

COMMISSION OF INQUIRY  
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

APRIL 16, 2008

Appearances:

Bernard Coffey, Q.C. . . . . Commission Co-counsel

Sandra Chaytor, Q.C. . . . . Commission Co-counsel

Rolf Pritchard/Jenny Chai . . . . . Her Majesty in Right of NL

Peter Browne/Jane Hennebury . . . . . Doctors Kara Laing et al

Daniel Simmons/Beth Whalen . . . . . Eastern Regional Integrated  
. . . . . Health Authority

Chesley Crosbie. . . . . Members of the Breast Cancer  
. . . . . Testing Class Action

Mark Pike . . . . . NL Medical Association

Jennifer Newbury . . . . . Canadian Cancer Society (NL Division)

Stacey O’Dea . . . . . Central, Western and Labrador-Grenfell  
Regional Integrated Health Authorities

1 THE COMMISSIONER:

2 Q. Mr. Coffey.

3 MR. GEORGE TILLEY, EXAMINATION-IN-CHIEF BY BERNARD

4 COFFEY, Q.C. (CONTINUED)

5 COFFEY, Q.C.:

6 Q. Thank you, Commissioner. Mr. Tilley, I  
7 believe yesterday when we left off, we had  
8 gotten, your account had gotten to the fall of  
9 2006. You had referred to a briefing of the  
10 minister and near the or in the environment of  
11 the House of Assembly and you had also,  
12 though, then referred back to a briefing  
13 involving ER/PR for the executive of the  
14 hospital?

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Okay. And that’s where you were, okay.

19 MR. TILLEY:

20 A. So we’re in the fall of 2006 and there’s a lot  
21 of discussion going on amongst leaders,  
22 amongst the lab with respect to the latest  
23 information that is available. There are  
24 briefings given with regards to what has been  
25 achieved to date and what the process is here

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MR. GEORGE TILLEY - RESUMES THE STAND

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1 on forward. There was a discussion with  
2 respect to the need to make some information  
3 available to the public and that’s what  
4 resulted in the decision to have a press  
5 briefing sometime in mid December. That was  
6 undertaken by the Vice-President of Medical  
7 Services, Dr. Howell, Dr. Denic, the Clinical  
8 Chief of Laboratory and Dr. Kara Laing, the  
9 Clinical Chief of Cancer Care Program. So  
10 that process occurred.

11 And the next recollection for me really  
12 extended itself into May when there was  
13 increased media attention with respect to this  
14 issue and the attention was emanating from the  
15 affidavit that had been filed as part of the  
16 certification process for the class action  
17 suit. And the issue focused in on the figure  
18 which was how many test results changed and a  
19 belief that there was a misleading of the  
20 issue because that figure was not identified  
21 back in December. This, I believe, was around  
22 mid May. There were a number of discussions  
23 that had gone on at that time, both within the  
24 organization and with and within government, I  
25 suspect, with respect to how this issue came

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1 about and how it should be responded to. That  
 2 resulted in me taking the lead in a press  
 3 conference that was held the 18th of May seems  
 4 to stick in my mind as a date, but it may be a  
 5 couple of days either way in which we spoke to  
 6 that particular issue. The press conference  
 7 was certainly well attended. I believe I read  
 8 a prepared statement and then entertained  
 9 questions from the media.

10 The next issue that I recall was a  
 11 briefing of the representatives from the House  
 12 of Assembly. I believe the minister had  
 13 expressed a desire that those individuals be  
 14 given an opportunity to hear directly from the  
 15 organization so on the--there were two days in  
 16 May, not that long after the press conference,  
 17 in which the briefings were given, and again,  
 18 the individuals that I mentioned earlier,  
 19 Doctors Laing, Denic, Howell and myself  
 20 attended that session. And that actually  
 21 lasted over two mornings.

22 On the second day of that briefing  
 23 another issue that was being pursued in  
 24 another part of our organization was raised  
 25 publicly by Eastern Health, and that

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1 specifically was in relation to a radiologist  
 2 whose interpretations were being questioned.  
 3 So audits had been done to the point where it  
 4 was felt appropriate to retest or re-interpret  
 5 the images that had been done by that  
 6 particular physician since his arrival in one  
 7 of our outport communities. So that was  
 8 announced by me, I'm thinking, on the second  
 9 day of the MHA briefing.

10 Then there's a couple of things happening  
 11 in simultaneously. In fact, it was a very  
 12 hectic period, to say the least. Within the  
 13 radiology issue there was a team mobilized to  
 14 start identifying the patients whose work had  
 15 to be redone.

16 Paralleling that, I'm thinking this is  
 17 late May, early June, there's a discussion  
 18 about ER/PR follow-up, and that discussion  
 19 started off between the deputy minister, Mr.  
 20 Thompson and I, with regards to patients who  
 21 had been contacted as part of the follow-up  
 22 process. I think it was initiated first by a  
 23 short e-mail that from Mr. Thompson to me that  
 24 I redirected to the appropriate person in the  
 25 organization. And that resulted in a level of

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1 concern that while the organization had felt  
 2 and, in fact, stated that all of the patients  
 3 had been followed up with, that there may have  
 4 been some that, in fact, were not. That  
 5 resulted in a follow-up meeting between Mr.  
 6 Thompson and I and I believe the minister and  
 7 the board chair, Mrs. Dawe, set up with Mr.  
 8 Wiseman and Mrs. Dawe. And I recall the  
 9 minister was concerned, he was disappointed,  
 10 he was upset to say "You have been indicating  
 11 that all patients have been followed-up and we  
 12 have now identified some who have not." So  
 13 clearly, an issue that we were all trying to  
 14 put our minds to.

15 Meantime, on the other initiative that  
 16 was happening in the Burin Peninsula, they  
 17 too, while they were a different group, were  
 18 going through that process of identification.

19 Now, before I sort of conclude that  
 20 piece, another issue came up during that  
 21 period of time and that was in relation to  
 22 tests that had been curtailed in 2003, ER/PR  
 23 tests by Dr. Ejeckam where that particular  
 24 test had been curtailed for several weeks and  
 25 reactivated. And there was a request by one

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1 of the local media outlets to have some  
 2 discussions about that. So I recall calling  
 3 in the medical and technical leads, as well as  
 4 Dr. Howell, to discuss that and that resulted  
 5 in a further media briefing.

6 And then to go back to the latter issue,  
 7 in the latter part of the month or probably  
 8 was the first week in July the team or the  
 9 process that was under way to identify  
 10 patients for whom the radiologist in question  
 11 had been involved the team had learned that,  
 12 in fact, they had missed a number of patients  
 13 in their follow-up.

14 THE COMMISSIONER:  
 15 Q. You're talking about patients relating to -  
 16 MR. TILLEY:  
 17 A. Radiology.  
 18 THE COMMISSIONER:  
 19 Q. Radiology.  
 20 MR. TILLEY:  
 21 A. Sorry, Commissioner. So it was a difficult  
 22 time, to say the least, and that resulted in  
 23 some further discussions between Mr. Thompson  
 24 and I and to acknowledge the fact that we were  
 25 disappointed would be an understatement with

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1 the result of that process. And I suspect it  
 2 was within a few days of that that I ended up  
 3 leaving my position at Eastern Health.  
 4 COFFEY, Q.C.:  
 5 Q. Okay. Anything further?  
 6 MR. TILLEY:  
 7 A. That's sort of brings me to my end of the  
 8 involvement.  
 9 COFFEY, Q.C.:  
 10 Q. Okay. Just now we had gotten to that point,  
 11 where are you working now?  
 12 MR. TILLEY:  
 13 A. I'm working as a consultant and I'm providing  
 14 interim CEO coverage for the Canadian Health  
 15 Services Research Foundation, and they're  
 16 based in Ottawa.  
 17 COFFEY, Q.C.:  
 18 Q. Okay, Health Services Research?  
 19 MR. TILLEY:  
 20 A. Foundation.  
 21 COFFEY, Q.C.:  
 22 Q. Foundation. How long have you been there?  
 23 MR. TILLEY:  
 24 A. September of '07.  
 25 COFFEY, Q.C.:

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1 Q. And interim because, I take it, they're  
 2 looking for someone?  
 3 MR. TILLEY:  
 4 A. They were in the process of recruiting a CEO  
 5 and wanted to provide coverage while that  
 6 process is under way, so the term, I suspect,  
 7 is going to be completed in the near future.  
 8 COFFEY, Q.C.:  
 9 Q. And who heads that organization?  
 10 MR. TILLEY:  
 11 A. As--well, the CEO would head it.  
 12 COFFEY, Q.C.:  
 13 Q. Yes.  
 14 MR. TILLEY:  
 15 A. From the chair perspective?  
 16 COFFEY, Q.C.:  
 17 Q. Yeah.  
 18 MR. TILLEY:  
 19 A. The chair would be Sister Elizabeth Davis.  
 20 COFFEY, Q.C.:  
 21 Q. It's the chair of the board of directors or  
 22 trustees?  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. What are they, are they called directors or  
 2 trustees?  
 3 MR. TILLEY:  
 4 A. I'm not sure. I think I've heard both.  
 5 COFFEY, Q.C.:  
 6 Q. Okay. That's the same Sister Elizabeth Davis  
 7 as you used to work for here in St. John's?  
 8 MR. TILLEY:  
 9 A. It is.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. So did she recruit you for that  
 12 position?  
 13 MR. TILLEY:  
 14 A. The board of directors did. In fact, there  
 15 were a number of directors on the board that I  
 16 had become familiar with over the years.  
 17 COFFEY, Q.C.:  
 18 Q. Sir, the year that you--not the year, but the  
 19 period of time that you were CEO of Workers,  
 20 I'll refer to them as Workers' Compensation,  
 21 okay.  
 22 MR. TILLEY:  
 23 A. Okay.  
 24 COFFEY, Q.C.:  
 25 Q. That organization. Who--was there anybody

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1 that--was there then a senior VP, do you know,  
 2 while you were away?  
 3 MR. TILLEY:  
 4 A. Not to my knowledge.  
 5 COFFEY, Q.C.:  
 6 Q. Okay. During the period that you were the  
 7 senior VP at the Health Care Corporation, who  
 8 was responsible for the clinical laboratory?  
 9 MR. TILLEY:  
 10 A. I was.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. So the period of time that the  
 13 Commission is examining here, 1997 through  
 14 2005, you were responsible for, either as  
 15 senior VP or as CEO, with the exception of the  
 16 period when you were with Workplace Health and  
 17 Safety -  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. - Compensation Commission?  
 22 MR. TILLEY:  
 23 A. With the exception that, while I was CEO, of  
 24 course, the laboratory would have reported  
 25 through one of the vice-presidents.

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1 COFFEY, Q.C.:

2 Q. Vice-president, but ultimately either as CEO

3 or senior VP, you were responsible for the

4 clinical laboratory?

5 MR. TILLEY:

6 A. That's correct, except for the Workers'

7 Compensation.

8 COFFEY, Q.C.:

9 Q. Yeah.

10 MR. TILLEY:

11 A. That's right.

12 COFFEY, Q.C.:

13 Q. Just, sir, in your professional career, your

14 work career, have you ever apologized publicly

15 other than on May 18th, 2007?

16 MR. TILLEY:

17 A. Nothing comes to mind.

18 COFFEY, Q.C.:

19 Q. And during your professional career and this

20 ER/PR matter is a clinical issue, you've

21 described it as such?

22 MR. TILLEY:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Have you ever been involved in addressing a

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1 clinical issue that involved so many patients?

2 MR. TILLEY:

3 A. Clearly not.

4 COFFEY, Q.C.:

5 Q. While you were CEO of Eastern Health, what

6 other matters involved significant publicity

7 that Eastern Health was involved in?

8 MR. TILLEY:

9 A. The restructuring, I suppose, was a piece of

10 it. The Burin Peninsula, there was lots of

11 issues there, including community assessment

12 and the CAT scanner and those sorts of issues.

13 COFFEY, Q.C.:

14 Q. Uh-hm.

15 MR. TILLEY:

16 A. There were labour relations issues. I'm

17 thinking of some demonstrations that may have

18 occurred. There were issues pertaining to a

19 child death review.

20 COFFEY, Q.C.:

21 Q. That would be the Turner matter?

22 MR. TILLEY:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. Do you recall when that report was released?

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1 MR. TILLEY:

2 A. No, I don't.

3 COFFEY, Q.C.:

4 Q. Okay. We'll come across it in the documents.

5 MR. TILLEY:

6 A. Okay.

7 COFFEY, Q.C.:

8 Q. Well, we'll come across it. Go ahead, I'm

9 sorry, the child death review.

10 MR. TILLEY:

11 A. I'm sure there must have been more issues, but

12 that's the ones that sort of occur to me at

13 the moment.

14 COFFEY, Q.C.:

15 Q. And the ER/PR and the radiology?

16 MR. TILLEY:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. Okay. Mr. Tilley, as the CEO either of the

20 Health Care Corporation, or for that matter as

21 the CEO of Eastern Health, could you tell the

22 Commissioner, please, how you saw your role?

23 What was your role or responsibility?

24 MR. TILLEY:

25 A. Well, I had a responsibility for the day to

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1 day operations of the organization. I would

2 have led a team to manage that process.

3 Obviously, the size of the organization would

4 dictate the need for a fairly extensive

5 management structure to be in place. I would

6 have been involved in dealing with external

7 stakeholders, a lot of outward discussions

8 dealing with municipal leaders or stakeholder

9 groups. I would have been involved in the

10 strategic issues, the planning, the designing

11 of what our future should look like and how we

12 should proceed with it. In many ways, I saw

13 my role as being how do I create the right

14 environment here for this organization to work

15 effectively. So to that end, I would look to

16 do things to show that they were important.

17 COFFEY, Q.C.:

18 Q. I'm sorry, what was that?

19 MR. TILLEY:

20 A. I would look to do things to show they were

21 important. For example, within the

22 organization we have a process to monitor the

23 quality of services and we had an

24 infrastructure which would include a quality

25 oversight committee, and I would be there,

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1 because often where the CEO participates,  
 2 sends a message to the organization as to how  
 3 important those issues are.  
 4 COFFEY, Q.C.:  
 5 Q. You were involved in that process?  
 6 MR. TILLEY:  
 7 A. Well, I would certainly -- yes, I was part of  
 8 the committee and I felt that was important  
 9 and the whole executive team was.  
 10 COFFEY, Q.C.:  
 11 Q. Was that true back in the Health Corporation  
 12 days?  
 13 MR. TILLEY:  
 14 A. Yes, it was as well.  
 15 COFFEY, Q.C.:  
 16 Q. Okay.  
 17 MR. TILLEY:  
 18 A. There was a lot of issues ongoing at the time  
 19 in terms of relationships with Government.  
 20 The organization in many ways had contacts  
 21 with Government at multiple levels, but  
 22 certainly if there was to be involvement or  
 23 issues that involved the Deputy or higher, I  
 24 would certainly look to be a part of those.  
 25 So back in tat period of time, clearly there

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1 would have been a lot of discussions with  
 2 government in terms of the financial situation  
 3 that the organization was in. In fact, I  
 4 suspect in those years it was probably the  
 5 item that consumed the greatest amount of time  
 6 as we were working to identify whether there  
 7 were opportunities for cost reduction within  
 8 the organization, looking to get more complete  
 9 information in terms of being able to justify  
 10 the potential for more resources being needed,  
 11 and that would be with respect to our  
 12 operating budget, but it also would include  
 13 our needs for capital and the like.  
 14 COFFEY, Q.C.:  
 15 Q. And this would have been in the beginning,  
 16 from the time you went back as CEO of the  
 17 Health Care Corporation onward?  
 18 MR. TILLEY:  
 19 A. That's correct. When I went back to the  
 20 Health Care Corporation of St. John's, there  
 21 had been a number of years of year end  
 22 deficits and they were starting to accumulate.  
 23 I probably hadn't been there very long before  
 24 the issue about how the organization was going  
 25 to deal with that was raised. So certainly

Page 19

1 that became an issue that I would have been  
 2 involved with in a significant way.  
 3 COFFEY, Q.C.:  
 4 Q. So if I could on that point because this  
 5 involves eventually the HAY Report --  
 6 MR. TILLEY:  
 7 A. That's correct.  
 8 COFFEY, Q.C.:  
 9 Q. Around 2002, and you used the phrase -- I'm  
 10 not sure you used it yesterday, but you  
 11 certainly used it just now, "opportunities for  
 12 cost reduction or cost reductions within the  
 13 organization".  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Identifying such opportunities. Now as a  
 18 practical matter, what does that really mean?  
 19 MR. TILLEY:  
 20 A. Well --  
 21 COFFEY, Q.C.:  
 22 Q. I mean, how do you cut costs?  
 23 MR. TILLEY:  
 24 A. In a health care organization you either do --  
 25 well, the bulk of your expenses are employees.

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1 COFFEY, Q.C.:  
 2 Q. Yes.  
 3 MR. TILLEY:  
 4 A. The next greatest piece would be your  
 5 supplies, your utility, your building  
 6 maintenance.  
 7 COFFEY, Q.C.:  
 8 Q. So your employees would make up what rough  
 9 percentage?  
 10 MR. TILLEY:  
 11 A. 70 to 75 percent perhaps.  
 12 COFFEY, Q.C.:  
 13 Q. And so -- how would opportunities for cost  
 14 reductions involving the employee structure  
 15 work? Does that mean reducing the number of  
 16 employees?  
 17 MR. TILLEY:  
 18 A. It would.  
 19 COFFEY, Q.C.:  
 20 Q. Okay, and in this context, the reductions if  
 21 they occur, occur generally at what level?  
 22 MR. TILLEY:  
 23 A. Well, in the initial period there was a  
 24 significant reduction in the number of  
 25 managers in the system, and the expectation

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1 when the Health Care Corporation was formed,  
 2 and equally so when Eastern Health was formed,  
 3 was that when you have seven organizations  
 4 coming together, you only needed the  
 5 management team of one to be able to manage  
 6 all, but, of course, in reality that's never  
 7 the case. In fact, when you restructure,  
 8 that's the time you probably need them the  
 9 most. Beyond that, there were no significant  
 10 layoffs of unionized staff that I can recall,  
 11 but there certainly was downsizing and I  
 12 recall that for the most part that had  
 13 occurred through attrition, through  
 14 retirements or resignations or conclusion of  
 15 temporary positions.  
 16 COFFEY, Q.C.:  
 17 Q. So if before the manager was downsized --  
 18 manager's position was downsized through  
 19 attrition, a manager, for example, in a  
 20 clinical area, if he or she was actually  
 21 performing some useful work, I take it that if  
 22 that work was to go on, it would have to be  
 23 done by whoever remained?  
 24 MR. TILLEY:  
 25 A. That's correct.

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1 COFFEY, Q.C.:  
 2 Q. Which means presumably that if they're  
 3 otherwise already performing some useful work,  
 4 the total amount of useful work that they  
 5 perform has to increase?  
 6 MR. TILLEY:  
 7 A. The workload has to go up or something has to  
 8 be referred, delegated down.  
 9 COFFEY, Q.C.:  
 10 Q. Or just not done?  
 11 MR. TILLEY:  
 12 A. Perhaps not done.  
 13 COFFEY, Q.C.:  
 14 Q. And this was recognized, I take it, by  
 15 yourself during this period?  
 16 MR. TILLEY:  
 17 A. We had looked at various employee to  
 18 management ratios throughout the country, and  
 19 felt that for the most part, while we were  
 20 within range, we were still operating a very  
 21 lean organization, and by decreasing the  
 22 number of managers, we were clearly putting a  
 23 lot of pressure on those that were remaining.  
 24 COFFEY, Q.C.:  
 25 Q. And this was recognized by yourself, you were

Page 23

1 the CEO of the Health Care Corporation and  
 2 then Eastern Health?  
 3 MR. TILLEY:  
 4 A. Well, yes.  
 5 COFFEY, Q.C.:  
 6 Q. I take it this wasn't -- you wouldn't have  
 7 thought or felt that this was knowledge  
 8 peculiar to yourself, this would have been  
 9 generally recognized within the senior  
 10 executive?  
 11 MR. TILLEY:  
 12 A. Yes. In fact, we would talk about it not only  
 13 amongst ourselves, but in our discussions with  
 14 the people at the Department of Health, the  
 15 budget people.  
 16 COFFEY, Q.C.:  
 17 Q. That's what I was going to ask you about next.  
 18 MR. TILLEY:  
 19 A. Okay, sorry.  
 20 COFFEY, Q.C.:  
 21 Q. So this was not only talked internally amongst  
 22 the senior executive of the Health Care  
 23 Corporation and Eastern Health, but was shared  
 24 with and discussed with the Department of  
 25 Health financial people or senior executive?

Page 24

1 MR. TILLEY:  
 2 A. Well --  
 3 COFFEY, Q.C.:  
 4 Q. And Treasury Board?  
 5 MR. TILLEY:  
 6 A. There was a period of time, and it may have  
 7 been while I was senior Vice President, and  
 8 perhaps spilled over into the period when I  
 9 was away from Health Care, where there were  
 10 actually representatives from Treasury Board  
 11 into the organization, and I remember --  
 12 COFFEY, Q.C.:  
 13 Q. And their role there was what?  
 14 MR. TILLEY:  
 15 A. They had been asked or decided to come into  
 16 the organization to look for opportunities to  
 17 reduce costs, and I recall discussions then  
 18 about the need for as many managers as was had  
 19 in the system. So there was a belief that in  
 20 health care there were more managers than were  
 21 needed, and sometimes we were being referred  
 22 to other sectors, such as education, but it  
 23 certainly was an ongoing topic of discussion.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. Sir, you referred to the

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1 responsibilities -- I was asking you, if you  
 2 could, to list them from your perspective of a  
 3 CEO and that type of health care organization.  
 4 You had referred to leading a team, dealing  
 5 with external stakeholders, creating the right  
 6 environment, contacts with the government at  
 7 multiple levels, and you had described that,  
 8 in effect, most of the contact with government  
 9 at multiple levels over the years had  
 10 generally meant dealing with financial  
 11 affairs, financial matters. Anything else that  
 12 --  
 13 MR. TILLEY:  
 14 A. In terms of my role?  
 15 COFFEY, Q.C.:  
 16 Q. As a CEO, yes.  
 17 MR. TILLEY:  
 18 A. Well, I guess it was -- it occupied a full  
 19 work day and a full work night. There was  
 20 lots of hours into that. There was obviously  
 21 a responsibility to the Board of Trustees.  
 22 There was responsibilities to link with our  
 23 foundations. That's for the fundraising part  
 24 of the organization. The executive team would  
 25 meet either on a weekly or bi-weekly basis. I

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1 think in Eastern Health it may have been bi-  
 2 weekly simply because the executive team was  
 3 spread throughout the eastern region of the  
 4 province.  
 5 THE COMMISSIONER:  
 6 Q. Who was the executive team?  
 7 MR. TILLEY:  
 8 A. That was be the Vice Presidents and the Chief  
 9 Operating Officers in the case of Eastern  
 10 Health, and in the case of the Health Care  
 11 Corporation, it would have been just the Vice  
 12 Presidents because we didn't have Chief  
 13 Operating Officers at that point in time. So  
 14 I'd be responsible for liaising with that  
 15 executive group, senior management group  
 16 regularly.  
 17 COFFEY, Q.C.:  
 18 Q. Would there be an agenda?  
 19 MR. TILLEY:  
 20 A. Yes. With provision for new issues to be  
 21 identified at the time, the agenda was  
 22 encouraged to help to planning the meeting  
 23 process.  
 24 COFFEY, Q.C.:  
 25 Q. So at these executive team meetings, either on

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1 a weekly basis when you go back to the Health  
 2 Care Corporation days, and bi-weekly in  
 3 Eastern Health, I take it that the vice-  
 4 president, COOs, whatever title one wants to  
 5 label them with, were expected to attend,  
 6 unless there was something more pressing they  
 7 were expected to show up.  
 8 MR. TILLEY:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. And it was known to all of them, at least to  
 12 your knowledge that they could bring up any  
 13 new topics, new issues?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. And in that regard, sir, I just want to be  
 18 clear on this, the--you would be very  
 19 surprised, I take it, to hear any one of those  
 20 individuals come in here and say that he or  
 21 she didn't raise something at such a meeting  
 22 because it wasn't on the agenda, if it was  
 23 something of significance, like ER/PR?  
 24 MR. TILLEY:  
 25 A. Can you say the question again?

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1 COFFEY, Q.C.:  
 2 Q. Okay, I'm going to suggest to you that you  
 3 would be very surprised if anyone was to come  
 4 in here and say, to the Commissioner, that he  
 5 or she did not raise the ER/PR issue because  
 6 it wasn't on the agenda.  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. Now in terms of leading an executive team,  
 11 what does that in practice mean?  
 12 MR. TILLEY:  
 13 A. Well, the organization, both organizations  
 14 were quite large, even the smallest ones. And  
 15 each of the senior officials had a very  
 16 significant part of the organization in terms  
 17 of oversight. I would be there to try to  
 18 resolve issues that might cross multiple  
 19 positions, if in fact they couldn't be  
 20 resolved at their level, be there for support  
 21 or advice in terms of what my thoughts might  
 22 be on a particular issue. Everybody was  
 23 working extremely hard, so it was an effort on  
 24 my part to continue to encourage ongoing  
 25 support for them and their various

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1 responsibilities.

2 COFFEY, Q.C.:

3 Q. There for support or advice, that would be for

4 the executive team members?

5 MR. TILLEY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. I'm sorry, go ahead.

9 MR. TILLEY:

10 A. I think what I was going to mention was we

11 would or I would have a fairly open-door

12 policy.

13 COFFEY, Q.C.:

14 Q. That was my next question, go ahead.

15 MR. TILLEY:

16 A. Which would provide for meetings with the

17 executive team and there were times that there

18 were scheduled meetings that we would just sit

19 and talk about issues and there were times

20 that we would have sort of a formal sit down

21 and talk about sort of the more significant

22 issues that had been ongoing for the year and

23 for me to give them some feedback with respect

24 to their achievements over the past year. I

25 should also say that when the Health Care

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1 Corporation was formed, I suspect it was the

2 first time that there was a senior management

3 team that wouldn't all be in the same building

4 in St. John's. Maybe with the exception of

5 the General Hospital in the old days when they

6 had both the Miller Centre and the Health

7 Science Centre site to deal with, but in the

8 Health Care Corporation, the main office was

9 adjacent or on the Waterford Hospital site.

10 There were vice-presidents at the Health

11 Sciences Centre, for a little while at the

12 Grace, another at the St. Clare's site. When

13 Eastern Health was formed, the corporate

14 office was retained where Eastern Health was.

15 There was only one vice-president that I'm

16 recalling--no, two vice-presidents--I'm sorry,

17 I have to step back, Eastern Health, there was

18 one vice-president there, there was another in

19 Carbonear, there was another in Whitbourne,

20 there was another in Clarenville, there was

21 another at St. Clare's and there were two at

22 the Health Sciences Centre. So geographically

23 there was a separation, so it presented a

24 challenge in that the frequency with which you

25 were able to maintain regular contract was

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1 significantly diminished.

2 COFFEY, Q.C.:

3 Q. So these bi-weekly meetings, would they be

4 attended in person?

5 MR. TILLEY:

6 A. That would be the preference, but there were

7 times I recall that those outside of the city

8 may have joined in by conference call because

9 of weather or other issues that might have

10 been simultaneous to that.

11 COFFEY, Q.C.:

12 Q. Okay, and in any case, I take it, as you,

13 yourself, had a fairly open-door policy, does

14 that mean that if a vice-president or COO

15 wanted to call you on the phone, they could

16 get you on the phone routinely, either that or

17 you would return the call?

18 MR. TILLEY:

19 A. Uh-hm, yes.

20 COFFEY, Q.C.:

21 Q. Okay. Now, in giving support or advice to

22 executive team members, when would that

23 involve overruling them? What sort of

24 circumstance had to exist that they were

25 suggesting a) and you said no, we're doing b),

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1 what had to occur?

2 MR. TILLEY:

3 A. Well, I suspect it would have to be a major

4 disagreement in direction.

5 COFFEY, Q.C.:

6 Q. But I take it that you saw your role as

7 involving, if it came to that, that you were

8 prepared to do so?

9 MR. TILLEY:

10 A. I felt that I had that authority, yes.

11 COFFEY, Q.C.:

12 Q. Now, while we're on the topic of authority,

13 you were employed at the Health Care

14 Corporation of St. John's by whom? You were

15 employed by the Board of Trustees or -

16 MR. TILLEY:

17 A. I believe my contract was signed by government

18 and the board. In fact, I think the offer

19 actually came at the time directly from the

20 minister of the day.

21 COFFEY, Q.C.:

22 Q. That would be back in 2000.

23 MR. TILLEY:

24 A. Yes. But the primary dealings were through a

25 reporting responsibility to the Board of



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1 Trustees.  
 2 COFFEY, Q.C.:  
 3 Q. And at Eastern Health, when you were CEO of  
 4 Eastern Health, who were you employed by?  
 5 MR. TILLEY:  
 6 A. When I was CEO of Eastern Integrated Health  
 7 Authority, but a very similar arrangement, I  
 8 recall that both the minister and the chair of  
 9 the board would have signed by employment  
 10 contract.  
 11 COFFEY, Q.C.:  
 12 Q. Before I move on to deal with your  
 13 relationship with the Board of Trustees of  
 14 either--of both organizations and with  
 15 government officials, you believed that a CEO  
 16 of the Health Care Corporation and Eastern  
 17 Health, you had the authority to give  
 18 direction to your senior executive team and  
 19 through them, presumably, all their  
 20 subordinates?  
 21 MR. TILLEY:  
 22 A. Yes, with one notable exception and that  
 23 pertains to the medical organization.  
 24 COFFEY, Q.C.:  
 25 Q. Okay, in terms of that, could you tell me

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1 please, tell the Commissioner about that?  
 2 MR. TILLEY:  
 3 A. Well, Commissioner, there's an unique  
 4 arrangement in the health system where  
 5 physicians in particular are a group of self-  
 6 governing individuals and they have  
 7 accountable bodies, professional bodies, so  
 8 that within the--or as a result, within the  
 9 hospitals or authorities themselves, there  
 10 would be a separate set of bylaws. In fact,  
 11 there would be two sets of bylaws: one  
 12 pertaining to the administrative part of the  
 13 organization and the other pertaining to the  
 14 medical, clinical part of the organization.  
 15 And there would be processes put in place for  
 16 the latter with respect to how those  
 17 physicians are to operate when a decision has  
 18 been made to what is commonly known as being  
 19 granted privileges to practice within that  
 20 facility. And as part of that process, I  
 21 believe we've mentioned Medical Advisory  
 22 Committees and there is a process whereby the  
 23 medical issues in the organization are  
 24 funnelled through that piece and from the  
 25 Medical Advisory Committee and then from the

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1 Medical Advisory Committee, directly to the  
 2 Board of Trustees. So for all intents and  
 3 purposes, I would not be in a position to  
 4 overrule a physician, wouldn't have the know  
 5 how, number one, but number two, the authority  
 6 to do so.  
 7 COFFEY, Q.C.:  
 8 Q. So I take it the know how or the authority to  
 9 do so, the authority you've just spoken to,  
 10 the know how, I take it, would be in relation  
 11 to, for example, such a thing as, you know,  
 12 how to suture somebody off, I mean, you  
 13 wouldn't know how to do that?  
 14 MR. TILLEY:  
 15 A. You're correct.  
 16 COFFEY, Q.C.:  
 17 Q. That kind of thing, you wouldn't purport to  
 18 tell somebody how to perform a clinical  
 19 service.  
 20 MR. TILLEY:  
 21 A. Uh-hm.  
 22 COFFEY, Q.C.:  
 23 Q. But there's certain aspects, I take it, of  
 24 physician's work or their relationships with  
 25 patients that you might or might not agree

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1 with their position on and have your own views  
 2 on it.  
 3 MR. TILLEY:  
 4 A. Certainly if I had received an e-mail or a  
 5 call from a family member or a patient that  
 6 they felt that they needed to get access to a  
 7 physician, that they felt was not easily  
 8 accessible, then I would certainly look to see  
 9 if I could get somebody to follow up on that.  
 10 Certainly relationship issues, I would  
 11 certainly represent any concerns that I would  
 12 have.  
 13 COFFEY, Q.C.:  
 14 Q. So in terms of, was there any aspect of  
 15 physician's work, such as, for example, the  
 16 administrative aspects of it that you did have  
 17 authority in?  
 18 MR. TILLEY:  
 19 A. To the extent that it was not included through  
 20 the bylaw process, I would believe so, yes.  
 21 COFFEY, Q.C.:  
 22 Q. For example, clinical facilities, a  
 23 laboratory, where a laboratory was located,  
 24 that would be your decision?  
 25 MR. TILLEY:

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1 A. Ultimately. If there was a resistance on the  
 2 part of the physicians or an opinion that was  
 3 contrary, I would certainly be mindful of  
 4 overruling if there was a major position to  
 5 the contrary.  
 6 THE COMMISSIONER:  
 7 Q. I take it then, vis-a-vis, well let's go to  
 8 lab work, is it that what's not in the bylaw  
 9 is under your--do you look to the bylaw to  
 10 determine whether or not it is an area in  
 11 which you can enter into, as it were, or do  
 12 you go about some other process?  
 13 MR. TILLEY:  
 14 A. Commissioner, I suspect that the number of  
 15 times that the bylaws are referred to is  
 16 probably very minimal. It was always a degree  
 17 or a line that might move around a little  
 18 depending on what the issue might be.  
 19 Certainly the medical staff, the Medial  
 20 Advisory Committee were the ones that were  
 21 looking at the quality of medical care. There  
 22 was also, in the bylaws, provision for, what  
 23 they call the medical staff organization which  
 24 I mentioned yesterday, were, sort of, the  
 25 local union of the medical group. They would

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1 have the opportunity to represent physicians  
 2 as a group on various issues.  
 3 THE COMMISSIONER:  
 4 Q. So, for example, if as a matter of  
 5 administrative efficiency, the hospital was to  
 6 determine that all laboratories should be  
 7 located in one location and you had identified  
 8 what the location might be, is that a decision  
 9 for the administration totally or is that a  
 10 decision in which there is an aspect which  
 11 would be for the MACs, as I understand?  
 12 MR. TILLEY:  
 13 A. Uh-hm, both. If the issue is whether to  
 14 centralize a laboratory at the Health Centre  
 15 site and move it out of St. Clare's for  
 16 example, if there was a strong opinion with  
 17 respect to not moving it by a group of  
 18 physicians, we were always very cautious in  
 19 terms of making those decisions. In part  
 20 influenced by the fact that that's a key group  
 21 that you need support from. Recruitment is  
 22 always very challenging in this area. So, you  
 23 would look to try to find some sort of  
 24 resolution that kept the issue settled.  
 25 COFFEY, Q.C.:

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1 Q. Ie. kept the physicians who were unhappy from  
 2 walking--getting so unhappy that they'd walk  
 3 away.  
 4 MR. TILLEY:  
 5 A. Well, that's certainly an element of it.  
 6 THE COMMISSIONER:  
 7 Q. We're talking here, I mean, I suppose I can  
 8 see a situation where some physician might  
 9 come along and say, you can't do that for this  
 10 reason that relates to medicine.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 THE COMMISSIONER:  
 14 Q. And that, I presume, would be the kind of  
 15 thing that you would consider to be in their  
 16 bailiwick, in their area of expertise and they  
 17 get to make those kinds of decisions.  
 18 MR. TILLEY:  
 19 A. Well, anything with regards to space, we would  
 20 try to find a resolution to. There have been  
 21 times over the years, I suspect, when  
 22 physicians have been impacted by space  
 23 decisions. And the closure of the Grace site  
 24 was certainly one major one that resolution or  
 25 satisfaction was solved. But in many cases,

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1 was not entirely resolved in the physician's  
 2 satisfaction. So, you sought an opportunity  
 3 to balance off multiple issues and make the  
 4 call.  
 5 COFFEY, Q.C.:  
 6 Q. While we're on the topic, are you aware that a  
 7 similar sort of matter or issue arose  
 8 involving St. Clare's and the General Hospital  
 9 site and relocating the pathology services -  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. - consolidating them on the General Hospital  
 14 site?  
 15 MR. TILLEY:  
 16 A. I do recall some recollection of that.  
 17 COFFEY, Q.C.:  
 18 Q. We'll come to that. Settling, and I use that  
 19 word advisedly, settling--if there was a  
 20 disagreement or difference of view by certain  
 21 physicians as to the wisdom, disagreement with  
 22 the wisdom of relocating the pathology  
 23 services entirely to the General Hospital  
 24 site, who--a person in what position was  
 25 responsible for dealing with that since 2000,

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1 since you arrived back -  
 2 MR. TILLEY:  
 3 A. Since 2000 and we're talking about the lab in  
 4 particular?  
 5 COFFEY, Q.C.:  
 6 Q. Yes, the lab in particular.  
 7 MR. TILLEY:  
 8 A. Well, there would be involvement by a number  
 9 of people. Obviously the laboratory medicine  
 10 program would be the predominant body that  
 11 would influence the go and no go. The vice  
 12 president for medical services -  
 13 COFFEY, Q.C.:  
 14 Q. Bob Williams.  
 15 MR. TILLEY:  
 16 A. - 2000, would certainly be involved.  
 17 COFFEY, Q.C.:  
 18 Q. That would be Bob Williams.  
 19 MR. TILLEY:  
 20 A. Yes, that's right. And undoubtedly, I would  
 21 be aware of that and know the process or know  
 22 of the discussions that were going on with  
 23 respect to the challenges around it.  
 24 COFFEY, Q.C.:  
 25 Q. Were you made aware that--I have reason to

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1 believe that Commissioner is going to hear  
 2 evidence about this, that at one point, those  
 3 discussions became--is the word--acrimonious.  
 4 Were you aware--was that ever brought to your  
 5 attention?  
 6 MR. TILLEY:  
 7 A. Can you elaborate a little bit more?  
 8 COFFEY, Q.C.:  
 9 Q. Okay. There was significant difference of  
 10 opinion and resistance by and decent on the  
 11 part of pathologists or certain pathologists  
 12 at St. Clare's -  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. - being relocated.  
 17 MR. TILLEY:  
 18 A. Oh yes.  
 19 COFFEY, Q.C.:  
 20 Q. You remember that?  
 21 MR. TILLEY:  
 22 A. Well, I can't remember the detail, but I  
 23 certainly know that there was resistance to  
 24 centralization.  
 25 COFFEY, Q.C.:

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1 Q. And from looking back on it, who brought that  
 2 to your attention?  
 3 MR. TILLEY:  
 4 A. I can't recall. It could have come from a  
 5 number of sources.  
 6 COFFEY, Q.C.:  
 7 Q. Would Bob Williams have been involved?  
 8 MR. TILLEY:  
 9 A. Could have been. I was also a member, or sat  
 10 in on medical advisory committee meetings  
 11 during the health care preparation days. So,  
 12 it could have come up there.  
 13 COFFEY, Q.C.:  
 14 Q. Do you know if it came up there?  
 15 MR. TILLEY:  
 16 A. I can't say with confidence.  
 17 COFFEY, Q.C.:  
 18 Q. And the decision not to relocate the services  
 19 at the time was ultimately whose decision?  
 20 MR. TILLEY:  
 21 A. Technically I could have overruled that and  
 22 made it happen, but didn't see it as a viable  
 23 solution at that time.  
 24 COFFEY, Q.C.:  
 25 Q. So, from your perspective, the decision not to

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1 relocate--you didn't overrule somebody. The  
 2 decision was made by somebody subordinate to  
 3 you?  
 4 MR. TILLEY:  
 5 A. I think the overall objective was always to  
 6 try to centralize that service. In the  
 7 absence of trying to achieve support from the  
 8 group that were going to be most affected.  
 9 Then the decision was really put on hold.  
 10 COFFEY, Q.C.:  
 11 Q. So, it was made, I take it, at Doctor  
 12 Williams' level and you did not see fit to  
 13 overrule?  
 14 MR. TILLEY:  
 15 A. I don't recall any disagreement between us.  
 16 COFFEY, Q.C.:  
 17 Q. I'm not suggesting there was. I'm just saying  
 18 you were aware he was making this decision or,  
 19 at least, wasn't going to force the issue on  
 20 relocation and you were prepared to leave it  
 21 there.  
 22 MR. TILLEY:  
 23 A. Uh-Hm.  
 24 COFFEY, Q.C.:  
 25 Q. That's correct?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Did that ever change during the entire time  
 5 you were there, afterward?  
 6 MR. TILLEY:  
 7 A. I don't recall.  
 8 COFFEY, Q.C.:  
 9 Q. Now, Mr. Tilley, you've told us, I believe, as  
 10 best you can recall, you first heard of the  
 11 ER/PR, estrogen receptor, progesterone  
 12 receptor, issue on July 7, 2005, as best you  
 13 can recall?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. And you heard about it from Doctor Williams?  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Now sir, when you first spoke with him and  
 22 when I say first, I don't necessarily mean in  
 23 the first two minutes, okay, when you first  
 24 spoke with him, the first day or two, this  
 25 having come to your attention, what

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1 understanding were you given about when this  
 2 problem had been recognized, when the issue  
 3 had been recognized?  
 4 MR. TILLEY:  
 5 A. There was an index case and that index case  
 6 was referred to as one that had converted on a  
 7 retest.  
 8 COFFEY, Q.C.:  
 9 Q. Did you have any understanding or were you  
 10 given any understanding as to when this had  
 11 occurred?  
 12 MR. TILLEY:  
 13 A. I remember, in fact, May month -  
 14 COFFEY, Q.C.:  
 15 Q. Did you ever ask Doctor Williams, first or  
 16 last, as to exactly when the index case  
 17 occurred?  
 18 MR. TILLEY:  
 19 A. No, I just worked on the assumption that it  
 20 was in that spring.  
 21 COFFEY, Q.C.:  
 22 Q. And certainly no later than May was your  
 23 understanding?  
 24 MR. TILLEY:  
 25 A. No later than May?

