peter Tabuns:** Okay. Did you ever receive materials from the Premier's office with the words "vapour"?

**Ms. Halyna Perun:** Not to my recollection.

**Mr. Peter Tabuns:** Not at all? Or Vapour Lock?

**Ms. Halyna Perun:** From the—

**Mr. Peter Tabuns:** From the Premier's office.

**Ms. Halyna Perun:** From the Premier's office, no.

**Mr. Peter Tabuns:** In the course of the work that you did—let's start with the Oakville plant—who do you believe was making the final decisions about the cancellation, the minister's office or the Premier's office?

**Ms. Halyna Perun:** I don't have a belief in that regard.

**Mr. Peter Tabuns:** Not one way or the other?

**Ms. Halyna Perun:** Not one way or the other.

**Mr. Peter Tabuns:** Okay. There should be a package of documents in front of you. It looks like this. Do you have that?

**Ms. Halyna Perun:** Oh, yes.

**Mr. Peter Tabuns:** And if you go through, there's one that has number 3 on it and it's an email from you to Malliha Wilson. Do you have that before you?

**Ms. Halyna Perun:** Yes, I do.

**Mr. Peter Tabuns:** Okay. If you go to the bottom of the page, third paragraph up, Deputy Lindsay is talking about a "negotiating mandate." He talks about the need for a "firm cap" on, I assume, what was going to be paid out. Was one ever put in place, to your knowledge?

**Ms. Halyna Perun:** I'm not aware.

**Mr. Peter Tabuns:** Pardon?

**Ms. Halyna Perun:** I'm not aware of a firm cap.

**Mr. Peter Tabuns:** No cap was ever put on, to your knowledge?

**Ms. Halyna Perun:** In the context of this particular email in this time frame: not that I'm aware of at this time.

**Mr. Peter Tabuns:** Was there a firm cap put on at a later date that you're aware of?

**Ms. Halyna Perun:** Not that I'm aware of.

**Mr. Peter Tabuns:** Okay. I'm going to go to the next document, document 4, and it's a series of emails.

**Ms. Halyna Perun:** Right here. Got it.

**Mr. Peter Tabuns:** Do you see the "4" there at the top of the page? On the second page, it's an email from Tom McKinlay to Malliha Wilson with a c.c. to you. In this email, you're referenced where you can see Tom's name—the bottom third of the page, two paragraphs up. It's written, "Significantly, however, Halyna indicated that it might be difficult for MEI to develop a more detailed rationale than is already set out in the letter." This is essentially providing a legal defence around the government's actions on the Mississauga plant—the Liberal action on the Mississauga plant. "As Craig noted in his email earlier today, the 'record' that MEI has pulled together is a bit thin at this point and does not include the kind of primary material that would be necessary to support a more detailed description of the community opposition to the Mississauga power plant."

It seems he's saying this because justification would be helpful to defend the government from claims of interference. Can you explain what was going on in this discussion?

**Ms. Halyna Perun:** At this particular time, we were gathering information to put before the minister so that he could make a decision based on the public record that there was opposition to the plant at this time.

**Mr. Peter Tabuns:** Are you suggesting that there wasn't much for rationale for them there?

**Ms. Halyna Perun:** I'm not suggesting that. In fact, I think, ultimately a record was pulled together and was put before the minister, and it was as robust as it could have been. It was as robust as we could make it.

**Mr. Peter Tabuns:** Does that mean that it was a very robust defence, or not?

**Ms. Halyna Perun:** It was not a defence at this time. It was simply a collection of materials that showed that there was opposition to the plant. That's what he needed to have before him so that he could make a decision, based on the public interest, that the plant should not proceed—should not continue.

**Mr. Peter Tabuns:** Did you ever brief the minister on legal risks in the different options for action on Oakville?

**Ms. Halyna Perun:** Yes. Oh. In terms—in Oakville, no.

**Mr. Peter Tabuns:** And you were never asked?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** That seems odd to me. Were others being asked?

**Ms. Halyna Perun:** There was legal advice provided. Prior to my arrival, there was certainly advice that was

provided, and it is in the materials that the committee has.

**Mr. Peter Tabuns:** Were you involved in drafting the October 7 termination letter that was sent to TransCanada?

**Ms. Halyna Perun:** That the Ontario Power Authority sent?

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** Were you involved in any discussions about the sending of that letter?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** When the new minister was sworn in, who provided a briefing on the gas plants?

**Ms. Halyna Perun:** I actually cannot recollect who actually would have provided the briefing, who in fact led the briefing or—I don't recollect, to be honest.

**Mr. Peter Tabuns:** Were you part of that briefing?

**Ms. Halyna Perun:** I may have been. I actually don't recollect.

**Mr. Peter Tabuns:** Okay. Were you familiar with the opinion given by the OPA in the fall of 2010 that it would be possible to exit Oakville and minimize costs by doing it slowly rather than quickly?

**Ms. Halyna Perun:** What time frame would that be?

**Mr. Peter Tabuns:** In October 2010—September or October 2010.

**1700**

**Ms. Halyna Perun:** Then that was before my time, probably.

**Mr. Peter Tabuns:** So you weren't familiar with any analysis at that time?

**Ms. Halyna Perun:** As I mentioned, when I arrived, that was September 13, 2010. The material that would have been in the briefing notes and all of that, that would have happened before my time at the ministry.

**Mr. Peter Tabuns:** Were you aware, in the spring of 2011, of the multiple offers made by the Ontario Power Authority to TransCanada to settle?

**Ms. Halyna Perun:** In the spring of 2011?

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** I was aware that there were efforts under way—in negotiations, yes.

**Mr. Peter Tabuns:** Were you drawn into those negotiations?

**Ms. Halyna Perun:** Somewhat.

**Mr. Peter Tabuns:** Can you detail what your experience was when you say "somewhat"?

**Ms. Halyna Perun:** There were several conference calls, or a number of calls I suppose, in April 2011, as I recall, where it was indicated that TransCanada and the Ontario Power Authority were having difficulties, or the negotiations were breaking down. So I guess at that point, in some respects, the ministry then became engaged in the discussions around what could be the next steps or what should happen next.

**Mr. Peter Tabuns:** And who were the participants in these calls?

**Ms. Halyna Perun:** I don't recall all of the people that would have been on the calls, but there was—

**Mr. Peter Tabuns:** No, but as best as you can recollect.

**Ms. Halyna Perun:** Particularly, in some instances, there was the Premier's office—

**Mr. Peter Tabuns:** And do you know who from the Premier's office?

**Ms. Halyna Perun:** Sean Mullin.

**Mr. Peter Tabuns:** Sean Mullin from the Premier's office?

**Ms. Halyna Perun:** Mm-hmm.

**Mr. Peter Tabuns:** I'm sorry; if you could pull that microphone closer to you.

**Ms. Halyna Perun:** I'm sorry. Okay. Is that better?

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** Okay.

**Mr. Peter Tabuns:** That is better, actually.

**Ms. Halyna Perun:** Okay. It's the way I'm sitting, as well, so then maybe this way it will help.

I was involved in a few conversations with Sean Mullin, Craig MacLennan, the deputy, Lindsay—it was Deputy Lindsay at the time—and the OPA on calls.

**Mr. Peter Tabuns:** We understand the instructions to make these settlement offers by the OPA, those instructions were coming from the ministry, telling them to go forward with them. Is that your recollection?

**Ms. Halyna Perun:** I don't have that recollection.

**Mr. Peter Tabuns:** What is your recollection?

**Ms. Halyna Perun:** I recollect that there were discussions, but I actually don't recollect the ministry saying that there must be a certain approach.

**Mr. Peter Tabuns:** Our understanding from reading the documents is that the OPA felt they were instructed to make those offers; certainly they were instructed to make a second offer. You don't have a recollection of those instructions being given?

**Ms. Halyna Perun:** No, I don't.

**Mr. Peter Tabuns:** Okay. In the spring of 2011, there was a slide deck produced that's in the package that you have before you that rated the different options on Oakville and gave the opinion that arbitration was the riskiest in terms of cost, but the great advantage was that it was not public. I'll just go through—it's a bit further in.

