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Tuesday 26 November 2013

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Mardi 26 novembre 2013

**Standing Committee on
Justice Policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 26 November 2013

Mardi 26 novembre 2013

The committee met at 1502 in room 151.

MEMBERS' PRIVILEGES

MS. SHELLY JAMIESON

Le Président (M. Shafiq Qadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochaine présentatrice, Ms. Shelly Jamieson, for a repeat rematch. Ms. Jamieson, I welcome you to be sworn in by our able Clerk.

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

Ms. Shelly Jamieson: I swear.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Jamieson. Just before I offer the floor to you for your introductory five-minute address, I would like to just respectfully remind all members—we even have a parliamentary source for this; I'm impressed—to please be courteous to our witnesses and with peripheral conversations, not citing any particular individuals. Evenly distributing that particular request to all members of the committee, I would invite you to please allow the witness to be heard. In any case, the proof is self-evident, I think.

Ms. Jamieson, your five-minute opening address begins now.

Ms. Shelly Jamieson: Thank you, Chair. I'm Shelly Jamieson—

Mr. Bob Delaney: Chair, are we not reading the sub-committee report in before we start?

The Chair (Mr. Shafiq Qadri): You're a good person, Mr. Delaney. Pardon me, Ms. Jamieson. We can do it afterwards. I will re-give you your three seconds used so far. Please begin again.

Ms. Shelly Jamieson: Thank you. My name is Shelly Jamieson. I'm the CEO of the Canadian Partnership Against Cancer, but I'm here in my capacity as former Secretary of cabinet in the province of Ontario. I did not prepare a statement this time, so I'm happy to turn it over to you.

The Chair (Mr. Shafiq Qadri): Fair enough. Ms. MacLeod, you have 20 minutes.

Ms. Lisa MacLeod: Thanks very much, Chair. Welcome back to committee, Ms. Jamieson. I bet that when

you left, you thought you were leaving for good. But do you know what? Once in, never out around here, I suppose.

I'd just like to ask a few questions and then I'll turn it over to my colleague from Renfrew–Nipissing–Pembroke. I'm just wondering what your professional relationship was with the Premier and the cabinet when you were Secretary of cabinet, in terms of your professional role.

Ms. Shelly Jamieson: I didn't know the Premier very well when I was appointed Secretary of cabinet. I had been the Deputy Minister of Transportation for two years, but I did not have a lot of exposure to the Premier one on one. My relationship with him was cordial, I would say. I always had the opportunity to give my advice. It wasn't always accepted, but I always had the opportunity to be listened to.

Ms. Lisa MacLeod: Were you considered an adviser to him?

Ms. Shelly Jamieson: Yes.

Ms. Lisa MacLeod: When speaking to the Oakville gas plant and the cancellation in previous testimony—I'm just going to read a statement—you said, "Around April 2011, we received notice that TransCanada intended to litigate. We were named in that litigation. So now, in the Secretary of cabinet's office, that becomes a bigger issue.... Now we were named in litigation, and so I was asked by the Premier's office to look into whether in fact there was a deal to be had to avoid litigation, or something else." I'm wondering, did the Premier's office provide you at that time with any reasoning as to why they wanted to avoid litigation?

Ms. Shelly Jamieson: No, they did not.

Ms. Lisa MacLeod: But he just made the statement and—

Ms. Shelly Jamieson: No, I actually got that direction from his chief of staff, Mr. Chris Morley. I would say it would be a pattern in the province of Ontario to look to avoid litigation where we can. Litigation is not a pleasant exercise. So there would be several times that things would come into Cabinet Office when they had been unresolved and it looked like we were tracking towards litigation. We might ask ourselves, is there something else we could do to avoid that situation? At that point, I saw this as the same as those other instances.

Ms. Lisa MacLeod: And what were the steps that were taken after that incident? Obviously, briefing notes would have been written. Meetings would have been had.

You would have obviously briefed the chief of staff to the Premier, if not senior cabinet ministers, on this after that happened.

Ms. Shelly Jamieson: So what I did is, I assembled a team of people who I thought could help me in this regard so that we could do some brainstorming about what was possible. As I reported previously, I decided that David Livingston was someone who could help me out in this regard, and he, with the Deputy Minister of Energy, David Lindsay, the Deputy Attorney General, Murray Segal, and myself—and Peter Wallace, to some degree, as the deputy of finance—became a group of people who tried to brainstorm on what we could do to resolve this issue with TransCanada.

Ms. Lisa MacLeod: And throughout that period—there are two different chiefs of staff during that period, first with Chris Morley, then David Livingston.

Ms. Shelly Jamieson: I was not employed with the province when David Livingston was the chief of staff.

Ms. Lisa MacLeod: Oh, I see. Okay. The other question that I have, then, is, while you were brainstorming with all of these individuals, were any of you, at the time, aware of the force majeure measures which were in the OPA contract with TCE that would have protected the OPA from incurring any astronomical costs, I guess, when it came to cancelling them?

Ms. Shelly Jamieson: I would say not at the beginning of the exercise, but as we became more familiar, yes. I would say those became clearer to us as we became more familiar with the terms. The contract wasn't between us, the government, and TransCanada. First, there was OPA, and we had to understand the terms of those contracts.

Ms. Lisa MacLeod: Well, I guess that becomes an issue because if there were force majeure measures within the contract that would have protected the OPA and effectively the ratepayer through a cancellation, at any point was that advice given to the Premier's office?

Ms. Shelly Jamieson: They would know that those provisions were there, yes.

Ms. Lisa MacLeod: So they would have known that this could have cost us, effectively, nothing, but they still proceeded the way they did.

Ms. Shelly Jamieson: I would say that our group did discuss—there was a scenario where, if things played out a certain way, the contract would have been cancelled, or it would have—

Ms. Lisa MacLeod: And what was that scenario?

Ms. Shelly Jamieson: If we did not intervene and time proceeded and TransCanada missed certain deadlines.

Ms. Lisa MacLeod: What were the responses by the government officials, then? I'm speaking of the political government officials: chiefs of staff, ministers, the Premier's aides and the Premier.

Ms. Shelly Jamieson: I was never in a meeting outside of cabinet with a minister, so I wasn't there when that advice was given. I would say all of those different options and discussions went forward through the chief

of staff and some of the other Premier's office officials into a discussion with the senior political advisers.

Ms. Lisa MacLeod: So in the last testimony, and I think again in this one, you say that you received direction from at least three sources: the Premier's office, the Premier's chief of staff and the cabinet.

Ms. Shelly Jamieson: Yes, I think I said only three sources.

Ms. Lisa MacLeod: Okay. At any time did any of these political bodies or individuals approach you—at any time—to discuss the force majeure after you mapped out the scenario, or prior to?

Ms. Shelly Jamieson: I think we approached them. I think we talked about—we, the civil service, presented different scenarios that could happen.

Ms. Lisa MacLeod: Was force majeure ever discussed in cabinet?

Ms. Shelly Jamieson: Not to my knowledge, no.

Ms. Lisa MacLeod: Why not?

Ms. Shelly Jamieson: I don't know why not, but I don't know. Not to my knowledge. Not when I was in the room.

Ms. Lisa MacLeod: Okay. I'll ask one final question and then I'll have my colleague—the AG report makes it clear the government had some, I think, solid footing in the case of Oakville, and arbitration could have possibly provided a better outcome.

The AG at the time references a force majeure that would allow OPA and TCE to walk away from the deal, incurring, as we've talked about, effectively no cost, if either side could not fulfil its contractual obligations within 24 months of the contract being signed. You say that you've mapped out a scenario, or you had mapped out a scenario, where that would have occurred, and that individuals—you would have reached out at the time to let them know.

1510

The mayor of Oakville testified to this committee that the city was prepared to take its case down to the Supreme Court. We also saw in Oakville that city hall was trying to delay the construction of the gas plants through a variety of different appeals. So it's pretty clear, when you look at it, that the legal mechanisms were in place.

You talk about this scenario that was laid out—one of the, I'm not sure how many, and that's probably another question we should ask. There were legal mechanisms in place that favoured the OPA, and it wasn't until the government waived any of the rights of the OPA that they had in the deal to make TCE whole that we ended up with these problems.

So if they went into the arbitration system, or some sort of litigation process, we would have been in a place where it would have cost taxpayers less. Wouldn't you agree with that, given the force majeure measures?

Ms. Shelly Jamieson: It depends how much time you had. There were many scenarios which would have tracked over different periods of time, including the Oakville regulation situation. So all of those scenarios

played out differently and would have different outcomes. I agree with that.