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1 COFFEY, Q.C.:  
 2 Q. Yes, that was your understanding.  
 3 MR. TILLEY:  
 4 A. Yes, sometime in May.  
 5 COFFEY, Q.C.:  
 6 Q. And so in speaking with Dr. Williams about  
 7 this initially, I say initially, I don't mean,  
 8 the first couple of minutes, but the first  
 9 couple of days that you become aware of this  
 10 and begin to grapple with it. You understood  
 11 that the issue went back to May of '05 when it  
 12 was first identified. What did you understand  
 13 at that point about where they were with it,  
 14 Dr. Williams and the people working for him?  
 15 What stage were they at at that point?  
 16 MR. TILLEY:  
 17 A. My understanding when he had called me was  
 18 that they had done some sampling or audit or  
 19 some other tests around that period of time  
 20 and felt when he had called me or just prior  
 21 to, that it had reached the point where this  
 22 was more than a few isolated conversions, it  
 23 was something that needed to be dealt with.  
 24 COFFEY, Q.C.:  
 25 Q. And that's the way he put it to you or that

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1 was your sense of it?  
 2 MR. TILLEY:  
 3 A. That's my sense of it.  
 4 COFFEY, Q.C.:  
 5 Q. Sir, when you first got this phone call, did  
 6 you meet with him that day?  
 7 MR. TILLEY:  
 8 A. I don't recall. Again, I was on one site on  
 9 the west end of the city and he was on the  
 10 Health Science Centre site, but it would have  
 11 been, I suspect, through the telephone.  
 12 COFFEY, Q.C.:  
 13 Q. Did he give you any sense at that time, in the  
 14 first day or two, as to the numbers? What  
 15 kind of numbers are we talking about in terms  
 16 of overall?  
 17 MR. TILLEY:  
 18 A. I seem to recall focus on 2002, but I don't  
 19 recall any discussions about the numbers.  
 20 COFFEY, Q.C.:  
 21 Q. And during the first day or so, you gained an  
 22 appreciation that these test results had  
 23 potentially significant ramifications for  
 24 treatment?  
 25 MR. TILLEY:

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1 A. Yes, because it was tied into whether a  
 2 patient could benefit from a therapy such as  
 3 Tamoxifen.  
 4 COFFEY, Q.C.:  
 5 Q. Sir, did you ever receive during the summer of  
 6 2005, a written report from Dr. Williams about  
 7 this?  
 8 MR. TILLEY:  
 9 A. I know through looking through the evidence,  
 10 mind it, there's a letter there that was sent  
 11 to me by Dr. Williams about a page and a half  
 12 which summarizes the activities that he had  
 13 been involved with in relation to this issue.  
 14 COFFEY, Q.C.:  
 15 Q. Do you recall when it was you received that?  
 16 MR. TILLEY:  
 17 A. No, I don't.  
 18 COFFEY, Q.C.:  
 19 Q. And other than that, during the summer of  
 20 2005, summer I mean up to Labour Day, 2005,  
 21 did you receive any other written reports from  
 22 him?  
 23 MR. TILLEY:  
 24 A. No.  
 25 COFFEY, Q.C.:

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1 Q. Can you tell us why not?  
 2 MR. TILLEY:  
 3 A. Well, I had decided that I would participate  
 4 in the discussions, some of the discussions  
 5 that were actually going on so I could get a  
 6 direct opportunity to hear from the clinical  
 7 people about what was happening.  
 8 COFFEY, Q.C.:  
 9 Q. So I take it that means, in--I take it that  
 10 means, are you saying that, "Look, I was going  
 11 to be there anyway, so there was no point in  
 12 him writing a report to tell me what I had  
 13 already witnessed myself."  
 14 MR. TILLEY:  
 15 A. Well, that was a part of it. Also, there had  
 16 been a briefing note prepared, I recall seeing  
 17 which identified some of the significant  
 18 issues.  
 19 COFFEY, Q.C.:  
 20 Q. So you're dealing with Dr. Williams internally  
 21 within your organization. Who else are you  
 22 dealing with?  
 23 MR. TILLEY:  
 24 A. Dr. Cook.  
 25 COFFEY, Q.C.:

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1 Q. He was the clinical chief of -  
 2 MR. TILLEY:  
 3 A. I'm sorry, he was the clinical chief of  
 4 laboratory medicine. Representatives from the  
 5 quality initiatives department would be  
 6 Heather Predham at that point in time. I  
 7 believe she was acting director. And Susan  
 8 Bonnell because there was a -  
 9 COFFEY, Q.C.:  
 10 Q. Your director of communications?  
 11 MR. TILLEY:  
 12 A. Yes. Certainly a need to look at the  
 13 communications element of this. And that  
 14 group subsequently grew in other meetings that  
 15 I would have participated in.  
 16 COFFEY, Q.C.:  
 17 Q. And to include?  
 18 MR. TILLEY:  
 19 A. The director of laboratory medicine, Mr.  
 20 Gulliver; some of the oncologists, Dr. Laing  
 21 and Dr. McCarthy; another pathologist for at  
 22 least one meeting that I recall, Dr. Carter.  
 23 THE COMMISSIONER:  
 24 Q. I'm sorry, Doctor?  
 25 MR. TILLEY:

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1 A. Sorry, Carter.  
 2 THE COMMISSIONER:  
 3 Q. Carter.  
 4 MR. TILLEY:  
 5 A. Did I get that right?  
 6 COFFEY, Q.C.:  
 7 Q. Bev Carter?  
 8 MR. TILLEY:  
 9 A. Okay, yes, Bev Carter. There was a gentleman,  
 10 Mr. Dwyer who would have been involved.  
 11 COFFEY, Q.C.:  
 12 Q. That's Barry Dwyer?  
 13 MR. TILLEY:  
 14 A. Barry Dwyer, he would -  
 15 COFFEY, Q.C.:  
 16 Q. Dyer, actually, his name is Dyer, I think you-  
 17 -I'm sorry, go ahead.  
 18 MR. TILLEY:  
 19 A. There would have undoubtedly been discussions  
 20 with the whole executive team at some point in  
 21 time with regards to this issue.  
 22 COFFEY, Q.C.:  
 23 Q. Pat Pilgrim?  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. When did Ms. Pilgrim enter the matter?

3 MR. TILLEY:

4 A. My recollection is that Mrs. Pilgrim had

5 responsibility for cancer care within Eastern

6 Health, so that would have brought her into

7 the discussion through that means.

8 COFFEY, Q.C.:

9 Q. Did she come on or enter the discussion fairly

10 early on?

11 MR. TILLEY:

12 A. I don't recall in the early stages.

13 COFFEY, Q.C.:

14 Q. Okay. Now sir, so you're going to be involved

15 enough (phonetic) from your perspective, in a

16 physical presence way that you felt you could

17 forego receiving written reports or written

18 updated from Dr. Williams, you'd rely upon

19 your presence and verbal briefings?

20 MR. TILLEY:

21 A. It was certain verbal briefings. I wasn't

22 participating in all the discussions. I

23 recall that it was an evolving process and

24 there was new information coming with regards

25 to literature, with regards to positivity

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1 rates.

2 COFFEY, Q.C.:

3 Q. And I'll get to those in a moment. I just

4 wanted to get some sense of what structure, if

5 any, you put in place or what methodology you

6 were using to keep track of all this.

7 MR. TILLEY:

8 A. Okay.

9 COFFEY, Q.C.:

10 Q. And I take it you were relying upon whatever

11 handwritten notes you made and your own memory

12 in terms of attendance at meetings which you

13 recalled?

14 MR. TILLEY:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. And whatever you received by way of, I take

18 it, e-mails, those sorts of things, because

19 there were no written reports, per se?

20 MR. TILLEY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. And the idea, for example, that you might

24 receive an e-mail directly from someone such

25 as Heather Predham was not at all unusual,

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1 particularly as this developed?

2 MR. TILLEY:

3 A. Right. Well, Heather wouldn't have reported

4 directly to me. As a director she would

5 report to a vice-president.

6 COFFEY, Q.C.:

7 Q. And in this context that was who?

8 MR. TILLEY:

9 A. That was Dr. Williams in the Eastern Health

10 days. And I remember she was providing a great

11 deal of input in terms of literature searches

12 on the test itself, in particular.

13 COFFEY, Q.C.:

14 Q. She would have no particular expertise

15 involving pathology or oncology?

16 MR. TILLEY:

17 A. No. All she could do is pass on information

18 as part of her review.

19 COFFEY, Q.C.:

20 Q. So July 7th you're told there's a problem.

21 What's your next memory, based upon documents

22 or otherwise, in terms of actually that you

23 dealt with this issue?

24 MR. TILLEY:

25 A. Other than conversations with Dr. Williams to

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1 get an appreciation for what he was finding we

2 did--there was two groups that would have been

3 important for me, one would be the board chair

4 and the other would be government.

5 COFFEY, Q.C.:

6 Q. Yeah. And they'd begin around July, well,

7 depending upon what document one looks at,

8 18th, 19th, 20th, depending upon which one.

9 And I'll get to that in a moment.

10 MR. TILLEY:

11 A. That's correct.

12 COFFEY, Q.C.:

13 Q. But the first time Dr. Williams speaks to you

14 he mentions Dr. Ejeckam, in 2003?

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. What did he tell you about that?

19 MR. TILLEY:

20 A. I don't recall specifically. I believe I

21 received a later call from him speaking

22 specifically to Dr. Ejeckam in 2003.

23 COFFEY, Q.C.:

24 Q. Okay.

25 MR. TILLEY:

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1 A. So I don't have a belief that that issue was  
 2 raised other than to suggest that, you know,  
 3 Dr. Ejeckam may have headed up this or was  
 4 heading up this particular service.  
 5 COFFEY, Q.C.:  
 6 Q. Now, Dr. Ejeckam was still in St. John's at  
 7 that time, wasn't he?  
 8 MR. TILLEY:  
 9 A. Yes, he was.  
 10 COFFEY, Q.C.:  
 11 Q. In fact, he was still in the same building  
 12 where Dr. Williams was?  
 13 MR. TILLEY:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. When you spoke with Dr. Williams then or  
 17 shortly thereafter you were aware that he was  
 18 still in St. John's?  
 19 MR. TILLEY:  
 20 A. Yes, I would.  
 21 COFFEY, Q.C.:  
 22 Q. So in terms of finding out what Dr. Ejeckam  
 23 did or didn't do in 2003, I'm going to suggest  
 24 to you, was a relatively simple matter?  
 25 MR. TILLEY:

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1 A. Yes. Now, I'm not -  
 2 COFFEY, Q.C.:  
 3 Q. Just simply, you know, walk down the corridor,  
 4 walk down the stairs if you're Dr. Williams -  
 5 MR. TILLEY:  
 6 A. That's correct.  
 7 COFFEY, Q.C.:  
 8 Q. - and ask him?  
 9 MR. TILLEY:  
 10 A. Well, when the issue of 2003 was brought, and  
 11 I'm not sure if it was the first conversation  
 12 or a subsequent one, I remember saying to Dr.  
 13 Williams that that is obviously an important  
 14 issue and we need to get more information with  
 15 respect to what happened back then.  
 16 COFFEY, Q.C.:  
 17 Q. And so Dr. Williams, I presume, reported back  
 18 to you on that?  
 19 MR. TILLEY:  
 20 A. There's a number of references in the notes to  
 21 2003, so I -  
 22 COFFEY, Q.C.:  
 23 Q. So what were you given then to understand,  
 24 like, the next conversation or conversation or  
 25 two after that about Dr. Ejeckam? Like, by

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1 the end of the summer of '05 what did you  
 2 understand about Dr. Ejeckam?  
 3 MR. TILLEY:  
 4 A. My understanding was is that there was a  
 5 stoppage in the test itself and that was made  
 6 by Dr. Ejeckam and then a reactivation of it  
 7 and it was a professional decision that he and  
 8 his--or colleagues had made.  
 9 COFFEY, Q.C.:  
 10 Q. Now, did Dr. Williams, during the summer of  
 11 2005, tell you that he had been aware of this  
 12 back in 2003?  
 13 MR. TILLEY:  
 14 A. No. To the contrary, he had indicated that he  
 15 was not aware of it in 2003.  
 16 COFFEY, Q.C.:  
 17 Q. Did you ask him at that time how is that  
 18 possible?  
 19 MR. TILLEY:  
 20 A. I don't recall that question.  
 21 COFFEY, Q.C.:  
 22 Q. Can you tell us why not?  
 23 MR. TILLEY:  
 24 A. I just don't recall whether we talked about  
 25 it.

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1 COFFEY, Q.C.:  
 2 Q. Wouldn't it be fairly self evident that if he  
 3 was responsible in 2003 as the VP medial for  
 4 clinical laboratory services that presumably  
 5 he would be--it would have been brought to his  
 6 attention and did you discuss that with him?  
 7 MR. TILLEY:  
 8 A. I can't recall.  
 9 COFFEY, Q.C.:  
 10 Q. Wouldn't it have been important to know  
 11 whether or not he was aware?  
 12 MR. TILLEY:  
 13 A. Well, we certainly talked about the need to  
 14 follow-up on that issue.  
 15 COFFEY, Q.C.:  
 16 Q. Well, follow-up is simply picking up the phone  
 17 and calling Dr. Ejeckam or walking, or in his  
 18 case walking down the corridor, or in your  
 19 case inviting Dr. Ejeckam in for a meeting or  
 20 even going to his office?  
 21 MR. TILLEY:  
 22 A. Um-hm.  
 23 COFFEY, Q.C.:  
 24 Q. So it was fairly simply done, wasn't it, if  
 25 you wanted to know from Dr. Ejeckam?

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1 MR. TILLEY:  
 2 A. Dr. Ejeckam was accessible.  
 3 COFFEY, Q.C.:  
 4 Q. Can you explain to the Commissioner why, the  
 5 best you know, anyway, Dr. Ejeckam was not  
 6 approached?  
 7 MR. TILLEY:  
 8 A. I don't know if he was or not.  
 9 COFFEY, Q.C.:  
 10 Q. But you were never told he was?  
 11 MR. TILLEY:  
 12 A. Not specifically.  
 13 COFFEY, Q.C.:  
 14 Q. Did you find that strange at the time, someone  
 15 wouldn't go and ask him?  
 16 MR. TILLEY:  
 17 A. You know, it was an important issue. I'd be  
 18 surprised if somebody wouldn't have asked him  
 19 about it.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. Now, you were told about Dr. Ejeckam  
 22 2003 ER/PR. Were you told anything else  
 23 about, like, Dr. Ejeckam had suspended the  
 24 ER/PR testing in 2003 for a period of weeks,  
 25 you understood that. Did Dr. Williams make

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1 you aware that the suspension was wider than  
 2 that?  
 3 MR. TILLEY:  
 4 A. I don't recall that being referenced.  
 5 COFFEY, Q.C.:  
 6 Q. When did you first become aware of the extent  
 7 of the suspension of certain types of services  
 8 in 2003 that Dr. Ejeckam had initiated, when  
 9 did you first become aware of the actual  
 10 extent of that?  
 11 MR. TILLEY:  
 12 A. It was actually sometime in 2007 when I--when  
 13 the memo that Dr. Ejeckam had written was  
 14 shared with me.  
 15 COFFEY, Q.C.:  
 16 Q. And who did you receive it from?  
 17 MR. TILLEY:  
 18 A. Dr. Cook.  
 19 COFFEY, Q.C.:  
 20 Q. And how is it that Dr. Cook came to give it to  
 21 you?  
 22 MR. TILLEY:  
 23 A. Well, we were following up on the media  
 24 inquiry that I was referencing earlier this  
 25 morning -

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1 COFFEY, Q.C.:  
 2 Q. And that had resulted, I take it, from the  
 3 premier -  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. - referencing it in the House of Assembly?  
 8 MR. TILLEY:  
 9 A. Right. So I said, "Guys, come over here."  
 10 They came over to my office, it was Dr. Cook,  
 11 Denic, Dr. Howell, Mr. Gulliver, Susan Bonnell  
 12 would have been there in her capacity in  
 13 communications and I was aware -  
 14 COFFEY, Q.C.:  
 15 Q. This is late May, 2007?  
 16 MR. TILLEY:  
 17 A. Yes. This--it's certainly in that time frame.  
 18 I can't remember now if it's May or June. So  
 19 I wanted to get a specific idea as to this  
 20 issue.  
 21 COFFEY, Q.C.:  
 22 Q. I take it Dr. Ejeckam wasn't asked to join the  
 23 group because by then he was thousands of  
 24 miles away?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Go ahead. So they had shared with me the  
 4 correspondence which had indicated that Dr.  
 5 Ejeckam had, in fact, made a decision to  
 6 curtail a number of tests, that it was related  
 7 to the staining process, and then went on to  
 8 share with me that there was a surgical  
 9 pathology committee that had--that he had been  
 10 liaising with and there was minutes -  
 11 COFFEY, Q.C.:  
 12 Q. That who had been liaising with?  
 13 MR. TILLEY:  
 14 A. Sorry. There was a surgical pathology  
 15 committee that Dr. Ejeckam had been a part of.  
 16 COFFEY, Q.C.:  
 17 Q. He had actually chaired it?  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. But go on, yeah.  
 22 MR. TILLEY:  
 23 A. And there were minutes that showed that this  
 24 issue had been resolved to his satisfaction  
 25 and the tests reactivated. I remember they



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1 had talked about or we had talked about, well,  
 2 what was it that was put in place to resolve  
 3 this and it was issues to deal with space,  
 4 rotating staff and the technology that had  
 5 been acquired at the time. The question as to  
 6 whether by this time, obviously, or, well,  
 7 certainly by this time the question was, was  
 8 there any concern about a retroactive problem  
 9 here. And the answer was the decision was  
 10 being made by the professionals or had been  
 11 made by professionals and the assumption was  
 12 that because they didn't see it as an issue,  
 13 then it was not raised as an issue.  
 14 COFFEY, Q.C.:  
 15 Q. I'm sorry, raised when?  
 16 MR. TILLEY:  
 17 Q. Back in 2003.  
 18 COFFEY, Q.C.:  
 19 Q. Okay. So you were querying those at the  
 20 meeting?  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. As to why they hadn't gone back and done  
 25 retesting in 2003?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. At the time. And you were told what?  
 5 MR. TILLEY:  
 6 A. That we had the professionals involved in  
 7 this, they made a decision that was related to  
 8 staining and that the issue of retroactivity  
 9 was not seen to be an issue so it wasn't  
 10 raised beyond that.  
 11 COFFEY, Q.C.:  
 12 Q. And who was telling you this?  
 13 MR. TILLEY:  
 14 A. Well, that would have been a conversation that  
 15 I would have had with Dr. Cook. Dr. Denic was  
 16 there but I'm not sure Dr. Denic would have  
 17 been around in 2003. Mr. Gulliver would have  
 18 been there. So -  
 19 COFFEY, Q.C.:  
 20 Q. Did you see those memos at that time?  
 21 MR. TILLEY:  
 22 A. At that time, in 2007?  
 23 COFFEY, Q.C.:  
 24 Q. Yes.  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Did you ask anyone why you had not seen them  
 4 or been made aware of their contents before  
 5 that?  
 6 MR. TILLEY:  
 7 A. I know there were several discussions  
 8 throughout the preceding months or years with  
 9 regards to Dr. Ejeckam's 2003 staining issue,  
 10 but I have no specific recollection of asking  
 11 that question.  
 12 COFFEY, Q.C.:  
 13 Q. Ever--so you first saw the memos in May of  
 14 2007, the Ejeckam memos I'll refer to them as,  
 15 the three of them?  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. April 4th, May 2nd, June 19th, 2003. You  
 20 first saw them in May of '07. You received  
 21 them actually physically from whom, do you  
 22 recall who actually -  
 23 MR. TILLEY:  
 24 A. I recall that Dr. Cook or Dr. Denic arrived  
 25 with some binders where these memos and

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1 minutes were retained and they were removed  
 2 from that.  
 3 COFFEY, Q.C.:  
 4 Q. Now, sir, with respect to that matter at the  
 5 time, you, I gather, in July of 2005, had  
 6 asked or understood Dr. Williams was  
 7 investigating the Ejeckam matter?  
 8 MR. TILLEY:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. There had been discussions about it on and off  
 12 or references to it over the intervening  
 13 almost two years, correct?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Yet you're only actually seeing the memos in  
 18 May of 2007. Did you ask any of those  
 19 present, Cook or Denic, the two physicians,  
 20 "Gentlemen, you know, did Dr. Williams ever  
 21 ask you about these?"  
 22 MR. TILLEY:  
 23 A. My understanding is that Dr. Williams had been  
 24 involved in follow-up, but I can't be  
 25 specific.

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1 COFFEY, Q.C.:

2 Q. Okay. But you didn't ask Dr. Cook or Denic,

3 "Did Dr. Williams come looking for these?"

4 MR. TILLEY:

5 A. No, I didn't.

6 COFFEY, Q.C.:

7 Q. Did you speak to either Dr. Cook or Denic

8 about why or what they believed about or

9 thought about why it was only then you were

10 getting those? How could it be that from

11 July, 2005 to May, 2007 at a meeting where you

12 asked them to come in to see you?

13 MR. TILLEY:

14 A. Yes, I did.

15 COFFEY, Q.C.:

16 Q. And they show up and Dr. Cook produces these

17 memos?

18 MR. TILLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. And you'd been dealing with Dr. Cook, I'm

22 going to take you through material throughout

23 2005, middle of 2005 onward for quite a period

24 of time about ER/PR. Did you ask him,

25 "Doctor, why haven't I seen these before?"

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1 MR. TILLEY:

2 A. I don't recall asking that?

3 COFFEY, Q.C.:

4 Q. Why not?

5 MR. TILLEY:

6 A. I just, I don't recall asking the question.

7 COFFEY, Q.C.:

8 Q. And I appreciate you don't recall asking him,

9 I'm asking you why?

10 MR. TILLEY:

11 A. You're asking -

12 COFFEY, Q.C.:

13 Q. Why wouldn't you ask that question?

14 MR. TILLEY:

15 A. Well, you have professionals on staff, you

16 have physicians on staff, you don't micro-

17 manage a process. You have to rely upon the

18 people that are leading these areas and if

19 they had spoken to the effect that that issue,

20 from their perspective, was dealt with

21 appropriately, then I accepted that.

22 COFFEY, Q.C.:

23 Q. I appreciate that back in '03, but I'm asking

24 about in '05. In 2005, July, 2005, you

25 recognized or were told that this matter arose

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1 or something involving ER/PR and stains arose

2 in '03. These three memos you were given in

3 May of '07 involved those matters, yet you

4 don't ask the physician who is giving you the

5 memo, you know, I've been looking -- I wanted

6 to know about this two years ago, and that's

7 not your style, I take it, to actually say

8 that to somebody, explain yourself, as it

9 were, to say to him "explain yourself, explain

10 why I haven't gotten this". That's not your

11 style?

12 MR. TILLEY:

13 A. Well, it's not my style to look for blame.

14 COFFEY, Q.C.:

15 Q. Okay.

16 MR. TILLEY:

17 A. I am a strong advocate for making improvements

18 in a system, and my interest was on follow-up

19 clearly at that point in time.

20 COFFEY, Q.C.:

21 Q. Sir, in terms of blame, do you see it as blame

22 to actually ask somebody, well, why haven't

23 you done something, do you see that as a

24 blame?

25 MR. TILLEY:

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1 A. No.

2 COFFEY, Q.C.:

3 Q. Okay, so it's not really blame.

4 MR. TILLEY:

5 A. No.

6 COFFEY, Q.C.:

7 Q. Now with respect to that, the matter of Dr.

8 Ejeckam in 2003, did you ever discuss with Dr.

9 Williams how it was that he had not been aware

10 of this in 2003? Did he ever offer any

11 explanation to you?

12 MR. TILLEY:

13 A. Well --

14 COFFEY, Q.C.:

15 Q. First of all, did you ever ask for one?

16 MR. TILLEY:

17 A. Why he didn't know?

18 COFFEY, Q.C.:

19 Q. Yes.

20 MR. TILLEY:

21 A. Well, he had indicated to me that it wasn't

22 brought to his attention. I've subsequently

23 learned that at the time this was happening,

24 he had been away for health reasons for a

25 short period of time.

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1 COFFEY, Q.C.:

2 Q. You learned that from whom?

3 MR. TILLEY:

4 A. Probably Mr. Simmons.

5 COFFEY, Q.C.:

6 Q. Okay, and we'll -- there's documentation.

7 We'll deal with that.

8 MR. TILLEY:

9 A. Uh-hm.

10 COFFEY, Q.C.:

11 Q. But at the time, it certainly wasn't -- Dr.

12 Williams didn't offer that as an excuse to

13 you, look, I wasn't aware of it because I was

14 away on sick leave?

15 MR. TILLEY:

16 A. No, no.

17 COFFEY, Q.C.:

18 Q. And so you never did ask him about why he

19 wasn't aware. He never offered an explanation

20 to you as to why he wasn't aware other than it

21 just wasn't brought to his attention?

22 MR. TILLEY:

23 A. Right.

24 COFFEY, Q.C.:

25 Q. Have you ever asked Dr. Cook about the Ejeckam

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1 matter, the 2003 matter, other than to get the

2 memos from him, and why they didn't go

3 retroactive at the time? In retrospect, kind

4 of look back -- other than that, did you ever

5 ask Dr. Cook about what it was all about?

6 MR. TILLEY:

7 A. That's the time that I remember the most.

8 COFFEY, Q.C.:

9 Q. The May '07 meeting?

10 MR. TILLEY:

11 A. The May '07 meeting. Whether it would have

12 come up in any of the discussions, I can't

13 recall.

14 COFFEY, Q.C.:

15 Q. Did you ever ask Terry Gulliver about it?

16 MR. TILLEY:

17 A. I certainly don't recall.

18 COFFEY, Q.C.:

19 Q. Now with respect to again July, when you first

20 get involved in this matter, was it brought to

21 your attention in the first week or so as to

22 what the overall state of affairs was in terms

23 of the status of the investigation and who was

24 conducting it?

25 MR. TILLEY:

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1 A. Well, it was ongoing and Dr. Cook would have

2 been the prime leader of that. Who he had

3 mobilized, I'm not aware.

4 COFFEY, Q.C.:

5 Q. And so in terms of a person who actually could

6 look through the business end of a microscope

7 and understand what he or she was saying, Dr.

8 Cook was the one who was doing that?

9 MR. TILLEY:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. In a clinical sense?

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. With the clinical skills.

17 MR. TILLEY:

18 A. Of course, there was Dr. Carter as well. She

19 would have reported through Dr. Cook, so I

20 know that she was involved at one point in the

21 process.

22 COFFEY, Q.C.:

23 Q. So two physicians are involved, those two

24 physicians. Dr. Williams was managing, I take

25 it, the investigation from your perspective?

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1 MR. TILLEY:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. Who else -- like, who else was involved at

5 that point?

6 MR. TILLEY:

7 A. I raised earlier about the people that were

8 actually in the meeting that I attended.

9 COFFEY, Q.C.:

10 Q. I appreciate that, but I'm talking about even

11 before the meeting because I'm trying to get

12 some sense of what you were given to

13 understand as to the scope of the problem and

14 what was known about the scope of the problem?

15 MR. TILLEY:

16 A. Uh-hm, that there had been a number of

17 patients in 2002 that had converted.

18 COFFEY, Q.C.:

19 Q. The -- i.e. they retested and had already

20 converted?

21 MR. TILLEY:

22 A. Yes, on the new Ventana unit.

23 COFFEY, Q.C.:

24 Q. Any sense of the numbers? Possibly 16 of 25?

25 MR. TILLEY:

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1 A. Yeah.  
 2 COFFEY, Q.C.:  
 3 Q. That sound about right?  
 4 MR. TILLEY:  
 5 A. A dozen or so, but that number rings a bell.  
 6 COFFEY, Q.C.:  
 7 Q. And a dozen or so, 10 or 12 had been notified  
 8 of the change?  
 9 MR. TILLEY:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. So when you're first apprised of this in the  
 13 sense of, like, the first day or two, you  
 14 understand there's an index case, conversion  
 15 back around May of '05, we've been  
 16 investigating it, there are being retests  
 17 involving 2002, about 16 of 25 or so  
 18 converted, about 10 or 12 people had been told  
 19 --  
 20 MR. TILLEY:  
 21 A. Uh-hm.  
 22 COFFEY, Q.C.:  
 23 Q. So far about the conversions, and in the  
 24 meantime other retesting was going on. You  
 25 would have understood that?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Were you made aware in the first day or so  
 5 that the call had already gone out across  
 6 Newfoundland to pathologists to send in all  
 7 the negatives from 2002?  
 8 MR. TILLEY:  
 9 A. I know it happened, but I'm not sure actually  
 10 when I became aware of that.  
 11 COFFEY, Q.C.:  
 12 Q. Well, would it have been in the first day or  
 13 two or three, do you think?  
 14 MR. TILLEY:  
 15 A. It certainly could be very possible.  
 16 COFFEY, Q.C.:  
 17 Q. The first day or two or three after you first  
 18 --  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Heard of this. Did you ever raise with Dr.  
 23 Williams how it could have gotten that far  
 24 that other authorities are being asked to send  
 25 all their 2002 negatives into St. John's for

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1 retesting without me, George Tilley, knowing?  
 2 Did you ever raise that with Dr. Williams?  
 3 MR. TILLEY:  
 4 A. No.  
 5 COFFEY, Q.C.:  
 6 Q. Can you tell us why not?  
 7 MR. TILLEY:  
 8 A. Dr. Williams is a very conscientious  
 9 individual, very focused in on the patient,  
 10 always was an advocate for patient safety. I  
 11 valued his judgment and trusted his follow-up  
 12 on this.  
 13 COFFEY, Q.C.:  
 14 Q. What does -- does that have really anything,  
 15 though, to do with why he hadn't let you know?  
 16 MR. TILLEY:  
 17 A. I can't explain why he hadn't --  
 18 MR. TILLEY:  
 19 A. I'll be asking him that, but I'm asking you  
 20 from your perspective, because you didn't ask  
 21 him why it has been a number of weeks before  
 22 I, the CEO, was told. You didn't ask him  
 23 that.  
 24 MR. TILLEY:  
 25 A. I don't recall, no.

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1 COFFEY, Q.C.:  
 2 Q. Did you ask him why he called you that day,  
 3 why now?  
 4 MR. TILLEY:  
 5 A. The recollection that I have is it was around  
 6 that time that they felt this was more than a  
 7 few isolated cases.  
 8 THE COMMISSIONER:  
 9 Q. Mr. Coffey, whenever it's convenient for you,  
 10 we'll take the morning break.  
 11 COFFEY, Q.C.:  
 12 Q. We can do that now, Commissioner, actually.  
 13 THE COMMISSIONER:  
 14 Q. Fifteen minutes.  
 15 (RECESS)  
 16 THE COMMISSIONER:  
 17 Q. Mr. Coffey.  
 18 COFFEY, Q.C.:  
 19 Q. Thank you, Commissioner. Mr. Tilley, if you  
 20 could look, please, at P-075.  
 21 THE COMMISSIONER:  
 22 Q. Mr. Tilley, you have your own control there so  
 23 you can't -- if you want to have a look at a  
 24 particular document, scroll up and down.  
 25 MR. TILLEY:

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1 A. Sorry, Commissioner, does this control this  
 2 screen and not everybody here?  
 3 THE COMMISSIONER:  
 4 Q. It controls all of them, actually.  
 5 MR. TILLEY:  
 6 A. Oh!  
 7 COFFEY, Q.C.:  
 8 Q. You have control -- so when you go to reach  
 9 for it, you have control of everything.  
 10 MR. TILLEY:  
 11 A. I see.  
 12 COFFEY, Q.C.:  
 13 Q. If we could, please, before -- I apologize,  
 14 Registrar, please, P-068.  
 15 THE COMMISSIONER:  
 16 Q. 68.  
 17 COFFEY, Q.C.:  
 18 Q. 68, yes. Now, sir, these are -- this  
 19 particular page is -- I think it was created  
 20 by yourself. It's an excerpt from your own  
 21 telephone log pertaining to ER/PR and  
 22 pathology -- pathologist, I presume. Is that  
 23 --  
 24 MR. TILLEY:  
 25 A. I'm sorry?

