

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">APRIL 24, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel</p> <p>Rolf Pritchard Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Chesley Crosbie. Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association</p> <p>Jennifer Newbury Canadian Cancer Society (NL Division) Stacey O’Dea Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-0021, P-0022, P-0023, P-0028, P-0370, P-0481 and P-0485 Pg. 5</p> <p>EXHIBITS P-0375 AND P-0394 Pg. 279</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>MR. GEORGE TILLEY - RESUMES THE STAND</p> <p>Examination-in-chief by Bernard Coffey, Q.C. . . . Pgs. 4 - 279</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER:</p> <p>2 Q. Please be seated. Mr. Coffey.</p> <p>3 MR. GEORGE TILLEY, EXAMINATION BY BERNARD COFFEY, Q.C.</p> <p>4 (CONT'D)</p> <p>5 COFFEY, Q.C.:</p> <p>6 Q. Good morning, Commissioner. Good morning, Mr.</p> <p>7 Tilley.</p> <p>8 MR. TILLEY:</p> <p>9 A. Good morning.</p> <p>10 COFFEY, Q.C.:</p> <p>11 Q. Commissioner, before I continue with Mr.</p> <p>12 Tilley, there are some other exhibits. I’m</p> <p>13 going to ask that they be entered, please.</p> <p>14 They’re P-0021, 0022, and 0023, and it’s</p> <p>15 redacted minutes of the Medical Advisory</p> <p>16 Committee minutes, and they’re the years 2005</p> <p>17 through 2007. There’s as well Exhibit P-0028,</p> <p>18 the Regional Advisory Committee minutes, which</p> <p>19 cover the years 2005 to 2007. There’s Exhibit</p> <p>20 P-0485, the Regional Quality Council meeting</p> <p>21 minutes for the years 2006 and 2007. There’s</p> <p>22 Exhibit P-0370, I don’t believe is entered</p> <p>23 yet, is an e-mail which I’m going to be asking</p> <p>24 Mr. Tilley about this morning. And Exhibit P-</p> <p>25 0481, which is an ethics review report, again,</p>

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1 which I'm going to be asking Mr. Tilley about
 2 this morning.
 3 THE COMMISSIONER:
 4 Q. All P exhibits?
 5 COFFEY, Q.C.:
 6 Q. Yes, Commissioner.
 7 THE COMMISSIONER:
 8 Q. All right. So we are admitting P-0021, 0022,
 9 0023, and 0028, as well as P-0370, P-0481 and
 10 0485. Thank you.
 11 EXHIBITS ENTERED AND MARKED EXHIBITS P-0021, P-0022, P-
 12 0023, P-0028, P-0370, P-0481, AND P-0485
 13 COFFEY, Q.C.:
 14 Q. Thank you. Now, Mr. Tilley, on Friday past
 15 when we left off, we were--I had it marked as
 16 we were dealing in August 2006. If we could
 17 bring up, please, Exhibit P-0370? Again, to
 18 help put this in some temporal context for
 19 you, Mr. Tilley, you recall that last day we
 20 were looking at that written submission or
 21 letter that you had prepared for The Globe
 22 and--not for The Current.
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Remember that, so this is in the same month.
 2 MR. TILLEY:
 3 A. Okay.
 4 COFFEY, Q.C.:
 5 Q. This is August of '06, just to put some
 6 temporal context to it. This is an e-mail of
 7 August 7th, 2006 from Susan Bonnell to
 8 Patricia Pilgrim, Sharon Smith, Leona
 9 Barrington, Heather Predham and Dr. Williams,
 10 Robert Williams, and the subject is
 11 communication with family physicians. I'd like
 12 to refer to some parts of this, and I have a
 13 question or two about it.
 14 Ms. Bonnell writes "just to follow up on
 15 our conversation this morning, I just spoke
 16 with Lynn Barter, Comm director with the NLMA.
 17 She is going to speak with the head of their
 18 GP's group re: communicating with family
 19 physicians. She agrees with me that the
 20 messages have really gotten mixed in general
 21 conversation and suspects that many family
 22 doctors will be hearing from their patients.
 23 She'll let us know if this is accurate. In
 24 the meantime, they will help us communicate
 25 with the GPs via letter when we are ready. It

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1 would be excellent if we were in a position to
 2 communicate where we are in the review process
 3 and to clarify what the process was about,
 4 some of the results we are finding, generally
 5 speaking, and to address what we are doing as
 6 an organization to ensure quality
 7 control/confidence in system. If you would
 8 like to get together in the next couple of
 9 days to strategize re: ways to reach the
 10 various groups, let us know. I am very
 11 nervous about doing any disclosures this week.
 12 The timing is very bad, especially given that
 13 we do not have a spokesperson to address this.
 14 FYI, Mark Quinn has made contact with us this
 15 morning. Mark is a CBC reporter who did the
 16 FOI," which would be freedom of information, I
 17 presume, "on ER/PR and Leona Head discussed
 18 with him setting up a briefing with our key
 19 players. I'd suspect he's looking for this
 20 now. We'll let you know."
 21 Now in this context, Mr. Tilley, again if
 22 I could, if I could have, please, brought up
 23 Exhibit P-0102. It's page one, Mr. Tilley.
 24 This is the communication with The Current and
 25 you'll note here that the message was August

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1 4th, 2006.
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. So if we could go back, please, to Exhibit P-
 6 0370? In the summer then or mid summer of
 7 '06, this e-mail seems to suggest that locally
 8 Mark Quinn was looking for information from
 9 Eastern Health about ER/PR. Do you remember,
 10 you know, what was generally going on? I
 11 mean, Susan has spoken to you, I gather, about
 12 writing to The Current?
 13 MR. TILLEY:
 14 A. That's correct, yes.
 15 COFFEY, Q.C.:
 16 Q. Well, The Current actually wanted to do an
 17 interview, but you decided, for reasons you've
 18 explained, that you'd do it in writing
 19 instead. Here, she's, at least not telling
 20 you, but she's telling your key person
 21 involved in this, Dr. Williams, that Mark
 22 Quinn is asking questions about it, looking
 23 for information on ER/PR. What was Eastern
 24 Health's position at that point in time, vis-
 25 a-vis dealing with the media?

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1 MR. TILLEY:
 2 A. I think it would be fair to say that
 3 generally, we felt that we were in an
 4 environment where there were so many things
 5 happening. The media was persistent in its
 6 interest to find out more. At that point in
 7 time, there was information coming back in the
 8 way of the analysis of the external reviews.
 9 There was information coming back with respect
 10 to the patients and the extent to which their
 11 tests had changed. The overriding objective,
 12 and the one that we kept referring ourselves
 13 to, is that our obligations are to the
 14 individual patients. And to be quite open
 15 with you, while we knew the media were there,
 16 quite simply, they were not our priority. We
 17 focused on ensuring that the patients
 18 continued to get as much information and would
 19 be the primary source of that information.
 20 COFFEY, Q.C.:
 21 Q. By that point in time, what was the situation
 22 with respect to the contact with the
 23 individual patients?
 24 MR. TILLEY:
 25 A. Ongoing, my thought. We would have had the

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1 information back from Mount Sinai. The panel,
 2 I'm going to stretch and say, maybe May of
 3 2006 -
 4 COFFEY, Q.C.:
 5 Q. May or June, 2006.
 6 MR. TILLEY:
 7 A. It was felt to be, so we were certainly into
 8 that period where a lot of that information
 9 was coming together.
 10 COFFEY, Q.C.:
 11 Q. So but if the panel is finished, May or June
 12 of '06, and I appreciate it would take a
 13 certain amount of time to get their
 14 recommendations communicated to patients by
 15 individual physicians, in the summer of '06,
 16 what was Eastern Health's view of, from your
 17 perspective, in terms of like how you expected
 18 this to unfold?
 19 MR. TILLEY:
 20 A. That we would complete the process with the
 21 individual patients, and I guess the day that
 22 we would have been satisfied is when we had
 23 all of the patients who were going--whose
 24 treatment was going to be influenced by this
 25 retest informed.

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1 COFFEY, Q.C.:
 2 Q. And then what would happen? What was the--was
 3 there any plan as to what would happen then?
 4 MR. TILLEY:
 5 A. We hadn't thought it through that far.
 6 COFFEY, Q.C.:
 7 Q. And what was going on elsewhere, do you know,
 8 in terms of in other forum or forum that you
 9 were involved in? For example, law suits,
 10 what was the situation at that point?
 11 MR. TILLEY:
 12 A. I think in the 19 -
 13 COFFEY, Q.C.:
 14 Q. In the middle of '06.
 15 MR. TILLEY:
 16 A. Sorry, 2005, we were after getting notice of a
 17 claim being pursued.
 18 COFFEY, Q.C.:
 19 Q. That would be the fall of '05, I believe.
 20 MR. TILLEY:
 21 A. It's not a date that I've got retained to say
 22 when the actual potential class action suit
 23 was to be filed.
 24 COFFEY, Q.C.:
 25 Q. That would be the fall, I'd suspect, of '05,

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1 but this is the summer of '06.
 2 MR. TILLEY:
 3 A. Right.
 4 COFFEY, Q.C.:
 5 Q. I'm just trying to get, for the Commissioner,
 6 some sense of, you know, the narrative as it
 7 unfolded from your perspective as a CEO. I
 8 mean, The Current is after you for comment in
 9 the beginning of August of '06. Ms. Bonnell
 10 is saying, at least in an e-mail to your VP
 11 medical, that Mark Quinn is looking for
 12 information. That's in the last paragraph of
 13 her e-mail. I'm wondering is the CEO, were you
 14 aware of this kind of agitation by the media?
 15 Well, obviously you were aware of The Current.
 16 Were you made aware of the agitation by the
 17 local media, inquiries by the local media for
 18 information?
 19 MR. TILLEY:
 20 A. While I wasn't circulated on the e-mail, I
 21 certainly knew that there was local interest
 22 on the part of the media in this story from
 23 Mark and others in particular.
 24 COFFEY, Q.C.:
 25 Q. And what type of information did you

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1 anticipate that they wanted--you understand
 2 they wanted then or anticipate that they would
 3 want?
 4 MR. TILLEY:
 5 A. My assumption would be whatever information we
 6 could possibly provide that they wouldn't have
 7 been able to access up to that point in time.
 8 COFFEY, Q.C.:
 9 Q. Which is concerning what? What sorts of
 10 information?
 11 MR. TILLEY:
 12 A. What's the status of the retesting and the
 13 panelling? What's the status of the
 14 reactivation of the tests inside? What's the
 15 issues with regards to contributing factors
 16 behind this? That would be my sense of it.
 17 COFFEY, Q.C.:
 18 Q. How many results changed?
 19 MR. TILLEY:
 20 A. Yes, I wouldn't doubt that.
 21 COFFEY, Q.C.:
 22 Q. Okay, and as you've indicated, as of the
 23 summer of '06, in terms of how--when you
 24 finally were satisfied that all the patients
 25 had been contacted and dealt with

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1 appropriately as individuals, what the next
 2 step was, you yourself hadn't actually thought
 3 that through at that point in time?
 4 MR. TILLEY:
 5 A. No. We were still in the midst of the
 6 restructuring. Everybody was trying to give
 7 their utmost attention to this. I think that
 8 was the fall that I actually went and spoke at
 9 a national conference.
 10 COFFEY, Q.C.:
 11 Q. I'll be asking about that. So this is kind of
 12 in a period where the communication with
 13 individual patients is just ending or being
 14 wrapped up.
 15 MR. TILLEY:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. And the next step hasn't yet been embarked on?
 19 MR. TILLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. Okay. There is a reference here to, in Ms.
 23 Bonnell's e-mail, to, in the second last
 24 paragraph, to--well, before I get to that, the
 25 third last paragraph, she says "if you," and

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1 that would be Dr. Williams et al, "would like
 2 to get together in the next couple of days to
 3 strategize re: ways to reach the various
 4 groups, let us know." Of course, the first
 5 part of that, this is about, the e-mail is
 6 about reaching the NLMA, the doctors.
 7 MR. TILLEY:
 8 A. Okay.
 9 COFFEY, Q.C.:
 10 Q. Let them know what the situation is. Mr.
 11 Tilley, at that point in time, in terms of
 12 dealing with the NLMA, making sure that GPs
 13 knew what was going on, or had some sense of
 14 the status of what was going on vis-a-vis
 15 their patients, sitting as the head of--as the
 16 CEO of Eastern Health, whose responsibility
 17 was the coordination of that?
 18 MR. TILLEY:
 19 A. It would be primarily through the vice-
 20 president for medical services, and
 21 undoubtedly, the communication staff of the
 22 two organizations would have been players in
 23 it.
 24 COFFEY, Q.C.:
 25 Q. The organizations being?

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1 MR. TILLEY:
 2 A. Sorry, the Newfoundland and Labrador Medical
 3 Association and Eastern Health.
 4 COFFEY, Q.C.:
 5 Q. Ms. Barter is the--Lynn Barter was the comm
 6 director for them.
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Here, it seems to suggest in that third last
 11 paragraph that Ms. Bonnell is looking for--or
 12 is encouraging meetings to strategize re: ways
 13 to reach the various groups.
 14 MR. TILLEY:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. Which might include whom? The media, I
 18 presume, ultimately, the NLMA and whomever
 19 else.
 20 MR. TILLEY:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. The public, I suppose, at large. That
 24 suggests that--or seems to suggest that she
 25 was pushing or trying to encourage the others

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1 involved in this to like look ahead as it
 2 were, to plan ahead. Is that--do you have any
 3 recollection of that?
 4 MR. TILLEY:
 5 A. Well, I think one of the questions that we
 6 talked about at the end of the last day is
 7 that Susan monitored this situation quite
 8 closely. She would have been very supportive
 9 of being as open as we could. There were
 10 times during this process she had offered some
 11 other advice to suggest that maybe the direct
 12 patient contact was the preferred route.
 13 You'll recall when we talked last time about
 14 some strengths and weaknesses of various
 15 options, and I think one of the comments that
 16 stuck with me was that we're probably into a
 17 no-win scenario with some of this, that we'll
 18 always be stuck with the reality that some
 19 will have--agree with her approach and others
 20 will have thought we should have done it
 21 differently.
 22 COFFEY, Q.C.:
 23 Q. And by this point in time, though, by the
 24 summer of '06, what was she pushing for?
 25 MR. TILLEY:

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1 A. I can only read the memo in front of me here
 2 and imply that let's talk about the requests
 3 that we're getting and see how we might be
 4 able to deal with this.
 5 COFFEY, Q.C.:
 6 Q. And I appreciate, as you and I can read what's
 7 written there, really what my question is
 8 directed at, is that--what's written there,
 9 does that accord with your memory of actually
 10 her general approach at that point in time?
 11 People can sometimes say--write one thing and
 12 say something else, and I'm not suggesting she
 13 did.
 14 MR. TILLEY:
 15 A. Happens many times.
 16 COFFEY, Q.C.:
 17 Q. I'm not suggesting she did at all. So this
 18 seems to suggest here that she is rally the
 19 troops, as it were. "We have to move ahead
 20 with this. The media, the NLMA."
 21 MR. TILLEY:
 22 A. Right, and I confess I'm basing my assumptions
 23 on the letter, as opposed to any direct hand
 24 knowledge that's sort of popping into my mind.
 25 COFFEY, Q.C.:

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1 Q. Okay, and that's really--there's nothing -
 2 MR. TILLEY:
 3 A. Okay.
 4 COFFEY, Q.C.:
 5 Q. You don't--nothing there kind of jumping out
 6 to you that this is not what I recall. This
 7 is--it's in accordance with what memory you do
 8 have of it?
 9 MR. TILLEY:
 10 A. Like, there's nothing that sticks out in my
 11 mind to suggest that it wouldn't be what she
 12 was presenting.
 13 COFFEY, Q.C.:
 14 Q. Thank you. If we could, please, if we'd bring
 15 up, please, Exhibit P-0481? Page two, please.
 16 Thank you. Now you have already made
 17 reference to an ethics consult?
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Remember that. Could you tell us, please, tell
 22 the Commissioner, please, in terms of the
 23 Health Care Corporation of St. John's and then
 24 Eastern Health, do they have ethicists
 25 actually on staff? How does that work?

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1 MR. TILLEY:
 2 A. When the organization was created for Eastern
 3 Health, one of the program functional areas
 4 that I was creating was, I can't remember the
 5 exact terminology but pastoral care and
 6 ethics.
 7 COFFEY, Q.C.:
 8 Q. Okay, yes.
 9 MR. TILLEY:
 10 A. And that was driven by the fact that we had
 11 had some exposure to it in the Health Care
 12 Corporation and used it as a body to bounce
 13 ideas off. That body or group would have
 14 consisted of an ethicist or two, and I believe
 15 in both cases, they were either jointly
 16 appointed between Eastern Health/Health Care
 17 Corporation and the University, or all in the
 18 university's camp, but it was clear that we
 19 were able to access them.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. TILLEY:
 23 A. But there really became a growing body of
 24 literature that supported using ethical models
 25 to try to bring some guidance in complex

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1 issues. My experience with them is that they
 2 don't make the decision. They just help the
 3 people who are trying to make the decision
 4 understand the parameters of it and maybe help
 5 them make the decision in the end.
 6 COFFEY, Q.C.:
 7 Q. That's what I was going to ask you about, the
 8 purpose. From the CEO's perspective, what
 9 your understanding was as to where they fit
 10 within the organization and what usage you
 11 would make of them?
 12 MR. TILLEY:
 13 A. Um-hm. There's a lot of people that you drew
 14 upon in health systems. The direct care
 15 professionals, the support staff, the
 16 ethicists, the pastoral care staff, you know,
 17 you sought opinions and then tried to
 18 assimilate the views to move yourself forward.
 19 COFFEY, Q.C.:
 20 Q. Now is there any policy within the Health Care
 21 Corporation or Eastern Health as to when it
 22 might be mandatory to consult an ethicist?
 23 MR. TILLEY:
 24 A. A mandatory consult doesn't come to mind.
 25 COFFEY, Q.C.:

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1 Q. Then in a discretionary way, are there any
 2 policies at all, do you know, that you can
 3 recall now off the top of your head, in which,
 4 you know, that refer to ethicists or
 5 utilization of them?
 6 MR. TILLEY:
 7 A. I don't have a recollection of that. Again,
 8 in the--one of the discussions that we had
 9 earlier about what I spend my time on is in
 10 part an attempt to reflect what I see as
 11 important in the organization, and that
 12 equally applies to how we create the
 13 organizational design. So by creating it with
 14 ethics in one of the major functions, it
 15 really would have sent the message that we
 16 value it, and there were occasions that people
 17 would often say to me that they had been
 18 involved in a consult and feel that it was a
 19 constructive process. So it wasn't something
 20 that we were discouraging being used.
 21 COFFEY, Q.C.:
 22 Q. And the practice of consulting ethicists dated
 23 back to the Health Care Corporation days?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. Okay, and it was carried forward into Eastern
 3 Health?
 4 MR. TILLEY:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. With respect to this ER/PR issue, do you know
 8 when it first came up then, who's instance it
 9 came up?
 10 MR. TILLEY:
 11 A. I can't recall the precise time. I do recall
 12 more specifically discussions that the ethics
 13 group had with respect to how can we or how
 14 should we deal with those people who are now
 15 deceased, but may or would have had one of
 16 these ER/PR tests performed, and trying to get
 17 some advice in terms of what options might be
 18 appropriate to treat those. That seems to me
 19 to be occurring at some point in time later.
 20 I don't recall ethics, an ethics consult in
 21 the summer of '05.
 22 COFFEY, Q.C.:
 23 Q. Yeah. Summer or fall of '05, I take it. You
 24 know, reflecting back upon it now are you able
 25 to tell the Commissioner, and looking back on

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1 it now, why it didn't come up?
 2 MR. TILLEY:
 3 A. I can't elaborate. Not only I can't
 4 elaborate, I just, I don't have any
 5 recollection of it. I think that this
 6 organization can be, not only can be but has
 7 been looked at from its ethical support as
 8 fairly prominent in the country, and Dr.
 9 Singleton, in particular, who heads up that
 10 service, has been consulted quite broadly, so
 11 it certainly wouldn't have been because we
 12 didn't have the expertise available. You just
 13 jump into this situation, you got information
 14 coming from multiple sources, you felt that
 15 you're doing the right thing by stopping the
 16 testing, by making a decision to send
 17 everybody out or retest people, so in your
 18 heart and soul you believe that you're doing
 19 the right thing. The question that I then
 20 ponder is what would be the ethics question at
 21 that point in time. I believe the ethicists
 22 would have said their support would have been
 23 lead to retesting. The question about the
 24 speed at which the retesting was done I don't
 25 think would have lent itself to an ethics

Page 25

1 question. The question about the inquiries of
 2 the media, possibly something to be discussed
 3 there. And, you know, their recommendations,
 4 it's their way of thinking that becomes the
 5 asset.
 6 THE COMMISSIONER:
 7 Q. Sorry.
 8 COFFEY, Q.C.:
 9 Q. Yes, go ahead.
 10 THE COMMISSIONER:
 11 Q. Mr. Coffey, for doing it in unison again, but
 12 I'm just wondering whether or not the Ethics
 13 and Pastoral Care, was it the title of the
 14 department?
 15 MR. TILLEY:
 16 A. Yes.
 17 THE COMMISSIONER:
 18 Q. Or Pastoral Care and Ethics, I can't remember.
 19 MR. TILLEY:
 20 A. Yes.
 21 THE COMMISSIONER:
 22 Q. Does that--is that department seen in the same
 23 way, we used the analogy last week of the IT
 24 department, they're there to help us if we
 25 need them, but we figure out whether we need

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1 to call them?
 2 MR. TILLEY:
 3 A. Yes. Well, the IT is both a sought after and
 4 a driver in and of itself. And probably you
 5 can say the same about the pastoral care
 6 ethics piece, pastoral care obviously there to
 7 be supporting patients. But the ethical piece
 8 of pastoral care, there are probably others
 9 that could speak in a more informed way about
 10 this, but it's for the most part, as I
 11 understand it, available when called.
 12 THE COMMISSIONER:
 13 Q. Okay. And can you tell me whether or not that
 14 division is used primarily on the research
 15 side or are there activities primarily in it
 16 consulting with those who might be dealing
 17 with patients on a direct kind of level?
 18 MR. TILLEY:
 19 A. Both, Madam Commissioner. They certainly
 20 would be involved in the research part in
 21 terms of looking at the efficacy of what is
 22 being proposed here and as part of a merit
 23 review panel, I suspect. But they have been
 24 drawn into specific over the years and that's
 25 usually been a process whereby they are

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1 talking to the direct care providers, maybe
 2 the family, maybe the patient, to try to
 3 rationalize some very complex issues.
 4 THE COMMISSIONER:
 5 Q. Okay. They might also, which perhaps is a
 6 mixture of pastoral care and ethics, but they
 7 might also be called upon to assist perhaps
 8 family members who are having to make
 9 difficult decisions in the aspect of health
 10 care, would they?
 11 MR. TILLEY:
 12 A. I think that would be a fair assessment, too,
 13 yes.
 14 THE COMMISSIONER:
 15 Q. All right. Thank you. Sorry, Mr. Coffey,
 16 I've done it again.
 17 COFFEY, Q.C.:
 18 Q. Thank you, Commissioner. So in respect of
 19 certainly the still living patients, I take it
 20 that as best you can recall the idea of doing
 21 ethics consult in any regard didn't come up?
 22 MR. TILLEY:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. Just didn't come up.

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1 MR. TILLEY:
 2 A. I have no recollection of even it being
 3 referenced.
 4 COFFEY, Q.C.:
 5 Q. Yeah. In terms of that what about in
 6 relation, in particular, to the issue of
 7 disclosure about the existence of a problem or
 8 perceived problem and, you know, what was to
 9 be done about it?
 10 MR. TILLEY:
 11 A. No, I don't have any recollection of that.
 12 COFFEY, Q.C.:
 13 Q. Didn't come up. Reflecting upon it now,
 14 looking back on it now, might the issue of
 15 disclosure have had ethical aspects to it?
 16 MR. TILLEY:
 17 A. A lot of what's done in this business has an
 18 ethical dimension to it. And with an issue
 19 like disclosure that we were clearly
 20 struggling with it may not have changed the
 21 outcome, but I don't think we were adverse to
 22 not seeking other opinions. And maybe
 23 somebody did along the way, but it's certainly
 24 it's not something that's come up that I was
 25 directly involved in.

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1 COFFEY, Q.C.:

2 Q. Do you know, if we could just look at Exhibit

3 P-0041. Now, this is a "Pastoral Care and

4 Ethics Department, Eastern Health" is the

5 heading. It's May 29th, 2006. The 6th is

6 handwritten over the 7, but I have no reason

7 to believe it was actually 2007. It says

8 2006, to Dr. Robert Williams from Rick

9 Singleton "Re: Ethics Consult, ER/PR." And

10 the text then goes on for more than a page, or

11 approximately a page, just over a page about

12 this matter. Was this ever, this document

13 ever brought to your attention or the

14 information contained in it?

15 MR. TILLEY:

16 A. You think it was '06 or so -

17 COFFEY, Q.C.:

18 Q. This would have been '06. I mean, unless

19 there's some--Mr. Simmons is not correcting

20 me, so.

21 MR. TILLEY:

22 A. No. I don't recall it being forwarded to me.

23 At a later point I remember one evening

24 calling Dr. Singleton, who actually

25 facilitated this session, to hear more

Page 30

1 firsthand as to what the discussions and how

2 the process worked.

3 COFFEY, Q.C.:

4 Q. Okay. Could you tell the Commissioner what

5 you recall about that?

6 MR. TILLEY:

7 A. That was just some time later when the issue

8 came up with regards to the deceased, I

9 believe.

10 COFFEY, Q.C.:

11 Q. Um-hm.

12 MR. TILLEY:

13 A. And I don't profess to have a good

14 understanding of it, now that I think back at

15 it, but he did talk about how they went to

16 assess this particular situation and how in

17 the end they made a recommendation that for

18 the families of any patients who were deceased

19 but had also been impacted or could

20 potentially be impacted by a changed test

21 result, that they, or we shouldn't be

22 presumptuous to think that those families want

23 that information or are equipped to deal with

24 that information. So the recollection that I

25 have is that the families would be offered an

Page 31

1 opportunity to request that information if

2 they chose to do so.

3 COFFEY, Q.C.:

4 Q. Do you recall whether or not Mr. Singleton

5 told you that he had written a report on this?

6 MR. TILLEY:

7 A. When I called him that evening, and I think I

8 got him at home, my recollection is is that he

9 said, "I need to get my computer," so he had

10 some document he was working from, but.

11 COFFEY, Q.C.:

12 Q. Okay.

13 MR. TILLEY:

14 A. Beyond that.

15 COFFEY, Q.C.:

16 Q. So I take it there was no system in place

17 within Eastern Health at the time to insure

18 that any report that he did, such as this

19 ethics consult document we have here, would

20 flow up through Dr. Williams to you in

21 relation to an issue like ER/PR?

22 MR. TILLEY:

23 A. Right. I believe the process would be is that

24 a report would go to the individuals who had

25 initiated the request. So those individuals

Page 32

1 that are present, I suspect, I suppose that

2 they would have been the individuals that

3 would have gotten that. I can't speak to the

4 communications that Dr. Singleton may have had

5 with Dr. Williams.

6 COFFEY, Q.C.:

7 Q. Okay. But the process did not, there was no

8 process in place, like if Dr. Williams in this

9 context in terms of, you know, managing the

10 ER/PR issue on behalf of Eastern Health, from

11 your perspective, the fact that he had gotten

12 an ethics consult report in writing concerning

13 the deceased and how disclosure should be

14 handled in relation to them, formal process or

15 even informal process in place did not insure

16 or were not meant to insure that it would come

17 to your attention as CEO?

18 MR. TILLEY:

19 A. I don't recall, no.

20 COFFEY, Q.C.:

21 Q. No. Do you recall how it was that you had to

22 contact Dr. Singleton as opposed to Dr.

23 Williams telling you about the result?

24 MR. TILLEY:

25 A. It seems to me when I made the contact Dr.

Page 33

1 Williams was, it was later.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. So Dr. Williams may have retired.
 6 COFFEY, Q.C.:
 7 Q. Oh, retired, okay.
 8 MR. TILLEY:
 9 A. And I just remember an evening calling just
 10 probably trying to get as much of an
 11 appreciation for the issue, just call him
 12 directly.
 13 COFFEY, Q.C.:
 14 Q. And from your perspective the purpose then of
 15 an ethics consult is what?
 16 MR. TILLEY:
 17 A. Well, it was to provide sort of an analysis of
 18 a particularly complex problem and to help put
 19 some guidance that the decision makers might
 20 use to make, reaffirm an existing decision or
 21 make changes to it.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 MR. TILLEY:
 25 A. It wouldn't be a decision that they themselves

Page 34

1 could make, but obviously their opinion would
 2 be sought.
 3 COFFEY, Q.C.:
 4 Q. The ethicists wouldn't decide the issue, they
 5 would just--that's what you're saying?
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. They're the ones who would not decide the
 10 issue -
 11 MR. TILLEY:
 12 A. Right.
 13 COFFEY, Q.C.:
 14 Q. It would be presumably in this context Dr.
 15 Williams, the requester or initiator?
 16 MR. TILLEY:
 17 A. That the recommendation would be made back,
 18 yes, that's correct.
 19 COFFEY, Q.C.:
 20 Q. Do you recall--so I take it then if you had to
 21 contact Dr. Singleton about this, you have no
 22 memory of Dr. Williams actually bringing this
 23 to your attention and you and him discussing
 24 about how Eastern Health would handle the
 25 deceased?

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1 MR. TILLEY:
 2 A. There's not a moment that's sort of coming to
 3 mind. We did talk about deceased. I'm not
 4 sure whether it was Dr. Williams and I or just
 5 a group of people, but that's as far as I can
 6 recollect.
 7 COFFEY, Q.C.:
 8 Q. The--if we look at this, now present here, or
 9 at least noted to be present is Dan Boone, a
 10 lawyer; Heather Predham, risk management; Dr.
 11 Joy McCarthy, oncologist; Dr. D. Cook,
 12 laboratory; Dr. N. Denic, laboratory; Dr.
 13 Natalie Bandeau, intensives and ethicist; and
 14 Rick Singleton, a facilitator. From your
 15 perspective as the CEO of Eastern Health the
 16 composition of the group, whose responsibility
 17 was it to decide who would form the group that
 18 would discuss the matter?
 19 MR. TILLEY:
 20 A. I can't answer that one.
 21 COFFEY, Q.C.:
 22 Q. Okay. Then the issue is framed there in a
 23 number of paragraphs. In the third paragraph
 24 of the text it says, "Important facts to the
 25 history and understand of this case include

Page 36

1 the following: There were no mistakes or
 2 technical errors at the root of this problem.
 3 It is impossible to know if any specific--in
 4 any specific case if the outcome for any
 5 individual patient would have been different.
 6 Intervention for post-menopausal women had
 7 positive impact by lengthening life in 47
 8 percent of patients treated." So, you know,
 9 the assertion or statement that there were no
 10 mistakes or technical errors at the root of
 11 this problem, the problem being the situation
 12 involving ER/PR retesting and the
 13 circumstances that occasioned the retesting
 14 and the results, the idea that, or the
 15 statement, the assertion that "There were no
 16 mistakes or technical errors at the root of
 17 this problem," from your perspective as the
 18 CEO, okay, of Eastern Health.
 19 MR. TILLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. As of the summer of 2006, August, 2006, had
 23 you any reason to believe that that was an
 24 accurate statement, that there were no
 25 mistakes or technical errors at the root of

Page 37

1 this problem?

2 MR. TILLEY:

3 A. Well, I have to say that for the whole period

4 of time in my mind I did never, I have never

5 felt comfortable that we have gotten to the

6 definitive issues here. I know that the peer

7 reviews specifically reference issues with

8 regards to the slices and so on, but I was not

9 able to reconcile that with the discussions

10 that I was having with some of the experts in

11 the country--experts in the country.

12 COFFEY, Q.C.:

13 Q. Okay.

14 MR. TILLEY:

15 A. Dr. Pritzker. I was not able to reconcile it

16 when there were no standards in the country

17 and therefore whether the staff were being

18 measured now on a standard that was in place

19 today but not in place in 2007. This is when

20 we started using more and more the issue of

21 the systems problem, and the system problem

22 being more than attributable to any particular

23 person, but a whole combination of factors.

24 And I don't only mean factors that are within

25 the laboratory in St. John's itself, I really

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1 look to the other parties in this in the

2 national system and the extent to which they

3 did or did not support some better clarity

4 around this particular issue. So -

5 THE COMMISSIONER:

6 Q. Frankly, and perhaps this is just the time to

7 just divert for a second in this, because I've

8 always had a problem as to what "a systems

9 problem" meant in this context.

10 MR. TILLEY:

11 A. Yes.

12 THE COMMISSIONER:

13 Q. Was it consistently used in the same way by

14 your organization?

15 MR. TILLEY:

16 A. Typically, yes.

17 THE COMMISSIONER:

18 Q. Okay.

19 MR. TILLEY:

20 A. But it meant to refer to situations that were

21 beyond one particular person. And here we had

22 clearly a report which looked at a group of

23 people and how they performed particular

24 tasks, but over that same period of time in

25 which they were looking at that some of the

Page 39

1 practices in the country were starting to

2 evolve, the standards that existed today

3 weren't the same standards, if at all, that

4 existed in the late '90s. So that's typically

5 when we refer to an issue as being something

6 much bigger than a particular person.

7 THE COMMISSIONER:

8 Q. Okay. But you can understand, perhaps, that a

9 systems problem by that definition can mean

10 that two people in your lab did something that

11 resulted in inaccurate tests.

12 MR. TILLEY:

13 A. Yes.

14 THE COMMISSIONER:

15 Q. For a lot of people, or it can mean that many,

16 many, many errors or mistakes not attributing

17 any mental intention to this at all or a piece

18 of machinery might be the cause of the--what

19 I'm saying is your definition of a systems

20 problem is so wide that it really means

21 nothing other than we cannot attribute the

22 cause of this problem to one person?

23 MR. TILLEY:

24 A. Right. Well, first of all just to say if it

25 was two people and we found two people were

Page 40

1 inappropriately applying standards and

2 knowingly, then that would be an issue. But

3 the use of a system problem is one that seems

4 to be used fairly wide spread in the health

5 care community, and it's meant to imply when

6 there appears to be, you know, multiple

7 factors that could, in fact, be leading to a

8 particular outcome. So you mentioned

9 technology, yes, technology could possibly be

10 a part of that. The Ventana system I know has

11 been talked about some as the system.

12 Certainly the system wasn't intended to be

13 referring just the Ventana. There's another

14 analogy that you may have heard in the health

15 system, it's called the "Swiss cheese

16 approach."

17 THE COMMISSIONER:

18 Q. Um-hm.

19 MR. TILLEY:

20 A. And there are, the block of Swiss cheese is

21 meant to imply all of the different parts that

22 are in place that together result in a test or

23 a treatment being performed. When you get a

24 problem, it's usually because the holes in the

25 Swiss cheese have lined up so that you can see

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1 from one side to the other, because more often
 2 in the health system there are so many things
 3 that sort of serve as a backup goalie to any
 4 issues that may arise so the Swiss cheese was
 5 designed to talk about how systems can
 6 sometimes fail if, in fact, the parts of the
 7 system that are not fail proof happen to line
 8 up with the other part of the system that's
 9 also not fail proof, etcetera, etcetera. So
 10 in the health system we do tend to look at
 11 these things very broadly. And with the
 12 organization that I became involved with, the
 13 Canadian Patient Safety Institute, it talked
 14 about that quite extensively. It talked about
 15 how is it that so many errors are seemingly
 16 occurring in health care organizations but
 17 never get reported and why, and hence, this is
 18 one of the issues which--this is, hence, why
 19 issues like blame-free culture and no-fault
 20 insurance became items that had been talked
 21 about quite extensively by them with the
 22 belief that through those couple of extra
 23 parameters we may be in a position where
 24 people are more likely to come forward if
 25 there's a problem that they see in the system

Page 42

1 that could potentially result in an adverse
 2 event or if they have, in fact, been involved
 3 in an adverse event themselves and the
 4 incentive has got to be there to come forward
 5 immediately in the event that can be rectified
 6 immediately or measures can be put in place to
 7 stop it from occurring again.
 8 THE COMMISSIONER:
 9 Q. Mr. Tilley, it seems to me that classifying a
 10 problem as a systems problem without anything
 11 further can be a way of doing a number of
 12 things: one is a way of not answering the
 13 question; two is a way of saying it's so
 14 complicated, we're not going to try to answer
 15 the question; and three is that's the best way
 16 of describing what we have found and that is
 17 that so many things are contributing to the
 18 problem. But if I was reading the paper
 19 tomorrow and read that Eastern Health had said
 20 this is a systems problem, I wouldn't know
 21 which one you were talking about.
 22 MR. TILLEY:
 23 A. Yes. Well, typically, Commissioner, it would
 24 be the third one. There are multiple factors
 25 that could, in fact, be attributing to this

Page 43

1 and I -
 2 THE COMMISSIONER:
 3 Q. And would you use system's problems when you
 4 were communicating to patients about what
 5 caused the problem? When the patient who had
 6 been informed you have a change on retest and
 7 we now believe that you are a positive;
 8 whereas at prior times we thought you were
 9 not, either it's too late to give you
 10 Tamoxifen or some other equivalent kind of
 11 drug that is appropriate for your particular
 12 case, or we're now going to put you on it, and
 13 the patient says to you, "What caused this?
 14 Why am I in that situation?" Would the
 15 response be, "It was a systems problem?"
 16 MR. TILLEY:
 17 A. I wasn't involved in any of those direct
 18 contacts, so I really can't say if that was
 19 the answer given or not.
 20 COFFEY, Q.C.:
 21 Q. If I could, well you're the CEO of the
 22 organization, wouldn't you make it your
 23 business to know what people, you know, your
 24 employees are telling these patients?
 25 MR. TILLEY:

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1 A. I had a lot of confidence in the people that
 2 were talking to them; in fact, they were
 3 people that were well known for their ability
 4 to be able to empathize with patients and
 5 speak to them, so I had to--and I did rely on
 6 their discussions. I would be surprised if
 7 they would not have had some sort of core
 8 communications plan so that they were all
 9 speaking consistently.
 10 COFFEY, Q.C.:
 11 Q. But what was it they were telling them, I
 12 mean, in terms of that?
 13 MR. TILLEY:
 14 A. I can't speak to that, I'm sorry.
 15 COFFEY, Q.C.:
 16 Q. So never knew first nor last what the core
 17 message was, as to what Eastern Health's
 18 representatives were telling patients -
 19 MR. TILLEY:
 20 A. Right.
 21 COFFEY, Q.C.:
 22 Q. - about the reason for the change.
 23 MR. TILLEY:
 24 A. Right, that was not something that I got
 25 myself involved in.

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1 COFFEY, Q.C.:

2 Q. Who should we ask about that then?

3 MR. TILLEY:

4 A. Well certainly the people who were directly

5 doing it would be advantageous and I suspect

6 the people in quality leading there, would be

7 good people to be able to provide some greater

8 insight.

9 COFFEY, Q.C.:

10 Q. And Dr. Williams, perhaps?

11 MR. TILLEY:

12 A. Well he's another level up, but certainly I'm

13 sure he would be more familiar with it than I

14 am.

15 COFFEY, Q.C.:

16 Q. If we could, please, while we're on this

17 topic, Exhibit P-0047 please? Now, Mr.

18 Tilley, this is the report of Trish

19 Wegrynowski dated November 9th, 2005. We've

20 already looked at Dr. Banerjee's October 17th

21 report, or at least portions of it. You told

22 the Commissioner that you do recall having

23 read Dr. Banerjee's report. Do you know if

24 you ever actually saw Trish Wegrynowski's

25 report? This is the fall of '05 report.

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1 MR. TILLEY:

2 A. Yes. I thought I had, again it would have

3 been in Dr. Williams' office to get the copy

4 that he had and would have thumbed through

5 them.

6 COFFEY, Q.C.:

7 Q. Now, this report is 20 pages long and it has

8 42 recommendations. Sir, Ms. Wegrynowski's

9 report and Dr. Banerjee's reports, they were

10 created in the fall of '05. What's the latest

11 by which you would have seen them? Would you

12 have seen them before 2006?

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Do you know if there would be any actual

17 record made of the fact that you had read

18 them?

19 MR. TILLEY:

20 A. I wouldn't know.

21 COFFEY, Q.C.:

22 Q. Any understanding how you sometimes people

23 have to, kind of, you know, check off that

24 they've--or you don't recall if there was any

25 such practice here.

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1 MR. TILLEY:

2 A. Right, sign off.

3 COFFEY, Q.C.:

4 Q. So you had understood that they had limited

5 circulation, those two reports, correct?

6 MR. TILLEY:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. Now looking back at Exhibit P-0041, could you

10 tell us please who you got the understanding

11 from that there were no mistakes or technical

12 errors at the root of the problem, where did

13 you get that?

14 MR. TILLEY:

15 A. This is the report of the -

16 COFFEY, Q.C.:

17 Q. Well you were saying, because I had read you

18 this portion of Dr. Singleton's -

19 MR. TILLEY:

20 A. Right.

21 COFFEY, Q.C.:

22 Q. - memo and "there were no mistakes or

23 technical errors at the root of this problem"

24 and you were elaborating on that for the

25 Commissioner, I'm asking you who gave you that

Page 48

1 understanding?

2 MR. TILLEY:

3 A. Well I read the reports myself. There were,

4 obviously, errors--sorry, I didn't read

5 anything which said there was specific errors

6 made. What I saw was issues with regards to

7 things not being done appropriately and then

8 where improvements could be made.

9 COFFEY, Q.C.:

10 Q. Could we bring up exhibit, please, P-0046?

11 Page 4. Mr. Tilley, so under the heading

12 "Conclusions about the Reasons for Test

13 Failure" although they're numbered seven,

14 there are actually six categories listed then

15 and then "Other System Flaws Observed" and

16 there are seven listed there. So can you tell

17 the Commissioner, please, having read that and

18 I appreciate you didn't understand it all,

19 you've explained that.

20 MR. TILLEY:

21 A. Uh-hm.

22 COFFEY, Q.C.:

23 Q. But what you did understand of it, you took

24 from this what, in terms of whether there had

25 been any mistakes or technical errors at the

Page 49

1 root of the problem?

2 MR. TILLEY:

3 A. Well there were a lot of issues referenced. I

4 didn't feel in my own mind that there was a

5 definitive identification of the problem, and

6 I made that judgment based upon the

7 discussions that I was or the information that

8 I was learning about with regard to the lack

9 of national standards.

10 COFFEY, Q.C.:

11 Q. Who are you having that with?

12 MR. TILLEY:

13 A. Well, I have been having that with Dr.

14 Pritzker. I would have also been privy to the

15 literature that was bound and trying to put

16 this in some context as to is what's happening

17 here--and I think I may have actually stated

18 it that way, this way in some correspondence,

19 is it something that this organization is

20 being a part of, of a larger issue, or is it

21 something specific to this particular issue?

22 It was clear to me -

23 COFFEY, Q.C.:

24 Q. Who did you ask about that? See, this is what

25 I'm trying to focus on. You talked to Dr.

Page 50

1 Pritzker in a general way, you've got no

2 reason to believe Dr. Pritzker actually read

3 either Dr. Banerjee's or Ms. Wegrynowski's

4 reports?

5 MR. TILLEY:

6 A. No, you're correct.

7 COFFEY, Q.C.:

8 Q. So whatever Dr. Pritzker did or didn't know,

9 you had no reason to believe he actually -

10 MR. TILLEY:

11 A. No, you're right.

12 COFFEY, Q.C.:

13 Q. - had listed those. So who else did you

14 actually speak to about who knew what was in

15 the reports about the reasons for whether

16 there were any mistakes or technical errors at

17 the root of this problem?

18 MR. TILLEY:

19 A. Well the only people that I could have talked

20 to about the reports per se would have been

21 the people who had received copies of them.

22 COFFEY, Q.C.:

23 Q. Do you recall speaking to any of them about

24 this issue?

25 MR. TILLEY:

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1 A. I can't imagine that those issues wouldn't

2 have come up in the discussions that we would

3 have had with the Doctors Cook or probably

4 Williams.

5 COFFEY, Q.C.:

6 Q. Did either of them tell you there were no

7 mistakes or technical errors at the root of

8 this problem?

9 MR. TILLEY:

10 A. I don't recall that line specifically.

11 COFFEY, Q.C.:

12 Q. Well did they even give you the sense of that?

13 Did either of those two gentlemen actually

14 suggest to George Tilley that there were no

15 mistakes or technical errors here?

16 MR. TILLEY:

17 A. Not that I can recall.

18 COFFEY, Q.C.:

19 Q. Now, Mr. Tilley, on this point, we've heard

20 from, the Commissioner has heard from Joan

21 Dawe who is the Chair of the Board as to--

22 she's told the Commissioner what she

23 understood, rightly or wrongly, the impression

24 she had or was left with at the time as to the

25 nature of the problem and she attributed most

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1 of that to either a conversation she had with

2 you or Dr. Williams, presentations by either

3 of you, particularly Dr. Williams, I believe.

4 The sorts of things that are listed in Dr.

5 Banerjee's October report and Trish

6 Wegrynowski's November report, okay? How

7 widely known were they within the

8 organization, after the reports?

9 MR. TILLEY:

10 A. Well, all I can tell you or speak to is the

11 individuals who actually had a copy of the

12 reports and were then tasked with following up

13 on the recommendations. I can speak to the

14 fact that Dr. Williams did speak to those

15 reports at board meetings and quite lengthy

16 presentations, but I can't speak beyond that.