**Ms. Halyna Perun:** So the three options: "No arbitration," "Arbitration on damages," and "Arbitration on all issues."

**Mr. Peter Tabuns:** That's right. These came from the legal services branch, Ministry of Energy.

**Ms. Halyna Perun:** Right.

**Mr. Peter Tabuns:** Were you involved in their preparation?

**Ms. Halyna Perun:** I was involved, yes.

**Mr. Peter Tabuns:** Okay. So—

**Ms. Halyna Perun:** Actually, there are a number of decks, and I'm just wondering what that—you don't happen to know what this was attached to, do you? Okay.

**Mr. Peter Tabuns:** Unfortunately I don't.

**Ms. Halyna Perun:** Okay.

**Mr. Peter Tabuns:** When I've gone through, I've seen multiple decks as well.

**Ms. Halyna Perun:** Yes, okay. Because I don't know if this was—

**Mr. Peter Tabuns:** As far as I can tell, this is the last one.

**Ms. Halyna Perun:**—or whether it was the final, or anything like that. Okay. That's fine.

**Mr. Peter Tabuns:** So the first option was no arbitration. The advantages were that it "could change the current tenor of negotiations between the OPA and TransCanada" and that "the court proceeding will be protracted." Can you tell me the advantages there? Why was it useful to stretch out the court hearings?

**Ms. Halyna Perun:** Ultimately if the proceeding is protracted, there is, as is typical in litigation—it all takes a lot of time. It could take a few years and there wouldn't be any settlement or any final award of damages until the end, and it could be a few years down the line. That is one significant advantage, I guess, if you're looking at it that way, to litigation.

**Mr. Peter Tabuns:** It would probably have meant that the OPA would have a stronger hand in any negotiations with TransCanada, is that—

**Ms. Halyna Perun:** I don't know that. This is written from the point of view of the ministry, I think—this particular deck.

**Mr. Peter Tabuns:** Excuse me. I'm just noting that there may be a motion called, but it's been deferred. I thought we were about to be hauled out of here.

Disadvantages: You note, "In litigation, full evidentiary disclosure will be required, including all documents and an examination for discovery of a representative of the crown."

Can you expand on why that was a disadvantage?

**Ms. Halyna Perun:** So in litigation, ultimately everything is public, and in terms of if there was any involvement of any representative of the crown in this matter, that would possibly come to the public domain—come out into the public.

**Mr. Peter Tabuns:** And what would be the disadvantage in that?

**Ms. Halyna Perun:** That would be seen as a disadvantage to the government depending on who the representative of the crown is here that is being referred to.

**Mr. Peter Tabuns:** So the fact that the government might be called on the stand was seen as a disadvantage.

**Ms. Halyna Perun:** So some person could be called—that's right.

**Mr. Peter Tabuns:** Possibly the Premier.

**Ms. Halyna Perun:** Possibly the Premier.

**Mr. Peter Tabuns:** The next option is arbitration on damages. The advantage is: "Province may not need to participate in arbitration of limited scope." So it would just be the Ontario Power Authority. Is that correct?

**Ms. Halyna Perun:** That's right. The arbitration would be between the Ontario Power Authority and the proponent, TransCanada.

**Mr. Peter Tabuns:** And the process would be short and could be confidential.

**Ms. Halyna Perun:** That's right.

**Mr. Peter Tabuns:** And so why was confidentiality a plus here?

**Ms. Halyna Perun:** It would be kept away from the public domain.

**Mr. Peter Tabuns:** Okay.

Now, in disadvantages: "Creates highest financial exposure for the province and the OPA." Why? Because in many lines of questioning we've had here we've been told that going to court is the riskiest, and what your legal branch is saying here is that this arbitration is the riskiest for the people of Ontario.

**Ms. Halyna Perun:** It is because once you go into arbitration there is no, in a sense, control. It's the arbitrator who decides ultimately. Even in litigation, I suppose there's a way to come to a settlement during the litigation, and I'm not sure that that's exactly the same way that it plays out in an arbitration.

**Mr. Peter Tabuns:** So in fact, the arbitration was riskier than going to court, apparently what's said here. This is the highest risk of exposure for the province and the OPA.

**Ms. Halyna Perun:** That's what the disadvantage that's set out here is: that it would be the highest financial exposure for the province and the OPA.

**Mr. Peter Tabuns:** So if the government had chosen litigation, it would have had lower risk than this course that it adopted.

**Ms. Halyna Perun:** Ultimately, it's kind of hard to conclude one way or the other. I realize that this is noted as a disadvantage on this particular deck but this is one of many thought processes that we had in the course of what was happening here at this time, and it's certainly a flag that we had here, but who knows how, really, the litigation would have turned out, as well.

1710

**Mr. Peter Tabuns:** As you're probably aware, with the arbitration, the government gave up all its defences—the defence that the project was in trouble, the defence that the Oakville municipal government was going to hold it up and that would have put it in a position of force majeure. In fact, speedy resolution was opening it up to greater risk, was it not?

**Ms. Halyna Perun:** The arbitration provided a definitive framework around the process, ultimately.

**Mr. Peter Tabuns:** And that meant that the province had fewer tools at its disposal to protect itself.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair, and good afternoon, Ms. Perun. Thanks for coming.

I'd like to start by asking you about the motion that was passed in estimates in May 2012 for all correspondence from the Minister of Energy, the Ministry of Energy

and the Ontario Power Authority related to the Mississauga and Oakville gas plants and within a specific date range. At the time this request was made, were negotiations ongoing with TransCanada Energy and Eastern Power?

**Ms. Halyna Perun:** Yes.

**Mr. Bob Delaney:** Would it be accurate to characterize these negotiations as being commercially sensitive?

**Ms. Halyna Perun:** Yes.

**Mr. Bob Delaney:** In your view, how significant do you think the risks would have been to the negotiations and the outcome of them if commercially sensitive details were made public before the deals were finalized?

**Ms. Halyna Perun:** It's always best to keep the negotiations, if there are negotiations going on, confidential so that you have the most advantage in negotiations when the other side does not know your hand, in a sense, and all the information that you have, that you are negotiating with.

**Mr. Bob Delaney:** And if the reverse is true, if commercially sensitive information is divulged, what are the attendant risks to the government?

**Ms. Halyna Perun:** That could undermine the negotiations.

**Mr. Bob Delaney:** Okay. Perhaps you could quantify this kind of risk for us, what it would mean for the taxpayers if the Ontario Power Authority and the province's negotiating position had been prejudiced because the companies with whom they were negotiating had had access to confidential and privileged information. Would we be talking about tens or hundreds of millions of dollars?

**Ms. Halyna Perun:** I can't speculate, actually. I don't really know how it could have turned out, but certainly there was a concern at the time to ensure that the negotiations continue in a way that was most confidential.

**Mr. Bob Delaney:** Okay, Let's try it a little differently. When the Auditor General was asked the same question, Mr. McCarter responded and said, "It's like in poker. You don't show the people around the table your cards." Would you agree with that?

**Ms. Halyna Perun:** Yes, I would.

**Mr. Bob Delaney:** Okay.

**Ms. Halyna Perun:** A number of witnesses have articulated the same sentiment here.

**Mr. Bob Delaney:** To talk about the document search itself: In terms of the scope of the request, in your experience, have you ever seen a request of this magnitude from a committee?

**Ms. Halyna Perun:** In my experience, no.

**Mr. Bob Delaney:** We know that more than 56,000 responsive records were ultimately produced in response to that request. How does the size of that response compare to other responses you've seen, whether it be in the context of a freedom-of-information request or otherwise?

**Ms. Halyna Perun:** Certainly, compared to a freedom-of-information request, it was unprecedented. I

think, generally, this type of document production endeavour in the ministry was unprecedented.

**Mr. Bob Delaney:** To use your word, “unprecedented,” what type of challenges would this type of undertaking present for the Ontario public service and for the Ontario Power Authority? Could you perhaps speak to the resources that would go into responding to such a request?