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1 COFFEY, Q.C.:  
 2 Q. This is an excerpt from telephone log of  
 3 George Tilley pertaining to ER/PR and  
 4 pathologists.  
 5 MR. TILLEY:  
 6 A. Okay. So that's not my actual book itself,  
 7 that's my -  
 8 COFFEY, Q.C.:  
 9 Q. This is your own --  
 10 MR. TILLEY:  
 11 A. This is my summary version of it.  
 12 COFFEY, Q.C.:  
 13 Q. Okay.  
 14 MR. TILLEY:  
 15 A. That's why I didn't recognize it.  
 16 COFFEY, Q.C.:  
 17 Q. Okay.  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. And in creating this, you actually just copied  
 22 out what was in your book?  
 23 MR. TILLEY:  
 24 A. That was my intention.  
 25 COFFEY, Q.C.:

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1 Q. In terms of this, July 7th, there's reference  
 2 to Bob Williams, and could you just read that  
 3 out to us, please?  
 4 MR. TILLEY:  
 5 A. "You'll find that I too will have some  
 6 difficulty", but -- I'm thinking it says,  
 7 "standard procedure for testing antigen". I'm  
 8 not sure if that's mask or mark. "If estrogen  
 9 marker, then treat that way to unmask  
 10 receptor. Boil stain prior to 2004, semi-  
 11 automated, Dr. Ejeckam", and his name is not  
 12 spelled correctly, but that's how I understood  
 13 it at the time.  
 14 COFFEY, Q.C.:  
 15 Q. And then there's a -- go ahead, there's  
 16 another reference to Bob Williams.  
 17 MR. TILLEY:  
 18 A. Yes, sorry, with --  
 19 COFFEY, Q.C.:  
 20 Q. That would be 5 p.m, I take it?  
 21 MR. TILLEY:  
 22 A. Yes, and I'm not sure if that's the same day  
 23 or not, "presume that's not available. Five  
 24 p.m. meeting, letter to Dr. Ejeckam to  
 25 Gulliver, 2003; problem followed up. Meeting

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1 with surgeons, talked about advising public,  
 2 assess quality of service".  
 3 COFFEY, Q.C.:  
 4 Q. And then the next entry here in the telephone  
 5 log is the July 19th '05 meeting with Mr.  
 6 Ottenheimer?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. If we could, please, look at P-075 now. This  
 11 is page three, please. Now this is this  
 12 briefing note you referred to earlier of July  
 13 20th. You'll see it at the bottom right hand  
 14 side of the page, 2005. This is the third  
 15 page of the briefing note, Eastern Health  
 16 letterhead, actions, and we've had evidence  
 17 that this was given to the Minister of Health  
 18 on July 21st, 2005. The second last paragraph  
 19 reads, "Eastern Health, Vice President of  
 20 Quality Diagnostic and Medical Services, Dr.  
 21 Robert Williams, has also asked that an  
 22 investigation be conducted into the five week  
 23 stoppage of immunoperoxidase staining for  
 24 ER/PR receptors in 2003 by Dr. Ejeckam". I  
 25 take it that's the investigation you were

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1 referring to earlier?  
 2 MR. TILLEY:  
 3 A. Yes.  
 4 COFFEY, Q.C.:  
 5 Q. Do you know how it was known at that point  
 6 that there had been a five week stoppage?  
 7 MR. TILLEY:  
 8 A. I have no idea, sir.  
 9 COFFEY, Q.C.:  
 10 Q. Did you ask anybody?  
 11 MR. TILLEY:  
 12 A. I assume that it was stated because it was  
 13 known.  
 14 COFFEY, Q.C.:  
 15 Q. If we could go back, please, to P-068, page  
 16 one. If you look through this, in the second  
 17 entry under Bob Williams, 5 p.m. meeting.  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. It says, "Letter, Ejeckam to Gulliver, 2003".  
 22 See that?  
 23 MR. TILLEY:  
 24 A. Yes, I do.  
 25 COFFEY, Q.C.:

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1 Q. Now if we could go, please, to Exhibit 0467.  
 2 Now this is a -- the source of this document  
 3 is Pat Pilgrim, source in the sense that it  
 4 was obtained -- forwarded through Mr. Simmons  
 5 to our office, I gather, from Pat Pilgrim.  
 6 MR. TILLEY:  
 7 A. Uh-hm.  
 8 COFFEY, Q.C.:  
 9 Q. To the Commission, and there's a -- in fact,  
 10 info related, Dr. Ejeckam.  
 11 MR. TILLEY:  
 12 A. Okay.  
 13 COFFEY, Q.C.:  
 14 Q. Do you recognize that, did you keep any --  
 15 MR. TILLEY:  
 16 A. I can only see the title page.  
 17 COFFEY, Q.C.:  
 18 Q. Yeah, just that. You wouldn't have typed  
 19 anything like that if that's --  
 20 MR. TILLEY:  
 21 A. No, no.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. This characterization, "Info related,  
 24 Dr. Ejeckam", that wouldn't have been yours?  
 25 MR. TILLEY:

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1 A. No.  
 2 COFFEY, Q.C.:  
 3 Q. I'm asking in terms of your own filing system.  
 4 MR. TILLEY:  
 5 A. Oh!  
 6 COFFEY, Q.C.:  
 7 Q. Because by the time the Commission really got  
 8 going, you were no longer in your position.  
 9 MR. TILLEY:  
 10 A. That's correct.  
 11 COFFEY, Q.C.:  
 12 Q. So if -- did you keep, for example, a file  
 13 related to information related to Dr. Ejeckam?  
 14 MR. TILLEY:  
 15 A. Yes, I tried to keep a file with any  
 16 information tat was coming through.  
 17 COFFEY, Q.C.:  
 18 Q. So we'll have to hear from Ms. Pilgrim as to  
 19 this characterization, but it's quite possible  
 20 you had a file labelled Dr. Ejeckam or info?  
 21 MR. TILLEY:  
 22 A. I'd be surprised if it was Dr. Ejeckam. I  
 23 would more think it's ER/PR.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. If we do, though, turn the page --

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1 actually, go on to the next page, I'll just  
 2 scroll through here. Page two of the exhibit  
 3 is an e-mail from yourself, May 31st, 2007, at  
 4 5 p.m. to, I take it, the Board of Trustees?  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. Of Eastern Health, and as well it's copied to  
 9 the Executive Team, Eastern Health, May, 2005?  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. Who in practise is -- I take it that captures  
 14 a whole lot of people, does it?  
 15 MR. TILLEY:  
 16 A. That would be the Vice Presidents and the  
 17 Chief Operating Officers.  
 18 COFFEY, Q.C.:  
 19 Q. This is you making the Board of Trustees aware  
 20 of the matter?  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. Now you do reference here, "In the House of  
 25 Assembly yesterday, the Premier released an

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1 internal memo dated June, 2003, to the media  
 2 from the pathologist who is overseeing our  
 3 histochemistry lab to the Director of  
 4 Laboratory Medicine, in which the pathologist  
 5 raises concerns about ER/PR testing in 2003,  
 6 two years prior to the time the decision was  
 7 made to retest. The existence of the memo was  
 8 not made known to Bob Williams until the  
 9 summer of 2005 when we were discussing  
 10 retesting, and then, of course, Bob would have  
 11 informed me after that". In fact, that's  
 12 borne out by the -- your handwritten note on  
 13 P-068, page one, letter, Ejeckam to Gulliver,  
 14 2003?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. If we could turn, please, to page six of this  
 19 exhibit, and this is a memo from Dr. Ejeckam  
 20 to Terry Gulliver, dated June 19th, 2003. The  
 21 subject is immunohistochemical stains at  
 22 Health Science Centre, and it's three pages  
 23 long. Go to page nine, this is a memo to  
 24 pathologists from Dr. G. Ejeckam, May 2, 2003,  
 25 and we finally go to page 12, April 4th, 2003,

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1 memo to pathologists again from Dr. Ejeckam.  
 2 So the letter from Dr. Ejeckam to Mr. Gulliver  
 3 is the June 19th one? I'll just go back up to  
 4 page six here. Bear with me, please. I take  
 5 it that's the memo?  
 6 MR. TILLEY:  
 7 A. That's my understanding.  
 8 COFFEY, Q.C.:  
 9 Q. And you were made aware of the existence of  
 10 this memo certainly on or before July 19,  
 11 2005?  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. Yet you did not see it until May or June of  
 16 2007?  
 17 MR. TILLEY:  
 18 A. That's my recollection, yes.  
 19 COFFEY, Q.C.:  
 20 Q. Or what I presume it would be, or arguably by  
 21 the end of May, 2007.  
 22 MR. TILLEY:  
 23 A. Uh-hm.  
 24 COFFEY, Q.C.:  
 25 Q. Did you ever ask Dr. Williams in the summer of

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1 2005, look, Doctor, if you've got a memo from  
 2 Dr. Ejeckam to Mr. Gulliver, can I see it?  
 3 Did you ever ask to see the memo?  
 4 MR. TILLEY:  
 5 A. No.  
 6 COFFEY, Q.C.:  
 7 Q. Can you tell us why not?  
 8 MR. TILLEY:  
 9 A. Because I had all the confidence in Dr.  
 10 Williams in terms of review and investigation.  
 11 COFFEY, Q.C.:  
 12 Q. And did you ever receive a report from Dr.  
 13 Williams as to the results of his  
 14 investigation?  
 15 MR. TILLEY:  
 16 A. No.  
 17 COFFEY, Q.C.:  
 18 Q. Did you ever follow up with him?  
 19 MR. TILLEY:  
 20 A. There would have been references in meetings,  
 21 but a specific reference to that point, no.  
 22 COFFEY, Q.C.:  
 23 Q. Well, what kind of references would there be  
 24 in meetings then?  
 25 MR. TILLEY:

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1 A. That during some of the meetings that I was  
 2 involved in, there was discussion around the  
 3 2003 testing.  
 4 COFFEY, Q.C.:  
 5 Q. Yes.  
 6 MR. TILLEY:  
 7 A. I don't -- I have a recollection because of  
 8 the notes that I kept at the time that that  
 9 was discussed, but I can't recall what the  
 10 nature of the discussion was.  
 11 COFFEY, Q.C.:  
 12 Q. Well you had told, I gather or Eastern Health  
 13 in the July 20th, 2003 briefing note, P-0075  
 14 please? Right there at the bottom of the  
 15 third page, you had advised the Minister of  
 16 Health in writing on July 21st, 2005 that an  
 17 investigation was being conducted and yet you  
 18 actually never did follow up to find out from  
 19 Dr. Williams, look, what's the answer?  
 20 MR. TILLEY:  
 21 A. I don't have a written report, no.  
 22 COFFEY, Q.C.:  
 23 Q. And as best as you can recall, you were never  
 24 told what the result was?  
 25 MR. TILLEY:

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1 A. I can't recall.  
 2 COFFEY, Q.C.:  
 3 Q. And are you able to tell the Commissioner why  
 4 that is, why you never followed up?  
 5 MR. TILLEY:  
 6 A. Well, my recollection is that we would have  
 7 had a discussion with regards to that issue.  
 8 He certainly would have talked to Dr. Cook  
 9 about it. I can't say specifically if in fact  
 10 he met with Dr. Ejeckam or not, but felt that  
 11 that was an issue that was dealt with by those  
 12 individuals at the time.  
 13 COFFEY, Q.C.:  
 14 Q. Dr. Williams told you this?  
 15 MR. TILLEY:  
 16 A. Well that was my sense of the recollection  
 17 here, you know, we'd been meeting now on and  
 18 off on several occasions and there would have  
 19 been discussions about this.  
 20 COFFEY, Q.C.:  
 21 Q. But it never again gets mentioned in any of  
 22 the briefing notes that Eastern Health  
 23 prepares for the Department of Health, does  
 24 it?  
 25 MR. TILLEY:

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1 A. I will accept that.  
 2 COFFEY, Q.C.:  
 3 Q. Do you recall whether or not the Department of  
 4 Health ever asked afterward again about what  
 5 the result was of this investigation?  
 6 MR. TILLEY:  
 7 A. I don't recall any follow up.  
 8 COFFEY, Q.C.:  
 9 Q. And if we can look, please, at Exhibit P-0467,  
 10 page six. So this is that memo and apparently  
 11 it was known--its existence was known to both  
 12 Dr. Williams and yourself in July of 2005, its  
 13 existence?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Because you, before July 2005, you certainly  
 18 had not been aware of it?  
 19 MR. TILLEY:  
 20 A. I have no recollection of it before that date.  
 21 COFFEY, Q.C.:  
 22 Q. No, and you didn't see it at the time, but to  
 23 be told about it, presumably Dr. Williams,  
 24 well, must have had a copy. You assumed he  
 25 had a copy when he was talking to you about a

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1 memo from Ejeckam to Gulliver, 2003?  
 2 MR. TILLEY:  
 3 A. I really couldn't make that assumption.  
 4 COFFEY, Q.C.:  
 5 Q. Okay, you didn't even go that far with him to  
 6 see, well, have you got a copy?  
 7 MR. TILLEY:  
 8 A. I can't recall the specific details of the  
 9 conversation.  
 10 COFFEY, Q.C.:  
 11 Q. Okay, now back in 2003, you were CEO of  
 12 Eastern Health--I'm sorry, of the Health Care  
 13 Corporation at the time.  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Where this lab was located?  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Are you able to explain now, looking back on  
 22 it, how it was that the fact that stains or  
 23 the usage of stains was suspended for a period  
 24 of time and it wasn't brought to your  
 25 attention? Because those stains, I'm going to

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1 suggest to you, were being done for hospitals  
 2 all across the province.  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. You're providing a province-wide service, IHC  
 7 staining. And how is it that this could  
 8 happen and the CEO would not be made aware of  
 9 it?  
 10 MR. TILLEY:  
 11 A. Well I guess it needs to be put in the context  
 12 that there are in St. John's hospitals alone,  
 13 tens of thousands of patient interactions,  
 14 five or six thousand staff, five hundred  
 15 physicians. There is a limit in terms of what  
 16 the CEO can realistically be involved in. You  
 17 have processes set up, structures set up to  
 18 deal with these issues and obviously at that  
 19 point in time it was dealt with -  
 20 COFFEY, Q.C.:  
 21 Q. At some level below you?  
 22 MR. TILLEY:  
 23 A. Yes..  
 24 COFFEY, Q.C.:  
 25 Q. Now you've had the opportunity, I take it, to



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1 read this memo since, the June 19th, 2003  
 2 memo?  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. The subject matter, at least as written there,  
 7 do you think that it would have been important  
 8 for that subject matter to be brought to your  
 9 attention?  
 10 MR. TILLEY:  
 11 A. I have to rely on the vice-presidents to make  
 12 a decision in terms of whether they feel  
 13 something is of significance to bring it to my  
 14 attention.  
 15 COFFEY, Q.C.:  
 16 Q. Looking at page 8, please, paragraph 6, now  
 17 sir, paragraph 6, can you just read that out  
 18 loud for me please?  
 19 MR. TILLEY:  
 20 A. "Finally it is pertinent to mention that  
 21 results of immuno stains are extremely  
 22 important in histopathologic diagnosis,  
 23 especially where classification of lymphoma  
 24 and determination of benign or malignancy of  
 25 certain lesions. For example, in the

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1 prostrate biopsies, depend on crisp reliable  
 2 and reproducible staining results. Diagnosis  
 3 based on inappropriate immuno stain will  
 4 surely jeopardize patient care and may even  
 5 expose HCCSJ litigation. Therefore, it will  
 6 be ill advised to operate an unreliable and  
 7 erratic immunohistochemical procedure in our  
 8 laboratory."  
 9 COFFEY, Q.C.:  
 10 Q. And down toward the bottom of the page, this  
 11 is copied to Dr. Desmond Robb, who is the AGL  
 12 chairman, discipline of laboratory medicine.  
 13 What would "AGL" stand for?  
 14 MR. TILLEY:  
 15 A. I don't know what AGL stands for.  
 16 COFFEY, Q.C.:  
 17 Q. Dr. D. Cook, clinical chief and site chief at  
 18 St. Clare's. So he's clinical chief of  
 19 laboratory medicine for all of the Health Care  
 20 Corporation of St. John's.  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. And site chief at St. Clare's. Dr. S. Parai,  
 25 the site chief at the Health Sciences Centre

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1 and Barry Dyer, the manager of histopathology.  
 2 Now bearing in mind the contents of paragraph  
 3 six and whom it's copied to, do you think that  
 4 the subject matter in paragraph six, for  
 5 example, if a physician who apparently had the  
 6 authority or was given or allowed the  
 7 authority to shut down or the use of certain  
 8 stains for a period of time because of  
 9 concerns he had about them, writes this sort  
 10 of a memo, particularly paragraph six, would  
 11 you have expected that the subject matter  
 12 there, be brought to your attention as CEO?  
 13 MR. TILLEY:  
 14 A. I would have expected it to be brought to the  
 15 appropriate vice-president. I would expect it  
 16 to be brought to the quality process if  
 17 there's a concern here that the organization  
 18 is doing something that might be putting  
 19 patients at risk.  
 20 COFFEY, Q.C.:  
 21 Q. The contents at paragraph six suggest the  
 22 patients might be at risk?  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. Are you able to explain then why it wasn't  
 2 brought to your attention?  
 3 MR. TILLEY:  
 4 A. No.  
 5 THE COMMISSIONER:  
 6 Q. You said you would expect it to be brought to  
 7 the attention of the appropriate VP who, in  
 8 2003 would have been?  
 9 COFFEY, Q.C.:  
 10 Q. Bob Williams.  
 11 MR. TILLEY:  
 12 A. Dr. Williams.  
 13 THE COMMISSIONER:  
 14 Q. And the other thing was quality?  
 15 MR. TILLEY:  
 16 A. Initiatives.  
 17 THE COMMISSIONER:  
 18 Q. And that would have been?  
 19 MR. TILLEY:  
 20 A. That would have been Dr. Williams in terms of  
 21 the vice-president, but the Quality  
 22 Initiatives Department is a support to all  
 23 areas of the organization and in particular  
 24 any issues that of a risk management nature  
 25 would tend to be supported through that

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1 service.  
 2 THE COMMISSIONER:  
 3 Q. I think I understand what it is Dr. Williams  
 4 would do as VP, but I'm still not sure I  
 5 understand what Quality Initiatives Department  
 6 does?  
 7 MR. TILLEY:  
 8 A. Okay. Back in the early 90's, probably a  
 9 little bit earlier than that, Commissioner,  
 10 throughout the Canadian health care system  
 11 there was a real push towards quality  
 12 assurance that various structures and  
 13 processes would be put in place to ensure  
 14 appropriate outcomes. As an outflow of that,  
 15 hospitals started to create these support  
 16 people who would go and assist various  
 17 programs or departments to ensure that those  
 18 structures, whether it be manuals or  
 19 monitoring processes would be in place, so  
 20 it's a level of expertise that you're  
 21 bringing. That got added to as years went on  
 22 to include utilization managers, so somebody  
 23 who monitors the patient flow and the  
 24 efficiency of patient flow and also got added  
 25 to in terms of risk management. And that

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1 person has a full realm of responsibilities,  
 2 but includes helping departments look for  
 3 potential risk areas and to help them think  
 4 about where there are potential to identify  
 5 risks, how you might control risks and  
 6 evaluate risks. So it is a support  
 7 department. They are obviously limited in  
 8 terms of their technical background, though  
 9 most of them would have been clinical people,  
 10 I suspect most of them would have been nurses  
 11 by training. So the reason I referred to them  
 12 as a possible source for that to be discussed  
 13 is because as part of the risk managers task,  
 14 any issues with regards to litigation would be  
 15 co-ordinated through there.  
 16 THE COMMISSIONER:  
 17 Q. Okay, so from what you're telling me, it's  
 18 almost like the function of an IT department,  
 19 for example. So somebody comes in, if you  
 20 have a problem internally, although your  
 21 description seems to be a bit wider, as I  
 22 understand it, you're saying they would assist  
 23 the divisions themselves in the development of  
 24 quality control initiatives, policy manuals,  
 25 all that kind of things, and it deals with

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1 risk management as well, as a result of sort  
 2 of later add ons?  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 THE COMMISSIONER:  
 6 Q. And the reason that the Quality Initiatives  
 7 Department would have been involved in this  
 8 case, was because of its risk management  
 9 aspect, not because of those other things?  
 10 MR. TILLEY:  
 11 A. Not because of?  
 12 THE COMMISSIONER:  
 13 Q. Those other things that you listed that they  
 14 did.  
 15 MR. TILLEY:  
 16 A. Oh yes, that's correct. So there is certainly  
 17 an issue there in terms of the quality of the  
 18 lab service and certainly there's a potential,  
 19 therefore, to bring in the quality initiatives  
 20 people.  
 21 THE COMMISSIONER:  
 22 Q. All right. Mr. Coffey, sorry, I interrupted  
 23 again.  
 24 COFFEY, Q.C.:  
 25 Q. No, thank you, Commissioner. So if we could

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1 look then to the same exhibit please, page 12  
 2 and I appreciate you didn't see this memo  
 3 until April 4, 2003 memo from Dr. Ejeckam to  
 4 pathologists, HSC, Health Sciences site, St.  
 5 Clare's and out of town hospitals until May of  
 6 2007, you wouldn't have seen it, but you did  
 7 see it in May of 2007 at that meeting you  
 8 described?  
 9 MR. TILLEY:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. You saw it, you would have read it at the  
 13 time?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Dr. Ejeckam has written "And please note that  
 18 immunohistochemical stains with the following  
 19 antibodies"--and he lists eight, the last two  
 20 are ER and PR--"have remained unreliable,  
 21 erratic and therefore unhelpful for diagnostic  
 22 purposes. Consequently the above staining  
 23 with these antibodies shall stop forthwith  
 24 until we can solve the reliability,  
 25 sensitivity and specificity problems. Efforts

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1 are underway and hopefully a solution will be  
 2 found within the next four to six weeks. You  
 3 will be duly informed when such stains can  
 4 resume." So having read that at your meeting  
 5 in May of 2007, you then, I take it, spoke  
 6 with Dr. Cook and Dr. Denic about this?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. If we could go back please to page two of this  
 11 exhibit? On May 31st that evening at 5:00,  
 12 this e-mail went out to the Board of Trustees  
 13 of Eastern Health from yourself and--now here  
 14 you've noted that, about how the existence of  
 15 the memo became public in your first  
 16 paragraph. The second paragraph you referred  
 17 to having done a technical for the CBC media  
 18 prior to a subsequent interview with Nash  
 19 Denic and yourself that afternoon. And you  
 20 list the people at the technical briefing.  
 21 And the points that were made included, "The  
 22 2003 memo was dealt with as part of the  
 23 ongoing lab quality control program." Do you  
 24 see that?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Who made that assertion?  
 4 MR. TILLEY:  
 5 A. I'm expecting--assuming it was Dr. Cook.  
 6 COFFEY, Q.C.:  
 7 Q. Was that the first that you had heard of that?  
 8 MR. TILLEY:  
 9 A. Pardon me?  
 10 COFFEY, Q.C.:  
 11 Q. Is it the first that you had heard of that?  
 12 MR. TILLEY:  
 13 A. Of the 2003 memo?  
 14 COFFEY, Q.C.:  
 15 Q. No, of the quality--of it having been dealt  
 16 with as part of an ongoing lab quality control  
 17 program. Dr. Ejeckam's activities in 2003  
 18 having been so characterized.  
 19 MR. TILLEY:  
 20 A. Well, my expectation--my understanding is that  
 21 it would have been picked up by Dr. Ejeckam  
 22 through whatever mechanism he had in place to  
 23 monitor quality within the laboratory.  
 24 COFFEY, Q.C.:  
 25 Q. Do you know if he was monitoring quality

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1 within the laboratory at the time?  
 2 MR. TILLEY:  
 3 A. I can't speak to it with certainty, but I  
 4 would expect him to.  
 5 COFFEY, Q.C.:  
 6 Q. Why is that?  
 7 MR. TILLEY:  
 8 A. Well, as a physician that has oversight for  
 9 this particular test, then I -  
 10 COFFEY, Q.C.:  
 11 Q. At the time this was going on?  
 12 MR. TILLEY:  
 13 A. Sorry?  
 14 COFFEY, Q.C.:  
 15 Q. In 2003 he had oversight for IHC testing?  
 16 MR. TILLEY:  
 17 A. He obviously had the ability to shut it down.  
 18 So, I'm thinking of him in that capacity.  
 19 COFFEY, Q.C.:  
 20 Q. Okay.  
 21 MR. TILLEY:  
 22 A. That there was some mechanisms obviously that  
 23 he would use to ensure the quality of the  
 24 process.  
 25 COFFEY, Q.C.:

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1 Q. And does that have any significance here? Why  
 2 was it important to tell CBC that?  
 3 MR. TILLEY:  
 4 A. I suspect it was just part of the process of  
 5 information sharing.  
 6 COFFEY, Q.C.:  
 7 Q. Now, the last bullet under that paragraph,  
 8 under the points that were made, include, it  
 9 says, "Other correspondence we share with the  
 10 media".  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. I take it that that's the other memos and the  
 15 minutes of these meetings, the Surgical  
 16 Pathology Review Committee. Is that what  
 17 we're talking about here?  
 18 MR. TILLEY:  
 19 A. Yes, that's my recollection, yes.  
 20 COFFEY, Q.C.:  
 21 Q. Now, did Doctor--I notice that Terry Gulliver,  
 22 no one from the actual technologist side is at  
 23 this meeting or this briefing. Or at least is  
 24 not -  
 25 MR. TILLEY:

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1 A. Not referenced. I seem to recall Mr. Gulliver  
 2 being there at some point in that there was  
 3 some request by Dr. Denic to actually bring  
 4 over slides so that he could help speak to  
 5 this bigger issue. And I wonder if Mr.  
 6 Gulliver had actually brought those over.  
 7 COFFEY, Q.C.:  
 8 Q. If we could go on then--but he in terms of  
 9 actually participating as an active  
 10 participant, he wasn't being offered up as -  
 11 MR. TILLEY:  
 12 A. I don't recall, no.  
 13 COFFEY, Q.C.:  
 14 Q. So, in terms of this technical briefing  
 15 involving the media, it wasn't seen fit or  
 16 thought appropriate by whoever organized the  
 17 briefing, to actually have someone who has the  
 18 physical skill to actually produce a slide  
 19 participate.  
 20 MR. TILLEY:  
 21 A. I certainly don't recall the discussion about  
 22 it.  
 23 COFFEY, Q.C.:  
 24 Q. Now, the bottom of that page, the questions of  
 25 the media were many including why was

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1 something not done about this in 2003? And  
 2 you've told the trustees, the answer was that  
 3 the focus at that time was about tissue  
 4 staining. And there was no indications of a  
 5 results concern. Unlike in 2005 when there  
 6 was an index case involving changed results  
 7 which precipitated a review on subsequent  
 8 retesting. Now, we told them that the  
 9 concerns in the memo were not shared at that  
 10 time beyond the lab and the Surgical Pathology  
 11 Review Committee which consisted of  
 12 pathologists, surgeons and oncologists, a  
 13 quality oversight committee. So, this quality  
 14 oversight committee is the Surgical Pathology  
 15 Review Committee. And they asked why it was  
 16 not shared with the administration at the  
 17 time. And we responded, it would not come to  
 18 our attention unless there was specific  
 19 recommendations flowing from it. There had  
 20 been recommendations hadn't there? Look at  
 21 that June 19 memo.  
 22 MR. TILLEY:  
 23 A. Sorry, is that scrolled down below.  
 24 COFFEY, Q.C.:  
 25 Q. I apologize, yes, I'm sorry. There we are.

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1 MR. TILLEY:  
 2 A. The recommendations were about centralizing  
 3 the service and not rotating the staff and the  
 4 equipment.  
 5 COFFEY, Q.C.:  
 6 Q. That's in the June 19 memo?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. So, therefore, there were specific  
 11 recommendations in Dr. Ejeckam's memo of June  
 12 19, 2003, correct?  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. Very specific ones.  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. And yet you're telling the media that it would  
 21 not come to the attention of the  
 22 administration unless there was specific  
 23 recommendations flowing from it.  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. But there had been specific recommendations  
 3 that flowed from it.  
 4 MR. TILLEY:  
 5 A. That's correct.  
 6 COFFEY, Q.C.:  
 7 Q. So, why then wasn't it brought to the  
 8 administration's attention?  
 9 MR. TILLEY:  
 10 A. Well, I'm thinking that at least two of the  
 11 issues were issues that the laboratory  
 12 medicine program could resolve within the  
 13 program. The issue with regards to technology  
 14 would certainly be flowed through the capital  
 15 equipment process.  
 16 COFFEY, Q.C.:  
 17 Q. In other words, buying the Ventana.  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. The two Ventana machines.  
 22 MR. TILLEY:  
 23 A. Ventana, I'm not sure if there's one or two to  
 24 be honest.  
 25 COFFEY, Q.C.:

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1 Q. We're going to hear evidence, I gather, that  
 2 there are two -  
 3 MR. TILLEY:  
 4 A. Okay.  
 5 COFFEY, Q.C.:  
 6 Q. - Ventana machine or machines. That would  
 7 involve an expenditure of funds.  
 8 MR. TILLEY:  
 9 A. That's right.  
 10 COFFEY, Q.C.:  
 11 Q. That would come to the administration's  
 12 attention.  
 13 MR. TILLEY:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. The rationale for it, presumably.  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. And if that arose or flowed from Dr. Ejeckam's  
 21 memo, should its existence and rationale have  
 22 been brought to your attention?  
 23 MR. TILLEY:  
 24 A. It would have been desirable, yes.  
 25 COFFEY, Q.C.:

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1 Q. Now, to go back, just at the bottom of the  
 2 first page of your e-mail, you've told the  
 3 trustees, the answer was that "the focus at  
 4 that time was about tissue staining and there  
 5 was no indication of a results concern.  
 6 Unlike in 2005 when there was an index case  
 7 involving changed results which precipitate  
 8 the review on subsequent retesting". Now, I'm  
 9 going to suggest to Mr. Tilley, that you can't  
 10 have a changed results unless you do at least  
 11 one retest. Can you? You have to retest  
 12 something to -  
 13 MR. TILLEY:  
 14 A. That's correct.  
 15 COFFEY, Q.C.:  
 16 Q. - get a changed result. So, if you never  
 17 actually retest something, you're not going to  
 18 get a changed result.  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. So, is it really an answer to say that it was  
 23 no concerns in 2030, that we had not changed  
 24 results because we didn't do any retesting, is  
 25 that really an answer?

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1 MR. TILLEY:  
 2 A. Well, what it says here is that there was no  
 3 indication of a results concern and that was  
 4 the information that I would have been  
 5 provided with at that time.  
 6 COFFEY, Q.C.:  
 7 Q. Well, when we look at page 12, please. Dr.  
 8 Ejeckam in early April 2003 had written that  
 9 "the immunohistochemical stains, the eight of  
 10 them, those antibodies have remained  
 11 unreliable, erratic and therefore, unhelpful  
 12 for diagnostic purposes". Isn't unreliable,  
 13 erratic and therefore unhelpful for diagnostic  
 14 purposes related to a results concern?  
 15 MR. TILLEY:  
 16 A. Well, if in fact--my interpretation of it is  
 17 that if the pathologist was seeing those  
 18 things, they simply wouldn't read the slide.  
 19 So, they would send it back for reprocessing.  
 20 COFFEY, Q.C.:  
 21 Q. Who gave you that understanding?  
 22 MR. TILLEY:  
 23 A. I mean, I'm working on the basis of a  
 24 conversation now with the two senior  
 25 pathologists that I was dealing with, Dr. Cook

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1 and Denic.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. And that would be the May 2007 meeting?  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. Did you ask them whether they had received Dr.  
 8 Ejeckam's memos back in 2003, the April 4 and  
 9 the May 2 one? Did you ask those two  
 10 gentlemen, did you fellows receive these?  
 11 MR. TILLEY:  
 12 A. I can't recall having that discussion though I  
 13 think you mentioned earlier that Dr. Cook was  
 14 copied on one.  
 15 COFFEY, Q.C.:  
 16 Q. Well, that's the June 19 one.  
 17 MR. TILLEY:  
 18 A. Okay.  
 19 COFFEY, Q.C.:  
 20 Q. He happens to be copied on that. There's no  
 21 sign that Dr. Denic was, but the May 2, 2003  
 22 one and the April 4, 2003 one are both  
 23 addressed to pathologists -  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. - simpliciter at the Health Sciences Centre,

3 St. Clare's.

4 MR. TILLEY:

5 A. Good point.

6 COFFEY, Q.C.:

7 Q. So, did you raise it with them as to--Dr. Cook

8 or Denic, you know, did you fellows get this

9 back in '03?

10 MR. TILLEY:

11 A. I can't remember that conversation per se.

12 COFFEY, Q.C.:

13 Q. Did you ask Dr. Cook that time or Dr. Denic,

14 for that matter, whether they had ever spoken

15 to Dr. Ejeckam about it, about the issue?

16 MR. TILLEY:

17 A. I can't imagine that we wouldn't have talked

18 about that, but I can't specifically recall

19 that discussion.

20 COFFEY, Q.C.:

21 Q. Okay. Now, if we can look please at Exhibit

22 P-0401, I'll just scroll down. This came from

23 Pat Pilgrim, came in the sense of--I gather it

24 was gathered up by that, a lady and sent

25 through Mr. Simmons to the Commission. This

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1 second page is a memo on Legislative and

2 Regulatory Affairs, Department of Health and

3 Community Services letterhead, stamped office

4 of the CEO, February 23, 2006, Eastern Health

5 has it received. The memo is to yourself from

6 Reg Coates. And who is Reg Coates?

7 MR. TILLEY:

8 A. Reg Coates is the solicitor in the Department

9 of Health.

10 COFFEY, Q.C.:

11 Q. You think he's a lawyer?

12 MR. TILLEY:

13 A. Yes, I believe.

14 COFFEY, Q.C.:

15 Q. That's your understanding anyway.

16 MR. TILLEY:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. It's cc'd to Tansy Mundon and Moira Hennessey.

20 Tansy was the Director of Communications for

21 the Department of Health.

22 MR. TILLEY:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. And Moira Hennessey was the ADM responsible

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1 for the health authorities.

2 MR. TILLEY:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. And Mr. Coates has written to you, he calls

6 you George. I take it--do you know him

7 personally?

8 MR. TILLEY:

9 A. Well, enough to call Reg and George, yes.

10 COFFEY, Q.C.:

11 Q. Okay. It says, "please find attached a draft

12 response to HSC ATI 06003 regarding a request

13 for information concerning a breast screening

14 test ER/PR receptors, much of the information

15 related to this request would reside with your

16 organization. In reviewing our records, we

17 found several e-mail and a number of briefing

18 notes. Based on our assessment, we have

19 determined the e-mail traffic from Ross Reid

20 is essentially personal information. Even if

21 we severe Mr. Reid's name, the potential

22 exists that someone could recognize the

23 individual patient based on circumstances

24 described. Therefore, based on Section 30, we

25 have decided to severe three e-mail in their

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1 entirety. With respect to the briefing notes,

2 we reviewing them in the context of paragraph

3 21(a) of ATTIPA, but do not believe that any

4 material is subject to that exemption. The

5 text and the briefing notes does not, in our

6 opinion, amount to policy advice. We would

7 like your opinion on our draft response as

8 soon as possible".

9 Now sir, what was your understanding

10 about why, in the end of February 2006, this

11 was being sent to you?

12 MR. TILLEY:

13 A. They were going to, obviously, make a decision

14 as to how much information was going to be

15 released. And they sent it to us to review

16 that and provide any feedback with respect to

17 any other issues that might have been

18 restricted.

19 COFFEY, Q.C.:

20 Q. Now, do you know if you ever did speak with

21 Mr. Coates about this matter?

22 MR. TILLEY:

23 A. I do. I think it was a couple of weeks later.

24 COFFEY, Q.C.:

25 Q. Go ahead, what happened? How did that come

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1 about?

2 MR. TILLEY:

3 A. Well, typically any time that we get or the

4 organization got a freedom of information

5 request, the process that we would use is to

6 have a person designated to review those. So,

7 when this would have come in, I don't know how

8 many pages, but I think it was quite

9 extensive. I would have referred that to

10 somebody, whichever person or persons would be

11 appropriate to review it.

12 COFFEY, Q.C.:

13 Q. Who's that?

14 MR. TILLEY:

15 A. It would be someone in the Quality Department,

16 but the name I can't tell you.

17 COFFEY, Q.C.:

18 Q. So, this it he same Quality Department you

19 were describing to the Commissioner?

20 MR. TILLEY:

21 A. Yes, that's correct.

22 COFFEY, Q.C.:

23 Q. Who are involved with litigation issues.

24 MR. TILLEY:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. Amongst other things, but litigation issues.

3 MR. TILLEY:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Okay.

7 MR. TILLEY:

8 A. So, I wouldn't have been able to go through

9 that in the detail myself. So, I would refer

10 it out. And I think sometime in March I had a

11 subsequent conversation with Mr. Coates to

12 give him the feedback that I had gotten.

13 COFFEY, Q.C.:

14 Q. Do you recall who it was?

15 MR. TILLEY:

16 A. Sorry, that had given to me?

17 COFFEY, Q.C.:

18 Q. Yes. If you're going to tell Mr. Coates

19 redact or expunge or omit certain things from

20 a government response, Department of Health

21 response for an ATIPPA request, wouldn't you

22 remember? This is the beginning of ATIPPA.

23 MR. TILLEY:

24 A. Yes. Well, there's a lot happening in my

25 office and I am not able to be able to say who

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1 that was specifically.

2 COFFEY, Q.C.:

3 Q. Yeah. And, actually, if we look at the

4 Exhibit P-0129, please, which is the actual--

5 I'll scroll down through this, Mr. Tilley,

6 you'll see that the first two pages of it--

7 actually, the first three pages of this

8 exhibit are the response to Mark Quinn of CBC

9 dated March 9th, 2006, signed by John G.

10 Abbott, Deputy Minister, copied to yourself.

11 And this is the response to that memo that Mr.

12 Coates or the subsequent response to Mr. Quinn

13 that the draft of which Mr. Coates had sent

14 over to you. If we actually look at the

15 exhibit, if we could go, please, to page 18?

16 Scroll down. You'll see that page 18 is the

17 end of the exhibit, okay.

18 MR. TILLEY:

19 A. Okay.

20 COFFEY, Q.C.:

21 Q. So the actual--other than the actual letter,

22 text of the letter which is three pages long,

23 pages 4 through 18 are the actual text.

24 MR. TILLEY:

25 A. Okay.

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1 COFFEY, Q.C.:

2 Q. That's being sent out. And if we look,

3 please, at page 6, now this is this July 20th,

4 2005 briefing note that had been given to the

5 minister of health on July 21st, 2005. And we

6 see a blank space there in the second-last

7 paragraph, and that's the paragraph dealing

8 with Dr. Ejeckam?

9 MR. TILLEY:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. 2003. Do you know why that's not there?

13 MR. TILLEY:

14 A. Well, I remember following the interview

15 process that I would have had with you in the

16 fall, you referencing the notes that were made

17 in the Department of Health on that issue.

18 COFFEY, Q.C.:

19 Q. Yes.

20 MR. TILLEY:

21 A. And it had the letters QA attached to it. QA

22 would be a term to identify quality assurance.