17 COFFEY, Q.C.:

18 Q. If we could, please, look at Exhibit P-0103?

19 Now this is two e-mails, sir. One is at the

20 bottom of the page, the longer one, is from

21 Patricia Pilgrim, Monday, August 7th, 2006,

22 2:42 p.m. to Sharon Smith and Heather Predham,

23 copied to Susan Bonnell, Leona Barrington and

24 Dianne Smith. The subject is "ER/PR Review

25 Process, The Status" and in this there's a

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1 two-page e-mail, single spaced by Patricia
 2 Pilgrim and effectively sets out, I gather
 3 from her perspective what the status of this
 4 matter was at the time. Now Ms. Pilgrim at
 5 that point in time, what was your
 6 understanding in the middle of the summer of
 7 '06 as to what the nature of her involvement
 8 in it was?
 9 MR. TILLEY:
 10 A. She was a chief operating officer which would
 11 have been reporting to me. She would have
 12 been a part of the executive team of Eastern
 13 Health and the connection specifically to this
 14 is that she would executive oversight
 15 involvement with the cancer care program.
 16 COFFEY, Q.C.:
 17 Q. And what, if any, management role did she have
 18 in this or co-ordination role, in terms of
 19 your understanding at the time?
 20 MR. TILLEY:
 21 A. I'm sure knowing her that she would have been
 22 there to just offer her support and guidance
 23 and if there is issues that the cancer care
 24 program were following up on, to be working
 25 with them in that regard.

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1 COFFEY, Q.C.:
 2 Q. And at this point in time, I'm just going to
 3 ask you to look down through this, I'm not
 4 going to--because it's fairly lengthy, I'm not
 5 going to read it to you, but there is a number
 6 of subject matters, she says, she just begins
 7 "Hello everyone, just so we're all on the same
 8 page with the various bits and pieces of this
 9 issue" and she continues, "This is my summary,
 10 understanding of the status of several issues"
 11 and the kind of headings are "Ensuring the
 12 oncologists are kept in the loop. Mrs. L in
 13 question need to follow up with here to
 14 clarify the message about the cancer
 15 diagnosis, other possible DCIS cases to be
 16 confirmed, communicating with other key
 17 stakeholders, notification of the retro
 18 converters" and then "So having said all
 19 this", towards the bottom of the second page,
 20 "here is the proposed plan." She talks about
 21 having Heather notified Larry Alteen and Ken
 22 Jenkins of the cases in their area and "Pat
 23 notifying Dr. Williams that we do not think we
 24 should be notifying these patients this month,
 25 but by the end of the month." And finally

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1 "touching base with Terry Gulliver regarding
 2 the current broadcast." So, at that point in
 3 the summer of '06, how much attention were you
 4 really paying to this? You've written the
 5 article to "The Current"?
 6 MR. TILLEY:
 7 A. Yes. It wasn't an issue that I spent a lot of
 8 time on at that time.
 9 COFFEY, Q.C.:
 10 Q. Okay, and that's what I--okay, so that was--it
 11 was being left to Dr. Williams to manage and
 12 Patricia Pilgrim, et cetera?
 13 MR. TILLEY:
 14 A. You know, I was involved in this to try to
 15 help as best I can in a very difficult
 16 situation, but it's not something that I could
 17 spend all of my time doing. But certainly
 18 would have been there if in fact they had
 19 asked me to be involved.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. TILLEY:
 23 A. And I was able to -
 24 THE COMMISSIONER:
 25 Q. Were you on vacation when this took place?

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1 COFFEY, Q.C.:
 2 Q. And some of this, Commissioner, he did say he
 3 drafted the -
 4 MR. TILLEY:
 5 A. I had a very difficult time trying to grab a
 6 few days in '05 and '06.
 7 THE COMMISSIONER:
 8 Q. I do remember the conversation about the
 9 drafting having been done while you were in
 10 your livingroom and somebody else was on the
 11 other end of the phone, as it were.
 12 MR. TILLEY:
 13 A. That was the year before.
 14 COFFEY, Q.C.:
 15 Q. No, this is '06.
 16 MR. TILLEY:
 17 A. You're right.
 18 THE COMMISSIONER:
 19 Q. And that was the same month, so I was just
 20 wondering whether when this particular
 21 document had been prepared, you in fact were
 22 in the organization or were off on a holiday
 23 somewhere or trying to even get back to your
 24 den, whatever.
 25 COFFEY, Q.C.:

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1 Q. Mr. Tilley, if I could on that point,
 2 Commissioner and I appreciate in '05, '06 for
 3 you, Mr. Tilley, things were probably fairly
 4 hectic. When you were aware from the office,
 5 you know, trying to catch a day here or there
 6 of downtime, I appreciate Ms. Bonnell tracked
 7 you down for "The Current", who was in charge
 8 when you were away, from your perspective?
 9 And I ask that in the context of, remember you
 10 had been the senior vice-president at one
 11 point, so was there any equivalent?
 12 MR. TILLEY:
 13 A. No, there wasn't. I made a judgment call at
 14 the time that I would not have a senior
 15 person. The team that I had recruited, a
 16 number of them had been chief executive
 17 officers in their previous organizations. And
 18 I know that when I was designated as the
 19 senior vice-president in the Health Care
 20 Corporation days, that brought with it some
 21 friction may be overstating it, but there
 22 wasn't unanimity that that was needed and how
 23 that decision was being made. So I made a
 24 decision that I wouldn't put that in place for
 25 this particular organization. Having said

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1 that, in--I'm not sure if it was late 2006 or
 2 early 2007, I was beginning to have
 3 discussions with my senior team to say I can't
 4 do all of this and I need somebody who can
 5 take a more senior role, and as a consequence,
 6 I was in the process of meeting with several
 7 of them to get their ideas as to how I might
 8 go about doing that.
 9 COFFEY, Q.C.:
 10 Q. And how far did that -
 11 MR. TILLEY:
 12 A. I didn't get to do it.
 13 COFFEY, Q.C.:
 14 Q. Okay, but I take it then by that point in
 15 time, based upon the sheer workload and
 16 burden, that you at least were prepared to
 17 reconsider -
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. - having a chief Lieutenant, as it were.
 22 MR. TILLEY:
 23 A. That's right.
 24 COFFEY, Q.C.:
 25 Q. And from an operational perspective, what

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1 about peoples' feelings might be, I mean,
 2 looking back on it, do you think--would you
 3 have pressed for it if you'd stayed on?
 4 MR. TILLEY:
 5 A. Yes, I would have because I had reached a
 6 point where, you know, I was down to a couple
 7 of choices and I was prepared to make one of
 8 those.
 9 COFFEY, Q.C.:
 10 Q. Okay. If we could, please, Exhibit P-0422,
 11 Commissioner?
 12 THE COMMISSIONER:
 13 Q. Mr. Tilley, before we leave (inaudible -
 14 microphone not turned on) conversations being
 15 as they are often when there's no chief
 16 lieutenant, somebody actually does it.
 17 MR. TILLEY:
 18 A. Yes.
 19 THE COMMISSIONER:
 20 Q. So, who would have done that in your
 21 organization because somebody usually steps up
 22 to the plate and when you're away, really
 23 handles things, even though officially they're
 24 not that position.
 25 MR. TILLEY:

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1 A. Yes, you're right, Madam Commissioner.
 2 THE COMMISSIONER:
 3 Q. Was there a consistent person in your
 4 organization?
 5 MR. TILLEY:
 6 A. There wouldn't have been a consistent person.
 7 The organization was so diverse and it's so
 8 many parts to it that what I would essentially
 9 asked to be done is that if the issue was one
 10 that was emanating from one of the rural areas
 11 where there was a designated chief operating
 12 officer, then I would expect that person to
 13 resolve the issue. And if the issue was being
 14 one that involved the city of St. John's with
 15 respect to access, then I would expect the
 16 chief operating officer of that group to do
 17 that. And in many ways, that worked. I knew
 18 that if there was a decision that they were
 19 looking for input, they would call any other
 20 member of the executive team to help them make
 21 that decision.
 22 What I was finding it difficult with is
 23 that as a new organization, I wanted to make
 24 sure that I was working with them in all the
 25 issues that they were dealing with, but what

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1 became more and more problematic is that I
 2 just physically couldn't keep the arrangement
 3 in place without having somebody who either
 4 took it on off the corner of their desk, as I
 5 had done in the previous health care
 6 corporation days because I had quite an
 7 extensive mandate as a vice president. And it
 8 just meant that when the CEO was gone, I was
 9 the person to go to if there ever was a
 10 conflict in decision making. In some
 11 organizations they have people who do not have
 12 day-to-day workloads, but sort of, second in
 13 command and have all of the level of executive
 14 report to them who then reports to the chief
 15 executive officer. So, you'll find a
 16 variation throughout the country.
 17 So, I was very much either naively or
 18 very wisely keeping my hands, as much as I
 19 could in the day-to-day operations because
 20 that was important to me as we built a new
 21 organization and they had appreciation for
 22 some of the issues that were important to me.
 23 Well, at the same time as a CEO being
 24 available to deal with outside groups because
 25 most CEOs will tell you that they spend the

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1 bulk of their time facing outwards as opposed
 2 to inwards.
 3 THE COMMISSIONER:
 4 Q. You were at 0422, Mr. Coffey.
 5 COFFEY, Q.C.:
 6 Q. Thank you, Commissioner. Mr. Tilley, I'm
 7 going to move into the fall of 2006 and--oh,
 8 just before, but on that point, ER/PR in this
 9 context, who would the individual have been?
 10 I take it -
 11 MR. TILLEY:
 12 A. The fall of 2006.
 13 COFFEY, Q.C.:
 14 Q. If you had to name somebody, as the
 15 Commissioner said, -
 16 MR. TILLEY:
 17 A. Right, well I'm thinking now which, you know,
 18 it's another challenge that I've faced, Dr.
 19 Williams had retired.
 20 COFFEY, Q.C.:
 21 Q. I wonder, if you could tell the Commissioner
 22 then how that unfolded?
 23 MR. TILLEY:
 24 A. This is like a spider's web, trying to figure
 25 all the pieces and remember them. But Dr.

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1 Williams and I had talked at the time that I
 2 was recruiting an executive team for Eastern
 3 Health. And in the end, he was interested in
 4 staying on, not indefinitely, but he thought
 5 he could--well, I thought he could help me
 6 restructure this very large organization. And
 7 Dr. Williams has an immense amount of
 8 credibility with physicians in this province.
 9 Being a deputy minister, as assistant deputy
 10 minister, he was simply well respected and
 11 having that person in the organization, I felt
 12 was advantageous.
 13 The second thing that we talked about
 14 which, I think, he found rather enticing was
 15 that in addition to liaising with clinical
 16 chiefs and sort of, being the secretariat for
 17 the Medical Advisory Committee, that I invited
 18 him to take on the quality portfolio. Madam
 19 Commissioner, we talked about why we have that
 20 sort of support department, but the reason
 21 that I had thought out Dr. Williams in that
 22 capacity was an interest that I had in
 23 bringing the medical quality piece along
 24 further. I had talked to a number of
 25 organizations throughout Canada trying to get

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1 a handle on the level of development of
 2 medical quality. And to be quite frank with
 3 you, it was all over the place. And there
 4 were very few organizations, in fact, none
 5 that gave me a sense that they were very far
 6 ahead of anybody else, but Dr. Williams had
 7 that interest.
 8 So, he was brought in enticed in some
 9 ways to do that, but clearly he wasn't going
 10 to be around indefinitely. He's in his early
 11 60s and he had quite a long and lustrous
 12 career and the objective was to get me through
 13 the hump, in terms of the restructuring
 14 process. Little did any of us know that the
 15 first week that we started having our first
 16 executive meeting, I think, that was in May,
 17 he started having to deal with the issue
 18 around ER/PR which, in and of itself, I'm
 19 sure, took a lot of time, but on top of his
 20 full workload was an extra challenge.
 21 COFFEY, Q.C.:
 22 Q. Who'd been doing the or what VP was
 23 responsible for quality in a clinical sense
 24 or/and, I suppose, in a non-clinical sense,
 25 the technological sense in the health care

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1 corporation days?
 2 MR. TILLEY:
 3 A. I'm thinking it was Pam Elliott. She was,
 4 sorry, yes, she was vice-president and she had
 5 actually--when I left the organization to go
 6 to Workers' Compensation, she was the person
 7 that was hired into the organization and would
 8 have taken on the quality portfolio. As you
 9 now know, with movement to Eastern Health, she
 10 actually moved into the director position
 11 overseeing that quality program.
 12 COFFEY, Q.C.:
 13 Q. Sir, we're in the summer of 2006 is ending and
 14 what was happening then with Dr. Williams and
 15 his replacement.
 16 MR. TILLEY:
 17 A. Right. For some time prior to that, we had
 18 advertised looking for a replacement. And had
 19 done a number of interviews and had three
 20 possibly four candidates who were interested.
 21 And there was a search committee that I was a
 22 participant in, as well as a number of
 23 physicians in the organization. It may have
 24 been the chair of MAC and a couple of others,
 25 can't seem to be able to say the names. So,

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1 we went through that process and it took
 2 longer than we thought trying to, sort of, as
 3 we narrowed ourselves down between two
 4 candidates. One having more exposure to the
 5 academic piece and another not.
 6 COFFEY, Q.C.:
 7 Q. So, I take it, Oscar Howell was finally
 8 offered the position?
 9 MR. TILLEY:
 10 A. He was.
 11 COFFEY, Q.C.:
 12 Q. And when did he start?
 13 MR. TILLEY:
 14 A. Some time in September of '06 is what rings a
 15 bell.
 16 COFFEY, Q.C.:
 17 Q. And Dr. Williams, in the meantime, what
 18 happened with respect to Dr. Williams?
 19 MR. TILLEY:
 20 A. Well, he had indicated, first of all, that he
 21 was willing to stay around to allow some time
 22 for the orientation for Dr. Howell to occur.
 23 I don't know exactly how long that took. I
 24 can also say to you that Dr. Williams did
 25 retain his relationship with Memorial and, in

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1 particular, the Faculty of Medicine because--
 2 I'm not sure if we called it a part time
 3 stipendiary role and to that end, he would be
 4 available to do some teaching work over there.
 5 And he still had a significant amount of
 6 interest in this process. And it indicated to
 7 me he was prepared to volunteer his time to
 8 continue to be involved and I had welcomed
 9 that.
 10 COFFEY, Q.C.:
 11 Q. So, did he continue to work for Eastern
 12 Health?
 13 MR. TILLEY:
 14 A. Not as an employee, but in a volunteer
 15 capacity because he was, at that point in
 16 time, thinking he may go and take additional
 17 training in the whole area of quality
 18 management and then possibly come and teach
 19 that or work in a consulting capacity.
 20 COFFEY, Q.C.:
 21 Q. So, Dr. Howell starts in September of '06. As
 22 the CEO, from your perspective, what was his
 23 immediate top three or four things to do?
 24 MR. TILLEY:
 25 A. Well, he would have certainly been briefed on

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1 the ER/PR situation. I had made a decision to
 2 change the portfolio so that he would not take
 3 on the quality as much as he really wanted it,
 4 but I was concerned that just coming into a
 5 large organization for the first time, that
 6 that was going to be too much of a learning
 7 curve to take on all at once.
 8 COFFEY, Q.C.:
 9 Q. So, where did that end up at?
 10 MR. TILLEY:
 11 A. That went over to Ms. Pilgrim and she had
 12 always had a great deal of interest in the
 13 quality portfolio. So Dr. Howell's focus, he
 14 would have had program responsibilities for
 15 lab, diagnostic imaging, pharmacy. He would
 16 have been the link with the Medical Advisory
 17 Committee, the clinical chiefs, and I think it
 18 would be fair to say that the revolving door
 19 that Dr. Williams had with physicians in the
 20 organization continued to revolve in Dr.
 21 Howell's day because they sought after him
 22 quite regularly.
 23 COFFEY, Q.C.:
 24 Q. In terms of clinical matters that--or clinical
 25 issues, large scale clinical issues that Dr.

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1 Howell might have to address in the fall of
 2 '06, was ER/PR one of them?
 3 MR. TILLEY:
 4 A. Yes, it would have been one of them.
 5 COFFEY, Q.C.:
 6 Q. Do you recall any other large clinical issue?
 7 MR. TILLEY:
 8 A. I can't imagine that there wouldn't have been.
 9 COFFEY, Q.C.:
 10 Q. Large in the sense of like just sheer numbers
 11 of people, large public interest and so on.
 12 MR. TILLEY:
 13 A. Radiologists in Burin was '07, or was that
 14 started '06?
 15 COFFEY, Q.C.:
 16 Q. Probably. You have some memory, it may have
 17 started in '06. Dr. Howell will come in and
 18 tell us about that.
 19 MR. TILLEY:
 20 A. Okay.
 21 COFFEY, Q.C.:
 22 Q. But from your--again, as a CEO, looking back
 23 on it, certainly ER/PR would have been the
 24 foremost one, I take it?
 25 MR. TILLEY:

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1 A. Right.
 2 COFFEY, Q.C.:
 3 Q. Now in terms of your overall organization, on
 4 this point, in the early fall of 2006, Zachary
 5 Turner and the report on Zachary Turner, do
 6 you recall--did your organization have any
 7 involvement in that, and if so, when did the
 8 report come out?
 9 MR. TILLEY:
 10 A. I had forgotten about that one.
 11 COFFEY, Q.C.:
 12 Q. And again, I'm trying to give the Commissioner
 13 some temporal context of as to what else.
 14 MR. TILLEY:
 15 A. One of the predecessor organizations, Health
 16 and Community Services St. John's, prior to
 17 restructuring, had been dealing with this
 18 particular client. The outcome led to an
 19 investigation and child protection, as an
 20 issue, was not something that I had had
 21 exposure to at all, but being in the position,
 22 I got pulled into fairly high level meetings
 23 with government on the report and the follow
 24 up to them. I remember meeting with some of
 25 the ministers. There was going to be press

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1 conference that up until the night before, I
 2 was supposed to be panel with the press
 3 conference. That got changed late in the
 4 night. So I was trying to change or learn
 5 about that. At the same time, I was getting
 6 some signals from government that they felt
 7 that the leadership in that area needed a
 8 change and I had gotten that message while I
 9 was attending meetings in Grand Falls and I
 10 got that message, in fact, on route to Grand
 11 Falls, landed in Grand Falls and turned
 12 immediately around and headed back to St.
 13 John's to deal with that issue from a senior
 14 management perspective and what I ended up
 15 doing the next morning was making some
 16 realignments of responsibility. I ended up
 17 having to meet with staff. These were a group
 18 of people that I had not really had much of an
 19 occasion to have a conversation with, but I
 20 did go and meet with them as a group. They
 21 were a part of our organization that felt, at
 22 this point in time, that, you know, they were
 23 still in their old organization and here they
 24 were all of a sudden dumped in the middle of
 25 this much larger one, and did they have the

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1 support that they would have had in their own
 2 organization in the past, and hence, my reason
 3 for connecting to them was to give them some
 4 assurances about how much we value them and
 5 how we're trying to work through this and this
 6 is a difficult situation, etcetera, etcetera.
 7 Those are just some of the things that pop to
 8 mind now that you've mentioned them to me.
 9 COFFEY, Q.C.:
 10 Q. So that the--as in the lead up to the
 11 publication of the Turner Report, the report
 12 involving Zachary Turner, and the aftermath of
 13 it, I take it that that involved you, a
 14 certain amount, if not a significant amount of
 15 your time as a CEO?
 16 MR. TILLEY:
 17 A. Well, as much as I could dedicate to it
 18 without neglecting the rest of the
 19 organization, but we did have a senior person
 20 take on the recommendations and work with the
 21 staff to deal with that situation, and again,
 22 it brought to me how an organization can be
 23 responsible for so much, can do so much good,
 24 but all of that, of course, doesn't tend to
 25 get talked about anywhere when you have a very

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1 serious incident of that nature. The focus
 2 just simply goes then on that and from an
 3 organizational perspective, one of my
 4 challenges becomes how do I keep this
 5 organization together without it doing a nose
 6 dive and then we've all lost. So it is a
 7 challenge, to say the least.
 8 COFFEY, Q.C.:
 9 Q. Commissioner, if we could?
 10 THE COMMISSIONER:
 11 Q. Take the morning break?
 12 COFFEY, Q.C.:
 13 Q. If we would, please.
 14 THE COMMISSIONER:
 15 Q. All right, we'll take 15 minutes.
 16 COFFEY, Q.C.:
 17 Q. Thank you.
 18 (BREAK)
 19 THE COMMISSIONER:
 20 Q. Please be seated. Mr. Coffey.
 21 COFFEY, Q.C.:
 22 Q. Thank you, Commissioner. Mr. Tilley,
 23 Registrar, please, could we bring up Exhibit
 24 P-0422?
 25 THE COMMISSIONER:

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1 Q. It's directly in front of you.
 2 COFFEY, Q.C.:
 3 Q. Thank you, yes. Thank you, Commissioner.
 4 This an e-mail from Nash Denic to Oscar
 5 Howell. The subject is ER and PR
 6 presentation. It's November 6th, 2006, 9:15
 7 a.m., and he begins "Hi, Oscar. Please, if
 8 your office can arrange a presentation, I
 9 think the best venue for that would be the
 10 Cancer Clinic conference room, which has
 11 ability for video tele-conference. I would
 12 like to invite the lab directors from the
 13 island because we were all involved, and they
 14 can join us by the video tele-conference which
 15 is available in their centres. The names and
 16 telephone numbers of the lab directors,
 17 pathologists, across Newfoundland Denise can
 18 obtain from my secretary, Judy," particular
 19 extension number. "Also, we should invite the
 20 Cancer Clinic professionals and managers,
 21 surgeons and QI personnel. The title of the
 22 presentation is ER and PR testing, Eastern
 23 Health experience. We can be ready for the
 24 week of the 13th of November. Let me know
 25 what do you think about it. Sincerely, Nash

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1 Denic."
 2 And if we could, please, just bring up
 3 too then, Exhibit 0423, P-0423? And then this
 4 is an e-mail from Denise Dunn, who is the
 5 executive assistant to Dr. Oscar Howell. She
 6 had worked for Dr. Williams. November 6th,
 7 2006, 2:59 p.m., to Michelle Gregory re:
 8 subject is ER/PR presentation. "Michelle, as
 9 discussed on phone, Dr. Denic will be giving a
 10 presentation to a large group November 20th at
 11 five p.m. to include Dr. Oscar Howell, Mr.
 12 George Tilley, Mr. Terry Gulliver, Ms. Heather
 13 Predham, pathologists, oncologists, surgeons
 14 who do breast surgery and lab technicians who
 15 are involved in the testing. Can you give me
 16 a list of the oncologists Dr. Laing would like
 17 to have there? There will be a second
 18 presentation to executive management on the
 19 morning of November 21. The third
 20 presentation will be to the media. Dr.
 21 Howell, Dr. Denic, Dr. Laing and Susan Bonnell
 22 from communications, and we're looking at
 23 November 30th. Can you confirm these dates
 24 with Dr. Laing? Thanks, Denise."
 25 Now, sir, I refer to those because again,

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1 I want to, if I can, perhaps assist your
 2 memory. Now as the fall of 2006 went on,
 3 where was Eastern Health going with this
 4 issue, in terms of, you know, restarting
 5 testing, ER/PR, communicating with the public,
 6 communicating with its own staff, physicians,
 7 communicating with the Department of Health?
 8 Could you just -
 9 MR. TILLEY:
 10 A. Well -
 11 COFFEY, Q.C.:
 12 Q. And who was running--who was driving the bus,
 13 as it were, at that point in terms of the
 14 issue? Because Dr. Howell was new to it.
 15 MR. TILLEY:
 16 A. Right. Well, there were a lot of things
 17 happening in that fall in some ways. The
 18 issue of trying to get a handle on all that we
 19 had learned and the work to date, the
 20 information that had come about because of the
 21 summary or because of the results coming in,
 22 we had--just reflecting on the conversation we
 23 had earlier this morning, there were obviously
 24 calls that had been originated from the media
 25 in terms of more information. So there were

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1 certainly discussions about doing that. I'm
 2 guessing that the wide net had been referenced
 3 in this particular memo that you have just
 4 referred to is an effort to try to get as many
 5 people as possible that would have an interest
 6 and a need to know, to be involved in this
 7 overview that was being provided by Dr. Denic.
 8 By the way, I'm not sure when we talked or if
 9 we talked about it, but Dr. Denic -
 10 COFFEY, Q.C.:
 11 Q. You're going to have to explain. What
 12 happened with Dr. Cook?
 13 MR. TILLEY:
 14 A. Did you do that already?
 15 COFFEY, Q.C.:
 16 Q. No, we haven't talked about that.
 17 MR. TILLEY:
 18 A. Okay, so that--all right, leave it to you.
 19 COFFEY, Q.C.:
 20 Q. Tell me, if you could, while we're at it,
 21 because Dr. Denic's name really surfaces here
 22 in this context for the first time.
 23 MR. TILLEY:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. What had happened with Dr. Cook?
 2 MR. TILLEY:
 3 A. Well, the clinical chiefs are normally
 4 appointed for three-year terms with the
 5 potential for re-appointment, and I'm thinking
 6 that Dr. Cook fulfilled one term, though I did
 7 have it scribbled down somewhere, but in any
 8 event, at the end of his term, he decided that
 9 he would step down from that leadership role
 10 and a process, the typical process that we
 11 would have for recruitment of clinical chiefs
 12 is, you know, we would advertise and we would
 13 invite other pathologists to make
 14 recommendations as to who might be interested.
 15 I have no idea what goes on behind the scenes,
 16 if they sort of chat amongst themselves and
 17 end up pushing one person to the head of the
 18 pack and that person does it.
 19 COFFEY, Q.C.:
 20 Q. We will hear from the physicians.
 21 Commissioner, we'll hear from them on exactly
 22 how that happens.
 23 MR. TILLEY:
 24 A. Okay.
 25 COFFEY, Q.C.:

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1 Q. But go ahead.
 2 MR. TILLEY:
 3 A. Okay. But in any event, it seemed to me that
 4 Dr. Denic hit the ground running, and was
 5 very, very knowledgeable in this area. I felt
 6 he had good leadership skills, in terms of how
 7 he related to the others, and you know, I was
 8 encouraged the fact that he was now sort of
 9 more in front, from the organization's
 10 perspective.
 11 So, a lot of conversations going on. You
 12 mention about getting the tests reactivated.
 13 COFFEY, Q.C.:
 14 Q. Yes, the ER/PR.
 15 MR. TILLEY:
 16 A. Right, with the old Ventana system, and I've
 17 reflected on that issue many times and I've
 18 had a lot of time to reflect. There was a
 19 period of time, Commissioner, that you may
 20 recall where it was felt that the Ventana
 21 system was overcalling and therefore it was
 22 shut down, and the manufacturer was brought
 23 in, but that didn't necessarily change.
 24 Everybody--and confirmed the accuracy of it,
 25 but that didn't necessarily convince

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1 everybody. So with the patient safety hat on,
 2 I think everybody was, at this point in time,
 3 being extremely cautious and therefore sending
 4 the tests out to Mount Sinai instead.
 5 In retrospect, you know, one could have
 6 said there was nothing in particular that
 7 would cause us concern with the Ventana. We
 8 could have done all of the tests on it, and we
 9 may have had this clued up and results out to
 10 the patients long, long before it actually
 11 happened. But by the time that level of
 12 confidence came, the process had started with
 13 Ventana--sorry, with Mount Sinai, and to that
 14 end, it would just be another variable that
 15 we'd have to try to contend with, in terms of
 16 whether we were getting consistent results or
 17 not.
 18 But, back to your point, there was a lot
 19 of discussion about when are we going to
 20 reactivate the Ventana for that purpose, and I
 21 kept saying "I have no expertise in which to
 22 tell you that. I got to rely upon the people
 23 who are most knowledgeable to say it."
 24 Now back to your question as to who's
 25 running this. Dr. Howell and I had multiple

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1 discussions, as he was getting briefed on the
 2 various issues in the department. He had the
 3 responsibility for the laboratory medicine
 4 program, which put him as the lead person, as
 5 was Dr. Williams, in speaking to this. Was it
 6 an unfair position to put him in? I was very
 7 impressed with Dr. Howell in terms of his
 8 ability to get to the bottom of certain
 9 issues. I'm sure that there were things that
 10 he would have been not as familiar with as Dr.
 11 Williams had been, but I felt he was a quick
 12 study. Secondly, Mrs. Pilgrim, of course,
 13 would have been more evident at this point in
 14 time, as she took upon the other dimension of
 15 this, which was the role of the quality
 16 initiatives department.

17 COFFEY, Q.C.:

18 Q. And so then, in terms of answering the final
 19 point, or addressing the final point, who's
 20 driving the bus, from your perspective, on
 21 ER/PR in the fall of '06?

22 MR. TILLEY:

23 A. In the fall of '06, I would have been relying
 24 upon Dr. Howell, in terms of the laboratory
 25 follow up, and Mrs. Pilgrim in terms of the

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1 quality follow up.

2 COFFEY, Q.C.:

3 Q. And the quality follow up, in this context,
 4 means what?

5 MR. TILLEY:

6 A. The patient contact.

7 COFFEY, Q.C.:

8 Q. I take it, having records in relation to that,
 9 making sure that it had been done and so on?

10 MR. TILLEY:

11 A. Yes, because that was being driven, of course,
 12 by the quality staff in the risk management,
 13 or the quality initiatives and risk management
 14 department.

15 COFFEY, Q.C.:

16 Q. Now if we could look, please, at Exhibit P-
 17 0424? Now this is an e-mail--actually, it's
 18 two e-mails, one embedded in the other. The
 19 first of them, towards the bottom of the page,
 20 it's from Joyce Penney, who would be your
 21 executive assistant at the time, Monday,
 22 November 6th, 15:31 hours, and it's an e-mail
 23 from her to you. Subject is ER/PR
 24 presentation. It says "George, on Monday the
 25 20th of November at five p.m., Dr. Howell is

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1 organizing a presentation by Heather Predham
 2 and Dr. Denic, among others, on the ER/PR with
 3 a view to having a presentation to executive
 4 on November 21st." Question to you, "who do
 5 you see giving the presentation to executive?
 6 Dr. Denic and Heather Predham, plus legal
 7 counsel? Do you want anyone else to attend?
 8 Note that we have John Hylton, CCHSE, giving a
 9 presentation to executive on the 21st as well.
 10 We are also holding time on November 30th for
 11 a potential press conference on ER/PR.
 12 Thanks, JP."

13 And you responded that same day at 7:13
 14 p.m., but you also included in your response,
 15 Oscar Howell. You wrote "Joyce, talking to
 16 Oscar and agreed to legal counsel attending.
 17 In terms of timing, I would like to have this
 18 presentation at 8:30 or 9, and get whoever can
 19 attend from executive. I just referenced to
 20 the gang you will need to confirm when Oscar
 21 finalizes."

22 Now Mr. Tilley, the reference to this
 23 presentation being organized by Dr. Howell, a
 24 presentation by Heather Predham and Dr. Denic,
 25 among others, on ER/PR, and further in her e-

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1 mail she says "who do you see giving the
 2 presentation to executive, Dr. Denic and
 3 Heather Predham, plus legal counsel?" Now
 4 what did legal counsel have to do with this?

5 MR. TILLEY:

6 A. I didn't certainly see legal counsel doing the
 7 presentation or any part of the presentation.
 8 My assumption was here was an opportunity to
 9 get an overview of the situation. Legal
 10 counsel obviously had their own work under
 11 way, and it was just a matter of the
 12 information being shared.

13 COFFEY, Q.C.:

14 Q. Now you did respond that evening saying you
 15 talked to Oscar and agreed to legal counsel
 16 attending. So who agreed here?

17 MR. TILLEY:

18 A. I guess that would be me.

19 COFFEY, Q.C.:

20 Q. And why would your agreement be necessary?

21 MR. TILLEY:

22 A. Well, I'm not sure. Certainly the legal
 23 counsel have been involved in other meetings
 24 in the past that I hadn't been specifically
 25 contacted on, but beyond that, I can't speak

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1 to it.
 2 COFFEY, Q.C.:
 3 Q. And what did you understand was--and the legal
 4 counsel in this context would be Dan Boone?
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. What did you understand his role was going to
 9 be there? I mean, you're being asked
 10 effectively for your consent or permission to
 11 have him there.
 12 MR. TILLEY:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. What did you understand his role would be?
 16 MR. TILLEY:
 17 A. To attend and to listen.
 18 COFFEY, Q.C.:
 19 Q. And why--do you have any--enlighten us at all
 20 on why your permission would be needed in that
 21 regard? Because as you pointed out, many
 22 occasions or a number of occasions before he
 23 had attended, no one had asked your views on
 24 it.
 25 MR. TILLEY:

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1 A. I can't speak to it, I'm sorry.
 2 COFFEY, Q.C.:
 3 Q. And was he supposed to attend the presentation
 4 given to the executive or the larger
 5 presentation?
 6 MR. TILLEY:
 7 A. I'm assuming it's the larger presentation.
 8 COFFEY, Q.C.:
 9 Q. She had framed it, Joyce here, executive
 10 assistant framed it to you, "Who do you see
 11 giving the presentation to executive?"
 12 MR. TILLEY:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. And then it referred to Dr. Denic, Heather
 16 Predham and the lawyer. And so I'm asking, I
 17 just point that to you and -
 18 MR. TILLEY:
 19 A. Right. No, I don't remember a specific one
 20 for the executive other than the one I
 21 attended which had the executive and several
 22 others in the room.
 23 COFFEY, Q.C.:
 24 Q. Do you recall attending one where there were,
 25 I mean, a host of people in terms of, like,

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1 many doctors, technologists -
 2 MR. TILLEY:
 3 A. The one I'm thinking about was the one that
 4 was held adjacent to my office in the
 5 corporate office building, and that room could
 6 probably accommodate 30 people.
 7 COFFEY, Q.C.:
 8 Q. That would be at the Waterford site?
 9 MR. TILLEY:
 10 A. That's correct.
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 MR. TILLEY:
 14 A. I remember somewhere in our discussions
 15 recently we talked about something at the
 16 Health Sciences Centre.
 17 COFFEY, Q.C.:
 18 Q. Yes.
 19 MR. TILLEY:
 20 A. Yeah, that's not the one that I recall
 21 attending.
 22 COFFEY, Q.C.:
 23 Q. And who is John Hylton or Hylton?
 24 MR. TILLEY:
 25 A. He would have been the CEO of the Canadian

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1 College of Health Service Executives. You'll
 2 remember in my resume I referenced that I was
 3 a certified health executive with him. So he
 4 just happened to be in town and wanted to do a
 5 presentation to really support further
 6 membership in that body.
 7 COFFEY, Q.C.:
 8 Q. So what do you recall about the--well, first
 9 of all, did you attend any meetings before--
 10 concerning ER/PR between the time you were
 11 first notified about the scheduling of the
 12 meeting and the actual presentation that you
 13 attended? Did you have any discussion with
 14 anybody about what was going to transpire?
 15 MR. TILLEY:
 16 A. Don't recall. The date of the presentation
 17 was going to be, sorry -
 18 COFFEY, Q.C.:
 19 Q. According to the e-mail we just looked at,
 20 probably November 21.
 21 MR. TILLEY:
 22 A. November the 20th?
 23 COFFEY, Q.C.:
 24 Q. Well, probably 21 with the executive.
 25 MR. TILLEY:

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1 A. Right. There's not a meeting that pops to
 2 mind.
 3 COFFEY, Q.C.:
 4 Q. And from your perspective whatever was to be
 5 presented at that meeting was decided by whom?
 6 MR. TILLEY:
 7 A. I seem to be recollecting presentations by Dr.
 8 Denic, so it was very much the clinical
 9 medical piece.
 10 COFFEY, Q.C.:
 11 Q. Now, sir, if we could bring up, please,
 12 Exhibit 0396, in particular, page 2? Now, I'm
 13 just going to scroll down through. First of
 14 all this appears to be a power point
 15 presentation and it's entitled "Going Public
 16 in Eastern Health Experience. George Tilley,
 17 President and Chief Executive Officer." And
 18 it goes on for a number of pages, three slides
 19 per page up to page 15 of the exhibit. Can
 20 you tell us, please, what this was about?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. When this occurred and how it came about?
 25 MR. TILLEY:

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1 A. It was in the fall of 2006 and it was a
 2 function that was being organized in the
 3 Atlantic Region by the Canadian Patient Safety
 4 Institute. The audience would have comprised
 5 of board chairs, CEOs, VPs of medical services
 6 and VPs of quality. And the four individuals
 7 in Eastern Health in those categories did go,
 8 namely, Mrs. Dawe, Dr. Howell, Mrs. Pilgrim
 9 and myself. So organizations throughout the
 10 Atlantic area were participating. By this
 11 time, of course, I, the year previous, had
 12 been in touch with Mr. Hassen, who is the CEO
 13 of the Canadian Patient Safety Institute.
 14 They asked if there was anything that we could
 15 speak about with regards to the situation that
 16 we were involved in and the presentation that
 17 you have is the one, the power deck that I
 18 used to speak from at that conference. I'm,
 19 roughly say there was 80 to 100 people there,
 20 perhaps, and that occurred in Halifax.
 21 COFFEY, Q.C.:
 22 Q. Was Ms. Dawe there?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. So the dimension we took was the one around
 4 disclosure. And, you know, we went through--
 5 I'm trying to remember this. What our normal
 6 protocol would have been for disclosure and
 7 talked about the challenges that we faced
 8 along the way and it really became a basis for
 9 sort of discussion by those in the audience on
 10 this issue of disclosure, in particular. And
 11 of course, the issue with the lab was
 12 referenced but not in any great detail, but
 13 you do get into some side conversations sort
 14 of afterwards about these sorts of things.
 15 COFFEY, Q.C.:
 16 Q. So you made the presentation. How was it
 17 received, do you recall?
 18 MR. TILLEY:
 19 A. Well, the feedback was very positive. I think
 20 that the fact that we were speaking about an
 21 actual event made it particularly so. I
 22 hadn't known, but Susan was able to touch base
 23 with the Canadian Patient Safety Institute at
 24 a later point and found out that it was one of
 25 the more highly rated pieces of the

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1 conference. So based upon the immediate
 2 questions that I received and that feedback,
 3 I'm thinking that it went over okay.
 4 COFFEY, Q.C.:
 5 Q. Okay. Now, if I could, please, could we look
 6 at, please, see page 5 of the exhibit. Now,
 7 this is beginning here, I think the earlier
 8 parts of it, you know, actually just quote
 9 from--I shouldn't say just, but quote from
 10 policies and publications. Do you know if
 11 this was done before the in-house presentation
 12 on ER/PR, you know, the one that -
 13 MR. TILLEY:
 14 A. I'm pretty sure it was.
 15 COFFEY, Q.C.:
 16 Q. Okay, this was--and looking at the slide at
 17 the top of the page here on page 5 of P-0396,
 18 "May 2005, organization learns of a potential
 19 problem in ER/PR testing." And "It's a
 20 standard test, it's complicated, 40 manual
 21 steps." "2004 the laboratory purchased an
 22 automated system, Ventana." "Major practice
 23 change in oncology." Which I take it is the
 24 30 to 10 -
 25 MR. TILLEY:

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1 A. Yes, that's my -
 2 COFFEY, Q.C.:
 3 Q. And arguably to one, depending upon what
 4 doctor you're talking to. Now, it says there,
 5 "Talking action," is that "talking" or is it
 6 should be "taking action"? I'm just--right
 7 here, you see what I'm -
 8 MR. TILLEY:
 9 A. Yes, I would think it's probably more
 10 appropriate to be "taking."
 11 COFFEY, Q.C.:
 12 Q. "Taking action," okay.
 13 THE COMMISSIONER:
 14 Q. Can we -
 15 COFFEY, Q.C.:
 16 Q. Commissioner.
 17 THE COMMISSIONER:
 18 Q. - increase the size of that, please, just a
 19 little bit.
 20 COFFEY, Q.C.:
 21 Q. Yes, thank you, I apologize, Commissioner.
 22 Yeah, there we are. Now, here under that
 23 heading it's "2005 a tissue sample is retested
 24 and converts from negative to positive.
 25 Pathologists and oncologists meet and decided

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1 to retest five more patients. They all
 2 convert. All negative results from 2002 are
 3 retested, many convert." And "Emergency
 4 meeting, planning action." Was it your
 5 understanding that at least all negative
 6 results from the Health Care Corporation in
 7 2002 had been retested locally?
 8 MR. TILLEY:
 9 A. That's the assumption that I was working
 10 under, yes.
 11 COFFEY, Q.C.:
 12 Q. Sure, okay. And then the next slide shows,
 13 it's entitled, "Fork in the Road." And we go
 14 to the next page, there are a number of,
 15 there's actually three other slides that refer
 16 to, are headed "Fork in the Road." The first
 17 cites the CPS dictionary of the obligation to
 18 disclose. The second one says, "For in the
 19 Road. Retest all tissue samples collected
 20 from 1997 to 2004. Engaged an external
 21 laboratory to complete retesting and conduct
 22 an external review of laboratory." And then
 23 "Fork in the Road, discontinue ER/PR testing
 24 until the review is complete. Contact
 25 numerous laboratories across Canada. Inform

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1 all patients and the public." Now, sir, you
 2 used the imagery and phrase, "Fork in the
 3 Road." What were you trying to convey there?
 4 Right, that suggests, you know, really a
 5 dichotomy of choice, you know, one or the
 6 other as opposed to, you know, something else.
 7 So why did you use the "Fork in the Road"
 8 analogy?
 9 MR. TILLEY:
 10 A. Well, I guess in some ways there was a
 11 potential fork there. Having said that, it's
 12 not one that we were prepared to take any
 13 other direction than the one we chose. By
 14 this time, you know, we were hearing that this
 15 was a problem elsewhere, but no where had we
 16 learned anybody going back to review it. I
 17 think we talked at one point in time about
 18 Ontario bringing in a lab, sorry,
 19 accreditation process.
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 MR. TILLEY:
 23 A. And you know, you can't help but wonder why
 24 Ontario brought in a lab accreditation process
 25 if it had not felt that it needed to be

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1 brought in. But no where had I ever learned
 2 whether Ontario had gone back and done
 3 anything as was done in St. John's.
 4 COFFEY, Q.C.:
 5 Q. Um-hm.
 6 MR. TILLEY:
 7 A. So for us it was presenting it as a potential
 8 choice, but choices that we always erred on in
 9 terms of the follow-up to the patient. And I
 10 guess overall it's a strategy used in the
 11 presentation to try to get your points across.
 12 COFFEY, Q.C.:
 13 Q. Yeah. And why I refer to it here is is, I
 14 raise it with you, is is that I just want to,
 15 you know, as much as one can, perhaps, you
 16 know, insure we're clear on this. From your
 17 perspective as a CEO at any point in this was
 18 there ever any suggestion that we are not
 19 going to do this?
 20 MR. TILLEY:
 21 A. Never.
 22 COFFEY, Q.C.:
 23 Q. Voiced at all?
 24 MR. TILLEY:
 25 A. No.

1 COFFEY, Q.C.:

2 Q. I just want to -

3 MR. TILLEY:

4 A. And I think that's been probably one of the

5 most difficult things that we've endured

6 during this process.

7 COFFEY, Q.C.:

8 Q. Is that because you suspect that in other

9 places they might not have made the same

10 choice?

11 MR. TILLEY:

12 A. No, I wasn't going to speak to that point, I

13 was just speaking -

14 COFFEY, Q.C.:

15 Q. That's what I'm -

16 MR. TILLEY:

17 A. Okay. Hold your thought.

18 COFFEY, Q.C.:

19 Q. Okay.

20 MR. TILLEY:

21 A. But my frustration was in regards to the times

22 that we were saying from the very beginning

23 that patient safety was our prime objective,

24 so you shut it down and you send the retest

25 out. I think there was never, ever a point

1 COFFEY, Q.C.:

2 Q. If we can go, please, to page--just scroll

3 down a little bit more. Sorry. Yes. Page 7

4 of the exhibit, Commissioner, it's, the

5 heading is "A Complicated Disclosure. Systems

6 issue, not a typical medical error." And this

7 is apropos Commissioner's questions this

8 morning. Here you're presenting, you know,

9 this slide deck to a group of people who are

10 relatively sophisticated compared to the

11 general population about health matters. And

12 you're characterizing, it says, "A systems

13 issue, not a typical medical error." Now,

14 what was it you intended to convey by that and

15 what did you say, if anything, in relation to

16 it?

17 MR. TILLEY:

18 A. Well, the typical medical error that we would

19 often refer to would be a patient getting an

20 incorrect drug or an inappropriate amount of a

21 drug. It may have been an incident where

22 there could have been a surgical instrument

23 that had not been removed during the operating

24 procedure, so you had a very defined event

25 with a single patient with a particular care

1 where we had felt we were going to do anything

2 other than do that. And you would have seen

3 in my written notes somewhere about if there

4 was one patient it could benefit, we're going

5 to deal with it. What I found particularly

6 frustrating, and, Mr. Coffey, it may have been

7 our own problem because we weren't talking

8 about it enough, but when we did, that issue

9 seems to have gotten lost in translation. So

10 that was my frustration that all of a sudden

11 it was felt we were doing this because, you

12 know, it became a public issue and we did it,

13 which was not the factor here. Now, sir,

14 going back to your point, which I've since

15 forgotten, so -

16 COFFEY, Q.C.:

17 Q. Which is did you--was there a suspicion, do

18 you think, amongst your--within your own

19 organization that perhaps in other places that

20 the same choice had not been made in the past

21 to go back or might not be made?

22 MR. TILLEY:

23 A. I will acknowledge the fact that that issue

24 did come up, but we really were in no position

25 to say whether anybody had or had not.