**Ms. Halyna Perun:** I think, as Deputy Imbrogno mentioned when he was here, that in terms of, I would say, the second search that was done at energy, it essentially brought the ministry to a standstill. It was a very challenging time.

**Mr. Bob Delaney:** Did you have to learn new skills, acquire new search tools?

**Ms. Halyna Perun:** We certainly learned better skills in terms of searching our records. It was simply very difficult to pull together the documents quickly. That is certain. In the second search, I believe Deputy Imbrogno also mentioned that there was specific IT support that was brought in to help out with the search.

**Mr. Bob Delaney:** Okay. On September 24, 2012, thousands of documents were provided to the committee in response to the motion. In his letter to the Clerk accompanying these documents, then-Minister Chris Bentley stated, “I’ve been advised by ministry staff that the documents attached to the letter comprise all documents responsive to the committee’s request, regardless of privilege or confidentiality.” At that time, did you believe that all responsive records had in fact been tabled?

**Ms. Halyna Perun:** Do I believe that?

**Mr. Bob Delaney:** Yes.

**Ms. Halyna Perun:** It was not my obligation to believe. It was the minister who made that statement. I think all best efforts were made to produce the documents that were responsive to comply with the motion of the committee.

**Mr. Bob Delaney:** Okay. So, although, to use your words, the best efforts had been made, additional documents were tabled by the ministry on October 12, 2012, last year. Deputy Imbrogno wrote to the Clerk and said, “No responsive information or documents were deliberately withheld from the September 24 package.” We’ve heard allegations that more documents were turned over because of a “cover-up,” but in the letter, the deputy says that the ministry’s search for documents was—and I’m going to quote again—“conducted in good faith with every intention to comply with the committee’s motion.” In the scope of your work, would you agree with that statement?

**Ms. Halyna Perun:** I would certainly agree with that statement.

**Mr. Bob Delaney:** Okay, thanks.

To talk, then, briefly about the document search within the Ontario Power Authority, who was responsible for what the Ontario Power Authority identified and tabled with the committee?

**Ms. Halyna Perun:** Within the Ontario Power Authority? I wouldn’t know that.

**Mr. Bob Delaney:** Okay. Are you aware of suggestions that the ministry interfered with the document search at the Ontario Power Authority?

**Ms. Halyna Perun:** I am aware of that.

**Mr. Bob Delaney:** Okay. In particular, there has been some scrutiny over an Ontario Power Authority memo that alleged that Jesse Kulendran, who was then a ministry employee, had directed Ontario Power Authority staff to withhold documents. Is that familiar to you?

**Ms. Halyna Perun:** That’s familiar to me.

**Mr. Bob Delaney:** Okay. When Ms. Kulendran appeared before this committee a few weeks ago, she testified—and again, I’m going to use her words:

“I did not direct the Ontario Power Authority to exclude documents. I do not have the authority to direct the Ontario Power Authority to exclude documents.

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

Would you agree with Ms. Kulendran’s statement that she was sent over to the OPA not to tell them to exclude documents, nor did she have the authority to provide them with that direction?

**Ms. Halyna Perun:** I would agree with that, but that particular meeting happened at the deputy minister’s office.

**Mr. Bob Delaney:** Okay. Thank you. When the secretary of cabinet testified before this committee, we were told that an internal investigation took place regarding these allegations that had been made against Ms. Kulendran. I understand that you were interviewed as part of that investigation. We have received meeting notes that were taken during the interview. The notes taken by legal counsel state, “Jesse never told Kristin Jenkins to take anything out. HP believes her,” and then later on, “HP does not think Jesse is that type of person,” suggesting to be directing anyone to remove documents. So, just to confirm, HP is you?

1720

**Ms. Halyna Perun:** I assume so.

**Mr. Bob Delaney:** Okay. So when you were asked during this internal investigation, you confirmed that you believed Ms. Kulendran’s version of the events, correct?

**Ms. Halyna Perun:** I was asked whether I believe her, and my answer was yes.

**Mr. Bob Delaney:** Okay. Thank you. When he testified before the committee, we asked Deputy Imbrogno about these allegations, and he told us, “I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse has” said.

When we asked Colin Andersen about it, he agreed that the OPA was responsible for its own document search and had the final sign-off on what was provided to the Clerk.

So my question to you: In your observation, was it ultimately up to the Ontario Power Authority to determine what records were responsive and what they provided to the committee?

**Ms. Halyna Perun:** They had their own separate obligation to the committee, and yes, they would have made their own decision.

**Mr. Bob Delaney:** Thank you. In his letter to the Clerk on October 12, 2012, Colin Andersen, CEO of the Ontario Power Authority, stated, “It was always our intention to provide all responsive records and to respect the ruling of the Speaker.” To the best of your knowledge, has the Ontario Power Authority acted in good faith in response to the document production motion?

**Ms. Halyna Perun:** I wouldn’t have any reason not to think that they acted in good faith.

**Mr. Bob Delaney:** Thinking back on that whole chapter, would it be fair to call it a bit of a learning process?

**Ms. Halyna Perun:** I’m not sure. I guess you could call it that. Those wouldn’t be my words, I guess.

**Mr. Bob Delaney:** How would you characterize it, then?

**Ms. Halyna Perun:** People basically did the best they could, and perhaps certain—I guess you could call it—everyone learned certainly from the work, from this experience—definitely. We possibly would do things a bit differently or more efficiently or whatever next time. But at the moment, I think people just basically did the best they could and acted with no malice, no wrong—no intention to do harm or anything like that.

**Mr. Bob Delaney:** Would the sheer volume of documents requested and the short time frame have given rise to any of the oversights and omissions?

**Ms. Halyna Perun:** Sorry. Can you repeat that?

**Mr. Bob Delaney:** Would the sheer volume of documents requested and the short time frame have given rise to any of the omissions or oversights in the document production?

**Ms. Halyna Perun:** It was just a lot. I would say yes, there was just simply a lot of documents that needed to be produced, and people did the best they could. Certainly, things were missed. It wasn’t intentional.

**Mr. Bob Delaney:** I’d like to talk a little bit about the Oakville relocation. The first question will be about the decision to renegotiate with TransCanada to find an alternative to the Oakville plant. From the documents we’ve seen and the testimony we’ve heard so far, it seems to be clear that the best path forward for both the Ontario Power Authority and the government was to renegotiate an alternative site with TransCanada Energy rather than to rip up the original contract, and if the government had simply walked away from the contract, what we’ve heard so far suggests that there was a very significant risk of litigation with the potential result being extensive damages awarded against the province. Could you expand on some of those risks?

**Ms. Halyna Perun:** So if there were to be a litigation, it would be because the OPA—first of all, the contract

was between the Ontario Power Authority and TransCanada, so in terms of repudiating the contract, in terms of walking away from it, TransCanada would have been in a position to sue for breach of contract because there was no right to terminate in this particular instance. They could have very well brought the province into the lawsuit as well for the tort of inducing a breach of contract.

That’s how it could have played out. We can only speculate what the court would conclude at the end of the day, but it certainly would have been a significant litigation.

**Mr. Bob Delaney:** Okay. In that vein, John Kelly from the Attorney General’s office testified here a short time ago, to use his words, “In my experience, after 40 years of litigating, if you can avoid litigation, you should. It’s a process that’s fraught with risk.”

**Ms. Halyna Perun:** I would agree with him, since he is our litigator. In terms of an opinion that I would have on litigation, I should just say at the outset and clarify that we would be turning to people like John to provide us with the legal advice on litigation—its risks and its outcomes. That is the role that I have in my branch. We do not actually litigate at the branch but we rely on crown law office-civil, which is John and others in his shop.

**Mr. Bob Delaney:** Just to clarify, then, based on what you’ve said before, if it had come down to litigation between the government and TransCanada Energy, do you feel the province was likely looking at a fairly protracted, expensive and difficult litigation?