Ms. Lisa MacLeod: But I guess I go back to—within a 24-month period, you mapped out a scenario for the government that included the force majeure measures. We know that the mayor of Oakville and the city of Oakville were placing obstacles, that they were prepared to go to the Supreme Court of Canada to make that happen. It became very clear that the OPA could have been protected, yet the cabinet document that was signed effectively threw away, I would say, their bargaining rights. I'm just having trouble understanding why the government wouldn't have taken that seriously and they wouldn't have looked at that option.

So can you explain to me this: Did you ever go to cabinet, or to the chief of staff, and lay out one, two, three, five options of where they could go and at what cost? Or was this purely a political decision made by the Premier to save seats?

Ms. Shelly Jamieson: I can say that, verbally, that little group sat around and talked about: What could you do, given the situation? What could you do to stop the Oakville plant? And given that their discussions had fallen apart, we talked about all of those different mechanisms, and the government made a choice, a decision, to proceed with an arbitration agreement.

Interjection.

Ms. Lisa MacLeod: Okay. Yes, keep going.

Ms. Shelly Jamieson: Okay. So I would say that all those options were discussed. Do you leave it to other parties to fight this? Do you leave it to the contract to fall apart? All of those things were discussed in our group, discussed with the chief of staff. I would say the government came back and told us that their decision was to proceed with some kind of arbitrated agreement so that we could look for ways to see if there was a deal to be had.

Ms. Lisa MacLeod: Go ahead.

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

Mr. John Yakabuski: Thank you very much, Ms. Jamieson, for joining us today. I'm kind of picking up where my colleague Ms. MacLeod left off, because it still leaves so many unanswered questions.

The auditor, in her report, made it pretty—this was not a big report. I'm sure you've seen the report. This was not a 100-page report. But the force majeure component of it, she gave quite a fair bit of weight to it. She gave it the attention, I think, that it deserved.

It's very difficult, I think, for people to try to get their heads around this, that if that—particularly when we find out the actual cost of the cancellation. It was certainly a whole lot more than the Premier—either former Premier McGuinty or the current Premier, Ms. Wynne—gave indication that they were aware of all through this process.

So if we accept the auditor's numbers—which we accept, and I think the public out there accepts those numbers; I think the Liberal Party's having trouble accepting those numbers. But given that, and given her

opinion—and I've never heard them question her competence. They may question her math, but they are not questioning her competence. Given her opinion and her judgment that this could have been avoided, it's really hard for someone to understand why they would not have gone down that road or allowed this, because at the end of the day—I don't have the report in front of me because I just rushed down here from caucus, but I'm trying to think of the drop-dead date at which time TransCanada had to have a plant up and operating. We're not that far away, realistically, when it comes to the world of building plants and getting them operating, from that time. Given that the jurisdictions involved here—Oakville was pretty clear that they were going to fight this to the death, if necessary. They actually won. This thing was cancelled.

Why wouldn't the government, given that we're now on the hook for hundreds of millions of dollars, not have gone down that road? I know you're not going to answer that because you don't answer for them, but can you give me even your judgment on this, as to why they chose—

Ms. Shelly Jamieson: I would say that my own assessment of the different options was around certainty. I agree that we're sitting here now and Oakville did win, and I agree that it looks like TransCanada wouldn't have met that 24-month time frame. But that wasn't certain when we were having these discussions. So the only thing I can say is that I would have said that these options provided different certainty and different costs.

Mr. John Yakabuski: “Different certainty and different costs”—well, zero is pretty low. The auditor's view is that the costs would have been considerably less. There would have been, obviously, some legal wrangling and battling and advising and motions to and fro and what goes on in the legal world. I'm not a lawyer. I thank God every day for that, and I'm sure a lot of other people do too. But in that world, yes, there would have been some costs associated with this, but it would have been nowhere near the costs that we ultimately arrived at. Again, I don't really understand your job completely, because I'm sure it's a lot more complex than we on the outside like to think of as anybody else's job. But as the Secretary of cabinet and working closely with the chiefs of staff, working closely with the deputy ministers of energy and whoever else may have been party to those conversations, would they not have felt that they needed to be a strong—who was actually giving the cabinet, and, ultimately, the Premier or the Minister of Energy, the advice? Even though we have a few pieces of paper, we're never really sure who pulled the trigger on these things, are we? Everybody seems to like to point to the other person as the one who actually made the call, but when it comes right down to it, I guess the Premier is the one who makes the call.

Was somebody not strongly saying, “I'm doing this on behalf of the taxpayers of Ontario. I'm doing this on behalf of ratepayers. I'm doing this on behalf of you, sir. In the end, this is going to be a big problem”? It looks like half of the book has been written already, this force

majeure. It looks like half of the book has been written. We've got the opponents on one side promising a holy war over this, so we know that this time frame now becomes a real issue. Would it not have been incumbent upon the advisers to say, "Let's just let this play out, and in the end, we strongly believe that we're going to be successful"?"

Ms. Shelly Jamieson: There's a long and proud history of the civil service giving advice to politicians here. Our relationship with them at various times in history has been closer and further apart and different things. As I said at the very beginning, I was always encouraged to give my advice. I gave my best advice, and so did those around me. We talked about all of these issues. There is a political calculus, and at the end of the day, the Premier and his colleagues made a decision, and our job was to execute it.

Mr. John Yakabuski: Okay. We are talking about something that has already happened, and part of this committee's work is to try to ensure that it doesn't happen again. It would certainly be part of my thinking that, hey, let's hope we're never going down this road again, because it was a bad road from the start; a bad road from when they initiated the planning; a bad road when they first agreed to build a plant on this site without doing their homework in the first place. But my goodness, if we ever get into that situation again, I think the provisions of force majeure have to be explored a whole lot more deeply as to whether or not this is the way to ultimately make the best deal on behalf of the ratepayers of the province of Ontario.

1520

MOUs are pretty standard business for cabinet ministers, right?

Ms. Shelly Jamieson: Yes.

Mr. John Yakabuski: I was just hoping you could give us some insight on how an MOU would be discussed in cabinet and how much detail would be given.

Ms. Shelly Jamieson: Do you mean the arbitration agreement specifically here, in the summer of 2011?

Mr. John Yakabuski: Yes, I am looking at that, but in general, if there's a memorandum of understanding, what does cabinet know about these things?

Ms. Shelly Jamieson: I would say that there are different decision-making processes. There are long and short ones, big and little ones. Some of them are a dialogue with cabinet over a period of years, frankly, where there's policy work developed through work with stakeholders and discussion and research around the world. Decks come forward to cabinet that are for information and discussion, and then a series of large options might be laid out, and then it would go back and turn into a shorter list. So there are long processes like that where the civil service is very involved.

There are other decisions where the civil service is not very involved, where the government of the day comes in with a platform idea with colleagues and stakeholders in the community and they make up their mind and come

and tell us, "Here's what we're doing," and that's a different kind of process.

Then there's another kind, which is, I would say, the more urgent kind: the issues that pop up that have political interest and political attention, where options are asked to be investigated quickly and where there aren't numerous trips to cabinet.

In this case, as you know, the arbitration agreement had a walk-around, so there were four members of cabinet who signed that in July for Oakville. The full discussion at cabinet was at the next cabinet meeting, when it would have been reported that there was a walk-around. That's our process for transparency to the rest of cabinet.

Mr. John Yakabuski: So prior to the walk-around, there was no discussion in cabinet?

Ms. Shelly Jamieson: Not that I was present for, no; perhaps in ministers-only. Sometimes I stayed in ministers-only and sometimes I did not.

Mr. John Yakabuski: We're talking about something that ultimately resulted in hundreds of millions of dollars in costs had a cursory walk-around?

Ms. Shelly Jamieson: With provisions in the arbitration agreement, we weren't allowed to go and settle a deal. We had to bring anything back. The arbitration agreement was about getting a pause and having people say—

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

Ms. Shelly Jamieson:—"Is there something that can be done here that can bring this to the ground and make it resolved?"

Mr. John Yakabuski: Is it typical for cabinet ministers in a walk-around—so four cabinet ministers signed, and you walked it around to see whoever was available, that sort of thing. You personally didn't walk it around.

Ms. Shelly Jamieson: I did not. I had members of the executive council—

Mr. John Yakabuski: Yes, but somebody walked it around and said, "Listen, we need four signatures here."