23 And my recollection is that the advice that

24 had been forwarded on to me was that that

25 issue was a part of the quality assurance

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1 program and therefore fell under the auspices  
 2 of the legislation that would protect that  
 3 information. So that was passed on to Mr.  
 4 Coates.  
 5 COFFEY, Q.C.:  
 6 Q. By?  
 7 MR. TILLEY:  
 8 A. Me.  
 9 COFFEY, Q.C.:  
 10 Q. Now, would it have been Dr. Williams was  
 11 telling you this?  
 12 MR. TILLEY:  
 13 A. I don't recollect who it was.  
 14 COFFEY, Q.C.:  
 15 Q. But particular attention would have--your  
 16 attention would have had to been drawn to that  
 17 particular paragraph?  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. Did you examine this memo in relation to any  
 22 other QA issues?  
 23 MR. TILLEY:  
 24 A. I didn't look at it, is my recollection. I  
 25 sent it to the appropriate place in the

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1 organization, which is somebody within the  
 2 quality initiatives department and got a  
 3 response. I think there was a -  
 4 COFFEY, Q.C.:  
 5 Q. And you don't recall from whom?  
 6 MR. TILLEY:  
 7 A. I can't recall.  
 8 COFFEY, Q.C.:  
 9 Q. Okay.  
 10 MR. TILLEY:  
 11 A. I don't know if my telephone log refers to it  
 12 or not.  
 13 COFFEY, Q.C.:  
 14 Q. And, for example, if we just look a bit  
 15 further up the page, "A technology consultant  
 16 from Mount Sinai will be reviewing our  
 17 laboratory to assess the immunoperoxidase  
 18 system. At that time we will ask the  
 19 consultant his or her opinion of the past  
 20 several years' results under the DAKO  
 21 methodology and for advice on the future  
 22 direction of the immuno service."  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. Now, how does that differ--in fact, I'm going  
 2 to suggest to you that there's a lot more  
 3 potentially about quality there than there is  
 4 in the paragraph involving Dr. Ejeckam?  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. So how does that -  
 9 MR. TILLEY:  
 10 A. Well, all I can say is to repeat what I had  
 11 indicated before. There was a reference to  
 12 quality assurance and I passed that  
 13 information on.  
 14 COFFEY, Q.C.:  
 15 Q. Now, as of March 9th, 2006, which is the date  
 16 that Mr. Quinn is getting his response, the  
 17 fact that Dr. Ejeckam had suspended the  
 18 testing or usage of certain stains in 2003 was  
 19 not publicly known, was it?  
 20 MR. TILLEY:  
 21 A. No.  
 22 COFFEY, Q.C.:  
 23 Q. In fact, it wasn't publicly known until more  
 24 than a year later?  
 25 MR. TILLEY:

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1 A. That's correct.  
 2 COFFEY, Q.C.:  
 3 Q. See, Mr. Tilley, here you're asking--you're  
 4 telling the Commissioner, look, I sent this by  
 5 our own internal ATIPPA people, correct?  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. And the only part of that three-page memo of  
 10 July 20th that gets expunged or suggested to  
 11 be expunged on a QA basis is that one  
 12 paragraph involving Dr. Ejeckam in 2003?  
 13 MR. TILLEY:  
 14 A. That's correct.  
 15 COFFEY, Q.C.:  
 16 Q. You would agree that there are quite a number  
 17 of other paragraphs that arguably might fall  
 18 or relate to quality?  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Issues?  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:



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1 Q. Are you telling the Commissioner that here in  
 2 this context you were merely the spokesperson,  
 3 the conduit for a decision by a subordinate in  
 4 this regard?  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. Okay, so that's--so why would it be then you,  
 9 why not have the subordinate contact Coates  
 10 directly? If the decision doesn't involve any  
 11 actual decision making by yourself?  
 12 MR. TILLEY:  
 13 A. Right. Well, he had referred the issue to me  
 14 so I was replying to him.  
 15 COFFEY, Q.C.:  
 16 Q. But you did so without exercising any judgment  
 17 at all on it or bringing your mind to bear on  
 18 it?  
 19 MR. TILLEY:  
 20 A. I confess, no.  
 21 COFFEY, Q.C.:  
 22 Q. And would you, at the time, have realized the  
 23 potential significance publicly at the time in  
 24 relation to an acknowledgement that, or  
 25 recognition that the ER/PR problem had arisen

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1 or at least the issues with ER/PR had arisen  
 2 in 2003? In March of '06 were you aware that  
 3 this was a matter of some public interest,  
 4 ER/PR?  
 5 MR. TILLEY:  
 6 A. Yes.  
 7 COFFEY, Q.C.:  
 8 Q. And therefore if the--the fact that this dated  
 9 back to 2003 in terms of Ejeckam's  
 10 involvement, that would have been of interest  
 11 publicly?  
 12 MR. TILLEY:  
 13 A. Certainly.  
 14 THE COMMISSIONER:  
 15 Q. Could we have just one small point clarified  
 16 just to make sure that I'm clear on this?  
 17 Because I understand that you got the request  
 18 from Mr. Coates, you forwarded it on to  
 19 somebody in the appropriate department?  
 20 MR. TILLEY:  
 21 A. Yes.  
 22 THE COMMISSIONER:  
 23 Q. Who in turn reviewed it and came back with a  
 24 particular paragraph should be deleted because  
 25 of QA concerns?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 THE COMMISSIONER:  
 4 Q. And the belief that that need not be or should  
 5 not be released under the legislation?  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 THE COMMISSIONER:  
 9 Q. Had you read the memo before you sent it on?  
 10 MR. TILLEY:  
 11 A. No.  
 12 THE COMMISSIONER:  
 13 Q. Did you read the memo when it came back?  
 14 MR. TILLEY:  
 15 A. Came back from?  
 16 THE COMMISSIONER:  
 17 Q. Your QA person.  
 18 MR. TILLEY:  
 19 A. I recall it was only a telephone conversation,  
 20 Madam Commissioner, to me saying there were a  
 21 couple of issues, one, that one being a  
 22 quality assurance and I think there was a  
 23 reference to a province, if I'm not mistaken,  
 24 that was also removed.  
 25 THE COMMISSIONER:

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1 Q. Okay. But when you were talking to Mr.  
 2 Coates, you knew what it was that you were  
 3 suggesting come out of the letter?  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 THE COMMISSIONER:  
 7 Q. Okay. So it wasn't that you didn't read it  
 8 beforehand and you didn't know what it was was  
 9 coming out?  
 10 MR. TILLEY:  
 11 A. Oh, I'm sorry. I hadn't read it, but I was  
 12 just relying the points that was made known to  
 13 me to pass on to the department.  
 14 THE COMMISSIONER:  
 15 Q. Well, that's my point, did you know what it  
 16 was--are you saying that you--somebody told  
 17 you paragraph such and such should come out  
 18 because it's QA and you just said, paragraph  
 19 whatever number it is on the page should come  
 20 out because it's QA or did somebody say to  
 21 you, "This paragraph comes out," you read this  
 22 paragraph and you say to Mr. Coates, "That  
 23 should come out because it's QA."?  
 24 MR. TILLEY:  
 25 A. No. The former. So somebody had indicated to

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1 me that that was a QA issue.  
 2 THE COMMISSIONER:  
 3 Q. Um-hm.  
 4 MR. TILLEY:  
 5 A. And that was passed on to Mr. Coates.  
 6 THE COMMISSIONER:  
 7 Q. So are you saying that when you talked to Mr.  
 8 Coates, you did not know that paragraph was  
 9 about Ejeckam?  
 10 MR. TILLEY:  
 11 A. Oh, no, I would have known that because I  
 12 obviously would have had to point that out. I  
 13 don't recall having the discussion it was  
 14 paragraph No. 3.  
 15 THE COMMISSIONER:  
 16 Q. That was the part that I was a bit confused  
 17 about.  
 18 MR. TILLEY:  
 19 A. Okay.  
 20 THE COMMISSIONER:  
 21 Q. I didn't know whether you were saying you just  
 22 -  
 23 MR. TILLEY:  
 24 A. No, I understand.  
 25 THE COMMISSIONER:

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1 Q. - sent on a message and not appreciating the  
 2 content of the paragraph.  
 3 MR. TILLEY:  
 4 A. Yes, right.  
 5 THE COMMISSIONER:  
 6 Q. You did know what the content of the paragraph  
 7 you were suggesting came out was?  
 8 MR. TILLEY:  
 9 A. Yes, that's correct.  
 10 THE COMMISSIONER:  
 11 Q. Okay. Thank you.  
 12 COFFEY, Q.C.:  
 13 Q. You realized the potential significance of it  
 14 from the public interest perspective, from the  
 15 media's perspective?  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. Sorry. Sorry, Mr. Tilley. Now, sir, if we  
 20 could, please--just a moment, please,  
 21 Commissioner. Mr. Tilley, after you were  
 22 first contacted by Dr. Williams on July 7th  
 23 and as we head toward your contact with the  
 24 minister of health on July 19th, can you tell  
 25 us, please, why on July 8th, 7th, 8th, 9th,

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1 10th, 11th, 12th, 13th, 14th and so on you did  
 2 not contact the Department of Health about  
 3 this?  
 4 MR. TILLEY:  
 5 A. No, I can't explain that, because normally it  
 6 would be an issue that I would be in touch  
 7 with rather quickly.  
 8 COFFEY, Q.C.:  
 9 Q. So when you say you can't explain it, what do  
 10 you mean by that?  
 11 MR. TILLEY:  
 12 A. Normally those sorts of issues are issues that  
 13 I would share with the Department of Health.  
 14 COFFEY, Q.C.:  
 15 Q. Uh-hm.  
 16 MR. TILLEY:  
 17 A. If they were at a level of significance of  
 18 this nature. To not have, I can only conclude  
 19 that there must have been still some work to  
 20 be done that would have delayed that contact,  
 21 but --  
 22 COFFEY, Q.C.:  
 23 Q. What work? What kind of -- in the same way  
 24 that Bob Williams had called you, I mean, why  
 25 wouldn't you just pick up the phone and call

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1 the DM?  
 2 MR. TILLEY:  
 3 A. Right. Well, for anything of this nature,  
 4 clearly I would make it known to the  
 5 Department of Health in terms of the --  
 6 COFFEY, Q.C.:  
 7 Q. But why the 11 or 12 day delay?  
 8 MR. TILLEY:  
 9 A. I can't explain that.  
 10 COFFEY, Q.C.:  
 11 Q. In terms of -- I take it, in terms of this,  
 12 though, during that period between the 7th and  
 13 certainly the 19th of July, you were in fairly  
 14 frequent contact with Dr. Williams?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. And, in fact, I'm going to suggest to you that  
 19 in the months before July 7th, your telephone  
 20 logs show that you talked to him a number of  
 21 times on other -- presumably, on other issues?  
 22 MR. TILLEY:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. But during that period between the 7th and the

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1 19th, just so the Commissioner can get some  
 2 sense of what was going on during the time  
 3 period, Exhibit P-069, please. Now, sir, this  
 4 is a letter on Health Care Corporation of St.  
 5 John's letterhead, and somebody has written up  
 6 here, "Discussed with Dr. Carter, July 16th,  
 7 2005". It's not your handwriting, I gather.  
 8 MR. TILLEY:  
 9 A. It's too neat to be mine.  
 10 COFFEY, Q.C.:  
 11 Q. Yes, and the second page of the exhibit is  
 12 signed by Beverley Carter, Breast Pathologist.  
 13 It's copied to Dr. Bob Williams, okay, and --  
 14 do you recognize the handwriting?  
 15 MR. TILLEY:  
 16 A. No, I don't.  
 17 COFFEY, Q.C.:  
 18 Q. Could it be Dr. Williams?  
 19 MR. TILLEY:  
 20 A. I don't think he writes that neatly either.  
 21 COFFEY, Q.C.:  
 22 Q. Okay. We'll figure it out --  
 23 MR. BROWNE:  
 24 A. If it's any issue, it's Dr. Cook's  
 25 handwriting.

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1 COFFEY, Q.C.:  
 2 Q. Yes, and -- thank you. Now this is July 14th,  
 3 2005, and what Dr. Carter has written to Dr.  
 4 Cook is -- this is seven days after you're  
 5 first told about it and five days before you  
 6 informed the Minister. She writes, "As per our  
 7 many recent discussions, I agree with you that  
 8 our estrogen receptor status reports prior to  
 9 2003 require immediate investigation. Our  
 10 recent examples of 16 patients converting from  
 11 estrogen receptor negative to estrogen  
 12 receptor positive status is quite concerning.  
 13 Factors identified on those slides clearly  
 14 show problems with the technique of estrogen  
 15 receptor testing and the interpretation of  
 16 same. I have been unable to review paperwork  
 17 from 1997 to 2003 with regards to protocols,  
 18 quality practise, and controls. I'm,  
 19 therefore, eager to review the estrogen  
 20 receptor status of all patients seen in our  
 21 laboratory from May, 1997, when  
 22 immunohistochemical staining for estrogen  
 23 receptor status first became available up to  
 24 March, 2004, when analysis and readjustment of  
 25 the estrogen receptor status protocol was

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1 carried out by Dr. G. Ejeckam. I think that  
 2 it is vital that we expediently review these  
 3 cases and let patients know as quickly as  
 4 possible of any change in their estrogen  
 5 receptor status. As quickly as possible I  
 6 would like to know the estrogen receptor  
 7 status of every patient tested in our  
 8 laboratory between 1997 and 2004, and from  
 9 that information I would also like an estimate  
 10 of the total positive cases given out per  
 11 year. I would need all the reports pulled  
 12 from the computer for review. Patient  
 13 demographics including name, age, and MCP  
 14 number, should be collated along with their  
 15 surgical number, his histological type of  
 16 carcinoma, and the histological grade. All of  
 17 the slides from the cases including estrogen  
 18 receptor slides need to be pulled and  
 19 organized. All slides then need to be  
 20 reviewed by me, both estrogen receptor  
 21 negative and estrogen receptor positive  
 22 patients. Estrogen receptor negative patients  
 23 should be given priority. Blocks will be  
 24 pulled from those cases and estrogen  
 25 receptor/progesterone receptor status

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1 reordered. This test should be carried out as  
 2 possible. Ten percent of cases should be  
 3 randomly selected for outside quality  
 4 assurance consultation. Dr. Frances O'Malley  
 5 of Mount Sinai Hospital has agreed to act in  
 6 this capacity. Although many cases are  
 7 defined by a multiplicity of reasons, should  
 8 also be sent for outside testing". She goes on  
 9 to conclude, "It will be necessary to have a  
 10 computerized database for this project. This  
 11 database should include the patient's name,  
 12 MCP number, surgical number, hospital of  
 13 origin. Please remember these patients were  
 14 treated in all hospitals in Newfoundland.  
 15 Results of original estrogen  
 16 receptor/progesterone receptor testing,  
 17 presence of control tissues, results of new  
 18 testing, and any comments about the case. Also  
 19 included in this computerized report should be  
 20 the histological type of cancer as well as the  
 21 grade of cancer. As we have discussed, in my  
 22 opinion, the above suggestion should be  
 23 carried out as quickly as possible". Now, Mr.  
 24 Tilley, were you made aware of this before you  
 25 met with the Minister on July 19th?

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1 MR. TILLEY:  
 2 A. This letter?  
 3 COFFEY, Q.C.:  
 4 Q. The letter or the general contents of the  
 5 letter? The scope of the problem --  
 6 MR. TILLEY:  
 7 A. I don't recall.  
 8 COFFEY, Q.C.:  
 9 Q. The scope of the problem that's pointed out  
 10 here, that's going to be investigated here?  
 11 MR. TILLEY:  
 12 A. Before we were going into the Minister, or  
 13 shortly before the meeting with the Minister,  
 14 I know there was some information that we had  
 15 received with regards to the positivity rates  
 16 over a number of years.  
 17 COFFEY, Q.C.:  
 18 Q. I'll get to that, I'll get to that.  
 19 MR. TILLEY:  
 20 A. Okay. So --  
 21 COFFEY, Q.C.:  
 22 Q. But here this appears to be, does it not, a  
 23 plan by Dr. Carter to have a full scale  
 24 investigation conducted?  
 25 MR. TILLEY:

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1 A. Full, yes, follow up.  
 2 COFFEY, Q.C.:  
 3 Q. Uh-hm. Were you made aware that such a plan  
 4 existed, did Dr. Williams make you aware of  
 5 that, or Dr. Cook?  
 6 MR. TILLEY:  
 7 A. Not that I recall.  
 8 COFFEY, Q.C.:  
 9 Q. Can you think of any reason why they might not  
 10 have from your perspective? Would it be  
 11 important for you as the CEO of that  
 12 organization to know that this kind of full  
 13 scale analysis was being planned?  
 14 MR. TILLEY:  
 15 A. Well, I'm interpreting it as a decision to  
 16 follow up on all of the tests for that  
 17 particular period, and obviously that's  
 18 consistent with the discussions that we've had  
 19 with the intent to go back and do that review.  
 20 COFFEY, Q.C.:  
 21 Q. Wait now, but see when we last left off in  
 22 terms of years, July 7th, it was 2002 --  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. Your conversation with Dr. Williams in 2002.  
 2 MR. TILLEY:  
 3 A. Yes, that's right.  
 4 COFFEY, Q.C.:  
 5 Q. Now this is seven days later and she says to  
 6 Dr. Cook, "As per our many recent discussions,  
 7 I agree with you", that's Dr. Cook, "that our  
 8 estrogen receptor status reports prior to 2003  
 9 require immediate investigation". In fact,  
 10 when you look at it further, it's perhaps up  
 11 to March of '04. So what I'm asking you is was  
 12 it brought to your attention, by July 14th or  
 13 15th, were you aware that this was well beyond  
 14 2002, according to the pathologist involved?  
 15 MR. TILLEY:  
 16 A. There was a point in time that we moved beyond  
 17 that. To say it was around that date, I can't  
 18 say with confidence.  
 19 COFFEY, Q.C.:  
 20 Q. But certainly before you met with John  
 21 Ottenheimer on the 19th, or spoke to him, and  
 22 met with him on the 21st, you were aware, and  
 23 we'll talk about those change numbers or those  
 24 numbers in a little bit, but you were aware  
 25 that Bev Carter and Don Cook and company, at

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1 least the pathologists involved, were thinking  
 2 a mass retesting?  
 3 MR. TILLEY:  
 4 A. Ah --  
 5 COFFEY, Q.C.:  
 6 Q. Whatever the results might be, mass retesting?  
 7 MR. TILLEY:  
 8 A. It was certainly at some point in time, but I  
 9 can't say when, that we were going to retest  
 10 everybody that had tested initially as  
 11 negative.  
 12 COFFEY, Q.C.:  
 13 Q. If we could look, please, at P-075, page two.  
 14 This is that briefing note that the Minister  
 15 received on the 21st of July. It's the second  
 16 page of it. It's under -- well, the  
 17 background section, and the second entry is  
 18 July 14th, 2005, "The decision was made that  
 19 all patients who were ER and PR negative from  
 20 1997 to 2004 would be retested, beginning with  
 21 the 2002 patients, with testing to take place  
 22 over the next number of weeks". That would be  
 23 consistent with --  
 24 MR. TILLEY:  
 25 A. Yes, it would.

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1 COFFEY, Q.C.:

2 Q. P-069, wouldn't it?

3 MR. TILLEY:

4 A. Uh-hm.

5 COFFEY, Q.C.:

6 Q. So certainly by the time you met with the

7 Minister on July 21st, you, if not were aware

8 of the details of how Dr. Cook -- I'm sorry,

9 Dr. Carter was going to go about it, you

10 certainly were aware that she planned to?

11 MR. TILLEY:

12 A. Well, I don't know if --

13 COFFEY, Q.C.:

14 Q. Her and --

15 COFFEY, Q.C.:

16 Q. Somebody was going obviously -- the decision

17 was made, but who -- whether Dr. Carter had

18 been the initiator of it, I don't recall

19 knowing that.

20 COFFEY, Q.C.:

21 Q. If you'll look at the second -- third entry,

22 I'm sorry, July 15th, 2005, it notes -- this

23 is in P-075, Commissioner, that Dr. Cook spoke

24 to four of the six provincial laboratory

25 directors, two others were unreachable due to

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1 holidays, regarding sending specimens into St.

2 John's for retesting. They said that they

3 will comply with the request as soon as

4 possible. I take it this is the request by

5 Dr. Cook throughout the province to send in

6 all the 1997 to 2004?

7 MR. TILLEY:

8 A. Yes.

9 COFFEY, Q.C.:

10 Q. So again by the time you met with the

11 Minister, you were aware of that?

12 MR. TILLEY:

13 A. Uh-hm.

14 COFFEY, Q.C.:

15 Q. And you were aware that that decision had been

16 made six days before you met with the

17 Minister, five days before you -- four days

18 before you spoke with him, and six days before

19 you met with him?

20 MR. TILLEY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. Sir, if you could go, please -- Registrar,

24 please, Exhibit P-007. Oh, P-070.

25 REGISTRAR;

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1 Q. 70?

2 COFFEY, Q.C.:

3 Q. Seventy, 70, I need a drink of water, thank

4 you. Now, Mr. Tilley, I appreciate you are

5 neither the originator nor recipient of this

6 e-mail, it's one from Deborah Thomas, Friday,

7 July 15th, 2005, 2:01 p.m. to Susan Bonnell.

8 Subject is an update, but you are referenced

9 in it, okay. She begins, "Hi Susan, here's

10 today's update from Heather Predham. Nancy is

11 thinking about how to implement a hot line.

12 Heather is providing an overview/synopsis for

13 George. George wants to disclose this info to

14 the board next week. Dr. Williams is trying

15 to talk him out of it. Lab has pulled names

16 and numbers and thinks they may be able to do

17 retesting in house, completing in about two

18 weeks. Terry G. says he has documentation

19 that shows positive controls were done daily.

20 Heather yet to see it. Heather checking other

21 hospitals to see if they have any issues

22 pertaining to this, hoping this could be just

23 a matter of a dramatic improvement in

24 technology, if indeed all controls were in

25 place (thinking we may want to release mid

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1 late next week). Have a nice weekend.

2 Deborah." Now, sir as of circa July 15th,

3 2005 that afternoon, Friday afternoon, what's

4 listed there? How does that compare with your

5 recollection of the state of affairs at the

6 time?

7 MR. TILLEY:

8 A. That things are in motion for follow up and

9 potentially a release to the public next week.

10 COFFEY, Q.C.:

11 Q. And so what, at this point, are you going to

12 tell the public?

13 MR. TILLEY:

14 A. That there is an issue that has been

15 identified with respect to this test and that

16 we would be, I guess, processing that and then

17 make contact with the patients from there.

18 COFFEY, Q.C.:

19 Q. And in relation to any such release mid or

20 late next week, mid would be presumably

21 Wednesday or Thursday, depending on how you

22 define it.

23 MR. TILLEY:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. That would be the 20th or 21st.  
 2 MR. TILLEY:  
 3 A. Uh-hm.  
 4 COFFEY, Q.C.:  
 5 Q. And the 22nd would be the following Friday.  
 6 So it was at that point it was envisaged that,  
 7 Deborah is saying here that Heather has told  
 8 her and she's communicating with Susan Bonnell  
 9 the idea that we may want to release mid late  
 10 next week. Now at this point in time, that  
 11 Friday, the Department of Health doesn't know  
 12 this based upon your recollection of it.  
 13 MR. TILLEY:  
 14 A. That's correct.  
 15 COFFEY, Q.C.:  
 16 Q. I mean, had there been any discussion, I mean,  
 17 up to the time you left work that Friday,  
 18 we're going public with this potentially  
 19 middle or late next week and the people in the  
 20 Confederation Building don't know yet.  
 21 MR. TILLEY:  
 22 A. Yes. It certainly wasn't to the level that I  
 23 felt that we would be making a statement as  
 24 early as next week.  
 25 COFFEY, Q.C.:

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1 Q. But this does suggest though, that you, the  
 2 next week, wanted to tell your board?  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. Because up to this point in time your board  
 7 didn't know about this.  
 8 MR. TILLEY:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. Can you tell us why your board didn't know  
 12 about this as of the end of that week?  
 13 MR. TILLEY:  
 14 A. Well, I communicate through the board chair.  
 15 COFFEY, Q.C.:  
 16 Q. Sure.  
 17 MR. TILLEY:  
 18 A. The board chair was away on vacation.  
 19 COFFEY, Q.C.:  
 20 Q. And she has told us that she was reachable.  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. You would have understood that.  
 25 MR. TILLEY:

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1 A. I presume so.  
 2 COFFEY, Q.C.:  
 3 Q. Do you know how long she had been away?  
 4 MR. TILLEY:  
 5 A. I think my calendar had referenced from the  
 6 8th to the 20th.  
 7 COFFEY, Q.C.:  
 8 Q. Of July?  
 9 MR. TILLEY:  
 10 A. That's what I'm recalling.  
 11 COFFEY, Q.C.:  
 12 Q. Again, you could reach her by e-mail, by  
 13 phone. I take it you just simply chose not  
 14 to.  
 15 MR. TILLEY:  
 16 A. Well I felt comfortable enough in delaying. I  
 17 knew what the board chair's concerns would be  
 18 and that would be to ensure that there is  
 19 attention being given to this matter. I also  
 20 expected that she would look to ensure that  
 21 the Department of Health has been involved and  
 22 I recall her e-mail back to me which  
 23 eventually said, please ensure the board is  
 24 aware prior to this becoming public  
 25 information. Because it certainly would be

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1 appropriate for the trustees to be given  
 2 notification or information on this before  
 3 that occurred.  
 4 COFFEY, Q.C.:  
 5 Q. So the trustees didn't in fact, as a group,  
 6 receive information until quite some time  
 7 later?  
 8 MR. TILLEY:  
 9 A. That's correct.  
 10 COFFEY, Q.C.:  
 11 Q. Well into September.  
 12 MR. TILLEY:  
 13 A. That's correct.  
 14 COFFEY, Q.C.:  
 15 Q. In the meantime, though, you knew Joan Dawe  
 16 well enough to conclude that if I contact her  
 17 and tell her this, she's going to ask me does  
 18 the department know this?  
 19 MR. TILLEY:  
 20 A. Yes, I was anticipating that.  
 21 COFFEY, Q.C.:  
 22 Q. And so up to the end of July 15th certainly,  
 23 2005, the department didn't know it.  
 24 MR. TILLEY:  
 25 A. No.

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1 COFFEY, Q.C.:

2 Q. So if you contacted Joan Dawe any time before,

3 up to and including July 15th, if you had

4 contacted her earlier that week on the 11th,

5 12th or 13th, she in effect was going to force

6 you into a position where you were either

7 going to have to tell her I won't tell the

8 department or you would have to go along and

9 tell her.

10 MR. TILLEY:

11 A. Yeah, I don't think there was any doubt that

12 the department would have been advised of

13 this.

14 COFFEY, Q.C.:

15 Q. I'm not--no one is taking issue with that, I'm

16 talking about the timing of it.

17 MR. TILLEY:

18 A. Uh-hm.

19 COFFEY, Q.C.:

20 Q. Or so ultimately whether or not it occurred.

21 So you knew the department was not yet in the

22 loop throughout that week, the week ending on

23 the 15th? And you knew that if you contacted

24 Joan Dawe, the first thing she would want to

25 know is does the department know.

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1 MR. TILLEY:

2 A. Yes, I anticipated that.

3 COFFEY, Q.C.:

4 Q. So how was it the department did come to know,

5 from your perspective?

6 MR. TILLEY:

7 A. Well, what I understand, looking back at it,

8 is that the communication's people had been

9 having conversations about this in light of

10 the discussion that we were going to do a

11 release on it.

12 COFFEY, Q.C.:

13 Q. So the communication's people within your

14 organization -

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Communicated with communication's people in

19 the Department of Health.

20 MR. TILLEY:

21 A. That's correct.

22 COFFEY, Q.C.:

23 Q. And or elsewhere in government, we'll deal

24 with that in a bit, but certainly within the

25 Department of Health.

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1 MR. TILLEY:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. And that's how in fact the Department of

5 Health became aware of it.

6 MR. TILLEY:

7 A. Unfortunately, yes.

8 COFFEY, Q.C.:

9 Q. When you say "unfortunately" why is that?

10 MR. TILLEY:

11 A. Well, I really think that this issue would

12 have been one that I would have brought to the

13 attention of the deputy first, as opposed to

14 it coming from someone else.

15 COFFEY, Q.C.:

16 Q. How did you first learn that the Department of

17 Health knew about this?

18 MR. TILLEY:

19 A. I can't recall.

20 COFFEY, Q.C.:

21 Q. Did you hear like somebody internally come

22 along and say, Mr. Tilley, you know, the

23 Department of Health knows, or did you get a

24 call from John Abbott saying what's going on?

25 MR. TILLEY:

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1 A. Actually I think there may have been an e-mail

2 that I was aware of or had been copied on

3 first, to say that the department is aware of

4 it.

5 COFFEY, Q.C.:

6 Q. Did that come internally? Okay, I'll take you

7 through those. So P-0070, if we could, Nancy

8 is who? Nancy Parsons that would be?

9 MR. TILLEY:

10 A. Yes.

11 COFFEY, Q.C.:

12 Q. And what's her role?

13 MR. TILLEY:

14 A. Patient relations officer in the organization.

15 COFFEY, Q.C.:

16 Q. And I take it she would then somehow be

17 involved in implementing a hot line to

18 address--the hot line, the purpose being what?

19 MR. TILLEY:

20 A. A number designated for patients or families

21 to call if they have any need for further

22 information.

23 COFFEY, Q.C.:

24 Q. And were you aware of that at the time that

25 there was actual thought being given to that?

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1 MR. TILLEY:  
 2 A. I certainly don't recall that specifically.  
 3 COFFEY, Q.C.:  
 4 Q. But you're not surprised that -  
 5 MR. TILLEY:  
 6 A. No, certainly not.  
 7 COFFEY, Q.C.:  
 8 Q. This overview synopsis for George, Heather is  
 9 suggesting here is providing. Did you  
 10 actually receive that?  
 11 MR. TILLEY:  
 12 A. I'm assuming that was the briefing note that  
 13 was prepared for the department.  
 14 COFFEY, Q.C.:  
 15 Q. That ultimately ended up, in one form or  
 16 another, as it evolved -  
 17 MR. TILLEY:  
 18 A. I'm not aware of anything else other than  
 19 that.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. "George wants to disclose this info to  
 22 the board next week. Dr. Williams is trying  
 23 to talk him out of it." Now, what was that  
 24 about?  
 25 MR. TILLEY:

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1 A. Well when I first saw that or heard about it,  
 2 I said that's not possible. Bob Williams  
 3 understands the need to keep my board  
 4 apprised. I heard from Mr. Simmons last week  
 5 or the week before about this and giving it  
 6 some thought, I do have a recollection of Dr.  
 7 Williams saying it's important for the  
 8 minister to know. At the same time the board  
 9 would know because he was thinking that the  
 10 minister should not have information or there  
 11 should not be information of this nature out  
 12 without the minister being given some priority  
 13 access.  
 14 COFFEY, Q.C.:  
 15 Q. And Dr. Williams you've told us at one point  
 16 he had been an ADM in health and a DM in  
 17 health?  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 THE COMMISSIONER:  
 21 Q. I'm still not sure what the answer to the  
 22 question is in terms of, I took Mr. Coffey's  
 23 question related to that section of the e-mail  
 24 to be whether or not you recollect Dr.  
 25 Williams trying to talk you out of disclosing

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1 information to your board.  
 2 MR. TILLEY:  
 3 A. Yes, and that wasn't the intent. When I first  
 4 saw it, I knew that was not possible that he  
 5 would be advising me not to share this  
 6 information with the board. When I reflected  
 7 on it, I recall Dr. Williams making a comment  
 8 that it would be important for the minister to  
 9 be able to get access to this information in  
 10 light of the significance of it. So that  
 11 statement there is really, portrays something  
 12 that I didn't, at any time, believe that he  
 13 was doing.  
 14 COFFEY, Q.C.:  
 15 Q. But you're suggesting that that's a possible  
 16 interpretation that somebody took from it?  
 17 MR. TILLEY:  
 18 A. Deborah Thomas presumably understood it that  
 19 way.  
 20 COFFEY, Q.C.:  
 21 Q. From Heather Predham apparently, according to  
 22 this. But we'll talk to both of them about  
 23 it. Now, yourself, looking back on it, is  
 24 what the Commissioner is really asking, I  
 25 gather asking you -

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. - is, looking back on it, is there anything  
 5 that Dr. Williams' did that could be perceived  
 6 of as him trying to talk you out of this?  
 7 MR. TILLEY:  
 8 A. No.  
 9 COFFEY, Q.C.:  
 10 Q. And you can just attribute it to this comment  
 11 about well, if you're going to tell the board,  
 12 you got to tell the minister -  
 13 MR. TILLEY:  
 14 A. Right.  
 15 COFFEY, Q.C.:  
 16 Q. - at the same time -  
 17 MR. TILLEY:  
 18 A. I also put it in the context that Dr.  
 19 Williams' in his early discussions was talking  
 20 about making this known to the public. So,  
 21 it's not a question of not sharing this with  
 22 the board.  
 23 COFFEY, Q.C.:  
 24 Q. Okay. Well, not so much "not share" because I  
 25 mean, you know, we've heard a lot of, well, it



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1 was never intentioned to never do it. It has  
 2 more to do with timing here. So, I take then  
 3 this--are you reading this as Dr. Williams'  
 4 was trying to talk you out of ever telling the  
 5 board or more of a point telling the board -  
 6 MR. TILLEY:  
 7 A. Well, that's the way it's stated.  
 8 COFFEY, Q.C.:  
 9 Q. Yes.  
 10 THE COMMISSIONER:  
 11 Q. "Because George wants to discuss"--sorry--  
 12 "disclose this info. to the board next week.  
 13 Dr. Williams is trying to talk him out of it".  
 14 Now, just sort of me coming at this cold, I  
 15 would just understand that particular phrase  
 16 to be Dr. Williams is trying to talk you out  
 17 of going to the board with the information  
 18 next week.  
 19 MR. TILLEY:  
 20 A. Well, Commissioner, I can just sort of  
 21 reiterate my recollection based--having seen  
 22 this--is Dr. Williams' having shared a belief  
 23 that it was important to have the minister  
 24 advised simultaneous with the Board.  
 25 THE COMMISSIONER:

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1 Q. Yes, which is an entirely different thing than  
 2 not go to the board.  
 3 MR. TILLEY:  
 4 A. Yes, that's right.  
 5 THE COMMISSIONER:  
 6 Q. That's your recollection. Okay.  
 7 COFFEY, Q.C.:  
 8 Q. Now, this is the day after--I'm sorry--yes,  
 9 the day after Dr. Carter's letter to Dr. Cook  
 10 and copied to Dr. Williams about her plan to  
 11 investigate the matter thoroughly. It's the  
 12 weekend, we're coming up on the weekend, what  
 13 then happened, from your perspective? And if  
 14 we could, it may be of some assistance to you,  
 15 P-0300 please. This is an e-mail, this is the  
 16 following Monday, July 18, 2005, 12:29 p.m..  
 17 It's from Heather Predham to Dr. Robert  
 18 Williams, copied to Denise Dunn, Dr. Donald  
 19 Cook and Terry Gulliver. Denise Dunn is who?  
 20 MR. TILLEY:  
 21 A. Would be Dr. Williams' executive assistant.  
 22 COFFEY, Q.C.:  
 23 Q. Okay. And the subject is ER/PR receptor  
 24 letter and the attachment is update on ER/PR  
 25 doc. "I, Dr. Williams, have heard back"--

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1 should be--"from Dr. Cook and Terry Gulliver  
 2 re: the letter and the changes have been made.  
 3 Both agree that it should come from you"--  
 4 assuming mean Dr. Williams--"I was speaking to  
 5 Deborah Thomas today and the Department of  
 6 Health has been notified and is now involved.  
 7 They would like a letter sent to each woman  
 8 outlining the problem and the steps we are  
 9 taking to address that. That draft letter  
 10 will have to be seen by our lawyer first, of  
 11 course. I guess we'll have to decide tomorrow  
 12 or the next day re: advising the public.  
 13 Signed, Heather".  
 14 Now, this is mid day on Monday, July 18.  
 15 Were you aware or made aware that this had  
 16 happened in the sense of the department knows  
 17 about this. The department not only knows  
 18 about it, but according to this, has  
 19 articulated that they want a letter sent to  
 20 ever woman outlining the problem and the steps  
 21 we are taking to address it.  
 22 MR. TILLEY:  
 23 A. I don't -  
 24 COFFEY, Q.C.:  
 25 Q. And the letter has got to be seen by a lawyer.

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1 MR. TILLEY:  
 2 A. Right.  
 3 COFFEY, Q.C.:  
 4 Q. Anybody make you aware of this going on on  
 5 that Monday?  
 6 MR. TILLEY:  
 7 A. It's not immediately coming to mind.  
 8 COFFEY, Q.C.:  
 9 Q. You'd be surprised that Heather Predham and  
 10 Dr. Williams would not have brought this to  
 11 your attention?  
 12 MR. TILLEY:  
 13 A. That it had been brought to the Department of  
 14 Health's attention?  
 15 COFFEY, Q.C.:  
 16 Q. Yes.  
 17 MR. TILLEY:  
 18 A. Yes, so -  
 19 COFFEY, Q.C.:  
 20 Q. I mean, they're stipulating letters and -  
 21 MR. TILLEY:  
 22 A. Yeah, well, certainly the Department of Health  
 23 being involved. I mean, I can't imagine that  
 24 I wouldn't have been informed of that by  
 25 somebody.

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1 COFFEY, Q.C.:

2 Q. But you have no memory of it?

3 MR. TILLEY:

4 A. Not at this point, no.

5 COFFEY, Q.C.:

6 Q. And she concludes by saying, "I guess we'll

7 have to decide tomorrow or the next day re:

8 advising the public" which would be,

9 presumably--you would take that to mean what?

10 The public at large, I take it?

11 MR. TILLEY:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. As opposed to the individual patients?

15 MR. TILLEY:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Because the letter would be sent to each

19 woman, would be the individual patients.

20 MR. TILLEY:

21 A. Yes.

22 THE COMMISSIONER:

23 Q. Wherever there's a convenient space, you can

24 break for lunch, Mr. Coffey.

25 COFFEY, Q.C.:

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1 Q. Thank you, Commissioner. Now, with respect to

2 that, on the state of preparedness of your

3 organization at the time, if we could just go

4 please to Exhibit P-071. Now, these are--this

5 exhibit is a number of pages long, there's

6 handwriting there. I can identify it because

7 it's mine. It's received from Deborah Thomas-

8 Pennell at Commission offices on 5-12-07 which

9 would be December 5, 2007.

10 MR. TILLEY:

11 A. Okay.

12 COFFEY, Q.C.:

13 Q. And it goes on for 14 pages and that would be

14 the Deborah Thomas referred to in that e-mail

15 we just looked at.

16 MR. TILLEY:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. If we could look to page 4 please. Actually,

20 I apologize, go back to page 2, please. We'll

21 run through this. Now, this is a briefing

22 note "ER/PR receptors", background is there.

23 I'll just jump to the next page of the exhibit

24 and it goes on in some length for two pages in

25 detail. And the next page, sir, page 4 is a

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1 draft, do you see that--I'll just scroll down,

2 you can see "draft" in the background there?