**Ms. Halyna Perun:** I would say that that certainly could very well be the case.

**Mr. Bob Delaney:** To ask you—how am I doing on time, Chair?

**The Chair (Mr. Shafiq Qadri):** Four minutes—less than.

**Mr. Bob Delaney:** Thank you. To ask you more specifically about negotiating versus tearing up a contract, when Deputy Lindsay was here before the committee not too long ago, he said, and I’ll use his words, “If you have a contract and you don’t honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure.”

He then moved on to say, “If you simply throw this into a court proceeding, what happens is you end up paying whatever costs without getting any electrons. So is there a better way to resolve this? TransCanada is a reputable company and our electricity system needs good suppliers out there, so maintaining good relationships with suppliers was part of the consideration. Paying costs and getting no electricity would not be a very good business decision. So try to avoid litigation was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do.”

As a lawyer, is this an accurate representation of the approach the government took at the time to avoid litigation?

**Ms. Halyna Perun:** There are a number of considerations when it comes to deciding what path to take, and I

think the way Deputy Lindsay articulated it is certainly—you know, those are the kinds of things that go into deciding what path to take. All of these options are put forward to the decision-maker and then a path is chosen. Certainly, litigation is a tough road, so other opportunities such as arbitration or mediation are considered as well.

**Mr. Bob Delaney:** Thank you, Chair. I think I'll pause here and pick it up on my next round.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Delaney. To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Thank you, Ms. Perun, for being here.

In the first two document dumps, the 56,000 documents, your name appears over 8,000 times. Is it fair to say that you would have intimate knowledge of this file?

**Ms. Halyna Perun:** Which file are we—

**Mr. Victor Fedeli:** The gas cancellation file.

**Ms. Halyna Perun:** A number of documents, yes, have my name on them. It's fair to say that I was either copied or the author or a recipient of a number of emails. A number of the documents pertain to the legal branch.

1730

**Mr. Victor Fedeli:** If you look at our documents that we've handed out—do you see them there?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Okay. Go to the second page, PC doc 2. The third last paragraph that begins "Deputy"—this is authored by you on October 12, 2011. "Deputy Lindsay spoke of a 'negotiating mandate.' SOC wanted folks to begin working on material to take to cabinet to scope out a mandate. The materials would detail the sunk costs and lost profits." So is it safe for me to assume, Ms. Perun, that from day 1—it looks like you would have just heard of Mississauga at that particular time—you would have understood there were more than just sunk costs right from this early point?

**Ms. Halyna Perun:** The email certainly sets out that the consideration in the materials that were expected to be produced would articulate sunk costs and lost profits.

**Mr. Victor Fedeli:** Okay. This is a note that you authored. This is yours.

**Ms. Halyna Perun:** This is, yeah.

**Mr. Victor Fedeli:** So you were aware that there would be sunk costs and other costs?

**Ms. Halyna Perun:** I'm not sure whether those are my words or whether those were Deputy Lindsay's or the secretary of cabinet's at this point, to be honest.

**Mr. Victor Fedeli:** But you authored this email, this lengthy email, that went to everybody out there.

**Ms. Halyna Perun:** Yeah. Just as a reporting email as to what happened at this particular meeting.

**Mr. Victor Fedeli:** At that time you reported that there will be sunk costs and other costs, and this was taken to cabinet. This is being—

**Ms. Halyna Perun:** This was for—the idea at the time was that there should an options deck created to be brought forward to cabinet.

**Mr. Victor Fedeli:** Okay. Back in October 2012, then, the deck would have been created that talked about sunk costs as well as other costs.

**Ms. Halyna Perun:** Right.

**Mr. Victor Fedeli:** Okay. Down at the bottom, it talks about a firm cap. I think I heard Mr. Tabuns ask you about that. Was there ever a firm cap? Did anybody have an upside limit? Did you ever hear of it?

**Ms. Halyna Perun:** In terms of the Mississauga plant, I don't recall.

**Mr. Victor Fedeli:** You don't recall.

**Ms. Halyna Perun:** There could have been, but I actually don't recall. Sorry.

**Mr. Victor Fedeli:** Okay. Others have been here testifying that the Ministry of Energy had no legal authority to direct the OPA to cancel those contracts. Is that your understanding as well?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** So can I ask you a simple question? Why do you think the OPA, then, cancelled these contracts if the Ministry of Energy had no legal authority to tell them to do so?

**Ms. Halyna Perun:** I can't speculate on that.

**Mr. Victor Fedeli:** Okay. If you go to document 4—it's after the slide—

**Ms. Halyna Perun:** Sorry—

**Mr. Victor Fedeli:** That's okay. It's after the slide deck. This is an email, now, a November 8 email from Tom McKinlay to Malliha Wilson—

**Ms. Halyna Perun:** MAL-uh-ha.

**Mr. Victor Fedeli:** Malliha, I'm sorry; Malliha Wilson. You are copied, as well as many others. The second paragraph begins with: "I suggested that these kinds of details would be useful in rebutting any inference that the minister (or the government) has been motivated by any improper or unlawful purpose in this case." Isn't it clear that there was political interference on this file, Ms. Perun?

**Ms. Halyna Perun:** The government made a decision to relocate the plant.

**Mr. Victor Fedeli:** Okay. In document 5—this is also an email, November 11, 2011, from you to Ms. Wilson.

**Ms. Halyna Perun:** Right.

**Mr. Victor Fedeli:** Down at the bottom, Craig MacLennan is sending a note—it's all in this email chain:

"As you know the minister is looking for paper comfort from his colleagues on exposure.

"Can you please tell me the options available for us on what that paper could be, i.e. cabinet minute, treasury board order, letter from Dwight, etc. and the pros and cons associated with each."

Can you describe your interactions with Craig MacLennan for me, please? What was he looking for here?

**Ms. Halyna Perun:** First of all, it's an email that he's sending Carolyn Calwell and David Lindsay. Actually, I don't really—

**Mr. Victor Fedeli:** He's looking for a comfort letter for his minister.

**Ms. Halyna Perun:** I think he's looking for options in the earlier part as to what there should be: a cabinet minute, a treasury board minute or a letter—

**Mr. Victor Fedeli:** To provide the minister the paper comfort.

**Ms. Halyna Perun:** I don't think we saw this as legal advice, to be quite honest.

**Mr. Victor Fedeli:** That's fair. So, let me then ask you—I'll repeat—what would your interactions be with Craig MacLennan, not just necessarily on this one document, but over time?

**Ms. Halyna Perun:** We would have interactions with him from time to time on files—

**Mr. Victor Fedeli:** From when to when?

**Ms. Halyna Perun:** Not very often, but he would either email or phone on matters.

**Mr. Victor Fedeli:** Can you recall starting when or ending when?

**Ms. Halyna Perun:** Since I arrived and until he left, I certainly know that I had not many but a number of conversations or emails from Craig.

**Mr. Victor Fedeli:** So you would repeat that from the time you arrived, which was the fall of 2010—

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:**—until he left—I don't want to put words in your mouth.

**Ms. Halyna Perun:** Yes. I actually don't recall when he left, but there would have been occasionally, not a lot—

**Mr. Victor Fedeli:** Yes, here and there.

**Ms. Halyna Perun:** He didn't email me particularly.

**Mr. Victor Fedeli:** Right until the time he left?

**Ms. Halyna Perun:** I don't know. I mean, I don't know exactly when he left, so I can't really tell you that.

**Mr. Victor Fedeli:** Okay. A couple of pages in, you basically—

**Ms. Halyna Perun:** Sorry, which—

**Mr. Victor Fedeli:** The same document, on page 3 of 3. Basically, you're asking, "What Craig was asking for—Deputy Lindsay wanted general not legal advice."

**Ms. Halyna Perun:** Oh. Well, there it is. Okay.

**Mr. Victor Fedeli:** That was pretty much what you just testified to, so I appreciate that consistency.

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Go to the next page, document 6. Again, this is from you. You generated a lot of email out of those 8,000, I have to say.

**Ms. Halyna Perun:** We were responsive.

**Mr. Victor Fedeli:** I can imagine that they were.

Again, on November 11, there's a line in here: "Minister Bentley would like this type of sentence included in the draft...."

"I will be engaging my colleagues in any dialogue with you on the most appropriate way to allocate compensation between the OPA and the Crown."