Ms. Shelly Jamieson: We would get direction from the Premier's Office about who would sign and why. Sometimes it was convenience and sometimes—Minister Bentley signed that particular one. We would always have had the minister responsible as the signatory for a walk-around.

Mr. John Yakabuski: Right. So the other three people who signed it were informed? They knew what they were signing?

Ms. Shelly Jamieson: They were briefed by Chris Morley.

Mr. John Yakabuski: They were briefed by the Premier's chief of staff at the time.

Ms. Shelly Jamieson: Yes.

Mr. John Yakabuski: So they knew what they were signing. They weren't signing it blindly.

Ms. Shelly Jamieson: They would have perhaps had a high-level briefing. I wasn't there for it, but yes. I know that Mr. Morley spoke to all of them.

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

Mr. Peter Tabuns: Thank you, Chair. Thank you for returning, Ms. Jamieson. You were just responding to some questions from the opposition that you had meetings in which you discussed all the options prior to settling on the arbitration option. Present in those meetings were Mr. Morley as chief of staff—

Ms. Shelly Jamieson: He would have been at some of them—I just want to be clear—not at all of them.

Mr. Peter Tabuns: Can you tell us the main options that you canvassed in your group?

Ms. Shelly Jamieson: We tried to—I have to be careful not to mix up Mississauga and Oakville, because—

Mr. Peter Tabuns: Let's focus on Oakville right now.

Ms. Shelly Jamieson: Okay. We did spend some time trying to understand what had been the problem between the OPA and TransCanada; in other words, why they hadn't come to a conclusion. Once we could identify what those issues were, perhaps we could figure out if there was a solution for those.

We talked about relocation options on a very broad scale; I've since come to understand the specifics about some of them, but that wasn't the case. We just sort of said, "Is there somewhere else in the province where we could do something else?"

We talked about how we could approach them should the OPA continue to be the approach point. Was that relationship done, or should we be more involved and have a different point person, and that would be before we involved David Livingston.

We talked about the Oakville bylaw, we talked about force majeure, we talked about the probabilities of success and failure through those options, and we talked about siting options. So if you were going to ever do this again, maybe you stick with this one—we did this with Mississauga as well—but you come out with new options that somehow better understand what the community really wants.

I think those are—

Mr. Peter Tabuns: You didn't discuss litigation in this?

Ms. Shelly Jamieson: Oh, yes. I'm sorry. The back-drop of that, of course, was litigation—I apologize. We discussed letting it go to litigation and what would happen, and we didn't like our chances in litigation.

Mr. Peter Tabuns: Why didn't you like our changes in litigation?

Ms. Shelly Jamieson: A whole series of reasons. I did get a legal opinion on where we stood. Imagine if you had a contract with somebody and you were compliant to date with everything in that contract, and someone phoned you up one day and said, "We're ripping it up." You'd be not very happy, and that was the reaction, both with Eastern Power and with TransCanada. There was a series of things that I thought contributed to weakening our case.

Mr. Peter Tabuns: Okay. I assume that Chris Morley came back to you and said, "We're going with arbitration." Am I understanding that correctly?

Ms. Shelly Jamieson: Correct.

Mr. Peter Tabuns: Did he give his reasons for selecting arbitration?

Ms. Shelly Jamieson: I don't believe so, no.

Mr. Peter Tabuns: Okay. What option did you favour?

Ms. Shelly Jamieson: Did I favour? It's easier for me to answer: I did not favour going to litigation.

Mr. Peter Tabuns: Okay, and of the others?

Ms. Shelly Jamieson: I believe that around the table we all had different opinions, and that's a good thing; it's a healthy debate. I believe I was more a proponent of staying the course and coming up with new siting options, but, you know, I wasn't the decision-maker.

Mr. Peter Tabuns: Okay. So from that point, you had your discussion and you gave your assessment—the group of you gave your assessment—to Mr. Morley.

Ms. Shelly Jamieson: Correct.

Mr. Peter Tabuns: Did this matter then go to cabinet for debate before there was a walkaround?

Ms. Shelly Jamieson: No.

Mr. Peter Tabuns: So there wasn't a debate—

Ms. Shelly Jamieson: When you say "cabinet," a formal cabinet meeting?

Mr. Peter Tabuns: Yes.

Ms. Shelly Jamieson: They might have talked about it in caucus. They might have; I don't know. But at the time I was responsible for the minutes of cabinet, and so I can tell you that I know what was discussed from that perspective, and prior to July 29, 2011, there wasn't a decision or lengthy, or even any, discussion that I recall on Oakville.

Mr. Peter Tabuns: So Chris Morley tells you that arbitration is a good idea. From that point until the walkaround, you are not involved in any discussion in cabinet in which there is a debate about what the best options are?

Ms. Shelly Jamieson: No, I was not, but during the time period up until July 29—or was it immediately following? Anyway, that's when I asked David Livingston to help out and to go and approach TransCanada. So it's immediately after that.

Mr. Peter Tabuns: You were just talking about how people are selected for a walkabout.

Ms. Shelly Jamieson: Yes.

Mr. Peter Tabuns: Obviously Chris Bentley, as Minister of Energy, would be part of that. How were the other three selected?

Ms. Shelly Jamieson: I know that Minister Wynne was selected because she was in the neighbourhood at the time. I do know that she was here, and we call on the Toronto-based ministers more frequently because it means our staff aren't in the car driving around. Minister Duncan was included because there was a financial impact—

Mr. Peter Tabuns: Okay.

Ms. Shelly Jamieson: —and actually, I'm not recalling at the moment who the fourth—

Mr. Peter Tabuns: I think it was Linda Jeffrey who was the fourth.

Ms. Shelly Jamieson: I'm not sure; I'm sorry. I don't recall the rest of it.

Mr. Peter Tabuns: Can you tell us what role the Premier's office, separate from the Ministry of Energy, has in directing the OPA?

Ms. Shelly Jamieson: What role the Premier's office has?

Mr. Peter Tabuns: Yes.

Ms. Shelly Jamieson: I wouldn't say they have a role, except through the minister's office. So they would speak to their colleagues in the minister's office, but I wouldn't say they had a role in directing the OPA.

Mr. Peter Tabuns: You became aware later that the Premier's office had been negotiating or talking directly with TransCanada. Were you surprised at that?

1530

Ms. Shelly Jamieson: I was, because I didn't understand that those conversations were going on. In hindsight, it is the job of the political staffers to have relationships with the stakeholders, and perhaps I just didn't ask the right question.

Mr. Peter Tabuns: Hmm.

Ms. Shelly Jamieson: It is true that political staff have relationships with key stakeholders, so they were having meetings, and I didn't find out about it until it was reported back through the Ministry of Energy that they had heard this.

Mr. Peter Tabuns: Sorry. So the Ministry of Energy had not heard?

Ms. Shelly Jamieson: They came to tell me.

Mr. Peter Tabuns: When did they come to tell you?

Ms. Shelly Jamieson: It was sometime after April when I was asked to do this, shortly after—

Mr. Gilles Bisson: April—

Ms. Shelly Jamieson: —of 2011.

Mr. Peter Tabuns: April 2011. So in fact, they had had discussions with TransCanada the summer before—

Ms. Shelly Jamieson: Probably in the fall. The deputy of energy spoke to me about it.

Mr. Peter Tabuns: And he spoke to you about it as soon as he knew about it?

Ms. Shelly Jamieson: Yes, he did.

Mr. Peter Tabuns: So discussions had been going on for several months before the Deputy Minister of Energy knew about it and, thus, you knew about it?

Ms. Shelly Jamieson: As far as I know, yes.

Mr. Peter Tabuns: When you found out that the Premier's office staff were talking to TransCanada, did you ask them what they had discussed and what they had committed to?

Ms. Shelly Jamieson: No, I didn't. I sought the advice of the Deputy Attorney General, because at that point we had been served notice of intent to litigate. I wanted legal advice on what we should do. His advice to me was to screen these three individuals off of the file. I took the extra step of having them interviewed by crown attorneys so that I wasn't asking them; somebody else was asking them. And they were to turn over their notes.

Mr. Peter Tabuns: I've got a few other questions. Do you mind?

Mr. Gilles Bisson: Yes, go ahead, as long as I get some time.

Mr. Peter Tabuns: One of the things that was striking to us when Colin Andersen was here most recently was that his instructions about the termination of the arrangement with TransCanada were delivered verbally. Is it common for decisions of this magnitude to be delivered simply verbally and not in writing?

Ms. Shelly Jamieson: I'm a little confused by that, because I thought there was a letter. That's how I first heard about this, about a week before the letter went from the minister. Did a letter not go to the OPA?