1 giver, ie, a surgeon or a nurse and the -

2 THE COMMISSIONER:

3 Q. Why aren't they systems issues?

4 MR. TILLEY:

5 A. Because in the case of the operating room, if

6 there was an instrument that had been left

7 there, there's processes in place to do

8 counting.

9 THE COMMISSIONER:

10 Q. Exactly.

11 MR. TILLEY:

12 A. When that was done, so obviously there would

13 have been someone there looking at that

14 specific incident that had done an incorrect

15 count. In the case of a medication, it would

16 be a nurse reading a medication card, told to

17 give five millimetres of a particular drug,

18 either gives something more or less or gives

19 the wrong drug, in particular. So it is sort

20 of an individual patient with a more of a

21 cause and effect relationship than we

22 typically see in what we had come to know as a

23 systems issues.

24 COFFEY, Q.C.:

25 Q. Was this talked about during the presentation?

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1 MR. TILLEY:
 2 A. I don't think that got a lot of conversation.
 3 Now, it's been a long time, but -
 4 COFFEY, Q.C.:
 5 Q. So you have no recollection of people asking,
 6 "Well, what happened, what caused this?" I'm
 7 not saying you did -
 8 MR. TILLEY:
 9 A. No, no, not off the top of my head, no.
 10 COFFEY, Q.C.:
 11 Q. Okay. I take it they were then, in that
 12 regard, I take it, all very polite in terms of
 13 no one might have asked, well -
 14 MR. TILLEY:
 15 A. I recall getting some questions from the
 16 audience, I'm just not able to sort of
 17 remember what they were.
 18 COFFEY, Q.C.:
 19 Q. There's a reference to "Pandora's box", the
 20 fourth entry.
 21 MR. TILLEY:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. What is that?
 25 MR. TILLEY:

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1 A. Well, I don't know, for me it was sort of
 2 saying I don't know what is the issue here. I
 3 hate to sound like a broken record, forgive
 4 me, it was trying to put this in the context,
 5 in the first case as to what we were learning
 6 throughout the country, what we were learning
 7 in the literature and, you know, some of those
 8 things everybody was learning for the first
 9 time. The descriptions that we were getting
 10 back from someone like Dr. Pritzker, who was
 11 giving credit to Newfoundland for having taken
 12 this on. And then in terms of the patients,
 13 those processes were ongoing. There were
 14 issues that you rightly pointed out in the
 15 letter to "The Current" of there are reference
 16 to a small number of clients or patients who
 17 had been misdiagnosed in the first place,
 18 those were learned during the process and the
 19 disclosure process I feel comfortable was
 20 applied to that particular point in time. It
 21 was just probably, Mr. Coffey, a reflection
 22 where my head was at the time to say, you
 23 know, I'm not feeling that I got a good handle
 24 on this.
 25 COFFEY, Q.C.:

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1 Q. Now, Mr. Tilley, perhaps if we could, I'll
 2 save the question I have in mind, if we could
 3 go then, please, to Exhibit P-421, these are,
 4 I take it, your handwritten notes?
 5 MR. TILLEY:
 6 A. They are.
 7 COFFEY, Q.C.:
 8 Q. And this is one, ER/PR, I think it's internal
 9 presentation, November 21, '06. And could you
 10 just take us down through this? Well, first
 11 of all, why would you write notes at all?
 12 Because I take it this was a presentation, a
 13 slide show.
 14 MR. TILLEY:
 15 A. I have over the years tended to write notes to
 16 allow me to sort of focus in on the issue or
 17 the presentation. I don't think I ever kept
 18 them with the intent that someday there might
 19 be an inquiry, that they'd be looking at them.
 20 So it became more of a habit and sometimes I'd
 21 refer to them and other times they wouldn't be
 22 referred to. Does this equate to the date of
 23 the internal presentation?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. The one for the executive.
 3 MR. TILLEY:
 4 A. Okay.
 5 COFFEY, Q.C.:
 6 Q. So if you'd just -
 7 MR. TILLEY:
 8 A. Take you down through?
 9 COFFEY, Q.C.:
 10 Q. Sure, if you would please?
 11 MR. TILLEY:
 12 A. "Differentiation of outcomes based on changing
 13 cutoffs." So I'm presuming that relates to
 14 the 30/10 the oncology issue. "2000
 15 oncologists change threshold, requested
 16 percentage rather than negative or positive
 17 from pathologists when bio assay to
 18 immunohistochemistry" then it goes on to say
 19 "inter-observer variability", so I took that
 20 in relation to the people who were looking at
 21 the microscopes and how a different person
 22 could look at the same slide and come up with
 23 a different result. The next "Change
 24 treatment on all patients"--I'm not sure
 25 what's in the bracket there, it almost looks

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1 like 3000 or 5000. "Change treatment on all
 2 patients not on those retested." I'm not sure
 3 exactly what that means. Then "13 patients
 4 changed because of definition change.
 5 Tamoxifen no longer gold standard, Aromatase
 6 inhibitor now in." Can I move it down, Mr.
 7 Coffey?
 8 COFFEY, Q.C.:
 9 Q. Please, sir, if you can.
 10 MR. TILLEY:
 11 A. Okay. Then I have here "evolving definition,
 12 v a r i a b i l i t y a m o n g s t o b s e r v e r s ,
 13 processing/protocols, environment, too many
 14 observers, must have correlation with
 15 treatment, if not fitting, then back to lab,
 16 treatment changed. Automation, increased
 17 positivity rate" and then "false negatives".
 18 "Problem, no documentation as to protocols in
 19 place in lab." And then "turn around at Mount
 20 Sinai".
 21 COFFEY, Q.C.:
 22 Q. And if you could -
 23 MR. TILLEY:
 24 A. "Reviewers middle of pack.
 25 COFFEY, Q.C.:

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1 Q. So does that help you to, you know kind of
 2 recall any of what you and your fellow members
 3 of the audience learned that day? For
 4 example, "reviewer is middle pack" I mean,
 5 where did that come from and in what context?
 6 MR. TILLEY:
 7 A. That was made known to me through a review or
 8 one of the reviewers that had been in and
 9 looked at the lab, I presume it came out of
 10 the discussion on the 21st, though I seem to
 11 remember hearing it before then.
 12 COFFEY, Q.C.:
 13 Q. And do you know whether or not, if there was
 14 such a comment by one of those reviewers, do
 15 you know whether it was in relation to what
 16 they found in 2005 or what they thought about
 17 anything they looked back from 2002 and '03?
 18 If a reviewer came in in '05, the Ventana
 19 existed, it was there and it was being
 20 utilized.
 21 MR. TILLEY:
 22 A. Right, that's right.
 23 COFFEY, Q.C.:
 24 Q. Or do you know or -
 25 MR. TILLEY:

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1 A. I don't know, sorry.
 2 COFFEY, Q.C.:
 3 Q. Okay. If we could, please, if we could go to
 4 the next page of the exhibit, this is November
 5 23rd, '06, handwritten notes of yourself. It
 6 says "Minister and John, Tansy, Darrell, Nash"
 7 -
 8 MR. TILLEY:
 9 A. Kara.
 10 COFFEY, Q.C.:
 11 Q. "Kara, Oscar" -
 12 MR. TILLEY:
 13 A. Susan.
 14 COFFEY, Q.C.:
 15 Q. "Susan and George". And there's a note here,
 16 "false negatives approximately five percent."
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Can you tell us please what this was about?
 21 You've already referred to the House of
 22 Assembly meeting.
 23 MR. TILLEY:
 24 A. Right. I remember this meeting in part
 25 because of its location and the fact that the

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1 minister was in the House at the time and
 2 stepped away from those proceedings to meet
 3 with us. I obviously don't have much in the
 4 way of record, which is a bit unique for me.
 5 I recall at the time that there was a
 6 spreadsheet of some sort that we may have
 7 referenced to.
 8 COFFEY, Q.C.:
 9 Q. If I could, please, Commissioner, I'm just
 10 going to ask anybody off the top of their
 11 head, the briefing, all the government's
 12 briefing notes are in one pile.
 13 MR. SIMMONS:
 14 Q. (Inaudible).
 15 THE COMMISSIONER:
 16 Q. Throwing out that challenge again to you, Mr.
 17 Simmons.
 18 COFFEY, Q.C.:
 19 Q. Yes, he's good. This might assist you.
 20 MR. SIMMONS:
 21 Q. 314 Maybe?
 22 COFFEY, Q.C.:
 23 Q. Could we just try 314 please?
 24 MR. PRITCHARD:
 25 Q. (Inaudible) page of notes? I think you've got

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1 them organized in 123 is '05.
 2 COFFEY, Q.C.:
 3 Q. It's 124, it is 124 is 2006, thank you.
 4 THE COMMISSIONER:
 5 Q. Thank you, Mr. Pritchard.
 6 COFFEY, Q.C.:
 7 Q. When the cabinet ministers were here, we were
 8 all very conversant with the number. I'm
 9 sorry, this should be 125, I apologize, is the
 10 2006 ones. It's page 42, Commissioner. Mr.
 11 Tilley, this is--I'm not saying this is the
 12 sheet, but is an ER/PR case analysis briefing
 13 note for the Department of Health and
 14 Community Services, November 23rd, 2006, it's
 15 on Eastern Health letterhead.
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And it's got a lot of numbers.
 20 MR. TILLEY:
 21 A. Yes, and that's what I remember, there was a
 22 document, it could have been this one or
 23 something very similar to it. My
 24 recollection, I don't have a lot of the
 25 details, I do remember there being a

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1 discussion with regards to information
 2 available about the deceased.
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. TILLEY:
 6 A. I'm not sure if that's in this one or not.
 7 Yes, okay. And that ended up in quite an
 8 extensive conversation. I think that in part
 9 a misunderstanding, but in part a bit of
 10 frustration. The government representatives,
 11 I can't recall exactly who, had felt that more
 12 information should be provided with regards to
 13 those patients who had this test performed,
 14 but were now deceased, that more information
 15 should be made available. And Dr. Laing in
 16 particular, but I can't remember if it might
 17 have been anyone else, I think spoke to the
 18 issue of the challenges with getting that and
 19 that got into a large discussion about the
 20 extent to which or did they have an
 21 appreciation for what is actually involved
 22 here in processing that information. And that
 23 had everything to do with the fact that, you
 24 know, these people were panelling this on
 25 their off hours and their focus had always

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1 been on the living. They were short staffed
 2 and, you know, got to be practical or
 3 reasonable in terms of our ability to respond
 4 to that. I do remember at the tail end of the
 5 meeting one--Dr. Howell's interpretation of
 6 it, which I admired, because he came to it in
 7 the end, he says, "here's my take on this, I
 8 got, you know, dot, dot, dot, that's what we
 9 got to do here". And I thought to myself,
 10 well I feel really good about that, he seems
 11 to be on top of this issue and I just took a
 12 degree of comfort from it. So that's the
 13 extent that I have been able to pull out of my
 14 memory banks in terms of how the meeting went.
 15 COFFEY, Q.C.:
 16 Q. Were there parts of the meeting uncomfortable,
 17 in the sense of verbal exchanges?
 18 MR. TILLEY:
 19 A. Well the issue regarding the deceased got
 20 spoken to a lot. I think Dr. Laing spoke to
 21 it and certainly believed there was an element
 22 of frustration in her reply, but I think
 23 before the meeting closed off, there was an
 24 appreciation for her position on it.
 25 COFFEY, Q.C.:

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1 Q. What was your understanding then as to what
 2 the minister's direction or advice was?
 3 MR. TILLEY:
 4 A. On the deceased?
 5 COFFEY, Q.C.:
 6 Q. On the whole--because I take it at this point
 7 the House is opened and this meeting was held
 8 why? Because the House was opened or because
 9 there was going to be a public presentation?
 10 MR. TILLEY:
 11 A. Well, I'm trying to figure that one out
 12 myself, Mr. Coffey, because normally we would
 13 go to the House if there was a pressing need
 14 to go to the House and if the House was
 15 opened, whether there was information that he
 16 need to be privy to. Clearly coinciding with
 17 that was an intention to do the technical
 18 debriefing, but I can't really say in terms of
 19 which was driving the discussion. It does
 20 seem, I can remember that was a rather late
 21 call to organize it.
 22 COFFEY, Q.C.:
 23 Q. And in terms of then having met with the
 24 Minister of Health, Tom Osborne, and his
 25 deputy and the other staff there, what was

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1 your understanding in terms of like, had you
 2 been given direction or was it simply you
 3 briefed him and went about your business?
 4 Because you made reference to Oscar Howell
 5 saying we got to do this, this, this -
 6 MR. TILLEY:
 7 A. Right. I had been in the habit when there's
 8 specific direction given to try to put
 9 something down that sort of says that. I
 10 obviously don't here, but to say that it was
 11 or was not, I'm leaning towards not, but I
 12 can't say it for sure.
 13 COFFEY, Q.C.:
 14 Q. Now there is a certain amount of information,
 15 certainly a number of numbers on Exhibit P-
 16 0125, page 42. During this meeting with the
 17 minister, do you recall whether or not the
 18 minister and their staff were advised that
 19 Eastern Health was about to have a media
 20 briefing on this issue?
 21 MR. TILLEY:
 22 A. I can't imagine that it wouldn't be talked
 23 about because as I noticed in one of the e-
 24 mails earlier from my assistant, it was
 25 referenced to an upcoming media briefing, so

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1 obviously the thinking had begun in terms of
 2 having that.
 3 COFFEY, Q.C.:
 4 Q. And with respect to this, do you recall
 5 whether or not the minister at the time or
 6 staff were told by anybody from Eastern Health
 7 at that meeting that there are some numbers we
 8 are not going to talk about publicly?
 9 MR. TILLEY:
 10 A. The only one that I recall discussing the
 11 numbers with, was the deceased. When we get
 12 to the point of a press conference, obviously
 13 you start getting your mind more around the
 14 issue. If there was ever to be, well no, the
 15 information that would be compiled for the
 16 press conference, of course, would be prepared
 17 in the first instance within Eastern Health.
 18 COFFEY, Q.C.:
 19 Q. Uh-hm.
 20 MR. TILLEY:
 21 A. And then in the second instance, would be
 22 shared with the appropriate people within the
 23 department and then onto the press themselves.
 24 COFFEY, Q.C.:
 25 Q. So, do you know if that--other than the

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1 reference to the fact that certain of the
 2 deceased's tissue samples had not been
 3 retested, that issue, do you know or was the
 4 minister or staff informed at the time that we
 5 are not going to talk about the number of
 6 change results.
 7 MR. TILLEY:
 8 A. I have certainly no recollection of that.
 9 COFFEY, Q.C.:
 10 Q. Looking at Exhibit P-0421, page 3 and a
 11 reference to false negatives, approximately
 12 five percent, November 23, '06, the meeting
 13 with the minister and his staff. What's this
 14 false negatives approximately five percent?
 15 MR. TILLEY:
 16 A. I can't say with total confidence other than
 17 the fact that it had come up from time to time
 18 that no matter how good your system is,
 19 there's always going to be an element of these
 20 problems occurring by the nature of the test.
 21 I can't explain it.
 22 COFFEY, Q.C.:
 23 Q. Okay. Now, when you met with minister on
 24 November 23, did you have any understanding
 25 about the percentage, rough percentage of

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1 conversions?
 2 MR. TILLEY:
 3 A. Well, we had the numbers there certainly. So
 4 -
 5 COFFEY, Q.C.:
 6 Q. So, if we could bring those up again please.
 7 So, you can actually just do the arithmetic,
 8 couldn't you?
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Had you done the arithmetic?
 13 MR. TILLEY:
 14 A. Had I done it at that time or had anybody else
 15 done it? I don't recall.
 16 COFFEY, Q.C.:
 17 Q. Did you have any understanding in getting
 18 toward the end of November, 2006 that the
 19 media might be asking about this when you held
 20 your -
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. - press conference.
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And in terms of that then, what happened? I
 4 would, if I could--please, if we could look at
 5 P-0421, page four. Now, these are an excerpt
 6 from your notes. You see that date there,
 7 December 4, '06?
 8 MR. TILLEY:
 9 A. Okay.
 10 COFFEY, Q.C.:
 11 Q. If you go on to the next page, it's some
 12 redacted material, but the next page is
 13 "Department of Health/Eastern, Susan and Tansy
 14 and George and John, ER/PR
 15 communication/department (minister), working
 16 relationship". Now, what was this? I take it
 17 this was a meeting that yourself and Ms.
 18 Bonnell and Tansy Mundon and John Abbott had?
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. How did this come about and what happened?
 23 MR. TILLEY:
 24 A. My recollection is that John had suggested the
 25 four of us get together. And it was more to

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1 ensure that everyone was on the same page in
 2 terms of how it dealt with issues. And as you
 3 can see there, "communications, working
 4 relationship" was a particular note. I can't
 5 say what we spoke specifically about with
 6 ER/PR.
 7 COFFEY, Q.C.:
 8 Q. This would have been a week before the actual,
 9 exactly one week before December 11.
 10 MR. TILLEY:
 11 A. Right, but I can't say what we actually talked
 12 about, unfortunately. I don't remember the
 13 meeting being particularly long, nor do I
 14 recall it being, in any way, a difficult
 15 meeting, other than, you know, just a
 16 discussion on how we should be working
 17 together.
 18 COFFEY, Q.C.:
 19 Q. How did that come up? Yourself and John
 20 Abbott have known each other a long time.
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. So, why, in the beginning of December of 2006
 25 is it necessary to have a meeting between the

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1 two of you and your two communications
 2 directors?
 3 MR. TILLEY:
 4 A. Right. Well, it was clearly not a meeting
 5 that John and I would have set up to deal with
 6 communications. We set it up at his request
 7 with the two communications leads in there.
 8 And it was specifically--not specifically--but
 9 primarily to talk about how the two
 10 communications pieces would work.
 11 COFFEY, Q.C.:
 12 Q. You told the Commissioner had there, you know,
 13 why was it necessary--to use your phrase, in
 14 terms of Ontario--why was it necessary to have
 15 a meeting?
 16 MR. TILLEY:
 17 A. Well, there was obviously some issues that
 18 John must have felt that there would be value
 19 in the communications people working closer
 20 together.
 21 THE COMMISSIONER:
 22 Q. An obvious question is, does that imply they
 23 had not been up to that point?
 24 MR. TILLEY:
 25 A. No. I think I would have seen a number of

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1 examples where documents would have been
 2 exchanged back and forth.
 3 THE COMMISSIONER:
 4 Q. Well, in that case, why would he have a
 5 meeting?
 6 MR. TILLEY:
 7 A. Right. What date was this again?
 8 COFFEY, Q.C.:
 9 Q. This is December 4, 2006.
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. I think a lot of the documentation exchange,
 14 not all of it, but a lot of it, you're going
 15 to see is after that.
 16 MR. TILLEY:
 17 A. Yeah.
 18 COFFEY, Q.C.:
 19 Q. So, that's why -
 20 MR. TILLEY:
 21 A. The documentation exchange on that particular
 22 press conference or in the long term?
 23 COFFEY, Q.C.:
 24 Q. Well, and longer term afterward.
 25 MR. TILLEY:

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1 A. I know, but I can't, in my mind, find the time
 2 it actually occurred. But we did go through a
 3 period of time where press releases that we
 4 were issuing on various issues, there was an
 5 expectation that we would run those by the
 6 department. And I remember Susan speaking to
 7 me with regards to our timelines being off as
 8 we wait for feedback from the department.
 9 That's the only thing that comes to mind when
 10 I look at this relationship issue.

11 COFFEY, Q.C.:

12 Q. So, on this point, okay, do you have any
 13 recollection of any disagreement between
 14 yourself and John Abbott involving
 15 communications issues and ER/PR? I understand
 16 we're going to have more testimony on this.

17 MR. TILLEY:

18 A. Sure. No, I don't.

19 COFFEY, Q.C.:

20 Q. Okay.

21 THE COMMISSIONER:

22 Q. Mr. Tilley, can you tell me generally, outside
 23 the context of ER/PR, whether Eastern Health
 24 or indeed the prior organization in which you
 25 were involved regularly was expected to run

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1 press releases past the Department of Health
 2 or was this something new?

3 MR. TILLEY:

4 A. It was an evolving process. Certainly in our
 5 earlier days it was done through their
 6 exclusion. And any inclusion would be more by
 7 coincidence. But clearly, as time went on,
 8 there was a greater expectation that things
 9 would be shared and advice and opportunity for
 10 advice to be given.

11 THE COMMISSIONER:

12 Q. Now, was there a communication with you that
 13 this reflected change in view from the
 14 department as to how things should be run or
 15 were you advised if the department was unhappy
 16 as to how communications was being held or
 17 being dealt with within Eastern -

18 MR. TILLEY:

19 A. No, I certainly wasn't getting an indication
 20 about the department being unhappy. More a
 21 reflection of how they expected things to be
 22 done.

23 THE COMMISSIONER:

24 Q. Okay. Does that--is communications unique in
 25 that respect?

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1 MR. TILLEY:

2 A. As opposed to other services within the
 3 organization?

4 THE COMMISSIONER:

5 Q. Yes. Did you find that this--for want of
 6 another term, I would call closer
 7 relationship, vis-a-vie, communications with
 8 the Department of Health. I understand that's
 9 what you're telling me.

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. Compare to your prior experience, you're now
 14 getting to the point where, in respect at
 15 least of communications coming out of Eastern
 16 Health, you were expected to have more contact
 17 with the department. They were expecting to
 18 see your press releases before they went out.
 19 Were they telling you why?

20 MR. TILLEY:

21 A. I can't say specifically why, but there were
 22 times that suggestions came back in terms of
 23 how things might have been phrased.
 24 Sometimes, I think the greatest frustration
 25 that I was being spoken to was the amount of

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1 time it took them to reply. So, it made us
 2 wonder what process they might be going
 3 through in their circles to assess what we had
 4 sent over. But, Madam Commissioner, back to
 5 your earlier point, was this unique to the
 6 organization? All health facilities would
 7 have had a connection with the Department of
 8 Health over the years. What I did notice
 9 though in recent years is that that
 10 relationship tended to be increasing. And
 11 comes to my mind more is consultants from the
 12 Department of Health coming in and actually
 13 meeting with our finance people and having a
 14 dialogue as to their comfort level on where
 15 our costs were, where they were changing, what
 16 we would do to get control of it? So, it
 17 seemed to be happening in a lot of places in
 18 the organization. So, contact was not
 19 restricted to a single source. So, it's not
 20 something I could readily measure.

21 THE COMMISSIONER:

22 Q. And I understood from what you had said in one
 23 of the prior days that you were also
 24 discovering that there was communication that
 25 you didn't know about at lower levels in your

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1 organization.
 2 MR. TILLEY:
 3 A. Yes. Now, later in the day, sort of, in the
 4 year, I'm sure Mr. Coffey may have it and you
 5 may, in fact, spoke to it--I did make a
 6 request to the organization -
 7 THE COMMISSIONER:
 8 Q. Yes, you did speak about that last time.
 9 MR. TILLEY:
 10 A. Okay, thank you.
 11 THE COMMISSIONER:
 12 Q. That you be copied on any communications so
 13 that you'd be aware of what went -
 14 MR. TILLEY:
 15 A. Because all of a sudden I realized that there
 16 could be information coming from any source
 17 here. And number one, I was expected to speak
 18 to it, but number two, you know, should there
 19 have been other people involved in signing off
 20 on any of those particular documents?
 21 THE COMMISSIONER:
 22 Q. Now, did you have any reason to believe that
 23 Eastern Health was treated any differently
 24 than any other of the authorities in this
 25 respect?

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1 MR. TILLEY:
 2 A. I would not expect so, but I really had no
 3 information to think otherwise.
 4 COFFEY, Q.C.:
 5 Q. Thank you, Commissioner. If we could, please,
 6 Exhibit 0418, page 3, actually page--yeah.
 7 This is an excerpt again from a notebook of
 8 yours. Let's go back a bit, if I could
 9 please. And it's a reference to John Abbott,
 10 pathology, oncology, Kara Laing.
 11 MR. TILLEY:
 12 A. This would be my telephone log.
 13 COFFEY, Q.C.:
 14 Q. Yes. And then there's John Abbott, number
 15 one, "briefing,"--is that brief?
 16 MR. TILLEY:
 17 A. Yeah, brief, briefing in ER/PR. Sorry, what
 18 date was this again?
 19 COFFEY, Q.C.:
 20 Q. Well -
 21 MR. TILLEY:
 22 A. We don't know, sorry.
 23 COFFEY, Q.C.:
 24 Q. No, no, sometimes we; sometimes we don't. You
 25 see that number one?

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1 MR. TILLEY:
 2 A. Yeah.
 3 COFFEY, Q.C.:
 4 Q. And you'll notice here, Volume 46, page 340.
 5 Now we go on to the next page of the exhibit,
 6 page three of the exhibit, which is Volume 46,
 7 page 341, number of things redacted, but we
 8 have that little--we have a number six
 9 circled, like we had the number one, and could
 10 you just read this out, please?
 11 MR. TILLEY:
 12 A. Yes. "Minister works differently than others.
 13 Must respect Minister's approach. Makes up
 14 his own mind."
 15 COFFEY, Q.C.:
 16 Q. Yes, and to help put this in some temporal
 17 context, if we go on to the next page of the
 18 exhibit, which is page--Volume 46, page 342,
 19 there is a date, November 28th '06, suggesting
 20 that what we just read there about the
 21 Minister was probably written before November
 22 28th.
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. What was this about, with reference to? This
 2 would have been Tom Osborne -
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. - if it's in 2006.
 7 MR. TILLEY:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. And you got, I think, four different
 11 questions. But below the first three bullets,
 12 the fourth bullet, which is a bit separated,
 13 says, "We hoped to wait to only disclose to
 14 those impacted." See that?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And what were you trying to convey to the
 19 audience?
 20 MR. TILLEY:
 21 A. That there were a lot of people who would have
 22 been a recipient of this particular test and
 23 its results and that our intention was to
 24 focus in on those who would have been impacted
 25 by the change as opposed to those that would

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1 not have been.
 2 COFFEY, Q.C.:
 3 Q. And what then would have happened with respect
 4 to those who were retested and had no change?
 5 MR. TILLEY:
 6 A. My presumption--I can't answer that, Mr.
 7 Coffey, now that I think about it. It would
 8 be more of a speculation than an actual piece
 9 of information.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 THE COMMISSIONER:
 13 Q. Mr. Coffey, can we explore what this witness
 14 sees as by the change?
 15 COFFEY, Q.C.:
 16 Q. Yes, in terms of that.
 17 MR. TILLEY:
 18 A. I'm sorry?
 19 THE COMMISSIONER:
 20 Q. I'm interested where you say that your
 21 intention was to focus only on those who would
 22 have been impacted by the change.
 23 MR. TILLEY:
 24 A. Right.
 25 THE COMMISSIONER:

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1 Q. And what do you mean by, "by the change"?
 2 MR. TILLEY:
 3 A. Well, any person whose results would have
 4 changed were certainly the ones that we were
 5 focused in on as opposed to those who would
 6 not have been impacted by the retest.
 7 THE COMMISSIONER:
 8 Q. Okay. But what's impacted? The point I'm
 9 getting at is that when you look at the
 10 materials that have been provided in respect
 11 of the persons who have had their retest done,
 12 they fall into not neat categories.
 13 MR. TILLEY:
 14 A. Right.
 15 THE COMMISSIONER:
 16 Q. And perhaps those who can be stated most
 17 clearly are those for whom the original test
 18 results were negative in the sense of zero and
 19 the retests were negative in the sense of
 20 zero. Everyone beyond that there are little
 21 ifs connected.
 22 MR. TILLEY:
 23 A. Right.
 24 THE COMMISSIONER:
 25 Q. So when you talk about people who had been

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1 impacted by the change, does that mean only
 2 those who had their treatment changed, for
 3 example?
 4 MR. TILLEY:
 5 A. Right. Well, the focus right from the very
 6 beginning was to make a difference for those
 7 who we actually could have a change in
 8 treatment. I don't know if we got more
 9 precise than that other than that's what we
 10 kept saying as to the reason we're doing this.
 11 COFFEY, Q.C.:
 12 Q. So the initial plan, I take it, was to tell--
 13 initial, initial plan was to have a press
 14 release and tell the public at large?
 15 MR. TILLEY:
 16 A. For what we were going to do, yes.
 17 COFFEY, Q.C.:
 18 Q. Yes. You were in the midst of doing a
 19 retesting?
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. That was the initial plan?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And then it became, and you've already
 3 elaborated upon this, wait for the retest
 4 results to come back and then we have
 5 something to tell the patients?
 6 MR. TILLEY:
 7 A. Right. That was the oncologists -
 8 COFFEY, Q.C.:
 9 Q. Oncologists.
 10 MR. TILLEY:
 11 A. - who were making us aware of that situation.
 12 COFFEY, Q.C.:
 13 Q. So what is your memory in terms of that, were
 14 the oncologists saying for the patients whose
 15 results come back, retest results come back at
 16 zero, zero, they were zero, zero to begin with
 17 and they're now zero, zero?
 18 MR. TILLEY:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. What was your understanding about the
 22 oncologists' best advice in that regard?
 23 MR. TILLEY:
 24 A. I can't recall it specifically because it was
 25 more of a technical issue that I wouldn't have

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1 been able to interpret.
 2 COFFEY, Q.C.:
 3 Q. Okay. I take it, though, if the results
 4 changed, ie, they went from zero, zero to,
 5 say, 80 and 80 -
 6 MR. TILLEY:
 7 A. Certainly if--yes.
 8 COFFEY, Q.C.:
 9 Q. Then you understood that certainly the
 10 oncologists thought that they should be told
 11 this?
 12 MR. TILLEY:
 13 A. Well, the oncologists said we want something
 14 to disclose and if, in fact, there is
 15 something there to disclose, then we will.
 16 COFFEY, Q.C.:
 17 Q. For the patients who for whatever reason were
 18 retested but were already on Tamoxifen or the
 19 equivalent, for whatever reason, they
 20 converted, the retest converted but they were
 21 already on Tamoxifen, what was your
 22 understanding in the early stages as to
 23 whether or not they were going to be told,
 24 because there'd be no treatment change?
 25 MR. TILLEY:

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1 A. No.
 2 COFFEY, Q.C.:
 3 Q. Arguably no treatment change.
 4 MR. TILLEY:
 5 A. I really don't recall.
 6 COFFEY, Q.C.:
 7 Q. Okay. Sir, with respect to--just looking at
 8 this exhibit, who prepared this slide show?
 9 MR. TILLEY:
 10 A. Well, there was a combination of input. I
 11 certainly would have obviously been a main
 12 contributor. I would have drawn upon others.
 13 Susan Bonnell was very useful in terms of
 14 getting the graphic pieces done. I'm sure I
 15 would have had some input from quality.
 16 COFFEY, Q.C.:
 17 Q. Input in the sense of they vetted it or -
 18 MR. TILLEY:
 19 A. Yeah, look and say--I was asked to do this
 20 presentation and then sought some input in
 21 terms of who would help or shape the ideas as
 22 to what we put in it.
 23 COFFEY, Q.C.:
 24 Q. The decision as to who should be the person
 25 that should disclose the fact that patients

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1 were being retested to the patients.
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Not the results but the fact that they were
 6 being retested.
 7 MR. TILLEY:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. Which occurred, I gather, in October of 2005.
 11 Whose decision was that?
 12 MR. TILLEY:
 13 A. I felt that I was a major contributor to that.
 14 There was question that was going on at the
 15 time about issuing a letter -
 16 COFFEY, Q.C.:
 17 Q. Yeah. And my second question was -
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. - the methodology.
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. Phone call or letter, but -

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1 MR. TILLEY:
 2 A. Well, let me just speak to the letter -
 3 COFFEY, Q.C.:
 4 Q. Sure.
 5 MR. TILLEY:
 6 A. - versus the other. I think I had mentioned
 7 before that in my assessment of this, I
 8 thought it was better for patients to have the
 9 benefit of talking to somebody who could at
 10 least provide some elaboration if there were
 11 questions. As to whose decision was it to
 12 notify the patients that they were going to be
 13 pretested.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. TILLEY:
 17 A. I think we looked at last week at a
 18 combination of documents, one of which we had
 19 indicated that we were going to consult Dr.
 20 Laing with regards to that. I don't have any
 21 other note which suggests there was a fine
 22 point in time that I can recall when that
 23 decision was made other than it was made and
 24 we acted upon it.
 25 COFFEY, Q.C.:

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1 Q. Now, in terms--and the method used was phone
 2 calls?
 3 MR. TILLEY:
 4 A. That's correct.
 5 COFFEY, Q.C.:
 6 Q. The choice as to what sort of individual
 7 should make the call?
 8 MR. TILLEY:
 9 A. That would be a clinical person within or
 10 coordinated by the quality initiatives
 11 department.
 12 COFFEY, Q.C.:
 13 Q. I see. And the choice not to use physicians
 14 to do that was whose?
 15 MR. TILLEY:
 16 A. I know in some cases physicians actually made
 17 the contact because they had the information.
 18 COFFEY, Q.C.:
 19 Q. I'm talking here about the retest.
 20 MR. TILLEY:
 21 A. Oh, sorry.
 22 COFFEY, Q.C.:
 23 Q. The fact of the retest.
 24 MR. TILLEY:
 25 A. I'm not sure that even entered the equation to

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1 think that we could get enough physicians who
 2 were willing to sit down and take on this very
 3 time extensive task.
 4 COFFEY, Q.C.:
 5 Q. And the choice of methodology, ie, phone call
 6 versus letter, you've told us about your own
 7 views on that.
 8 MR. TILLEY:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. We do know, based upon looking at the
 12 exhibits, that there's an e-mail that Dan
 13 Boone sent one day saying "Don't send a
 14 letter" and he says why, okay. The next day
 15 you send an e-mail yourself to all of the
 16 trustees saying "We are beginning today to
 17 contact the patients by phone."
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. Were you at the time you made the decision to
 22 use the phone to contact the patients, were
 23 you aware of Mr. Boone's views arguing against
 24 a letter, were you aware of them?
 25 MR. TILLEY:

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1 A. There was a letter around that time, you say?
 2 COFFEY, Q.C.:
 3 Q. No, it's an e-mail from him -
 4 MR. TILLEY:
 5 A. No, the e-mail that I'm thinking of is the one
 6 that referenced the views of HIROC, but that
 7 was much earlier in the game.
 8 COFFEY, Q.C.:
 9 Q. That was much earlier, it's July 10th, yeah.
 10 MR. TILLEY:
 11 A. I can't recall specifically if I was aware of
 12 it. I guess the minutes -
 13 THE COMMISSIONER:
 14 Q. (Inaudible - microphone not on) Mr. Coffey?
 15 COFFEY, Q.C.:
 16 Q. Yes, I can, and I'll do that right away.
 17 THE COMMISSIONER:
 18 Q. Or e-mail, I guess it is.
 19 COFFEY, Q.C.:
 20 Q. It's Exhibit P-0092, it's October 19th, 2005.
 21 And this is the one that you see down below
 22 here, Mr. Boone has sent it to Heather Predham
 23 and she redistributed it the next day,
 24 next morning to Ms. Pilgrim, Dr. Williams and
 25 Susan Bonnell. And then if we could look at

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1 Exhibit P-0093, please? Approximately 25
 2 hours later you are e-mailing the board
 3 members. The last paragraph in this you'll
 4 note "As well, today we will start calling all
 5 patients who are being retested to advise them
 6 of when their results can be expected." You
 7 see that?
 8 MR. TILLEY:
 9 A. No. You say the last paragraph?
 10 COFFEY, Q.C.:
 11 Q. The last paragraph. It's right here. "As
 12 well," the second -
 13 MR. TILLEY:
 14 A. Okay, I got you now. "As well".
 15 COFFEY, Q.C.:
 16 Q. "As well".
 17 MR. TILLEY:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. So that's at 9:30, approximately, on the 20th
 21 of October. And if we could go back to P-
 22 0092?
 23 MR. TILLEY:
 24 A. And that was the day before?
 25 COFFEY, Q.C.:

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1 Q. Well, the distribution to Patricia Pilgrim,
 2 Dr. Williams and Susan Bonnell occurred at
 3 8:30, approximately, the morning before,
 4 "Here's Dan's view on the feedback." And when
 5 you look at Dan's view, we've looked at this
 6 before, this is his view on the ill
 7 advisability from his perspective of a letter.
 8 So I'm just asking you, at the time the
 9 decision was made to use the phone as opposed
 10 to a letter were you aware of Mr. Boone's--
 11 whether you saw the e-mail or not, were you
 12 made aware of Mr. Boone's position?
 13 MR. TILLEY:
 14 A. I can't say that I was. I'm just looking at
 15 the letter and there's a reference there
 16 that's--I'm just trying to get my head around.
 17 "There's a possibility that we could be sued
 18 in a class action by those people who receive
 19 this proposed correspondence whose test
 20 results do not change."
 21 COFFEY, Q.C.:
 22 Q. Isn't that the sort of thing that would be
 23 brought to a CEO's attention?
 24 MR. TILLEY:
 25 A. Well, I guess we've ignored it because by

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1 contacting everybody we've, in fact, done the
 2 same thing, that's what I'm thinking about.
 3 COFFEY, Q.C.:
 4 Q. Did you ignore it, know of it and ignore it,
 5 know of it and accept half of it, don't use
 6 the letter, but contact the patients anyway -
 7 MR. TILLEY:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. - or did you know of it at all? And that's, I
 11 guess, that's really what I'm -
 12 MR. TILLEY:
 13 A. And that's, I can't sort of say that I was
 14 aware of this or not at that point in time.
 15 COFFEY, Q.C.:
 16 Q. Now with respect to--sorry. Look again at
 17 0396, please? If we could look, please, at
 18 page 7? Here you've said, the second--
 19 "Getting the message across." And you said,
 20 "Compensation." What does compensation have
 21 to do with this?
 22 MR. TILLEY:
 23 A. It certainly doesn't fit in with the other
 24 points and I can't, I can't speak to it. By
 25 this time I know the Labrador reference had

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1 been made in 2005.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. It could be through that connection that it
 6 was referenced.
 7 COFFEY, Q.C.:
 8 Q. In the sense that -
 9 MR. TILLEY:
 10 A. The method -
 11 COFFEY, Q.C.:
 12 Q. - the disclosure methodology could involve
 13 exposing you to having to pay compensation?
 14 MR. TILLEY:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Is that the -
 18 MR. TILLEY:
 19 A. That's the only thing that occurs to me at the
 20 moment.
 21 COFFEY, Q.C.:
 22 Q. If we could go on then to--then there are a
 23 series of slides here and, you know, again, I
 24 don't know if there's any significance or not,
 25 to the shapes of the signs. I don't want to

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1 read too much into it.
 2 MR. TILLEY:
 3 A. I don't think so.
 4 COFFEY, Q.C.:
 5 Q. Otherwise I'm not going to--just because they
 6 are different, at least certain of them are.
 7 You have patients and their families and then
 8 physicians and staff and the different types
 9 of physicians. Now in terms of disclosure
 10 physicians and staff, fee for service
 11 physicians, surgeons, oncologists,
 12 pathologists who I take it are salaried and
 13 laboratory staff. Mr. Tilley, in November, by
 14 November of '06 certainly the idea of, you
 15 know, addressing the issue of communicating
 16 with your staff about what had happened was
 17 front and centre, at least you're about to
 18 hold these seminars, as it were.
 19 MR. TILLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. Okay. Decisions about how much staff should
 23 or shouldn't know or be told, who made those
 24 decisions, at what level in your organization?
 25 MR. TILLEY:

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1 A. Well, it was certainly not an area that I was
 2 involved in. In terms of my direction it
 3 would have been to the extent that these
 4 reports and the recommendations had to be
 5 followed up on them. So beyond that, how that
 6 was delivered would have been more within the
 7 leadership team of the lab.
 8 COFFEY, Q.C.:
 9 Q. And there's a reference to "Other hospitals
 10 labs outside the province, what -
 11 MR. TILLEY:
 12 A. I think my intent there was in talking about
 13 how complicated this was, was the multiple
 14 stakeholders that were connecting with this
 15 issue, so it just wasn't one particular
 16 patient and one particular staff or one
 17 particular hospital.
 18 COFFEY, Q.C.:
 19 Q. And in terms then of, as you've indicated, at
 20 times you spoke to a couple of CEOs and maybe
 21 a lab director or two about this?
 22 MR. TILLEY:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. Over time. Outside the province, that is. In

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1 terms of other hospitals and labs inside the
 2 province, who was responsible for dealing with
 3 them?
 4 MR. TILLEY:
 5 A. Would have been the pathology--sorry, the
 6 chief, clinical chief of the laboratory, they
 7 would link up with them. And of course, we
 8 did arrange some briefing sessions for the
 9 CEOs and the vice-presidents of medical
 10 services.
 11 COFFEY, Q.C.:
 12 Q. Provincial government?
 13 MR. TILLEY:
 14 A. Well -
 15 COFFEY, Q.C.:
 16 Q. The next -
 17 MR. TILLEY:
 18 A. Yes. Obviously you know the extent that they
 19 were there and were very interested in how
 20 this was unfolding.
 21 COFFEY, Q.C.:
 22 Q. And in terms of control, or ultimate control
 23 of the process, from your perspective, was it-
 24 did it rest on your shoulders or Mr.
 25 Abbott's?

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1 MR. TILLEY:
 2 A. Well, I think it rests -
 3 COFFEY, Q.C.:
 4 Q. As a civil servant, I mean, both of you in one
 5 sense are civil servants.
 6 MR. TILLEY:
 7 A. No, no. I guess in terms of control I felt it
 8 rested on my shoulders. I certainly was
 9 sharing and would have been open to any advice
 10 that would be forthcoming.
 11 COFFEY, Q.C.:
 12 Q. Do you have any recollection in this whole
 13 process of Mr. Abbott giving you advice that
 14 you chose to reject?
 15 MR. TILLEY:
 16 A. Not having or not being able to see items two
 17 to five
 18 COFFEY, Q.C.:
 19 Q. Well, we could arrange to do that
 20 MR. TILLEY:
 21 A. Yes, I know.
 22 COFFEY, Q.C.:
 23 Q. If Mr. Simmons wants to.
 24 MR. TILLEY:
 25 A. So there must have been other issues talked

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1 about than just this.
 2 COFFEY, Q.C.:
 3 Q. Yes, oh yeah.
 4 MR. TILLEY:
 5 A. The way I interpret that was just mere fact
 6 that we had just been through Minister
 7 Ottenheimer and Minister Ottenheimer was
 8 certainly very hands on in this issue, and I
 9 was just getting the message that the Minister
 10 worked differently than his predecessor, and
 11 if he had a particular thing that he wanted
 12 done, if it was a change for the department,
 13 then you know, they were certainly going to be
 14 making every effort to accommodate him.
 15 COFFEY, Q.C.:
 16 Q. This message you were getting, I take it, was
 17 from Mr. Abbott?
 18 MR. TILLEY:
 19 A. That's correct.
 20 COFFEY, Q.C.:
 21 Q. And when you say "must respect Minister's
 22 approach. Makes his own mind," I take it
 23 this wasn't your conclusion. This was
 24 something you were being told. You were just
 25 making -

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1 MR. TILLEY:
 2 A. That's correct, yes.
 3 COFFEY, Q.C.:
 4 Q. Okay. This is Mr. Abbott's observations and
 5 to you?
 6 MR. TILLEY:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. What did you understand from the "makes up his
 10 own mind" comment?
 11 MR. TILLEY:
 12 A. There's nothing that comes to my mind,
 13 unfortunately, that I could give any detail as
 14 to what the intent was.
 15 COFFEY, Q.C.:
 16 Q. Suggesting perhaps that others in his position
 17 don't make up their own mind, they accept what
 18 they're told. Is that--was that a possible -
 19 MR. TILLEY:
 20 A. I really couldn't say.
 21 COFFEY, Q.C.:
 22 Q. If we could, please, page five of this
 23 exhibit. Thank you, Registrar. This is again
 24 telephone logs, I gather, from--this is John
 25 Abbott. It's referenced November 30th '06.

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1 ER/PR, and what's this?
 2 MR. TILLEY:
 3 A. That looks like "Tara responds" but I'm
 4 thinking it might be Tansy. That's the only
 5 thing that I can equate it to. And the
 6 reference "deceased" and "messages" and then
 7 underneath that, it says "Susan, heads up,
 8 Minister's style (political style)" and then I
 9 have an arrow shooting down towards "budget"
 10 and from the budget, there's sort of two sub
 11 ones which says "political." I've looked at
 12 that one a thousand times. The only thing I
 13 can come up with is "hook" and then "plans"
 14 and that looks like "lined" but it may not be
 15 that.
 16 COFFEY, Q.C.:
 17 Q. Now what would this--Tara is written there.
 18 It's probably Tansy, as you indicated, and
 19 bearing in mind this is, I gather, John Abbott
 20 calling you. The reference on November 30th
 21 then to the deceased and messages, what's this
 22 about?
 23 MR. TILLEY:
 24 A. My assumption is that it would refer to the
 25 discussion that was held on the 23rd about the

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1 deceased.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. And what could be said about those people who
 6 are--who have family members that are in that
 7 category.
 8 COFFEY, Q.C.:
 9 Q. So why was John Abbott contacting you on the
 10 30th about this?
 11 MR. TILLEY:
 12 A. I have no trigger as to why that might be or
 13 why that might be so.
 14 COFFEY, Q.C.:
 15 Q. To say, there's an arrow--does it suggest,
 16 arguably, John Abbott's--the message you're
 17 being asked to convey to Susan, heads up?
 18 MR. TILLEY:
 19 A. Yes, that's a reasonable interpretation.
 20 COFFEY, Q.C.:
 21 Q. And so that suggests that at the end of
 22 November, the deputy minister is asking you,
 23 as CEO, to give your director of
 24 communications a heads up about the minister's
 25 style?