Do you have any idea what he's referring to there: "allocate compensation between the OPA and the Crown"?

**Ms. Halyna Perun:** I think this is the whole issue, yes.

**Mr. Victor Fedeli:** Is this the first time that we saw ratepayer versus taxpayer?

**Ms. Halyna Perun:** I think that was a signal. There are other drafts in the materials that actually have the words—

**Mr. Victor Fedeli:** Ratepayer versus taxpayer, yes. We were coming to those.

Do you know why? Why the difference between ratepayer versus taxpayer?

**Ms. Halyna Perun:** Again, for the taxpayer, the monies come out of the CRF, and for the ratepayer, it's we consumers who pay for this.

**Mr. Victor Fedeli:** So it's safe to say that the money that comes from the taxpayer, out of the CRF, is public knowledge, and we may never know the breakdown for the money that would come from the ratepayer. Is that a fair assumption to say to you?

**Ms. Halyna Perun:** That is one way of looking at it, I guess. That's certainly—

**Mr. Victor Fedeli:** But is it correct to look at it that way, as well?

**Ms. Halyna Perun:** Well, I don't really—you know, ultimately, the ratepayer amounts are seen on our bills, so—

**Mr. Victor Fedeli:** My hydro bill isn't broken down by—the scandal is added in there. I think it's safe to say that that's a way to bury the cost.

1740

Back as far as November 11, they were already talking, in your own words, about ratepayer versus taxpayer, where they were going to split these costs. Is that correct?

**Ms. Halyna Perun:** I wouldn't characterize it that way.

**Mr. Victor Fedeli:** Split the costs?

**Ms. Halyna Perun:** There was a concern in terms of how the compensation would be apportioned.

**Mr. Victor Fedeli:** I like it characterized like that even better, to be honest: that there were concerns.

Document 7; then we're going to get out of Missis-sauga after this one. There was a Keele Valley side deal.

**Ms. Halyna Perun:** I'm sorry, document 7—

**Mr. Victor Fedeli:** You don't really need the document in front of you. I think you're pretty well versed with the file. The Keele Valley side deal: I won't refer to the document. How many of the 10 side deals the Auditor General outlined were you aware of or involved in? The side deals.

**Ms. Halyna Perun:** I should really explain my involvement and where I fit into all of this.

**Mr. Victor Fedeli:** I only have 20 minutes with you today. I have about 10 minutes left—

**Ms. Halyna Perun:** Okay, but if I may just for a second, because I guess it's important in terms of the—at that particular time, first of all, the main negotiation continued between the OPA and Greenfield in November 2011. In terms of the Keele Valley litigations, that was sort of the bailiwick, I suppose, of the Ministry of Fi-

nance and the OEFC. So that was something that those entities would have been involved in. In terms of the settling of the whole Greenfield matter, we had external counsel on the file. They would have been more involved than I.

**Mr. Victor Fedeli:** So you're telling me, on the Mississauga round, where they talked about sunk costs and other costs, that you were aware that there were other costs.

We're going to start on Oakville now. Were you aware that there are other costs as well as the \$40 million in sunk costs?

**Ms. Halyna Perun:** "Yes" is the short answer.

**Mr. Victor Fedeli:** Okay. How long ago would you have known that there are more than \$40 million in sunk costs that will be the total cost of Oakville?

**Ms. Halyna Perun:** Certainly at the time that the MOU was developed. You've had discussions here about the MOU. At that time of the negotiations around that particular, there were two MOUs that were finalized on September 24 and posted. At that time, there were a number of costs articulated in those MOUs.

**Mr. Victor Fedeli:** Colin Andersen, Butler, Killeavy and Lyle all said that the government was at the table and signed the MOU. Were you literally and physically at the table?

**Ms. Halyna Perun:** There are many tables there, if I may tell you this.

**Mr. Victor Fedeli:** I'm going to get a yes or a no from you one of these times; I just know it. I'm going to keep pushing.

So were you at the table when they speak of being at the table, negotiating?

**Ms. Halyna Perun:** I was a participant at a particular table. They were very complicated deals—

**Mr. Victor Fedeli:** That's okay. I understand. You were at the table, in the room, at one of those many tables. When Colin Andersen said that everybody knew—everybody knew what they were talking about; \$40 million were the sunk costs, plus there were other costs.

**Ms. Halyna Perun:** But they were sort of negotiating tables; then basically the two MOUs came together. The deals—

**Mr. Victor Fedeli:** Would most participants have seen both MOUs?

**Ms. Halyna Perun:** Then both MOUs were presented to the minister and the deputy at a very early-morning briefing of Monday, September 24.

**Mr. Victor Fedeli:** The briefing that you spoke about, where Colin Andersen swore under oath here that everybody knew that there were additional costs: Is it safe to say—well, why don't I just ask you? Will you comment on that? Did everybody know there were additional costs?

**Ms. Halyna Perun:** I'm not sure what he means by "everybody," but—

**Mr. Victor Fedeli:** He was talking about the people involved—ministry, staff.

**Ms. Halyna Perun:** Certainly I was aware that there would be other costs. I may not really have been attuned to what those costs were or the numbers, but I was aware personally that there were other costs because they were articulated in the MOU.

**Mr. Victor Fedeli:** You would have known that the total cost of the cancellation was not \$40 million?

**Ms. Halyna Perun:** I believe the sunk cost—

**Mr. Victor Fedeli:** No, that's not what I asked you. I asked you: Were you aware that the total cost was not \$40 million?

**Ms. Halyna Perun:** It would have been more than \$40 million.

**Mr. Victor Fedeli:** That's fair. Who else would have been aware of that? Give me the long list—or a short list, for that matter.

**Ms. Halyna Perun:** I think ultimately you're asking whether people such as the minister and the deputy were aware.

**Mr. Victor Fedeli:** Yes, that's exactly what I'm asking you.

**Ms. Halyna Perun:** You've heard from Deputy Imbrogno himself that he knew.

**Mr. Victor Fedeli:** I'm sorry?

**Ms. Halyna Perun:** I think you heard that he knew and you also heard from Minister Bentley at the time when he was here that he also knew.

**Mr. Victor Fedeli:** I'm not quite sure if this is hypothetical or not, but why do you think everybody continues to say the total cost is \$40 million when everybody knows it's not?

**Ms. Halyna Perun:** I can't say.

**Mr. Victor Fedeli:** Okay. That's fair enough. If you can't say, you can't say.

**The Chair (Mr. Shafiq Qadri):** That's not hypothetical.

**Mr. Victor Fedeli:** It's not really hypothetical? I didn't know what the word for that was.

When did you first become aware of Oakville? You told us that it was right around the time when you first got hired, right? Is that what I heard?

**Ms. Halyna Perun:** When I first arrived to the branch, around that time, the first encounter I had with the fact that the government was moving forward with the cancellation of the plant was in commenting on communications materials.

**Mr. Victor Fedeli:** Okay. I want you to go to document 10. This is a May 27 document now.

**Ms. Halyna Perun:** Document 10, May 27. Yes.

**Mr. Victor Fedeli:** This is again from you: "I was called in ... to meet with ADAG"—

**Ms. Halyna Perun:** That's the Assistant Deputy Attorney General.

**Mr. Victor Fedeli:** How do you pronounce her first name again?

**Ms. Halyna Perun:** MAL-uh-ha.

**Mr. Victor Fedeli:** —"Malliha Wilson at the end of day.... She wanted to let me know that counsel for TCE requested a meeting with her and our counsel John Kelly

to discuss the matter. The meeting is scheduled for Wed. June 1. Malliha was asked to proceed with the meeting by MAG MO. I am assuming that Energy MO and PO—would PO be the Premier's office?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** —“are aware—but we should probably advise them. Apparently, TCE counsel are working on a draft of the statement of claim and will be sharing it with Malliha and John next week. Please let me know if you'd like us to send a note to Craig on this as a head's up.” Who's Craig?