Mr. Peter Tabuns: Apparently not.

Ms. Shelly Jamieson: I don't think—October 7 is one of the three dates I wrote down here.

Mr. Peter Tabuns: Yes, about 10 days before—

Ms. Shelly Jamieson: Oh, well, that's not that uncommon, a heads-up.

Mr. Peter Tabuns: —the OPA was informed verbally that this was happening—

Ms. Shelly Jamieson: No, that's not that uncommon: "This is happening, and you will receive written instruction about it." The minister had the authority to issue such a letter—without going to cabinet, by the way.

Mr. Peter Tabuns: I will double-check, but I'm not sure a letter actually was issued.

What's the legal purpose of the letter?

Ms. Shelly Jamieson: It's a directive, an instruction. The reason why I remember this is because the deputy of energy came to see me and said, "My minister is thinking about writing this letter," and that was news to me. I went to the Premier's office to check that it wasn't news to them.

Mr. Peter Tabuns: And so a letter would be a ministerial directive?

Ms. Shelly Jamieson: Correct.

Mr. Peter Tabuns: I'll tell you right now, it's not listed on the list of ministerial directives.

Ms. Shelly Jamieson: Well, I remember a discussion in our office about whether the minister had the authority to do this.

Mr. Peter Tabuns: I have no doubt of that.

Ms. Shelly Jamieson: That's all I remember about it.

Mr. Peter Tabuns: What's the political/legal implication of a ministerial letter? Why is it necessary for giving direction to arm's-length organizations?

Ms. Shelly Jamieson: Because boards need to know that they've been instructed to do something. They, of course, also want it in writing.

Mr. Peter Tabuns: As far as I know, this was verbal.

Anyway, when you got into the discussions, and I'm going to move back in time to your discussions with Chris Morley and your other advisers, were you given a briefing on the protections for Ontario in the contract with TransCanada?

Ms. Shelly Jamieson: The protections for the OPA or for Ontario?

Mr. Peter Tabuns: Sorry; for the OPA.

Ms. Shelly Jamieson: I personally would have been given a very high-level briefing. There are a lot of people who spend a lot of time with those contracts and with the OPA, kind of pulling that apart. To be honest, my role was more, “What did you find? How did it go?” as opposed to actually reviewing the contract.

Mr. Peter Tabuns: So when you made the decision around arbitration—sorry, when your group presented that option to Morley, and Morley came back and said, “We’re going to go with arbitration,” was there a discussion about what things would be given up and what things would be included in that arbitration effort?

Ms. Shelly Jamieson: There was general discussion within the group about that, yes.

Mr. Peter Tabuns: So everyone knew that the protection against paying lost profits was something in the OPA contract and was going to be abandoned in the arbitration.

Ms. Shelly Jamieson: I believe—my recollection is that Colin Andersen in particular said that. It was an element of the entire picture, and I believe it was discussed.

Mr. Peter Tabuns: Okay. Go ahead.

Mr. Gilles Bisson: Just a couple of questions: Can you walk us through, just quickly—you want to get something discussed at cabinet. What’s the process? There’s an agenda, I take it?

Ms. Shelly Jamieson: Yes.

Mr. Gilles Bisson: And you control that?

Ms. Shelly Jamieson: Well, we—

Mr. Gilles Bisson: Well, you don’t control it, but somebody has to manage it, is my point.

Ms. Shelly Jamieson: Yes, we’re the process air traffic controllers. We meet with the Premier’s office to say, “This is what we think is coming to cabinet. Anything you don’t want here, and anything you do want here?”

Mr. Gilles Bisson: So if I’m a minister of the crown and I have an issue, do I flag it with my Premier or do I flag it with you?

Ms. Shelly Jamieson: Probably both. You send your deputy into cabinet office and you send your minister in to the Premier.

Mr. Gilles Bisson: Do you guys still have P and P? We used to have P and P back in the day.

Ms. Shelly Jamieson: They did when I was here, but—

Mr. Gilles Bisson: But the planning and priorities is still there?

Ms. Shelly Jamieson: When I was there, yes.

Mr. Gilles Bisson: Okay.

Ms. Shelly Jamieson: It was somewhat merged with treasury board at one point, and the structure changed at one point.

Mr. Gilles Bisson: Does stuff typically go there before it goes to cabinet?

Ms. Shelly Jamieson: Most items, yes.

Mr. Gilles Bisson: Okay. So, once—

Ms. Shelly Jamieson: Most items go to some committee before they come to cabinet.

Mr. Gilles Bisson: So then there’s a minute—not a minute. There’s an agenda that’s developed as a result of requests that come in to you or requests that come in to the Premier’s office. There’s obviously a meeting between your people and the Premier’s people, and then there’s an agenda set. If you have an item to be discussed, it’s on the agenda, I take it. It’s a printed agenda, right?

Ms. Shelly Jamieson: That’s correct, yes.

Mr. Gilles Bisson: I’m just trying to recall. And when that item comes open and it becomes a discussion at cabinet, that discussion is minuted in some way?

Ms. Shelly Jamieson: The decision is minuted.

Mr. Gilles Bisson: I know the decision is minuted. My question is, is the discussion minuted?

Ms. Shelly Jamieson: No.

Mr. Gilles Bisson: Some things don’t change. But all supporting documents would be in the discussion around item A or whatever that item is that comes to cabinet. There would be an agenda that says, “Item A is coming to cabinet on such-and-such a date.” Then you would reflect the decision that was made by cabinet—

Ms. Shelly Jamieson: Correct.

Mr. Gilles Bisson: —and any supporting documents would then be attached to that?

Ms. Shelly Jamieson: Correct.

Mr. Gilles Bisson: And any of the discussions that happened at cabinet—what happens to those? They’re not minuted whatsoever?

Ms. Shelly Jamieson: No, they’re not.

Mr. Gilles Bisson: Then it’s just a recollection of who was at the meeting.

Ms. Shelly Jamieson: About the discussion? Yes. But just to be clear, I actually signed the minutes as Secretary of cabinet, to make sure that these were the decisions that cabinet took.

Mr. Gilles Bisson: Okay. What happens if you’re at cabinet and there’s an item—is there, like, an “Other items to be discussed”? Do people bring stuff up—“Oh, by the way, I just found out on the way through the door that”? I don’t remember those happening, but does that happen in your—

Ms. Shelly Jamieson: No. Maybe the day before, something might get added—

Mr. Gilles Bisson: No, no. I mean at the meeting.

Ms. Shelly Jamieson: No, not that—

Mr. Gilles Bisson: So you’re pretty limited to what’s on the agenda?

Ms. Shelly Jamieson: Yes. There is a ministers-only discussion, typically at the end, so I’m not speaking to that.

Mr. Gilles Bisson: That’s where I’m going. So the ministers—normally, you get to the end of the agenda and all of the decisions are minuted, and attached documents are there. Then you go to a ministers-only. At times, political staff are there; at times, you’re there as well?

Ms. Shelly Jamieson: Sometimes I was there, and if the conversation, frankly, was too political, I left.

Mr. Gilles Bisson: But sometimes you'd be asked to leave the room as well, right?

Ms. Shelly Jamieson: That's true, yes. In fact, it would be the reverse. I would assume I'm leaving unless I was asked to stay.

Mr. Gilles Bisson: Okay. Are there any minutes of decisions made at the ministers-only?

Ms. Shelly Jamieson: They can't make decisions without the secretary attesting to a decision as cabinet—

Mr. Gilles Bisson: Is there any record of the discussion?

Ms. Shelly Jamieson: No.

Mr. Gilles Bisson: Okay. And as for P and P, it's the same process?

Ms. Shelly Jamieson: Yes.

Mr. Gilles Bisson: Because you would have the same process, and you could end up as a ministers-only at P and P, right?

Ms. Shelly Jamieson: Correct. All of the various cabinet committees—they did take different structures at different times, so I'm making a general—

Mr. Gilles Bisson: Yes, I understand. I've sat on a number of them.

I'm going to go back to Mr. Tabuns in a minute. I just have one other question.

Back on the question of the deletion of documents, there are a number of documents and emails that were deleted off hard drives and all that kind of stuff. Was that your practice when you were there?

1540

Ms. Shelly Jamieson: Was that my practice?

Mr. Gilles Bisson: Yes.

Ms. Shelly Jamieson: No—well, transitory records.

Mr. Gilles Bisson: Yes, "Please come and get the quart of milk," that kind of stuff; you didn't worry about that stuff.