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1 MR. TILLEY:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. That's--do you recall what in particular it
 5 was about the minister's style that you were
 6 supposed to bring to Susan's attention?
 7 MR. TILLEY:
 8 A. Not a clue, sir.
 9 COFFEY, Q.C.:
 10 Q. Now this is all under the context, until we
 11 get down to the word "budget" with its own
 12 arrow, is all under the heading, arrow ER/PR.
 13 MR. TILLEY:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. Tara or Tansy responds, then to Susan. So what
 17 did this--do you recall, is that helpful, in
 18 terms of your memory of what message you were
 19 supposed to convey to Susan about ER/PR?
 20 MR. TILLEY:
 21 A. I don't recall anything from that note which
 22 says that there's any ER/PR other than--for
 23 Susan, other than just to talk about the
 24 minister's particular style. For some reason
 25 or another--this again is the end of November?

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1 COFFEY, Q.C.:

2 Q. It's November 30th.

3 MR. TILLEY:

4 A. So we're getting into budget processes or in

5 the middle of budget processes at that time,

6 and I'm wondering if that political hook would

7 be, you know, if there's anything in the

8 budget process that might be particularly of

9 interest for the minister to be supporting.

10 COFFEY, Q.C.:

11 Q. And this does--the heading here, sir, is ER/PR

12 and a week before you had met with the

13 minister about ER/PR and your organization is

14 about to do a press conference.

15 MR. TILLEY:

16 A. Right. The only issue is that you see the

17 arrow pointing to the ER/PR, there's another

18 arrow pointing to budget.

19 COFFEY, Q.C.:

20 Q. Yes.

21 MR. TILLEY:

22 A. Not to say that I'm perfect at it, but usually

23 that, for me, means, you know, we've switched

24 on to another topic.

25 COFFEY, Q.C.:

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1 Q. Okay, and in terms of though the "heads up,

2 Susan," wouldn't it be unusual for the deputy

3 minister to call the CEO of an organization

4 like Eastern Health and to give some kind of a

5 message about, you know, ER/PR, talk to your

6 director of communications, give her a heads

7 up? Wouldn't that be unusual, first of all?

8 MR. TILLEY:

9 A. Yes, and I guess it's possible that I've

10 misstated it here, but that's the way it

11 reads.

12 COFFEY, Q.C.:

13 Q. Was there--do you recall, at this point in

14 time, and in fact all the way through the

15 December 11th briefing, was John Abbott or

16 Moira Hennessey or Tansy Mundon ever told, to

17 your knowledge, that Eastern Health was not

18 going to release certain information to the

19 public?

20 MR. TILLEY:

21 A. I can't recall any discussion of that nature.

22 COFFEY, Q.C.:

23 Q. There is--if we could, please, Exhibit P-0421,

24 page seven? Again, this is--some of this is

25 redacted, but again, this is from Volume 53,

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1 page 306. The date is December 6th '06, and

2 we go on to the next page. This full page is

3 redacted, with the exception of the date.

4 This is Volume 53, page 307. It's page eight

5 of the exhibit, Commissioner, Exhibit 0421,

6 and there's--we pick up a numbering system.

7 You see this, Mr. Tilley?

8 MR. TILLEY:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. 14, 15, and so on, and get down to number 19,

12 there's a name, Oscar, and above that, there's

13 a name Pat Pilgrim and then the name here is -

14 MR. TILLEY:

15 A. Louise.

16 COFFEY, Q.C.:

17 Q. Louise, that would be Louise Jones, I take it?

18 MR. TILLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. And then Oscar, I take it these are the people

22 who are speaking to certain points?

23 MR. TILLEY:

24 A. Yes, and my guess would be these are--this

25 would have been occurring during an executive

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1 meeting.

2 COFFEY, Q.C.:

3 Q. Yes.

4 MR. TILLEY:

5 A. So doing a round the table -

6 COFFEY, Q.C.:

7 Q. Items on an agenda, as it were.

8 MR. TILLEY:

9 A. Yeah.

10 COFFEY, Q.C.:

11 Q. Possibly. And it says Oscar, number 19. Is

12 that oncology?

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Could you just read out what's there then,

17 below the oncology?

18 MR. TILLEY:

19 A. Below oncology, "ER/PR technical review,

20 Monday. Media, Dan Boone reluctant." But

21 then a reference to "public trust." Then

22 under that, talks about "med oncologists,

23 resignation of Siddiqui, Laing and Ganguly.

24 Kara okay. Others job description to define.

25 Gyne oncologists, three times. Two M,"

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1 perhaps. "ML," which is possibly maternity
 2 leave. "Question on call fee."
 3 COFFEY, Q.C.:
 4 Q. Yes, and then it goes on with some other
 5 material. So with respect to ER/PR, technical
 6 review would be Monday. I take it that's
 7 probably that technical media briefing that
 8 ended up being held?
 9 MR. TILLEY:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. Bear in mind that this is a page before, dated
 13 December 6th.
 14 MR. TILLEY:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. What were you given to understand at the time
 18 about "media. Dan Boone reluctant." What was
 19 he reluctant about?
 20 MR. TILLEY:
 21 A. Well, I seem to remember conversations that
 22 were being repeated to me about you can't
 23 dissect this issue one piece at a time in the
 24 media. There was a lot of discussion amongst
 25 the executive team that really said that

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1 there's a bigger issue here that's going to
 2 cause us to be responding to. I'm not sure if
 3 I'm confusing this meeting with a subsequent
 4 e-mail, but there was a reference to what is
 5 an error and the fact as you can't make an
 6 assumption that because a change has occurred,
 7 it's an error. So that's my general
 8 recollection around it.
 9 COFFEY, Q.C.:
 10 Q. So do you recall what Mr. Boone was said to be
 11 reluctant about?
 12 MR. TILLEY:
 13 A. Well, as I go back to -
 14 COFFEY, Q.C.:
 15 Q. And to go back to, you know, the follow up
 16 question will be, and why would it matter?
 17 MR. TILLEY:
 18 A. Well, right from the very beginning, of
 19 course, the recommendation is that we should
 20 be talking to those for which there's actually
 21 been a change, and that we shouldn't be going
 22 out and making a open public statement. I
 23 think that goes back to early 2005.
 24 COFFEY, Q.C.:
 25 Q. That was the initial view was tell those

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1 who've had a change?
 2 MR. TILLEY:
 3 A. Right.
 4 COFFEY, Q.C.:
 5 Q. And those who haven't had a change, they
 6 wouldn't be told. The initial assumption was
 7 perhaps even they wouldn't be told.
 8 MR. TILLEY:
 9 A. The initial assumption is that we were going
 10 to issue a release to the public.
 11 COFFEY, Q.C.:
 12 Q. Sure.
 13 MR. TILLEY:
 14 A. So that's what he was, I think, speaking to.
 15 COFFEY, Q.C.:
 16 Q. And then he--and so you'd understand, big
 17 public announcement and he intervened and said
 18 what, in '05?
 19 MR. TILLEY:
 20 A. I'm just trying to--there was an e-mail that
 21 Heather Predham, I believe, had written and
 22 basically it was saying it's not that they're
 23 against disclosure. It's more it should be
 24 with the people who are actually impacted
 25 here.

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1 COFFEY, Q.C.:
 2 Q. So actual impact in this context meant what?
 3 MR. TILLEY:
 4 A. Well, whose results would have changed.
 5 COFFEY, Q.C.:
 6 Q. Would change.
 7 MR. TILLEY:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. Suggesting that those whose results hadn't
 11 changed, at least the initial thought would be
 12 they wouldn't be told?
 13 MR. TILLEY:
 14 A. That's quite possible.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 MR. SIMMONS:
 18 Q. Excuse me, Commissioner. If we're talking
 19 about that e-mail, it may be important to make
 20 sure that there's an understanding of exactly
 21 what it says. I mean, it was referred to
 22 earlier before. I'm not sure that this
 23 exchange right now actually reflects
 24 accurately the content of that e-mail, which I
 25 think is the one back from July -

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1 THE COMMISSIONER:
 2 Q. I thought we had moved on from the e-mail to
 3 what was the earlier plan.
 4 COFFEY, Q.C.:
 5 Q. Yes. I'm very conversant with what the e-mail
 6 says versus what the witness has told me, and
 7 -
 8 MR. SIMMONS:
 9 Q. But I'm not sure that -
 10 THE COMMISSIONER:
 11 Q. Okay, but I--wait now.
 12 MR. SIMMONS:
 13 Q. - this conversation reflects that. So if
 14 we're talking about -
 15 THE COMMISSIONER:
 16 Q. Yes, except that I thought the witness -
 17 MR. SIMMONS:
 18 Q. - Heather Predham -
 19 THE COMMISSIONER:
 20 Q. - was describing, and you can correct me if
 21 I'm wrong, Mr. Tilley, but I thought that at
 22 this time, you were describing--you had said
 23 you were unsure whether you were harkening
 24 back to Ms. Predham's e-mail or not and then
 25 you and Mr. Coffey got on what I thought was

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1 going to be a continuum of initially we were
 2 looking at it this way, and.
 3 MR. TILLEY:
 4 A. Yes.
 5 THE COMMISSIONER:
 6 Q. Now was I wrong? Did I -
 7 MR. TILLEY:
 8 A. I guess I was trying to deal with Mr. Boone's
 9 reluctance
 10 THE COMMISSIONER:
 11 Q. Okay.
 12 MR. TILLEY:
 13 A. And that reluctance had sort of started -
 14 THE COMMISSIONER:
 15 Q. Earlier.
 16 MR. TILLEY:
 17 A. - much earlier.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 COFFEY, Q.C.:
 21 Q. Perhaps you could just elaborate on that, your
 22 memory of it, in terms of how--what it was and
 23 how it evolved, if it evolved?
 24 THE COMMISSIONER:
 25 Q. We will go back to your--we will give the

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1 witness an opportunity to look at the
 2 document, be assured, Mr. Simmons, but I
 3 didn't think he was referring to the document
 4 when he was answering the question.
 5 MR. SIMMONS:
 6 Q. I think there was actually two different e-
 7 mails at two different points in time and I
 8 think the reference to the July e-mail was the
 9 one where it might be useful to look at the
 10 document, July '05.
 11 THE COMMISSIONER:
 12 Q. All right. I'll make sure the witness gets a
 13 look at both of the e-mails.
 14 COFFEY, Q.C.:
 15 Q. Go ahead.
 16 THE COMMISSIONER:
 17 Q. But for the moment, the witness is giving us
 18 his recollection of the progress of events.
 19 MR. TILLEY:
 20 A. Yes.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 MR. TILLEY:
 24 A. And -
 25 THE COMMISSIONER:

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1 Q. As best you can without the aid of it and then
 2 we'll go to the e-mails and have a look at
 3 those.
 4 MR. TILLEY:
 5 A. Sorry, Commissioner, but my brain cells are
 6 really -
 7 THE COMMISSIONER:
 8 Q. It's almost lunch time.
 9 COFFEY, Q.C.:
 10 Q. Yes, it is, actually. Actually, what I'm
 11 going to suggest is this, if we could, because
 12 it is actually one minute beyond lunch time,
 13 or the usual break, if we could break and we
 14 can come back and when Mr. Tilley is a bit
 15 fresher after lunch, we can just take this up
 16 and go on.
 17 THE COMMISSIONER:
 18 Q. All right.
 19 COFFEY, Q.C.:
 20 Q. I would suggest that.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 COFFEY, Q.C.:
 24 Q. Thank you.
 25 THE COMMISSIONER:

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1 Q. All right, 2:05.
 2 (LUNCH BREAK)
 3 THE COMMISSIONER:
 4 Q. Please be seated. Mr. Coffey.
 5 COFFEY, Q.C.:
 6 Q. Thank you, Commissioner. Mr. Tilley, just
 7 before the lunch break, I had asked you about
 8 your memory of how the input from Mr. Boone or
 9 HIROC's lawyers occurred in the context of
 10 this matter.
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And evolved as time went on, your memory of
 15 this. Could you just tell us please?
 16 MR. TILLEY:
 17 A. Right. Well, during the lunch break, I sort
 18 of had Mr. Simmons dig out the memo for me and
 19 reminded myself that that in fact memo that I
 20 was referring to was referencing HIROC rather
 21 than Dan Simms.
 22 MR. SIMMONS:
 23 Q. Boone.
 24 MR. TILLEY:
 25 A. Who did I say? Boone, sorry. Too many Dans.

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1 MR. SIMMONS:
 2 Q. (Inaudible).
 3 MR. TILLEY:
 4 A. So he wasn't there. There were meetings that
 5 Mr. Simms--sorry, Mr. Boone had been in, but I
 6 don't recall him speaking to any of this
 7 issue. The other issue that I mentioned was
 8 in regards to the forthcoming technical
 9 debriefing, and I know, while I didn't speak
 10 to him at that time either, that he was in
 11 fact copied on the presentation that was being
 12 used.
 13 COFFEY, Q.C.:
 14 Q. So what was your--as a CEO of Eastern Health,
 15 what was your understanding of what input, if
 16 any, Mr. Boone had in this matter from
 17 beginning to end? And again, I don't--the
 18 Commission doesn't want to hear, you know, the
 19 actual legal advice, in terms of defence of -
 20 MR. TILLEY:
 21 A. Right.
 22 COFFEY, Q.C.:
 23 Q. - you know, the class action or anything.
 24 MR. TILLEY:
 25 A. The way I would coin it is that Mr. Boone was

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1 a reputable lawyer who was, from time to time,
 2 sharing an opinion, but not one that we felt
 3 obligated to accept. But one that we were
 4 certainly not going to discourage his presence
 5 because of that.
 6 COFFEY, Q.C.:
 7 Q. And who was arranging to have him present at
 8 various points in time?
 9 MR. TILLEY:
 10 A. The contact, as I understand it, would have
 11 been through the quality initiatives and in
 12 particular the risk manager.
 13 COFFEY, Q.C.:
 14 Q. That should be Heather Predham?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Well, and again, this may or may not assist
 19 you. If we could bring up, please, Exhibit P-
 20 0396? Look at page 11, please, of the
 21 exhibit. If you look at this first--first in
 22 the sense of on this page in the exhibit. You
 23 posited a question, "how do we disclose?"
 24 MR. TILLEY:
 25 A. Nothing comes to mind, no.

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1 COFFEY, Q.C.:
 2 Q. Okay. There's a triangle here on this one,
 3 "Liability Insurer"?
 4 MR. TILLEY:
 5 A. Uh-hm. That would have been HIROC.
 6 COFFEY, Q.C.:
 7 Q. And what -
 8 MR. TILLEY:
 9 A. Well other than they are a stakeholder
 10 throughout the whole process and we would,
 11 obviously they have a responsibility in this
 12 process if in fact that was proven to be
 13 appropriate.
 14 COFFEY, Q.C.:
 15 Q. And "Legal Team".
 16 MR. TILLEY:
 17 A. Well you don't go through something like this
 18 without having someone advise you in that way,
 19 so yet again, another group that were part of
 20 the puzzle.
 21 THE COMMISSIONER:
 22 Q. Once again, I'm not interested in any legal
 23 advice you may have received, but when you're
 24 saying "legal team" is that over--is that
 25 separate from your insurer?

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1 MR. TILLEY:
 2 A. No, no, Commissioner, that was the one that I
 3 would have been referring to -
 4 COFFEY, Q.C.:
 5 Q. HIROC's lawyer.
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Or lawyers.
 10 THE COMMISSIONER:
 11 Q. While we're on the subject of theses, can I
 12 just get one point straight?
 13 COFFEY, Q.C.:
 14 Q. Sure.
 15 THE COMMISSIONER:
 16 Q. Mr. Tilley, all of these little signs, as I
 17 understand it, relate to parties to whom
 18 certain information had to be conveyed?
 19 MR. TILLEY:
 20 A. Yes, or they connected with the issue at some
 21 point in time.
 22 THE COMMISSIONER:
 23 Q. All right. In the process of conveying
 24 information to others, for example, other labs
 25 throughout the province, was there a script

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1 for telling labs about this, as opposed to a
 2 script for telling CEOs about this, as opposed
 3 to a script for telling your insurer about
 4 this or was everybody conveyed essentially the
 5 same information?
 6 MR. TILLEY:
 7 A. The latter primarily. There were a couple of
 8 stakeholders, like the directors of the other
 9 labs that actually got letters.
 10 THE COMMISSIONER:
 11 Q. Uh-hm.
 12 MR. TILLEY:
 13 A. The connections with the CEOs of the other
 14 health authorities, they were poled as a group
 15 and were updated by conference calls.
 16 Government, of course, would have been through
 17 the regular meetings and briefing notes. So
 18 it would be multiple individuals involved.
 19 THE COMMISSIONER:
 20 Q. With multiple different versions, presumably.
 21 I mean, in the sense of one might anticipate
 22 that the interest of lab directors would be
 23 somewhat different than perhaps the interest
 24 of CEOs, in that lab directors at least would
 25 probably want more detail than a CEO would

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1 want.
 2 MR. TILLEY:
 3 A. Sure.
 4 THE COMMISSIONER:
 5 Q. But I suppose what I'm asking is whether or
 6 not in this process your organization said,
 7 okay, this is the information we have to send
 8 to this group, we'll move that to their side;
 9 this is the information we should give to this
 10 group, or was it kind of on an ad hoc basis?
 11 MR. TILLEY:
 12 A. What I found, Commissioner, that there's a lot
 13 of repeat of information because even in my
 14 own notes I'm finding that I was documenting
 15 things several times, so there seemed to be a
 16 fairly consistent message being delivered to
 17 groups, regardless of their standing.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 COFFEY, Q.C.:
 21 Q. Commissioner, if we could, the interest
 22 groups, which I take it would be, for example,
 23 the Canadian Cancer Society.
 24 MR. TILLEY:
 25 A. Yes, I would put them there.

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1 COFFEY, Q.C.:
 2 Q. As an example. Media, local provincial and
 3 national.
 4 MR. TILLEY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Now this is November of '06, probably, that
 8 you're speaking -
 9 MR. TILLEY:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. - in Halifax. Other than the initial two or
 13 three weeks after the news first broke in
 14 October of '05, it's now a year later.
 15 MR. TILLEY:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. And other than giving a one-page summary to
 19 "The Current", do you know if there had been
 20 any further dealings with the media?
 21 MR. TILLEY:
 22 A. No, other than to say that there was obviously
 23 interest on the part of the media in the
 24 issue.
 25 COFFEY, Q.C.:

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1 Q. And in the intervening--well in the passage of
 2 that year, between say November of '05 until
 3 November of '06, was there a consistent policy
 4 within Eastern Health to make no comment to
 5 the media?
 6 MR. TILLEY:
 7 A. I'm sorry, December?
 8 COFFEY, Q.C.:
 9 Q. November of '05 to November of '06, was there
 10 a consistent policy known within Eastern
 11 Health that you would make no comment to the
 12 media?
 13 MR. TILLEY:
 14 A. I'm not sure it was a policy, but we were into
 15 a period of time when even ourselves didn't
 16 feel comfortable that we really had a good
 17 handle on the situation. So we weren't
 18 encouraging it at all.
 19 COFFEY, Q.C.:
 20 Q. Now was it that you didn't have a good handle,
 21 is that really the--just reflect upon it, is
 22 that really the case or is it you didn't want
 23 to talk about it?
 24 MR. TILLEY:
 25 A. Well, I mean, the thing is when there were

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1 issues, we did speak, we spoke in the December
 2 conference, we did "The Current" issue when
 3 the Ejeckam letter did come, grant it's
 4 outside that timeline, it was spoken to then,
 5 you know, it was really a balance call. For
 6 me, it was still not having as good as an
 7 appreciation as I would have liked to, in
 8 terms of trying to get an explanation of this,
 9 recognizing the national contacts and all the
 10 issues that that was driving, and again, our
 11 focus in the organization was to move this
 12 thing forward and put all the recommendations
 13 that were there, that were practically to be
 14 implemented.
 15 COFFEY, Q.C.:
 16 Q. And in terms of the reasons, rightly or
 17 wrongly, identified by Dr. Banerjee and Trish
 18 Wegrynowski in the fall of '05, would that
 19 ever have become public if this process hadn't
 20 started, the Commission?
 21 MR. TILLEY:
 22 A. Well, I don't have a good answer and it's easy
 23 to look back at it now and say yes, it would
 24 have, but -
 25 COFFEY, Q.C.:

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1 Q. Could you identify when it would have or how?
 2 MR. TILLEY:
 3 A. It certainly had not been specifically
 4 addressed during the time. You had raised a
 5 question about the Canadian Patient Safety
 6 Institute and trying to learn from one
 7 another, you know, I think part of that
 8 process would have to be sharing of
 9 information. But the peer review process has
 10 that element to it of confidentiality and it
 11 is really at a bit of a dichotomy in terms of
 12 how do you disclose this, because in many
 13 ways, the whole reason that you get people to
 14 participate in the peer review process is that
 15 you give that cloak of confidentiality to it
 16 and not as much, perhaps for this particular
 17 case, but undoubtedly we would look to do more
 18 peer reviews in the future.
 19 COFFEY, Q.C.:
 20 Q. So I take it then that, you know, unless
 21 somehow it got conveyed in some, I gather,
 22 anonymous sort of fashion or edited fashion to
 23 CPSI, the nature of the problems or at least
 24 problems that Dr. Banerjee and Trish
 25 Wegrynowski purported to identify would never

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1 become known.
 2 MR. TILLEY:
 3 A. And hence the reason that we kept focussing in
 4 on the recommendations because I guess in
 5 focussing on the recommendations, you were
 6 some way acknowledging the issues that the
 7 recommendations were driving.
 8 COFFEY, Q.C.:
 9 Q. On that point, okay, who was it, if anyone,
 10 was suggesting to you that somehow the
 11 recommendations were in a different category
 12 than what I'll refer to as say findings?
 13 MR. TILLEY:
 14 A. I don't know if anybody specifically mentioned
 15 that, other than the focus was to make
 16 whatever improvement opportunities there might
 17 be.
 18 COFFEY, Q.C.:
 19 Q. But in terms of the idea that you could talk
 20 about recommendations and specific ones, do
 21 you remember who -
 22 MR. TILLEY:
 23 A. No, no specific recommendation other than a
 24 feeling that that was the right thing to do.
 25 COFFEY, Q.C.:

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1 Q. Okay. I'm sorry, just move on at the top of
 2 the next page, "How do we disclose?" and "News
 3 conference and supporting hotline", and we've
 4 seen that in, I believe, early on and the
 5 approach Eastern Health was thinking about
 6 adopting and you've explained why you were
 7 dissuaded from that.

8 MR. TILLEY:
 9 A. Uh-hm.

10 COFFEY, Q.C.:
 11 Q. "Contact all patients by registered letter."
 12 The idea of a registered letter, when did that
 13 come up?

14 MR. TILLEY:
 15 A. I'm not sure of the word "registered" twigs to
 16 me because I hadn't seen it up until that
 17 point in time. I presume we would have done
 18 it by registered letter.

19 COFFEY, Q.C.:
 20 Q. Just to be able to keep track of whether
 21 somebody got it, I presume.

22 MR. TILLEY:
 23 A. Uh-hm.

24 COFFEY, Q.C.:
 25 Q. But in terms of contacting all patients by

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1 letter, registered or otherwise, the--I take
 2 it that that came up in the summer of '05 with
 3 the minister. You've talked about that.

4 MR. TILLEY:
 5 A. Yes.

6 COFFEY, Q.C.:
 7 Q. And you've told us about October of '05, your
 8 own views and we seen Mr. Boone's e-mail.
 9 Ultimately the decision not to use a letter,
 10 who bears responsibility for the decision not
 11 to send letters?

12 MR. TILLEY:
 13 A. Well, I can't remember a moment in time, but I
 14 do know that I was a very strong supporter of
 15 personal contact.

16 COFFEY, Q.C.:
 17 Q. So are you saying that if somebody has to wear
 18 it, as it were, in assume responsibility, it
 19 would be yourself?

20 MR. TILLEY:
 21 A. Yes, then I'll have to accept that.

22 COFFEY, Q.C.:
 23 Q. Okay. And as you say, you've put your own
 24 views forward strongly and you're the CEO -

25 MR. TILLEY:

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1 A. Uh-hm.

2 COFFEY, Q.C.:
 3 Q. Ergo unless you change your mind, that's going
 4 to be it, that would be the -

5 MR. TILLEY:
 6 A. I don't recall any major disagreement to that
 7 effect.

8 COFFEY, Q.C.:
 9 Q. And then it says, "A disclosure to only those
 10 affected, panel results and make
 11 recommendations to treating physician." And
 12 the Commissioner was asking about this sort of
 13 thing earlier, "disclosure to only those
 14 affected" and then you go on to say, "we hope
 15 to wait on--to only disclose to those
 16 impacted" and you've explained what you
 17 thought what you meant by impacted, but
 18 disclosure to only those affected, what was it
 19 you intended to convey to the audience?

20 MR. TILLEY:
 21 A. Looking back, I would have to say that it was
 22 anybody who would have experienced a change,
 23 as opposed to anybody who had not experienced
 24 a change.

25 COFFEY, Q.C.:

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1 Q. And ultimately that expanded to anybody who
 2 was retested?

3 MR. TILLEY:
 4 A. Yes.

5 COFFEY, Q.C.:
 6 Q. Okay, whether they had a change or not,
 7 ultimately I gather people were -

8 MR. TILLEY:
 9 A. Yes, because I think by this time obviously we
 10 would have just created a question mark for
 11 anybody who has had that test, and rather than
 12 have everybody call the organization to find
 13 out if they've been retested or not, then if
 14 the results had come back no change, that
 15 would have been appropriate to advise them of
 16 that.

17 COFFEY, Q.C.:
 18 Q. Sir, and you point out the best laid plans,
 19 we've heard about that, "since that time, we
 20 have retested almost 1000 patients", you've
 21 got on this slide. "Every patient was
 22 contacted by telephone", now this would have
 23 been November probably of '06. Who had given
 24 you that understanding?

25 MR. TILLEY:

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1 A. Well that would have been the office that had
 2 co-ordinated the phoning and that would have
 3 been Quality Initiatives.
 4 COFFEY, Q.C.:
 5 Q. And who is that?
 6 MR. TILLEY:
 7 A. Well it could have come from multiple sources,
 8 I would expect certainly it would have come
 9 from the risk manager, Heather Predham,
 10 possibly from the director, which would have
 11 been Pamela Elliott.
 12 COFFEY, Q.C.:
 13 Q. Now under "Results" it says "Panel all
 14 patients and write physicians." What was your
 15 understanding about how or who or what type of
 16 patients this panel actually examined?
 17 MR. TILLEY:
 18 A. My understanding was for patients who had
 19 converted from negative to positive.
 20 COFFEY, Q.C.:
 21 Q. And what was your understanding with respect
 22 to patients who had not converted who were
 23 confirmed negative, confirmed 00?
 24 MR. TILLEY:
 25 A. This is in 2006?

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1 COFFEY, Q.C.:
 2 Q. Yes, this is November of '06.
 3 MR. TILLEY:
 4 A. That they would be contacted to indicate that
 5 there was no change.
 6 COFFEY, Q.C.:
 7 Q. And that contact would be carried out by?
 8 MR. TILLEY:
 9 A. By the Quality Initiative staff.
 10 COFFEY, Q.C.:
 11 Q. Now the last bullet here says "Patients with
 12 no change have been contacted by letter." Now
 13 is that correct?
 14 MR. TILLEY:
 15 A. No, it's not.
 16 COFFEY, Q.C.:
 17 Q. Were you under that impression at the time you
 18 gave this?
 19 MR. TILLEY:
 20 A. No, no I was not, it was clearly by that time
 21 we had indicated that people with no change
 22 would be advised of that.
 23 COFFEY, Q.C.:
 24 Q. And by phone, I take it?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Why then was that here, do you know?
 4 MR. TILLEY:
 5 A. No, I don't know, no.
 6 COFFEY, Q.C.:
 7 Q. The third bullet in that particular screen or
 8 slide says "Slides sent to Mount Sinai for
 9 independent retesting." Now, were you under
 10 the impression that slides were actually being
 11 sent to Mount Sinai?
 12 MR. TILLEY:
 13 A. No, it was the blocks. I think when we talked
 14 back in December I had indicated that it was
 15 the blocks that had gone, yes.
 16 COFFEY, Q.C.:
 17 Q. Now the next page, there is a reference to the
 18 Baker Norton Adverse Events Study, I take it
 19 that is, that's is, it's well known within the
 20 health executive community of acute care
 21 hospitals?
 22 MR. TILLEY:
 23 A. I wouldn't put it only in the executive
 24 community and it really was that study that
 25 resulted in the creation of the Canadian

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1 Patient Safety Institute.
 2 COFFEY, Q.C.:
 3 Q. Yes, you've referred to that earlier. Here
 4 you've said, "Today, disclosures continue.
 5 Analysis has not yet been complete.
 6 Litigation, media scrutiny, national advocacy,
 7 over one year later the issue is still
 8 ongoing." Now at that point in time, were the
 9 disclosures to the patients still continuing
 10 or did you understand that they were
 11 concluded? Or did you know?
 12 MR. TILLEY:
 13 A. I can't say with confidence. I think that my
 14 recollection was that there were a number of
 15 people that were going through the panel,
 16 there were some that had been incorrectly
 17 diagnosed that was separate from the ER/PR
 18 issue, so I think my understanding was that
 19 everybody had been contacted, whether everyone
 20 had been followed up, was still, I guess, the
 21 question in my mind.
 22 COFFEY, Q.C.:
 23 Q. Now before I get to the, in the rearview
 24 mirror, which I take it is from your
 25 perspective, your observations as to

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1 potentially lessons learned or at least, you
 2 know, otherwise things done right. When did
 3 you get the understanding, first come to the
 4 understanding that everyone had been contacted
 5 about the retests results?
 6 MR. TILLEY:
 7 A. Well, there was a lot of briefing notes that
 8 had been going back and forth to suggest that
 9 the, all of the patients had been contacted.
 10 COFFEY, Q.C.:
 11 Q. Briefing notes from whom to whom?
 12 MR. TILLEY:
 13 A. Well, occurring between Eastern Health and
 14 government and between me and individuals
 15 within the organization. There were
 16 individuals that would come up in the
 17 community from time to time indicating that
 18 they hadn't been contacted and I recall making
 19 some telephone calls within the organization
 20 and looking for a better elaboration or just
 21 trying to address the question as to whether
 22 people had in fact been contacted. And I
 23 remember talking to the director, Mrs. Elliott
 24 in particular on one occasion and said that
 25 there were people who had called in and

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1 indicated they weren't called, but either had
 2 misinterpreted the original call or had been
 3 called by a physician and weren't seen to be
 4 somebody from Eastern Health. So, it gave
 5 them or they gave me the assurance that, look,
 6 everybody's been contacted here. That
 7 subsequently didn't prove to be the case and I
 8 don't think anybody deliberately withheld
 9 information from me, but I think they had a
 10 sincere belief that they had everybody. Now,
 11 I know in the early stages, they were doing a
 12 number of things to try to eliminate the
 13 potential that somebody had fallen between the
 14 cracks, with a newspaper ad, with letters to
 15 the physicians. But for whatever reason, it
 16 turned out that in a meeting that I held with
 17 Minister Wiseman, Acting Deputy Minister
 18 Thompson and possibly, the board chair, that
 19 became--and that's some time in May of '07--
 20 that became the topic of the conversation.
 21 COFFEY, Q.C.:
 22 Q. Okay. And I'll be getting to that, but what
 23 I'm trying to ascertain for the Commissioner
 24 is, is do you recall when it was or can you
 25 point us to something in writing as to the

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1 date on which, now, as CEO, I sat at my desk
 2 and I was satisfied that every patient now
 3 knows the retest results.
 4 MR. TILLEY:
 5 A. Uh-hm, I can't point you to something
 6 specifically, no.
 7 COFFEY, Q.C.:
 8 Q. You referred to briefing notes, like, internal
 9 ones. What type of document are you referring
 10 to?
 11 MR. TILLEY:
 12 A. Well, the briefing notes that would have been
 13 prepared for government.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. TILLEY:
 17 A. You know, where patients would have been
 18 contacted.
 19 THE COMMISSIONER:
 20 Q. (Inaudible - microphone not on).
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 MR. TILLEY:
 24 A. That would have been through the Quality
 25 Initiatives Department.

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1 COFFEY, Q.C.:
 2 Q. If you could bring up, please, Exhibit P-0126,
 3 I think it is. No, I apologize, it should be
 4 0125. We looked at this earlier, this is P-
 5 0125, page 42, this was the briefing for the
 6 Department of Health and Community Services,
 7 November 23, 2006. And can you point to
 8 anywhere on that that it actually says that
 9 everybody has been contacted? Take your time.
 10 MR. TILLEY:
 11 A. Sorry. I don't see it on this page.
 12 COFFEY, Q.C.:
 13 Q. By the time you met with Tom Osborne and the
 14 Department of Health staff at the House of
 15 Assembly premises on November 23, what was he
 16 told about whether everybody had been
 17 contacted?
 18 MR. TILLEY:
 19 A. I'm thinking by that time we were working on
 20 the understanding that the patients had been
 21 contacted either on the first contact or in
 22 terms of follow-up.
 23 THE COMMISSIONER:
 24 Q. You mean all patients, do you?
 25 MR. TILLEY:

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1 A. Yes, one either because their tests had been
 2 sent out or the tests had been back.
 3 COFFEY, Q.C.:
 4 Q. I'm thinking about somewhat more of the point,
 5 tests are back and being told about the
 6 results.
 7 MR. TILLEY:
 8 A. Okay, uh-hm.
 9 COFFEY, Q.C.:
 10 Q. What was your understanding about that at this
 11 point in time? This is the end of November of
 12 '06.
 13 MR. TILLEY:
 14 A. My assumption had been that we had the tests
 15 back and had followed up on them.
 16 COFFEY, Q.C.:
 17 Q. I mean, this is--and this particular page,
 18 Commissioner, is to help Mr. Tilley--it's P-
 19 0125, page 43, it's a question and answer
 20 briefing note, Department of Health and
 21 Community Services and Mr. Tilley--this was
 22 one November 27, '06.
 23 MR. TILLEY:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. If you note that there, it's drafted by
 2 Beverley Griffiths approved by Moira
 3 Hennessey. And the anticipated question,
 4 second bullet, "have all affected been
 5 notified of their test results"? And the key
 6 message is, the second one says, "more than
 7 900 test samples were sent to Mt. Sinai
 8 Laboratory and all the test results are back.
 9 Eastern Health has made every effort to
 10 contact the patients or families involved.
 11 This review is in the final stages and should
 12 be concluded in the near future. Eastern will
 13 provide a briefing to the public within a week
 14 or two". And it says, "has made every effort
 15 to contact the patients or families involved".
 16 And if you just go down then to the final one
 17 for that year. This is page 46, Commissioner,
 18 P-0125. This is a briefing note of December
 19 12, 2006 which is the day after Eastern Health
 20 held the media technical briefing. And can
 21 you see, just looking through that--I stand to
 22 be corrected, but I'll just bring you up to
 23 the top of this, right there, can you point
 24 the Commissioner anywhere in that where
 25 there's an assertion that everybody's been

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1 contacted? You can scroll down through -
 2 MR. TILLEY:
 3 A. Thank you. Just seen here, "all retesting has
 4 been completed and then Eastern Health did
 5 initially advise patients of the retesting and
 6 many learned of it from the media before they
 7 were contacted.
 8 COFFEY, Q.C.:
 9 Q. Sure.
 10 MR. TILLEY:
 11 A. "Eastern intended to wait for the results
 12 before disclosing actual information to the
 13 patients instead of having them, that they may
 14 or may not be impacted by the review. And
 15 that's why Eastern didn't know what this would
 16 mean for them. Eastern also did not want to
 17 unnecessarily raise alarm".
 18 Other than that, I don't see those
 19 references, Mr. Coffey.
 20 COFFEY, Q.C.:
 21 Q. Okay. In fact, as of the December 12, '06 in
 22 the internal Department of Health briefing
 23 note, we looked at the one before November 27,
 24 now the December 12 one, it's not actually an
 25 assertion there that everybody's been

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1 contacted.
 2 MR. TILLEY:
 3 A. No, no, and in fairness, I do recall
 4 discussions about having difficulty reaching
 5 people, either because their addresses had
 6 changed or something, but you know, for the
 7 most part, I think we were working on the
 8 assumption that the bulk of the patients had
 9 been followed up on.
 10 COFFEY, Q.C.:
 11 Q. Just in terms of that then, I appreciate
 12 there's a lot of written material that exists,
 13 and in your preparation to come and testify
 14 here, I take it, you have not been, as of yet
 15 anyway, in a position to say, look, you know,
 16 Madam Commissioner, this is--the director of
 17 risk management wrote me on such and such a
 18 date to say, they're all done; they're all
 19 contacted. There hasn't been any such document
 20 that you can think of anyway or be able to
 21 identify?
 22 MR. TILLEY:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. And in terms of a note, like you have--you

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1 know, even if they didn't write it out, they
 2 told you and you wrote it down -
 3 MR. TILLEY:
 4 A. You have all of my notes.
 5 COFFEY, Q.C.:
 6 Q. Okay, and I appreciate that. If we could,
 7 please, a look at Exhibit P-0183. And this is
 8 an e-mail, December 7, '06, 8:45 a.m. from
 9 Susan Bonnell to a number of people, senior
 10 people in your organization and some not so
 11 senior perhaps; Oscar Howell, Nash Denic, Kara
 12 Laing, Heather Predham and Leona Barrington.
 13 The subject is error rate and attachments are
 14 technical briefing agenda, key messages, a
 15 draft press release and a technical briefing.
 16 And says, "attached to this e-mail you'll see
 17 Heather's explanation of our error rate. This
 18 is not to be shared with the media, but I
 19 thought you would like to see it for your own
 20 understanding". And she goes on to talk about
 21 whose working on various things and will
 22 handle certain things. Toward the bottom of
 23 the page, there's a reference to this e-mail.
 24 It says, "we'll begin the briefing session
 25 with an explanation that this is an

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1 unprecedented event because of the"--I
 2 presume--"last"--some kind of action.
 3 MR. BROWNE:
 4 Q. Class action.
 5 COFFEY, Q.C.:
 6 Q. Class, sorry, thank you very much, Mr. Browne--
 7 "class action that we"--that's how far it is
 8 from my mind actually--"because of the class,
 9 but we believe have an obligation to inform
 10 the general public about our outcomes and to
 11 provide the reporters with an opportunity to
 12 fully understand the test procedure and our
 13 actions since May 2005, so that they can
 14 report effectively on the issue. However,
 15 because of a lawsuit, we are limited on what
 16 we can talk about in terms of causative
 17 factors. This will be dealt with by the
 18 courts. Secondly, we will not be talking
 19 about any individual cases. This information
 20 is protected and can only be disclosed between
 21 the patient and care provider". And she ask
 22 that people review the attached and she's open
 23 to any advice and concerns, suggestions. She
 24 says, "following our meeting with Dan I think
 25 I have a sense of how far we can go, but

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1 Heather will be sharing all of this as well as
 2 a Q. and A. with him and I hope to get his
 3 feedback as well".
 4 Now, Mr. Tilley, this is about four days
 5 before the media technical briefing. How much
 6 in the loop were you kept as to what was going
 7 to happen at the media technical briefing?
 8 MR. TILLEY:
 9 A. My recollection on getting involved here was
 10 actually a little bit later. Because I
 11 remember replying to an e-mail with a slide
 12 deck some time over a weekend, but in terms of
 13 this, I don't recall any involvement in that
 14 part of the discussion.
 15 COFFEY, Q.C.:
 16 Q. So then, and this is a Thursday, so the
 17 intervening weekend would be the slide deck.
 18 MR. TILLEY:
 19 A. It looks to be.
 20 COFFEY, Q.C.:
 21 Q. Okay, yes, and the idea that Mr. Boone, who
 22 presumably is the Dan here, in the last
 23 paragraph, so was providing advice as to how
 24 far we can go, which is what Ms. Bonnell
 25 refers to. Were you aware that that was going

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1 on? That that sort of advice was being given?
 2 MR. TILLEY:
 3 A. I wasn't specifically aware, though it doesn't
 4 surprise me.
 5 COFFEY, Q.C.:
 6 Q. Oh no, I'm not suggesting it would. I just--
 7 okay, but you--in terms of--I'm trying to get
 8 some sense of how much kind of, as I said,
 9 that you were in the loop, as it were.
 10 MR. TILLEY:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. If we could just turn the page--I'm sorry, I
 14 apologize. Can't turn the page.
 15 Metaphorically, turn the page, page two of P-
 16 0183, and this is an e-mail from Heather
 17 Predham, December 7th, 2006, 8:14 a.m., to
 18 Susan Bonnell. The subject is error rate, and
 19 she says "Hi, Susan. Sorry about not getting
 20 this to you yesterday, but I needed some quiet
 21 and a cup of tea to get it clear in my head.
 22 Here's my explanation" and there is an
 23 explanation that has a lot of numbers and
 24 percentages, and a certain rationale, text
 25 rationale. Were you ever made aware of this,

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1 the explanation of error rate?
 2 MR. TILLEY:
 3 A. Well -
 4 COFFEY, Q.C.:
 5 Q. At least according to Heather Predham.
 6 MR. TILLEY:
 7 A. - I did see this e-mail through Mr. Simmons in
 8 the past couple of weeks.
 9 COFFEY, Q.C.:
 10 Q. Okay. Well, no, and I appreciate -
 11 MR. TILLEY:
 12 A. Okay, so you don't mind that?
 13 COFFEY, Q.C.:
 14 Q. Not so much that, no.
 15 MR. TILLEY:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. I'm not -
 19 MR. TILLEY:
 20 A. In terms of the calculation, I'm not sure if
 21 this is the same thing, but I remember very
 22 early in this process, Dr. Williams talking
 23 about positivity rates and the expected
 24 increase in the positivity rates post testing.
 25 I'm not sure, unless I took some time to try

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1 to figure this out, if this is the reverse way
 2 of dealing with that.
 3 COFFEY, Q.C.:
 4 Q. Having the end numbers and working your way -
 5 MR. TILLEY:
 6 A. Right, having the negativity rate versus the
 7 positivity rate.
 8 COFFEY, Q.C.:
 9 Q. But in terms of, you know, Heather's
 10 rationale, whatever it might be, do you ever
 11 remember, as a CEO, being exposed to it in
 12 December or late November, early December of
 13 '06?
 14 MR. TILLEY:
 15 A. No, I don't recall that.
 16 COFFEY, Q.C.:
 17 Q. Okay. Now in terms of yourself, if we could
 18 go, please, to Exhibit P-0184, and again, in
 19 terms of her rationale, if you were never
 20 exposed to it, I'm not going to ask you, you
 21 know, looking back now years, several years
 22 later as to whether you agree or disagree.
 23 This is an e-mail from Susan Bonnell,
 24 Saturday, December 9th, 2006, 6:21 p.m. It's
 25 to many of the same individuals as the e-mail

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1 we just looked at, but added here are J.
 2 Bussey, that would be Jane Bussey, I presume,
 3 and D.Boone.
 4 MR. TILLEY:
 5 A. I'm sorry, Jane Bussey would be who?
 6 COFFEY, Q.C.:
 7 Q. Okay, I have you at a disadvantage. She works
 8 with the same law firm as Mr. Boone.
 9 MR. TILLEY:
 10 A. Okay, thank you.
 11 COFFEY, Q.C.:
 12 Q. And George Tilley.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Yourself here. Subject is materials for
 17 tomorrow and attachments, technical briefing
 18 agenda and so on are listed there. She says
 19 "hello again, everyone. Following
 20 conversations with Nash, Heather, Dan and
 21 Oscar, I have revised the original drafts in
 22 anticipation of our meeting at one p.m.
 23 tomorrow. We can make further revisions at
 24 that point. I will bring copies with me.
 25 Please note that I have added speaking points

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1 to the slides, especially for Oscar, less so
 2 for Kara and Nash. I guess the most
 3 significant change you will note from the
 4 original material is the lack of reference to
 5 a rate of error. We can anticipate that this
 6 will be a major pressing point with the media,
 7 but the approach we will be taking here is
 8 that A. we can indicate that an error has
 9 actually occurred and B. the whole process
 10 wasn't about identifying a rate of error
 11 anyways. It was about identifying patients
 12 whose treatment would change as a result of
 13 the review and the panelling. Hence, the
 14 number of patients impacted has changed from
 15 104 to 117, taking into account the 13
 16 individuals who had no change in their
 17 results, but because of the new definition of
 18 positivity should have been offered Tamoxifen.
 19 We won't be spelling that out like that
 20 though. Re: the dead, we must also be
 21 prepared. Our statement would need to be that
 22 in this almost ten-year period individuals
 23 have died either as a result of their breast
 24 cancer or for any one of numerous reasons. We
 25 did not retest these patient individuals

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1 because the purpose of the test was to provide
 2 opportunities for individuals who could
 3 potentially benefit from a retest. However,
 4 if families would like to have their
 5 relatives' samples retested, we can arrange
 6 that for them. We have no way of predicting
 7 how many, if any, of these individuals would
 8 not have died had they not been--had they been
 9 offered Tamoxifen after their initial
 10 treatment for cancer. Hope all this helps.
 11 See you tomorrow."
 12 I take it then, if we look through this,
 13 there is then attached to this--well, I gather
 14 is the attachments to that e-mail.
 15 MR. TILLEY:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. You would have received this e-mail presumably
 19 on Saturday. Do you recall, is this the e-
 20 mail you're talking about, the one on the
 21 weekend?
 22 MR. TILLEY:
 23 A. Yes, and I think I replied to it the following
 24 day.
 25 COFFEY, Q.C.:

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1 Q. Do you recall what your reply was?
 2 MR. TILLEY:
 3 A. It wasn't extensive. I think I made some
 4 reference to appreciate everybody's work here.
 5 I seem to recall saying that, you know, we
 6 need to go ahead and do this, despite how the
 7 media might choose to present it, and that in
 8 the end something about, you know, we've
 9 always done this with the best interest of the
 10 patient in mind, and that's my recollection of
 11 it.
 12 COFFEY, Q.C.:
 13 Q. And in terms of the second point, we're going
 14 to go ahead and do this despite how the media
 15 might portray it, I take it you anticipated
 16 what?
 17 MR. TILLEY:
 18 A. Well, I guess our record, as an organization,
 19 in terms of dealing with the media, is that we
 20 would often have difficulty in getting the
 21 messages, all of the messages out. Certain
 22 messages would be selected and then folded
 23 into other things. So just the fact that that
 24 was a reality of the environment in which we
 25 dealt with.