**Ms. Halyna Perun:** That would be Craig MacLennan.

**Mr. Victor Fedeli:** Do you know if you sent a note to Craig? This is on May 27 of 2011.

**Ms. Halyna Perun:** I actually don't know if I sent a note. Oh, it's in here. Yes, there it is. So I did.

**Mr. Victor Fedeli:** The next page—

**Ms. Halyna Perun:** Oh, and this was a real problem, because it was sent to the wrong Craig.

**Mr. Victor Fedeli:** Who did you send it to?

**Ms. Halyna Perun:** Well, you see at the top. It's “Craig McLellan (MGS).”

**Mr. Victor Fedeli:** I'm sorry, could you start over?

**Ms. Halyna Perun:** There are a few other emails, because this was intended to be sent to Craig MacLennan but it was sent to someone else in error and then it was retracted.

**Mr. Victor Fedeli:** Did you ever send it to the real Craig MacLennan?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Yes, you did?

**Ms. Halyna Perun:** Yes, I did.

**Mr. Victor Fedeli:** You didn't know that he was screened off the file a month earlier.

**Ms. Halyna Perun:** As far as I was aware, he wasn't screened off at this time.

**Mr. Victor Fedeli:** He swore under oath that he was screened off in April. This is a May 29 email.

**The Chair (Mr. Shafiq Qadri):** It's not a deliberate interruption, Mr. Fedeli.

**Mr. Victor Fedeli:** Damn, I was just rolling.

**The Chair (Mr. Shafiq Qadri):** And now to the NDP.

**Mr. Peter Tabuns:** Thank you, Chair. Just to complete that, as far as we know he was screened off and told to have nothing to do with this file in April. This is May 29.

**Ms. Halyna Perun:** I think that the issue of whether—his screening was later than that. He may not have recalled it, but it was in June.

**Mr. Peter Tabuns:** Really?

**Ms. Halyna Perun:** But I don't know for sure. In fact, I also don't know 100%, but I thought that it was later.

1750

**Mr. Peter Tabuns:** We can double-check that.

Going back to this question of briefing the minister on the memorandum of understanding, were the scale of cost and the buckets of cost discussed in that briefing?

**Ms. Halyna Perun:** I think the purpose of the briefing was to take the minister and the deputy through the entire—both MOUs. I don't recall, truly, what costs were referred to at that particular—so in terms of answering your question, the scale of costs—

**Mr. Peter Tabuns:** Or range.

**Ms. Halyna Perun:** —or range, I don't know whether they actually went into that amount—that kind of detail—but the types of costs would have been identified. I'm not sure if I'm making myself clear.

**Mr. Peter Tabuns:** I think you are. You're saying that the categories of costs were identified—

**Ms. Halyna Perun:** Yes.

**Mr. Peter Tabuns:** —and you don't have a recollection of the minister asking what the range—

**Ms. Halyna Perun:** He may have, but I don't recall. Truly, I don't recall.

**Mr. Peter Tabuns:** Were you there for the whole briefing?

**Ms. Halyna Perun:** Yes, I was.

**Mr. Peter Tabuns:** I would have thought the numbers and the scale of costs for someone signing off on this very high profile issue were something that would have struck everyone in the room as necessary.

**Ms. Halyna Perun:** Certain costs and certain numbers resonated, but others didn't with me. I wasn't—

**Mr. Peter Tabuns:** Do you remember the discussion of the sunk costs, then?

**Ms. Halyna Perun:** Yes. If I may, the sunk costs and the costs of the turbines—those kinds of costs—were identified costs, and they would have been noted. Additionally, you know, there are two particular schedules: schedule A, which was the OPA agreement that identified gas delivery and management service costs and that kind of thing—the NRR; and then schedule B, which was the reimbursement agreement, also noted the \$210-million cost for the gas turbines, the \$40-million sunk costs and also there was a \$50-million break fee.

**Mr. Peter Tabuns:** Right.

**Ms. Halyna Perun:** So those are identified. I don't know in how much detail they were discussed at the briefing, but I'm sure that they were reviewed.

**Mr. Peter Tabuns:** So when the gas delivery and management cost was noted, no one asked about the scale of that cost or the range of that cost?

**Ms. Halyna Perun:** I can't say there was no one. It simply didn't resonate with me.

**Mr. Peter Tabuns:** Okay. So you don't have a recollection.

**Ms. Halyna Perun:** I don't have a recollection of that, but it doesn't mean it wasn't discussed.

**Mr. Peter Tabuns:** Okay. On another matter, then, were you involved in the meeting with Michael Barrack and TransCanada Energy counsel?

**Ms. Halyna Perun:** This is the meeting with—can you tell me particularly which meeting you're talking about?

**Mr. Peter Tabuns:** There was a meeting that John Kelly took notes of. I think the PC document—

**Ms. Halyna Perun:** There was a meeting that I attended with John Kelly and others with Mike Barrack.

**Mr. Peter Tabuns:** If my colleagues don't mind, it's PC document 12: "Notes to file—Meeting with Michael Barrack and John Finnigan, June 2, 2011." You are listed as being present that time.

**Ms. Halyna Perun:** Yes.

**Mr. Peter Tabuns:** Do you recollect that meeting?

**Ms. Halyna Perun:** Yes, I do.

**Mr. Peter Tabuns:** Do you believe that TransCanada felt they had a deal with the Premier's office?

**Ms. Halyna Perun:** I didn't feel or believe anything. I think this is what was being told to us.

**Mr. Peter Tabuns:** Interesting.

**Ms. Halyna Perun:** It was a meeting with someone else telling us about—

**Mr. Peter Tabuns:** Did you get a sense that they might be trying to mislead you?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** But you neither believed nor disbelieved what—

**Ms. Halyna Perun:** No. It was something that was conveyed to us.

**Mr. Peter Tabuns:** Did your legal department at any point provide legal advice to the Premier's office suggesting it should promise to make TransCanada whole?

**Ms. Halyna Perun:** Sorry, can you repeat the question?

**Mr. Peter Tabuns:** Did your legal department ever provide legal advice to the Premier's office on the deal with TransCanada, any advice as to whether or not TransCanada should be made whole or kept whole?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** I'm going to go back to our document, page 4.

**Ms. Halyna Perun:** Sorry, is this your document?

**Mr. Peter Tabuns:** Yes—no. My apologies, Halyna. I don't see it in our package. I will just ask.

*Interjections.*

**Ms. Halyna Perun:** Oh, I do have this. This is the legal opinion.

**Mr. Peter Tabuns:** Right. Page—

*Interjection.*

**Mr. Peter Tabuns:** Yes, too much paper is right.

On page 4, there's a brief written by Malliha Wilson. She writes, "We are of the view that a court would be strongly inclined to"—

**Ms. Halyna Perun:** Sorry.

**Mr. Peter Tabuns:** Do you have that before you?

**Ms. Halyna Perun:** Page 4, okay.

**Mr. Peter Tabuns:** Yes.

**Ms. Halyna Perun:** And where are you?

**Mr. Peter Tabuns:** Under "Waiver of article 14.1," second paragraph.

**Ms. Halyna Perun:** Yes.

**Mr. Peter Tabuns:** "We are of the view that a court would be strongly inclined to admit at least some of the evidence of the negotiations between TransCanada Enterprises, the Ontario Power Authority and the Premier's

office. The parties may also have conducted themselves in a manner inconsistent with any continued reliance on article 14.1." That was the article that protected the Ontario Power Authority from being sued for lost profits. Is that an opinion you agree with?

**Ms. Halyna Perun:** I would have no reason not to agree with the crown law office-civil's view on this. This is an opinion that was developed by crown law office-civil. We work very closely and collaboratively with that office, and I would definitely be relying on their view.

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

**Mr. Peter Tabuns:** In fact, giving up on a big piece of protection, that protection against claim for profits, would have substantially weakened the province's position. Is that correct?

**Ms. Halyna Perun:** That's correct.

**Mr. Peter Tabuns:** Do you have any idea why the decision was made to abandon that very important piece of defence?

**Ms. Halyna Perun:** No.

**Mr. Peter Tabuns:** It appears that you were regularly part of phone calls touching on Vapour and Vapour-lock. Were chiefs of staffs or ministers' office staff ever part of those calls?