Ms. Shelly Jamieson: Or "Me too" as a "Reply all."

Mr. Gilles Bisson: Yes. But you would have kept, and most of your colleagues would have kept, documents that were related to decisions that were being made at cabinet. You wouldn't automatically delete those?

Ms. Shelly Jamieson: That's correct. I will say, in my office, when I was there, the actual responsibility for keeping the documents reflecting cabinet is actually not my computer, me. It is a responsibility because we are the central record-keepers.

Mr. Gilles Bisson: So whose responsibility is it?

Ms. Shelly Jamieson: The executive council—of Cabinet Office. There's a whole machine there. That's who I would rely on to retrieve documents, etc., that pertained to cabinet specifically.

Mr. Gilles Bisson: What would happen to your emails and stuff?

Ms. Shelly Jamieson: They're there.

Mr. Gilles Bisson: It's kind of odd that a whole bunch of stuff would be deleted, right?

Ms. Shelly Jamieson: Yes.

Mr. Gilles Bisson: In this case, it would appear that a lot of the documents that are related to the issue of contempt and some of the issues around the cost have been deleted, which is kind of odd, is it not? It's not the normal practice, is it—

Ms. Shelly Jamieson: That's not happening in the civil service, is it?

Mr. Gilles Bisson: No, no; I'm just saying it's kind of odd that that would be done, that you would be in the Premier's office or the Minister of Energy's office or whoever's office and you would be deleting records that are sensitive. That's not what you normally see in government, right?

Ms. Shelly Jamieson: Correct.

Mr. Gilles Bisson: Okay.

Mr. Peter Tabuns: Going back to approvals, and it may be that I'm simply not familiar with procedure, the arbitration agreement with TransCanada had to be run through cabinet. It was minuted. It went forward. The decision to cancel the contract in the first place—was that something that came to cabinet? If the arbitration came to cabinet—

Ms. Shelly Jamieson: No, it did not, because the minister had the authority to do it.

Mr. Peter Tabuns: On his or her own, without coming back?

Ms. Shelly Jamieson: I believe that's the case; it's my recollection, Mr. Tabuns.

Mr. Peter Tabuns: Did the Premier have the authority to do the same, or did the authority rest with the minister?

Ms. Shelly Jamieson: No, I think the authority sits with the minister.

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

Ms. Shelly Jamieson: But a minister wouldn't do that without—

Mr. Peter Tabuns: Without?

Ms. Shelly Jamieson: —speaking to a Premier.

Mr. Peter Tabuns: Would the Premier do it without talking to a minister?

Ms. Shelly Jamieson: I don't know. One way around, the person could find themselves out of a minister's job, so—

Mr. Peter Tabuns: True, eh? True.

Is it standard practice for the Premier's office to make commitments on projects which are in the hands of ministries?

Ms. Shelly Jamieson: Standard practice, no. I would say it's collaborative; they work together. There's someone in the Premier's office assigned to all of the ministries, so they would be part of that team. When you say "make decisions," I see it more as collaborative. In some cases, the civil service would be involved in that team working on an issue as well.

Mr. Peter Tabuns: But to your knowledge, it isn't common for the Premier's office to reach into a ministry and make a major decision about a project without involving the minister—

Le Président (M. Shafiq Qadri): Merci, Monsieur Tabuns. Je passe la parole à mon collègue M. Delaney.

Mr. Bob Delaney: Good afternoon, Ms. Jamieson; good to see you again.

Ms. Shelly Jamieson: Good afternoon.

Mr. Bob Delaney: I just want to touch on, actually, some of the points that were raised by my colleagues opposite on redaction and deletion of documents. Sometimes, “redaction” in the committee has been interpreted to mean that information was kept from the public or the reader on purpose. There have been some allegations that documents were, in fact, hidden. You actually spoke to this during your last appearance, that redactions don’t take place as an attempt to hide anything but rather because there may be personal or commercial or sensitive information in those documents, and in fact, there’s a very structured disclosure process.

As not all of the committee members present today were present at your last appearance, could you just quickly recap that issue once more to ensure that we understand what that process entails?

Ms. Shelly Jamieson: I feel strongly about the rights to redaction. I was fussed the last time I was here that the committee didn’t trust the process that the civil service uses. Never, ever, was I asked in the time that I was secretary of cabinet about whether something should be redacted or not. That is not something that we’re involved in. There are professionals who have decision trees who oversee that whole process.

But I feel strongly—at the time, I was an employee of the Ontario public service and I, too, have rights. If I’m writing about a doctor’s appointment on the bottom of an email—I would never do it again, but I did, on the bottom of a gas plant email; I was just explaining why I would be absent—I don’t actually relish that being part of the committee proceedings or the public record. I believe that, as an employee, I actually have rights; they’ve been proven in court.

I worry about redaction, and I wondered if this committee could come up with a way to have confidence in what’s redacted. That could be to have a little group of people who review the redaction, or have an honest third party who is making sure that that’s what’s going on. But I don’t think that we should automatically move to “We’re not going to redact anything,” because there are some things that actually should be redacted.

Mr. Bob Delaney: Okay. Just quickly cover document deletion.

Ms. Shelly Jamieson: Document deletion: There are documents that are deleted. For example, if a document is written by somebody else and sent to me, it’s actually not my responsibility to be the keeper of that document. That’s how you’ve ended up with 35 or 3,500 or 350 of a single deck that has shown up all over the place. I’ll accept that perhaps it’s not well understood, but the responsibility is housed with the people who created the document—unless I’m commenting back on the document, and then I have a responsibility to keep what I created. I just think there’s room for improvement in the

process, and I’m hoping the committee will make some recommendations to that.

I will say that when I think of, over the last few years, the manpower that has been used to produce for this committee—and I’m a supporter of this committee. I said, the last time I was here, that I was glad this issue was being reviewed at this committee. So I’m a supporter of the committee. But you can’t actually be loving that you’re getting all of this duplicate information. The time and attention that it’s taking for people to produce this—it has become, I understand, a cottage industry.

There must be better guidelines around making sure that you get what you need and that the civil service is not seen to be obstructing it—which I actually don’t believe is possible. Everything is so many places that it’s almost impossible for the civil service to hide something, I have to say.

Mr. Bob Delaney: And yet in the last 10 years, it is now possible for stuff to be in so many places, simply because the technology to store the information wasn’t there 10 years ago. Ten years ago, you had to delete it, because you had nowhere to put it.

Ms. Shelly Jamieson: Yes.

Mr. Bob Delaney: As the ability to store stuff increased—I’m kind of guessing here—our policies may have trailed a bit behind technology.

Ms. Shelly Jamieson: I think perhaps that’s true. I also worry about risk aversion in terms of a paralysis that will exist where the people of Ontario actually won’t get the good advice from the civil service, because everyone will be afraid to write anything down to do with anything, any time. I don’t know how that serves us.

Mr. Bob Delaney: Right. Yet there are, as Chris Morley told us, 99 different reasons why you have to delete documents.

Ms. Shelly Jamieson: There are instructions from the Ministry of Government Services—or there were, when I was here—about space on the system and not cluttering it up, so there are some expectations that you don’t keep everything.

There’s some balance that we need to find between what we should keep, so that the story can be told about how decisions were made and that we’re transparent and accountable—but I think that there are also some rights in terms of redaction. I think there is some ownership clarity that we should have: Whose responsibility is it to keep what?

Mr. Bob Delaney: Okay. To switch topics just a little bit, to go back to both Oakville and Mississauga—in this case, Oakville—all parties at that time, even in 2010, had agreed that this plant should be cancelled. Correct?

Ms. Shelly Jamieson: In 2010?

Mr. Bob Delaney: In 2010, which is roughly when—

Ms. Shelly Jamieson: You know, I’m not sure that I would know that for sure. I did know that in the summer of 2011. I just can’t speak to—it wasn’t on my radar before that. But by the time I joined the game, there were some entrenched positions, so I assume that you’re right.

Mr. Bob Delaney: You had talked about the probabilities and the risks involved in the different scenarios as

you constructed the decision tree. Sometime after you made your first appearance, Chris Breen from Trans-Canada Energy was here and he said they were ready to pursue all legal avenues to ensure that they were able to fulfil the contract that they had been granted, despite the bylaws and other measures passed by the town of Oakville.

1550

Not that long ago, the Auditor General was here and she said to me that she had a legal opinion that Trans-Canada Energy was on track to win all five cases that they had. What might the ramifications have been to the province if TCE had actually won all of those?