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1 COFFEY, Q.C.:
 2 Q. Now I take it that the plan was not to have
 3 you participate?
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Why is that?
 8 MR. TILLEY:
 9 A. Well, I've always felt that this was a
 10 clinical issue and could best be spoken to by
 11 the people who understood it best. The vice-
 12 president in charge of the physician group and
 13 in charge of the lab would be present, and
 14 that was sort of the thinking from the very
 15 beginning.
 16 COFFEY, Q.C.:
 17 Q. Sir, in terms of Ms. Bonnell's e-mail, now Ms.
 18 Bonnell had been at the briefing with Tom
 19 Osborne, hasn't she?
 20 MR. TILLEY:
 21 A. She had.
 22 COFFEY, Q.C.:
 23 Q. As had Oscar Howell?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And I think some others there. Was the--in
 3 this last paragraph in this e-mail of December
 4 9th, she refers to "re: the dead, we must also
 5 be prepared." She talks about what our
 6 statement will need to be. Now Eastern Health
 7 actually had the results of 101 -
 8 MR. TILLEY:
 9 A. That's correct.
 10 COFFEY, Q.C.:
 11 Q. -tests from the deceased. What was planned to
 12 be said about the deceased, period? You
 13 weren't going to say that you had retested
 14 some? I mean, you'd been in telling the
 15 minister two weeks before.
 16 MR. TILLEY:
 17 A. Right, that we already had. My initial
 18 comment was going to be I thought we had
 19 mentioned that at some point in time, that we
 20 had actually had some of the deceased, but
 21 maybe it's information and dates folding into
 22 one another. The issue of the deceased
 23 patients was certainly the major topic of
 24 conversation with the minister. I think the
 25 perspective put by--put forward by Dr. Laing

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1 suggested that it was not something that was
 2 going to be able to be completed to the point
 3 of being able to discuss in the press
 4 conference, but I'm assuming this is an
 5 attempt to deal with it in light of that
 6 restriction.
 7 THE COMMISSIONER:
 8 Q. I'm sorry, I didn't think I followed that.
 9 Could you say that again?
 10 MR. TILLEY:
 11 A. The issue of the deceased was a topic of
 12 conversation -
 13 THE COMMISSIONER:
 14 Q. In that meeting with the minister.
 15 MR. TILLEY:
 16 A. - meeting with the minister, and the eventual
 17 resolution that I recall is that there was no
 18 way that we could really bring that issue to
 19 completion to be able to speak to it. So my
 20 assumption is, is that that was recognizing
 21 that that issue would come up, then that's
 22 what they could with it in the meantime.
 23 COFFEY, Q.C.:
 24 Q. - i.e. effectively say nothing about it?
 25 MR. TILLEY:

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1 A. Well -
 2 COFFEY, Q.C.:
 3 Q. Is that -
 4 MR. TILLEY:
 5 A. Nothing, not to say it's nothing, but
 6 obviously it would be to speak to it to the
 7 extent that they felt comfortable.
 8 THE COMMISSIONER:
 9 Q. So, wait now. I understood from the
 10 conversation this morning that there was the
 11 meeting with the minister and generally how
 12 that ran. You're confirming that it was a
 13 major part of the topic of the meeting with
 14 the minister?
 15 MR. TILLEY:
 16 A. It was.
 17 THE COMMISSIONER:
 18 Q. When you came out of that meeting, were you of
 19 a clear understanding if you were going to
 20 have to have all of the deceased retested?
 21 MR. TILLEY:
 22 A. No.
 23 THE COMMISSIONER:
 24 Q. No?
 25 MR. TILLEY:

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1 A. That was sort of--the bulk of them were
 2 retested. There were others that weren't
 3 retested.
 4 THE COMMISSIONER:
 5 Q. By then, we knew there were 101 retested
 6 already.
 7 MR. TILLEY:
 8 A. Right, but actually getting them panelled to
 9 the point of being able to assess whether in
 10 fact their treatment might have been
 11 different.
 12 THE COMMISSIONER:
 13 Q. Okay, you physically couldn't do that in the
 14 period of time?
 15 MR. TILLEY:
 16 A. No.
 17 THE COMMISSIONER:
 18 Q. But when you came out of the meeting, did--
 19 were you either instructed by the minister or
 20 did the minister make the kind of suggestion
 21 that CEOs don't ignore, to the effect that
 22 retest the rest of the deceased, get them
 23 panelled, get it done? Or did he have any
 24 other kind of message or no message at all?
 25 MR. TILLEY:

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1 A. Well, I suspect my interpretation would be
 2 somewhere in the middle.
 3 THE COMMISSIONER:
 4 Q. Okay.
 5 MR. TILLEY:
 6 A. He certainly recognized or expressed an
 7 interest in following that information
 8 through, but also recognized it's not
 9 something that we were going to be able to
 10 have completed prior to this event happening.
 11 THE COMMISSIONER:
 12 Q. Okay, and when you came out of that meeting,
 13 had you and the minister or you, with the
 14 minister's officials, or anybody else to your
 15 knowledge with the minister addressed the
 16 issue of what, if anything, would be said
 17 about the deceased patients at the conference?
 18 MR. TILLEY:
 19 A. Not specifically, no.
 20 THE COMMISSIONER:
 21 Q. Had anybody said well, we can't say anything
 22 about them or we can't do anything about them
 23 or we'll tell it as it is, or -
 24 MR. TILLEY:
 25 A. To the extent that I shared with you the

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1 discussion about our limits, in terms of being
 2 able to know the details, I can't recall any
 3 other comments that might have been mentioned.
 4 COFFEY, Q.C.:
 5 Q. Now Mr. Tilley, you know, when you got this e-
 6 mail on December 9th and, as you said, you
 7 replied, was it your understanding that
 8 Eastern Health, on December 11th, was not
 9 going to tell the media the number of changed
 10 results or conversions?
 11 MR. TILLEY:
 12 A. There was this reference here to an error
 13 rate.
 14 COFFEY, Q.C.:
 15 Q. Yes. No, I'm not -
 16 MR. TILLEY:
 17 A. And I fully agree that we were not in a
 18 position to identify whether an error
 19 occurred, and you know, in terms of the actual
 20 number of people that were changed, I recall
 21 reference here to this--here it is. It was all
 22 about identifying patients whose treatment
 23 would change as a result of the review and the
 24 panelling. When I subsequently met with the
 25 oncologists, there was a discussion about the

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1 fact that you needed to take these results and
 2 put them, first of all in the clinical
 3 context, and secondly, that I needed to
 4 understand about the probabilistic nature of
 5 it. So to that end, the feeling was to focus
 6 in on those where it actually made a
 7 difference.
 8 Now as you know, several months later, I
 9 came out, on behalf of the organization, and
 10 spoke to that. That information was factual
 11 information. It would have been information
 12 that was going to be shared as a part of the
 13 Court process, and while it was everyone's
 14 belief that the most important piece of
 15 information was the one that was shared, that
 16 I had indicated that, no, in fact that's
 17 something that should have in fact been
 18 shared.
 19 THE COMMISSIONER:
 20 Q. Mr. Coffey, at a convenient place.
 21 COFFEY, Q.C.:
 22 Q. Sure. Thank you, Commissioner. You've just
 23 made reference to at a meeting with
 24 oncologists. When was that?
 25 MR. TILLEY:

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1 A. Well, I can't say exactly when, but it seems
 2 to me to be around the time that I was
 3 speaking to this issue, later in May.
 4 COFFEY, Q.C.:
 5 Q. Oh, May '07, okay.
 6 MR. TILLEY:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. I'm thinking about just before December 11th.
 10 MR. TILLEY:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. On or before December 11th.
 14 MR. TILLEY:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. It has been posited to you on the evening of
 18 December 9th that this will--we anticipate the
 19 error, rate of error, anticipate this will be
 20 a major pressing point with the media, the
 21 approach, it's spelled out there, and there's
 22 a--when one reads through this, there's a
 23 conclusion and the actual reasoning is spelled
 24 out there, the number of individuals impacted
 25 has changed from 104 to 117, etcetera. "We

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1 won't be spelling that out like that though."
 2 What did that--what did you understand that
 3 referred to? "We won't be spelling that out
 4 like that though."
 5 MR. TILLEY:
 6 A. Well, I understood that the 13 patients who
 7 were impacted because there was a change in
 8 the criteria for the administration of
 9 Tamoxifen.
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. TILLEY:
 13 A. So I think it needed more elaboration than
 14 just that in order to be truly understood.
 15 COFFEY, Q.C.:
 16 Q. When you read this, what did you understand
 17 would not be spelled out like that though?
 18 MR. TILLEY:
 19 A. The issue with regards to the new definition
 20 of positivity.
 21 COFFEY, Q.C.:
 22 Q. That was your understanding, was it?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. Thinking back now.
 4 COFFEY, Q.C.:
 5 Q. Oh yes, and from that perspective, why?
 6 Wasn't that going to be talked about?
 7 MR. TILLEY:
 8 A. It was, yeah.
 9 COFFEY, Q.C.:
 10 Q. So I'm just -
 11 MR. TILLEY:
 12 A. I can't speak on behalf of the author.
 13 COFFEY, Q.C.:
 14 Q. And I understand that, and I appreciate that.
 15 I'm just asking from your perspective as a CEO
 16 reading it at the time.
 17 MR. TILLEY:
 18 A. Right, yeah.
 19 COFFEY, Q.C.:
 20 Q. When you get something where a subordinate is
 21 telling you, or telling you and a group of
 22 senior people, "we won't be spelling that out
 23 like that though." Did that ever raise any
 24 antenna on your part? I mean, because it
 25 suggested that well, you know, there's a down

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1 side to actually spelling it out in the way
 2 she just has.
 3 MR. TILLEY:
 4 A. Yeah. I mean, I just looked at it in terms of
 5 this is a short e-mail and just cryptic
 6 description of it.
 7 COFFEY, Q.C.:
 8 Q. And if I could, just before we break,
 9 Commissioner, if we could just look at P-0184,
 10 page nine, please, and towards the bottom of
 11 the page? Would you have read all the
 12 attachments? I take it you would have, would
 13 you?
 14 MR. TILLEY:
 15 A. I would like to think I would have, Mr.
 16 Coffey, yes.
 17 COFFEY, Q.C.:
 18 Q. And question nine, what is the rate of error?
 19 How many people converted? And the answer
 20 nine is there, and in fact the reference to
 21 the definition of negative having changed is
 22 spelled out there. She says, or whoever, the
 23 group here, I suppose the consensus answer was
 24 "the numbers of individual conversions are not
 25 relevant and turn the process into a numbers

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1 game." See that? And there's an assertion at
 2 the bottom, what is relevant is the number of
 3 people whose care may change as a result of
 4 the process, and that was 117.
 5 Mr. Tilley, at the time you were involved
 6 in this, December 9th, 10th, 11th, bearing in
 7 mind that you had been warned and you
 8 understood that there'd be a major pressing
 9 point with the media, in terms of the number
 10 whose results converted or changed, you had
 11 told the minister in a one-page document the
 12 number of people whose results changed on
 13 retest. There's no hedging in that document.
 14 It's all spelled out.
 15 MR. TILLEY:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. Looking back at it now, do you--you know, what
 19 are your feelings about or thoughts about
 20 whether it should have been apparent to you at
 21 the time, and the people around you? You
 22 know, really what you were inviting here?
 23 MR. TILLEY:
 24 A. Right. Well, you know, Mr. Coffey, I've
 25 thought about that issue a million times and

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1 I've had a lot of time to think about it.
 2 And, of course, during that press conference I
 3 acknowledged the fact that in retrospect that
 4 number, by not having it there, just added
 5 more complications to this issue than should
 6 have been the case. So, if I had known and
 7 had the benefit of hindsight then, there's a
 8 lot of things that one would do differently.
 9 COFFEY, Q.C.:
 10 Q. Whose idea was it to leave it out?
 11 MR. TILLEY:
 12 A. I'm not sure, other than when I got it -
 13 COFFEY, Q.C.:
 14 Q. I ask, was it your idea?
 15 MR. TILLEY:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Okay. I'm sorry, go ahead, you were going to
 19 say when you -
 20 MR. TILLEY:
 21 A. You know, again, here goes my broken record.
 22 This is on a weekend, which is a time when I
 23 spent a lot of time in the office because of
 24 things going on in that organization. There's
 25 probably another 40 or 50 issues that I'm

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1 juggling at the same time. So while I'll
 2 fully acknowledge that this was a critical
 3 issue that the organization and I were trying
 4 to deal with, I dealt with this as a part of
 5 many other things. And if one had the time to
 6 sit down and ponder and then sit on it, sleep
 7 on, go back and challenge yourself, then it
 8 might be a different outcome. But I have no
 9 way, life has no way of putting us back to
 10 make those reassessments.

11 COFFEY, Q.C.:

12 Q. If I could, Commissioner, just one--if I could
 13 just look at P-0183, please? Page 2. Yeah,
 14 that's it right there. This is what's
 15 described as Heather Predham's explanation of
 16 the error rate, of our error rate. And on
 17 that one page, sir, can you anywhere see 117
 18 or 113?

19 MR. TILLEY:

20 A. I can't see it on my eyeball here, no.

21 COFFEY, Q.C.:

22 Q. Can't, I appreciate, okay. Thank you,
 23 Commissioner.

24 THE COMMISSIONER:

25 Q. We'll take that 15 minute break. But, Mr.

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1 Coffey, were you supposed to enter a couple of
 2 exhibits?

3 COFFEY, Q.C.:

4 Q. I'll do that right after.

5 THE COMMISSIONER:

6 Q. I am supposed to advise, I've been instructed
 7 by our administrator and I always follow Ms.
 8 Connors' instructions, to advise those of you
 9 who do not have your computers with you that
 10 there will be paper copies for you at the
 11 break. Thank you. We'll take 15.

12 (RECESS)

13 THE COMMISSIONER:

14 Q. Thank you, please be seated. Mr. Coffey?

15 COFFEY, Q.C.:

16 Q. Thank you, Commissioner. Exhibit P-0183
 17 again.

18 THE COMMISSIONER:

19 Q. P-0183.

20 COFFEY, Q.C.:

21 Q. Page, I spoke to page 1. Here. Now, Mr.
 22 Tilley, and I try and get your understanding
 23 as the CEO of Eastern Health now circa
 24 December, 2006. In the second-last paragraph
 25 of what Ms. Bonnell wrote, I appreciate this

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1 did not come to you, but there's something
 2 here I want to ask you about your
 3 understanding as the CEO at the time. She
 4 says here, "However, because of the lawsuit we
 5 are limited in what we can talk about in terms
 6 of causative factors. This will have to be
 7 dealt with by the courts." See that?

8 MR. TILLEY:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. Now, what was your understanding at the time
 12 as to whether or not you could talk about
 13 causative factors?

14 MR. TILLEY:

15 A. Well -

16 COFFEY, Q.C.:

17 Q. And, you know, what if any relationship that
 18 bore to whether there was a lawsuit going on?

19 MR. TILLEY:

20 A. First of all, in my mind I wasn't definitively
 21 clear in terms of what the causative factors
 22 were.

23 COFFEY, Q.C.:

24 Q. Okay.

25 MR. TILLEY:

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1 A. With all that's out there, in my mind that was
 2 still outstanding. The issue with regards to
 3 the fact that we were clearly going to court
 4 on this.

5 COFFEY, Q.C.:

6 Q. Um-hm.

7 MR. TILLEY:

8 A. And it was just our general sense that we
 9 should not be openly discussing issues other
 10 than factual issues because of that.

11 COFFEY, Q.C.:

12 Q. And factual issues might be causation?

13 MR. TILLEY:

14 A. Well -

15 COFFEY, Q.C.:

16 Q. At times causation can be factual, I take it?

17 MR. TILLEY:

18 A. It could be in time, but in my mind they were
 19 not definitive.

20 COFFEY, Q.C.:

21 Q. So in terms of if a matter was before the
 22 courts, as it were, ie, we're being sued.

23 MR. TILLEY:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. The organization was being sued. Could you
 2 talk about facts?
 3 MR. TILLEY:
 4 A. Yes. Like the number of patients whose
 5 results had converted.
 6 COFFEY, Q.C.:
 7 Q. So what characteristics did something have to
 8 have that it would become non-factual such
 9 that it couldn't be talked about?
 10 MR. TILLEY:
 11 A. Well, I guess interpretative issues, you know,
 12 I guess whether something was an error or not.
 13 I didn't feel comfortable that it was clear,
 14 particularly when I was hearing things like
 15 "You're the middle of the pack." or that, you
 16 know, "There's no national standards."
 17 COFFEY, Q.C.:
 18 Q. That has to do with standard of care, doesn't
 19 it, middle of the pack would have to do with
 20 whether you meet the kind of generally
 21 accepted, you know?
 22 MR. TILLEY:
 23 A. Well, the standard of service that you have.
 24 COFFEY, Q.C.:
 25 Q. Sure.

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1 MR. TILLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And that's what comes up in lawsuits, you
 5 know, there's a racket over whether or not you
 6 meet the standard of care?
 7 MR. TILLEY:
 8 A. Oh.
 9 COFFEY, Q.C.:
 10 Q. Or minimum standard of care, that's -
 11 MR. TILLEY:
 12 A. I confess, I'm not that knowledgeable to be
 13 able to speak to it that way.
 14 COFFEY, Q.C.:
 15 Q. Okay. On this point, if there was, in your
 16 mind there was no issue involving, you know,
 17 peer review or quality assurance, in terms of
 18 those Ejeckam and Wegrynowski reports,
 19 Banerjee, I'm sorry, I apologize, Banerjee and
 20 Wegrynowski reports, could their findings or
 21 their commentary have been made public?
 22 MR. TILLEY:
 23 A. Sorry, if?
 24 COFFEY, Q.C.:
 25 Q. If there was no issue of peer review or

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1 quality assurance.
 2 MR. TILLEY:
 3 A. Well, there would be no protection for them
 4 that we had seen.
 5 COFFEY, Q.C.:
 6 Q. Yeah, okay, you say there's no protection,
 7 okay, I just wanted to -
 8 MR. TILLEY:
 9 A. Yeah. Well, you know, I am not adverse to
 10 admitting if a mistake had been made.
 11 COFFEY, Q.C.:
 12 Q. Um-hm.
 13 MR. TILLEY:
 14 A. There have been occasions in the past when
 15 adverse events have occurred that we've openly
 16 acknowledged it and moved on. For me I just
 17 didn't feel that that was what I was seeing
 18 here.
 19 COFFEY, Q.C.:
 20 Q. And so what, if anything, did the fact that
 21 there was an outstanding lawsuit have to do
 22 with the matter?
 23 MR. TILLEY:
 24 A. Well, other than we wouldn't be picking apart
 25 different pieces of this in the media. This

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1 was as complicated as an issue that I can
 2 imagine and having it dissected and spoken to,
 3 people saying the middle of the pack, well,
 4 you know, that was one person's opinion, is
 5 that true, you know, I guess all of those
 6 things would be adding to the complexity of
 7 this.
 8 COFFEY, Q.C.:
 9 Q. So I'm clear then, as of December of '06 the
 10 idea or notion that the '05 external reviews
 11 were peer review or quality assurance, from
 12 your perspective, prevented Eastern Health
 13 from talking publicly about the findings in
 14 those reports?
 15 MR. TILLEY:
 16 A. They were a component to the extent that we
 17 decided to talk about the recommendations
 18 anyway.
 19 COFFEY, Q.C.:
 20 Q. Okay. That's what I was going to go--but the
 21 findings you couldn't talk about because they
 22 were peer review or quality assurance?
 23 MR. TILLEY:
 24 A. Well -
 25 COFFEY, Q.C.:

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1 Q. Is that -
 2 MR. TILLEY:
 3 A. In our minds we didn't segregate those. I
 4 mean, we knew they were peer review, but at
 5 the same time we knew that we needed to talk
 6 about this. I'm not sure we got legal advice,
 7 I'm not aware of any legal advice which says
 8 you can talk about one component versus the
 9 other. For me our energies had to be not
 10 going back to hold somebody accountable, to--
 11 but rather to move forward and make whatever
 12 recommendations we could to bring this lab up
 13 to a level that we could all feel confident
 14 in.
 15 COFFEY, Q.C.:
 16 Q. So if I could, in terms of that, you were--had
 17 arrived at a considered decision by December
 18 of '06, you were prepared to talk publicly
 19 about what these external reviewers
 20 recommendations were?
 21 MR. TILLEY:
 22 A. Yes, we had during that technical debriefing.
 23 COFFEY, Q.C.:
 24 Q. Yes. During the media technical briefing in
 25 December 11th, '06?

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1 MR. TILLEY:
 2 A. Well, I understand that there were issues
 3 shared with measures that we were -
 4 COFFEY, Q.C.:
 5 Q. Okay. That's the one you're talking about?
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. That's what I'm getting at, okay. In terms of
 10 the then existing lawsuit, that inhibited you
 11 from talking about causation?
 12 MR. TILLEY:
 13 A. Right, and identifying error -
 14 COFFEY, Q.C.:
 15 Q. For anything about which people--error?
 16 MR. TILLEY:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. In terms of attributing error, labelling
 20 something with error?
 21 MR. TILLEY:
 22 A. Yes, that was certainly a part of it. And
 23 like most things in health care, nothing is
 24 straight lined. I was firmly working in a
 25 direction of a blameless culture and it is

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1 true that mechanism that we had the greatest
 2 potential of individuals who discover those to
 3 come forward quickly and get them potentially
 4 rectified without any harm to the patient or
 5 at least to benefit future patients.
 6 COFFEY, Q.C.:
 7 Q. In the blameless culture approach when, if
 8 ever, is there any accountability?
 9 MR. TILLEY:
 10 A. Well, if, in fact, somebody is found to be
 11 deliberately mishandling an issue, then
 12 obviously there is an intent that needs to be
 13 dealt with. I mean, there's -
 14 COFFEY, Q.C.:
 15 Q. Leaving aside, that's almost--deliberately
 16 mishandling something in this context would
 17 almost be or potentially would be a crime.
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. So, I mean, you know, let's leave aside
 22 somebody doing that.
 23 MR. TILLEY:
 24 A. No. So, you know, in terms of accountability,
 25 every one of those professionals who are

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1 involved in this process has to be made aware
 2 of the learnings associated with their
 3 particular areas. And in that end, you know,
 4 through their job descriptions, to the quality
 5 management process, to the ongoing monitoring
 6 done by their supervisors, that's where the
 7 accountability issue is dealt with.
 8 COFFEY, Q.C.:
 9 Q. But how is it dealt with? I mean, in a
 10 practical sense how is it--in this context how
 11 was anyone ever, you know, how was their
 12 accountability here, could you point us to
 13 anything?
 14 MR. TILLEY:
 15 A. Well, there's got to be a relationship between
 16 the pathologists and the chief pathologist,
 17 there's got to be a relationship between the
 18 technologists and the manager -
 19 COFFEY, Q.C.:
 20 Q. But what I'm--but here, like in terms of
 21 accountability, has there been anyone, and I
 22 use the phrase advisedly, held accountable
 23 from an administrator's perspective?
 24 MR. TILLEY:
 25 A. No, we have not gone and held--Eastern Health

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1 has not gone, to my knowledge, and held
 2 somebody accountable and said, "You are" or
 3 "You, this group, are held responsible for
 4 this particular action."
 5 COFFEY, Q.C.:
 6 Q. I come back to the point of, you know, the
 7 blameless culture approach, which you've
 8 indicated you advocate, you know, under what
 9 circumstances short of a crime, like
 10 intentional misconduct or intentionally, you
 11 know, flouting rules, you know, short of that
 12 where and when is there any accountability?
 13 MR. TILLEY:
 14 A. I mean, I guess there is always
 15 accountability.
 16 COFFEY, Q.C.:
 17 Q. Okay. Could you -
 18 MR. TILLEY:
 19 A. In terms of individuals that may have been
 20 identified to be using less than current or
 21 available protocols for this, I mean, the
 22 accountability process occurs back in the
 23 education of them to bring in new practices.
 24 But in terms of holding them at fault, that's
 25 not the focus of what a blame-free culture is

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1 trying to achieve.
 2 COFFEY, Q.C.:
 3 Q. And then in this context here can you point to
 4 any point in time while you were still CEO
 5 that accountability occurred in the educative
 6 process for the people involved in this?
 7 MR. TILLEY:
 8 A. I can't speak to it directly.
 9 COFFEY, Q.C.:
 10 Q. Have you ever been told that, in fact, that it
 11 actually occurred?
 12 MR. TILLEY:
 13 A. I can't recall.
 14 COFFEY, Q.C.:
 15 Q. Whose responsibility, from your perspective,
 16 in terms of Eastern Health, whose
 17 responsibility was it to ensure that it, in
 18 fact, did occur?
 19 MR. TILLEY:
 20 A. Well, it would be -
 21 COFFEY, Q.C.:
 22 Q. In theory it's yours as CEO, but I mean,
 23 leaving that aside, I'm talking about in
 24 practice.
 25 MR. TILLEY:

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1 A. I mean, you're right to point it out. But
 2 directly it would be the leadership team for
 3 laboratory medicine and I know that they were
 4 being monitored by the vice-president for
 5 medical services.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 THE COMMISSIONER:
 9 Q. Mr. Tilley, I just want to make sure I just, I
 10 understood the conversation that you and Mr.
 11 Coffey just had. I think I did understand
 12 that your view as CEO is consistent with the
 13 current thinking in that you were attempting
 14 to establish a blameless culture in the
 15 organization. And in answer to Mr. Coffey's
 16 question regarding accountability, I heard you
 17 to say, and perhaps, I don't think, Mr.
 18 Coffey, I heard the same answer, so that's why
 19 I'm asking the question.
 20 COFFEY, Q.C.:
 21 Q. Sure.
 22 THE COMMISSIONER:
 23 Q. I heard you to say that accountability is
 24 reflected in the fact that somebody is
 25 educated. Is that what you were trying to

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1 say?
 2 MR. TILLEY:
 3 A. That's a part of it, Commissioner.
 4 THE COMMISSIONER:
 5 Q. But shouldn't you be educating everybody
 6 anyway, so why is that accountability?
 7 MR. TILLEY:
 8 A. Well, in terms of follow-up one of the
 9 recommendations with regards to the front-line
 10 staff is furthering their education. So I'm
 11 saying there's an accountability process that
 12 both the care or the technologists or the
 13 pathologists have to accept and take on as a
 14 part of the process. But I'm also saying that
 15 in terms of the accountability process there's
 16 a relationship between the technologists and
 17 their manager, between the pathologists and
 18 the clinical chief and it's part of their
 19 quality monitoring program. Those are pieces
 20 that should be insuring that people are doing
 21 their jobs appropriately and to insure that
 22 any new developments in the field are being
 23 adapted into practice.
 24 THE COMMISSIONER:
 25 Q. But what you have described to me would seem

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1 to be the kind of thing that I would imagine
 2 somebody would say to me should happen in any
 3 well-run lab. So why would you put the
 4 accountability label on it? Because it seems
 5 to me that's what you should be doing, in any
 6 event, and whether somebody was involved in
 7 this or not should be receiving education and
 8 updates when there's new things happening.

9 MR. TILLEY:
 10 A. I don't disagree with you, Madam Commissioner.
 11 That's a part of the normal running, not only
 12 of a lab, but of any part of any organization.

13 THE COMMISSIONER:
 14 Q. Well, we would hope particularly when it has
 15 to do with medicine which seems to be
 16 advancing at rapid rates in, particularly in
 17 some branches of medicine.

18 MR. TILLEY:
 19 A. That's correct.

20 THE COMMISSIONER:
 21 Q. I don't doubt that it's difficult to keep pace
 22 with what's happening for some people.

23 MR. TILLEY:
 24 A. Um-hm.

25 THE COMMISSIONER:

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1 Q. But what you're describing on accountability
 2 side, to me, is just a good management, good
 3 professional behaviour, you're describing
 4 accountability in terms that I would say would
 5 be the kinds of things that the people who are
 6 properly professional would be doing in any
 7 even and, frankly, an organization would be
 8 providing opportunities for their professional
 9 to be engaged in.

10 MR. TILLEY:
 11 A. That's correct and what I was trying to
 12 explain in response to the question, I think
 13 and I stand to be corrected, Mr. Coffey was
 14 asking in a blameless culture where is your
 15 accountability.

16 THE COMMISSIONER:
 17 Q. Uh-hm.

18 MR. TILLEY:
 19 A. And I was referring to those issues as where I
 20 would see the process of people being held
 21 responsible and accountable for their
 22 particular role in the organization.

23 COFFEY, Q.C.:
 24 Q. Which is really nothing extra than what should
 25 have been carrying on anyway.

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1 MR. TILLEY:
 2 A. Oh no, I agree.

3 COFFEY, Q.C.:
 4 Q. Okay, that's what I had understood,
 5 Commissioner.

6 THE COMMISSIONER:
 7 Q. All right, thank you.

8 COFFEY, Q.C.:
 9 Q. And in relation to that, if the leadership
 10 team or team members' earlier activities might
 11 have involved them in the very matter in
 12 respect of which accountability, you know, was
 13 at least thought to be appropriate, okay, how
 14 does that fit into this? I mean, if they're
 15 all involved, the whole department is
 16 involved?

17 MR. TILLEY:
 18 A. In terms of whether they would not follow up
 19 on the -

20 COFFEY, Q.C.:
 21 Q. I'm not saying they wouldn't at all, I'm not
 22 suggesting, I'm just--in terms of like
 23 accountability, because you're suggesting -

24 MR. TILLEY:
 25 A. Well, I think I understand your question. In

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1 the end, the vice-president for Medical
 2 Services oversees that. As well as the
 3 Medical Advisory Committee oversees that. So
 4 there's a little bit of a check and valve
 5 there, but I also will confess or acknowledge,
 6 I'm not sure how best to frame it, I have
 7 people in that organization that I trust and I
 8 have never come across any of the individuals
 9 that we have referred to here that would do
 10 anything other than what's in the best
 11 interest of the patient.

12 COFFEY, Q.C.:
 13 Q. Uh-hm.

14 MR. TILLEY:
 15 A. And in an organization, you have to rely on
 16 that significant amount.

17 COFFEY, Q.C.:
 18 Q. And in terms of this, if the problem or root
 19 causes of the problem and I cut across a wide
 20 group of people, okay, assume for the moment
 21 that it does, within a particular part of your
 22 organization, as it then was in Eastern
 23 Health, and it involves managers, okay, how
 24 did you envisage then--what would be the
 25 appropriate way of addressing the issue?

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1 MR. TILLEY:
 2 A. Well -
 3 COFFEY, Q.C.:
 4 Q. And this is then, something could happen
 5 tomorrow or the next day.
 6 MR. TILLEY:
 7 A. Right and it's not to suggest that a manager
 8 has never been disciplined in Eastern Health
 9 or Health Care Corporation.
 10 COFFEY, Q.C.:
 11 Q. And I'm not suggesting necessary discipline at
 12 all, I'm asking about how it should be handled
 13 from your perspective in the most effective
 14 manner.
 15 MR. TILLEY:
 16 A. Between the employee, in this case a manager
 17 or clinical chief and their respective
 18 supervisor, which would be the vice-president
 19 of Medical Services and/or in the case of the
 20 clinical chief, the Medical Advisory
 21 Committee.
 22 COFFEY, Q.C.:
 23 Q. Okay, that would be the--and if I could ask
 24 you this, do you know if this whole matter of
 25 ER/PR has ever been taken up with the MAC in

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1 that kind of a context?
 2 MR. TILLEY:
 3 A. I know it's been talked about at MAC. I have
 4 not been an attender at MAC.
 5 COFFEY, Q.C.:
 6 Q. I appreciate, but in terms of were you ever
 7 advised that MAC had taken it up as a matter
 8 of something to be looked at by the MAC in
 9 that capacity.
 10 MR. TILLEY:
 11 A. My recollection is that there's been
 12 discussion at MAC on this. And if we wanted
 13 to know about that, we should talk to the VP
 14 Medical, I take it, or the head of the MAC?
 15 MR. TILLEY:
 16 A. Right.
 17 COFFEY, Q.C.:
 18 Q. And in terms of the technologists, if there's
 19 something that, you know, should have been
 20 addressed with them arising out of this and
 21 the technologists' supervisors.
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. Who would we -

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1 MR. TILLEY:
 2 A. They would come through the vice-president of
 3 Medical.
 4 COFFEY, Q.C.:
 5 Q. Which would be, depending upon the timeframe,
 6 Dr. Williams or Dr. Howell?
 7 MR. TILLEY:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. Finally then in terms of that, because the
 11 leadership team does involve, at times there's
 12 a separate individual of the medical school?
 13 MR. TILLEY:
 14 A. That's correct.
 15 COFFEY, Q.C.:
 16 Q. And their programs, particularly the residency
 17 program. How in this matter would you have
 18 envisaged, you know, that should be taken up
 19 with the medical school and its representative
 20 or representatives, in terms of whether or not
 21 they should or should not have had more
 22 involvement in this? As a CEO looking at it,
 23 I'm asking you that.
 24 MR. TILLEY:
 25 A. Right, well we have an affiliation agreement

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1 which provides for a liaison with the
 2 university. There is a mechanism whereby the
 3 dean and the VP Medical meet from time to
 4 time. There's a provision that if there are
 5 issues that are outstanding from there, it
 6 gets moved up to the president of the
 7 university and the CEO of Eastern Health, and
 8 the feature of the program base model of
 9 having the discipline chair representing the
 10 university at the same table as the managers,
 11 both medical and technical managers, is seen
 12 to be a way of keeping everybody in the loop
 13 and getting more of a responsive prompter
 14 strategy.
 15 COFFEY, Q.C.:
 16 Q. And I raise it because you recall that in that
 17 June 19th, 2003 memo of Dr. Ejeckam -
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. One of the people who was copied that, I think
 22 it's Dr. Robb, if I recall correctly and I'll
 23 be corrected if I'm not, was discipline chair
 24 at the time, in that particular department, in
 25 lab medicine. So in terms of, from the

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1 organization's perspective by taking it up
 2 with or making inquiries of the medical
 3 school, in terms of well what, if anything,
 4 did Dr. Robb do about this? Did anyone ever
 5 think to kind of go down that trail, I mean,
 6 because he did get copied on that e-mail, the
 7 June 19th memo.
 8 MR. TILLEY:
 9 A. I can't speak to that specifically, but there
 10 is that mechanism there and secondly, the dean
 11 is an ex officio member of the Board of
 12 Trustees. So there's a couple of ways that
 13 the opportunity could present itself, but
 14 certainly if there were implications for the
 15 teaching program, the expectation is that the
 16 teaching program would be modified if there
 17 were found to be -
 18 COFFEY, Q.C.:
 19 Q. Possible improvement -
 20 MR. TILLEY:
 21 A. Standards, yes.
 22 COFFEY, Q.C.:
 23 Q. Do you know in this context if that was ever
 24 done?
 25 MR. TILLEY:

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1 A. I can't speak to that.
 2 COFFEY, Q.C.:
 3 Q. If we could, please, Exhibit P-0104. This is
 4 an e-mail from Susan Bonnell to Tansy Mundon,
 5 December 11th, 2006 at 8:52 a.m., Monday.
 6 There are a number of attachments and this is,
 7 this was the material for the December 11th
 8 media technical briefing. Well, first of all,
 9 did you know that a copy of this was being
 10 sent by your communications director to the
 11 department's communications director?
 12 MR. TILLEY:
 13 A. I know that it's an expectation that it be
 14 shared.
 15 COFFEY, Q.C.:
 16 Q. You'd be saying the converse, if it wasn't
 17 sent, I'd be surprised?
 18 MR. TILLEY:
 19 A. That's correct.
 20 COFFEY, Q.C.:
 21 Q. And the purpose in doing that would be what?
 22 MR. TILLEY:
 23 A. The department wanted to know about any
 24 messages that were being delivered before they
 25 were and I keep thinking about the meeting

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1 that was held -
 2 COFFEY, Q.C.:
 3 Q. December 4th.
 4 MR. TILLEY:
 5 A. Where just the four of us were there.
 6 COFFEY, Q.C.:
 7 Q. Yes, that's the December 4th.
 8 MR. TILLEY:
 9 A. Recalling that was something that was a part
 10 of that conversation.
 11 COFFEY, Q.C.:
 12 Q. And Mr. Abbott was asking that your
 13 organization ensure that that was done, at
 14 least they were given a heads up as to what
 15 was being said.
 16 MR. TILLEY:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. How about in terms of, were they to be given a
 20 veto on what was to be said? It's one thing
 21 to tell somebody this is what I'm going to
 22 say, it's another thing entirely to ask them
 23 can I say it. And what was your understanding
 24 after that December 4th meeting?
 25 MR. TILLEY:

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1 A. I can't specifically recall the outcome of the
 2 meeting, but in general if the deputy of the
 3 minister came over and said "George, we have a
 4 problem with regards to what's in there or
 5 what's not in there" then I would expect it to
 6 come to my attention and that we would resolve
 7 it before we made the next move.
 8 COFFEY, Q.C.:
 9 Q. And if there's silence, you send it over and
 10 there's silence?
 11 MR. TILLEY:
 12 A. I guess--I remember times that there was
 13 silence, I can't remember if it was that issue
 14 or not and I thought we waited, but it's not
 15 to say we waited in all times.
 16 COFFEY, Q.C.:
 17 Q. But if you didn't get any feedback, negative
 18 feedback or any expression or concern, would
 19 you take that as approval?
 20 MR. TILLEY:
 21 A. Well after a reasonable period of time, I
 22 think we would, yes.
 23 COFFEY, Q.C.:
 24 Q. Now this particular one got sent 8:52 that
 25 morning, if we go to page 35, please of this

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1 exhibit, P-0104, it indicates on this that
 2 media technical briefing was apparently to
 3 occur Monday, December 11th, 2006 at 11:30
 4 a.m., which would be two and a half hours
 5 after Ms. Bonnell sent her e-mail. Did you
 6 have any communication with the Department of
 7 Health that day about this?
 8 MR. TILLEY:
 9 A. I don't recall off the top of my head, unless
 10 my telephone log specifically mentions it.
 11 COFFEY, Q.C.:
 12 Q. And what I'm getting at is from the
 13 perspective of being told yes, it's fine,
 14 George or, you know, are you--we have
 15 misgivings, you don't have any recollection
 16 either way?
 17 MR. TILLEY:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. If we could, please, if we could bring up,
 21 please, Exhibit P-0196? This is an e-mail
 22 from Tansy Mundon to Ms. Bonnell that morning,
 23 9:50 a.m., thanking her and indicating she'd
 24 be in Moncton on Friday and Saturday. She's
 25 responding at 8:52, you'll see it there, an e-

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1 mail. If we could go to page two of this
 2 exhibit, this is from Tansy Mundon to a number
 3 of people in the department that morning at
 4 10:25 a.m. It's an EMBARGO news release and
 5 it's a news release and if you look at the
 6 bottom of the page, Mr. Tilley, it's--the
 7 media contact is Leona Barrington.
 8 MR. TILLEY:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. What was your understanding in terms of this
 12 news media technical briefing as to how
 13 closely the Department of Health was following
 14 this? Did you anticipate that they were
 15 following this closely?
 16 MR. TILLEY:
 17 A. I would have expected them to by the mere
 18 number of meetings that we've had on this
 19 issue.
 20 COFFEY, Q.C.:
 21 Q. Now see that phrase "media technical briefing"
 22 what did that mean to you? What connotations
 23 did that have, as opposed to a press
 24 conference, as opposed to whatever, did it
 25 have any particular meaning or significance?

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1 MR. TILLEY:
 2 A. I didn't particularly see it any differently.
 3 When you're into an environment where you have
 4 a number of media outlets there, I think one
 5 could pretty much expect that the questions
 6 could be from multiple directions. I guess
 7 what it does, it sort of sends a signal
 8 perhaps that you're going to be doing some
 9 basic review, as opposed to making only an
 10 announcement.
 11 COFFEY, Q.C.:
 12 Q. Sir, how many technical media briefings were
 13 held that day, do you know?
 14 MR. TILLEY:
 15 A. No, I don't know. I assume there was only
 16 one.
 17 COFFEY, Q.C.:
 18 Q. In terms of the media's ability to publish
 19 what was said, to record or publish what was
 20 said, did you have any understanding about
 21 whether there were any restrictions on what
 22 the media could and couldn't record?
 23 MR. TILLEY:
 24 A. That rings a bell, but I can't--something
 25 about what footage they could take or

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1 something.
 2 COFFEY, Q.C.:
 3 Q. Yes, and things like that, what they could--
 4 what parts of the briefing that could or
 5 couldn't be recorded, you know, electronically
 6 recorded, for example.
 7 MR. TILLEY:
 8 A. It rings a bell but I confess I can't pull the
 9 specifics out of my head.
 10 COFFEY, Q.C.:
 11 Q. Whether there were to be any such
 12 restrictions, from your perspective, as CEO,
 13 were you imposing them or were you consulted
 14 about it?
 15 MR. TILLEY:
 16 A. No, I wouldn't get involved in that level of
 17 detail on it.
 18 COFFEY, Q.C.:
 19 Q. And what level would you expect those, any
 20 such decisions would be made?
 21 MR. TILLEY:
 22 A. I assume it would be with the team that's
 23 involved in the briefing itself.
 24 COFFEY, Q.C.:
 25 Q. Just a moment, please, Commissioner. Could we

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1 bring up, please, Exhibit--let's go back a
 2 bit. There are a number of exhibits. I'm not
 3 going--they're internal to the government.
 4 What I am going to ask you concerning and the
 5 technical briefing on December 11 and several
 6 days following it. Okay? Were you getting
 7 regular updates from your own media people
 8 about the media coverage?
 9 MR. TILLEY:
 10 A. I'd be surprised if I wasn't. Periodically, I
 11 would get an e-mail clip of stories.
 12 COFFEY, Q.C.:
 13 Q. And the purpose in that would be what?
 14 MR. TILLEY:
 15 A. Just to hear about what's going on with the
 16 organization and, I think, in terms of this
 17 one, you know, it's an important issue, would
 18 be useful to know.
 19 COFFEY, Q.C.:
 20 Q. If I could, please, just a moment, please,
 21 Commissioner. Overall then in terms of the
 22 December 11 media briefing, by the time
 23 Christmas rolled around, looking back on it,
 24 what was your perception at the time, in terms
 25 of how it had gone?

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1 MR. TILLEY:
 2 A. My general assessment is that the briefing
 3 itself had gone okay, but the outstanding
 4 question with regards to what was the
 5 causative factor was still being raised.
 6 COFFEY, Q.C.:
 7 Q. Publicly, wasn't it?
 8 MR. TILLEY:
 9 A. Pardon?
 10 COFFEY, Q.C.:
 11 Q. Publicly, wasn't it?
 12 MR. TILLEY:
 13 A. So, clearly, we hadn't satisfied the appetite
 14 for information.
 15 COFFEY, Q.C.:
 16 Q. And were you aware of whether or not, the
 17 issue about the number of--the failure to
 18 comment on the number of conversions or
 19 changed results had received some media
 20 attention or commentary?
 21 MR. TILLEY:
 22 A. That rings a bell. I'm thinking as I'm
 23 talking here about the fact that before this
 24 briefing was taking place, it was anticipated
 25 that that was going to be referenced. And the

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1 decision to say no, we wouldn't be providing
 2 that at the time, but it's clear that that was
 3 another issue.
 4 COFFEY, Q.C.:
 5 Q. Mr. Tilley, when did you become aware that
 6 information concerning the total number of
 7 changed results was going to be filed in an
 8 affidavit in the Trial Division here in St.
 9 John's? When did you become aware that that
 10 was so?
 11 MR. TILLEY:
 12 A. Around the time the affidavit was being filed
 13 seems to be my recollection.
 14 COFFEY, Q.C.:
 15 Q. So, that would probably be February, I guess.
 16 MR. TILLEY:
 17 A. Yes. I just remember thinking back and
 18 saying, well, that's information that was
 19 obviously going to be public information.
 20 COFFEY, Q.C.:
 21 Q. And at the time, that it occurred, we just
 22 filed this information and yet, back in
 23 December, we went to some trouble not to use
 24 those numbers.
 25 MR. TILLEY:

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1 A. Right. Did it occur to me?
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. There is a disconnect there, isn't there?
 8 MR. TILLEY:
 9 A. Yes, there is. And I'd like to be able to
 10 say, there's the reason why, but other than
 11 the things that happen to be occurring at that
 12 time, I don't recall anybody specifically
 13 referencing it.
 14 COFFEY, Q.C.:
 15 Q. If we could look, please, at P-0166. And just
 16 before we get into this, you know, as we go
 17 into '07, your understanding as CEO of Eastern
 18 Health was what in terms of where the ER/PR
 19 matter stood?
 20 MR. TILLEY:
 21 A. As we go into '07?
 22 COFFEY, Q.C.:
 23 Q. Yes, broad strokes, yeah, broad strokes,
 24 overall. You got your press conference done.
 25 MR. TILLEY:

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1 A. Yes. The certification process would happen.
 2 THE COMMISSIONER:
 3 Q. So, it'd be in the court.
 4 MR. TILLEY:
 5 A. Yes, that the media were still very interested
 6 in finding out more, that by this time the
 7 patients were being dealt with.
 8 COFFEY, Q.C.:
 9 Q. The patients, by this point, would have all
 10 been notified and presumably were -
 11 MR. TILLEY:
 12 A. Right.
 13 COFFEY, Q.C.:
 14 Q. - told of you--you understood--had been all
 15 notified and treatment -
 16 MR. TILLEY:
 17 A. Right. I mean, there was always issues that
 18 were going around, I'm sure, and those are the
 19 ones that stick in my mind.
 20 COFFEY, Q.C.:
 21 Q. So then, with the press conference over, was
 22 it envisaged that there would be any more
 23 press conferences?
 24 MR. TILLEY:
 25 A. I can't say that with total assurity because

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1 this thing was really a big issue and there
 2 was a lot of interest in it.
 3 COFFEY, Q.C.:
 4 Q. But, I mean, with the matter before the
 5 courts, as it were, what did you expect to
 6 next happen in this? The court process, I
 7 take it, and that was really it?
 8 MR. TILLEY:
 9 A. Well, in terms of external environment -
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. TILLEY:
 13 A. - but, of course, internally, there was also a
 14 responsibility to make sure that we were
 15 acting upon this and we were able to restore
 16 confidence in the system, but also amongst the
 17 system.
 18 COFFEY, Q.C.:
 19 Q. We understand from the documentation that
 20 ER/PR did restart in St. John's anyway, for
 21 the St. John's hospitals, February 1, 2007.
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Were you aware beforehand that that was

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1 happening?
 2 MR. TILLEY:
 3 A. I can't say. The only thing that I can speak
 4 to in that issue is that it came up
 5 subsequently, I think, that the minister was
 6 responding in the House of Assembly and -
 7 COFFEY, Q.C.:
 8 Q. And that's in May, about where the tests -
 9 MR. TILLEY:
 10 A. Okay.
 11 COFFEY, Q.C.:
 12 Q. - but at the time -
 13 MR. TILLEY:
 14 A. No, I just said to Dr. Howell and the clinical
 15 chiefs, when you guys are comfortable that
 16 this thing is ready to go, then it's your
 17 call.
 18 COFFEY, Q.C.:
 19 Q. Were you aware that they were only going to
 20 do, or made aware that they were only going to
 21 do the St. John's ones and not then take on,
 22 at that point, the rest of Newfoundland?
 23 MR. TILLEY:
 24 A. No, I didn't and that's my connection with
 25 May. That's when I learned about that issue.