**Ms. Halyna Perun:** They could have been.

**Mr. Peter Tabuns:** Which political staff did you regularly brief, if any? Did you brief people in the Premier's office?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. How are you holding up, Halyna? Are you all right?

**Ms. Halyna Perun:** Okay. It's a very long hour and a half, I must say. You must feel the same.

**Mr. Bob Delaney:** Well, you're nearly at the end. It's almost in sight, now.

I have just a few questions regarding the Oakville plant. The memorandum of understanding for the Oakville relocation: Did that also include additional savings?

**1800**

**Ms. Halyna Perun:** It could have. I understand that there was a lower NRR reached, but again, I don't recall the actual number. Sorry.

**Mr. Bob Delaney:** So, just for clarity, when you refer to a lower NRR, you mean a lower net revenue requirement.

**Ms. Halyna Perun:** Right.

**Mr. Bob Delaney:** And in this case, from the Lennox site, right?

**Ms. Halyna Perun:** Right.

**Mr. Bob Delaney:** Okay. Some of the witnesses who have testified before the committee regarding the meetings between the Premier's staff and TransCanada Energy—their testimony lines up with notes that we've seen taken from their interviews with you and your colleagues on the file.

For example, Jamison Steeve told us, "My discussions with TransCanada were exploratory in nature." Sean Mullin confirmed, "We were not authorized to ... and we

did not engage in” any negotiation. Chris Breen from TransCanada confirmed that they were not negotiating directly with the company.

We also know that no offers were made and no deals were reached during these meetings. The former Deputy Minister of Energy, David Lindsay, testified, and I’ll use his words: “I don’t think they actually had a deal. If they had a deal, why were we going through all this process?” Would you agree with that assessment?

**Ms. Halyna Perun:** Those were former Deputy Lindsay’s thoughts. I don’t have any reason not to agree with him.

**Mr. Bob Delaney:** Okay. Chair, I think that is it for the government. We are done. Thank you very much for—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you very much. If you’ll go to PC doc 13 now.

**Ms. Halyna Perun:** Okay.

**Mr. Victor Fedeli:** We’re back at those. Got that?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Do you see where I’m reading the first sentence? “The meeting is ‘agenda setting’—Jenn won’t be able to elaborate.” Do you see that?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** “This is all Craig.” Which Craig are they referring to?

**Ms. Halyna Perun:** Craig MacLennan, I presume.

**Mr. Victor Fedeli:** Okay. Again, this is now on June 2, 2011. Turn the page. Go to page 2 of 5. The fourth line from the bottom, if you will: “Conference call for this evening for tomorrow morning at 10 (with OPA, DM, minister’s office and Sean Mullin from PO).” Is that Sean Mullin from the Premier’s office?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** And you’ll note that that date is June 2, 2011. Go a couple of pages in, then, please, to document 14. Third paragraph: “Deputy Lindsay spoke to energy’s chief of staff who then spoke to Sean Mullin.” Note that the date is June 6. Do you know that Sean Mullin was screened off the file in April as well?

**Ms. Halyna Perun:** I don’t know that.

**Mr. Victor Fedeli:** They swore under oath here that they were screened off. Both MacLennan and Mullin swore under oath that they were screened off. In fact, they couldn’t give us numbers of a late April decision, because they had been screened off by then. They both swore under oath. Do you have any comment about that, communicating with them after they were screened off?

**Ms. Halyna Perun:** I’m not sure that they were actually screened off at that time.

**Mr. Victor Fedeli:** Yet they swore under oath that they were.

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Okay. We’ll get to them later, then.

So now I want to turn your attention—you don’t have this document, because you won’t need it. We’re just going to talk about the document this whole committee

was given. I don’t know how to pronounce it—the law firm of Lenczner Slaght?

**Ms. Halyna Perun:** “Lenczner Slot,” I think, yes.

**Mr. Victor Fedeli:** This is a presentation to the Ontario Power Authority board, and it talks about the Jesse Kulendran discussion.

**Ms. Halyna Perun:** Okay.

**Mr. Victor Fedeli:** I’m just going to give you some names and dates. “On August 22, 2012, Halyna Perun, Ministry of Energy, legal, contacted Mike Lyle to request a meeting to discuss the OPA documents.” Would you agree?

**Ms. Halyna Perun:** Yes.

**Mr. Victor Fedeli:** Okay. August 22, 2012 meeting: “Ziyaad Mia contacts Halyna Perun, who advises:

“(1) come to fourth floor at Hearst;

“(2) meet with Jesse Kulendran;

“(3) bring documents;

“(4) Halyna will try to be there; and

“(5) issues with documents.”

Does that ring a bell?

**Ms. Halyna Perun:** I presume that I called—wait a second. Did I call Ziyaad? Is that—

**Mr. Victor Fedeli:** This one says “Ziyaad Mia contacts Halyna Perun.”

**Ms. Halyna Perun:** Oh, he calls me. Well, it could be.

**Mr. Victor Fedeli:** Do you recall those—

**Ms. Halyna Perun:** I don’t recall having a conversation with him, but I don’t say that I didn’t.

**Mr. Victor Fedeli:** Okay. So you didn’t say to Ziyaad Mia, “Come to the fourth floor at Hearst”?

**Ms. Halyna Perun:** I could have.

**Mr. Victor Fedeli:** “Meet with Jesse Kulendran”?

**Ms. Halyna Perun:** He did meet with her on the fourth floor, so I presume—

**Mr. Victor Fedeli:** “Bring documents”?

**Ms. Halyna Perun:** I presume that I told him that. I’m not saying that I didn’t; I just simply don’t remember that I actually had that conversation.

**Mr. Victor Fedeli:** “Bring documents”? That’s you?

**Ms. Halyna Perun:** If it’s in that, and he said that’s what I said, then I probably did.

**Mr. Victor Fedeli:** Okay. “Halyna will try to be there.” For some reason, you weren’t at the meeting.

**Ms. Halyna Perun:** I wasn’t at the meeting.

**Mr. Victor Fedeli:** “Issues with the documents”? Are you acknowledging that? He’s saying that when he contacted you, you advised that there are issues with the documents.

**Ms. Halyna Perun:** My recollection is that there was a need or a desire to have a meeting with the OPA to review certain documents. If he characterized it as issues, that’s—

**Mr. Victor Fedeli:** That’s not me characterizing. I’m reading the lawyer’s report.

**Ms. Halyna Perun:** That’s the lawyer writing about how Ziyaad characterizes it.

**Mr. Victor Fedeli:** “On August 22, a meeting had been called by Halyna Perun, and it was understood to be

a meeting in which the position of ministry legal on document disclosure was being communicated.” Does that make sense? Is that accurate? I’ve only got three minutes, so we’ve got to roll here.

**Ms. Halyna Perun:** I’m not aware of—I wouldn’t characterize it that way.

**Mr. Victor Fedeli:** The note here—it says, “The OPA was provided the following guidance:

“The documents need to be within the ranges identified in the motion.

“The documents have to be correspondence.

“They must refer to Oakville and Mississauga.

“SWGTA was not considered a proxy for Oakville.”

Are those your instructions or your understanding?

**Ms. Halyna Perun:** No. Again, it goes to basically what Ziyaad and Kristin understood happened at that particular meeting and what Jesse has indicated happened at that particular meeting.

**Mr. Victor Fedeli:** So—

**Ms. Halyna Perun:** But I just wanted to say, in terms of our legal advice in terms of the scope of the motion, it was basically that the motion addressed correspondence, emails, attachments to emails and—

**Mr. Victor Fedeli:** So were the instructions to OPA not to include anything that wasn’t correspondence or attachments?

**Ms. Halyna Perun:** No. That would not have been my communication.

**Mr. Victor Fedeli:** It says here afterward—that is the communication in this lawyer’s document, the presentation to the OPA. It says—

**Ms. Halyna Perun:** About something that they understood at that particular meeting.

**Mr. Victor Fedeli:** “Colin Andersen spoke to the deputy minister to discuss the ministry’s approach.” Because they were different; the ministry’s approach was different than OPA’s. “Deputy confirms that legal has reviewed.” Was that you?