Ms. Shelly Jamieson: Well, we would have paid a lot of money. We would not have had a relationship with a valued supplier, a valued vendor. I believe that in my little group, when we were talking, we were trying to figure out, if we were going to spend a lot of money, how we got some value—how we actually got some electricity. So we were looking at options where we could try and make sure that even if we did have to pay out a lot of money, there was still power being produced; it wasn't just a lawsuit.

Mr. Bob Delaney: Right. So when you say that we would have paid out a lot of money, although I don't need you to speculate on how much, could you speculate on some of the categories in which we would have paid out the money? Like, what type of money would we have paid out?

Ms. Shelly Jamieson: Well, I think early on there were—I remember asking the question about sunk costs. I remember knowing that turbines—I learned more about turbines than I ever knew—were worth about \$200 million to \$210 million, and they were being built, so it would be better to use them than it would be to just receive them and not have anything to do with them. So that was one.

There was gas delivery and management costs, transmission costs.

I suspect they would have pursued legal costs. I suspect they would have. I don't know how that would have gone.

There's land costs—are we talking about Oakville?

Mr. Bob Delaney: Yes.

Ms. Shelly Jamieson: Okay. Mississauga, there's also demolition.

Mr. Bob Delaney: So in essence, then, to try to find a route that did not lead through litigation, I'm making the assumption that you were trying to find a prudent course that would optimize the value for the province and minimize the absolute costs and the risk of incurring additional unpredictable costs.

Ms. Shelly Jamieson: I would say that was the discussion between my deputy colleagues and I. That's what we were trying to do. We were trying to come up with options that fulfilled that. It was difficult.

Mr. Bob Delaney: Okay. One of the other mandates of the committee is in fact the future siting of gas plants and what type of consultations should take place on that. The Premier, in her throne speech and on multiple

occasions thereafter, said that the government should incorporate more local decision in the siting of energy infrastructure projects.

In this vein, the Independent Electricity System Operator and the Ontario Power Authority jointly delivered a report at the request of the Minister of Energy to provide recommendations on these types of siting issues going forward. The government said that we accept them and in fact we'll implement the 18 recommendations.

During your last visit here, you said that you were "confident that the OPA had followed its public consultation process" with the existing rules in place at the time. You also said that you were "completely convinced that the people of Mississauga and Oakville didn't want those gas plants in the end," which were your words. At the time, in your last visit to the committee, you mentioned that Ontario had been successful in siting 13 other gas plants, but that on this issue of Oakville you had wished there was a more fulsome debate with the people of Oakville.

What are some of the observations, in light of all of this, that come to your mind from your perspective and your place in government that would be helpful to the committee going forward, having had a chance to reflect on what the committee has done so far?

Ms. Shelly Jamieson: Well, on the local decision piece, I believe that the opinions of these communities changed over time and that time didn't match with the development of these plants. That's an effective lobby, an effective campaign inside those communities that got more people focused than were during the initial phases. So I think we have to better understand that process and make sure that people are engaged at the consultation time and not later, and that there should be some point at which the ship has sailed and that a decision can't or shouldn't be reversed. When do you change your mind?

I also was dismayed. I think if I asked people who were really involved in the decision in Oakville, in the Oakville community, if they understand the ramifications of actually not having a gas plant—where was the debate about what this means? Because if they're not going to generate energy—they don't need it right away, I understand. But at some point in the future, Oakville needs energy, and if they're not going to generate it, it's going to have to be transmitted or it's going to have to be brought in to their community. That has also land use and environmental and community impact that nobody is even talking about. So I'm not sure we've gotten to a point where we're actually having an honest debate with the people of Oakville about what they are going to do to get their electricity.

Mr. Bob Delaney: In the course of the last month or two, one of the points that has come out is that while municipalities have to plan for water and sewer, waste removal and many other municipal services, one of the things that, ironically, they don't have to plan for is the availability of electricity if you're planning a new subdivision. Do you want to keep going on that theme and—

Ms. Shelly Jamieson: I just think we need to have a more honest dialogue in communities about what they're

going to need and when and how they are going to get it, because if we're bringing transmission lines into Oakville, I'm pretty sure that's going to be disruptive somewhere in Oakville, and that's the choice they have made.

We had other communities, and I can't recall who they were, who were begging for gas plants, because they didn't want transmission lines. This is the reverse, but did they understand what they were picking and why?

So these ships have sailed, and I understand that, but I think when we go back next time, we should have a better debate, and we should also have better understanding about buffers and setbacks etc. It seems that some work should be done in that regard.

Mr. Bob Delaney: Have you kept up to date with the progress that the government has made in making ministers, political staff and others aware of their records retention responsibilities?

Ms. Shelly Jamieson: I have. Actually, I've had a discussion with the current secretary of cabinet about it.

Mr. Bob Delaney: All right. When Ann Cavoukian appeared before the committee, in fact, she commended the work that the Premier has done and said that the government had been very forthcoming and co-operative in working with her office on improvements. What's your perception of the directives given by the Premier and the focus on openness and transparency?

Ms. Shelly Jamieson: While I'm not sure I'm as familiar with the detail, I would just say that I understood, through Peter Wallace, the secretary of cabinet, that there was a re-emphasis on training, on responsibilities and requirements. Apparently, that's needed. I can't speak to the detail, Mr. Delaney; I'm sorry.

Mr. Bob Delaney: Okay. Chair, how am I doing on time?

The Chair (Mr. Shafiq Qadri): You have about six minutes, Mr. Delaney.

Mr. Bob Delaney: Okay.

The Chair (Mr. Shafiq Qadri): Use it well.

Mr. Bob Delaney: Chair, I think I'm going to stop here on this round.

The Chair (Mr. Shafiq Qadri): I would concur.

Mr. Yakabuski?

Mr. John Yakabuski: I would concur as well. Thank you very much. It's much appreciated. Do we get the time—

Interjections.

Mr. John Yakabuski: No, I just mean I concur that he's decided to end at this point.

Thank you, again. I really appreciate the answers that you're giving as well. You've talked about a lot of things in your answers to Mr. Delaney. One of them, I think, speaks to the kind of mess that happens when politics rules the day, as opposed to policy. You're painting us a picture of the future, of what it could be like when decisions are made based on the politics of the issue, as opposed to what may or may not be the right policy.

You also talked about—I'm going to get back to this, but first I want to just finish up maybe where I left off in

round 1, because you never know when he's going to concur with me.

So we were talking about the signing of these MOUs and the walk-around and stuff like that. Mr. Tabuns kind of asked some questions around that, too. It just seems that maybe the gravity either isn't there, or maybe that's what we're being led to believe: that the gravity isn't there, the importance isn't there.

When you sign a cabinet document as a minister, that's a serious issue, is it not? I mean, you're signing something that is of paramount importance. Is that not correct?

1600

Ms. Shelly Jamieson: Yes, that is correct. There are a lot of cabinet documents, but in this instance, this is a big decision.

Mr. John Yakabuski: Okay. Let's talk about this one in particular.

Ms. Shelly Jamieson: This is a big decision. I agree with you.

Mr. John Yakabuski: This was a big one. This a decision about what the next step was going to be in trying to deal with or mitigate the gas plant issue, the cancellation decision in Oakville. This is serious.

It's funny. They made the decision to build the plant in September 2009, and a year later, they cancelled it. It had been on—sorry. The contract was issued in September 2009; the decision was made in 2004, or maybe 2005. I don't have all the notes in front of me. But it took them all these years, and then they sign a contract, and within a year, they cancel that contract, which started the whole ball rolling to this mess that we've got today.

So you have to ask yourself, if people signed off on that document and we're now going down the route of arbitration, they'd better have known what they were doing, right?

Ms. Shelly Jamieson: Yes. I would say, though, it was to enter into discussions to see if there was anything to be done. So I guess I would say that this decision, this arbitration piece—the decision to cancel the contract had already happened. So now this was, is there something else on the table, something else that could be done?

If I were a minister signing that, I know I would have the assurance that nobody could cut a deal without us coming back to cabinet. So I'm just differentiating that from a decision that is final and you're never going to hear from anybody again.

Mr. John Yakabuski: It had to come back to cabinet.

Ms. Shelly Jamieson: It had to come back. It was a note—I'm sure you have the minute. It was a note in there that said you had to come back.

Mr. John Yakabuski: You talked about, in your discussions with Mr. Delaney, so I trust that it's all fine and good—you started to talk about turbines and whether we'd buy—

Ms. Shelly Jamieson: Yes, the big—

Mr. John Yakabuski: Yes, those big things. Interestingly enough, we're in a situation today where the province, essentially the people of Ontario, are being sued for

\$2.5 billion or \$2.25 billion by developers that were told years ago—and I know you’ve been the secretary of cabinet since 2008, correct?