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1 And, you know, whether I was expected to have
 2 been told that, it's a large organization, so
 3 it's possible that it may have been
 4 overlooked.
 5 COFFEY, Q.C.:
 6 Q. If we could, please, P-0166. Now, sir, this
 7 is a couple of e-mails, one from John Abbott
 8 to yourself, January 17, '07, 5:46 p.m.. The
 9 subject is Dr. Ganguly and he just simply
 10 says, "thanks for this". But what he's
 11 thanking you for is an e-mail from yourself to
 12 Tom Osborne copied to Oscar Howell and to John
 13 Abbott, January 17 at 5:32 p.m.. The subject
 14 again, of course, is Dr. Ganguly. And then
 15 there is a text which extends into the second
 16 page. It's signed by yourself and it's copied
 17 to Cathy Bradbury or, at least--I don't think,
 18 I suspect you didn't copy it to Cathy
 19 Bradbury, it was copied by John Abbott's
 20 response to Ms. Bradbury. But in terms of
 21 this e-mail, do you recall, did you type this
 22 yourself?
 23 MR. TILLEY:
 24 A. Oh, I likely did. I don't use anybody--errors
 25 and all, I got to take responsibility for

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1 them.

2 COFFEY, Q.C.:

3 Q. Okay. And it says, begins, "Minister"--and

4 you say--"I was speaking to John Abbott to

5 learn that Dr. Ganguly has been in touch with

6 you about his resignation from his

7 administrative duties in our cancer care

8 program. During the fall, representatives

9 from the NLMA met with Dr. Howell et al to say

10 that they were going to take on the issue of

11 compensation for the administrative work that

12 three of our oncologists were providing for

13 our cancer care program (Laing - clinical

14 chief; Ganguly, Division Chief of Radiation

15 Oncology; and Siddiqui - Division Chief of

16 Medical Oncology). Interestingly, shortly

17 before that I met with Rob Ritter where he

18 gave me an indication that they were going to

19 use oncology as the medical field to talk

20 about in relation to the upcoming

21 negotiations, feeling the public support would

22 be there. Back in November with issues

23 surrounding ER/PR about to be dealt with in

24 the media, I asked Oscar Howell to resolve the

25 compensation issue for Dr. Laing as it was

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1 different from the others (retroactivity) and

2 we needed her full support when we moved

3 forward in the ER/PR discussions. That left

4 the Divisions Chiefs outstanding". And you go

5 on and talk about the details of that.

6 COFFEY, Q.C.:

7 Q. Sir, the reference to, "I asked

8 (unintelligible) back in November"--which

9 would be November, presumably of '06, "with

10 the ER/PR about to be dealt with in the media.

11 I asked Dr. Howell to resolve the compensation

12 issue for Kara Laing and we needed her full

13 support when we move forward on the ER/PR

14 discussions." Now what was that about?

15 MR. TILLEY:

16 A. Well first of all let me say that I don't

17 write a minister unless I'm invited, so either

18 Mr. Abbott had directed me to reply to him on

19 this issue or not -

20 COFFEY, Q.C.:

21 Q. Because you had said "I was speaking to John

22 Abbott" -

23 MR. TILLEY:

24 A. Right and I know there were some e-mails that

25 the minister had written me on this pharmacy

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1 issue or nursing issue at the same time.

2 There is an arrangement that, a funding

3 arrangement that exists for some of the

4 oncologists who have taken on additional work

5 load, non-clinical work load to get paid for

6 it, and Dr. Laing and Ganguly and Siddiqui

7 were three people that were involved and there

8 was a suggestion that they were going to work

9 the rule, so to speak, so that they would not

10 do any of the administrative tasks, that was

11 one element of it. The second element of it

12 is that these things, with the exception of

13 the clinical chief position, I understand are

14 part of the collective bargaining process

15 between the NLMA and government. So two

16 things, one, I have known from many years that

17 if I was to wait until that went through those

18 channels, I'd be waiting a long time. The

19 second thing is is that there was no

20 acknowledgement on Eastern Health's part that

21 government or the NLMA had any involvement in

22 what we were going to do to negotiate the

23 compensation that we paid to our clinical

24 chiefs. So I said to Dr. Howell, we can

25 settle one of these very quickly because it's

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1 within our power to make and usually the

2 compensation for clinical chiefs is based upon

3 a standard amount and the question is really

4 how much time do they commit? In terms of the

5 language, we needed her full support when we

6 moved forward on ER/PR discussions. I

7 couldn't imagine that I would have let this be

8 ignored and have a physician leader stand to

9 the wayside while we were addressing a very

10 significant clinical issue. So you learn over

11 the years to say resolve what you can and move

12 on. Nothing other than that. It was

13 certainly not intended to try to buy her

14 opinion or support, it had only been through

15 this process that I got to meet Dr. Kara Laing

16 and if I was ever in a situation where I

17 needed an oncologist, she's the person I would

18 go to. She is very knowledgeable, very

19 credible, very well spoken and she stood out

20 amongst any other oncologists that I have seen

21 in terms of being a leader and I'm saying I'm

22 not letting that one slip through my fingers,

23 so let's resolve it and let the other two go

24 through the normal processes.

25 COFFEY, Q.C.:

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1 Q. And so what then does your reference to "we
 2 needed her full support when we move forward
 3 on the ER/PR discussions" mean? What did you
 4 mean when you typed that? Because you linked
 5 it, it is linked here, I mean rightly or
 6 wrongly it's linked with ER/PR discussions.
 7 MR. TILLEY:
 8 A. I got to confess, I didn't read it the way you
 9 were reading it, but our minds read very
 10 differently -
 11 COFFEY, Q.C.:
 12 Q. I'm just reading what's there.
 13 MR. TILLEY:
 14 A. I couldn't imagine us going into the future
 15 dealing with this major issue and having Dr.
 16 Laing, because of a bargaining strategy say,
 17 boys, I'm not meeting with you fellows to talk
 18 to through this or I'm not going to be part of
 19 your press conference because, you know, we've
 20 got a dispute with government. So that was
 21 simply a way of saying this is an important
 22 person here and I'm not going to dilly dally
 23 around with this waiting for approval that I
 24 don't think I need to resolve it.
 25 COFFEY, Q.C.:

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1 Q. And I take it you had understood at the time
 2 in November that Dr. Laing was playing a more
 3 prominent role in the group addressing this
 4 ER/PR issue than Dr. Ganguly or Dr. Siddiqui?
 5 MR. TILLEY:
 6 A. That's true.
 7 COFFEY, Q.C.:
 8 Q. Now, sir, with respect to, there's also the
 9 reference to, in the first paragraph, "I had
 10 met with Rob Ritter when he gave me an
 11 indication"--"they" presumably is the NLMA--
 12 "were going to use oncology as the medial
 13 field to talk about in relation to the
 14 upcoming negotiations, feeling a public
 15 support would be there." Suggesting that
 16 oncology in contradistinction to perhaps other
 17 areas of medicine, so what did--I mean, you
 18 typed this out, what did you understand from
 19 your conversation with Mr. Ritter at the time?
 20 MR. TILLEY:
 21 A. Well that they were going to use as part of
 22 their promotional campaign to build public
 23 support of the value of oncologists and, I
 24 guess every organization that is in that
 25 position chooses strategy wisely. I can't say

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1 I was blown away by it, but I was certainly
 2 disappointed by it if we were going to this
 3 issue and this was going to get caught up in
 4 the middle of a bargaining process, it was--it
 5 didn't have a good taste to it.
 6 COFFEY, Q.C.:
 7 Q. Now with respect to that, if we could look at
 8 the second page of this--well first of all,
 9 just before I leave this page, I just want to
 10 be clear, there had never been any suggestion,
 11 I take it, by Dr. Laing that she would not co-
 12 operate on the ER/PR matter?
 13 MR. TILLEY:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. I just want to be fair to -
 17 MR. TILLEY:
 18 A. No, I don't think so, I mean, this was being
 19 told to me as we're going to be asking these
 20 people not to, that's how I recall it.
 21 COFFEY, Q.C.:
 22 Q. Never any reluctance on Dr. Laing's part to
 23 take, as you're aware of -
 24 MR. TILLEY:
 25 A. No, in fairness to her.

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 THE COMMISSIONER:
 4 Q. Can we resolve just one point you made
 5 regarding clinical chiefs?
 6 MR. TILLEY:
 7 A. Yes.
 8 THE COMMISSIONER:
 9 Q. What was the distinction in respect to them?
 10 MR. TILLEY:
 11 A. The clinical chiefs were those positions that
 12 the organization put in when it put in a
 13 program-based management to have a leadership
 14 team.
 15 THE COMMISSIONER:
 16 Q. Uh-hm
 17 MR. TILLEY:
 18 A. We always kept the establishment and the
 19 compensation level for those positions out of
 20 any bargaining process.
 21 THE COMMISSIONER:
 22 Q. Okay, so that's determined internally by
 23 Eastern Health as a part of your normal
 24 process.
 25 MR. TILLEY:

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1 A. That's correct, right, and the NLMA at the
 2 time, I think were thinking that maybe it
 3 should be included in it.
 4 THE COMMISSIONER:
 5 Q. Uh-hm, something you were not in favour of?
 6 MR. TILLEY:
 7 A. No, they were managing position, we didn't see
 8 them as being appropriate to fall into a non-
 9 management group.
 10 THE COMMISSIONER:
 11 Q. Yes, all right, thank you.
 12 COFFEY, Q.C.:
 13 Q. And now the second last paragraph says, "While
 14 we have received their resignations for
 15 January 1, they did give us a two-week
 16 extension to January 15th." Now I take it
 17 that's Dr. Ganguly and Dr. Siddiqui's
 18 resignations as division chiefs?
 19 MR. TILLEY:
 20 A. I'm assuming so, Mr. Coffey, but I stand to be
 21 corrected.
 22 COFFEY, Q.C.:
 23 Q. Sir, what's your experience with respect to
 24 whether or not, as a CEO of the Health Care
 25 Corporation and Eastern Health, a threat by

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1 physicians to resign from, you know, a
 2 position or particular duties? I mean, was
 3 this the first time you encountered this?
 4 MR. TILLEY:
 5 A. We had a physician strike.
 6 COFFEY, Q.C.:
 7 Q. A strike may be different than a mass
 8 resignation, but -
 9 MR. TILLEY:
 10 A. I'm sorry.
 11 COFFEY, Q.C.:
 12 Q. - maybe not. I mean, I -
 13 MR. TILLEY:
 14 A. But up until that moment I would have never
 15 said it was possible.
 16 COFFEY, Q.C.:
 17 Q. Yes. Up to the time of the strike, yes.
 18 MR. TILLEY:
 19 A. Right. I mean, that was obviously very bold
 20 decision to make.
 21 COFFEY, Q.C.:
 22 Q. In terms of just the idea of, you know,
 23 people, you know, would resign from particular
 24 positions or duties and I appreciate people
 25 routinely resign from things, but the idea of,

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1 you know, unless something happens, I will
 2 resign?
 3 MR. TILLEY:
 4 A. I can't be specific, but I can tell you over
 5 the years I've heard it a few times.
 6 COFFEY, Q.C.:
 7 Q. Okay. The point being this wasn't the first
 8 time that you -
 9 MR. TILLEY:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. - encountered that. If we could, please,
 13 Exhibit P-0278? This is a pathology workload
 14 review, Newfoundland and Labrador. It's the
 15 Dr. Maung report, I believe, if we look down
 16 right there. See that?
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. And it's commissioned by John Abbott, the
 21 deputy minister. And it's pathology workload
 22 review, January 22nd, 2007. And it is 43
 23 pages long, including a number of footnoted--
 24 or not footnoted but certainly references.
 25 Were you aware that this was going on and of

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1 its being having being submitted in the winter
 2 of '07?
 3 MR. TILLEY:
 4 A. I don't remember seeing it because this is the
 5 first time I've seen something with two flags
 6 on it and I'm curious about what the right
 7 flag is.
 8 MR. SIMMONS:
 9 Q. (Inaudible).
 10 MR. TILLEY:
 11 A. Okay, so it's not St. Pierre or anything,
 12 okay. Well, I knew that--and I referenced St.
 13 Pierre because obviously we have a
 14 relationship with them.
 15 COFFEY, Q.C.:
 16 Q. Sure.
 17 MR. TILLEY:
 18 A. I was aware about the compensation issue with
 19 pathologists and where we could made
 20 representation to government. I think, Madam
 21 Commissioner, we did speak about this the
 22 other day.
 23 COFFEY, Q.C.:
 24 Q. We did speak about that, so that's why I'm
 25 just about the Dr. Maung report itself.

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1 MR. TILLEY:
 2 A. Okay.
 3 COFFEY, Q.C.:
 4 Q. I mean, you've explained -
 5 MR. TILLEY:
 6 A. No. I mean, Dr. Williams, I think, played a
 7 very major role in the work in that report, so
 8 could obviously speak to it. But I think one
 9 of the frustrating parts of this for me is
 10 that we had a major compensation issue and
 11 instead of fixing the compensation issue, we
 12 send it off for another study. And I'm here
 13 thinking Rome is burning down and this process
 14 has been shelved would be inappropriate, but
 15 unnecessarily deferred would be. I would have
 16 sooner that we would have aired on the
 17 compensation side and dealt with the workload
 18 afterwards.
 19 COFFEY, Q.C.:
 20 Q. If we could, Commissioner, if you look at
 21 Exhibit P-0432? Now, this--0432, thank you.
 22 Now, Mr. Tilley, this is an e-mail from Susan
 23 Bonnell to Oscar Howell, Denise Dunn, Heather
 24 Predham, yourself and Leona Barrington. The
 25 subject is "Key Messages", Thursday, January

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1 25, 2007 at 12:35 p.m. And it says, "Hi,"
 2 that would be Susan, "I've spoken with George
 3 and he's good with the following messages.
 4 Leona has spoken to Stephanie. She apologized
 5 for the short notice, but can only extend her
 6 deadline to 2 p.m., otherwise they would be
 7 willing to do a follow-up story next week but
 8 we don't want that. Rather than speak to
 9 Stephanie directly we can send this to her and
 10 attribute it to you so as to avoid opening up
 11 another line of questioning which we would
 12 rather not. Leona can explain to Stephanie
 13 that given the short notice we are unable to
 14 do an interview but can provide the short
 15 statements: We are surprised," and below,
 16 that's a colon after the word "statements"
 17 And then several lines below, "We are
 18 surprised by this information. It is our
 19 understanding that all individuals impacted by
 20 the review had been contacted. The process of
 21 notifying individual patients has involved
 22 numerous individuals, physicians and
 23 specialists both within and outside the
 24 organization. Eastern Health is now
 25 rechecking the list to verify with the

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1 physicians and specialists involved that these
 2 patients have all been contacted. We
 3 encourage any individuals who are in the
 4 retesting group and have not heard from their
 5 physician or from our organization to call our
 6 client services officer at the 777-6500
 7 number." So in terms of the issue of whether
 8 or not everybody had been, all the patients
 9 had been notified about the retest results,
 10 this is January 25th, '07. Do you recall,
 11 does that help you or assist you in any way in
 12 recalling what was going on with respect to
 13 that, what had happened here? And if we could
 14 while we're at it, Exhibit P-0431? Page 2.
 15 There's some notes of yours, I gather, Mr.
 16 Tilley, this one is January 25, '07, "Susan
 17 Bonnell", "Independent", "Patient Missed",
 18 something "Dr. Laing". Do you recall what
 19 that is, can you see?
 20 MR. TILLEY:
 21 A. I can see it, sir, but I can't -
 22 COFFEY, Q.C.:
 23 Q. Can't pick it out?
 24 MR. TILLEY:
 25 A. Can't pick it out.

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1 COFFEY, Q.C.:
 2 Q. Does that--any recollection then of what had
 3 happened here and, you know, what, if
 4 anything, Eastern Health did at the time
 5 concerning it, specifically and general?
 6 MR. TILLEY:
 7 A. Independent makes a call and references a
 8 patient who had not been followed-up on. This
 9 says the patient missed by Dr. Laing. I don't
 10 know if it was in terms of missed coming from
 11 the panel and supposed to be contacted or
 12 whether it was missed in terms of identifying,
 13 so I'm assuming it's the former. As the
 14 letter implies, we were working on the
 15 assumption that all of this information from
 16 the panel was out there and being followed up
 17 on.
 18 COFFEY, Q.C.:
 19 Q. Um-hm.
 20 MR. TILLEY:
 21 A. So beyond that I'm not able to recall
 22 specifics.
 23 COFFEY, Q.C.:
 24 Q. Do you recall what, if anything, you know, as
 25 the CEO, I mean, upon learning of this, Susan

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1 quotes you as having spoken with you and
 2 you're good with the following messages, which
 3 is at the bottom of the page.
 4 MR. TILLEY:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. The last three paragraphs. Yes, please.
 8 Thank you. It runs down here. You indicated
 9 you're good with, or she says you're good with
 10 saying Eastern Health is now rechecking the
 11 list. I mean, do you recall what was done in
 12 relation to that and if you ever heard
 13 anything further about it?
 14 MR. TILLEY:
 15 A. I remember discussions about we need to follow
 16 up with the physicians to make sure that
 17 they've actually followed up with the
 18 patients. I also think I recall, now because
 19 it comes back to me, that if it wasn't for bad
 20 luck, I'd have no luck. Because here we were
 21 embarking on a process that everyone of us
 22 felt we were going to be making a significant
 23 statement, in terms of follow up, but we kept
 24 running into these execution errors or
 25 challenges, you know. But I can't tell you

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1 specifically what conversations there might
 2 have been with Dr. Laing on that.
 3 COFFEY, Q.C.:
 4 Q. And -
 5 THE COMMISSIONER:
 6 Q. At a convenient spot, Mr. Coffey.
 7 COFFEY, Q.C.:
 8 Q. Yes. If we could, please, Exhibit P-0280?
 9 This is an e-mail from Sharon Smith to
 10 Beverley Griffiths, March 7, 2007. Subject is
 11 re: some info yet again, and in terms of the
 12 issue of having potentially missed a patient,
 13 the second paragraph says "there have not been
 14 many issues since the technical briefing. We
 15 did have one individual who had not seen a
 16 doctor to get her results. A number of
 17 attempts had been made to contact her, but she
 18 was missed and she did go to the press in
 19 January. We know the Court case is proceeding
 20 under Ches Crosbie and I have no further word
 21 on that and can't contact"--sorry, "connect
 22 with our risk manager at this point. In terms
 23 of lab accreditation, they will be surveyed in
 24 September as part of a pilot project with the
 25 Canadian Council on Health Services

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1 Accreditation" and it goes on from there.
 2 Now Mr. Tilley, can you tell the
 3 Commissioner, please, when this one incident
 4 occurred in January of '07, you know, and was
 5 brought to your attention as a CEO that "we
 6 missed at least one," we in the larger sense,
 7 missed at least one patient, did you order or
 8 instruct or direct that any concerted effort
 9 occur to ensure we've got everybody? And if
 10 so, what was the--who did it and who reported
 11 back to you?
 12 MR. TILLEY:
 13 A. Well, on a couple of occasions, I would have
 14 talked to the quality initiatives department,
 15 and I would repeat what everybody else was
 16 hearing in the media. There are people who
 17 are coming forward and saying they haven't
 18 been identified. The feedback that I had
 19 gotten is that they feel that they have gotten
 20 everybody. What process they went through
 21 other than their own logs, I can't tell you.
 22 This is in March. I know in a subsequent
 23 conversation that Mrs. Pilgrim and I were
 24 involved in where she actually went down and
 25 reviewed the documents that were being kept

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1 there, which showed how everybody had been
 2 contacted and so on. But the reports that I
 3 was getting back in this point in time is, as
 4 far as they were concerned, they had everybody
 5 contacted.
 6 COFFEY, Q.C.:
 7 Q. And you were getting this report from who?
 8 MR. TILLEY:
 9 A. Mrs. Elliott, the director of quality
 10 initiatives department, and I'm not sure as to
 11 whether Heather Predham would have given me
 12 that, but I definitely remember talking to
 13 Mrs. Elliott about it.
 14 COFFEY, Q.C.:
 15 Q. Okay. Just one final point before I forget
 16 it, on a completely different topic. Susan
 17 Bonnell has been referred to a number of
 18 times. She's sending you e-mails and so on.
 19 She doesn't report--does she report to you
 20 directly throughout all this or who is her
 21 nominal boss?
 22 MR. TILLEY:
 23 A. She would report to the vice-president for
 24 people and informations, which would be
 25 Stephen Dodge.

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1 COFFEY, Q.C.:

2 Q. In practice, in terms of ER/PR?

3 MR. TILLEY:

4 A. Oh, in terms of ER/PR, she would come into my

5 office. She would speak to Dr. Williams, Dr.

6 Howell. She was really floating around in

7 numerous areas.

8 COFFEY, Q.C.:

9 Q. Okay. Commissioner.

10 THE COMMISSIONER:

11 Q. Okay. We're adjourning for the week.

12 Reconvene on Monday morning at 9:30. Thank

13 you.

14 CROSBIE, Q.C.:

15 Q. Commissioner, were there documents to be

16 entered? Did I understand that?

17 COFFEY, Q.C.:

18 Q. Yes.

19 THE COMMISSIONER:

20 Q. There were, but Mr. Coffey hasn't mentioned

21 them, so I presume he's put them off again.

22 COFFEY, Q.C.:

23 Q. Well, actually, the--while I'm at it, why not.

24 THE COMMISSIONER:

25 Q. Did you get your copies electronically, Mr.

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1 Crosbie, or did they provide them for you?

2 CROSBIE, Q.C.:

3 Q. I have a disk.

4 THE COMMISSIONER:

5 Q. All right.

6 COFFEY, Q.C.:

7 Q. Exhibit P-0375. Thank you, Mr. Crosbie. I

8 appreciate that. P-0375 and this is, Mr.

9 Crosbie, and I've told counsel before, if

10 there's something that they wish entered, I'll

11 certainly accommodate them.

12 THE COMMISSIONER:

13 Q. All right.

14 COFFEY, Q.C.:

15 Q. There is, as well, Exhibit P-0394. This is

16 Mr. Pritchard asked about this. They'll be

17 talking about them eventually, but they just

18 asked -

19 THE COMMISSIONER:

20 Q. They be entered today?

21 COFFEY, Q.C.:

22 Q. Yes, please. And -

23 THE COMMISSIONER:

24 Q. So that's--yes, is there a third?

25 COFFEY, Q.C.:

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1 Q. No, the Registrar is nodding that's it.

2 THE COMMISSIONER:

3 Q. I think we should take the Registrar's advice.

4 COFFEY, Q.C.:

5 Q. Oh yes.

6 THE COMMISSIONER:

7 Q. All right then.

8 COFFEY, Q.C.:

9 Q. I've learned not to -

10 THE COMMISSIONER:

11 Q. Enter P-0375 and P-0394, all right.

12 EXHIBITS ENTERED AND MARKED EXHIBITS P-0375 AND P-0394

13 THE COMMISSIONER:

14 Q. Thank you all. Monday at 9:30.

15 (UPON CONCLUSION AT 4:57 P.M.)

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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 24th 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 24th day of April, A.D., 2008

13 Judy Moss

<p style="text-align: center;">COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p style="text-align: center;">BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p style="text-align: center;">APRIL 24, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel</p> <p>Rolf Pritchard Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Chesley Crosbie. Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association</p> <p>Jennifer Newbury Canadian Cancer Society (NL Division) Stacey O’Dea Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p style="text-align: center;">LIST OF EXHIBITS</p> <p>EXHIBITS P-0021, P-0022, P-0023, P-0028, P-0370, P-0481 and P-0485 Pg. 5</p> <p>EXHIBITS P-0375 AND P-0394 Pg. 279</p>
<p style="text-align: center;">TABLE OF CONTENTS</p> <p>MR. GEORGE TILLEY - RESUMES THE STAND</p> <p>Examination-in-chief by Bernard Coffey, Q.C. . . . Pgs. 4 - 279</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER:</p> <p>2 Q. Please be seated. Mr. Coffey.</p> <p>3 MR. GEORGE TILLEY, EXAMINATION BY BERNARD COFFEY, Q.C.</p> <p>4 (CONT'D)</p> <p>5 COFFEY, Q.C.:</p> <p>6 Q. Good morning, Commissioner. Good morning, Mr.</p> <p>7 Tilley.</p> <p>8 MR. TILLEY:</p> <p>9 A. Good morning.</p> <p>10 COFFEY, Q.C.:</p> <p>11 Q. Commissioner, before I continue with Mr.</p> <p>12 Tilley, there are some other exhibits. I’m</p> <p>13 going to ask that they be entered, please.</p> <p>14 They’re P-0021, 0022, and 0023, and it’s</p> <p>15 redacted minutes of the Medical Advisory</p> <p>16 Committee minutes, and they’re the years 2005</p> <p>17 through 2007. There’s as well Exhibit P-0028,</p> <p>18 the Regional Advisory Committee minutes, which</p> <p>19 cover the years 2005 to 2007. There’s Exhibit</p> <p>20 P-0485, the Regional Quality Council meeting</p> <p>21 minutes for the years 2006 and 2007. There’s</p> <p>22 Exhibit P-0370, I don’t believe is entered</p> <p>23 yet, is an e-mail which I’m going to be asking</p> <p>24 Mr. Tilley about this morning. And Exhibit P-</p> <p>25 0481, which is an ethics review report, again,</p>

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1 which I'm going to be asking Mr. Tilley about
 2 this morning.
 3 THE COMMISSIONER:
 4 Q. All P exhibits?
 5 COFFEY, Q.C.:
 6 Q. Yes, Commissioner.
 7 THE COMMISSIONER:
 8 Q. All right. So we are admitting P-0021, 0022,
 9 0023, and 0028, as well as P-0370, P-0481 and
 10 0485. Thank you.
 11 EXHIBITS ENTERED AND MARKED EXHIBITS P-0021, P-0022, P-
 12 0023, P-0028, P-0370, P-0481, AND P-0485
 13 COFFEY, Q.C.:
 14 Q. Thank you. Now, Mr. Tilley, on Friday past
 15 when we left off, we were--I had it marked as
 16 we were dealing in August 2006. If we could
 17 bring up, please, Exhibit P-0370? Again, to
 18 help put this in some temporal context for
 19 you, Mr. Tilley, you recall that last day we
 20 were looking at that written submission or
 21 letter that you had prepared for The Globe
 22 and--not for The Current.
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 6

1 Q. Remember that, so this is in the same month.
 2 MR. TILLEY:
 3 A. Okay.
 4 COFFEY, Q.C.:
 5 Q. This is August of '06, just to put some
 6 temporal context to it. This is an e-mail of
 7 August 7th, 2006 from Susan Bonnell to
 8 Patricia Pilgrim, Sharon Smith, Leona
 9 Barrington, Heather Predham and Dr. Williams,
 10 Robert Williams, and the subject is
 11 communication with family physicians. I'd like
 12 to refer to some parts of this, and I have a
 13 question or two about it.
 14 Ms. Bonnell writes "just to follow up on
 15 our conversation this morning, I just spoke
 16 with Lynn Barter, Comm director with the NLMA.
 17 She is going to speak with the head of their
 18 GP's group re: communicating with family
 19 physicians. She agrees with me that the
 20 messages have really gotten mixed in general
 21 conversation and suspects that many family
 22 doctors will be hearing from their patients.
 23 She'll let us know if this is accurate. In
 24 the meantime, they will help us communicate
 25 with the GPs via letter when we are ready. It

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1 would be excellent if we were in a position to
 2 communicate where we are in the review process
 3 and to clarify what the process was about,
 4 some of the results we are finding, generally
 5 speaking, and to address what we are doing as
 6 an organization to ensure quality
 7 control/confidence in system. If you would
 8 like to get together in the next couple of
 9 days to strategize re: ways to reach the
 10 various groups, let us know. I am very
 11 nervous about doing any disclosures this week.
 12 The timing is very bad, especially given that
 13 we do not have a spokesperson to address this.
 14 FYI, Mark Quinn has made contact with us this
 15 morning. Mark is a CBC reporter who did the
 16 FOI," which would be freedom of information, I
 17 presume, "on ER/PR and Leona Head discussed
 18 with him setting up a briefing with our key
 19 players. I'd suspect he's looking for this
 20 now. We'll let you know."
 21 Now in this context, Mr. Tilley, again if
 22 I could, if I could have, please, brought up
 23 Exhibit P-0102. It's page one, Mr. Tilley.
 24 This is the communication with The Current and
 25 you'll note here that the message was August

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1 4th, 2006.
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. So if we could go back, please, to Exhibit P-
 6 0370? In the summer then or mid summer of
 7 '06, this e-mail seems to suggest that locally
 8 Mark Quinn was looking for information from
 9 Eastern Health about ER/PR. Do you remember,
 10 you know, what was generally going on? I
 11 mean, Susan has spoken to you, I gather, about
 12 writing to The Current?
 13 MR. TILLEY:
 14 A. That's correct, yes.
 15 COFFEY, Q.C.:
 16 Q. Well, The Current actually wanted to do an
 17 interview, but you decided, for reasons you've
 18 explained, that you'd do it in writing
 19 instead. Here, she's, at least not telling
 20 you, but she's telling your key person
 21 involved in this, Dr. Williams, that Mark
 22 Quinn is asking questions about it, looking
 23 for information on ER/PR. What was Eastern
 24 Health's position at that point in time, vis-
 25 a-vis dealing with the media?

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1 MR. TILLEY:
 2 A. I think it would be fair to say that
 3 generally, we felt that we were in an
 4 environment where there were so many things
 5 happening. The media was persistent in its
 6 interest to find out more. At that point in
 7 time, there was information coming back in the
 8 way of the analysis of the external reviews.
 9 There was information coming back with respect
 10 to the patients and the extent to which their
 11 tests had changed. The overriding objective,
 12 and the one that we kept referring ourselves
 13 to, is that our obligations are to the
 14 individual patients. And to be quite open
 15 with you, while we knew the media were there,
 16 quite simply, they were not our priority. We
 17 focused on ensuring that the patients
 18 continued to get as much information and would
 19 be the primary source of that information.
 20 COFFEY, Q.C.:
 21 Q. By that point in time, what was the situation
 22 with respect to the contact with the
 23 individual patients?
 24 MR. TILLEY:
 25 A. Ongoing, my thought. We would have had the

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1 information back from Mount Sinai. The panel,
 2 I'm going to stretch and say, maybe May of
 3 2006 -
 4 COFFEY, Q.C.:
 5 Q. May or June, 2006.
 6 MR. TILLEY:
 7 A. It was felt to be, so we were certainly into
 8 that period where a lot of that information
 9 was coming together.
 10 COFFEY, Q.C.:
 11 Q. So but if the panel is finished, May or June
 12 of '06, and I appreciate it would take a
 13 certain amount of time to get their
 14 recommendations communicated to patients by
 15 individual physicians, in the summer of '06,
 16 what was Eastern Health's view of, from your
 17 perspective, in terms of like how you expected
 18 this to unfold?
 19 MR. TILLEY:
 20 A. That we would complete the process with the
 21 individual patients, and I guess the day that
 22 we would have been satisfied is when we had
 23 all of the patients who were going--whose
 24 treatment was going to be influenced by this
 25 retest informed.

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1 COFFEY, Q.C.:
 2 Q. And then what would happen? What was the--was
 3 there any plan as to what would happen then?
 4 MR. TILLEY:
 5 A. We hadn't thought it through that far.
 6 COFFEY, Q.C.:
 7 Q. And what was going on elsewhere, do you know,
 8 in terms of in other forum or forum that you
 9 were involved in? For example, law suits,
 10 what was the situation at that point?
 11 MR. TILLEY:
 12 A. I think in the 19 -
 13 COFFEY, Q.C.:
 14 Q. In the middle of '06.
 15 MR. TILLEY:
 16 A. Sorry, 2005, we were after getting notice of a
 17 claim being pursued.
 18 COFFEY, Q.C.:
 19 Q. That would be the fall of '05, I believe.
 20 MR. TILLEY:
 21 A. It's not a date that I've got retained to say
 22 when the actual potential class action suit
 23 was to be filed.
 24 COFFEY, Q.C.:
 25 Q. That would be the fall, I'd suspect, of '05,

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1 but this is the summer of '06.
 2 MR. TILLEY:
 3 A. Right.
 4 COFFEY, Q.C.:
 5 Q. I'm just trying to get, for the Commissioner,
 6 some sense of, you know, the narrative as it
 7 unfolded from your perspective as a CEO. I
 8 mean, The Current is after you for comment in
 9 the beginning of August of '06. Ms. Bonnell
 10 is saying, at least in an e-mail to your VP
 11 medical, that Mark Quinn is looking for
 12 information. That's in the last paragraph of
 13 her e-mail. I'm wondering is the CEO, were you
 14 aware of this kind of agitation by the media?
 15 Well, obviously you were aware of The Current.
 16 Were you made aware of the agitation by the
 17 local media, inquiries by the local media for
 18 information?
 19 MR. TILLEY:
 20 A. While I wasn't circulated on the e-mail, I
 21 certainly knew that there was local interest
 22 on the part of the media in this story from
 23 Mark and others in particular.
 24 COFFEY, Q.C.:
 25 Q. And what type of information did you

Page 13

1 anticipate that they wanted--you understand
 2 they wanted then or anticipate that they would
 3 want?
 4 MR. TILLEY:
 5 A. My assumption would be whatever information we
 6 could possibly provide that they wouldn't have
 7 been able to access up to that point in time.
 8 COFFEY, Q.C.:
 9 Q. Which is concerning what? What sorts of
 10 information?
 11 MR. TILLEY:
 12 A. What's the status of the retesting and the
 13 panelling? What's the status of the
 14 reactivation of the tests inside? What's the
 15 issues with regards to contributing factors
 16 behind this? That would be my sense of it.
 17 COFFEY, Q.C.:
 18 Q. How many results changed?
 19 MR. TILLEY:
 20 A. Yes, I wouldn't doubt that.
 21 COFFEY, Q.C.:
 22 Q. Okay, and as you've indicated, as of the
 23 summer of '06, in terms of how--when you
 24 finally were satisfied that all the patients
 25 had been contacted and dealt with

Page 14

1 appropriately as individuals, what the next
 2 step was, you yourself hadn't actually thought
 3 that through at that point in time?
 4 MR. TILLEY:
 5 A. No. We were still in the midst of the
 6 restructuring. Everybody was trying to give
 7 their utmost attention to this. I think that
 8 was the fall that I actually went and spoke at
 9 a national conference.
 10 COFFEY, Q.C.:
 11 Q. I'll be asking about that. So this is kind of
 12 in a period where the communication with
 13 individual patients is just ending or being
 14 wrapped up.
 15 MR. TILLEY:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. And the next step hasn't yet been embarked on?
 19 MR. TILLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. Okay. There is a reference here to, in Ms.
 23 Bonnell's e-mail, to, in the second last
 24 paragraph, to--well, before I get to that, the
 25 third last paragraph, she says "if you," and

Page 15

1 that would be Dr. Williams et al, "would like
 2 to get together in the next couple of days to
 3 strategize re: ways to reach the various
 4 groups, let us know." Of course, the first
 5 part of that, this is about, the e-mail is
 6 about reaching the NLMA, the doctors.
 7 MR. TILLEY:
 8 A. Okay.
 9 COFFEY, Q.C.:
 10 Q. Let them know what the situation is. Mr.
 11 Tilley, at that point in time, in terms of
 12 dealing with the NLMA, making sure that GPs
 13 knew what was going on, or had some sense of
 14 the status of what was going on vis-a-vis
 15 their patients, sitting as the head of--as the
 16 CEO of Eastern Health, whose responsibility
 17 was the coordination of that?
 18 MR. TILLEY:
 19 A. It would be primarily through the vice-
 20 president for medical services, and
 21 undoubtedly, the communication staff of the
 22 two organizations would have been players in
 23 it.
 24 COFFEY, Q.C.:
 25 Q. The organizations being?

Page 16

1 MR. TILLEY:
 2 A. Sorry, the Newfoundland and Labrador Medical
 3 Association and Eastern Health.
 4 COFFEY, Q.C.:
 5 Q. Ms. Barter is the--Lynn Barter was the comm
 6 director for them.
 7 MR. TILLEY:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Here, it seems to suggest in that third last
 11 paragraph that Ms. Bonnell is looking for--or
 12 is encouraging meetings to strategize re: ways
 13 to reach the various groups.
 14 MR. TILLEY:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. Which might include whom? The media, I
 18 presume, ultimately, the NLMA and whomever
 19 else.
 20 MR. TILLEY:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. The public, I suppose, at large. That
 24 suggests that--or seems to suggest that she
 25 was pushing or trying to encourage the others

Page 17

1 involved in this to like look ahead as it
 2 were, to plan ahead. Is that--do you have any
 3 recollection of that?
 4 MR. TILLEY:
 5 A. Well, I think one of the questions that we
 6 talked about at the end of the last day is
 7 that Susan monitored this situation quite
 8 closely. She would have been very supportive
 9 of being as open as we could. There were
 10 times during this process she had offered some
 11 other advice to suggest that maybe the direct
 12 patient contact was the preferred route.
 13 You'll recall when we talked last time about
 14 some strengths and weaknesses of various
 15 options, and I think one of the comments that
 16 stuck with me was that we're probably into a
 17 no-win scenario with some of this, that we'll
 18 always be stuck with the reality that some
 19 will have--agree with her approach and others
 20 will have thought we should have done it
 21 differently.
 22 COFFEY, Q.C.:
 23 Q. And by this point in time, though, by the
 24 summer of '06, what was she pushing for?
 25 MR. TILLEY:

Page 18

1 A. I can only read the memo in front of me here
 2 and imply that let's talk about the requests
 3 that we're getting and see how we might be
 4 able to deal with this.
 5 COFFEY, Q.C.:
 6 Q. And I appreciate, as you and I can read what's
 7 written there, really what my question is
 8 directed at, is that--what's written there,
 9 does that accord with your memory of actually
 10 her general approach at that point in time?
 11 People can sometimes say--write one thing and
 12 say something else, and I'm not suggesting she
 13 did.
 14 MR. TILLEY:
 15 A. Happens many times.
 16 COFFEY, Q.C.:
 17 Q. I'm not suggesting she did at all. So this
 18 seems to suggest here that she is rally the
 19 troops, as it were. "We have to move ahead
 20 with this. The media, the NLMA."
 21 MR. TILLEY:
 22 A. Right, and I confess I'm basing my assumptions
 23 on the letter, as opposed to any direct hand
 24 knowledge that's sort of popping into my mind.
 25 COFFEY, Q.C.:

Page 19

1 Q. Okay, and that's really--there's nothing -
 2 MR. TILLEY:
 3 A. Okay.
 4 COFFEY, Q.C.:
 5 Q. You don't--nothing there kind of jumping out
 6 to you that this is not what I recall. This
 7 is--it's in accordance with what memory you do
 8 have of it?
 9 MR. TILLEY:
 10 A. Like, there's nothing that sticks out in my
 11 mind to suggest that it wouldn't be what she
 12 was presenting.
 13 COFFEY, Q.C.:
 14 Q. Thank you. If we could, please, if we'd bring
 15 up, please, Exhibit P-0481? Page two, please.
 16 Thank you. Now you have already made
 17 reference to an ethics consult?
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Remember that. Could you tell us, please, tell
 22 the Commissioner, please, in terms of the
 23 Health Care Corporation of St. John's and then
 24 Eastern Health, do they have ethicists
 25 actually on staff? How does that work?

Page 20

1 MR. TILLEY:
 2 A. When the organization was created for Eastern
 3 Health, one of the program functional areas
 4 that I was creating was, I can't remember the
 5 exact terminology but pastoral care and
 6 ethics.
 7 COFFEY, Q.C.:
 8 Q. Okay, yes.
 9 MR. TILLEY:
 10 A. And that was driven by the fact that we had
 11 had some exposure to it in the Health Care
 12 Corporation and used it as a body to bounce
 13 ideas off. That body or group would have
 14 consisted of an ethicist or two, and I believe
 15 in both cases, they were either jointly
 16 appointed between Eastern Health/Health Care
 17 Corporation and the University, or all in the
 18 university's camp, but it was clear that we
 19 were able to access them.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. TILLEY:
 23 A. But there really became a growing body of
 24 literature that supported using ethical models
 25 to try to bring some guidance in complex

Page 21

1 issues. My experience with them is that they
 2 don't make the decision. They just help the
 3 people who are trying to make the decision
 4 understand the parameters of it and maybe help
 5 them make the decision in the end.
 6 COFFEY, Q.C.:
 7 Q. That's what I was going to ask you about, the
 8 purpose. From the CEO's perspective, what
 9 your understanding was as to where they fit
 10 within the organization and what usage you
 11 would make of them?
 12 MR. TILLEY:
 13 A. Um-hm. There's a lot of people that you drew
 14 upon in health systems. The direct care
 15 professionals, the support staff, the
 16 ethicists, the pastoral care staff, you know,
 17 you sought opinions and then tried to
 18 assimilate the views to move yourself forward.
 19 COFFEY, Q.C.:
 20 Q. Now is there any policy within the Health Care
 21 Corporation or Eastern Health as to when it
 22 might be mandatory to consult an ethicist?
 23 MR. TILLEY:
 24 A. A mandatory consult doesn't come to mind.
 25 COFFEY, Q.C.:

Page 22

1 Q. Then in a discretionary way, are there any
 2 policies at all, do you know, that you can
 3 recall now off the top of your head, in which,
 4 you know, that refer to ethicists or
 5 utilization of them?
 6 MR. TILLEY:
 7 A. I don't have a recollection of that. Again,
 8 in the--one of the discussions that we had
 9 earlier about what I spend my time on is in
 10 part an attempt to reflect what I see as
 11 important in the organization, and that
 12 equally applies to how we create the
 13 organizational design. So by creating it with
 14 ethics in one of the major functions, it
 15 really would have sent the message that we
 16 value it, and there were occasions that people
 17 would often say to me that they had been
 18 involved in a consult and feel that it was a
 19 constructive process. So it wasn't something
 20 that we were discouraging being used.
 21 COFFEY, Q.C.:
 22 Q. And the practice of consulting ethicists dated
 23 back to the Health Care Corporation days?
 24 MR. TILLEY:
 25 A. Yes.