**Ms. Halyna Perun:** The approach that the ministry took on its own production—

**Mr. Victor Fedeli:** The OPA production.

**Ms. Halyna Perun:** On the OPA production would not be pursuant to my legal advice. It would be pursuant to their legal advice.

**Mr. Victor Fedeli:** It says that “the approach was applied.” What they’re talking about is the approach being that anything that has SWGTA doesn’t belong in there. Anything that isn’t correspondence doesn’t belong in there. As a result of that meeting that you instructed them to be at, the approach was applied. Certain documents were removed as a result. It was understood that non-privileged documents were to be released October 27 and privileged documents were to be disclosed in camera, and it never occurred. So are you saying that you did not instruct Jesse Kulendran to instruct the OPA how to manage the documents?

**Ms. Halyna Perun:** I didn’t instruct her to instruct—

**Mr. Victor Fedeli:** What did you send her over there to do, then?

**Ms. Halyna Perun:** So, if I may—

**Mr. Victor Fedeli:** Yes. Please.

**Ms. Halyna Perun:** The minister’s office called to ask me to arrange this meeting, so I arranged it. There was an urgency to it happening—

**Mr. Victor Fedeli:** What was the purpose of it?

**Ms. Halyna Perun:** To meet with the OPA so that they could understand—sort of a check-in, I guess, to make sure that they understood how the ministry was responding to the document request and to sort of do a check-in with them. So that’s the—

**1810**

**Mr. Victor Fedeli:** So this urgent meeting—what would the difference have been between how you did it and how—

**Ms. Halyna Perun:** I think the urgency was in the fact that there was an expectation that all the documents needed to be organized for production that same night. In fact, ultimately, we ended up having a couple of more days. So there was urgency in terms of meeting with the OPA that morning.

**Mr. Victor Fedeli:** It says here you responded: “The ministry is in the process of reviewing documents.... You will be notified once a determination has been made as to how the disclosure request will be responded to.”

What did you tell them to do differently?

**Ms. Halyna Perun:** Sorry, can you just—sorry, I’m not sure. Can you just read that again?

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

**Mr. Victor Fedeli:** It says, “The ministry is in the process of reviewing documents with a view to responding to the disclosure request. You will be notified once a determination has been made as to how the disclosure request will be responded to.”

**Ms. Halyna Perun:** Is that my email to—

**Mr. Victor Fedeli:** Supposedly. Again, I’m reading from the lawyer’s packet here.

**Ms. Halyna Perun:** I think that was an email that I sent to Mike Lyle, who was the general counsel at the OPA at the time that the motion was first brought forward. I forwarded the motion to him and I basically told him that we would be responding, and I would assume that they would be responding too, and then I would be in further communication about that.

**Mr. Victor Fedeli:** So you never asked Jesse Kulendran to deal with those issues with the documents that Ziyaad Mia talked about?

**Ms. Halyna Perun:** I called—I arranged the meeting, but I didn’t instruct her, and I don’t think she—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, and once again, not an intentional interruption, but the time has expired.

Ms. Perun, I thank you on behalf of the committee for your testimony and your presence.

#### COMMITTEE BUSINESS

**The Chair (Mr. Shafiq Qaadri):** Just before we conclude, there is an issue here before the committee with reference to documents that are provided to the committee in response to a motion, and it goes as

follows—and I welcome Mr. Trevor Day, who is also here to ensure that we follow procedure, along with our current Clerk.

When reviewing Hansard from our last meeting regarding the documents the committee has received from the Ministry of Finance, the Premier's office and Cabinet Office, the committee wanted to receive all the documents, including the confidential ones. I inform the committee that those documents are now here, ready for distribution, one per caucus. You'll determine, I think, how many thousands of documents are on this USB key. However, there are some documents that have been flagged as confidential/commercially sensitive, and the cover letter is from the Deputy Minister of Finance.

The problem or issue before the committee is that we are, of course, prepared, as is the committee's right, to distribute those documents. There are some several thousand. I would, I think, just at this moment, ask respectfully that this is for your own internal review and not to be made public at present, because there is still, I guess you could say, a ruling or a decision, because there are four items flagged. They are a reference to the Ring of Fire; green energy investment; the Ford Oakville plant, as in, I guess, the car plant; and Cisco Systems, which have somehow been taken up in this document dump but are not relevant or responsive.

Yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, there was a line on the bottom of that letter that also said "any previous information that the committee had." It was on the bottom of the front page. They want that kept confidential, but our ruling already stands over those. I couldn't agree with that portion, because those documents—you can't put that toothpaste back in the tube. Those are gone.

**The Chair (Mr. Shafiq Qaadri):** Fine. Are there any comments on this issue? Mr. Delaney.

**Mr. Bob Delaney:** Chair, first of all, let me, on this one rare occasion, agree with Mr. Fedeli: That toothpaste has gone out of the tube. But with regard to this one, may I suggest that as the committee at the moment doesn't have an indication of what these documents are, what their nature is, that we defer the discussion on this matter until the next meeting?

**The Chair (Mr. Shafiq Qaadri):** I'm willing to entertain that. Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, so you're prepared at the moment to turn that disk over to us. We can release all but those four. Is that what you're asking? On our honour, to keep those four—is that what you're asking? As you've given us other confidential documents?

**The Clerk of the Committee (Ms. Tamara Pomanski):** If you were to open up the USB sticks, there are folders that will say "confidential." But looking at this, I'm not sure—I wouldn't be able to tell you exactly Cliffs Resources or green energy investment—

**Mr. Victor Fedeli:** We all understand those, to be quite frank.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Okay. So if you were to look at the USB sticks, they are separated by a folder that says "confidential" on each USB stick. That's what was sent to us as confidential.

**Mr. Victor Fedeli:** I would suggest, Chair, that you issue the document, the USB sticks, and as you have issued us other confidential material, we could hold those four documents in confidence until we have a further discussion.

**The Chair (Mr. Shafiq Qaadri):** Is that agreeable to the committee?

**Mr. Peter Tabuns:** The ones are related here—

**Mr. Victor Fedeli:** The four—

**Mr. Peter Tabuns:** —but not to the gas plant matter.

**Mr. Victor Fedeli:** Yes.

**The Chair (Mr. Shafiq Qaadri):** That's what we're being told, yes.

**Mr. Victor Fedeli:** The four identified items on page 2 or 3—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, comments?

**Mr. Bob Delaney:** I have no objection to that, Chair, as long as it's understood that, at this point, those documents rest with us on our honour as MPPs and remain confidential, and we'll discuss it at a future time.

**Mr. Victor Fedeli:** That's fine.

**Mr. Bob Delaney:** I'm okay with that.

**The Chair (Mr. Shafiq Qaadri):** And we won't go through the protocol of signed signatures this time.

**The Clerk of the Committee (Ms. Tamara Pomanski):** I just want to get this clear. What I'm clear on is that I'm going to give you these documents, one per caucus, and the ones that are identified as confidential, you will keep those to yourselves until the committee decides what to do with them?

**Mr. Victor Fedeli:** Yes.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Mr. Delaney? Everyone's agreed with that?

**Mr. Bob Delaney:** I'm fine with that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, then, to the members of the committee, and thanks to our Clerk, Ms. Pomanski, and Mr. Day. Committee is adjourned.

*The committee adjourned at 1816.*

# CONTENTS

Tuesday 28 May 2013

Members' privileges .....	JP-511
Hon. Bob Chiarelli .....	JP-511
Ms. Halyna Perun.....	JP-525
Committee business .....	JP-538

## STANDING COMMITTEE ON JUSTICE POLICY

### Chair / Président

Mr. Shafiq Qaadri (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 Qaadri (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)

    Ms. Soo Wong (Scarborough–Agincourt L)

    Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

### Clerk / Greffière

Ms. Tamara Pomanski

### Staff / Personnel

Mr. Jeff Parker, research officer,

    Research Services

Mr. Peter Sibenik, Table Research Clerk,

    Table Research