3 MR. TILLEY:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. Watermark, on Eastern Health letterhead.

7 That's a media release for immediate release

8 date July 18, 2005, St. John's, Newfoundland

9 and Labrador, "Breast Cancer Tests being re-

10 Examined" and there's a draft press release.

11 It flows over, contact information, to the

12 next page and then there's a briefing note,

13 "ER/PR receptors" again a draft. It goes over

14 three pages, goes into the third page. And

15 then at page nine of this exhibit, there is a

16 media release, a draft one for immediate

17 release July XX, 2005 "re:testing due to

18 improved technology". At page 11 of the

19 exhibit, there's another media release, a

20 draft one, "Eastern Health review ER and PR

21 test results", July XX, 2005. And then

22 there's a key messages at page 12 of the

23 exhibit, a page of those. And page 13 is

24 another draft media release entitled,

25 "Laboratory testing review to be completed by

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1 outside consultant", July XX, 2005. And then

2 there's what appears to be a page 14. Now,

3 it's a document and when one looks at it, it

4 ends with a "Thank you" and it begins with

5 "Eastern Health would like to advise you of a

6 situation which had led to retesting of your

7 breast tissue sample", and it goes on from

8 there. And it appears to be a draft of a

9 letter to patients.

10 So, were you aware that as of July 18,

11 2005 there were draft press releases,

12 apparently a draft letter that day or the day

13 after or so.

14 MR. TILLEY:

15 A. I knew Dr. Williams had been in touch with the

16 communications department about the potential

17 of a public release here. And I would look at

18 this as being their efforts to start the

19 preparatory work for that.

20 COFFEY, Q.C.:

21 Q. Preparatory? I take it this doesn't--does

22 those documents suggests they're fairly far

23 along in their process?

24 MR. TILLEY:

25 A. Well, I mean, that's what I meant in terms of

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1 preparatory work, I suppose, that if, in fact,  
 2 we were ready to make a decision about the  
 3 public notification, that we would be prepared  
 4 to do so pretty quickly.  
 5 COFFEY, Q.C.:  
 6 Q. Okay. Thank you, Commissioner. Break time?  
 7 THE COMMISSIONER:  
 8 Q. All right then. Since we're a little late,  
 9 we'll adjourn until 2:05.  
 10 (BREAK FOR LUNCH)  
 11 THE COMMISSIONER:  
 12 Q. Please be seated. Mr. Coffey.  
 13 COFFEY, Q.C.:  
 14 Q. Thank you, Commissioner. If we could open,  
 15 please, Exhibit P-0328, page 1, please? Now,  
 16 Mr. Tilley, do you recognize the handwriting  
 17 on this?  
 18 MR. TILLEY:  
 19 A. That's mine.  
 20 COFFEY, Q.C.:  
 21 Q. Okay. I'm going to try something now.  
 22 Exhibit P-0071, split the screen, please, page  
 23 2, P-0071.  
 24 REGISTRAR:  
 25 Q. I'm going to have to close down

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1 (unintelligible).  
 2 COFFEY, Q.C.:  
 3 Q. That's fine. Not a problem. Thank you.  
 4 Sorry, Registrar, I didn't give you a heads up  
 5 on it.  
 6 REGISTRAR:  
 7 Q. That's fine.  
 8 THE COMMISSIONER:  
 9 Q. The two exhibits we're looking at, Mr. -  
 10 COFFEY, Q.C.:  
 11 Q. P-0071.  
 12 THE COMMISSIONER:  
 13 Q. P-0071.  
 14 COFFEY, Q.C.:  
 15 Q. And P-0328.  
 16 THE COMMISSIONER:  
 17 Q. All right.  
 18 COFFEY, Q.C.:  
 19 Q. The second, which is the second page.  
 20 THE COMMISSIONER:  
 21 Q. And which pages do you want, Mr. Coffey?  
 22 COFFEY, Q.C.:  
 23 Q. Okay. P-0071, page 2. Thank you. Are you  
 24 able to read that--what about the -  
 25 MR. TILLEY:

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1 A. I think we're probably the same.  
 2 COFFEY, Q.C.:  
 3 Q. Yes.  
 4 MR. TILLEY:  
 5 A. The one on the right is, if that could be  
 6 enlarged a little?  
 7 COFFEY, Q.C.:  
 8 Q. Yeah. That's great. So this appears to be,  
 9 P-0071 was identified before lunch as being  
 10 part of the materials that, the source was  
 11 Deborah Pennell, Deborah Thomas Pennell. And  
 12 P-0328 then, with your handwriting, Mr.  
 13 Tilley, I take it, is, if you just look down  
 14 through, it appears to be the same page?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. And it's two pages long. If you go to page 2  
 19 of 0328, please? You'll see that that's the  
 20 one that's two pages there. And as well, on  
 21 page 3 of that, please? That handwriting is  
 22 whose, is that yours?  
 23 MR. TILLEY:  
 24 A. That's mine.  
 25 COFFEY, Q.C.:

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1 Q. Okay. And that's a draft because it begins  
 2 "Dear," and "We are contacting patients who  
 3 were diagnosed with breast cancer between 1997  
 4 and 2004" and it's signed and there's a "Thank  
 5 you" at the bottom, so this appears to be a  
 6 draft of a letter?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. If I could, please, then, if I could just--you  
 11 could close out then, please, or minimize P-  
 12 0071 and go back to full screen, 0328? Thank  
 13 you. Thank you. Looking at page 1 of 0328.  
 14 Now, sir, this--you've written "Pre July 19th,  
 15 '05." See that?  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. What does that mean?  
 20 MR. TILLEY:  
 21 A. I really can't place any context unless that  
 22 information was pre 19, '05.  
 23 COFFEY, Q.C.:  
 24 Q. July 19th, '05, 2005?  
 25 MR. TILLEY:

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1 A. Yeah.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. And there's a reference to "National  
 4 benchmark" I believe here on the left-hand  
 5 side?  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. You've circled "All"?  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. Underline the "25", boxed the year "2002",  
 14 boxed the "1997, 2004, will be retested." In  
 15 the bottom, here on the left-hand side,  
 16 "Possible cause".  
 17 MR. TILLEY:  
 18 A. "Possible cause," it looks like "variances."  
 19 COFFEY, Q.C.:  
 20 Q. "Variances," "of variances", perhaps,  
 21 "Possible cause of variances."?  
 22 MR. TILLEY:  
 23 A. Could be.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. And then you've underlined various

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1 parts or someone has, presumably yourself,  
 2 underlined certain parts of the second page.  
 3 There's a reference there at the top of the  
 4 page, "It was decided to wait until we were  
 5 able to get more information regarding  
 6 retesting, the anticipated time lines and a  
 7 support line established." That's "After  
 8 meeting with the surgeons and oncologists it  
 9 was decided to." And "We do expect a higher  
 10 number of positives" is underlined. You've  
 11 underlined, "All samples which initially  
 12 tested as negative from 1997." And then the  
 13 next sentence you've underlined the word,  
 14 "Will be" or "Will" in the context of be  
 15 retested. And then on the draft letter could  
 16 you tell us what that says?  
 17 MR. TILLEY:  
 18 A. "The results provide guidance to your  
 19 attending physician as to the treatment plan."  
 20 COFFEY, Q.C.:  
 21 Q. Okay. And you were going to insert that  
 22 before the sentence beginning, or in the  
 23 sentence or after the sentence, "When a tumor  
 24 has these receptors, it is more likely to  
 25 respond to hormonal therapy."

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1 MR. TILLEY:  
 2 A. Um-hm.  
 3 COFFEY, Q.C.:  
 4 Q. And you were making this reference to  
 5 guidance.  
 6 MR. TILLEY:  
 7 A. Somewhere I think that point was being made  
 8 that that's one of the factors that the  
 9 physician would use in making that decision.  
 10 COFFEY, Q.C.:  
 11 Q. Now, sir, go back to the first page of Exhibit  
 12 P-0328. It begins, "Briefing note - ER/PR  
 13 receptors", the word "Background", and then  
 14 there are various references to dates, "May  
 15 11th," one paragraph, "On May 17th," the  
 16 second paragraph, and then the fourth  
 17 paragraph, "On June 13th, 2005." And then  
 18 there's a list of actions in bullet form and  
 19 then certain notes in bullet form. Do you  
 20 recall, you know, the context in which you  
 21 were making amendments or making notes on this  
 22 briefing note? Because this briefing note is  
 23 not apparently the actual one that ended up in  
 24 the minister's hands. Portions of it did, but  
 25 do you recall, like, why would you be involved

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1 in actually making notes on or making  
 2 amendments to -  
 3 MR. TILLEY:  
 4 A. Do we know what date this was?  
 5 COFFEY, Q.C.:  
 6 Q. Unless -  
 7 MR. TILLEY:  
 8 A. Normally I would highlight through underlining  
 9 items if I'm listening to somebody present on  
 10 an issue and just sort of underscoring the  
 11 point as we were moving along.  
 12 COFFEY, Q.C.:  
 13 Q. And what about the draft letter?  
 14 MR. TILLEY:  
 15 A. Don't know if that was my suggestion or  
 16 whether somebody else may have been speaking  
 17 to it.  
 18 COFFEY, Q.C.:  
 19 Q. Why would you be involved in, you know, in  
 20 noting a potential amendment to a draft  
 21 letter?  
 22 MR. TILLEY:  
 23 A. I guess if somebody had sought my opinion,  
 24 then it was provided.  
 25 COFFEY, Q.C.:

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1 Q. Exhibit P-0300. Now, we looked at this this  
 2 morning. This is the e-mail of July 18th,  
 3 2005, 12:29 p.m. from Heather Predham to Dr.  
 4 Robert Williams and copied to various people.  
 5 The second paragraph says, "They would like a  
 6 letter sent to each woman outlining the  
 7 problem and the steps we are taking to address  
 8 it."  
 9 MR. TILLEY:  
 10 A. Um-hm.  
 11 COFFEY, Q.C.:  
 12 Q. That draft we've just looked at that you've  
 13 made some handwritten note on, is that  
 14 possibly that letter or draft of the letter?  
 15 MR. TILLEY:  
 16 A. I would make that assumption.  
 17 COFFEY, Q.C.:  
 18 Q. In terms of Heather's reference in here e-mail  
 19 to "That draft letter will have to be seen by  
 20 our lawyer first, of course." Now, at that  
 21 stage, midday on July 18th, Monday, July 18th,  
 22 2005 why would it be necessary?  
 23 MR. TILLEY:  
 24 A. To?  
 25 COFFEY, Q.C.:

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1 Q. Run it past -  
 2 MR. TILLEY:  
 3 A. A lawyer?  
 4 COFFEY, Q.C.:  
 5 Q. A lawyer, yes.  
 6 MR. TILLEY:  
 7 A. I couldn't speculate other than lawyers seem  
 8 to be everywhere these days. But where we  
 9 have where we have an issue of that nature, I  
 10 guess it was felt to be prudent to do that.  
 11 COFFEY, Q.C.:  
 12 Q. Now, "our lawyer" in this context, who is "our  
 13 lawyer," do you know, at that time?  
 14 MR. TILLEY:  
 15 A. There were multiple lawyers for Eastern  
 16 Health, depending on what the issue would have  
 17 been.  
 18 COFFEY, Q.C.:  
 19 Q. Um-hm. Do you know who the lawyer was in the  
 20 middle of July, 2005 dealing with ER/PR?  
 21 MR. TILLEY:  
 22 A. No, I couldn't say.  
 23 THE COMMISSIONER:  
 24 Q. Who would be able to say?  
 25 MR. TILLEY:

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1 A. I guess the person who wrote the e-mail.  
 2 COFFEY, Q.C.:  
 3 Q. Okay. And we'll get to that.  
 4 MR. TILLEY:  
 5 A. Okay.  
 6 COFFEY, Q.C.:  
 7 Q. But did you attend any meetings where lawyers  
 8 were in attendance?  
 9 MR. TILLEY:  
 10 A. Later, maybe a couple of days later.  
 11 COFFEY, Q.C.:  
 12 Q. Okay. So that would be Dan Boone, I take it?  
 13 MR. TILLEY:  
 14 A. Yes.  
 15 COFFEY, Q.C.:  
 16 Q. And he is the lawyer for HIROC?  
 17 MR. TILLEY:  
 18 A. That's correct.  
 19 COFFEY, Q.C.:  
 20 Q. Would you have perceived him as "our lawyer"?  
 21 MR. TILLEY:  
 22 A. He wouldn't have been Eastern Health's lawyer.  
 23 COFFEY, Q.C.:  
 24 Q. And I appreciate this is not your e-mail, I  
 25 understand that.

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1 MR. TILLEY:  
 2 A. Um-hm.  
 3 COFFEY, Q.C.:  
 4 Q. So you would have made the distinction in your  
 5 own mind between -  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. -HIROC's lawyer and Eastern Health's own  
 10 lawyer?  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. If we could look, please, at Exhibit P-0322?  
 15 Now, this, Mr. Tilley, is the source  
 16 identified within Eastern Health, identified  
 17 to the Commission, anyway, the source of this  
 18 is Terry Gulliver, the top left-hand side.  
 19 It's addressed to George Tilley, it's the  
 20 "From" is left blank. It's an update on ER/PR  
 21 receptor testing. And it begins by saying,  
 22 "The following activity has taken place since  
 23 the memo of Dr. D. Cook to Dr. R. Williams  
 24 dated May 24th, 2005. See that?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. And then there's--then I think there are nine  
 4 bullets over two pages. Follow it? You'll  
 5 notice -  
 6 THE COMMISSIONER:  
 7 Q. Sorry, Mr. Coffey, but I missed it. What was  
 8 the date of this particular communication?  
 9 COFFEY, Q.C.:  
 10 Q. It's undated, Commissioner.  
 11 THE COMMISSIONER:  
 12 Q. Oh, okay.  
 13 COFFEY, Q.C.:  
 14 Q. You didn't miss it. It is undated. When one  
 15 looks at this, this one just simply does so,  
 16 it's addressed to George Tilley. And "The  
 17 following activity has taken place since the  
 18 memo of Dr. D. Cook to Dr. R. Williams dated  
 19 May 24, 2005." Okay. If we could go then,  
 20 please, to Exhibit P-0323? Now, this is a  
 21 two-page memo. Just scroll down there, Mr.  
 22 Tilley, you can see it's two pages?  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

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1 Q. It's got one, two, three, four, five, six, I  
 2 think it's eight bullets. Yes, eight bullets  
 3 in this one. And it's addressed to yourself  
 4 from Dr. R. Williams "Re: Update on ER/PR  
 5 receptor testing." And this one begins, "The  
 6 following activity has taken place since the  
 7 memo of Dr. D. Cook to Dr. R. Williams dated  
 8 May 24th, 2005 (attached):" and then the eight  
 9 bullets follow. Now, sir, do you recall ever  
 10 receiving this? Because I'm just going to  
 11 scroll to, well, actually go to, scroll to--  
 12 I'll ask, please, that Exhibit P-0324 be  
 13 opened, please? And this is on Health Care  
 14 Corporation of St. John's letterhead,  
 15 "Confidential. May 24th, 2005." Addressed to  
 16 "Dr. Robert Williams." It's "Re; False  
 17 negative results for estrogen and progesterone  
 18 receptors, ER and PR." And this is a three-  
 19 page letter from Dr. Donald Cook. I'm just  
 20 going to go back up through this to the second  
 21 page of this exhibit. Do you recognize any of  
 22 the handwriting?  
 23 MR. TILLEY:  
 24 A. No.  
 25 COFFEY, Q.C.:

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1 Q. Okay. None of that's yours. Now, sir, that  
 2 is a May 24th memo of Dr. Cook to Dr. R.  
 3 Williams. If we could go back to 0323,  
 4 please, up to the first page of it? Do you  
 5 know if you've ever seen this memo from Dr.  
 6 Williams?  
 7 MR. TILLEY:  
 8 A. Only by reason it's in the package.  
 9 COFFEY, Q.C.:  
 10 Q. Because this appears to be--well, of course,  
 11 it is addressed to you, it's from Dr.  
 12 Williams. It does refer to the memo of Dr.  
 13 Cook to Dr. Williams dated May 24th, 2005 as  
 14 being attached?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. I think you did refer this morning at one  
 19 point you thought you'd received something in  
 20 writing from Dr. Williams?  
 21 MR. TILLEY:  
 22 A. Well, that was this -  
 23 COFFEY, Q.C.:  
 24 Q. This one?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. And there would have been, then, according to  
 4 this, the May 24th letter attached?  
 5 MR. TILLEY:  
 6 A. That's what's stated there.  
 7 COFFEY, Q.C.:  
 8 Q. Um-hm. If we look through this memo, what  
 9 you're being told by Dr. Williams is "Samples  
 10 collected from 25 women initially tested as  
 11 negative in 2002 were retested, 16 of these  
 12 came back positive. Testing is currently  
 13 being done on 33 more patients. Approximately  
 14 12 of these patients have been informed by  
 15 their oncologists." So I take it that would  
 16 have lead you, from that you would have  
 17 concluded that they're through one group,  
 18 they're in the midst of doing the second  
 19 retest?  
 20 MR. TILLEY:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. Second group. And 12 patients already know  
 24 about their results?  
 25 MR. TILLEY:

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1 A. Um-hm.  
 2 COFFEY, Q.C.:  
 3 Q. There's a reference to "June 13th, 2005, Dr.  
 4 Cook wrote to all laboratory directors in the  
 5 province to submit all negative ER and PR  
 6 cases for year 2002 for retesting with the new  
 7 more sensitive Ventana system. So far no  
 8 samples have been received so Dr. Cook will  
 9 contact all laboratory directors again  
 10 requesting samples from 1997 to 2004." So  
 11 presumably this was written at a point where  
 12 the decision had been made to go with the '97  
 13 to '04?  
 14 MR. TILLEY:  
 15 A. Um-hm.  
 16 COFFEY, Q.C.:  
 17 Q. Retesting. You agree with that?  
 18 MR. TILLEY:  
 19 A. That's what's stated, yes.  
 20 COFFEY, Q.C.:  
 21 Q. The second sentence of the third bullet says,  
 22 "All samples which initially tested as  
 23 negative from 1997 until the implementation of  
 24 the Ventana system in April, 2004 will be  
 25 retested. As the test results can affect

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1 future treatment, patients that are still  
 2 living will have the testing done first before  
 3 it is done on those that are deceased. Extra  
 4 resources have been identified within the  
 5 HCCSJ lab to undertake identification and  
 6 retesting. The list of patients will be  
 7 double checked with the names on the cancer  
 8 registry to insure none have been missed.  
 9 Time lines required to do the retesting  
 10 internally will be determined as soon as  
 11 possible. If it is determined to be too time  
 12 consuming, options to utilize external  
 13 laboratories will be explored." So does that  
 14 capture your memory of the state of affairs  
 15 sometime before July 19th?  
 16 MR. TILLEY:  
 17 A. Generally, yes.  
 18 COFFEY, Q.C.:  
 19 Q. The reference to "list of patients will be  
 20 double checked with the names on the Cancer  
 21 Registry to ensure none will be missed",  
 22 suggesting that -- what did that suggest to  
 23 you?  
 24 MR. TILLEY:  
 25 A. That there were some concerns about the source

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1 of the list that they were using at the time.  
 2 COFFEY, Q.C.:  
 3 Q. And what, if any, steps did you understand  
 4 they were taking to ensure that they  
 5 identified everybody?  
 6 MR. TILLEY:  
 7 A. I understand the Cancer Registry is a separate  
 8 list of patients who had that diagnosis, and  
 9 they were looking to try to find some way to  
 10 ensure that they had a complete list by doing  
 11 a comparison.  
 12 THE COMMISSIONER:  
 13 Q. Who maintains the Cancer Registry?  
 14 MR. TILLEY:  
 15 A. I can't answer that, Madam Commissioner.  
 16 COFFEY, Q.C.:  
 17 Q. In 2005, the Cancer Registry physically is  
 18 where?  
 19 MR. TILLEY:  
 20 A. I'm thinking it's in the Newfoundland Cancer  
 21 Treatment Foundation.  
 22 COFFEY, Q.C.:  
 23 Q. Which is located where?  
 24 MR. TILLEY:  
 25 A. Next to the Health Sciences Centre.

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1 COFFEY, Q.C.:  
 2 Q. That building right next door now?  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And did Eastern Health assume responsibility  
 7 for that organization at some point in 2005?  
 8 MR. TILLEY:  
 9 A. It did.  
 10 COFFEY, Q.C.:  
 11 Q. So "The current testing standards of Ventana  
 12 System are being assessed by cross-referencing  
 13 our results with another laboratory", what did  
 14 you understand about that?  
 15 MR. TILLEY:  
 16 A. That there was some parallel testing with  
 17 another lab outside the province to see that  
 18 comparability of the results.  
 19 COFFEY, Q.C.:  
 20 Q. Now the Ventana System, your understanding was  
 21 the Ventana System was used to do what?  
 22 MR. TILLEY:  
 23 A. Well, it had automated a number of steps that  
 24 had included boiling in the old DAKO System.  
 25 COFFEY, Q.C.:

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1 Q. So what was it -- it was used to prepare what?  
 2 MR. TILLEY:  
 3 A. I can't tell you.  
 4 COFFEY, Q.C.:  
 5 Q. Did it have anything to do with IHC testing?  
 6 MR. TILLEY:  
 7 A. Immunohistochemistry?  
 8 COFFEY, Q.C.:  
 9 Q. Yes.  
 10 MR. TILLEY:  
 11 A. I look at that as the broad -- yes.  
 12 COFFEY, Q.C.:  
 13 Q. Did you acquire any understanding about -- I  
 14 take it you understood there was some  
 15 relationship between ER and PR tests and the  
 16 Ventana System?  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Did you have any understanding as to whether  
 21 the Ventana was used for anything other than  
 22 ER/PR?  
 23 MR. TILLEY:  
 24 A. No, I don't have that understanding.  
 25 COFFEY, Q.C.:

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1 Q. You didn't --  
 2 MR. TILLEY:  
 3 A. Not direct knowledge coming to me.  
 4 COFFEY, Q.C.:  
 5 Q. Like, the idea that there might have been 100  
 6 other stains run using that machinery, that  
 7 sort of notion?  
 8 MR. TILLEY:  
 9 A. It really wasn't an issue that had come to my  
 10 attention.  
 11 COFFEY, Q.C.:  
 12 Q. So did anyone ever explain to you how ER/PR,  
 13 those two tests, those two stains, related to  
 14 IHC staining generally, or IHC testing  
 15 generally?  
 16 MR. TILLEY:  
 17 A. They may have, but I really can't piece it  
 18 together at the moment.  
 19 COFFEY, Q.C.:  
 20 Q. In that vein, by the end of July, the  
 21 beginning of August, anyway, the decision was  
 22 made to stop doing ER/PR testing in St.  
 23 John's?  
 24 MR. TILLEY:  
 25 A. Yes.

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1 COFFEY, Q.C.:  
 2 Q. At the General Hospital site, and you were  
 3 telling the Commissioner yesterday about their  
 4 concerns about maybe the Ventana was  
 5 overcalling --  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. The ER/PR results. What was your  
 10 understanding about during August, September,  
 11 October, November, and December of '05,  
 12 whether the Ventana System was being used?  
 13 MR. TILLEY:  
 14 A. My understanding is that we were referring all  
 15 the ER and PR tests out to an alternative lab.  
 16 COFFEY, Q.C.:  
 17 Q. How about the Ventana System being used, like,  
 18 the machinery?  
 19 MR. TILLEY:  
 20 A. I have no recollection of discussion around  
 21 that.  
 22 COFFEY, Q.C.:  
 23 Q. So did anybody ever point out to you, look,  
 24 we're going to continue to use this Ventana  
 25 machine to do a whole lot of other tests,

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1 we're just not going to use it for ER/PR? Did  
 2 anybody ever explain that to you?  
 3 MR. TILLEY:  
 4 A. I don't recall.  
 5 COFFEY, Q.C.:  
 6 Q. Would you have been interested to know whether  
 7 that was so?  
 8 MR. TILLEY:  
 9 A. Yes. I was very focusing on the ER/PR issue  
 10 and the concerns that were being expressed  
 11 about the variability or the conversions  
 12 there, so the other issues really was not  
 13 something that I recall talking about.  
 14 COFFEY, Q.C.:  
 15 Q. Now here the second paragraph on the second  
 16 page -- the second bullet on the second page  
 17 of Exhibit P-0323 states, "The public will  
 18 have to be informed. Corporate communications  
 19 have been involved, and as at least five  
 20 patients are aware of this information  
 21 already, disclosure has to be made quickly".  
 22 Now just looking at that and going back to the  
 23 first page, the first bullet, the last  
 24 sentence reads, "Approximately twelve of these  
 25 patients have been informed by their



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1 oncologist", that's 12 of the 16 out of 25  
 2 that had converted.  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. So did you see at the time you read this or  
 7 notice this potential discrepancy here between  
 8 on the one hand you're told 12, and on the  
 9 other --  
 10 MR. TILLEY:  
 11 A. Yes, I see the difference. I certainly hadn't  
 12 picked up on that.  
 13 COFFEY, Q.C.:  
 14 Q. At the time in July of 2005 the idea that 16  
 15 out of 25 had come back positive, the first 25  
 16 retested, approximately 12 of these had been  
 17 informed by their oncologist -- now it doesn't  
 18 actually say 12 of those that came back  
 19 positive, but I gather that's what you  
 20 understood by it.  
 21 MR. TILLEY:  
 22 A. Uh-hm.  
 23 COFFEY, Q.C.:  
 24 Q. Did anybody ever discuss whether or not the  
 25 other patients, those that had -- like, the

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1 difference between 16 and 12 is four, whether  
 2 those patients should be told, or what the  
 3 status was for them?  
 4 MR. TILLEY:  
 5 A. The only link I can make is that around this  
 6 time there was a question raised about the  
 7 results of the Ventana technology, and a  
 8 reference to Dr. Laing or one of the  
 9 oncologists suggesting that they would hold  
 10 further contact with patients until the  
 11 Ventana System was confirmed. That may or may  
 12 not be an explanation for why the other four,  
 13 but it's the only recollection I have.  
 14 COFFEY, Q.C.:  
 15 Q. That had apparently come back positive.  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. How about the idea of informing the nine  
 20 patients that had on retest come back  
 21 negative, like, letting them know that they  
 22 were retested?  
 23 MR. TILLEY:  
 24 A. I don't recall any discussion about that at  
 25 that point in time.

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1 THE COMMISSIONER:  
 2 Q. I'm not sure I understood the reference you  
 3 were making. You said that you recall one of  
 4 the oncologists suggesting you withhold what?  
 5 MR. TILLEY:  
 6 A. Advising any further patients of the change  
 7 because very shortly thereafter there was a  
 8 question as to the Ventana System's  
 9 sensitivity in that it might have been  
 10 overcalling the positivity rate, and you may  
 11 find that in a subsequent document.  
 12 THE COMMISSIONER:  
 13 Q. So you're associating this with those who have  
 14 been retested at this point, and while a  
 15 number had been told, you would not tell any  
 16 more until you were satisfied that the Ventana  
 17 was properly operating?  
 18 MR. TILLEY:  
 19 A. Yes, Mr. Coffey had asked if there was any  
 20 discussion around that, and that was the  
 21 connection I was making to a subsequent  
 22 discussion.  
 23 THE COMMISSIONER:  
 24 Q. Thank you.  
 25 COFFEY, Q.C.:

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1 Q. If you look at Exhibit P-0324, please. I take  
 2 it this is -- this is certainly the only May  
 3 24th memo that we have located from Dr. Cook  
 4 to Dr. Williams. Do you expect then, and when  
 5 you looked at that memo from Dr. Williams to  
 6 yourself that refers to the May 24th memo  
 7 attached, that you would have seen this at the  
 8 time?  
 9 MR. TILLEY:  
 10 A. I can't say with confidence. I don't recall  
 11 seeing the memo.  
 12 COFFEY, Q.C.:  
 13 Q. This is the May 24th one?  
 14 MR. TILLEY:  
 15 A. Yes, the May 24th one. I recognize the fact  
 16 that it was attached, so it was either not  
 17 attached or I could have looked at the cover  
 18 memo and went from there, but I can't  
 19 elaborate beyond that point.  
 20 COFFEY, Q.C.:  
 21 Q. Well, if it wasn't attached, then you either  
 22 didn't ask for it, possibility one -- is there  
 23 any reason why you wouldn't have if indeed  
 24 that's what happened?  
 25 MR. TILLEY:

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1 A. If indeed -- no, there wouldn't be any reason  
 2 unless I didn't note the point that it was  
 3 attached.  
 4 COFFEY, Q.C.:  
 5 Q. If it had been attached, do you have any  
 6 reason to believe that you wouldn't have read  
 7 it?  
 8 MR. TILLEY:  
 9 A. No.  
 10 COFFEY, Q.C.:  
 11 Q. I mean, it's not that long?  
 12 MR. TILLEY:  
 13 A. No, and it's an important issue.  
 14 COFFEY, Q.C.:  
 15 Q. If you'll look, please, at -- scroll down  
 16 through this. The first paragraph refers to  
 17 May 11th, 2005, "Dr. Cook having received a  
 18 phone call from Dr. Joy McCarthy, a medical  
 19 oncologist, informing Dr. Cook of an ER/PR  
 20 reported negative in a patient with  
 21 infiltrating lobular carcinoma of the breast  
 22 diagnosed in 2002, and when retested in May,  
 23 2005, the ER and PR report is strongly  
 24 positive. Dr. McCarthy also expressed concern  
 25 over what appears to be a high rate of

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1 infiltrating lobular carcinomas that were  
 2 reported as ER and PR negative. She stated  
 3 that usually 95 percent of lobular carcinomas  
 4 are ER and PR positive, while 5 percent are  
 5 negative. Dr. McCarthy requested that two  
 6 other patients with infiltrating lobular  
 7 carcinoma who were reported as ER and PR  
 8 negative in 2002 also be retested. I also  
 9 express concern over this and suggest that we  
 10 meet to discuss this further". Now that idea  
 11 involving a known significant percentage, a  
 12 significantly high percentage of a particular  
 13 type of breast cancer --  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. Known to be ER/PR positive --  
 18 MR. TILLEY:  
 19 A. Yes.  
 20 COFFEY, Q.C.:  
 21 Q. When did you first become aware of that?  
 22 MR. TILLEY:  
 23 A. Some time during this process, so I'm assuming  
 24 it was, you know, within the next week or two  
 25 of the middle of July.

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1 COFFEY, Q.C.:  
 2 Q. Certainly by the time that big meeting, and  
 3 I'm going to suggest to you was August 1, 2005  
 4 --  
 5 MR. TILLEY:  
 6 A. August 1 meeting, yes.  
 7 COFFEY, Q.C.:  
 8 Q. That you described yesterday.  
 9 MR. TILLEY:  
 10 A. Yes.  
 11 COFFEY, Q.C.:  
 12 Q. You knew about the fact that --  
 13 MR. TILLEY:  
 14 A. There was a particular diagnosis that would  
 15 normally convert as positive.  
 16 COFFEY, Q.C.:  
 17 Q. There's a paragraph dealing with May 17th,  
 18 2005, meeting involving Dr. Cook, Dr. Bev  
 19 Carter, resource person for breast pathology,  
 20 Barry Dyer, Divisional Manager for Anatomical  
 21 Pathology, and Dr's Joy McCarthy and Kara  
 22 Laing, medical oncologists, and talk about --  
 23 talks about the fact that he had a second --  
 24 he, Dr. Cook, had a second patient now on  
 25 retest go strongly positive for breast

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1 receptors, and he talks about different known  
 2 percentages or perceived to be percentages.  
 3 If we look through the second page of this,  
 4 there is in the middle of the page if you  
 5 could look down through this -- you had an  
 6 opportunity to see this recently, haven't you?  
 7 MR. TILLEY:  
 8 A. I've skimmed it. Which paragraph are you  
 9 referring to?  
 10 COFFEY, Q.C.:  
 11 Q. The whole really of page two, because  
 12 effectively page two is an education.  
 13 MR. TILLEY:  
 14 A. Uh-hm.  
 15 COFFEY, Q.C.:  
 16 Q. On ER/PR and where it fits into immuno  
 17 staining and other matters, and it talks about  
 18 the history really.  
 19 MR. TILLEY:  
 20 A. Uh-hm.  
 21 COFFEY, Q.C.:  
 22 Q. Of the DAKO manual system as is described  
 23 there. See that?  
 24 MR. TILLEY:  
 25 A. Yes, I do.

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1 COFFEY, Q.C.:

2 Q. Would it have been of assistance to you in

3 July -- well, if you didn't see it and you

4 don't remember whether or not you saw it,

5 would it have been of assistance to you at the

6 time to have seen this?

7 MR. TILLEY:

8 A. Yes, and it's consistent with sort of the

9 general discussion that I had been involved in

10 in trying to understand the technical aspects

11 of this.

12 COFFEY, Q.C.:

13 Q. Did you ever receive or ask for anything in

14 writing to help you understand it?

15 MR. TILLEY:

16 A. No.

17 COFFEY, Q.C.:

18 Q. Can you tell the Commissioner why you didn't?

19 MR. TILLEY:

20 A. Other than I was a part of a discussion and

21 getting regular briefings, and I have to rely

22 again upon those experts in the field.

23 COFFEY, Q.C.:

24 Q. I appreciate that, and I'm not talking about

25 your -- as you said just now, you're trying to

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1 gain an understanding of it yourself.

2 MR. TILLEY:

3 A. Uh-hm.

4 COFFEY, Q.C.:

5 Q. It's one thing to listen to somebody

6 sometimes, and another thing entirely to

7 actually read something because you can read

8 it two, three, or four times?

9 MR. TILLEY:

10 A. That's correct.

11 COFFEY, Q.C.:

12 Q. And you didn't ask to -- see a primer or have

13 somebody prepare a document spelling out how

14 this worked?

15 MR. TILLEY:

16 A. No, that's accurate.

17 COFFEY, Q.C.:

18 Q. If you had to do it all over, do you think you

19 would have or should have?

20 MR. TILLEY:

21 A. I can only put it in the context of where the

22 organization was and where I was in terms of

23 my responsibilities, just created a new

24 organization and bringing massive amounts of

25 systems and people together, and this was a

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1 very important issue, but one of a number that

2 I happened to be responsible or involved in at

3 that time. So it being a very technical

4 medical issue, then I really did rely upon

5 those people who were closer to it and had a

6 better understanding of it.

7 COFFEY, Q.C.:

8 Q. And I appreciate that, you're not a physician

9 and you certainly weren't going to set out, at

10 that point, to become one. But I'm just, for

11 the Commissioner's benefit, you know, just

12 trying to get some sense of what you were

13 thinking about and what was important to you

14 at the time.

15 MR. TILLEY:

16 A. Uh-hm.

17 COFFEY, Q.C.:

18 Q. In a sense of getting something right. For

19 example, the second last paragraph on page two

20 actually spells out generally, I gather, how

21 this all works.

22 MR. TILLEY:

23 A. Sir, the one beginning with -

24 COFFEY, Q.C.:

25 Q. "Immunoperoxidase stains, couples of

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1 (phonetic) peroxidase labelled to a primary

2 antibody." And it goes on from there and

3 whether you understand it or not, I take it

4 that you had the people available to you, if

5 you didn't understand, who could explain it to

6 you, looking at this?

7 MR. TILLEY:

8 A. Well as you know from one of the notes I read

9 from my telephone log this morning, we

10 referenced to unmasking antigens and the like,

11 so there were efforts to try to get a better

12 understanding of this.

13 COFFEY, Q.C.:

14 Q. Looking at the bottom paragraph of the second

15 page, it says, "In early 2000, Dr. Gershon

16 Ejeckam our point man (phonetic) for

17 immunoperoxidase testing at the General

18 Hospital site, discontinued testing of the

19 ER/PR receptors with the manual method for a

20 six-week period. A memo was circulated to all

21 pathologists across the province stating this.

22 The technique was temporarily halted because

23 of erratic staining which required

24 readjustments of titration and staining times.