Page 23

1 COFFEY, Q.C.:
 2 Q. Okay, and it was carried forward into Eastern
 3 Health?
 4 MR. TILLEY:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. With respect to this ER/PR issue, do you know
 8 when it first came up then, who's instance it
 9 came up?
 10 MR. TILLEY:
 11 A. I can't recall the precise time. I do recall
 12 more specifically discussions that the ethics
 13 group had with respect to how can we or how
 14 should we deal with those people who are now
 15 deceased, but may or would have had one of
 16 these ER/PR tests performed, and trying to get
 17 some advice in terms of what options might be
 18 appropriate to treat those. That seems to me
 19 to be occurring at some point in time later.
 20 I don't recall ethics, an ethics consult in
 21 the summer of '05.
 22 COFFEY, Q.C.:
 23 Q. Yeah. Summer or fall of '05, I take it. You
 24 know, reflecting back upon it now are you able
 25 to tell the Commissioner, and looking back on

Page 24

1 it now, why it didn't come up?
 2 MR. TILLEY:
 3 A. I can't elaborate. Not only I can't
 4 elaborate, I just, I don't have any
 5 recollection of it. I think that this
 6 organization can be, not only can be but has
 7 been looked at from its ethical support as
 8 fairly prominent in the country, and Dr.
 9 Singleton, in particular, who heads up that
 10 service, has been consulted quite broadly, so
 11 it certainly wouldn't have been because we
 12 didn't have the expertise available. You just
 13 jump into this situation, you got information
 14 coming from multiple sources, you felt that
 15 you're doing the right thing by stopping the
 16 testing, by making a decision to send
 17 everybody out or retest people, so in your
 18 heart and soul you believe that you're doing
 19 the right thing. The question that I then
 20 ponder is what would be the ethics question at
 21 that point in time. I believe the ethicists
 22 would have said their support would have been
 23 lead to retesting. The question about the
 24 speed at which the retesting was done I don't
 25 think would have lent itself to an ethics

Page 25

1 question. The question about the inquiries of
 2 the media, possibly something to be discussed
 3 there. And, you know, their recommendations,
 4 it's their way of thinking that becomes the
 5 asset.
 6 THE COMMISSIONER:
 7 Q. Sorry.
 8 COFFEY, Q.C.:
 9 Q. Yes, go ahead.
 10 THE COMMISSIONER:
 11 Q. Mr. Coffey, for doing it in unison again, but
 12 I'm just wondering whether or not the Ethics
 13 and Pastoral Care, was it the title of the
 14 department?
 15 MR. TILLEY:
 16 A. Yes.
 17 THE COMMISSIONER:
 18 Q. Or Pastoral Care and Ethics, I can't remember.
 19 MR. TILLEY:
 20 A. Yes.
 21 THE COMMISSIONER:
 22 Q. Does that--is that department seen in the same
 23 way, we used the analogy last week of the IT
 24 department, they're there to help us if we
 25 need them, but we figure out whether we need

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1 to call them?
 2 MR. TILLEY:
 3 A. Yes. Well, the IT is both a sought after and
 4 a driver in and of itself. And probably you
 5 can say the same about the pastoral care
 6 ethics piece, pastoral care obviously there to
 7 be supporting patients. But the ethical piece
 8 of pastoral care, there are probably others
 9 that could speak in a more informed way about
 10 this, but it's for the most part, as I
 11 understand it, available when called.
 12 THE COMMISSIONER:
 13 Q. Okay. And can you tell me whether or not that
 14 division is used primarily on the research
 15 side or are there activities primarily in it
 16 consulting with those who might be dealing
 17 with patients on a direct kind of level?
 18 MR. TILLEY:
 19 A. Both, Madam Commissioner. They certainly
 20 would be involved in the research part in
 21 terms of looking at the efficacy of what is
 22 being proposed here and as part of a merit
 23 review panel, I suspect. But they have been
 24 drawn into specific over the years and that's
 25 usually been a process whereby they are

Page 27

1 talking to the direct care providers, maybe
 2 the family, maybe the patient, to try to
 3 rationalize some very complex issues.
 4 THE COMMISSIONER:
 5 Q. Okay. They might also, which perhaps is a
 6 mixture of pastoral care and ethics, but they
 7 might also be called upon to assist perhaps
 8 family members who are having to make
 9 difficult decisions in the aspect of health
 10 care, would they?
 11 MR. TILLEY:
 12 A. I think that would be a fair assessment, too,
 13 yes.
 14 THE COMMISSIONER:
 15 Q. All right. Thank you. Sorry, Mr. Coffey,
 16 I've done it again.
 17 COFFEY, Q.C.:
 18 Q. Thank you, Commissioner. So in respect of
 19 certainly the still living patients, I take it
 20 that as best you can recall the idea of doing
 21 ethics consult in any regard didn't come up?
 22 MR. TILLEY:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. Just didn't come up.

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1 MR. TILLEY:
 2 A. I have no recollection of even it being
 3 referenced.
 4 COFFEY, Q.C.:
 5 Q. Yeah. In terms of that what about in
 6 relation, in particular, to the issue of
 7 disclosure about the existence of a problem or
 8 perceived problem and, you know, what was to
 9 be done about it?
 10 MR. TILLEY:
 11 A. No, I don't have any recollection of that.
 12 COFFEY, Q.C.:
 13 Q. Didn't come up. Reflecting upon it now,
 14 looking back on it now, might the issue of
 15 disclosure have had ethical aspects to it?
 16 MR. TILLEY:
 17 A. A lot of what's done in this business has an
 18 ethical dimension to it. And with an issue
 19 like disclosure that we were clearly
 20 struggling with it may not have changed the
 21 outcome, but I don't think we were adverse to
 22 not seeking other opinions. And maybe
 23 somebody did along the way, but it's certainly
 24 it's not something that's come up that I was
 25 directly involved in.

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1 COFFEY, Q.C.:

2 Q. Do you know, if we could just look at Exhibit

3 P-0041. Now, this is a "Pastoral Care and

4 Ethics Department, Eastern Health" is the

5 heading. It's May 29th, 2006. The 6th is

6 handwritten over the 7, but I have no reason

7 to believe it was actually 2007. It says

8 2006, to Dr. Robert Williams from Rick

9 Singleton "Re: Ethics Consult, ER/PR." And

10 the text then goes on for more than a page, or

11 approximately a page, just over a page about

12 this matter. Was this ever, this document

13 ever brought to your attention or the

14 information contained in it?

15 MR. TILLEY:

16 A. You think it was '06 or so -

17 COFFEY, Q.C.:

18 Q. This would have been '06. I mean, unless

19 there's some--Mr. Simmons is not correcting

20 me, so.

21 MR. TILLEY:

22 A. No. I don't recall it being forwarded to me.

23 At a later point I remember one evening

24 calling Dr. Singleton, who actually

25 facilitated this session, to hear more

Page 30

1 firsthand as to what the discussions and how

2 the process worked.

3 COFFEY, Q.C.:

4 Q. Okay. Could you tell the Commissioner what

5 you recall about that?

6 MR. TILLEY:

7 A. That was just some time later when the issue

8 came up with regards to the deceased, I

9 believe.

10 COFFEY, Q.C.:

11 Q. Um-hm.

12 MR. TILLEY:

13 A. And I don't profess to have a good

14 understanding of it, now that I think back at

15 it, but he did talk about how they went to

16 assess this particular situation and how in

17 the end they made a recommendation that for

18 the families of any patients who were deceased

19 but had also been impacted or could

20 potentially be impacted by a changed test

21 result, that they, or we shouldn't be

22 presumptuous to think that those families want

23 that information or are equipped to deal with

24 that information. So the recollection that I

25 have is that the families would be offered an

Page 31

1 opportunity to request that information if

2 they chose to do so.

3 COFFEY, Q.C.:

4 Q. Do you recall whether or not Mr. Singleton

5 told you that he had written a report on this?

6 MR. TILLEY:

7 A. When I called him that evening, and I think I

8 got him at home, my recollection is is that he

9 said, "I need to get my computer," so he had

10 some document he was working from, but.

11 COFFEY, Q.C.:

12 Q. Okay.

13 MR. TILLEY:

14 A. Beyond that.

15 COFFEY, Q.C.:

16 Q. So I take it there was no system in place

17 within Eastern Health at the time to insure

18 that any report that he did, such as this

19 ethics consult document we have here, would

20 flow up through Dr. Williams to you in

21 relation to an issue like ER/PR?

22 MR. TILLEY:

23 A. Right. I believe the process would be is that

24 a report would go to the individuals who had

25 initiated the request. So those individuals

Page 32

1 that are present, I suspect, I suppose that

2 they would have been the individuals that

3 would have gotten that. I can't speak to the

4 communications that Dr. Singleton may have had

5 with Dr. Williams.

6 COFFEY, Q.C.:

7 Q. Okay. But the process did not, there was no

8 process in place, like if Dr. Williams in this

9 context in terms of, you know, managing the

10 ER/PR issue on behalf of Eastern Health, from

11 your perspective, the fact that he had gotten

12 an ethics consult report in writing concerning

13 the deceased and how disclosure should be

14 handled in relation to them, formal process or

15 even informal process in place did not insure

16 or were not meant to insure that it would come

17 to your attention as CEO?

18 MR. TILLEY:

19 A. I don't recall, no.

20 COFFEY, Q.C.:

21 Q. No. Do you recall how it was that you had to

22 contact Dr. Singleton as opposed to Dr.

23 Williams telling you about the result?

24 MR. TILLEY:

25 A. It seems to me when I made the contact Dr.

Page 33

1 Williams was, it was later.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. So Dr. Williams may have retired.
 6 COFFEY, Q.C.:
 7 Q. Oh, retired, okay.
 8 MR. TILLEY:
 9 A. And I just remember an evening calling just
 10 probably trying to get as much of an
 11 appreciation for the issue, just call him
 12 directly.
 13 COFFEY, Q.C.:
 14 Q. And from your perspective the purpose then of
 15 an ethics consult is what?
 16 MR. TILLEY:
 17 A. Well, it was to provide sort of an analysis of
 18 a particularly complex problem and to help put
 19 some guidance that the decision makers might
 20 use to make, reaffirm an existing decision or
 21 make changes to it.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 MR. TILLEY:
 25 A. It wouldn't be a decision that they themselves

Page 34

1 could make, but obviously their opinion would
 2 be sought.
 3 COFFEY, Q.C.:
 4 Q. The ethicists wouldn't decide the issue, they
 5 would just--that's what you're saying?
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. They're the ones who would not decide the
 10 issue -
 11 MR. TILLEY:
 12 A. Right.
 13 COFFEY, Q.C.:
 14 Q. It would be presumably in this context Dr.
 15 Williams, the requester or initiator?
 16 MR. TILLEY:
 17 A. That the recommendation would be made back,
 18 yes, that's correct.
 19 COFFEY, Q.C.:
 20 Q. Do you recall--so I take it then if you had to
 21 contact Dr. Singleton about this, you have no
 22 memory of Dr. Williams actually bringing this
 23 to your attention and you and him discussing
 24 about how Eastern Health would handle the
 25 deceased?

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1 MR. TILLEY:
 2 A. There's not a moment that's sort of coming to
 3 mind. We did talk about deceased. I'm not
 4 sure whether it was Dr. Williams and I or just
 5 a group of people, but that's as far as I can
 6 recollect.
 7 COFFEY, Q.C.:
 8 Q. The--if we look at this, now present here, or
 9 at least noted to be present is Dan Boone, a
 10 lawyer; Heather Predham, risk management; Dr.
 11 Joy McCarthy, oncologist; Dr. D. Cook,
 12 laboratory; Dr. N. Denic, laboratory; Dr.
 13 Natalie Bandeau, intensives and ethicist; and
 14 Rick Singleton, a facilitator. From your
 15 perspective as the CEO of Eastern Health the
 16 composition of the group, whose responsibility
 17 was it to decide who would form the group that
 18 would discuss the matter?
 19 MR. TILLEY:
 20 A. I can't answer that one.
 21 COFFEY, Q.C.:
 22 Q. Okay. Then the issue is framed there in a
 23 number of paragraphs. In the third paragraph
 24 of the text it says, "Important facts to the
 25 history and understand of this case include

Page 36

1 the following: There were no mistakes or
 2 technical errors at the root of this problem.
 3 It is impossible to know if any specific--in
 4 any specific case if the outcome for any
 5 individual patient would have been different.
 6 Intervention for post-menopausal women had
 7 positive impact by lengthening life in 47
 8 percent of patients treated." So, you know,
 9 the assertion or statement that there were no
 10 mistakes or technical errors at the root of
 11 this problem, the problem being the situation
 12 involving ER/PR retesting and the
 13 circumstances that occasioned the retesting
 14 and the results, the idea that, or the
 15 statement, the assertion that "There were no
 16 mistakes or technical errors at the root of
 17 this problem," from your perspective as the
 18 CEO, okay, of Eastern Health.
 19 MR. TILLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. As of the summer of 2006, August, 2006, had
 23 you any reason to believe that that was an
 24 accurate statement, that there were no
 25 mistakes or technical errors at the root of

Page 37

1 this problem?
 2 MR. TILLEY:
 3 A. Well, I have to say that for the whole period
 4 of time in my mind I did never, I have never
 5 felt comfortable that we have gotten to the
 6 definitive issues here. I know that the peer
 7 reviews specifically reference issues with
 8 regards to the slices and so on, but I was not
 9 able to reconcile that with the discussions
 10 that I was having with some of the experts in
 11 the country--experts in the country.
 12 COFFEY, Q.C.:
 13 Q. Okay.
 14 MR. TILLEY:
 15 A. Dr. Pritzker. I was not able to reconcile it
 16 when there were no standards in the country
 17 and therefore whether the staff were being
 18 measured now on a standard that was in place
 19 today but not in place in 2007. This is when
 20 we started using more and more the issue of
 21 the systems problem, and the system problem
 22 being more than attributable to any particular
 23 person, but a whole combination of factors.
 24 And I don't only mean factors that are within
 25 the laboratory in St. John's itself, I really

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1 look to the other parties in this in the
 2 national system and the extent to which they
 3 did or did not support some better clarity
 4 around this particular issue. So -
 5 THE COMMISSIONER:
 6 Q. Frankly, and perhaps this is just the time to
 7 just divert for a second in this, because I've
 8 always had a problem as to what "a systems
 9 problem" meant in this context.
 10 MR. TILLEY:
 11 A. Yes.
 12 THE COMMISSIONER:
 13 Q. Was it consistently used in the same way by
 14 your organization?
 15 MR. TILLEY:
 16 A. Typically, yes.
 17 THE COMMISSIONER:
 18 Q. Okay.
 19 MR. TILLEY:
 20 A. But it meant to refer to situations that were
 21 beyond one particular person. And here we had
 22 clearly a report which looked at a group of
 23 people and how they performed particular
 24 tasks, but over that same period of time in
 25 which they were looking at that some of the

Page 39

1 practices in the country were starting to
 2 evolve, the standards that existed today
 3 weren't the same standards, if at all, that
 4 existed in the late '90s. So that's typically
 5 when we refer to an issue as being something
 6 much bigger than a particular person.
 7 THE COMMISSIONER:
 8 Q. Okay. But you can understand, perhaps, that a
 9 systems problem by that definition can mean
 10 that two people in your lab did something that
 11 resulted in inaccurate tests.
 12 MR. TILLEY:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. For a lot of people, or it can mean that many,
 16 many, many errors or mistakes not attributing
 17 any mental intention to this at all or a piece
 18 of machinery might be the cause of the--what
 19 I'm saying is your definition of a systems
 20 problem is so wide that it really means
 21 nothing other than we cannot attribute the
 22 cause of this problem to one person?
 23 MR. TILLEY:
 24 A. Right. Well, first of all just to say if it
 25 was two people and we found two people were

Page 40

1 inappropriately applying standards and
 2 knowingly, then that would be an issue. But
 3 the use of a system problem is one that seems
 4 to be used fairly wide spread in the health
 5 care community, and it's meant to imply when
 6 there appears to be, you know, multiple
 7 factors that could, in fact, be leading to a
 8 particular outcome. So you mentioned
 9 technology, yes, technology could possibly be
 10 a part of that. The Ventana system I know has
 11 been talked about some as the system.
 12 Certainly the system wasn't intended to be
 13 referring just the Ventana. There's another
 14 analogy that you may have heard in the health
 15 system, it's called the "Swiss cheese
 16 approach."
 17 THE COMMISSIONER:
 18 Q. Um-hm.
 19 MR. TILLEY:
 20 A. And there are, the block of Swiss cheese is
 21 meant to imply all of the different parts that
 22 are in place that together result in a test or
 23 a treatment being performed. When you get a
 24 problem, it's usually because the holes in the
 25 Swiss cheese have lined up so that you can see

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1 from one side to the other, because more often
 2 in the health system there are so many things
 3 that sort of serve as a backup goalie to any
 4 issues that may arise so the Swiss cheese was
 5 designed to talk about how systems can
 6 sometimes fail if, in fact, the parts of the
 7 system that are not fail proof happen to line
 8 up with the other part of the system that's
 9 also not fail proof, etcetera, etcetera. So
 10 in the health system we do tend to look at
 11 these things very broadly. And with the
 12 organization that I became involved with, the
 13 Canadian Patient Safety Institute, it talked
 14 about that quite extensively. It talked about
 15 how is it that so many errors are seemingly
 16 occurring in health care organizations but
 17 never get reported and why, and hence, this is
 18 one of the issues which--this is, hence, why
 19 issues like blame-free culture and no-fault
 20 insurance became items that had been talked
 21 about quite extensively by them with the
 22 belief that through those couple of extra
 23 parameters we may be in a position where
 24 people are more likely to come forward if
 25 there's a problem that they see in the system

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1 that could potentially result in an adverse
 2 event or if they have, in fact, been involved
 3 in an adverse event themselves and the
 4 incentive has got to be there to come forward
 5 immediately in the event that can be rectified
 6 immediately or measures can be put in place to
 7 stop it from occurring again.
 8 THE COMMISSIONER:
 9 Q. Mr. Tilley, it seems to me that classifying a
 10 problem as a systems problem without anything
 11 further can be a way of doing a number of
 12 things: one is a way of not answering the
 13 question; two is a way of saying it's so
 14 complicated, we're not going to try to answer
 15 the question; and three is that's the best way
 16 of describing what we have found and that is
 17 that so many things are contributing to the
 18 problem. But if I was reading the paper
 19 tomorrow and read that Eastern Health had said
 20 this is a systems problem, I wouldn't know
 21 which one you were talking about.
 22 MR. TILLEY:
 23 A. Yes. Well, typically, Commissioner, it would
 24 be the third one. There are multiple factors
 25 that could, in fact, be attributing to this

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1 and I -
 2 THE COMMISSIONER:
 3 Q. And would you use system's problems when you
 4 were communicating to patients about what
 5 caused the problem? When the patient who had
 6 been informed you have a change on retest and
 7 we now believe that you are a positive;
 8 whereas at prior times we thought you were
 9 not, either it's too late to give you
 10 Tamoxifen or some other equivalent kind of
 11 drug that is appropriate for your particular
 12 case, or we're now going to put you on it, and
 13 the patient says to you, "What caused this?
 14 Why am I in that situation?" Would the
 15 response be, "It was a systems problem?"
 16 MR. TILLEY:
 17 A. I wasn't involved in any of those direct
 18 contacts, so I really can't say if that was
 19 the answer given or not.
 20 COFFEY, Q.C.:
 21 Q. If I could, well you're the CEO of the
 22 organization, wouldn't you make it your
 23 business to know what people, you know, your
 24 employees are telling these patients?
 25 MR. TILLEY:

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1 A. I had a lot of confidence in the people that
 2 were talking to them; in fact, they were
 3 people that were well known for their ability
 4 to be able to empathize with patients and
 5 speak to them, so I had to--and I did rely on
 6 their discussions. I would be surprised if
 7 they would not have had some sort of core
 8 communications plan so that they were all
 9 speaking consistently.
 10 COFFEY, Q.C.:
 11 Q. But what was it they were telling them, I
 12 mean, in terms of that?
 13 MR. TILLEY:
 14 A. I can't speak to that, I'm sorry.
 15 COFFEY, Q.C.:
 16 Q. So never knew first nor last what the core
 17 message was, as to what Eastern Health's
 18 representatives were telling patients -
 19 MR. TILLEY:
 20 A. Right.
 21 COFFEY, Q.C.:
 22 Q. - about the reason for the change.
 23 MR. TILLEY:
 24 A. Right, that was not something that I got
 25 myself involved in.

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1 COFFEY, Q.C.:

2 Q. Who should we ask about that then?

3 MR. TILLEY:

4 A. Well certainly the people who were directly

5 doing it would be advantageous and I suspect

6 the people in quality leading there, would be

7 good people to be able to provide some greater

8 insight.

9 COFFEY, Q.C.:

10 Q. And Dr. Williams, perhaps?

11 MR. TILLEY:

12 A. Well he's another level up, but certainly I'm

13 sure he would be more familiar with it than I

14 am.

15 COFFEY, Q.C.:

16 Q. If we could, please, while we're on this

17 topic, Exhibit P-0047 please? Now, Mr.

18 Tilley, this is the report of Trish

19 Wegrynowski dated November 9th, 2005. We've

20 already looked at Dr. Banerjee's October 17th

21 report, or at least portions of it. You told

22 the Commissioner that you do recall having

23 read Dr. Banerjee's report. Do you know if

24 you ever actually saw Trish Wegrynowski's

25 report? This is the fall of '05 report.

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1 MR. TILLEY:

2 A. Yes. I thought I had, again it would have

3 been in Dr. Williams' office to get the copy

4 that he had and would have thumbed through

5 them.

6 COFFEY, Q.C.:

7 Q. Now, this report is 20 pages long and it has

8 42 recommendations. Sir, Ms. Wegrynowski's

9 report and Dr. Banerjee's reports, they were

10 created in the fall of '05. What's the latest

11 by which you would have seen them? Would you

12 have seen them before 2006?

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Do you know if there would be any actual

17 record made of the fact that you had read

18 them?

19 MR. TILLEY:

20 A. I wouldn't know.

21 COFFEY, Q.C.:

22 Q. Any understanding how you sometimes people

23 have to, kind of, you know, check off that

24 they've--or you don't recall if there was any

25 such practice here.

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1 MR. TILLEY:

2 A. Right, sign off.

3 COFFEY, Q.C.:

4 Q. So you had understood that they had limited

5 circulation, those two reports, correct?

6 MR. TILLEY:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. Now looking back at Exhibit P-0041, could you

10 tell us please who you got the understanding

11 from that there were no mistakes or technical

12 errors at the root of the problem, where did

13 you get that?

14 MR. TILLEY:

15 A. This is the report of the -

16 COFFEY, Q.C.:

17 Q. Well you were saying, because I had read you

18 this portion of Dr. Singleton's -

19 MR. TILLEY:

20 A. Right.

21 COFFEY, Q.C.:

22 Q. - memo and "there were no mistakes or

23 technical errors at the root of this problem"

24 and you were elaborating on that for the

25 Commissioner, I'm asking you who gave you that

Page 48

1 understanding?

2 MR. TILLEY:

3 A. Well I read the reports myself. There were,

4 obviously, errors--sorry, I didn't read

5 anything which said there was specific errors

6 made. What I saw was issues with regards to

7 things not being done appropriately and then

8 where improvements could be made.

9 COFFEY, Q.C.:

10 Q. Could we bring up exhibit, please, P-0046?

11 Page 4. Mr. Tilley, so under the heading

12 "Conclusions about the Reasons for Test

13 Failure" although they're numbered seven,

14 there are actually six categories listed then

15 and then "Other System Flaws Observed" and

16 there are seven listed there. So can you tell

17 the Commissioner, please, having read that and

18 I appreciate you didn't understand it all,

19 you've explained that.

20 MR. TILLEY:

21 A. Uh-hm.

22 COFFEY, Q.C.:

23 Q. But what you did understand of it, you took

24 from this what, in terms of whether there had

25 been any mistakes or technical errors at the

Page 49

1 root of the problem?

2 MR. TILLEY:

3 A. Well there were a lot of issues referenced. I

4 didn't feel in my own mind that there was a

5 definitive identification of the problem, and

6 I made that judgment based upon the

7 discussions that I was or the information that

8 I was learning about with regard to the lack

9 of national standards.

10 COFFEY, Q.C.:

11 Q. Who are you having that with?

12 MR. TILLEY:

13 A. Well, I have been having that with Dr.

14 Pritzker. I would have also been privy to the

15 literature that was bound and trying to put

16 this in some context as to is what's happening

17 here--and I think I may have actually stated

18 it that way, this way in some correspondence,

19 is it something that this organization is

20 being a part of, of a larger issue, or is it

21 something specific to this particular issue?

22 It was clear to me -

23 COFFEY, Q.C.:

24 Q. Who did you ask about that? See, this is what

25 I'm trying to focus on. You talked to Dr.

Page 50

1 Pritzker in a general way, you've got no

2 reason to believe Dr. Pritzker actually read

3 either Dr. Banerjee's or Ms. Wegrynowski's

4 reports?

5 MR. TILLEY:

6 A. No, you're correct.

7 COFFEY, Q.C.:

8 Q. So whatever Dr. Pritzker did or didn't know,

9 you had no reason to believe he actually -

10 MR. TILLEY:

11 A. No, you're right.

12 COFFEY, Q.C.:

13 Q. - had listed those. So who else did you

14 actually speak to about who knew what was in

15 the reports about the reasons for whether

16 there were any mistakes or technical errors at

17 the root of this problem?

18 MR. TILLEY:

19 A. Well the only people that I could have talked

20 to about the reports per se would have been

21 the people who had received copies of them.

22 COFFEY, Q.C.:

23 Q. Do you recall speaking to any of them about

24 this issue?

25 MR. TILLEY:

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1 A. I can't imagine that those issues wouldn't

2 have come up in the discussions that we would

3 have had with the Doctors Cook or probably

4 Williams.

5 COFFEY, Q.C.:

6 Q. Did either of them tell you there were no

7 mistakes or technical errors at the root of

8 this problem?

9 MR. TILLEY:

10 A. I don't recall that line specifically.

11 COFFEY, Q.C.:

12 Q. Well did they even give you the sense of that?

13 Did either of those two gentlemen actually

14 suggest to George Tilley that there were no

15 mistakes or technical errors here?

16 MR. TILLEY:

17 A. Not that I can recall.

18 COFFEY, Q.C.:

19 Q. Now, Mr. Tilley, on this point, we've heard

20 from, the Commissioner has heard from Joan

21 Dawe who is the Chair of the Board as to--

22 she's told the Commissioner what she

23 understood, rightly or wrongly, the impression

24 she had or was left with at the time as to the

25 nature of the problem and she attributed most

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1 of that to either a conversation she had with

2 you or Dr. Williams, presentations by either

3 of you, particularly Dr. Williams, I believe.

4 The sorts of things that are listed in Dr.

5 Banerjee's October report and Trish

6 Wegrynowski's November report, okay? How

7 widely known were they within the

8 organization, after the reports?

9 MR. TILLEY:

10 A. Well, all I can tell you or speak to is the

11 individuals who actually had a copy of the

12 reports and were then tasked with following up

13 on the recommendations. I can speak to the

14 fact that Dr. Williams did speak to those

15 reports at board meetings and quite lengthy

16 presentations, but I can't speak beyond that.

17 COFFEY, Q.C.:

18 Q. If we could, please, look at Exhibit P-0103?

19 Now this is two e-mails, sir. One is at the

20 bottom of the page, the longer one, is from

21 Patricia Pilgrim, Monday, August 7th, 2006,

22 2:42 p.m. to Sharon Smith and Heather Predham,

23 copied to Susan Bonnell, Leona Barrington and

24 Dianne Smith. The subject is "ER/PR Review

25 Process, The Status" and in this there's a

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1 two-page e-mail, single spaced by Patricia
 2 Pilgrim and effectively sets out, I gather
 3 from her perspective what the status of this
 4 matter was at the time. Now Ms. Pilgrim at
 5 that point in time, what was your
 6 understanding in the middle of the summer of
 7 '06 as to what the nature of her involvement
 8 in it was?
 9 MR. TILLEY:
 10 A. She was a chief operating officer which would
 11 have been reporting to me. She would have
 12 been a part of the executive team of Eastern
 13 Health and the connection specifically to this
 14 is that she would executive oversight
 15 involvement with the cancer care program.
 16 COFFEY, Q.C.:
 17 Q. And what, if any, management role did she have
 18 in this or co-ordination role, in terms of
 19 your understanding at the time?
 20 MR. TILLEY:
 21 A. I'm sure knowing her that she would have been
 22 there to just offer her support and guidance
 23 and if there is issues that the cancer care
 24 program were following up on, to be working
 25 with them in that regard.

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1 COFFEY, Q.C.:
 2 Q. And at this point in time, I'm just going to
 3 ask you to look down through this, I'm not
 4 going to--because it's fairly lengthy, I'm not
 5 going to read it to you, but there is a number
 6 of subject matters, she says, she just begins
 7 "Hello everyone, just so we're all on the same
 8 page with the various bits and pieces of this
 9 issue" and she continues, "This is my summary,
 10 understanding of the status of several issues"
 11 and the kind of headings are "Ensuring the
 12 oncologists are kept in the loop. Mrs. L in
 13 question need to follow up with here to
 14 clarify the message about the cancer
 15 diagnosis, other possible DCIS cases to be
 16 confirmed, communicating with other key
 17 stakeholders, notification of the retro
 18 converters" and then "So having said all
 19 this", towards the bottom of the second page,
 20 "here is the proposed plan." She talks about
 21 having Heather notified Larry Alteen and Ken
 22 Jenkins of the cases in their area and "Pat
 23 notifying Dr. Williams that we do not think we
 24 should be notifying these patients this month,
 25 but by the end of the month." And finally

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1 "touching base with Terry Gulliver regarding
 2 the current broadcast." So, at that point in
 3 the summer of '06, how much attention were you
 4 really paying to this? You've written the
 5 article to "The Current"?
 6 MR. TILLEY:
 7 A. Yes. It wasn't an issue that I spent a lot of
 8 time on at that time.
 9 COFFEY, Q.C.:
 10 Q. Okay, and that's what I--okay, so that was--it
 11 was being left to Dr. Williams to manage and
 12 Patricia Pilgrim, et cetera?
 13 MR. TILLEY:
 14 A. You know, I was involved in this to try to
 15 help as best I can in a very difficult
 16 situation, but it's not something that I could
 17 spend all of my time doing. But certainly
 18 would have been there if in fact they had
 19 asked me to be involved.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 MR. TILLEY:
 23 A. And I was able to -
 24 THE COMMISSIONER:
 25 Q. Were you on vacation when this took place?

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1 COFFEY, Q.C.:
 2 Q. And some of this, Commissioner, he did say he
 3 drafted the -
 4 MR. TILLEY:
 5 A. I had a very difficult time trying to grab a
 6 few days in '05 and '06.
 7 THE COMMISSIONER:
 8 Q. I do remember the conversation about the
 9 drafting having been done while you were in
 10 your livingroom and somebody else was on the
 11 other end of the phone, as it were.
 12 MR. TILLEY:
 13 A. That was the year before.
 14 COFFEY, Q.C.:
 15 Q. No, this is '06.
 16 MR. TILLEY:
 17 A. You're right.
 18 THE COMMISSIONER:
 19 Q. And that was the same month, so I was just
 20 wondering whether when this particular
 21 document had been prepared, you in fact were
 22 in the organization or were off on a holiday
 23 somewhere or trying to even get back to your
 24 den, whatever.
 25 COFFEY, Q.C.:

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1 Q. Mr. Tilley, if I could on that point,
 2 Commissioner and I appreciate in '05, '06 for
 3 you, Mr. Tilley, things were probably fairly
 4 hectic. When you were aware from the office,
 5 you know, trying to catch a day here or there
 6 of downtime, I appreciate Ms. Bonnell tracked
 7 you down for "The Current", who was in charge
 8 when you were away, from your perspective?
 9 And I ask that in the context of, remember you
 10 had been the senior vice-president at one
 11 point, so was there any equivalent?
 12 MR. TILLEY:
 13 A. No, there wasn't. I made a judgment call at
 14 the time that I would not have a senior
 15 person. The team that I had recruited, a
 16 number of them had been chief executive
 17 officers in their previous organizations. And
 18 I know that when I was designated as the
 19 senior vice-president in the Health Care
 20 Corporation days, that brought with it some
 21 friction may be overstating it, but there
 22 wasn't unanimity that that was needed and how
 23 that decision was being made. So I made a
 24 decision that I wouldn't put that in place for
 25 this particular organization. Having said

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1 that, in--I'm not sure if it was late 2006 or
 2 early 2007, I was beginning to have
 3 discussions with my senior team to say I can't
 4 do all of this and I need somebody who can
 5 take a more senior role, and as a consequence,
 6 I was in the process of meeting with several
 7 of them to get their ideas as to how I might
 8 go about doing that.
 9 COFFEY, Q.C.:
 10 Q. And how far did that -
 11 MR. TILLEY:
 12 A. I didn't get to do it.
 13 COFFEY, Q.C.:
 14 Q. Okay, but I take it then by that point in
 15 time, based upon the sheer workload and
 16 burden, that you at least were prepared to
 17 reconsider -
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. - having a chief Lieutenant, as it were.
 22 MR. TILLEY:
 23 A. That's right.
 24 COFFEY, Q.C.:
 25 Q. And from an operational perspective, what

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1 about peoples' feelings might be, I mean,
 2 looking back on it, do you think--would you
 3 have pressed for it if you'd stayed on?
 4 MR. TILLEY:
 5 A. Yes, I would have because I had reached a
 6 point where, you know, I was down to a couple
 7 of choices and I was prepared to make one of
 8 those.
 9 COFFEY, Q.C.:
 10 Q. Okay. If we could, please, Exhibit P-0422,
 11 Commissioner?
 12 THE COMMISSIONER:
 13 Q. Mr. Tilley, before we leave (inaudible -
 14 microphone not turned on) conversations being
 15 as they are often when there's no chief
 16 lieutenant, somebody actually does it.
 17 MR. TILLEY:
 18 A. Yes.
 19 THE COMMISSIONER:
 20 Q. So, who would have done that in your
 21 organization because somebody usually steps up
 22 to the plate and when you're away, really
 23 handles things, even though officially they're
 24 not that position.
 25 MR. TILLEY:

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1 A. Yes, you're right, Madam Commissioner.
 2 THE COMMISSIONER:
 3 Q. Was there a consistent person in your
 4 organization?
 5 MR. TILLEY:
 6 A. There wouldn't have been a consistent person.
 7 The organization was so diverse and it's so
 8 many parts to it that what I would essentially
 9 asked to be done is that if the issue was one
 10 that was emanating from one of the rural areas
 11 where there was a designated chief operating
 12 officer, then I would expect that person to
 13 resolve the issue. And if the issue was being
 14 one that involved the city of St. John's with
 15 respect to access, then I would expect the
 16 chief operating officer of that group to do
 17 that. And in many ways, that worked. I knew
 18 that if there was a decision that they were
 19 looking for input, they would call any other
 20 member of the executive team to help them make
 21 that decision.
 22 What I was finding it difficult with is
 23 that as a new organization, I wanted to make
 24 sure that I was working with them in all the
 25 issues that they were dealing with, but what

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1 became more and more problematic is that I
 2 just physically couldn't keep the arrangement
 3 in place without having somebody who either
 4 took it on off the corner of their desk, as I
 5 had done in the previous health care
 6 corporation days because I had quite an
 7 extensive mandate as a vice president. And it
 8 just meant that when the CEO was gone, I was
 9 the person to go to if there ever was a
 10 conflict in decision making. In some
 11 organizations they have people who do not have
 12 day-to-day workloads, but sort of, second in
 13 command and have all of the level of executive
 14 report to them who then reports to the chief
 15 executive officer. So, you'll find a
 16 variation throughout the country.

17 So, I was very much either naively or
 18 very wisely keeping my hands, as much as I
 19 could in the day-to-day operations because
 20 that was important to me as we built a new
 21 organization and they had appreciation for
 22 some of the issues that were important to me.
 23 Well, at the same time as a CEO being
 24 available to deal with outside groups because
 25 most CEOs will tell you that they spend the

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1 bulk of their time facing outwards as opposed
 2 to inwards.

3 THE COMMISSIONER:
 4 Q. You were at 0422, Mr. Coffey.

5 COFFEY, Q.C.:
 6 Q. Thank you, Commissioner. Mr. Tilley, I'm
 7 going to move into the fall of 2006 and--oh,
 8 just before, but on that point, ER/PR in this
 9 context, who would the individual have been?
 10 I take it -

11 MR. TILLEY:
 12 A. The fall of 2006.

13 COFFEY, Q.C.:
 14 Q. If you had to name somebody, as the
 15 Commissioner said, -

16 MR. TILLEY:
 17 A. Right, well I'm thinking now which, you know,
 18 it's another challenge that I've faced, Dr.
 19 Williams had retired.

20 COFFEY, Q.C.:
 21 Q. I wonder, if you could tell the Commissioner
 22 then how that unfolded?

23 MR. TILLEY:
 24 A. This is like a spider's web, trying to figure
 25 all the pieces and remember them. But Dr.

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1 Williams and I had talked at the time that I
 2 was recruiting an executive team for Eastern
 3 Health. And in the end, he was interested in
 4 staying on, not indefinitely, but he thought
 5 he could--well, I thought he could help me
 6 restructure this very large organization. And
 7 Dr. Williams has an immense amount of
 8 credibility with physicians in this province.
 9 Being a deputy minister, as assistant deputy
 10 minister, he was simply well respected and
 11 having that person in the organization, I felt
 12 was advantageous.

13 The second thing that we talked about
 14 which, I think, he found rather enticing was
 15 that in addition to liaising with clinical
 16 chiefs and sort of, being the secretariat for
 17 the Medical Advisory Committee, that I invited
 18 him to take on the quality portfolio. Madam
 19 Commissioner, we talked about why we have that
 20 sort of support department, but the reason
 21 that I had thought out Dr. Williams in that
 22 capacity was an interest that I had in
 23 bringing the medical quality piece along
 24 further. I had talked to a number of
 25 organizations throughout Canada trying to get

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1 a handle on the level of development of
 2 medical quality. And to be quite frank with
 3 you, it was all over the place. And there
 4 were very few organizations, in fact, none
 5 that gave me a sense that they were very far
 6 ahead of anybody else, but Dr. Williams had
 7 that interest.

8 So, he was brought in enticed in some
 9 ways to do that, but clearly he wasn't going
 10 to be around indefinitely. He's in his early
 11 60s and he had quite a long and lustrous
 12 career and the objective was to get me through
 13 the hump, in terms of the restructuring
 14 process. Little did any of us know that the
 15 first week that we started having our first
 16 executive meeting, I think, that was in May,
 17 he started having to deal with the issue
 18 around ER/PR which, in and of itself, I'm
 19 sure, took a lot of time, but on top of his
 20 full workload was an extra challenge.

21 COFFEY, Q.C.:
 22 Q. Who'd been doing the or what VP was
 23 responsible for quality in a clinical sense
 24 or/and, I suppose, in a non-clinical sense,
 25 the technological sense in the health care

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1 corporation days?
 2 MR. TILLEY:
 3 A. I'm thinking it was Pam Elliott. She was,
 4 sorry, yes, she was vice-president and she had
 5 actually--when I left the organization to go
 6 to Workers' Compensation, she was the person
 7 that was hired into the organization and would
 8 have taken on the quality portfolio. As you
 9 now know, with movement to Eastern Health, she
 10 actually moved into the director position
 11 overseeing that quality program.
 12 COFFEY, Q.C.:
 13 Q. Sir, we're in the summer of 2006 is ending and
 14 what was happening then with Dr. Williams and
 15 his replacement.
 16 MR. TILLEY:
 17 A. Right. For some time prior to that, we had
 18 advertised looking for a replacement. And had
 19 done a number of interviews and had three
 20 possibly four candidates who were interested.
 21 And there was a search committee that I was a
 22 participant in, as well as a number of
 23 physicians in the organization. It may have
 24 been the chair of MAC and a couple of others,
 25 can't seem to be able to say the names. So,

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1 we went through that process and it took
 2 longer than we thought trying to, sort of, as
 3 we narrowed ourselves down between two
 4 candidates. One having more exposure to the
 5 academic piece and another not.
 6 COFFEY, Q.C.:
 7 Q. So, I take it, Oscar Howell was finally
 8 offered the position?
 9 MR. TILLEY:
 10 A. He was.
 11 COFFEY, Q.C.:
 12 Q. And when did he start?
 13 MR. TILLEY:
 14 A. Some time in September of '06 is what rings a
 15 bell.
 16 COFFEY, Q.C.:
 17 Q. And Dr. Williams, in the meantime, what
 18 happened with respect to Dr. Williams?
 19 MR. TILLEY:
 20 A. Well, he had indicated, first of all, that he
 21 was willing to stay around to allow some time
 22 for the orientation for Dr. Howell to occur.
 23 I don't know exactly how long that took. I
 24 can also say to you that Dr. Williams did
 25 retain his relationship with Memorial and, in

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1 particular, the Faculty of Medicine because--
 2 I'm not sure if we called it a part time
 3 stipendiary role and to that end, he would be
 4 available to do some teaching work over there.
 5 And he still had a significant amount of
 6 interest in this process. And it indicated to
 7 me he was prepared to volunteer his time to
 8 continue to be involved and I had welcomed
 9 that.
 10 COFFEY, Q.C.:
 11 Q. So, did he continue to work for Eastern
 12 Health?
 13 MR. TILLEY:
 14 A. Not as an employee, but in a volunteer
 15 capacity because he was, at that point in
 16 time, thinking he may go and take additional
 17 training in the whole area of quality
 18 management and then possibly come and teach
 19 that or work in a consulting capacity.
 20 COFFEY, Q.C.:
 21 Q. So, Dr. Howell starts in September of '06. As
 22 the CEO, from your perspective, what was his
 23 immediate top three or four things to do?
 24 MR. TILLEY:
 25 A. Well, he would have certainly been briefed on

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1 the ER/PR situation. I had made a decision to
 2 change the portfolio so that he would not take
 3 on the quality as much as he really wanted it,
 4 but I was concerned that just coming into a
 5 large organization for the first time, that
 6 that was going to be too much of a learning
 7 curve to take on all at once.
 8 COFFEY, Q.C.:
 9 Q. So, where did that end up at?
 10 MR. TILLEY:
 11 A. That went over to Ms. Pilgrim and she had
 12 always had a great deal of interest in the
 13 quality portfolio. So Dr. Howell's focus, he
 14 would have had program responsibilities for
 15 lab, diagnostic imaging, pharmacy. He would
 16 have been the link with the Medical Advisory
 17 Committee, the clinical chiefs, and I think it
 18 would be fair to say that the revolving door
 19 that Dr. Williams had with physicians in the
 20 organization continued to revolve in Dr.
 21 Howell's day because they sought after him
 22 quite regularly.
 23 COFFEY, Q.C.:
 24 Q. In terms of clinical matters that--or clinical
 25 issues, large scale clinical issues that Dr.