Ms. Shelly Jamieson: Yes.

Mr. John Yakabuski: So within that time frame, that they were going to be able to build these wind turbines in the Great Lakes, and then—

Mr. Bob Delaney: Wait a minute. Chair—

Mr. John Yakabuski: I haven’t asked a question; I’m making a statement. I’m talking about history here. So—

Mr. Bob Delaney: Chair, he’s welcome to make a statement about anything that pertains to either the Mississauga or the Oakville power plants—

Mr. John Yakabuski: It does.

Mr. Bob Delaney: —as long as it doesn’t lead away from the mandate of the committee.

Mr. John Yakabuski: Of course.

The Chair (Mr. Shafiq Qadri): Your point is well understood, and we’ll—

Mr. John Yakabuski: Thank you very much, Chair. We were listening very intently to Mr. Delaney and promised him earlier we wouldn’t interrupt. I thought we had a similar deal, but apparently not.

Anyway, at some point they were given this assurance, or contracts were signed, to build turbines in the Great Lakes, and that political decision was then made some time later to cancel those contracts. Would there have been a cabinet document—and you were the secretary of cabinet—that got circulated for a walk-around on that one? That kind of came out of the blue. The 2011 election was approaching, and I recall the announcement that they were not going to proceed with the building of these turbines in the Great Lakes. Do you recall if there was a cabinet document on it?

Mr. Bob Delaney: Chair, on a point of order—

Mr. John Yakabuski: I’m trying to get—

Mr. Bob Delaney: I would like a ruling—

The Chair (Mr. Shafiq Qadri): Mr. Delaney, your formal point of order.

Mr. Bob Delaney: I would like a ruling from the Chair on whether this particular line of discussion is within the mandate of the committee.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. Your point is well taken.

Mr. Yakabuski, we would once again encourage you to confine your remarks to the mandate of the committee. Please proceed.

Mr. John Yakabuski: I am, and what I’m trying to get at is the importance of MOUs and cabinet documents, Mr. Chair, because that’s essentially what we’ve been talking about here today. So I guess what I’m asking about is: Was there, at that time, a cabinet document or an MOU signed?

Ms. Shelly Jamieson: I really don’t recall. I’m sitting here trying to recall. I certainly know the issue you’re talking about. I can’t speak to what happened. I can’t; I don’t recall.

Mr. John Yakabuski: Yes, because we’re trying to determine and try to put the weight that’s attached with

these cabinet documents and these walk-arounds and those kinds of things because—

Ms. Shelly Jamieson: I can just say that on walk-arounds, as secretary of cabinet, I had a responsibility to ensure that, whenever possible, there was a full cabinet discussion about issues. Walk-arounds are not a good way to run the government.

Mr. John Yakabuski: No.

Ms. Shelly Jamieson: If you’re a cabinet minister, you want the opportunity to sit at that table and have those discussions. So I monitored the number of walk-arounds, the types of issues; it was part of the job of my office. They ebbed and flowed, let me say. Then I would say, “No, wait a minute, there’s just too many.” Someone who comes in says, “We have to do this,” because by Tuesday something happens, and we say, “Well, where were you? Why didn’t you plan better?” So there were a lot of discussions—

Mr. John Yakabuski: Yes. That’s what the whole crux of this committee is about, now. Why didn’t they plan better?

Ms. Shelly Jamieson: I’m just giving you sort of the context for walk-arounds. It’s not the ideal way to do cabinet business and generally frowned upon, unless it’s the only option you have for time.

Mr. John Yakabuski: So you don’t recall this specific one?

Ms. Shelly Jamieson: I do not.

Mr. John Yakabuski: I’m just trying to see if there’s a pattern. Of course, now we’re in a situation where this could be even more costly than the gas plant cancellation, if the litigants are successful.

Ms. Shelly Jamieson: I’m just not familiar with—

Mr. John Yakabuski: No, I understand. You’re not giving all of your attention to what’s going on at Queen’s Park these days, and I understand that.

Ms. Shelly Jamieson: I’m not, actually.

Mr. John Yakabuski: We appreciate you coming to join us.

I think you’ve pretty well answered me on these issues on the cabinet documents and the MOUs.

I’m going to ask one more specific question, and I know this is probably challenging your memory on that because you’re going back to the time, but at that time, for those people who signed the MOU, I don’t think they were chosen randomly—as you say, Chris Bentley was one of them. I don’t think they were chosen randomly. Before they signed that, were there any discussions involving those four people where they would have known that—what we’re talking about here is, “I want you to understand. This is about the Oakville gas plant cancellation. We know we’re going into a new phase here now, and this is going to be a big political issue down the road. We expect it’s going to hit the fan,” as they say, “and you all understand that the costs here are—there are going to be some sunk costs, but then there are going to be a whole lot of other associated costs that go well beyond that that are going to conceivably go—through the OPA and discussions with them—into

the hundreds of millions of dollars. So we want you to understand, when you're signing this, that this is what we're going to be discussing. This is our next phase, to go into a process to try to deal with all of the facts and figures surrounding those possibilities." They would have been aware of that, would they not?

Ms. Shelly Jamieson: That is the job of the Premier's chief of staff, to brief those people. I would say some of those people would have been chosen randomly. It would have been a proximity issue—"What does the schedule look like?" But because those people are being asked to sign on, they would look for the Minister of Finance and the Minister of Energy to be signatories, because they would want the confidence that those two people would have had more face time and airtime on this issue.

Mr. John Yakabuski: Right.

Ms. Shelly Jamieson: I think Minister Jeffrey and Minister Wynne, at the time, were in the neighbourhood. I really do.

Mr. John Yakabuski: Okay.

The Chair (Mr. Shafiq Qadri): Thank you very much.

Mr. Tabuns?

Mr. Peter Tabuns: Thank you, Chair.

To go back to the question I was asking before I lost my time, is it standard practice for the Premier's office staff to make commitments on projects which are being managed by other ministries?

Ms. Shelly Jamieson: It's not uncommon. You and I can talk about what standard practice is. It depends what the style of the Premier's office is at the time. Some of them are more centralized and some are more decentralized. I would say, on some issues, that the Premier's office—is it a government issue, in this case a McGuinty government issue? Or is it just a ministerial issue?

It would vary, to be honest. It wasn't that uncommon, but they would always have the minister—they would be working with the minister to understand what the minister wanted out of this. It would be collaborative.

Mr. Peter Tabuns: Okay. In the question of the Ontario Power Authority getting instructions to discontinue the contract at Oakville and start a process, I can't find any ministerial directive.

Ms. Shelly Jamieson: Really?

Mr. Peter Tabuns: Really.

1610

Ms. Shelly Jamieson: Then what is the October 7 letter? Who wrote it?

Mr. Peter Tabuns: That was a letter from the OPA to TransCanada Enterprises saying, "We are severing our relationship." But when I questioned Mr. Andersen, he was given verbal instructions. He asked Mr. Ben Chin to confirm with the Premier's office that the verbal instructions were correct. The verbal instructions were verified by Mr. Chin. Then there was an exchange of emails about the content of the October 7 letter to TransCanada. No ministerial directive was ever issued that I can detect or that shows on the public record.

Ms. Shelly Jamieson: So I'm mistaken, then. I apologize. In my head, this was—

Mr. Peter Tabuns: I know, and Jamison Steeve said the same thing.

Ms. Shelly Jamieson: Oh, well, I'm—

Mr. Peter Tabuns: I'm puzzled as well, but I just know that in terms of a formal record of a ministerial directive—

Ms. Shelly Jamieson: What about on Mississauga?

Mr. Peter Tabuns: There was a ministerial letter but not a directive.

Ms. Shelly Jamieson: And he was also told first verbally.

Mr. Peter Tabuns: Probably, yes.

Ms. Shelly Jamieson: Yes, I know he was.

Mr. Peter Tabuns: What's the legal implication of sending a ministerial directive? Who does it protect? What is its function? Why don't all decisions just get conveyed verbally?

Ms. Shelly Jamieson: In terms of agency relationships with the government, agencies with boards like to make sure they have understood the direction. Mostly agencies just operate on their own and have a business plan that's filed with the government once a year—"These are the things that we're going to do"—and it's approved. But every now and then, things change and the government has a direction to an agency. The practice, mostly, would be that that would come—I shouldn't say "mostly"; I guess it would come in writing. It would depend how formal the decision was. Instead, if it's like "Grow tourism," that's maybe not—

Mr. Peter Tabuns: Or the scale of the decision. Like if you're talking about a \$1-billion contract, typically that would be worth more than a phone call.