25 Once Dr. Ejeckam felt confident of the

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1 reliability of staining, the test was  
 2 reintroduced." So I take it that that kind of  
 3 summarizes, doesn't it -  
 4 MR. TILLEY:  
 5 A. The 2003 issue? Uh-hm.  
 6 COFFEY, Q.C.:  
 7 Q. Now is it--if this was known at the time and  
 8 apparently it was known as of May 24th, 2005,  
 9 what more was there to be learned by an  
 10 investigation by Dr. Williams?  
 11 MR. TILLEY:  
 12 A. The question as to whether there should have  
 13 been a retroactive review?  
 14 COFFEY, Q.C.:  
 15 Q. No, no, just on July 20th in a memo delivered  
 16 the 21st of July to the Minister of Health, it  
 17 says Dr. Williams is being asked to conduct an  
 18 investigation.  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Apparently almost two months earlier.  
 23 MR. TILLEY:  
 24 A. Oh, I see what you mean.  
 25 COFFEY, Q.C.:

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1 Q. That much is known, at least that much is  
 2 known.  
 3 MR. TILLEY:  
 4 A. Uh-hm.  
 5 COFFEY, Q.C.:  
 6 Q. So do you know what Dr. William was otherwise  
 7 was supposed to find out?  
 8 MR. TILLEY:  
 9 A. No, I can't contribute to that.  
 10 COFFEY, Q.C.:  
 11 Q. If I could turn to page three, please, just  
 12 scroll down the exhibit. Here Dr. Cook  
 13 concludes by saying "In closing, I would like  
 14 to make the following recommendations for  
 15 immunoperoxidase testing"--and, of course,  
 16 he's making these recommendations at the end  
 17 of May to Dr. Williams, who is described as,  
 18 if I could, while I'm at it, as the acting CEO  
 19 Vice-President Medical Services, General  
 20 Hospital site or the Health Care Corporation  
 21 of St. John's. He's got four recommendations,  
 22 Dr. Cook does, the immediate establishment of  
 23 an external proficiency testing and monitoring  
 24 program for immunoperoxidase testing;  
 25 establishment of a separate immunoperoxidase

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1 service with at least three technologist  
 2 solely dedicated to immunoperoxidase testing  
 3 with separate testing facilities; training of  
 4 immunoperoxidase technologists in a major  
 5 immuno referral lab that has a well  
 6 established quality control and  
 7 troubleshooting program; and four, appropriate  
 8 C and E funding for those immuno  
 9 technologists. And these are preliminary  
 10 recommendations that will no doubt require  
 11 additional manpower and funding levels than  
 12 currently exist." So were you made aware by  
 13 Dr. Williams early on in July 2005 that, about  
 14 six weeks before, seven weeks before he had  
 15 received these recommendations?  
 16 MR. TILLEY:  
 17 A. Whether I had learned it in July?  
 18 COFFEY, Q.C.:  
 19 Q. Yes. If you saw this letter, you did, but if  
 20 you otherwise -  
 21 MR. TILLEY:  
 22 A. No.  
 23 COFFEY, Q.C.:  
 24 Q. Does that suggest, I mean, that kind of  
 25 listing there, in fact, generally in many ways

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1 that's in fact what ended up happening, isn't  
 2 it?  
 3 MR. TILLEY:  
 4 A. That's correct.  
 5 COFFEY, Q.C.:  
 6 Q. Does that suggest to you that at least in Dr.  
 7 Cook's mind, would you have thought if you  
 8 received it at the time, that he's relatively  
 9 far along in terms of what he's concluded  
 10 about what's got to be done?  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. If you look at, please, Exhibit P-0073? Now  
 15 this, Mr Tilley is an e-mail--well it's two e-  
 16 mails actually. The first in time is from  
 17 Heather Predham, Tuesday, July 19th, 2005 at  
 18 8:22 a.m. It's to Dr. Robert Williams, Dr.  
 19 Donald Cook, Terry Gulliver, Susan Bonnell and  
 20 Deborah Thomas, copied to Denise Dunn and  
 21 Patricia Pilgrim. And the subject is  
 22 "Information from HIROC". And in terms of the  
 23 senior management involved in this, I take it  
 24 you're the only one left off?  
 25 MR. TILLEY:

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1 A. Yes, in terms of the vice-presidents who were  
 2 not--or were related to this, yes.  
 3 COFFEY, Q.C.:  
 4 Q. Yes. Because we've got Bob Williams and  
 5 Patricia Pilgrim?  
 6 MR. TILLEY:  
 7 A. That's correct.  
 8 COFFEY, Q.C.:  
 9 Q. So Ms. Pilgrim, by this point by 8:22 a.m. on  
 10 July 19th is involved, okay. Heather writes,  
 11 "Hi, I had a long conversation with  
 12 representatives from HIROC yesterday evening."  
 13 And she goes on as a bit of background, "They  
 14 are currently defending a class action lawsuit  
 15 against Health Labrador re: the reprocessing  
 16 of equipment. Apparently the aspect of this  
 17 lawsuit in which they are most vulnerable was  
 18 the method that people were informed. Ches  
 19 Crosbie has alleged in the lawsuit that the  
 20 people suffered significant mental anguish  
 21 from the way they were told and the risk of  
 22 disease from their exposure did not warrant  
 23 the stress and anxiety they suffered by being  
 24 told. The organization felt the need to  
 25 disclose publicly, ran it by their legal

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1 counsel and then wrote letters to every person  
 2 affected and sent out a news release (sound  
 3 familiar??). Their vulnerability comes from  
 4 the lack of weighing out the risk from the  
 5 exposure verses the anxiety being told about  
 6 it. In this case the risk from the exposure  
 7 was very small. This leads to our situation,  
 8 it's not that they don't want us to disclose,  
 9 they just don't want us to disclose until we  
 10 are sure of our facts. I've had a quick voice  
 11 mail from Dan after my chat with HIROC. They  
 12 contacted him after they hung up from me,  
 13 reiterating this and that they will be in  
 14 touch again in the morning. So I guess we  
 15 will have to re-evaluate where we are before  
 16 plan to send those letters, et cetera? Should  
 17 we chat about this face to face? Signed  
 18 Heather." Now on the morning--and Heather, 14  
 19 minutes later at the top of the page sends it  
 20 to a group of people, I gather who work in the  
 21 same division she does, Debbie Parsons, Nancy  
 22 Parsons and so on. And forwarding the  
 23 information from HIROC, presumably this e-mail  
 24 and she says, "The plot thickens".  
 25 MR. TILLEY:

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1 A. Uh-hm.  
 2 COFFEY, Q.C.:  
 3 Q. Now, sir, when did you first learn about HIROC  
 4 or HIROC having been consulted in this matter?  
 5 MR. TILLEY:  
 6 A. I can't pinpoint a date, though I do remember  
 7 having a discussion with Dr. Williams. It may  
 8 have been on that same day, later in that day.  
 9 COFFEY, Q.C.:  
 10 Q. It would seem logical, wouldn't it. I mean,  
 11 everyone except you and the senior management  
 12 involved in this, is listed on this e-mail as  
 13 a recipient and effectively Heather is  
 14 communicating here, I gather, that HIROC is  
 15 saying in terms of the disclosure, you might  
 16 want to think about it.  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. So it would be important that that be brought  
 21 to your attention?  
 22 MR. TILLEY:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Because if we looked at, just before lunch,

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1 all the preparation that had been going on, in  
 2 terms of media releases, draft briefing notes,  
 3 some of which have your handwriting on it.  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. Or versions, you know, particular copies have  
 8 your handwriting on it. So by midday--  
 9 certainly early morning of Tuesday, July 19th,  
 10 it is likely as not you were told that morning  
 11 about HIROC?  
 12 MR. TILLEY:  
 13 A. That morning?  
 14 COFFEY, Q.C.:  
 15 Q. Yes.  
 16 MR. TILLEY:  
 17 A. I can't be specific, but I do have a  
 18 handwritten note if there is a way of  
 19 accessing that.  
 20 COFFEY, Q.C.:  
 21 Q. And you have a handwritten note on--well let's  
 22 see, bring up 0329, maybe this will help, P-  
 23 0329? And these are labelled as George  
 24 Tilley's notes, July 19th, Susan B.  
 25 MR. TILLEY:

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1 A. I guess the one at the bottom where it starts  
 2 at 3 p.m., Bob W.  
 3 COFFEY, Q.C.:  
 4 Q. Yes.  
 5 MR. TILLEY:  
 6 A. Yes, okay. There's a reference there to legal  
 7 counsel cautious--no cautions release pending  
 8 full results. So that would have been an  
 9 indication that there had been an involvement,  
 10 I suspect by HIROC at that time.  
 11 COFFEY, Q.C.:  
 12 Q. Well we know that they had been involved from  
 13 Heather's e-mail.  
 14 MR. TILLEY:  
 15 A. Yes, yes.  
 16 COFFEY, Q.C.:  
 17 Q. But in terms of your knowledge certainly by  
 18 then, by the middle of the afternoon of the  
 19 19th, you knew.  
 20 MR. TILLEY:  
 21 A. That's correct.  
 22 COFFEY, Q.C.:  
 23 Q. Now that Tuesday, what do you recall about  
 24 that Tuesday?  
 25 MR. TILLEY:

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1 A. The 19th?  
 2 COFFEY, Q.C.:  
 3 Q. Yes.  
 4 MR. TILLEY:  
 5 A. I think that was the day that some information  
 6 came back which suggested that the positivity  
 7 rate wasn't in all years as inconsistent with  
 8 national benchmarks as originally thought. So  
 9 it raised the issue as to whether we had mis-  
 10 read the situation.  
 11 COFFEY, Q.C.:  
 12 Q. In what way?  
 13 MR. TILLEY:  
 14 A. That for some years the positivity rates were  
 15 actually within the recommended benchmarks  
 16 nationally for this particular test.  
 17 COFFEY, Q.C.:  
 18 Q. Which years were they?  
 19 MR. TILLEY:  
 20 A. I think 2003 is the one that immediately jumps  
 21 to mind. It wasn't in all cases, there is a  
 22 chart that I'm sure that you have that I'm  
 23 recollecting in mind which broke it down by  
 24 year.  
 25 COFFEY, Q.C.:

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1 Q. The chart is dated, I believe, July 20th.  
 2 MR. TILLEY:  
 3 A. Okay.  
 4 COFFEY, Q.C.:  
 5 Q. So I'm asking about the 19th.  
 6 MR. TILLEY:  
 7 A. There must have been some information came out  
 8 because if you can scroll up--maybe I can  
 9 scroll up.  
 10 COFFEY, Q.C.:  
 11 Q. Certainly.  
 12 MR. TILLEY:  
 13 A. "Susan Bonnell at today's meeting revealed the  
 14 potential that scope of problem restricted as  
 15 basis of review of percent of positivity  
 16 results for 2003 being 75 percent which is  
 17 consistent with national benchmarks." So it  
 18 did raise that issue of that, so I'm assuming  
 19 that while that memo might have been--or the  
 20 chart might be dated the following day, that  
 21 there obviously was some indication through  
 22 some other means that that information was  
 23 there.  
 24 COFFEY, Q.C.:  
 25 Q. And, Mr. Tilley, that said nothing about 2002,

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1 2001, 2000, did it?  
 2 MR. TILLEY:  
 3 A. No, other than the range for positivity for  
 4 this rate, I think I may have alluded to it  
 5 yesterday, evolved as we went forward. It  
 6 originally started fairly broad, fifty to  
 7 eighty-five percent, but I remember later Dr.  
 8 Carter making some more clarity around that  
 9 and suggesting sixty-eight to eighty-five or  
 10 eighty percent. So there were clearly years  
 11 that fell on the outside of that.  
 12 COFFEY, Q.C.:  
 13 Q. And what difference would that make?  
 14 MR. TILLEY:  
 15 A. I guess the question was being put as to  
 16 whether in fact something was being  
 17 interpreted wrong in the broader sense to have  
 18 a concern that the tests were inaccurate, but  
 19 then find out that they were within range, it  
 20 just caused the professionals to stop and  
 21 pause.  
 22 COFFEY, Q.C.:  
 23 Q. I'm going to suggest to you that for some of  
 24 those years, the numbers were significantly  
 25 lower than they were for '03.

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1 MR. TILLEY:  
 2 A. Sixty-two percent is one that comes to mind.  
 3 COFFEY, Q.C.:  
 4 Q. In any case, what difference would that make?  
 5 I mean, if an individual test result, original  
 6 one is wrong, then it is just wrong, isn't it?  
 7 MR. TILLEY:  
 8 A. It could be -  
 9 COFFEY, Q.C.:  
 10 Q. - for that patient. What I'm trying to  
 11 establish for the Commissioner is have you  
 12 explain to her what difference did it make  
 13 whether or not it was locally it was 65 or 75  
 14 percent? What did the percentage have to do  
 15 with anything?  
 16 MR. TILLEY:  
 17 A. Well, it's just one of the benchmarks that was  
 18 available in the system that allowed you to  
 19 give some comparison or some ability to get a  
 20 sense as to whether your overall results are  
 21 being consistent with practices found  
 22 elsewhere.  
 23 COFFEY, Q.C.:  
 24 Q. And what difference did that make to the care  
 25 of individual patients?

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1 MR. TILLEY:  
 2 A. Well, I mean, the whole idea of benchmarks is  
 3 to try to give you an indication to measure  
 4 your quality. All I can say is that it was  
 5 raised as an issue. It caused the technical  
 6 and medical people to pause and that was the  
 7 point that was being made.  
 8 COFFEY, Q.C.:  
 9 Q. So, it caused them to pause, but in the  
 10 meantime, if we look at that--just above mid  
 11 page you've written there, "discussion with  
 12 Carolyn re: announcement and concerns of  
 13 minister".  
 14 MR. TILLEY:  
 15 A. Yes. She must have passed that on in terms of  
 16 -  
 17 COFFEY, Q.C.:  
 18 Q. So, this would be a discussion by you with  
 19 Carolyn or Susan with Carolyn?  
 20 MR. TILLEY:  
 21 A. That would be Susan.  
 22 COFFEY, Q.C.:  
 23 Q. Susan, and she's pass--Susan then is passing  
 24 on the details of her discussion with Carolyn  
 25 Chaplin to you?

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1 MR. TILLEY:  
 2 A. It could be or indicating that she was  
 3 intending to follow-up with her. I can't be  
 4 confident which direction it is referring.  
 5 COFFEY, Q.C.:  
 6 Q. You see, there's a reference "Susan B. today's  
 7 meeting, review". So, which meeting is that?  
 8 MR. TILLEY:  
 9 A. I can't be specific. I don't think there was  
 10 a meeting that I was involved in.  
 11 COFFEY, Q.C.:  
 12 Q. You see the -  
 13 THE COMMISSIONER:  
 14 Q. Mr. Tilley, I'm having trouble understanding  
 15 where this is going at this stage. It seemed  
 16 to me that early, if you follow the  
 17 communication here, that early in the game  
 18 when it was realized that (a) there was a  
 19 problem of a certain kind related to a  
 20 particular kind of cancer, I know, what  
 21 started the ball rolling as it were, but then  
 22 a wider sampling was done and it seemed like a  
 23 relatively high number of people turned around  
 24 on terms of going from negative to positive.  
 25 And then it was relatively quickly determined

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1 that one had to go wider. But is the remark--  
 2 do I interpret these remarks about what the  
 3 benchmarks are as somebody saying, "put the  
 4 brakes on, we don't have to go any wider".  
 5 MR. TILLEY:  
 6 A. Yes, Madam Commissioner, there was talk about  
 7 benchmarks in terms of maybe this is not as  
 8 big a problem as was originally thought.  
 9 THE COMMISSIONER:  
 10 Q. But how were you going to resolve the issue of  
 11 whether it was a bigger problem than you  
 12 thought, by redoing the test or quitting, if  
 13 you didn't have the percentages?  
 14 MR. TILLEY:  
 15 A. No, I think--you'll see later on that despite  
 16 that pause, the decision was made to continue  
 17 on with the retesting process, but for -  
 18 THE COMMISSIONER:  
 19 Q. Well, I guess it's the point, the questions  
 20 have been asked by Mr. Coffey--why did you  
 21 have to pause?  
 22 MR. TILLEY:  
 23 A. It was being expressed to me in a meeting the  
 24 following day, I believe, and this was the  
 25 first indication of its existence, that the

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1 percentage of positivity was seen to be within  
 2 the national benchmark for that test. And it  
 3 was just one indicator that they had, or maybe  
 4 the only indicator that they had at their  
 5 disposal to put into this issue to try to get  
 6 a better analysis of it. But it did result in  
 7 the physicians saying, and the technologist,  
 8 saying we just need to get a better feel for  
 9 what we have here. But that pause, as you'll  
 10 see, is temporary.  
 11 COFFEY, Q.C.:  
 12 Q. Which technologists?  
 13 MR. TILLEY:  
 14 A. The information that we've seen or, I guess,  
 15 you will refer to which showed the years was  
 16 prepared by Mr. Gulliver.  
 17 COFFEY, Q.C.:  
 18 Q. Yes.  
 19 MR. TILLEY:  
 20 A. So, that's my source of information.  
 21 COFFEY, Q.C.:  
 22 Q. Oh, okay, Mr. Gulliver. He's the manager.  
 23 MR. TILLEY:  
 24 A. He's a director of the program.  
 25 COFFEY, Q.C.:

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1 Q. But not the actual technologist who actually  
 2 do the work?  
 3 MR. TILLEY:  
 4 A. No, no, no -  
 5 COFFEY, Q.C.:  
 6 Q. You weren't try to -  
 7 MR. TILLEY:  
 8 A. No, no. And I suspect Mr. Dyer would have  
 9 been there somewhere in the process as well.  
 10 COFFEY, Q.C.:  
 11 Q. If we could look at, please, because I'm just  
 12 trying to get some sense of what went on July  
 13 19, okay. Page--sorry--exhibit P-0068. The  
 14 bottom of the page, well, the top of the page,  
 15 this is an excerpt from your telephone log.  
 16 "July 19, 05", it's written, "John  
 17 Ottenheimer, lab, briefing note, explosive,  
 18 sooner the better, Kara Laing".  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. Now, did you have a meeting with John  
 23 Ottenheimer that day? Did you have lunch with  
 24 him? Did you speak with him on the phone or  
 25 some combination thereof?

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1 MR. TILLEY:  
 2 A. That would have been in my telephone log book.  
 3 COFFEY, Q.C.:  
 4 Q. Yes.  
 5 MR. TILLEY:  
 6 A. So, it would be an indication that that would  
 7 be the basis of communication. I wouldn't -  
 8 COFFEY, Q.C.:  
 9 Q. That's why I asked could it be a combination  
 10 of both? Could you have spoken with him and  
 11 then met with him ?  
 12 MR. TILLEY:  
 13 A. No. I just spoke to him.  
 14 COFFEY, Q.C.:  
 15 Q. Okay. Because he seems to remember--he's not  
 16 certain, but he seems to remember you had  
 17 lunch.  
 18 MR. TILLEY:  
 19 A. Well, in fact, in my calendar, there are two  
 20 dates of potential lunches with the minister.  
 21 The minister had called prior to this being a  
 22 issue for him to suggest that we have lunch,  
 23 but not anything, any specific agenda. Those  
 24 meetings were subsequently cancelled. So, the  
 25 fact that he's in my telephone log means that

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1 that was the form of communication. Very rare  
 2 would I call a minister. It would be the  
 3 minister calling me first or calling me the  
 4 minister calling and me calling him back.  
 5 COFFEY, Q.C.:  
 6 Q. So, what happened that day?  
 7 MR. TILLEY:  
 8 A. The minister had been made aware, obviously,  
 9 of this particular issue.  
 10 COFFEY, Q.C.:  
 11 Q. So, he called you?  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 COFFEY, Q.C.:  
 15 Q. Okay.  
 16 MR. TILLEY:  
 17 A. The reference to "explosive" -  
 18 COFFEY, Q.C.:  
 19 Q. So, he called you and you picked up the phone  
 20 and spoke to him. You first started to talk  
 21 to him, you understood that he already knew  
 22 about this?  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:



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1 Q. Okay, go ahead.  
 2 MR. TILLEY:  
 3 A. And he was aware at that time by the reference  
 4 to the briefing note that either one was being  
 5 prepared or had asked for it. He did suggest  
 6 that this was "explosive".  
 7 COFFEY, Q.C.:  
 8 Q. That's his word, is it?  
 9 MR. TILLEY:  
 10 A. That's his word. And I said to him that, you  
 11 know, I don't disagree with that, this is a  
 12 significant issue. The "sooner the better" is  
 13 the reference to dealing with it. And "Kara  
 14 Laing", I can't say what that was in reference  
 15 to because at that point in time her name  
 16 really hadn't been in anything that I had been  
 17 involved in.  
 18 COFFEY, Q.C.:  
 19 Q. So, do you recall what time of day this was,  
 20 this phone call? Because you were supposed to  
 21 have lunch with him that day? It's in the  
 22 calendar.  
 23 MR. TILLEY:  
 24 A. I don't indicate there what time of the day it  
 25 was. I mean, it was possible that he might

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1 have been calling to cancel lunch, but I can't  
 2 say specifically.  
 3 COFFEY, Q.C.:  
 4 Q. So, are you certain that you did not have  
 5 lunch with him that day?  
 6 MR. TILLEY:  
 7 A. I know there was a lunch meeting that he had  
 8 actually cancelled.  
 9 COFFEY, Q.C.:  
 10 Q. Pardon?  
 11 MR. TILLEY:  
 12 A. A luncheon meeting that he had actually  
 13 cancelled.  
 14 COFFEY, Q.C.:  
 15 Q. Okay.  
 16 MR. TILLEY:  
 17 A. I recall him saying that we would have a  
 18 meeting, not with a specific agenda, but just  
 19 to go out to lunch. So, I have no  
 20 recollection of actually meeting with him.  
 21 And usually I can visualize those things.  
 22 COFFEY, Q.C.:  
 23 Q. Go back please to P-0329. Now here the entry  
 24 for July 19, she's informing you about a  
 25 discussion she'd had had with Carolyn -

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. - re: "the announcement and concerns of  
 5 minister".  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. What do you recall about that?  
 10 MR. TILLEY:  
 11 A. Nothing other than what the note says. I  
 12 guess it's consistent with the phone message  
 13 that the minister wanted to get more  
 14 information and to have it dealt with as  
 15 quickly as possible.  
 16 COFFEY, Q.C.:  
 17 Q. I mean, had you already--when the minister  
 18 called, had you already dealt with John Abbott  
 19 on this?  
 20 MR. TILLEY:  
 21 A. No, I don't recall having talked to John.  
 22 COFFEY, Q.C.:  
 23 Q. How about e-mail?  
 24 MR. TILLEY:  
 25 A. No, don't recall seeing an e-mail.

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1 COFFEY, Q.C.:  
 2 Q. So, your first contact with the department, as  
 3 best you can recall, is a phone call from John  
 4 Ottenheimer?  
 5 MR. TILLEY:  
 6 A. That's the only record I have of the  
 7 connection, yes.  
 8 COFFEY, Q.C.:  
 9 Q. As well that you can recall, just the record  
 10 that you can recall.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. Okay. Did you ask within your organization,  
 15 how does John Ottenheimer know about this when  
 16 I don't know that he knows.  
 17 MR. TILLEY:  
 18 A. Well, it wasn't a surprise to me. We  
 19 referenced the earlier e-mail this morning,  
 20 the Department of Health is aware, was that  
 21 the 18th?  
 22 COFFEY, Q.C.:  
 23 Q. That was the 18th, the day before.  
 24 MR. TILLEY:  
 25 A. So, I'm just -

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1 COFFEY, Q.C.:

2 Q. That e-mail, see, doesn't come to you.

3 MR. TILLEY:

4 A. No.

5 COFFEY, Q.C.:

6 Q. And to receive a phone call from the minister

7 talking about something that you understood

8 that his department didn't know about.

9 MR. TILLEY:

10 A. Right. I just assumed that, you know, it was

11 an acrid issue of assumption, but I can't

12 recall then where his information came from.

13 COFFEY, Q.C.:

14 Q. Do you recall then--did Susan Bonnell, that

15 day, tell you that she had contacted Carolyn

16 Chaplin?

17 MR. TILLEY:

18 A. Well, yes, that, in fact, what the 19th says.

19 So, it could have been that, but then again,

20 the reference to contacting Carolyn and the

21 concerns the minister suggests that there must

22 have been an earlier--of course, that was the

23 day before, the 18th. I can't reconcile it in

24 my recollection.

25 COFFEY, Q.C.:

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1 Q. Now sir, on the 19th--if we could look please

2 at exhibit P-0312, actually--yes, 0312, page

3 one. I appreciate you're neither the

4 originator nor recipient of this e-mail, but

5 it's an e-mail from Gary Cake on Tuesday, July

6 19th, 2005 at 10:32 a.m. to Robert Thompson.

7 The subject is "A major health matter." And

8 Mr. Cake advises Mr. Thompson that "Carolyn

9 Chaplin just called from HCS to provide a

10 heads up that a major story will break from

11 the Eastern Health Board as early as this

12 Thursday but more likely next Monday. The

13 Eastern Health Board has recently discovered

14 errors in its breast cancer testing program.

15 This matter affects clients who were subject

16 to breast cancer testing from 1997 to April,

17 2004. I understand that an estimated 1200 to

18 1500 clients will need to be retested. The

19 Eastern Health Board is currently working on a

20 strategy for communicating this news to

21 affected clients and the public at large.

22 Legal advice is being engaged in this process.

23 HCS will be advised of the communication

24 strategy. A briefing note is currently being

25 prepared. Carolyn has also alerted Elizabeth

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1 to this matter." Signed, "Gary." Now, sir,

2 this is the middle of the morning, Tuesday,

3 July 19th this e-mail was sent.

4 MR. TILLEY:

5 A. Okay.

6 COFFEY, Q.C.:

7 Q. Were you--does that reflect generally your

8 understanding of the state of affairs at the

9 time, 1200 to 1500 people and retesting '97 to

10 April, '04, errors in breast cancer testing

11 program?

12 MR. TILLEY:

13 A. There was a lot of information. What I didn't

14 appreciate until I saw this e-mail was the

15 belief that this was going to happen

16 imminently.

17 COFFEY, Q.C.:

18 Q. Okay.

19 MR. TILLEY:

20 A. Certainly in my mind there was more work to be

21 thought through before that process was

22 concluded.

23 COFFEY, Q.C.:

24 Q. Okay. So, see, if we could look at Exhibit P-

25 0300--I apologize. I apologize. One moment,

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1 please, Commissioner.

2 THE COMMISSIONER:

3 Q. Mr. Coffey, it's about time for the afternoon

4 break. Do you want to take that to look for

5 that or would you prefer to find what it is

6 you're looking for first?

7 COFFEY, Q.C.:

8 Q. If I could, Commissioner, just one moment,

9 please.

10 THE COMMISSIONER:

11 Q. Sure.

12 COFFEY, Q.C.:

13 Q. We had looked earlier at a reference to an

14 intention to go public or an assertion that

15 Eastern Health would go public the middle of

16 the week of the 18th or late that week.

17 Remember we looked at that earlier today?

18 MR. TILLEY:

19 A. Press releases.

20 COFFEY, Q.C.:

21 Q. Press releases and the idea of -

22 MR. TILLEY:

23 A. There was a--yes.

24 COFFEY, Q.C.:

25 Q. - planning that we might go -

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. - public the middle of the week of the 18th or  
 5 late that week. And this e-mail here from Mr.  
 6 Cake to Mr. Thompson certainly does envisage,  
 7 perhaps, going public "as early as this  
 8 Thursday" which would just past mid week of  
 9 the 18th, wouldn't it?  
 10 MR. TILLEY:  
 11 A. Yes.  
 12 COFFEY, Q.C.:  
 13 Q. And you understood that there were--did you  
 14 have any sense of how many patients there were  
 15 potentially to be retested? 1200 to 1500 is  
 16 not a bad guesstimate, is it?  
 17 MR. TILLEY:  
 18 A. Well, at some point in time, but I can't date  
 19 it, there was talk about how many cases are  
 20 done on average per year.  
 21 COFFEY, Q.C.:  
 22 Q. Sure.  
 23 MR. TILLEY:  
 24 A. So if one were to look at '97 to 2004 and do  
 25 some math, you'd do a rough estimate as to

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1 what it might be.  
 2 COFFEY, Q.C.:  
 3 Q. Yes. And -  
 4 MR. TILLEY:  
 5 A. But I hadn't seen that 12 to 15 hundred in any  
 6 of the correspondence that I had seen at that  
 7 point.  
 8 COFFEY, Q.C.:  
 9 Q. Well, had you heard it talked about?  
 10 MR. TILLEY:  
 11 A. You know, certainly a large number of people.  
 12 COFFEY, Q.C.:  
 13 Q. Yes. The span from '97 to April, '04, you'd  
 14 certainly seen that and heard that talked  
 15 about?  
 16 MR. TILLEY:  
 17 A. Yes, that's correct.  
 18 COFFEY, Q.C.:  
 19 Q. You heard people talk about errors in breast  
 20 cancer testing, you'd certainly heard that?  
 21 MR. TILLEY:  
 22 A. Yes.  
 23 COFFEY, Q.C.:  
 24 Q. Now, the idea, "Eastern Health is currently  
 25 working on a strategy for communicating this

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1 news to affected clients and the public at  
 2 large." You certainly understood that was the  
 3 case?  
 4 MR. TILLEY:  
 5 A. Yes.  
 6 COFFEY, Q.C.:  
 7 Q. You understood that, or at least there's a  
 8 reference in the e-mail we looked at to legal  
 9 advice as being engaged in that process?  
 10 MR. TILLEY:  
 11 A. Um-hm.  
 12 COFFEY, Q.C.:  
 13 Q. "Run it past our lawyers", right?  
 14 MR. TILLEY:  
 15 A. That's correct, yes.  
 16 COFFEY, Q.C.:  
 17 Q. "A briefing note is currently being prepared."  
 18 We've looked at that, correct?  
 19 MR. TILLEY:  
 20 A. Yes.  
 21 COFFEY, Q.C.:  
 22 Q. So in the main the information contained in  
 23 this e-mail is fairly accurate?  
 24 MR. TILLEY:  
 25 A. Generally, yes.

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1 COFFEY, Q.C.:  
 2 Q. And, yet, you have--you're telling the  
 3 Commissioner you have no idea of how that  
 4 information got to the Department of Health?  
 5 MR. TILLEY:  
 6 A. Other than the subsequent reference to the e-  
 7 mail where the communications individuals were  
 8 talking about this is the only indication that  
 9 I have of connection at that point.  
 10 COFFEY, Q.C.:  
 11 Q. You weren't told that this was going to  
 12 happen?  
 13 MR. TILLEY:  
 14 A. I wasn't aware of that, no.  
 15 COFFEY, Q.C.:  
 16 Q. Thank you, Commissioner. Thank you.  
 17 THE COMMISSIONER:  
 18 Q. We'll take 15 minutes.  
 19 (RECESS)  
 20 THE COMMISSIONER:  
 21 Q. Please be seated. Mr. Coffey.  
 22 COFFEY, Q.C.:  
 23 Q. Thank you, Commissioner. Just fill in a  
 24 little gap there. The exhibit I was looking  
 25 for at the time was P-0070. It's the July

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1 15th, '05 e-mail from Deborah Thomas to Susan  
 2 Bonnell. And at the--it concludes with--P-  
 3 0070, P-0070. It concludes with the comment,  
 4 "Thinking we may want to release mid, late  
 5 next week." So whether or not you were  
 6 thinking that was going to happen, Mr. Tilley,  
 7 certainly some of your subordinates were?  
 8 MR. TILLEY:  
 9 A. That appears to be the case, yes.  
 10 COFFEY, Q.C.:  
 11 Q. Now, these personnel, people like Susan  
 12 Bonnell, where was she physically located?  
 13 MR. TILLEY:  
 14 A. She was actually in the same building that I  
 15 was on the Waterford Hospital property,  
 16 corporate office.  
 17 COFFEY, Q.C.:  
 18 Q. Deborah Thomas?  
 19 MR. TILLEY:  
 20 A. She would be there, as well.  
 21 COFFEY, Q.C.:  
 22 Q. Heather Predham?  
 23 MR. TILLEY:  
 24 A. She would have been located at the Leonard  
 25 Miller Centre on Forest Road.

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1 COFFEY, Q.C.:  
 2 Q. And Dr. Williams was?  
 3 MR. TILLEY:  
 4 A. At the Health Sciences Centre.  
 5 COFFEY, Q.C.:  
 6 Q. Health Sciences Centre. Exhibit P-032--no,  
 7 before we go to that. Mr. Tilley, the  
 8 Commission received a printout of your, or at  
 9 least a calendar for you. I apologize,  
 10 Commissioner, I don't have a redacted version  
 11 because there's much in it that is completely  
 12 irrelevant to your terms of reference, but we  
 13 just got it in the page couple of days, day or  
 14 two. And the entry, Mr.--and I will be  
 15 providing this in a redacted form,  
 16 Commissioner. But the entry for July 19th,  
 17 12:30 p.m., I'll bring it around so you can  
 18 see it. Okay?  
 19 MR. TILLEY:  
 20 A. Yes. Reads, "He will pick me up."  
 21 COFFEY, Q.C.:  
 22 Q. John Ottenheimer, lunch. Will pick me."  
 23 MR. TILLEY:  
 24 A. Yeah.  
 25 COFFEY, Q.C.:

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1 Q. That should be "pick me up." So, it's your  
 2 recollection that lunch that day must have  
 3 been cancelled?  
 4 MR. TILLEY:  
 5 A. Yes, sir.  
 6 COFFEY, Q.C.:  
 7 Q. Now, when Mr. Ottenheimer called you, as you  
 8 said, this is a rarity, a minister calling  
 9 you, relatively speaking, a rarity?  
 10 MR. TILLEY:  
 11 A. That's correct.  
 12 COFFEY, Q.C.:  
 13 Q. In fact, up to that point you really didn't  
 14 know John Ottenheimer at all, did you?  
 15 MR. TILLEY:  
 16 A. Only by reputation.  
 17 COFFEY, Q.C.:  
 18 Q. And he called to ask you or speak to you about  
 19 the ER/PR issue? He was already aware of it?  
 20 MR. TILLEY:  
 21 A. Well, we certainly talked about it. And I  
 22 have no reference to any other point before  
 23 that.  
 24 COFFEY, Q.C.:  
 25 Q. Up to that point you had not planned to

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1 actually bring it up with him that day?  
 2 MR. TILLEY:  
 3 A. No. No, I don't recall that.  
 4 COFFEY, Q.C.:  
 5 Q. So he calls, speaks to you about it, so he  
 6 obviously--you didn't plan to bring it up and  
 7 you didn't bring it up of your own volition,  
 8 then he must have brought it up?  
 9 MR. TILLEY:  
 10 A. That's what I'm recalling.  
 11 COFFEY, Q.C.:  
 12 Q. Did you ask him--well, first of all, did he  
 13 volunteer how he was aware of it?  
 14 MR. TILLEY:  
 15 A. No.  
 16 COFFEY, Q.C.:  
 17 Q. Did you ask him?  
 18 MR. TILLEY:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. Did you ever ask Susan Bonnell about whether  
 22 she knew about how the department had learned  
 23 about this?  
 24 MR. TILLEY:  
 25 A. I can't recall any discussion to that effect.

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1 COFFEY, Q.C.:

2 Q. Now, and Exhibit P-0329, just so I'm clear, up

3 to this point in time, this is July 19th, the

4 oncologists views on this had not been

5 canvassed, had they?

6 MR. TILLEY:

7 A. That's correct.

8 COFFEY, Q.C.:

9 Q. That came later on, in fact, that came the

10 next week?

11 MR. TILLEY:

12 A. There is a reference in some note about the

13 need to pull in the oncologists, yes.

14 COFFEY, Q.C.:

15 Q. Yeah. That's Susan Bonnell's memo, amongst

16 other things, of July 21 and 22, it's there

17 and it's -

18 MR. TILLEY:

19 A. Yeah. I don't know if it's anywhere in

20 advance of that, but I recall it being there,

21 too.

22 COFFEY, Q.C.:

23 Q. And there's a reference in the, some

24 handwritten notes of July 21 for your meeting

25 with the minister that -

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1 MR. TILLEY:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. - oncologists Monday or Tuesday?

5 MR. TILLEY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. IE, that they would be dealt with or spoken

9 to. So, Mr. Tilley, as of July 19th, by the

10 time day ended, the oncologists didn't figure

11 into, at that point, saying yes or no to going

12 public, did they?

13 MR. TILLEY:

14 A. I think that's a fair statement.

15 COFFEY, Q.C.:

16 Q. Okay. If we look at P-0329, we look just past

17 the middle of the page, and you pointed this

18 out to me earlier, 3 p.m., Bob W., Bob

19 Williams. "Legal counsel cautions release

20 pending full results." And that's in reference

21 to, I take it, probably the e-mail that

22 Heather Predham had sent around early that

23 morning, or at least the contents of it, the

24 discussion with HIROC the night before? I'll

25 bring up, 0073, please, P-0073?

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1 THE COMMISSIONER:

2 Q. Mr. Tilley, you know that there's a paper

3 copy?

4 MR. TILLEY:

5 A. Yes.

6 THE COMMISSIONER:

7 Q. Of many of these documents.

8 MR. TILLEY:

9 A. Yes.

10 THE COMMISSIONER:

11 Q. In the material in front of you. And I think

12 you'll find most of the ones that have been

13 referred to so far in Volume 1. So if you'd

14 prefer to -

15 MR. TILLEY:

16 A. I appreciate that, Commissioner.

17 THE COMMISSIONER:

18 Q. - have it in paper, you can -

19 MR. TILLEY:

20 A. It's all in numerical sequence, is it?

21 COFFEY, Q.C.:

22 Q. I gather.

23 THE COMMISSIONER:

24 Q. Yes. There may be omissions in the sense of

25 certain documents may be missing, but it

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1 should work that way.

2 MR. TILLEY:

3 A. Okay. And I'll keep using this as long as my

4 eyes hold up, but I appreciate knowing that.

5 THE COMMISSIONER:

6 Q. Okay, all right.

7 COFFEY, Q.C.:

8 Q. This P-0073 we've looked at earlier, this is

9 Heather Predham's e-mail of 8:22 a.m. that

10 morning referring to her long conversation

11 with representatives from HIROC yesterday

12 evening and referencing Dan toward the bottom

13 of it. So, I take it that on Exhibit P-0329

14 the reference to "Legal counsel cautions

15 release pending full results," P-0329, please?

16 MR. TILLEY:

17 A. I'm with you.

18 COFFEY, Q.C.:

19 Q. Okay. So as of July 19th the only one

20 cautioning against release, at least

21 externally to you, is legal counsel or HIROC

22 or both?

23 MR. TILLEY:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. Because the minister certainly wants you to  
 2 contact the patients?  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And perhaps go public, but certainly the  
 7 patients right away?  
 8 MR. TILLEY:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. And that was not only the minister, but the  
 12 department wanted that?  
 13 MR. TILLEY:  
 14 A. Um-hm.  
 15 COFFEY, Q.C.:  
 16 Q. Correct?  
 17 MR. TILLEY:  
 18 A. Yes. Dr. Williams.  
 19 COFFEY, Q.C.:  
 20 Q. Wanted you to go public in the sense of  
 21 contact the patients?  
 22 MR. TILLEY:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Did you, before you heard from legal counsel

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1 or HIROC have any reservations?  
 2 MR. TILLEY:  
 3 A. No, I hadn't expressed any other than the  
 4 original intent.  
 5 COFFEY, Q.C.:  
 6 Q. Yes. And the original intent was to go public  
 7 as soon as possible. And what I'm getting at  
 8 here is what were you waiting for? Before  
 9 HIROC came along and a reference to running  
 10 letters past lawyers and the caution from  
 11 HIROC, what were you waiting for, or were you  
 12 waiting for anything?  
 13 MR. TILLEY:  
 14 A. We probably weren't waiting for anything. I  
 15 would acknowledge the fact that the press  
 16 releases were done up, I'm not sure how  
 17 widespread they would have been other than in  
 18 the communications department area, but our  
 19 intent was to do this. There was some  
 20 reference, though, in some document about  
 21 wanting to be sure that we had a better  
 22 appreciation for the timing of the retests and  
 23 the contact, so that may have been a factor,  
 24 but I'm not sure.  
 25 COFFEY, Q.C.:

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1 Q. But until HIROC came--until HIROC and legal  
 2 counsel came along on the 19th your  
 3 organization or you, yourself, and the  
 4 department and the minister were for making  
 5 this public, contacting the patients directly  
 6 first by letter?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. And letting, as well--and then releasing it  
 11 publicly?  
 12 MR. TILLEY:  
 13 A. Yeah. Well, there's a legal opinion there, no  
 14 doubt. It seems to have coincided with this  
 15 issue we spoke about earlier about whether  
 16 there were national benchmarks and rightly or  
 17 wrongly that caused the situation to pause for  
 18 some time, not long period of time -  
 19 COFFEY, Q.C.:  
 20 Q. But HIROC wasn't--there's nothing in the--  
 21 unless you know something we haven't heard,  
 22 there's nothing in HIROC's material or the  
 23 reference to them to say that national  
 24 benchmarks -  
 25 MR. TILLEY:

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1 A. No, I'm referring to Susan's note on the top  
 2 of the page where it just says that  
 3 "Consistent with national benchmarks." So  
 4 simultaneous with this reference to legal  
 5 counsel's thoughts, there was this issue with  
 6 regards to national benchmarks that had caused  
 7 some pause in the process.  
 8 COFFEY, Q.C.:  
 9 Q. Now, "Legal counsel cautions release pending  
 10 full results." That was, I take it, results  
 11 for individual patients?  
 12 MR. TILLEY:  
 13 A. Results for?  
 14 COFFEY, Q.C.:  
 15 Q. Individual patients?  
 16 MR. TILLEY:  
 17 A. I can't be certain.  
 18 COFFEY, Q.C.:  
 19 Q. Okay, well, so you didn't go to get an actual  
 20 understanding of what -  
 21 MR. TILLEY:  
 22 A. No, sir.  
 23 COFFEY, Q.C.:  
 24 Q. Okay. Could it be anything else? I mean,  
 25 anything else that you can think of?