Ms. Shelly Jamieson: Yes, but I would say that in both the cases of Mississauga and Oakville we wouldn't have known how much they were going to cost.

Mr. Peter Tabuns: You knew the value of the contract, though, even if you didn't know the value of the cancellation?

Ms. Shelly Jamieson: That's true.

Mr. Peter Tabuns: Because in fact—

Ms. Shelly Jamieson: So it could have been up to the value; yes, that's true.

Mr. Peter Tabuns: Craig MacLennan did ask at the time what the range was, and he was told the upper range was \$1.2 billion. So this was not a minor contract.

Ms. Shelly Jamieson: No.

Mr. Peter Tabuns: What's the responsibility of the board of an arm's-length agency when they're given an instruction? Are they supposed to engage in due diligence before they act on that, or are they supposed to simply act?

Ms. Shelly Jamieson: First of all, there are some 600 agencies. One of the problems, I think, in this province, is that there are almost as many definitions of the relationship. The more sophisticated—I would say that OPA is one of the more sophisticated agencies—would have a very serious sense of their own governance model, their own due diligence and where they put their word to something or do an estimate to something. I can't say that

all of them would do that, but I would say that most of them would say, “What does that mean? Let’s think about what the implications are.” There have been instances with agencies where a chair and a CEO might push back on direction given from the government. That’s either sorted out or it isn’t. So the relationships are different, I guess.

Mr. Peter Tabuns: You’ve answered my question; thank you.

You said, in your last visit here, that a week before the October 7, 2010, letter/decision/announcement, you were told that David Lindsay said his minister was considering a letter to the OPA to cancel the Oakville gas plant. Were you aware at that time that this came out of a discussion between the Premier’s office and TransCanada Enterprises?

Ms. Shelly Jamieson: No, but as a good secretary of cabinet I went down the hall to check to make sure that they did know, and they did. They affirmed that they did. Because I hadn’t heard about it at all and wanted to make sure that this was known, and it was.

Mr. Peter Tabuns: Sorry, you were made aware that the Ministry of Energy knew that the Premier’s office had—

Ms. Shelly Jamieson: No, I was made aware by the deputy of energy that his minister was considering writing this letter and cancelling the plant. I went to see the chief of staff in the Premier’s office and asked if he was aware of that. That is a pretty normal thing, actually. I would have seen him several times a day and we would compare notes on what was going on. I was just making sure that he was aware, and he was. So I don’t know which happened first, but—

Mr. Peter Tabuns: But you tried to make sure that the parties that were involved in this were aware of what each other was doing?

Ms. Shelly Jamieson: Correct.

Mr. Peter Tabuns: No one was freelancing?

Ms. Shelly Jamieson: No. That was part of my job.

Mr. Peter Tabuns: Did Deputy Lindsay tell you there was already an agreement between the Premier’s office and TransCanada to protect TransCanada’s profits in all of this?

Ms. Shelly Jamieson: At some point later—not the first time, not in that first conversation, but at some point later—and I’m sorry; I can’t tell you when it was—he came to see me and told me that he had heard that.

Mr. Peter Tabuns: Was this in April of the following year, when the lawsuit was started against—

Ms. Shelly Jamieson: Yes, it was much later than the October time frame, but I can’t tell you when it was. But he did come and tell me that.

Mr. Peter Tabuns: And did he say that all of these directions were coming from the Premier’s office and not from the minister’s office?

Ms. Shelly Jamieson: No. He cited three individuals, one of whom was from the minister’s office—so again, I said it was collaborative—and two from the Premier’s office.

Mr. Peter Tabuns: And again, those three individuals would have been?

Ms. Shelly Jamieson: Jamison Steeve, Sean Mullin and Craig MacLennan. Craig was with the—he was the minister’s chief.

Mr. Peter Tabuns: And they would have been at the heart of that liaison group between the minister’s office and the Premier’s office?

Ms. Shelly Jamieson: Yes. And—yes.

Mr. Peter Tabuns: Okay. Were you aware, when Chris Morley came back to you about the arbitration process, that it strongly favoured TransCanada Enterprises, that the terms of the arbitration were to the disadvantage of the OPA?

Ms. Shelly Jamieson: I’m not sure of the sequence. I would say Colin Andersen told me the same thing. So I more remember hearing from Colin.

Mr. Peter Tabuns: And you can’t remember whether this was before or after the arbitration was approved?

Ms. Shelly Jamieson: It was all happening at the same time. It would all have been right around the same time, in the summer of 2011.

Mr. Peter Tabuns: And did you discuss these matters in your regular meetings with the Premier?

Ms. Shelly Jamieson: No. That particular—

Mr. Peter Tabuns: Yes, that particular matter.

Ms. Shelly Jamieson: No.

Mr. Peter Tabuns: Is there a particular reason you wouldn’t have?

Ms. Shelly Jamieson: Just that my agenda would have been sort of things that I thought weren’t being discussed with him, with his staff. My time with him was always tight, and I always got to the point on things I wanted to make sure I said to him. I knew the advice was going through. Our advice went through to the Premier. I know that.

Mr. Peter Tabuns: Okay.

Ms. Shelly Jamieson: That was the relationship.

Mr. Peter Tabuns: I don’t have any further questions. Thank you.

Ms. Shelly Jamieson: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Tabuns. To the Liberal side. Mr. Delaney.

Mr. Bob Delaney: Ms. Jamieson, I want to thank you very much for having come in a second time and for sharing the insight that you always bring. Your answers have always been clear and concise and direct, and the committee appreciates the time that you’ve spent to come in and enlighten us.

Chair, that’s all I have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney. And thanks to you, Ms. Jamieson, not only for today’s testimony but for the repeat appearance. Certainly, we’ll let you know if there’s to be a third. Thanks to you for your services to the province of Ontario and the people, in your various capacities here. You’re officially dismissed.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qadri): Subcommittee report, Monsieur, Señor Del Duca, por favor.

Mr. Steven Del Duca: Thanks very much, Chair. The report of the subcommittee:

Your subcommittee on committee business met on Thursday, November 21, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

(1) That the redacted version of non-confidential documents the committee received from the Ministry of Energy and the office of the Minister of Energy in response to the committee's August 27, 2013, motion form part of the committee's public record.

(2) That the remaining two versions of confidential documents the committee received from the Ministry of Energy and the office of the Minister of Energy—Ministry of Energy—excuse me—

The Clerk of the Committee (Ms. Tamara Pomanski): It should be "Minister."

Mr. Steven Del Duca: Yes, that's what I thought—of the Minister of Energy in response to the committee's August 27, 2013, motion not form part of the committee's public record. That the Clerk of the Committee retains the two versions of confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the Committee shall return the two versions of confidential documents to the Ministry of Energy and the office of the Minister of Energy.

I move that the subcommittee report be adopted.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Del Duca. Are there any discussion points on this before we move to adoption? Seeing none, those in favour of the subcommittee report, as read? Those opposed? The motion carries.

Mr. Peter Tabuns: Mr. Chair?

The Chair (Mr. Shafiq Qadri): Yes, Mr. Tabuns.

Mr. Peter Tabuns: The Minister of Finance was to go through a variety of documents, and there were some Cabinet Office documents as well that were to be redacted. I don't believe that they have come back to us. Through you, Mr. Chair, to Mr. Delaney: I know that you have been following up on this—

Mr. Bob Delaney: Mercilessly.

Mr. Peter Tabuns: I'm very appreciative and I actually accept your word on that. What's the status of your merciless efforts?

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

The Clerk of the Committee (Ms. Tamara Pomanski): I can provide a bit of an update, just from my end. I had sent another letter to the Ministry of Finance, I think it was last week, requesting an update, because I hadn't heard from them. I received a letter back from the deputy minister saying that they should be able to fulfil our request within the next few weeks.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Shafiq Qadri): Just before we conclude, I'd also like to commend our Clerk and her office for finding the most economical USB keys, I think, known to North America.

If there's no further business before this committee, the committee is adjourned.

The committee adjourned at 1621.

CONTENTS

Tuesday 26 November 2013

Members' privileges	JP-1155
Ms. Shelly Jamieson.....	JP-1155
Subcommittee report	JP-1169

STANDING COMMITTEE ON JUSTICE POLICY

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