1 MR. TILLEY:  
 2 A. No.  
 3 COFFEY, Q.C.:  
 4 Q. So that if we could look then, please, at  
 5 Exhibit P-0312, please? In particular, page  
 6 3. Now, this is an e-mail from Robert  
 7 Thompson to Gary Cake responding to his 10:32  
 8 a.m. e-mail, 10:51 a.m. Mr. Thompson says,  
 9 "Thanks. Please insure the department and the  
 10 board include in our com plan the assurance  
 11 that once the solution is set in motion that  
 12 an evaluation will be done to determine the  
 13 specific or systemic reasons why this occurred  
 14 so the matter will be properly addressed in  
 15 the long term. I'd like to see this aspect  
 16 before it goes out. Thanks." Were you ever  
 17 made aware of Mr. Thompson's direction?  
 18 MR. TILLEY:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. Because it's directed at the department and  
 22 the board?  
 23 MR. TILLEY:  
 24 A. Yes.  
 25 COFFEY, Q.C.:

1 MR. TILLEY:  
 2 A. Not that I can recall.  
 3 COFFEY, Q.C.:  
 4 Q. Since, up until May of 2007, anyway?  
 5 MR. TILLEY:  
 6 A. If it happened, it happened without my  
 7 knowledge.  
 8 COFFEY, Q.C.:  
 9 Q. That's what I want to say -  
 10 MR. TILLEY:  
 11 A. Yeah, sorry.  
 12 COFFEY, Q.C.:  
 13 Q. - I mean, you're unaware of. The idea that  
 14 the Clerk of the Council might be involved in  
 15 reviewing communications plans or aspects of  
 16 them by the Board, or by the Board being the  
 17 Eastern Health or the Health Care Corporation  
 18 in your day as CEO, or Senior Vice President,  
 19 were you ever involved in the Clerk of the  
 20 Council vetting things or were you aware that  
 21 he was doing it, or she?  
 22 MR. TILLEY:  
 23 A. Neither.  
 24 COFFEY, Q.C.:  
 25 Q. Now if we could go back to page -- just go

1 Q. And you were never, that was never brought to  
 2 your attention? Not so much the e-mail as the  
 3 substances of it?  
 4 MR. TILLEY:  
 5 A. Well, we had indicated fairly early on that we  
 6 were going to do an evaluation, so whether  
 7 that was known and accepted, I can't say.  
 8 COFFEY, Q.C.:  
 9 Q. Well, yeah, but this is not only to do the  
 10 evaluation, but a reference be included in the  
 11 com plan, communications plan, and that's  
 12 apparently what Mr. Thompson wanted to see.  
 13 MR. TILLEY:  
 14 A. Oh, okay, I didn't take that point when you  
 15 were referring me to it.  
 16 COFFEY, Q.C.:  
 17 Q. "Please insure the department and the board  
 18 include in their com plan."  
 19 MR. TILLEY:  
 20 A. Oh, I'm sorry, yeah, right.  
 21 COFFEY, Q.C.:  
 22 Q. So the idea that the clerk of the council, as  
 23 he then was, would be seeking to vet your com  
 24 plan or a certain aspect of it, had you ever  
 25 run into anything like that before?

1 back, if we could, to page two of the same  
 2 exhibit. Now Mr. Thompson had characterized  
 3 this in a 10:49 a.m. e-mail to Brian Crawley,  
 4 he had described what was in Mr. Cake's e-mail  
 5 as, "This is major. Once a solution is set in  
 6 motion, we will expect the department and the  
 7 Board to take appropriate evaluation to  
 8 determine why this happened", signed Robert.  
 9 So were you ever made aware in this whole  
 10 matter until these e-mails became public  
 11 recently, were you ever made aware that this  
 12 had received this kind of attention in the  
 13 Confederation Building on July 19th?  
 14 MR. TILLEY:  
 15 A. Not until the past week or so.  
 16 COFFEY, Q.C.:  
 17 Q. Okay.  
 18 MR. TILLEY:  
 19 A. So when it became an issue here.  
 20 COFFEY, Q.C.:  
 21 Q. Page five of the exhibit, Commissioner, I'll  
 22 bring that up for you, this is an e-mail the  
 23 same day, 2:37 p.m. from Carolyn Chaplin to  
 24 Gary Cake, it's copied to John Abbott, and it  
 25 says, "Gary, further to this morning and

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1 incoming information this afternoon, no action  
 2 is required at this time. We have arranged a  
 3 briefing with the Health Authority for the  
 4 latter part of this week and we'll be in a  
 5 better position to forward relevant briefing  
 6 materials at that time. No public  
 7 announcement will be forthcoming this week,  
 8 and there's a possibility that the  
 9 significance of any announcement will be  
 10 minimized". Now, sir, are you aware of any  
 11 incoming information or, I suppose from your  
 12 perspective, it would be outgoing from your  
 13 organization to the Department of Health or  
 14 the Cabinet Secretariat, are you aware of any  
 15 --  
 16 MR. TILLEY:  
 17 A. The only connection I can make is in relation  
 18 to this issue that had been referenced earlier  
 19 about the positivity rates for 2003 being in  
 20 range.  
 21 COFFEY, Q.C.:  
 22 Q. How would that have gotten over to Carolyn  
 23 Chaplin?  
 24 MR. TILLEY:  
 25 A. Only because of my note here on July 19th,

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1 which references Susan Bonnell saying that she  
 2 had a discussion and in the same conversation  
 3 there's a reference to those benchmarks. I'm  
 4 just putting those two points together and  
 5 assuming that that might have been the  
 6 direction or the route.  
 7 COFFEY, Q.C.:  
 8 Q. Well, at the time were you aware, was it made  
 9 known to you that Susan Bonnell had taken it  
 10 upon herself to contact Carolyn Chaplin about  
 11 new information and so on?  
 12 MR. TILLEY:  
 13 A. Not that I recall.  
 14 COFFEY, Q.C.:  
 15 Q. So are you able to enlighten us in any way  
 16 upon the reference to "There's a possibility  
 17 the significance of any announcement will be  
 18 minimized"?  
 19 MR. TILLEY:  
 20 A. Only in relation to the point I made a few  
 21 moments ago about 2003 and now having that  
 22 global information.  
 23 COFFEY, Q.C.:  
 24 Q. But that's got nothing to do, you would agree,  
 25 with '02 and '01 and --

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1 MR. TILLEY:  
 2 A. Oh, absolutely, but it did for a little while  
 3 cause the issue to be questioned, but I should  
 4 -- later, a couple of days later there was  
 5 some question about the sensitivity of the  
 6 Ventana unit and I don't know if that was  
 7 known in other circles, but, I mean, that's  
 8 the only things that I can think of.  
 9 COFFEY, Q.C.:  
 10 Q. There's no reference, I don't believe, in the  
 11 materials to the department having been told  
 12 about sensitivity issues as of the 19th, about  
 13 over sensitivity, I should say, that you're  
 14 aware of?  
 15 MR. TILLEY:  
 16 A. Not in my materials.  
 17 COFFEY, Q.C.:  
 18 Q. So when work ends on July 19th, by the time  
 19 the working day ended, you had understood what  
 20 about the contact with the Department of  
 21 Health? You had spoken to the Minister?  
 22 MR. TILLEY:  
 23 A. Yes, to express the concern.  
 24 COFFEY, Q.C.:  
 25 Q. And what had you told him? You've written

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1 down what he told you.  
 2 MR. TILLEY:  
 3 A. Yes. I mean, I remember saying to him I can't  
 4 -- I agree with the severity of the situation.  
 5 You know, there was no doubt that we wanted to  
 6 act on it, and he was looking for a briefing  
 7 note, and that we would be meeting with him.  
 8 I'm not sure if that meeting was set by that  
 9 date or not. It was the 21st that we actually  
 10 met.  
 11 COFFEY, Q.C.:  
 12 Q. So what was your plan in the meantime, if any,  
 13 as to what would happen if one of those 12  
 14 people who had been told they converted went  
 15 to the media?  
 16 MR. TILLEY:  
 17 A. Well, we would have to respond and acknowledge  
 18 the fact that we are doing this -- we've  
 19 identified this issue and are following up on  
 20 it, and the intention is and always was to  
 21 ensure that these are being followed up on and  
 22 individual patients.  
 23 COFFEY, Q.C.:  
 24 Q. Yes, but did you actually have any plan?  
 25 MR. TILLEY:



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1 A. A written down plan?

2 COFFEY, Q.C.:

3 Q. Yes.

4 MR. TILLEY:

5 A. You know, the communications --

6 COFFEY, Q.C.:

7 Q. Or a discussed out plan, either one?

8 MR. TILLEY:

9 A. Well, you know, we had no intentions other

10 than to be forthright and open if this issue

11 became known before we were in a position to

12 respond to it.

13 COFFEY, Q.C.:

14 Q. So the only thing, I take it, actually holding

15 or delaying the process as of July 19th would

16 have been -- as of the close of business that

17 day, would have been the Minister had not yet

18 had his briefing and that was scheduled for

19 the 21st?

20 MR. TILLEY:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. That's point one, because you'd hardly go

24 public without telling the Minister.

25 MR. TILLEY:

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1 A. Uh-hm.

2 COFFEY, Q.C.:

3 Q. And briefing him, would you?

4 MR. TILLEY:

5 A. That's correct.

6 COFFEY, Q.C.:

7 Q. And the only other thing holding you up in

8 terms of influences was legal counsel's

9 cautioning, HIROC's counselling?

10 MR. TILLEY:

11 A. No, I wouldn't say that was the only ones. I

12 keep referring back to this benchmark issue

13 and, you know, it did cause us to pause.

14 COFFEY, Q.C.:

15 Q. And as the Commissioner asked you, for how

16 long and why?

17 MR. TILLEY:

18 A. Well, certainly for a couple of days there was

19 a question there. I recall some reference in

20 a note, either my handwritten note or

21 somewhere else, to say that despite that we

22 were going to proceed anyway.

23 COFFEY, Q.C.:

24 Q. Despite --

25 MR. TILLEY:

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1 A. Despite issues around the benchmarks because

2 we couldn't feel totally comfortable with

3 those results.

4 COFFEY, Q.C.:

5 Q. Again I -- I guess I'm just -- what did the

6 benchmarks have to do with whether or not

7 you'd do the retesting? Presumably the

8 retesting was going full steam ahead.

9 MR. TILLEY:

10 A. Right. Well, in the literature --

11 COFFEY, Q.C.:

12 Q. I appreciate --

13 MR. TILLEY:

14 A. In the literature it was speaking to one of

15 the indicators that's available for this

16 particular test, and the literature had

17 indicated that you could assume that your

18 overall results would be in a select range. I

19 would take that -- the lab would take that

20 information and use it as a guidepost to

21 assess overall its results. Also in the

22 literature, it was very clear that these

23 particular tests were being identified as

24 problematic in terms of their reliability.

25 So, you know, that was just one indicator that

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1 all of a sudden popped out that said let's

2 think through this a bit more.

3 THE COMMISSIONER:

4 Q. Thinking through it a bit more meaning you

5 wouldn't do it? I mean, you had decided, as I

6 understood it, now correct me if I'm wrong on

7 this because I'm reading your -- I'm

8 interpreting what you're saying, I had

9 understood by July 19th your organization had

10 decided (a) you had a problem; (b) it was a

11 serious problem; and (c) the only proper thing

12 to do was to go back and retest those who had

13 come out negative. Am I right?

14 MR. TILLEY:

15 A. That's correct, Commissioner.

16 THE COMMISSIONER:

17 Q. Okay. So at some point somebody does the

18 literature search and they're saying, you

19 know, the expected range of positivity, I

20 think is the phrase you used --

21 MR. TILLEY:

22 A. That's correct.

23 THE COMMISSIONER:

24 Q. Is from here to here, and maybe in some of

25 those years we're not that far off. Now does

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1 that mean you were rethinking whether you  
 2 would do the retests for those years?  
 3 MR. TILLEY:  
 4 A. Those years that fell within the range?  
 5 THE COMMISSIONER:  
 6 Q. Yes.  
 7 MR. TILLEY:  
 8 A. I think that was a question mark, but it  
 9 wasn't a question mark for long, but it did  
 10 raise the issue with the pathologist in terms  
 11 of what they were dealing with here. So I,  
 12 unfortunately, can't probably articulate it  
 13 the way they could, but benchmarks are used  
 14 fairly regularly in the health system to try  
 15 to give an indication -- look at in terms of a  
 16 fence post as to whether the results are  
 17 responding or the outcomes of the results are  
 18 consistent with what you'd expect on a global  
 19 basis.  
 20 THE COMMISSIONER:  
 21 Q. So instead of retesting for somebody -- I'm  
 22 putting it that way. Somebody was suggesting  
 23 that maybe instead of retesting from 1997 to,  
 24 I think then, 2004, was it --  
 25 MR. TILLEY:

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1 A. Yes.  
 2 THE COMMISSIONER:  
 3 Q. Later became 2005. You could skip whatever  
 4 year it might be within the appropriate  
 5 guidepost, is --  
 6 MR. TILLEY:  
 7 A. Possibly, yes.  
 8 THE COMMISSIONER:  
 9 Q. But did anyone -- do you recall anyone  
 10 suggesting that to you, and if so, who?  
 11 MR. TILLEY:  
 12 A. I can't be specific other than the fact that  
 13 the issue was raised, it was raised through  
 14 the laboratory medicine program.  
 15 THE COMMISSIONER:  
 16 Q. But it seems to me the issue could be raised  
 17 in certain -- in different ways. For example,  
 18 someone could come along and say "maybe the  
 19 problem really isn't going to be that big when  
 20 we look at the figures because we're within  
 21 the guideposts and maybe we oughtn't to be so  
 22 worried about what the results are going to  
 23 be", or someone can come along and say, "let's  
 24 not test for those years", and that's two  
 25 different things.

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1 MR. TILLEY:  
 2 A. Right, and I can't be specific in terms of  
 3 which one it was because it was all being  
 4 talked about. My note of the 19th in  
 5 discussions with Dr. Williams references the  
 6 2003 year, and at approximate 75 percent  
 7 positivity rate. So it was obviously being  
 8 talked about between Dr. Williams and Mr.  
 9 Gulliver, and I really can't be more specific  
 10 in terms of how it was to be interpreted.  
 11 THE COMMISSIONER:  
 12 Q. I've done it again, Mr. Coffey, I interrupted  
 13 you.  
 14 COFFEY, Q.C.:  
 15 Q. No, that's fine. Did you have any  
 16 understanding that this problem, the original  
 17 identification of the index patient, had been  
 18 because the particular type of cancer she had,  
 19 and it should be -- statistically it should be  
 20 positive?  
 21 MR. TILLEY:  
 22 A. Yes, I believe that was made known to me.  
 23 COFFEY, Q.C.:  
 24 Q. You understood that.  
 25 MR. TILLEY:

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1 A. At some point in time it was.  
 2 COFFEY, Q.C.:  
 3 Q. If you could look at P-071, please. Page six,  
 4 please. This apparently is a draft of a  
 5 briefing note on ER/PR receptors. We will  
 6 hear evidence on it, but I gather prepared by  
 7 Deborah Thomas, or at her instance, and we  
 8 read the first paragraph, the background says,  
 9 "As a last ditch effort and as a favour to a  
 10 friend, oncologist Kara Laing, contacted a  
 11 colleague in the US earlier this spring about  
 12 a patient of hers who was suffering with  
 13 breast cancer and the woman was terminal. The  
 14 American oncologist found it odd the woman in  
 15 question was ER/PR negative considering her  
 16 illness type. He suggested she be retested.  
 17 Her tissue was retested and her status was  
 18 confirmed to be ER/PR positive", and it goes  
 19 on from there. Now, sir, was that your  
 20 understanding what the index case was about  
 21 that an oncologist in the United States had  
 22 pointed out that that type of cancer should --  
 23 MR. TILLEY:  
 24 A. Yes, I have a recollection that there was a  
 25 consultation with somebody out of country.

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1 COFFEY, Q.C.:

2 Q. And that particular type of cancer, whatever

3 it was, it happened to be invasive lobular,

4 but that it should be positive?

5 MR. TILLEY:

6 A. Yes.

7 COFFEY, Q.C.:

8 Q. In fact, that's consistent with what Dr. Cook

9 to Dr. Williams letter of May 14th says --

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. About Dr. McCarthy's complaint, doesn't it?

14 MR. TILLEY:

15 A. And it's also consistent with the 3 p.m.

16 conversation with Bob Williams, which is 100

17 percent positive of lobular cancers.

18 COFFEY, Q.C.:

19 Q. Sure. So that the idea that whatever year

20 they fell into, and whether you're within a

21 benchmark or not for that year, I take it that

22 if there was a lobular invasive that was found

23 that was originally described as negative --

24 MR. TILLEY:

25 A. Yes.

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1 COFFEY, Q.C.:

2 Q. The thought was it would be retested?

3 MR. TILLEY:

4 A. Yes, and through this process there were a

5 couple of individuals that were identified

6 like that.

7 COFFEY, Q.C.:

8 Q. See here -- it would have been, I take it,

9 readily apparent to you on July 19th that

10 you're finally figuring out the scope of this

11 problem was going to be a long way into the

12 future, weeks, if not months. That's a fair

13 statement, isn't it?

14 MR. TILLEY:

15 A. In terms of retesting?

16 COFFEY, Q.C.:

17 Q. Retesting, and even knowing --

18 MR. TILLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. And really as of July 19th and July 20th, for

22 example, you would not really have known a

23 whole lot more from one day to the next in

24 terms of the entire scope of the problem or

25 what the full results were?

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1 MR. TILLEY:

2 A. That's true, and the information was evolving,

3 but not in relation to the results or the

4 numbers. It was more in relation to the

5 literature than what we -- what I was

6 learning, in particular, about some of the

7 limitations of this test.

8 COFFEY, Q.C.:

9 Q. On that point, you've mentioned that yesterday

10 too, I just want to be clear on this.

11 Limitations of this test, you've used that

12 phrase a number of times. You were CEO on

13 February 1st, 2007?

14 MR. TILLEY:

15 A. Yes.

16 COFFEY, Q.C.:

17 Q. When this test, ER/PR, was re-instituted in

18 St. John's, weren't you?

19 MR. TILLEY:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. Did you have any reservations about it being

23 re-instituted?

24 MR. TILLEY:

25 A. Not based upon the advice that I had had.

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1 COFFEY, Q.C.:

2 Q. I take it then that you wouldn't have agreed

3 to have it re-instituted here in St. John's

4 unless you were satisfied yourself that the

5 results here were going to be accurate?

6 MR. TILLEY:

7 A. Well, satisfied that the experts were

8 satisfied, yes.

9 COFFEY, Q.C.:

10 Q. So if there are limitations in the test

11 itself, they didn't affect your willingness to

12 resume the testing?

13 MR. TILLEY:

14 A. Well, all I can defer to is the literature

15 that's out there. There are obviously places

16 like Mount Sinai who seem to have been able to

17 put whatever mechanisms in place to feel

18 comfortable with that, and presumably the

19 recommendations that Mount Sinai had were

20 being implemented, and, therefore, the experts

21 felt it was appropriate to restart.

22 COFFEY, Q.C.:

23 Q. But in terms of -- I'm just trying to get some

24 sense of this before you refer to and use it a

25 lot in this context, "limitations of the

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1 test", and I appreciate there's a lot of  
 2 literature, but you're not a clinician nor a  
 3 researcher, are you?  
 4 MR. TILLEY:  
 5 A. No.  
 6 COFFEY, Q.C.:  
 7 Q. So when we talk about "limitations of the  
 8 test", was there anybody internally telling  
 9 you about limitations of the test and the  
 10 testing is so limited, we shouldn't be  
 11 involved?  
 12 MR. TILLEY:  
 13 A. Other than referring to the literature, and  
 14 referring to the fact that even with some of  
 15 the results we sent to Mount Sinai, I remember  
 16 somebody referencing there were at least two  
 17 cases sent inadvertently twice and came back  
 18 with different results, so --  
 19 COFFEY, Q.C.:  
 20 Q. Yes, and I'll be dealing with those.  
 21 MR. TILLEY:  
 22 A. Okay.  
 23 COFFEY, Q.C.:  
 24 Q. But other than two out of, I take it, a  
 25 thousand, okay, give or take a bit, whatever

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1 might be the explanation for those, your  
 2 people internally weren't telling you that  
 3 there's a inherent limitation in this test,  
 4 yet we're going to restart it anyway?  
 5 MR. TILLEY:  
 6 A. No, but they were referring to the literature.  
 7 COFFEY, Q.C.:  
 8 Q. Oh, yes.  
 9 MR. TILLEY:  
 10 A. Which was very evident about the test itself.  
 11 COFFEY, Q.C.:  
 12 Q. That, in fact, some labs -- surveys had shown  
 13 in the literature that some labs apparently  
 14 didn't get the right results?  
 15 MR. TILLEY:  
 16 A. That had difficulty getting the right results,  
 17 yes.  
 18 COFFEY, Q.C.:  
 19 Q. And I take it, you've come to conclude that  
 20 your own lab had difficulty in that regard?  
 21 MR. TILLEY:  
 22 A. Well, I'm -- you know, it's a question mark.  
 23 COFFEY, Q.C.:  
 24 Q. To you it's still a question mark, is it?  
 25 MR. TILLEY:

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1 A. Not in terms of the current situation because  
 2 that's been now reaffirmed by the  
 3 professionals that were in that whatever steps  
 4 we could possibly take have been implemented.  
 5 THE COMMISSIONER:  
 6 Q. Mr. Tilley, are you suggesting there was some  
 7 question about whether or not the test itself  
 8 should be used?  
 9 MR. TILLEY:  
 10 A. The literature was referring to the  
 11 reliability of the test. When I talked to Dr.  
 12 Bell, the oncologist, CEO, University Health  
 13 Network in Toronto, he had referenced it as a  
 14 grey test. Oncologists were saying that the  
 15 test needs to be used, taking into  
 16 consideration the clinical context of the  
 17 patient.  
 18 COFFEY, Q.C.:  
 19 Q. Oh, yeah, but they wanted it done.  
 20 MR. TILLEY:  
 21 A. Yes.  
 22 COFFEY, Q.C.:  
 23 Q. In fact, the oncologist's position was we want  
 24 it done, but we want it done right?  
 25 MR. TILLEY:

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1 A. Yes.  
 2 COFFEY, Q.C.:  
 3 Q. Isn't it?  
 4 MR. TILLEY:  
 5 A. Oh, absolutely.  
 6 COFFEY, Q.C.:  
 7 Q. Yeah, and --  
 8 THE COMMISSIONER:  
 9 Q. So we're not talking about not using the test  
 10 at all?  
 11 MR. TILLEY:  
 12 A. No, no, Commissioner, what I'm referring to is  
 13 the amount of evidence that I was being privy  
 14 to which raised this issue in Europe and the  
 15 United States with regards to the problem with  
 16 this particular test and how it should be  
 17 interpreted, and the challenges associated  
 18 with getting it right.  
 19 COFFEY, Q.C.:  
 20 Q. Now if I could -- if we could just bring up,  
 21 P-046, while it's in my mind. You did  
 22 reference having read these reports. This is  
 23 one of them. This is Dr. Banerjee's October  
 24 17th, 2005, report. You indicated that you  
 25 had read this in Dr. Williams' office?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. Did you read Trish Wegrynowski's?  
 5 MR. TILLEY:  
 6 A. I think so.  
 7 COFFEY, Q.C.:  
 8 Q. And that's the first two reports. How about  
 9 the second two reports?  
 10 MR. TILLEY:  
 11 A. The follow up reports?  
 12 COFFEY, Q.C.:  
 13 Q. Yes.  
 14 MR. TILLEY:  
 15 A. Well, I remember seeing the spreadsheet that  
 16 had the recommendation and the follow up.  
 17 COFFEY, Q.C.:  
 18 Q. I'm not asking about the spreadsheet. I'm  
 19 asking about did you actually read the two  
 20 subsequent reports?  
 21 MR. TILLEY:  
 22 A. I've since looked at them, but I can't recall  
 23 seeing the two subsequent reports at the time.  
 24 COFFEY, Q.C.:  
 25 Q. While you were CEO?

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1 MR. TILLEY:  
 2 A. Right.  
 3 COFFEY, Q.C.:  
 4 Q. At the time that you would have seen Dr.  
 5 Banerjee's October 17th report, I take it,  
 6 would that have been in October of 2005?  
 7 MR. TILLEY:  
 8 A. It would have been shortly there afterwards.  
 9 COFFEY, Q.C.:  
 10 Q. When Dr. Williams said, look, it's in --  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. You would have made it a point to go by and  
 15 read it?  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. And going by and reading it, in that context  
 20 meant going to his office on the General  
 21 Hospital site?  
 22 MR. TILLEY:  
 23 A. Yes.  
 24 COFFEY, Q.C.:  
 25 Q. Was he there at the time?

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1 MR. TILLEY:  
 2 A. I remember sitting in his office around a  
 3 small conference room table that he has, but I  
 4 can't be specific as to whether he was sitting  
 5 in his desk or not.  
 6 COFFEY, Q.C.:  
 7 Q. Now he is a general practitioner?  
 8 MR. TILLEY:  
 9 A. Yes.  
 10 COFFEY, Q.C.:  
 11 Q. You don't understand him to have any  
 12 particular expertise in pathology?  
 13 MR. TILLEY:  
 14 A. Not as much as a pathologist.  
 15 COFFEY, Q.C.:  
 16 Q. No. Was there any pathologist there at the  
 17 time?  
 18 MR. TILLEY:  
 19 A. No.  
 20 COFFEY, Q.C.:  
 21 Q. That you could talk to about it.  
 22 MR. TILLEY:  
 23 A. No.  
 24 COFFEY, Q.C.:  
 25 Q. Did you find the report at all confusing?

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1 MR. TILLEY:  
 2 A. There were technical elements that I didn't  
 3 fully appreciate.  
 4 COFFEY, Q.C.:  
 5 Q. Did you ask anybody what they meant?  
 6 MR. TILLEY:  
 7 A. I don't recall at that specific time.  
 8 COFFEY, Q.C.:  
 9 Q. How about afterward?  
 10 MR. TILLEY:  
 11 A. Other than general conversation about various  
 12 issues, no, not specifically.  
 13 COFFEY, Q.C.:  
 14 Q. So I take it then, the answer is no?  
 15 MR. TILLEY:  
 16 A. You're right.  
 17 COFFEY, Q.C.:  
 18 Q. Okay, if we can look at page 4 of the exhibit,  
 19 please? Now, here Dr. Banerjee has written  
 20 "interlaboratory variability." He says, "A  
 21 number of publications indicate poor  
 22 concordance between laboratories for ER  
 23 assays, especially for the weakly positive  
 24 cases. And this is attributed to variation in  
 25 antigen retrieval protocols." Now at the time

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1 you read this, did you understand what that  
 2 meant?  
 3 MR. TILLEY:  
 4 A. No.  
 5 COFFEY, Q.C.:  
 6 Q. Can you tell the Commissioner, please, what  
 7 the point would be of your reading this if you  
 8 didn't understand it or weren't going to make  
 9 the effort to have somebody explain it to you?  
 10 MR. TILLEY:  
 11 A. Well at that point in time, I was more  
 12 interested in getting our laboratory back in  
 13 operation.  
 14 COFFEY, Q.C.:  
 15 Q. This is mid--this is October now of '05.  
 16 MR. TILLEY:  
 17 A. Right. So the idea was is that if there were  
 18 any suggestions that we could make that would  
 19 restore the level of confidence in our system,  
 20 then that had to become our preoccupation. So  
 21 when Dr. Williams and I spoke about that, that  
 22 was the discussion that we had.  
 23 COFFEY, Q.C.:  
 24 Q. But you don't recall even if he was in the  
 25 room when you were reading this?

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1 MR. TILLEY:  
 2 A. Well, it may not have been at that same time,  
 3 but certainly that was the decision on a go-  
 4 forward basis.  
 5 COFFEY, Q.C.:  
 6 Q. And again, as a CEO of a major health care  
 7 corporation receiving a report from the  
 8 president of the Canadian Association of  
 9 Pathologists, the outside expert who is  
 10 retained to come in a look at this, you did  
 11 not see fit to actually utilize a pathologist  
 12 to help you understand it?  
 13 MR. TILLEY:  
 14 A. No, sir.  
 15 COFFEY, Q.C.:  
 16 Q. Any reason you didn't?  
 17 MR. TILLEY:  
 18 A. Well, simply because it's an issue that I saw  
 19 would be more appropriately dealt with by the  
 20 professionals in the organization.  
 21 COFFEY, Q.C.:  
 22 Q. If we can look at, the next heading is  
 23 "Conclusions about the reasons for test  
 24 failure." Question No. 1 "Is the DAKO system  
 25 faulty? This is unlikely as there are many

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1 laboratory using the DAKO system  
 2 successfully." I take it did you have any  
 3 difficulty understanding those two sentences?  
 4 MR. TILLEY:  
 5 A. No.  
 6 COFFEY, Q.C.:  
 7 Q. And what did it mean to you?  
 8 MR. TILLEY:  
 9 A. That there should be no reason why the  
 10 technology in particular with DAKO would be  
 11 the problem.  
 12 COFFEY, Q.C.:  
 13 Q. Paragraph No. 2, well before that, paragraph  
 14 1, he does go on to talk about the reason for  
 15 test failure was most likely due to a lack of  
 16 test optimization, including antigen retrieval  
 17 method and antibody detection system titration  
 18 as positive controls show weak staining in  
 19 general and internal controls failed on all  
 20 the false negative cases." Now what, if  
 21 anything, did you understand when you read  
 22 that? What did that mean?  
 23 MR. TILLEY:  
 24 A. That didn't mean anything that I could  
 25 understand.

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1 COFFEY, Q.C.:  
 2 Q. How about the reference to "Internal controls  
 3 failed in all the of the false negative  
 4 cases." There was something about all the  
 5 false negatives.  
 6 MR. TILLEY:  
 7 A. I can't, I don't have an understanding as to  
 8 what that refers to.  
 9 COFFEY, Q.C.:  
 10 Q. And you didn't ask anybody either?  
 11 MR. TILLEY:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. Number 2, "Is the Ventana system too  
 15 sensitive?" The answer is, "There is no  
 16 evidence that the Ventana system creates false  
 17 positive results." Now, did you have any  
 18 difficulty understanding those sentences?  
 19 MR. TILLEY:  
 20 A. No, that's very clear to me.  
 21 COFFEY, Q.C.:  
 22 Q. And in the meantime, as you've told the  
 23 Commissioner yesterday, on August 4th, 2005,  
 24 you had already known that the Ventana rep or  
 25 tech had come in here and given a clean bill

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1 of health to the Ventana system?  
 2 MR. TILLEY:  
 3 A. That's true, although I recall that there was  
 4 some -  
 5 MR. SIMMONS:  
 6 Q. Madam Commissioner, I don't think it was by  
 7 the 4th of August, it was at a later date the  
 8 Ventana -  
 9 COFFEY, Q.C.:  
 10 Q. Well it's August 4th or 5th. He was here on  
 11 the 4th and the letter is written on the 5th.  
 12 It's a she, too.  
 13 THE COMMISSIONER:  
 14 Q. Well we can resolve that by checking the  
 15 letter in due course.  
 16 COFFEY, Q.C.:  
 17 Q. Yes, and we'll do that, yes.  
 18 THE COMMISSIONER:  
 19 Q. You can do that overnight if you wouldn't  
 20 mind, Mr. Coffey.  
 21 COFFEY, Q.C.:  
 22 Q. Sure, I certainly will.  
 23 THE COMMISSIONER:  
 24 Q. Thank you.  
 25 MR. TILLEY:

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1 A. The issue with regards to Ventana was one that  
 2 had been raised by Dr. Carter and I'm not sure  
 3 how long that went on. I thought it was a  
 4 little after the Ventana report, but I can't  
 5 be specific.  
 6 COFFEY, Q.C.:  
 7 Q. Like you have a good memory, okay. And that  
 8 in fact is one of the reasons or her concerns  
 9 is one of the reasons that on a go-forward  
 10 basis, on a current basis, the ER/PR was being  
 11 tested at Mount Sinai? That's the reason,  
 12 isn't it or do you know?  
 13 MR. TILLEY:  
 14 A. Not off the top of my head, no.  
 15 COFFEY, Q.C.:  
 16 Q. Okay, but in any case, whatever Dr. Carter's  
 17 views might have been, you understood Dr.  
 18 Banerjee was saying that there's no evidence  
 19 that the Ventana system creates false positive  
 20 results.  
 21 MR. TILLEY:  
 22 A. That's correct.  
 23 COFFEY, Q.C.:  
 24 Q. He did go on to say the system still requires  
 25 optimization to avoid non specific cytoplasmic

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1 staining." Did you understand what that  
 2 meant?  
 3 MR. TILLEY:  
 4 A. No.  
 5 COFFEY, Q.C.:  
 6 Q. And you didn't make any further inquiries?  
 7 MR. TILLEY:  
 8 A. No.  
 9 COFFEY, Q.C.:  
 10 Q. Paragraph 3, "Is there a problem with tissue  
 11 fixation? There appears to be inadequate  
 12 attention paid by the grossing pathologist to  
 13 the thickness of tissue slices, quality and  
 14 adequacy of fixation and there is no  
 15 standardized fixation protocol that everyone  
 16 adheres to." Now, what if anything did that  
 17 mean to you when you read it?  
 18 MR. TILLEY:  
 19 A. It was very difficult to understand for me,  
 20 not being a pathologist. At the time I was  
 21 trying to place this in the context of the  
 22 reality that there were no national standards  
 23 in place in this country for this particular  
 24 procedure. So, you know, it was very  
 25 confusing in terms of trying to understand

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1 what the issues were here and whether he was  
 2 comparing a fault with us in relation to  
 3 today's standards or whether that was a fault  
 4 all along.  
 5 COFFEY, Q.C.:  
 6 Q. And did you make any inquiries?  
 7 MR. TILLEY:  
 8 A. No.  
 9 COFFEY, Q.C.:  
 10 Q. Even of Dr. Williams?  
 11 MR. TILLEY:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. Can you tell the Commissioner why not?  
 15 MR. TILLEY:  
 16 A. My focus was clearly on the follow up  
 17 recommendations of the report. I had to  
 18 acknowledge the fact that I personally was not  
 19 able to have a professional technical  
 20 understanding of the commentary, but the focus  
 21 that I had with the people who were in this  
 22 area was to take the recommendations and  
 23 follow up on them.  
 24 COFFEY, Q.C.:  
 25 Q. Did you understand when you read that

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1 paragraph No. 3 on page 4 of P-0046 that at  
 2 least from Dr. Banerjee's perspective, he was  
 3 characterizing it as inadequate attention paid  
 4 by the grossing pathologist.  
 5 MR. TILLEY:  
 6 A. Indicated there appears to be, yes.  
 7 COFFEY, Q.C.:  
 8 Q. Appears to be, yes. So he was characterizing  
 9 it as or saying it appeared to be inadequate  
 10 attention, as opposed to adequate attention.  
 11 MR. TILLEY:  
 12 A. Yes.  
 13 COFFEY, Q.C.:  
 14 Q. So there is some inadequacy from his  
 15 perspective, you would have understood at  
 16 least that?  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Paragraph 4, "Inadequate or no attention is  
 21 being paid by the reporting pathologist to the  
 22 status of internal controls with  
 23 inappropriately exclusive reliance on external  
 24 positive controls." Did you have any  
 25 understanding of what that meant?

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1 MR. TILLEY:  
 2 A. No.  
 3 COFFEY, Q.C.:  
 4 Q. And you made no inquiries?  
 5 MR. TILLEY:  
 6 A. No.  
 7 COFFEY, Q.C.:  
 8 Q. Where he categorizes it as "inadequate or no  
 9 attention is being paid by the reporting  
 10 pathologist", I take it, did you understand  
 11 that that was not a good thing?  
 12 MR. TILLEY:  
 13 A. Well that clearly was evident, though aside  
 14 from the fact that we're in an environment  
 15 with no standards, I'm also thinking that  
 16 we're into a review here where the last recent  
 17 years we were getting high positivity rates,  
 18 so I'm not sure where that's the current  
 19 situation he's referring to, or the past  
 20 because if it's the current, then you try to  
 21 put in the context that results are coming out  
 22 seemingly in the right levels.  
 23 COFFEY, Q.C.:  
 24 Q. Well if we could put your mind to rest in that  
 25 regard, if you could turn to page 3, please?

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1 Dr. Banerjee did begin by pointing out that  
 2 the incident problem case, the third  
 3 paragraph, "four of the patients previously  
 4 tested as negative in 2002 were also retested  
 5 and all tested positive with the Ventana  
 6 system. This led to a review of the other 57  
 7 cases reported in 2002 as negative which, on  
 8 retesting on the Ventana benchmark -  
 9 MR. TILLEY:  
 10 A. I'm sorry, sir, I lost my -  
 11 COFFEY, Q.C.:  
 12 Q. I apologize, page 3, right there.  
 13 MR. TILLEY:  
 14 A. Okay, you're on the last paragraph?  
 15 COFFEY, Q.C.:  
 16 Q. Last paragraph.  
 17 MR. TILLEY:  
 18 A. Okay, can you start again?  
 19 COFFEY, Q.C.:  
 20 Q. Sure. "Four other patients previously tested  
 21 as negative in 2002 were also retested and all  
 22 tested positive with the Ventana system. This  
 23 led to a review of other 57 cases reported in  
 24 2002 as negative, which on retesting on the  
 25 Ventana benchmark, resulted in a high

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1 conversion rate from negative to positive. 38  
 2 over 57 is 67 percent."  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. And he then continues, "I've reviewed a number  
 7 of cases from the retrospective testing set  
 8 with Dr. Donald Cook." Now the only  
 9 retrospective testing set referred to in the  
 10 letter is the one above, 2002 cases.  
 11 MR. TILLEY:  
 12 A. Uh-hm.  
 13 COFFEY, Q.C.:  
 14 Q. So, which we're reading on the next page, did  
 15 you understand that that related to the 2002?  
 16 MR. TILLEY:  
 17 A. I have to acknowledge the fact that that level  
 18 of information, the technical nature of it was  
 19 not information that I could be comfortable  
 20 knowing about or being able to interpret.  
 21 COFFEY, Q.C.:  
 22 Q. Well is that technical if he says they  
 23 retested the '02--certain '02 cases, they are  
 24 the ones I looked at.  
 25 MR. TILLEY:



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1 A. Right, that particular issue is very clear to  
 2 me and I'm just looking at the report and the  
 3 tests. It's not a background that I have or  
 4 the ability to interpret.  
 5 COFFEY, Q.C.:  
 6 Q. And then he goes on, if I could and in fact,  
 7 it's misnumbered because there's no paragraph  
 8 5, paragraph 6, "Inappropriate choice of  
 9 blocks with no representative normal ductal  
 10 epithelium." I take it you didn't understand  
 11 what that was about?  
 12 MR. TILLEY:  
 13 A. No, sir.  
 14 COFFEY, Q.C.:  
 15 Q. And you made no inquiries?  
 16 MR. TILLEY:  
 17 A. No.  
 18 COFFEY, Q.C.:  
 19 Q. Inappropriate choice of blocks, I take it  
 20 though you understood was probably not a good  
 21 thing.  
 22 MR. TILLEY:  
 23 A. I really didn't know what it meant.  
 24 COFFEY, Q.C.:  
 25 Q. Well inappropriate, something that's an

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1 inappropriate choice, a professional is  
 2 characterizing it as an inappropriate choice.  
 3 MR. TILLEY:  
 4 A. Yes.  
 5 COFFEY, Q.C.:  
 6 Q. You would have understood that that's not a  
 7 good thing.  
 8 MR. TILLEY:  
 9 A. I think that's fair to say.  
 10 COFFEY, Q.C.:  
 11 Q. And paragraph 7, "Better education required  
 12 for technologists, pathologists and clinicians  
 13 about the pitfalls of IHC, the importance of  
 14 quality control and the interpretation of IHC  
 15 results." Did you understand that?  
 16 MR. TILLEY:  
 17 A. Yes, that was in one of the recommendations, I  
 18 believe.  
 19 COFFEY, Q.C.:  
 20 Q. Did you ask anybody about what type of better  
 21 education was required and why it was  
 22 required?  
 23 MR. TILLEY:  
 24 A. No.  
 25 COFFEY, Q.C.:

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1 Q. And can you tell the Commissioner why you  
 2 wouldn't have asked well why do these people  
 3 need better education?  
 4 MR. TILLEY:  
 5 A. Well I think that would go without saying for  
 6 all the health professionals, no matter what  
 7 field you're in.  
 8 COFFEY, Q.C.:  
 9 Q. We can all get better, but in this context,  
 10 sir -  
 11 MR. TILLEY:  
 12 A. No. Mr. Coffey, all I can repeat is that this  
 13 report had information in it which I was  
 14 relying upon those individuals who were in  
 15 this area and could interpret it and we agreed  
 16 very quickly that the focus was going to be on  
 17 following up on all recommendations.  
 18 COFFEY, Q.C.:  
 19 Q. Did you ever ask Dr. Cook about any of this  
 20 because the letter went to him, the report  
 21 went to Dr. Cook, if you look at page 1, if we  
 22 could just go to page 1, please? Did you ever  
 23 ask Dr. Cook about what he thought of all  
 24 this?  
 25 MR. TILLEY:

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1 A. I'm sure we had a discussion but the  
 2 discussion would have been along the lines  
 3 that the recommendations are what I want  
 4 followed up on.  
 5 COFFEY, Q.C.:  
 6 Q. So you limited any discussion with Dr. Cook to  
 7 the recommendations?  
 8 MR. TILLEY:  
 9 A. I'm not sure I limited or he would have  
 10 limited, just I don't recall that dimension,  
 11 but I clearly remember that the focus was on  
 12 the recommendations and that was where our  
 13 energies needed to be -  
 14 COFFEY, Q.C.:  
 15 Q. Well I appreciate what the focus was, but I'm  
 16 asking you did you ever ask him about what is  
 17 referred to here as the conclusions about the  
 18 reasons for test failure?  
 19 MR. TILLEY:  
 20 A. No, no.  
 21 COFFEY, Q.C.:  
 22 Q. Any reason why not? He's the clinical chief  
 23 of the day.  
 24 MR. TILLEY:  
 25 A. That's correct. He would report to the

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1 Medical Advisory Committee, as well as the  
 2 vice-president for Medical Services. I am in  
 3 a position to be responsible for the whole  
 4 organization but I have to rely upon those  
 5 experts to be able to understand this and  
 6 interpret it and follow up on it  
 7 appropriately.  
 8 COFFEY, Q.C.:  
 9 Q. Okay. Meaning it's left to whom?  
 10 MR. TILLEY:  
 11 A. Well the laboratory medicine clinical chief  
 12 and then the vice-president for Medical  
 13 Services would be ensuring that there is  
 14 appropriate follow up being done.  
 15 COFFEY, Q.C.:  
 16 Q. And that is Dr. Williams?  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. And you never asked--did you ever speak to Dr.  
 21 Williams about the conclusions about the  
 22 reasons for test failure?  
 23 MR. TILLEY:  
 24 A. I can't specifically recall the discussions  
 25 about that, but I know I was present in a

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1 number of places when Dr. Williams had  
 2 referenced the report and talked about the  
 3 recommendations.  
 4 COFFEY, Q.C.:  
 5 Q. I'll get to the recommendations, I'm talking  
 6 about the reasons for the problem in the first  
 7 place, at least according to Dr. Banerjee,  
 8 whether it is right or wrong, that's another--  
 9 or somebody judges him right or wrong, they  
 10 were his stated conclusions. You understood  
 11 that?  
 12 MR. TILLEY:  
 13 A. Uh-hm. Yes, I can't recall having a  
 14 discussion with Dr. Williams specifically on  
 15 that.  
 16 COFFEY, Q.C.:  
 17 Q. So, and the list of recommendations, when did  
 18 you first see that, like as a separate list?  
 19 MR. TILLEY:  
 20 A. I can't recall.  
 21 COFFEY, Q.C.:  
 22 Q. Do you have any sense in time when it might  
 23 have been? Was it before they started  
 24 retesting--or not retesting, before they  
 25 restarted testing, I'm sorry.

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1 MR. TILLEY:  
 2 A. Oh yes, yes, as in 2007?  
 3 COFFEY, Q.C.:  
 4 Q. A spreadsheet.  
 5 MR. TILLEY:  
 6 A. As in 2007?  
 7 COFFEY, Q.C.:  
 8 Q. Yes. Or do you know if even by then you had  
 9 actually seen the list?  
 10 MR. TILLEY:  
 11 A. I'm sorry, I can't recall with confidence.  
 12 COFFEY, Q.C.:  
 13 Q. So you had made a trip to Dr. Williams' office  
 14 to review the report, which presumably he had  
 15 told you he had a copy in his office.  
 16 MR. TILLEY:  
 17 A. Yes.  
 18 COFFEY, Q.C.:  
 19 Q. Dr. Banerjee's report. Did, at the time did  
 20 Dr. Williams say anything to you about the  
 21 report in sense of it's good, bad, indifferent  
 22 or anything?  
 23 MR. TILLEY:  
 24 A. I can't recall specifically, I mean I don't  
 25 think by any stretch was Dr. Williams

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1 dismissive of the report. He was very  
 2 concerned that we had a need to make changes i  
 3 the lab and was focussed in on that.  
 4 COFFEY, Q.C.:  
 5 Q. But did he talk to you about the reasons for  
 6 it? Did he tell you when he called you or  
 7 afterward about his thoughts on the reasons  
 8 for test failure or the subject matters there?  
 9 MR. TILLEY:  
 10 A. Right. My recollection -  
 11 COFFEY, Q.C.:  
 12 Q. See, Mr. Tilley, here's, I suppose, the  
 13 question really, get right to it. This is the  
 14 most major clinical problem you've run into in  
 15 your career?  
 16 MR. TILLEY:  
 17 A. That's correct.  
 18 COFFEY, Q.C.:  
 19 Q. You have one external consultant, a  
 20 pathologist come in and he provides a report  
 21 and you go to read it in your VP medical's  
 22 office. The reason for the problem or the  
 23 reasons for the problem, at least in Dr.  
 24 Banerjee's view, are spelled out here, aren't  
 25 they?

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1 MR. TILLEY:  
 2 A. He's got a number of points raised, that's  
 3 accurate.  
 4 COFFEY, Q.C.:  
 5 Q. And you, as a CEO, never again spoke to anyone  
 6 about the reasons that he described here, like  
 7 is he right, is he wrong, what do you think of  
 8 this or that? You didn't speak to Dr.  
 9 Williams, you didn't go to any other  
 10 pathologist or informed individual to have it  
 11 explained to you what it was about?  
 12 MR. TILLEY:  
 13 A. Well I can't say that I didn't talk to Dr.  
 14 Williams or I didn't talk to Dr. Cook. What I  
 15 am saying is that I have no specific  
 16 recollection of that conversation.  
 17 COFFEY, Q.C.:  
 18 Q. And in terms of them expressing to you their  
 19 thoughts as to whether Dr. Banerjee was right  
 20 or wrong?  
 21 MR. TILLEY:  
 22 A. We weren't -  
 23 COFFEY, Q.C.:  
 24 Q. Did they ever express to you any sentiment  
 25 that Dr. Banerjee has got it wrong?

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1 MR. TILLEY:  
 2 A. No. By then we had agreed that the approach  
 3 here has got to be following up on the  
 4 recommendations.  
 5 COFFEY, Q.C.:  
 6 Q. Which implicitly suggest, I take it, that they  
 7 acknowledge that he's probably got it right,  
 8 that's what you have taken it from.  
 9 MR. TILLEY:  
 10 A. Well there was no option in my mind that we  
 11 were going to do anything other than follow up  
 12 on the recommendations.  
 13 COFFEY, Q.C.:  
 14 Q. In terms of--because you did end up being  
 15 asked about the overall reasons, the  
 16 Department of Health asked you about it.  
 17 MR. TILLEY:  
 18 A. Yes.  
 19 COFFEY, Q.C.:  
 20 Q. Moira Hennessey asked you in an e-mail about  
 21 it.  
 22 MR. TILLEY:  
 23 A. Yes, that's correct.  
 24 COFFEY, Q.C.:  
 25 Q. You never did tell her or did you? Did you

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1 ever tell her?  
 2 MR. TILLEY:  
 3 A. The e-mail that I am recalling -  
 4 COFFEY, Q.C.:  
 5 Q. November 3rd, 2005.  
 6 MR. TILLEY:  
 7 A. Is that the one I replied to say I was out of  
 8 the province and to follow up with Dr.  
 9 Williams?  
 10 COFFEY, Q.C.:  
 11 Q. Yes.  
 12 MR. TILLEY:  
 13 A. Right. So -  
 14 COFFEY, Q.C.:  
 15 Q. Did you ever tell her or any minister or  
 16 deputy minister as to summarize for them or  
 17 point out the conclusions about the reasons  
 18 for test failure?  
 19 MR. TILLEY:  
 20 A. Well I know that Dr. Williams in various  
 21 meetings talked about the follow up to the  
 22 report because I have some notations.  
 23 COFFEY, Q.C.:  
 24 Q. That's, I'm asking you about the reasons for  
 25 the problem.

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1 MR. TILLEY:  
 2 A. I can't speak to it off the top of my head,  
 3 unless there's a note in my file to that  
 4 effect.  
 5 COFFEY, Q.C.:  
 6 Q. You certainly have no conscious memory of  
 7 telling the department about the reasons that  
 8 Dr. Banerjee had found?  
 9 MR. TILLEY:  
 10 A. I do not, no.  
 11 COFFEY, Q.C.:  
 12 Q. Okay, with respect to that, this was the only  
 13 such examination going on, wasn't it, of the  
 14 reasons for the problem?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. Had you known that Dr. Carter had started in  
 19 the summer of '05 to, we looked at that letter  
 20 this morning, July 14th.  
 21 MR. TILLEY:  
 22 A. Yes, I'm aware through that process that she  
 23 was doing a review.  
 24 COFFEY, Q.C.:  
 25 Q. And you understood that she had stopped it at

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1 one point?  
 2 MR. TILLEY:  
 3 A. Yes, through you, in fact.  
 4 COFFEY, Q.C.:  
 5 Q. Okay. So, you didn't know until you met me in  
 6 2007?  
 7 MR. TILLEY:  
 8 A. Well, yes.  
 9 COFFEY, Q.C.:  
 10 Q. Okay.  
 11 MR. TILLEY:  
 12 A. You had mentioned if anyone asked her to step  
 13 down from it.  
 14 COFFEY, Q.C.:  
 15 Q. So, no one had ever brought that to your  
 16 attention before?  
 17 MR. TILLEY:  
 18 A. That she had stepped down?  
 19 COFFEY, Q.C.:  
 20 Q. Yes. I'm not suggesting they did, I'm just -  
 21 MR. TILLEY:  
 22 A. No, no, there are a number of conversations  
 23 that I would have had where Dr. Carter's name  
 24 was referenced, but in terms of her doing a  
 25 review and choosing to stop it, I don't recall

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1 that being an issue.  
 2 COFFEY, Q.C.:  
 3 Q. Now, so then in October of '05, at least by  
 4 that point in time and subsequently, you had  
 5 no reason to believe there was any other  
 6 review going on that would determine the  
 7 reasons for the problem?  
 8 MR. TILLEY:  
 9 A. No.  
 10 COFFEY, Q.C.:  
 11 Q. And you told the Commissioner yesterday you  
 12 understood that that was cloaked with  
 13 confidentiality -  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. - as quality -  
 18 MR. TILLEY:  
 19 A. It was a peer review process, so that was the  
 20 understanding it was set up under.  
 21 COFFEY, Q.C.:  
 22 Q. So, if it was cloaked with that kind of  
 23 confidentiality or protection, I take it that  
 24 if there was no other examination going on,  
 25 then the reason for the problem or reasons for

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1 the problem would never be known?  
 2 MR. TILLEY:  
 3 A. Well, I don't know if it would never be known.  
 4 COFFEY, Q.C.:  
 5 Q. Well, you had no plans, I take it, or no plans  
 6 in place that it would be known?  
 7 MR. TILLEY:  
 8 A. No, I can't say -  
 9 COFFEY, Q.C.:  
 10 Q. In fact, there weren't any, were there?  
 11 MR. TILLEY:  
 12 A. No.  
 13 COFFEY, Q.C.:  
 14 Q. So, by the fall of 2005, by the end of 2005,  
 15 by the end of that year you were aware that  
 16 the only such investigations that had gone on  
 17 into the problem here or problems were  
 18 conducted by two outside consultants. You  
 19 viewed their reports or investigations as  
 20 confidential, protected from any kind of  
 21 disclosure.  
 22 MR. TILLEY:  
 23 A. That's correct.  
 24 COFFEY, Q.C.:  
 25 Q. To the public or otherwise, correct?

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1 MR. TILLEY:  
 2 A. Yes.  
 3 COFFEY, Q.C.:  
 4 Q. And you were aware there were no other  
 5 investigation contemplated, had occurred or  
 6 contemplated?  
 7 MR. TILLEY:  
 8 A. Not that I'm aware of.  
 9 COFFEY, Q.C.:  
 10 Q. Okay, ie. that unless someone got behind the  
 11 cloak of confidentiality, it would never  
 12 become known what the results or reasons for  
 13 failure were, that you were of.  
 14 MR. TILLEY:  
 15 A. The focus was clearly on the recommendations  
 16 and there was a lot of discussion -  
 17 COFFEY, Q.C.:  
 18 Q. Is that so?  
 19 MR. TILLEY:  
 20 A. Pardon?  
 21 COFFEY, Q.C.:  
 22 Q. Is that so? You were aware, that as far you  
 23 knew, there was never going to be another  
 24 investigation.  
 25 MR. TILLEY:

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1 A. I wasn't aware of a repeat recommendation, no.  
 2 COFFEY, Q.C.:  
 3 Q. So then, is it fair to say then that this was  
 4 structured so that it would never become known  
 5 outside the organization?  
 6 MR. TILLEY:  
 7 A. No, I wouldn't agree with that. The normal  
 8 process -  
 9 COFFEY, Q.C.:  
 10 Q. Well, what step was taken then, can you tell  
 11 the Commissioner?  
 12 MR. TILLEY:  
 13 A. Well, the normal process that we would go  
 14 through for an evaluation of physician is a  
 15 peer review process. The value of that is  
 16 that you bring in a peer, you -  
 17 COFFEY, Q.C.:  
 18 Q. Sir, just if I can stop you there -  
 19 MR. SIMMONS:  
 20 Q. Madam Commissioner, Mr. Tilley has been asked  
 21 a question and this may be an important one,  
 22 he should be allowed to finish his answer  
 23 without being interrupted, please.  
 24 THE COMMISSIONER:  
 25 Q. Mr. Coffey.

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1 COFFEY, Q.C.:  
 2 Q. Yes, I'm sorry, you go right ahead, sir. You  
 3 go right ahead.  
 4 MR. TILLEY:  
 5 A. The peer review process is set up to bring in  
 6 an expert who works in that particular field.  
 7 It's designed to be protected to encourage the  
 8 physicians who are involved with that to as  
 9 open as possible without fear of there being  
 10 retribution.  
 11 COFFEY, Q.C.:  
 12 Q. Uh-hm.  
 13 MR. TILLEY:  
 14 A. So, you encourage an open dialogue.  
 15 COFFEY, Q.C.:  
 16 Q. Okay. What else happens with them? Go on, go  
 17 ahead.  
 18 MR. TILLEY:  
 19 A. What happens with?  
 20 COFFEY, Q.C.:  
 21 Q. The peer review was carried out, what happens?  
 22 MR. TILLEY:  
 23 A. Well, the follow-up recommendations.  
 24 COFFEY, Q.C.:  
 25 Q. What else can happen?

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1 MR. TILLEY:  
 2 A. I'm sorry.  
 3 COFFEY, Q.C.:  
 4 Q. How can it be used or are you familiar with  
 5 the MAC rules, the medical bylaws?  
 6 MR. TILLEY:  
 7 A. There's nothing coming immediately to mind.  
 8 You need to give me a memory jogger.  
 9 COFFEY, Q.C.:  
 10 Q. Well, what, in fact, happens with a peer  
 11 review? Say the peer reviewer comes in and  
 12 says, this not good.  
 13 MR. TILLEY:  
 14 A. Okay.  
 15 COFFEY, Q.C.:  
 16 Q. What's to happen then?  
 17 MR. TILLEY:  
 18 A. You're referencing something in the medical  
 19 staff bylaws?  
 20 COFFEY, Q.C.:  
 21 Q. Are you aware of even how they work?  
 22 MR. TILLEY:  
 23 A. Well, other than the fact that the peer review  
 24 process is fairly well known throughout the  
 25 health care system. And it is used quite

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1 regularly as a means of trying to get to the  
 2 bottom of a particular issue.  
 3 COFFEY, Q.C.:  
 4 Q. I'm talking about the one enforced in your own  
 5 institution.  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. What did that say about what could happen or  
 10 what couldn't happen?  
 11 MR. TILLEY:  
 12 A. I'm sorry, I can't elaborate because I'm not  
 13 familiar with what you're referencing.  
 14 COFFEY, Q.C.:  
 15 Q. Well, what I'm getting at is what was to be  
 16 done if the physician was judged to be  
 17 inadequate or physicians were judged to be  
 18 inadequate?  
 19 MR. TILLEY:  
 20 A. Okay. There would be a process that would be  
 21 initiated, I suspect, that would look at the  
 22 competency of particular physicians and be  
 23 acted upon through the process that would be  
 24 provided for in those bylaws.  
 25 COFFEY, Q.C.:

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1 Q. Yes, but how would that ever become public?  
 2 MR. TILLEY:  
 3 A. I'm not sure there is a process that's built  
 4 into to become public.  
 5 COFFEY, Q.C.:  
 6 Q. That's the point I was making with you.  
 7 MR. TILLEY:  
 8 A. Okay.  
 9 COFFEY, Q.C.:  
 10 Q. There is none, is there?  
 11 MR. TILLEY:  
 12 A. That's why in times when we were trying to  
 13 talk about this, we were cognisant of the fact  
 14 it was protected, but yet we were trying to  
 15 err on the side on the being as open as  
 16 possible. The December technical briefing  
 17 that was offered was despite issues or  
 18 concerns about the Evidence Act and the focus  
 19 was on the recommendations.  
 20 COFFEY, Q.C.:  
 21 Q. But sure the recommendations are not  
 22 discloseable under the Evidence Act either.  
 23 MR. TILLEY:  
 24 A. But we did talk about it.  
 25 COFFEY, Q.C.:

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1 Q. Which meaning that you were aware of the  
 2 Evidence Act limitations or prohibition on the  
 3 usage of them, but you went right ahead anyway  
 4 and ignored the Evidence Act where it involved  
 5 the recommendations? That's what you're  
 6 telling us?  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. So, that you're prepared to ignore the  
 11 Evidence Act, consciously ignore it, in terms  
 12 of the recommendations, yet you weren't  
 13 prepared to deal with part of the reports  
 14 outside the recommendations.  
 15 MR. TILLEY:  
 16 A. Well, we -  
 17 COFFEY, Q.C.:  
 18 Q. Why is that?  
 19 MR. TILLEY:  
 20 A. Well, we saw all this trying to be open as  
 21 much as we could. It was a balance call. To  
 22 do anything less would be undesirable and was  
 23 certainly not supported by the team.  
 24 COFFEY, Q.C.:  
 25 Q. Okay. So, is it fair to say then that the

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1 team was of the view that, well ignore the  
 2 Evidence Act, in that regard?  
 3 MR. TILLEY:  
 4 A. Well, I know there was discussions -  
 5 MR. SIMMONS:  
 6 Q. Excuse me, Madam Commissioner?  
 7 THE COMMISSIONER:  
 8 Q. Yes, Mr. Simmons.  
 9 MR. SIMMONS:  
 10 Q. I'm not sure that we're hearing it from the  
 11 witness or from Mr. Coffey, who is suggesting  
 12 that there was a conscious recognition at the  
 13 time that the December '06 briefing was held  
 14 as to what the Evidence Act protected and  
 15 didn't. As we all know, this was a  
 16 substantial issue that we had to deal with in  
 17 court -  
 18 THE COMMISSIONER:  
 19 Q. I was understanding the witness to tell us  
 20 that certain things were done on his  
 21 understanding of the Evidence Act. Now,  
 22 whether he correctly understood the Evidence  
 23 Act is another question.  
 24 MR. SIMMONS:  
 25 Q. Yes, and he -

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1 THE COMMISSIONER:  
 2 Q. But surely he can tell us what he understood.  
 3 MR. SIMMONS:  
 4 Q. And I think it would be very useful to  
 5 clarify it with Mr. Tilley whether there was  
 6 an actual discussion of that issue and any  
 7 conscious addressing of that issue, of whether  
 8 the Evidence Act applied to the  
 9 recommendations or not and if the  
 10 considerations in December '06 took that into  
 11 account or not. Because I'm not sure that's  
 12 being explored in a way that would allow Mr.  
 13 Tilley to have answered that question.  
 14 COFFEY, Q.C.:  
 15 Q. (Inaudible) lawyer, perhaps you could tell us.  
 16 MR. TILLEY:  
 17 A. Well, there was a discussion about the  
 18 Evidence Act and the potential limitations  
 19 that that might involve, but -  
 20 COFFEY, Q.C.:  
 21 Q. Did that discussion involve a lawyer?  
 22 MR. TILLEY:  
 23 A. No.  
 24 COFFEY, Q.C.:  
 25 Q. Okay, go ahead.

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1 MR. TILLEY:  
 2 A. And then we made a decision that we needed to  
 3 be speaking about this publicly.  
 4 COFFEY, Q.C.:  
 5 Q. So, you recognized that the recommendations,  
 6 the prohibition under the Evidence Act  
 7 included recommendations?  
 8 MR. TILLEY:  
 9 A. Not sure we talked about it that specifically.  
 10 COFFEY, Q.C.:  
 11 Q. Okay.  
 12 MR. TILLEY:  
 13 A. But we did make a conscious decision to say we  
 14 want to err on the side of talking about this.  
 15 COFFEY, Q.C.:  
 16 Q. Uh-hm.  
 17 MR. TILLEY:  
 18 A. So, there was a lot of discussion talking  
 19 about what things had been put in place in  
 20 order to restore the level of confidence in  
 21 that particular test.  
 22 COFFEY, Q.C.:  
 23 Q. But you didn't make any--you brought up the  
 24 Evidence Act and no one said, well, where are  
 25 the lawyers and let's ask them? That's what

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1 you're saying?  
 2 MR. TILLEY:  
 3 A. That's true, sir.  
 4 COFFEY, Q.C.:  
 5 Q. Was there, in fact, a lawyer involved in the  
 6 lead up to the December '06 press conference?  
 7 MR. TILLEY:  
 8 A. I know there was a lawyer copied on one of the  
 9 e-mails that I was privy to.  
 10 COFFEY, Q.C.:  
 11 Q. Okay. That would be Mr. Boone, I take it?  
 12 MR. TILLEY:  
 13 A. Yes.  
 14 THE COMMISSIONER:  
 15 Q. Can I go back to something that Mr. Coffey  
 16 started at about ten minutes ago and got  
 17 diverted from, and I'm quite confident at some  
 18 point there will be debates about the value or  
 19 otherwise of peer review, but for the moment,  
 20 I would like your understanding of how it --  
 21 not how it worked in the sense of, you know,  
 22 calling in somebody, looking at it, following  
 23 the rules, and dealing with the person or  
 24 persons whose work may be reviewed, but in the  
 25 sense of what the result is on a peer review.

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1 Essentially, Mr. Coffey, was I think putting  
 2 to you that if you choose to examine a  
 3 problem, but via that route, a very small  
 4 number of people in your institution would  
 5 even -- would become aware of it, and there  
 6 was no way that the public would ever become  
 7 aware of what the problem was.  
 8 MR. TILLEY:  
 9 A. That's right, Commissioner.  
 10 THE COMMISSIONER:  
 11 Q. Is that accurate?  
 12 MR. TILLEY:  
 13 A. That's accurate in the context that the peer  
 14 review process is an internal process. The  
 15 results are not normally shared and there's no  
 16 provision for how that issue is to be resolved  
 17 in terms of balancing the confidentiality of  
 18 the process against the public's interest in  
 19 knowing more about it. Again if -- sorry.  
 20 THE COMMISSIONER:  
 21 Q. And further to Mr. Coffey's point, at least  
 22 what I took to be the point he was putting to  
 23 you, is that whether you thought about it  
 24 consciously or not, when you chose to examine  
 25 this process, you thought -- we subsequently

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1 learned it wasn't via peer review, but your  
 2 understanding at the time -- was it, or maybe  
 3 I'm misunderstanding that?  
 4 MR. TILLEY:  
 5 A. My understanding was when this was set up, it  
 6 was set up as part of a peer review process.  
 7 THE COMMISSIONER:  
 8 Q. Okay. So knowing that it was set up as part of  
 9 a peer review process, you also knew that as  
 10 large as this thing was, or at least  
 11 understood that as large as this thing was,  
 12 the question of what went wrong would never be  
 13 answered for anybody but that small group of  
 14 people who were entitled to know under the  
 15 peer review process?  
 16 MR. TILLEY:  
 17 A. Yes, Commissioner, there's no provision --  
 18 THE COMMISSIONER:  
 19 Q. That would include the government, that would  
 20 include the public of Newfoundland, that would  
 21 include people from other places who might  
 22 benefit from knowing what went wrong?  
 23 MR. TILLEY:  
 24 A. Right. Well, we certainly shared it with  
 25 government when requested.

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1 THE COMMISSIONER:  
 2 Q. Wait now, you shared it with government?  
 3 MR. TILLEY:  
 4 A. Well, yes.  
 5 COFFEY, Q.C.:  
 6 Q. In what sense?  
 7 MR. TILLEY:  
 8 A. Well, they had asked for a copy and I had  
 9 indicated to them that we were going to  
 10 forward it to them.  
 11 COFFEY, Q.C.:  
 12 Q. Copy of the reports?  
 13 MR. TILLEY:  
 14 A. Yes. There's a log in my telephone --  
 15 COFFEY, Q.C.:  
 16 Q. Go ahead.  
 17 THE COMMISSIONER:  
 18 Q. I'm sorry, you shared that with government,  
 19 you say?  
 20 MR. TILLEY:  
 21 A. Well, Mr. Abbott had requested it. In my  
 22 telephone log, there's a reference to, yes,  
 23 it'll be sent to you.  
 24 THE COMMISSIONER:  
 25 Q. Uh-hm.

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1 MR. TILLEY:  
 2 A. Shortly after that, Mr. Abbott -- or the next  
 3 day or thereabouts, Mr. Abbott stepped down  
 4 from the position. I was told -- of course,  
 5 Mr. Thompson took over. I was told that on my  
 6 desk after I had departed the Eastern Health  
 7 position, there was the package of information  
 8 addressed to Mr. Abbott, so it was certainly  
 9 acknowledged that we would provide it, but  
 10 through events, it appears that they may not  
 11 have actually received it.  
 12 COFFEY, Q.C.:  
 13 Q. So that would have been May 30th -- the 29th  
 14 or 30th, 2007?  
 15 MR. TILLEY:  
 16 A. Yes.  
 17 COFFEY, Q.C.:  
 18 Q. So you packaged up, or got your hands on a  
 19 copy of the reports, the external review  
 20 reports --  
 21 MR. TILLEY:  
 22 A. Right.  
 23 COFFEY, Q.C.:  
 24 Q. John Abbott had said, George, will you send  
 25 them to me, please?

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1 MR. TILLEY:  
 2 A. That's correct.  
 3 COFFEY, Q.C.:  
 4 Q. And you had packaged them, put them in an  
 5 envelope, addressed them to him?  
 6 MR. TILLEY:  
 7 A. Yes.  
 8 COFFEY, Q.C.:  
 9 Q. And the next thing, he's not in the position?  
 10 MR. TILLEY:  
 11 A. Right.  
 12 COFFEY, Q.C.:  
 13 Q. And why then weren't they just simply sent, do  
 14 you know?  
 15 MR. TILLEY:  
 16 A. No, other than the events of those couple of  
 17 months and I learned afterwards that after I  
 18 had gone, in my desk was that package of  
 19 information.  
 20 COFFEY, Q.C.:  
 21 Q. Who told you that it was found on your desk?  
 22 MR. TILLEY:  
 23 A. I think, Mr. Boone -- sorry, Mr. Simmons had  
 24 referenced it.  
 25 COFFEY, Q.C.:

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1 Q. So you had forgotten that, not in the sense --  
 2 you hadn't realized you hadn't sent it?  
 3 MR. TILLEY:  
 4 A. That's correct.  
 5 COFFEY, Q.C.:  
 6 Q. So you packaged it. You certainly -- when  
 7 John Abbott contacted you about sending it  
 8 over, the Commission had been called by then.  
 9 Commissioner Cameron hadn't been identified,  
 10 but the Commission had been announced?  
 11 MR. TILLEY:  
 12 A. Uh-hm.  
 13 COFFEY, Q.C.:  
 14 Q. The end of May, 2007. You had no hesitation  
 15 about sending it to him?  
 16 MR. TILLEY:  
 17 A. No. My log refers to that.  
 18 COFFEY, Q.C.:  
 19 Q. And just on that point, if I could,  
 20 Commissioner, before we break for the day,  
 21 because you did yesterday talk about --  
 22 express concern about an incident or incidents  
 23 in the past where certain information  
 24 concerning a cancer drug had resulted in  
 25 unfortunate consequences for patients.



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1 MR. TILLEY:  
 2 A. Oh, yes, right.  
 3 COFFEY, Q.C.:  
 4 Q. In various places across this country, and the  
 5 information, the known potential pitfalls of  
 6 it had not been shared.  
 7 MR. TILLEY:  
 8 A. Yes.  
 9 COFFEY, Q.C.:  
 10 Q. And yet in 2005, you were aware -- became  
 11 aware of at least certain problems that Dr.  
 12 Banerjee identified that existed -- he said  
 13 existed here in St. John's?  
 14 MR. TILLEY:  
 15 A. Yes.  
 16 COFFEY, Q.C.:  
 17 Q. I take it, you had no reason objectively to  
 18 believe that those problems might not exist in  
 19 some other spots?  
 20 MR. TILLEY:  
 21 A. That's true.  
 22 COFFEY, Q.C.:  
 23 Q. Potentially, yet there's no mechanism in place  
 24 to bring this to other people's attention?  
 25 MR. TILLEY:

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1 A. Well, what I had done, as you probably know,  
 2 is --  
 3 COFFEY, Q.C.:  
 4 Q. Is bring it up with Canadian Association --  
 5 MR. TILLEY:  
 6 A. I brought it up with a number of individuals -  
 7 -  
 8 COFFEY, Q.C.:  
 9 Q. Yes.  
 10 MR. TILLEY:  
 11 A. But I also took a fairly significant amount of  
 12 the literature that I was getting, which  
 13 expressed the concerns about this particular  
 14 test, and forwarded it on.  
 15 COFFEY, Q.C.:  
 16 Q. But the actual problems or arguably problems  
 17 identified by Dr. Banerjee in the material I  
 18 just took you through, that was not being  
 19 shared with others?  
 20 MR. TILLEY:  
 21 A. Not at that point in time, no.  
 22 COFFEY, Q.C.:  
 23 Q. Not even a heads-up across the country, you  
 24 know, I'm not commenting upon what we have  
 25 found here, but be aware, that wasn't --

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1 MR. TILLEY:  
 2 A. It was certainly the spirit that we would be  
 3 prepared to get this issue onto the Canadian  
 4 scene and talked about in terms of whatever  
 5 learnings were now being pursued in the  
 6 European and American health care systems.  
 7 COFFEY, Q.C.:  
 8 Q. But in terms of the actual nitty-gritty of  
 9 what Banerjee had found?  
 10 MR. TILLEY:  
 11 A. We hadn't reached that point, but I don't  
 12 think there would --  
 13 COFFEY, Q.C.:  
 14 Q. In fact -- I'm sorry, go ahead.  
 15 THE COMMISSIONER:  
 16 Q. You said, "You hadn't reached that point,  
 17 but".  
 18 MR. TILLEY:  
 19 A. But not to say if this became an issue and an  
 20 opportunity for us to contribute to this, that  
 21 we would not. I think that would be an  
 22 obvious benefit from this whole process.  
 23 COFFEY, Q.C.:  
 24 Q. But as of two years after the problem first  
 25 surfaced in May of 2005, it hadn't gone beyond

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1 a very small group within Eastern Health, it  
 2 hadn't even made it over to the Confederation  
 3 Building?  
 4 MR. TILLEY:  
 5 A. That's correct.  
 6 COFFEY, Q.C.:  
 7 Q. And unless John Abbott had asked for it, you  
 8 certainly hadn't taken it upon yourself to  
 9 send it to John Abbott?  
 10 MR. TILLEY:  
 11 A. No, other than Ms. Hennessey was inquiring of  
 12 the reports or results and referred to Dr.  
 13 Williams.  
 14 COFFEY, Q.C.:  
 15 Q. And that was long, long -- that was in the  
 16 fall of '05?  
 17 MR. TILLEY:  
 18 A. That's reasonable, yes.  
 19 COFFEY, Q.C.:  
 20 Q. So we're clear then overall, without you  
 21 either mailing it to John Abbott, reports to  
 22 John Abbott, or a successor in May of '07,  
 23 okay, and that only came about because of the  
 24 fuss that led to the Commission --  
 25 MR. TILLEY:

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1 A. Yes.  
2 COFFEY, Q.C.:  
3 Q. Without that having happened, or subsequently  
4 a court proceeding, this to this day would not  
5 be known, what Dr. Banerjee and Trish  
6 Wegrynowski found?  
7 MR. TILLEY:  
8 A. There was no process built in the system to do  
9 it.  
10 COFFEY, Q.C.:  
11 Q. Okay. Do you think there should have been  
12 somehow or another?  
13 MR. TILLEY:  
14 A. I think that's an issue that's being talked  
15 about, about the peer review process, in  
16 general.  
17 COFFEY, Q.C.:  
18 Q. Commissioner, tomorrow morning, please.  
19 THE COMMISSIONER:  
20 Q. All right, 9:30. Thank you.

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1 CERTIFICATE  
2 I, Judy Moss, hereby certify that the foregoing is  
3 a true and correct transcript in the matter of the  
4 Commission of Inquiry on Hormone Receptor Testing,  
5 heard on the 16th day of April, A.D., 2008 before  
6 the Honourable Justice Margaret A. Cameron,  
7 Commissioner, at the Commission of Inquiry, St.  
8 John's, Newfoundland and Labrador and was  
9 transcribed by me to the best of my ability by  
10 means of a sound apparatus.  
11 Dated at St. John's, Newfoundland and Labrador  
12 this 16th day of March, A.D., 2008  
13 Judy Moss

Inquiry on Hormone Receptor Testing

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