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1 Howell might have to address in the fall of
 2 '06, was ER/PR one of them?
 3 MR. TILLEY:
 4 A. Yes, it would have been one of them.
 5 COFFEY, Q.C.:
 6 Q. Do you recall any other large clinical issue?
 7 MR. TILLEY:
 8 A. I can't imagine that there wouldn't have been.
 9 COFFEY, Q.C.:
 10 Q. Large in the sense of like just sheer numbers
 11 of people, large public interest and so on.
 12 MR. TILLEY:
 13 A. Radiologists in Burin was '07, or was that
 14 started '06?
 15 COFFEY, Q.C.:
 16 Q. Probably. You have some memory, it may have
 17 started in '06. Dr. Howell will come in and
 18 tell us about that.
 19 MR. TILLEY:
 20 A. Okay.
 21 COFFEY, Q.C.:
 22 Q. But from your--again, as a CEO, looking back
 23 on it, certainly ER/PR would have been the
 24 foremost one, I take it?
 25 MR. TILLEY:

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1 A. Right.
 2 COFFEY, Q.C.:
 3 Q. Now in terms of your overall organization, on
 4 this point, in the early fall of 2006, Zachary
 5 Turner and the report on Zachary Turner, do
 6 you recall--did your organization have any
 7 involvement in that, and if so, when did the
 8 report come out?
 9 MR. TILLEY:
 10 A. I had forgotten about that one.
 11 COFFEY, Q.C.:
 12 Q. And again, I'm trying to give the Commissioner
 13 some temporal context of as to what else.
 14 MR. TILLEY:
 15 A. One of the predecessor organizations, Health
 16 and Community Services St. John's, prior to
 17 restructuring, had been dealing with this
 18 particular client. The outcome led to an
 19 investigation and child protection, as an
 20 issue, was not something that I had had
 21 exposure to at all, but being in the position,
 22 I got pulled into fairly high level meetings
 23 with government on the report and the follow
 24 up to them. I remember meeting with some of
 25 the ministers. There was going to be press

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1 conference that up until the night before, I
 2 was supposed to be panel with the press
 3 conference. That got changed late in the
 4 night. So I was trying to change or learn
 5 about that. At the same time, I was getting
 6 some signals from government that they felt
 7 that the leadership in that area needed a
 8 change and I had gotten that message while I
 9 was attending meetings in Grand Falls and I
 10 got that message, in fact, on route to Grand
 11 Falls, landed in Grand Falls and turned
 12 immediately around and headed back to St.
 13 John's to deal with that issue from a senior
 14 management perspective and what I ended up
 15 doing the next morning was making some
 16 realignments of responsibility. I ended up
 17 having to meet with staff. These were a group
 18 of people that I had not really had much of an
 19 occasion to have a conversation with, but I
 20 did go and meet with them as a group. They
 21 were a part of our organization that felt, at
 22 this point in time, that, you know, they were
 23 still in their old organization and here they
 24 were all of a sudden dumped in the middle of
 25 this much larger one, and did they have the

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1 support that they would have had in their own
 2 organization in the past, and hence, my reason
 3 for connecting to them was to give them some
 4 assurances about how much we value them and
 5 how we're trying to work through this and this
 6 is a difficult situation, etcetera, etcetera.
 7 Those are just some of the things that pop to
 8 mind now that you've mentioned them to me.
 9 COFFEY, Q.C.:
 10 Q. So that the--as in the lead up to the
 11 publication of the Turner Report, the report
 12 involving Zachary Turner, and the aftermath of
 13 it, I take it that that involved you, a
 14 certain amount, if not a significant amount of
 15 your time as a CEO?
 16 MR. TILLEY:
 17 A. Well, as much as I could dedicate to it
 18 without neglecting the rest of the
 19 organization, but we did have a senior person
 20 take on the recommendations and work with the
 21 staff to deal with that situation, and again,
 22 it brought to me how an organization can be
 23 responsible for so much, can do so much good,
 24 but all of that, of course, doesn't tend to
 25 get talked about anywhere when you have a very

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1 serious incident of that nature. The focus
 2 just simply goes then on that and from an
 3 organizational perspective, one of my
 4 challenges becomes how do I keep this
 5 organization together without it doing a nose
 6 dive and then we've all lost. So it is a
 7 challenge, to say the least.
 8 COFFEY, Q.C.:
 9 Q. Commissioner, if we could?
 10 THE COMMISSIONER:
 11 Q. Take the morning break?
 12 COFFEY, Q.C.:
 13 Q. If we would, please.
 14 THE COMMISSIONER:
 15 Q. All right, we'll take 15 minutes.
 16 COFFEY, Q.C.:
 17 Q. Thank you.
 18 (BREAK)
 19 THE COMMISSIONER:
 20 Q. Please be seated. Mr. Coffey.
 21 COFFEY, Q.C.:
 22 Q. Thank you, Commissioner. Mr. Tilley,
 23 Registrar, please, could we bring up Exhibit
 24 P-0422?
 25 THE COMMISSIONER:

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1 Q. It's directly in front of you.
 2 COFFEY, Q.C.:
 3 Q. Thank you, yes. Thank you, Commissioner.
 4 This an e-mail from Nash Denic to Oscar
 5 Howell. The subject is ER and PR
 6 presentation. It's November 6th, 2006, 9:15
 7 a.m., and he begins "Hi, Oscar. Please, if
 8 your office can arrange a presentation, I
 9 think the best venue for that would be the
 10 Cancer Clinic conference room, which has
 11 ability for video tele-conference. I would
 12 like to invite the lab directors from the
 13 island because we were all involved, and they
 14 can join us by the video tele-conference which
 15 is available in their centres. The names and
 16 telephone numbers of the lab directors,
 17 pathologists, across Newfoundland Denise can
 18 obtain from my secretary, Judy," particular
 19 extension number. "Also, we should invite the
 20 Cancer Clinic professionals and managers,
 21 surgeons and QI personnel. The title of the
 22 presentation is ER and PR testing, Eastern
 23 Health experience. We can be ready for the
 24 week of the 13th of November. Let me know
 25 what do you think about it. Sincerely, Nash

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1 Denic."
 2 And if we could, please, just bring up
 3 too then, Exhibit 0423, P-0423? And then this
 4 is an e-mail from Denise Dunn, who is the
 5 executive assistant to Dr. Oscar Howell. She
 6 had worked for Dr. Williams. November 6th,
 7 2006, 2:59 p.m., to Michelle Gregory re:
 8 subject is ER/PR presentation. "Michelle, as
 9 discussed on phone, Dr. Denic will be giving a
 10 presentation to a large group November 20th at
 11 five p.m. to include Dr. Oscar Howell, Mr.
 12 George Tilley, Mr. Terry Gulliver, Ms. Heather
 13 Predham, pathologists, oncologists, surgeons
 14 who do breast surgery and lab technicians who
 15 are involved in the testing. Can you give me
 16 a list of the oncologists Dr. Laing would like
 17 to have there? There will be a second
 18 presentation to executive management on the
 19 morning of November 21. The third
 20 presentation will be to the media. Dr.
 21 Howell, Dr. Denic, Dr. Laing and Susan Bonnell
 22 from communications, and we're looking at
 23 November 30th. Can you confirm these dates
 24 with Dr. Laing? Thanks, Denise."
 25 Now, sir, I refer to those because again,

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1 I want to, if I can, perhaps assist your
 2 memory. Now as the fall of 2006 went on,
 3 where was Eastern Health going with this
 4 issue, in terms of, you know, restarting
 5 testing, ER/PR, communicating with the public,
 6 communicating with its own staff, physicians,
 7 communicating with the Department of Health?
 8 Could you just -
 9 MR. TILLEY:
 10 A. Well -
 11 COFFEY, Q.C.:
 12 Q. And who was running--who was driving the bus,
 13 as it were, at that point in terms of the
 14 issue? Because Dr. Howell was new to it.
 15 MR. TILLEY:
 16 A. Right. Well, there were a lot of things
 17 happening in that fall in some ways. The
 18 issue of trying to get a handle on all that we
 19 had learned and the work to date, the
 20 information that had come about because of the
 21 summary or because of the results coming in,
 22 we had--just reflecting on the conversation we
 23 had earlier this morning, there were obviously
 24 calls that had been originated from the media
 25 in terms of more information. So there were

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1 certainly discussions about doing that. I'm
 2 guessing that the wide net had been referenced
 3 in this particular memo that you have just
 4 referred to is an effort to try to get as many
 5 people as possible that would have an interest
 6 and a need to know, to be involved in this
 7 overview that was being provided by Dr. Denic.
 8 By the way, I'm not sure when we talked or if
 9 we talked about it, but Dr. Denic -
 10 COFFEY, Q.C.:
 11 Q. You're going to have to explain. What
 12 happened with Dr. Cook?
 13 MR. TILLEY:
 14 A. Did you do that already?
 15 COFFEY, Q.C.:
 16 Q. No, we haven't talked about that.
 17 MR. TILLEY:
 18 A. Okay, so that--all right, leave it to you.
 19 COFFEY, Q.C.:
 20 Q. Tell me, if you could, while we're at it,
 21 because Dr. Denic's name really surfaces here
 22 in this context for the first time.
 23 MR. TILLEY:
 24 A. Right.
 25 COFFEY, Q.C.:

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1 Q. What had happened with Dr. Cook?
 2 MR. TILLEY:
 3 A. Well, the clinical chiefs are normally
 4 appointed for three-year terms with the
 5 potential for re-appointment, and I'm thinking
 6 that Dr. Cook fulfilled one term, though I did
 7 have it scribbled down somewhere, but in any
 8 event, at the end of his term, he decided that
 9 he would step down from that leadership role
 10 and a process, the typical process that we
 11 would have for recruitment of clinical chiefs
 12 is, you know, we would advertise and we would
 13 invite other pathologists to make
 14 recommendations as to who might be interested.
 15 I have no idea what goes on behind the scenes,
 16 if they sort of chat amongst themselves and
 17 end up pushing one person to the head of the
 18 pack and that person does it.
 19 COFFEY, Q.C.:
 20 Q. We will hear from the physicians.
 21 Commissioner, we'll hear from them on exactly
 22 how that happens.
 23 MR. TILLEY:
 24 A. Okay.
 25 COFFEY, Q.C.:

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1 Q. But go ahead.
 2 MR. TILLEY:
 3 A. Okay. But in any event, it seemed to me that
 4 Dr. Denic hit the ground running, and was
 5 very, very knowledgeable in this area. I felt
 6 he had good leadership skills, in terms of how
 7 he related to the others, and you know, I was
 8 encouraged the fact that he was now sort of
 9 more in front, from the organization's
 10 perspective.
 11 So, a lot of conversations going on. You
 12 mention about getting the tests reactivated.
 13 COFFEY, Q.C.:
 14 Q. Yes, the ER/PR.
 15 MR. TILLEY:
 16 A. Right, with the old Ventana system, and I've
 17 reflected on that issue many times and I've
 18 had a lot of time to reflect. There was a
 19 period of time, Commissioner, that you may
 20 recall where it was felt that the Ventana
 21 system was overcalling and therefore it was
 22 shut down, and the manufacturer was brought
 23 in, but that didn't necessarily change.
 24 Everybody--and confirmed the accuracy of it,
 25 but that didn't necessarily convince

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1 everybody. So with the patient safety hat on,
 2 I think everybody was, at this point in time,
 3 being extremely cautious and therefore sending
 4 the tests out to Mount Sinai instead.
 5 In retrospect, you know, one could have
 6 said there was nothing in particular that
 7 would cause us concern with the Ventana. We
 8 could have done all of the tests on it, and we
 9 may have had this clued up and results out to
 10 the patients long, long before it actually
 11 happened. But by the time that level of
 12 confidence came, the process had started with
 13 Ventana--sorry, with Mount Sinai, and to that
 14 end, it would just be another variable that
 15 we'd have to try to contend with, in terms of
 16 whether we were getting consistent results or
 17 not.
 18 But, back to your point, there was a lot
 19 of discussion about when are we going to
 20 reactivate the Ventana for that purpose, and I
 21 kept saying "I have no expertise in which to
 22 tell you that. I got to rely upon the people
 23 who are most knowledgeable to say it."
 24 Now back to your question as to who's
 25 running this. Dr. Howell and I had multiple

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1 discussions, as he was getting briefed on the
 2 various issues in the department. He had the
 3 responsibility for the laboratory medicine
 4 program, which put him as the lead person, as
 5 was Dr. Williams, in speaking to this. Was it
 6 an unfair position to put him in? I was very
 7 impressed with Dr. Howell in terms of his
 8 ability to get to the bottom of certain
 9 issues. I'm sure that there were things that
 10 he would have been not as familiar with as Dr.
 11 Williams had been, but I felt he was a quick
 12 study. Secondly, Mrs. Pilgrim, of course,
 13 would have been more evident at this point in
 14 time, as she took upon the other dimension of
 15 this, which was the role of the quality
 16 initiatives department.

17 COFFEY, Q.C.:

18 Q. And so then, in terms of answering the final
 19 point, or addressing the final point, who's
 20 driving the bus, from your perspective, on
 21 ER/PR in the fall of '06?

22 MR. TILLEY:

23 A. In the fall of '06, I would have been relying
 24 upon Dr. Howell, in terms of the laboratory
 25 follow up, and Mrs. Pilgrim in terms of the

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1 quality follow up.

2 COFFEY, Q.C.:

3 Q. And the quality follow up, in this context,
 4 means what?

5 MR. TILLEY:

6 A. The patient contact.

7 COFFEY, Q.C.:

8 Q. I take it, having records in relation to that,
 9 making sure that it had been done and so on?

10 MR. TILLEY:

11 A. Yes, because that was being driven, of course,
 12 by the quality staff in the risk management,
 13 or the quality initiatives and risk management
 14 department.

15 COFFEY, Q.C.:

16 Q. Now if we could look, please, at Exhibit P-
 17 0424? Now this is an e-mail--actually, it's
 18 two e-mails, one embedded in the other. The
 19 first of them, towards the bottom of the page,
 20 it's from Joyce Penney, who would be your
 21 executive assistant at the time, Monday,
 22 November 6th, 15:31 hours, and it's an e-mail
 23 from her to you. Subject is ER/PR
 24 presentation. It says "George, on Monday the
 25 20th of November at five p.m., Dr. Howell is

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1 organizing a presentation by Heather Predham
 2 and Dr. Denic, among others, on the ER/PR with
 3 a view to having a presentation to executive
 4 on November 21st." Question to you, "who do
 5 you see giving the presentation to executive?
 6 Dr. Denic and Heather Predham, plus legal
 7 counsel? Do you want anyone else to attend?
 8 Note that we have John Hylton, CCHSE, giving a
 9 presentation to executive on the 21st as well.
 10 We are also holding time on November 30th for
 11 a potential press conference on ER/PR.
 12 Thanks, JP."

13 And you responded that same day at 7:13
 14 p.m., but you also included in your response,
 15 Oscar Howell. You wrote "Joyce, talking to
 16 Oscar and agreed to legal counsel attending.
 17 In terms of timing, I would like to have this
 18 presentation at 8:30 or 9, and get whoever can
 19 attend from executive. I just referenced to
 20 the gang you will need to confirm when Oscar
 21 finalizes."

22 Now Mr. Tilley, the reference to this
 23 presentation being organized by Dr. Howell, a
 24 presentation by Heather Predham and Dr. Denic,
 25 among others, on ER/PR, and further in her e-

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1 mail she says "who do you see giving the
 2 presentation to executive, Dr. Denic and
 3 Heather Predham, plus legal counsel?" Now
 4 what did legal counsel have to do with this?

5 MR. TILLEY:

6 A. I didn't certainly see legal counsel doing the
 7 presentation or any part of the presentation.
 8 My assumption was here was an opportunity to
 9 get an overview of the situation. Legal
 10 counsel obviously had their own work under
 11 way, and it was just a matter of the
 12 information being shared.

13 COFFEY, Q.C.:

14 Q. Now you did respond that evening saying you
 15 talked to Oscar and agreed to legal counsel
 16 attending. So who agreed here?

17 MR. TILLEY:

18 A. I guess that would be me.

19 COFFEY, Q.C.:

20 Q. And why would your agreement be necessary?

21 MR. TILLEY:

22 A. Well, I'm not sure. Certainly the legal
 23 counsel have been involved in other meetings
 24 in the past that I hadn't been specifically
 25 contacted on, but beyond that, I can't speak

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1 to it.
 2 COFFEY, Q.C.:
 3 Q. And what did you understand was--and the legal
 4 counsel in this context would be Dan Boone?
 5 MR. TILLEY:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. What did you understand his role was going to
 9 be there? I mean, you're being asked
 10 effectively for your consent or permission to
 11 have him there.
 12 MR. TILLEY:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. What did you understand his role would be?
 16 MR. TILLEY:
 17 A. To attend and to listen.
 18 COFFEY, Q.C.:
 19 Q. And why--do you have any--enlighten us at all
 20 on why your permission would be needed in that
 21 regard? Because as you pointed out, many
 22 occasions or a number of occasions before he
 23 had attended, no one had asked your views on
 24 it.
 25 MR. TILLEY:

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1 A. I can't speak to it, I'm sorry.
 2 COFFEY, Q.C.:
 3 Q. And was he supposed to attend the presentation
 4 given to the executive or the larger
 5 presentation?
 6 MR. TILLEY:
 7 A. I'm assuming it's the larger presentation.
 8 COFFEY, Q.C.:
 9 Q. She had framed it, Joyce here, executive
 10 assistant framed it to you, "Who do you see
 11 giving the presentation to executive?"
 12 MR. TILLEY:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. And then it referred to Dr. Denic, Heather
 16 Predham and the lawyer. And so I'm asking, I
 17 just point that to you and -
 18 MR. TILLEY:
 19 A. Right. No, I don't remember a specific one
 20 for the executive other than the one I
 21 attended which had the executive and several
 22 others in the room.
 23 COFFEY, Q.C.:
 24 Q. Do you recall attending one where there were,
 25 I mean, a host of people in terms of, like,

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1 many doctors, technologists -
 2 MR. TILLEY:
 3 A. The one I'm thinking about was the one that
 4 was held adjacent to my office in the
 5 corporate office building, and that room could
 6 probably accommodate 30 people.
 7 COFFEY, Q.C.:
 8 Q. That would be at the Waterford site?
 9 MR. TILLEY:
 10 A. That's correct.
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 MR. TILLEY:
 14 A. I remember somewhere in our discussions
 15 recently we talked about something at the
 16 Health Sciences Centre.
 17 COFFEY, Q.C.:
 18 Q. Yes.
 19 MR. TILLEY:
 20 A. Yeah, that's not the one that I recall
 21 attending.
 22 COFFEY, Q.C.:
 23 Q. And who is John Hylton or Hylton?
 24 MR. TILLEY:
 25 A. He would have been the CEO of the Canadian

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1 College of Health Service Executives. You'll
 2 remember in my resume I referenced that I was
 3 a certified health executive with him. So he
 4 just happened to be in town and wanted to do a
 5 presentation to really support further
 6 membership in that body.
 7 COFFEY, Q.C.:
 8 Q. So what do you recall about the--well, first
 9 of all, did you attend any meetings before--
 10 concerning ER/PR between the time you were
 11 first notified about the scheduling of the
 12 meeting and the actual presentation that you
 13 attended? Did you have any discussion with
 14 anybody about what was going to transpire?
 15 MR. TILLEY:
 16 A. Don't recall. The date of the presentation
 17 was going to be, sorry -
 18 COFFEY, Q.C.:
 19 Q. According to the e-mail we just looked at,
 20 probably November 21.
 21 MR. TILLEY:
 22 A. November the 20th?
 23 COFFEY, Q.C.:
 24 Q. Well, probably 21 with the executive.
 25 MR. TILLEY:

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1 A. Right. There's not a meeting that pops to
 2 mind.
 3 COFFEY, Q.C.:
 4 Q. And from your perspective whatever was to be
 5 presented at that meeting was decided by whom?
 6 MR. TILLEY:
 7 A. I seem to be recollecting presentations by Dr.
 8 Denic, so it was very much the clinical
 9 medical piece.
 10 COFFEY, Q.C.:
 11 Q. Now, sir, if we could bring up, please,
 12 Exhibit 0396, in particular, page 2? Now, I'm
 13 just going to scroll down through. First of
 14 all this appears to be a power point
 15 presentation and it's entitled "Going Public
 16 in Eastern Health Experience. George Tilley,
 17 President and Chief Executive Officer." And
 18 it goes on for a number of pages, three slides
 19 per page up to page 15 of the exhibit. Can
 20 you tell us, please, what this was about?
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. When this occurred and how it came about?
 25 MR. TILLEY:

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1 A. It was in the fall of 2006 and it was a
 2 function that was being organized in the
 3 Atlantic Region by the Canadian Patient Safety
 4 Institute. The audience would have comprised
 5 of board chairs, CEOs, VPs of medical services
 6 and VPs of quality. And the four individuals
 7 in Eastern Health in those categories did go,
 8 namely, Mrs. Dawe, Dr. Howell, Mrs. Pilgrim
 9 and myself. So organizations throughout the
 10 Atlantic area were participating. By this
 11 time, of course, I, the year previous, had
 12 been in touch with Mr. Hassen, who is the CEO
 13 of the Canadian Patient Safety Institute.
 14 They asked if there was anything that we could
 15 speak about with regards to the situation that
 16 we were involved in and the presentation that
 17 you have is the one, the power deck that I
 18 used to speak from at that conference. I'm,
 19 roughly say there was 80 to 100 people there,
 20 perhaps, and that occurred in Halifax.
 21 COFFEY, Q.C.:
 22 Q. Was Ms. Dawe there?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. So the dimension we took was the one around
 4 disclosure. And, you know, we went through--
 5 I'm trying to remember this. What our normal
 6 protocol would have been for disclosure and
 7 talked about the challenges that we faced
 8 along the way and it really became a basis for
 9 sort of discussion by those in the audience on
 10 this issue of disclosure, in particular. And
 11 of course, the issue with the lab was
 12 referenced but not in any great detail, but
 13 you do get into some side conversations sort
 14 of afterwards about these sorts of things.
 15 COFFEY, Q.C.:
 16 Q. So you made the presentation. How was it
 17 received, do you recall?
 18 MR. TILLEY:
 19 A. Well, the feedback was very positive. I think
 20 that the fact that we were speaking about an
 21 actual event made it particularly so. I
 22 hadn't known, but Susan was able to touch base
 23 with the Canadian Patient Safety Institute at
 24 a later point and found out that it was one of
 25 the more highly rated pieces of the

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1 conference. So based upon the immediate
 2 questions that I received and that feedback,
 3 I'm thinking that it went over okay.
 4 COFFEY, Q.C.:
 5 Q. Okay. Now, if I could, please, could we look
 6 at, please, see page 5 of the exhibit. Now,
 7 this is beginning here, I think the earlier
 8 parts of it, you know, actually just quote
 9 from--I shouldn't say just, but quote from
 10 policies and publications. Do you know if
 11 this was done before the in-house presentation
 12 on ER/PR, you know, the one that -
 13 MR. TILLEY:
 14 A. I'm pretty sure it was.
 15 COFFEY, Q.C.:
 16 Q. Okay, this was--and looking at the slide at
 17 the top of the page here on page 5 of P-0396,
 18 "May 2005, organization learns of a potential
 19 problem in ER/PR testing." And "It's a
 20 standard test, it's complicated, 40 manual
 21 steps." "2004 the laboratory purchased an
 22 automated system, Ventana." "Major practice
 23 change in oncology." Which I take it is the
 24 30 to 10 -
 25 MR. TILLEY:

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1 A. Yes, that's my -
 2 COFFEY, Q.C.:
 3 Q. And arguably to one, depending upon what
 4 doctor you're talking to. Now, it says there,
 5 "Talking action," is that "talking" or is it
 6 should be "taking action"? I'm just--right
 7 here, you see what I'm -
 8 MR. TILLEY:
 9 A. Yes, I would think it's probably more
 10 appropriate to be "taking."
 11 COFFEY, Q.C.:
 12 Q. "Taking action," okay.
 13 THE COMMISSIONER:
 14 Q. Can we -
 15 COFFEY, Q.C.:
 16 Q. Commissioner.
 17 THE COMMISSIONER:
 18 Q. - increase the size of that, please, just a
 19 little bit.
 20 COFFEY, Q.C.:
 21 Q. Yes, thank you, I apologize, Commissioner.
 22 Yeah, there we are. Now, here under that
 23 heading it's "2005 a tissue sample is retested
 24 and converts from negative to positive.
 25 Pathologists and oncologists meet and decided

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1 to retest five more patients. They all
 2 convert. All negative results from 2002 are
 3 retested, many convert." And "Emergency
 4 meeting, planning action." Was it your
 5 understanding that at least all negative
 6 results from the Health Care Corporation in
 7 2002 had been retested locally?
 8 MR. TILLEY:
 9 A. That's the assumption that I was working
 10 under, yes.
 11 COFFEY, Q.C.:
 12 Q. Sure, okay. And then the next slide shows,
 13 it's entitled, "Fork in the Road." And we go
 14 to the next page, there are a number of,
 15 there's actually three other slides that refer
 16 to, are headed "Fork in the Road." The first
 17 cites the CPS dictionary of the obligation to
 18 disclose. The second one says, "For in the
 19 Road. Retest all tissue samples collected
 20 from 1997 to 2004. Engaged an external
 21 laboratory to complete retesting and conduct
 22 an external review of laboratory." And then
 23 "Fork in the Road, discontinue ER/PR testing
 24 until the review is complete. Contact
 25 numerous laboratories across Canada. Inform

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1 all patients and the public." Now, sir, you
 2 used the imagery and phrase, "Fork in the
 3 Road." What were you trying to convey there?
 4 Right, that suggests, you know, really a
 5 dichotomy of choice, you know, one or the
 6 other as opposed to, you know, something else.
 7 So why did you use the "Fork in the Road"
 8 analogy?
 9 MR. TILLEY:
 10 A. Well, I guess in some ways there was a
 11 potential fork there. Having said that, it's
 12 not one that we were prepared to take any
 13 other direction than the one we chose. By
 14 this time, you know, we were hearing that this
 15 was a problem elsewhere, but no where had we
 16 learned anybody going back to review it. I
 17 think we talked at one point in time about
 18 Ontario bringing in a lab, sorry,
 19 accreditation process.
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 MR. TILLEY:
 23 A. And you know, you can't help but wonder why
 24 Ontario brought in a lab accreditation process
 25 if it had not felt that it needed to be

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1 brought in. But no where had I ever learned
 2 whether Ontario had gone back and done
 3 anything as was done in St. John's.
 4 COFFEY, Q.C.:
 5 Q. Um-hm.
 6 MR. TILLEY:
 7 A. So for us it was presenting it as a potential
 8 choice, but choices that we always erred on in
 9 terms of the follow-up to the patient. And I
 10 guess overall it's a strategy used in the
 11 presentation to try to get your points across.
 12 COFFEY, Q.C.:
 13 Q. Yeah. And why I refer to it here is is, I
 14 raise it with you, is is that I just want to,
 15 you know, as much as one can, perhaps, you
 16 know, insure we're clear on this. From your
 17 perspective as a CEO at any point in this was
 18 there ever any suggestion that we are not
 19 going to do this?
 20 MR. TILLEY:
 21 A. Never.
 22 COFFEY, Q.C.:
 23 Q. Voiced at all?
 24 MR. TILLEY:
 25 A. No.

1 COFFEY, Q.C.:

2 Q. I just want to -

3 MR. TILLEY:

4 A. And I think that's been probably one of the

5 most difficult things that we've endured

6 during this process.

7 COFFEY, Q.C.:

8 Q. Is that because you suspect that in other

9 places they might not have made the same

10 choice?

11 MR. TILLEY:

12 A. No, I wasn't going to speak to that point, I

13 was just speaking -

14 COFFEY, Q.C.:

15 Q. That's what I'm -

16 MR. TILLEY:

17 A. Okay. Hold your thought.

18 COFFEY, Q.C.:

19 Q. Okay.

20 MR. TILLEY:

21 A. But my frustration was in regards to the times

22 that we were saying from the very beginning

23 that patient safety was our prime objective,

24 so you shut it down and you send the retest

25 out. I think there was never, ever a point

1 COFFEY, Q.C.:

2 Q. If we can go, please, to page--just scroll

3 down a little bit more. Sorry. Yes. Page 7

4 of the exhibit, Commissioner, it's, the

5 heading is "A Complicated Disclosure. Systems

6 issue, not a typical medical error." And this

7 is apropos Commissioner's questions this

8 morning. Here you're presenting, you know,

9 this slide deck to a group of people who are

10 relatively sophisticated compared to the

11 general population about health matters. And

12 you're characterizing, it says, "A systems

13 issue, not a typical medical error." Now,

14 what was it you intended to convey by that and

15 what did you say, if anything, in relation to

16 it?

17 MR. TILLEY:

18 A. Well, the typical medical error that we would

19 often refer to would be a patient getting an

20 incorrect drug or an inappropriate amount of a

21 drug. It may have been an incident where

22 there could have been a surgical instrument

23 that had not been removed during the operating

24 procedure, so you had a very defined event

25 with a single patient with a particular care

1 where we had felt we were going to do anything

2 other than do that. And you would have seen

3 in my written notes somewhere about if there

4 was one patient it could benefit, we're going

5 to deal with it. What I found particularly

6 frustrating, and, Mr. Coffey, it may have been

7 our own problem because we weren't talking

8 about it enough, but when we did, that issue

9 seems to have gotten lost in translation. So

10 that was my frustration that all of a sudden

11 it was felt we were doing this because, you

12 know, it became a public issue and we did it,

13 which was not the factor here. Now, sir,

14 going back to your point, which I've since

15 forgotten, so -

16 COFFEY, Q.C.:

17 Q. Which is did you--was there a suspicion, do

18 you think, amongst your--within your own

19 organization that perhaps in other places that

20 the same choice had not been made in the past

21 to go back or might not be made?

22 MR. TILLEY:

23 A. I will acknowledge the fact that that issue

24 did come up, but we really were in no position

25 to say whether anybody had or had not.

1 giver, ie, a surgeon or a nurse and the -

2 THE COMMISSIONER:

3 Q. Why aren't they systems issues?

4 MR. TILLEY:

5 A. Because in the case of the operating room, if

6 there was an instrument that had been left

7 there, there's processes in place to do

8 counting.

9 THE COMMISSIONER:

10 Q. Exactly.

11 MR. TILLEY:

12 A. When that was done, so obviously there would

13 have been someone there looking at that

14 specific incident that had done an incorrect

15 count. In the case of a medication, it would

16 be a nurse reading a medication card, told to

17 give five millimetres of a particular drug,

18 either gives something more or less or gives

19 the wrong drug, in particular. So it is sort

20 of an individual patient with a more of a

21 cause and effect relationship than we

22 typically see in what we had come to know as a

23 systems issues.

24 COFFEY, Q.C.:

25 Q. Was this talked about during the presentation?

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1 MR. TILLEY:
 2 A. I don't think that got a lot of conversation.
 3 Now, it's been a long time, but -
 4 COFFEY, Q.C.:
 5 Q. So you have no recollection of people asking,
 6 "Well, what happened, what caused this?" I'm
 7 not saying you did -
 8 MR. TILLEY:
 9 A. No, no, not off the top of my head, no.
 10 COFFEY, Q.C.:
 11 Q. Okay. I take it they were then, in that
 12 regard, I take it, all very polite in terms of
 13 no one might have asked, well -
 14 MR. TILLEY:
 15 A. I recall getting some questions from the
 16 audience, I'm just not able to sort of
 17 remember what they were.
 18 COFFEY, Q.C.:
 19 Q. There's a reference to "Pandora's box", the
 20 fourth entry.
 21 MR. TILLEY:
 22 A. Uh-hm.
 23 COFFEY, Q.C.:
 24 Q. What is that?
 25 MR. TILLEY:

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1 A. Well, I don't know, for me it was sort of
 2 saying I don't know what is the issue here. I
 3 hate to sound like a broken record, forgive
 4 me, it was trying to put this in the context,
 5 in the first case as to what we were learning
 6 throughout the country, what we were learning
 7 in the literature and, you know, some of those
 8 things everybody was learning for the first
 9 time. The descriptions that we were getting
 10 back from someone like Dr. Pritzker, who was
 11 giving credit to Newfoundland for having taken
 12 this on. And then in terms of the patients,
 13 those processes were ongoing. There were
 14 issues that you rightly pointed out in the
 15 letter to "The Current" of there are reference
 16 to a small number of clients or patients who
 17 had been misdiagnosed in the first place,
 18 those were learned during the process and the
 19 disclosure process I feel comfortable was
 20 applied to that particular point in time. It
 21 was just probably, Mr. Coffey, a reflection
 22 where my head was at the time to say, you
 23 know, I'm not feeling that I got a good handle
 24 on this.
 25 COFFEY, Q.C.:

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1 Q. Now, Mr. Tilley, perhaps if we could, I'll
 2 save the question I have in mind, if we could
 3 go then, please, to Exhibit P-421, these are,
 4 I take it, your handwritten notes?
 5 MR. TILLEY:
 6 A. They are.
 7 COFFEY, Q.C.:
 8 Q. And this is one, ER/PR, I think it's internal
 9 presentation, November 21, '06. And could you
 10 just take us down through this? Well, first
 11 of all, why would you write notes at all?
 12 Because I take it this was a presentation, a
 13 slide show.
 14 MR. TILLEY:
 15 A. I have over the years tended to write notes to
 16 allow me to sort of focus in on the issue or
 17 the presentation. I don't think I ever kept
 18 them with the intent that someday there might
 19 be an inquiry, that they'd be looking at them.
 20 So it became more of a habit and sometimes I'd
 21 refer to them and other times they wouldn't be
 22 referred to. Does this equate to the date of
 23 the internal presentation?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. The one for the executive.
 3 MR. TILLEY:
 4 A. Okay.
 5 COFFEY, Q.C.:
 6 Q. So if you'd just -
 7 MR. TILLEY:
 8 A. Take you down through?
 9 COFFEY, Q.C.:
 10 Q. Sure, if you would please?
 11 MR. TILLEY:
 12 A. "Differentiation of outcomes based on changing
 13 cutoffs." So I'm presuming that relates to
 14 the 30/10 the oncology issue. "2000
 15 oncologists change threshold, requested
 16 percentage rather than negative or positive
 17 from pathologists when bio assay to
 18 immunohistochemistry" then it goes on to say
 19 "inter-observer variability", so I took that
 20 in relation to the people who were looking at
 21 the microscopes and how a different person
 22 could look at the same slide and come up with
 23 a different result. The next "Change
 24 treatment on all patients"--I'm not sure
 25 what's in the bracket there, it almost looks

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1 like 3000 or 5000. "Change treatment on all
 2 patients not on those retested." I'm not sure
 3 exactly what that means. Then "13 patients
 4 changed because of definition change.
 5 Tamoxifen no longer gold standard, Aromatase
 6 inhibitor now in." Can I move it down, Mr.
 7 Coffey?
 8 COFFEY, Q.C.:
 9 Q. Please, sir, if you can.
 10 MR. TILLEY:
 11 A. Okay. Then I have here "evolving definition,
 12 v a r i a b i l i t y a m o n g s t o b s e r v e r s ,
 13 processing/protocols, environment, too many
 14 observers, must have correlation with
 15 treatment, if not fitting, then back to lab,
 16 treatment changed. Automation, increased
 17 positivity rate" and then "false negatives".
 18 "Problem, no documentation as to protocols in
 19 place in lab." And then "turn around at Mount
 20 Sinai".
 21 COFFEY, Q.C.:
 22 Q. And if you could -
 23 MR. TILLEY:
 24 A. "Reviewers middle of pack.
 25 COFFEY, Q.C.:

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1 Q. So does that help you to, you know kind of
 2 recall any of what you and your fellow members
 3 of the audience learned that day? For
 4 example, "reviewer is middle pack" I mean,
 5 where did that come from and in what context?
 6 MR. TILLEY:
 7 A. That was made known to me through a review or
 8 one of the reviewers that had been in and
 9 looked at the lab, I presume it came out of
 10 the discussion on the 21st, though I seem to
 11 remember hearing it before then.
 12 COFFEY, Q.C.:
 13 Q. And do you know whether or not, if there was
 14 such a comment by one of those reviewers, do
 15 you know whether it was in relation to what
 16 they found in 2005 or what they thought about
 17 anything they looked back from 2002 and '03?
 18 If a reviewer came in in '05, the Ventana
 19 existed, it was there and it was being
 20 utilized.
 21 MR. TILLEY:
 22 A. Right, that's right.
 23 COFFEY, Q.C.:
 24 Q. Or do you know or -
 25 MR. TILLEY:

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1 A. I don't know, sorry.
 2 COFFEY, Q.C.:
 3 Q. Okay. If we could, please, if we could go to
 4 the next page of the exhibit, this is November
 5 23rd, '06, handwritten notes of yourself. It
 6 says "Minister and John, Tansy, Darrell, Nash"
 7 -
 8 MR. TILLEY:
 9 A. Kara.
 10 COFFEY, Q.C.:
 11 Q. "Kara, Oscar" -
 12 MR. TILLEY:
 13 A. Susan.
 14 COFFEY, Q.C.:
 15 Q. "Susan and George". And there's a note here,
 16 "false negatives approximately five percent."
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Can you tell us please what this was about?
 21 You've already referred to the House of
 22 Assembly meeting.
 23 MR. TILLEY:
 24 A. Right. I remember this meeting in part
 25 because of its location and the fact that the

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1 minister was in the House at the time and
 2 stepped away from those proceedings to meet
 3 with us. I obviously don't have much in the
 4 way of record, which is a bit unique for me.
 5 I recall at the time that there was a
 6 spreadsheet of some sort that we may have
 7 referenced to.
 8 COFFEY, Q.C.:
 9 Q. If I could, please, Commissioner, I'm just
 10 going to ask anybody off the top of their
 11 head, the briefing, all the government's
 12 briefing notes are in one pile.
 13 MR. SIMMONS:
 14 Q. (Inaudible).
 15 THE COMMISSIONER:
 16 Q. Throwing out that challenge again to you, Mr.
 17 Simmons.
 18 COFFEY, Q.C.:
 19 Q. Yes, he's good. This might assist you.
 20 MR. SIMMONS:
 21 Q. 314 Maybe?
 22 COFFEY, Q.C.:
 23 Q. Could we just try 314 please?
 24 MR. PRITCHARD:
 25 Q. (Inaudible) page of notes? I think you've got

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1 them organized in 123 is '05.
 2 COFFEY, Q.C.:
 3 Q. It's 124, it is 124 is 2006, thank you.
 4 THE COMMISSIONER:
 5 Q. Thank you, Mr. Pritchard.
 6 COFFEY, Q.C.:
 7 Q. When the cabinet ministers were here, we were
 8 all very conversant with the number. I'm
 9 sorry, this should be 125, I apologize, is the
 10 2006 ones. It's page 42, Commissioner. Mr.
 11 Tilley, this is--I'm not saying this is the
 12 sheet, but is an ER/PR case analysis briefing
 13 note for the Department of Health and
 14 Community Services, November 23rd, 2006, it's
 15 on Eastern Health letterhead.
 16 MR. TILLEY:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And it's got a lot of numbers.
 20 MR. TILLEY:
 21 A. Yes, and that's what I remember, there was a
 22 document, it could have been this one or
 23 something very similar to it. My
 24 recollection, I don't have a lot of the
 25 details, I do remember there being a

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1 discussion with regards to information
 2 available about the deceased.
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 MR. TILLEY:
 6 A. I'm not sure if that's in this one or not.
 7 Yes, okay. And that ended up in quite an
 8 extensive conversation. I think that in part
 9 a misunderstanding, but in part a bit of
 10 frustration. The government representatives,
 11 I can't recall exactly who, had felt that more
 12 information should be provided with regards to
 13 those patients who had this test performed,
 14 but were now deceased, that more information
 15 should be made available. And Dr. Laing in
 16 particular, but I can't remember if it might
 17 have been anyone else, I think spoke to the
 18 issue of the challenges with getting that and
 19 that got into a large discussion about the
 20 extent to which or did they have an
 21 appreciation for what is actually involved
 22 here in processing that information. And that
 23 had everything to do with the fact that, you
 24 know, these people were panelling this on
 25 their off hours and their focus had always

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1 been on the living. They were short staffed
 2 and, you know, got to be practical or
 3 reasonable in terms of our ability to respond
 4 to that. I do remember at the tail end of the
 5 meeting one--Dr. Howell's interpretation of
 6 it, which I admired, because he came to it in
 7 the end, he says, "here's my take on this, I
 8 got, you know, dot, dot, dot, that's what we
 9 got to do here". And I thought to myself,
 10 well I feel really good about that, he seems
 11 to be on top of this issue and I just took a
 12 degree of comfort from it. So that's the
 13 extent that I have been able to pull out of my
 14 memory banks in terms of how the meeting went.
 15 COFFEY, Q.C.:
 16 Q. Were there parts of the meeting uncomfortable,
 17 in the sense of verbal exchanges?
 18 MR. TILLEY:
 19 A. Well the issue regarding the deceased got
 20 spoken to a lot. I think Dr. Laing spoke to
 21 it and certainly believed there was an element
 22 of frustration in her reply, but I think
 23 before the meeting closed off, there was an
 24 appreciation for her position on it.
 25 COFFEY, Q.C.:

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1 Q. What was your understanding then as to what
 2 the minister's direction or advice was?
 3 MR. TILLEY:
 4 A. On the deceased?
 5 COFFEY, Q.C.:
 6 Q. On the whole--because I take it at this point
 7 the House is opened and this meeting was held
 8 why? Because the House was opened or because
 9 there was going to be a public presentation?
 10 MR. TILLEY:
 11 A. Well, I'm trying to figure that one out
 12 myself, Mr. Coffey, because normally we would
 13 go to the House if there was a pressing need
 14 to go to the House and if the House was
 15 opened, whether there was information that he
 16 need to be privy to. Clearly coinciding with
 17 that was an intention to do the technical
 18 debriefing, but I can't really say in terms of
 19 which was driving the discussion. It does
 20 seem, I can remember that was a rather late
 21 call to organize it.
 22 COFFEY, Q.C.:
 23 Q. And in terms of then having met with the
 24 Minister of Health, Tom Osborne, and his
 25 deputy and the other staff there, what was

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1 your understanding in terms of like, had you
 2 been given direction or was it simply you
 3 briefed him and went about your business?
 4 Because you made reference to Oscar Howell
 5 saying we got to do this, this, this -
 6 MR. TILLEY:
 7 A. Right. I had been in the habit when there's
 8 specific direction given to try to put
 9 something down that sort of says that. I
 10 obviously don't here, but to say that it was
 11 or was not, I'm leaning towards not, but I
 12 can't say it for sure.
 13 COFFEY, Q.C.:
 14 Q. Now there is a certain amount of information,
 15 certainly a number of numbers on Exhibit P-
 16 0125, page 42. During this meeting with the
 17 minister, do you recall whether or not the
 18 minister and their staff were advised that
 19 Eastern Health was about to have a media
 20 briefing on this issue?
 21 MR. TILLEY:
 22 A. I can't imagine that it wouldn't be talked
 23 about because as I noticed in one of the e-
 24 mails earlier from my assistant, it was
 25 referenced to an upcoming media briefing, so

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1 obviously the thinking had begun in terms of
 2 having that.
 3 COFFEY, Q.C.:
 4 Q. And with respect to this, do you recall
 5 whether or not the minister at the time or
 6 staff were told by anybody from Eastern Health
 7 at that meeting that there are some numbers we
 8 are not going to talk about publicly?
 9 MR. TILLEY:
 10 A. The only one that I recall discussing the
 11 numbers with, was the deceased. When we get
 12 to the point of a press conference, obviously
 13 you start getting your mind more around the
 14 issue. If there was ever to be, well no, the
 15 information that would be compiled for the
 16 press conference, of course, would be prepared
 17 in the first instance within Eastern Health.
 18 COFFEY, Q.C.:
 19 Q. Uh-hm.
 20 MR. TILLEY:
 21 A. And then in the second instance, would be
 22 shared with the appropriate people within the
 23 department and then onto the press themselves.
 24 COFFEY, Q.C.:
 25 Q. So, do you know if that--other than the

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1 reference to the fact that certain of the
 2 deceased's tissue samples had not been
 3 retested, that issue, do you know or was the
 4 minister or staff informed at the time that we
 5 are not going to talk about the number of
 6 change results.
 7 MR. TILLEY:
 8 A. I have certainly no recollection of that.
 9 COFFEY, Q.C.:
 10 Q. Looking at Exhibit P-0421, page 3 and a
 11 reference to false negatives, approximately
 12 five percent, November 23, '06, the meeting
 13 with the minister and his staff. What's this
 14 false negatives approximately five percent?
 15 MR. TILLEY:
 16 A. I can't say with total confidence other than
 17 the fact that it had come up from time to time
 18 that no matter how good your system is,
 19 there's always going to be an element of these
 20 problems occurring by the nature of the test.
 21 I can't explain it.
 22 COFFEY, Q.C.:
 23 Q. Okay. Now, when you met with minister on
 24 November 23, did you have any understanding
 25 about the percentage, rough percentage of

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1 conversions?
 2 MR. TILLEY:
 3 A. Well, we had the numbers there certainly. So
 4 -
 5 COFFEY, Q.C.:
 6 Q. So, if we could bring those up again please.
 7 So, you can actually just do the arithmetic,
 8 couldn't you?
 9 MR. TILLEY:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Had you done the arithmetic?
 13 MR. TILLEY:
 14 A. Had I done it at that time or had anybody else
 15 done it? I don't recall.
 16 COFFEY, Q.C.:
 17 Q. Did you have any understanding in getting
 18 toward the end of November, 2006 that the
 19 media might be asking about this when you held
 20 your -
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. - press conference.
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And in terms of that then, what happened? I
 4 would, if I could--please, if we could look at
 5 P-0421, page four. Now, these are an excerpt
 6 from your notes. You see that date there,
 7 December 4, '06?
 8 MR. TILLEY:
 9 A. Okay.
 10 COFFEY, Q.C.:
 11 Q. If you go on to the next page, it's some
 12 redacted material, but the next page is
 13 "Department of Health/Eastern, Susan and Tansy
 14 and George and John, ER/PR
 15 communication/department (minister), working
 16 relationship". Now, what was this? I take it
 17 this was a meeting that yourself and Ms.
 18 Bonnell and Tansy Mundon and John Abbott had?
 19 MR. TILLEY:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. How did this come about and what happened?
 23 MR. TILLEY:
 24 A. My recollection is that John had suggested the
 25 four of us get together. And it was more to

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1 ensure that everyone was on the same page in
 2 terms of how it dealt with issues. And as you
 3 can see there, "communications, working
 4 relationship" was a particular note. I can't
 5 say what we spoke specifically about with
 6 ER/PR.
 7 COFFEY, Q.C.:
 8 Q. This would have been a week before the actual,
 9 exactly one week before December 11.
 10 MR. TILLEY:
 11 A. Right, but I can't say what we actually talked
 12 about, unfortunately. I don't remember the
 13 meeting being particularly long, nor do I
 14 recall it being, in any way, a difficult
 15 meeting, other than, you know, just a
 16 discussion on how we should be working
 17 together.
 18 COFFEY, Q.C.:
 19 Q. How did that come up? Yourself and John
 20 Abbott have known each other a long time.
 21 MR. TILLEY:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. So, why, in the beginning of December of 2006
 25 is it necessary to have a meeting between the

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1 two of you and your two communications
 2 directors?
 3 MR. TILLEY:
 4 A. Right. Well, it was clearly not a meeting
 5 that John and I would have set up to deal with
 6 communications. We set it up at his request
 7 with the two communications leads in there.
 8 And it was specifically--not specifically--but
 9 primarily to talk about how the two
 10 communications pieces would work.
 11 COFFEY, Q.C.:
 12 Q. You told the Commissioner had there, you know,
 13 why was it necessary--to use your phrase, in
 14 terms of Ontario--why was it necessary to have
 15 a meeting?
 16 MR. TILLEY:
 17 A. Well, there was obviously some issues that
 18 John must have felt that there would be value
 19 in the communications people working closer
 20 together.
 21 THE COMMISSIONER:
 22 Q. An obvious question is, does that imply they
 23 had not been up to that point?
 24 MR. TILLEY:
 25 A. No. I think I would have seen a number of

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1 examples where documents would have been
 2 exchanged back and forth.
 3 THE COMMISSIONER:
 4 Q. Well, in that case, why would he have a
 5 meeting?
 6 MR. TILLEY:
 7 A. Right. What date was this again?
 8 COFFEY, Q.C.:
 9 Q. This is December 4, 2006.
 10 MR. TILLEY:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. I think a lot of the documentation exchange,
 14 not all of it, but a lot of it, you're going
 15 to see is after that.
 16 MR. TILLEY:
 17 A. Yeah.
 18 COFFEY, Q.C.:
 19 Q. So, that's why -
 20 MR. TILLEY:
 21 A. The documentation exchange on that particular
 22 press conference or in the long term?
 23 COFFEY, Q.C.:
 24 Q. Well, and longer term afterward.
 25 MR. TILLEY:

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1 A. I know, but I can't, in my mind, find the time
 2 it actually occurred. But we did go through a
 3 period of time where press releases that we
 4 were issuing on various issues, there was an
 5 expectation that we would run those by the
 6 department. And I remember Susan speaking to
 7 me with regards to our timelines being off as
 8 we wait for feedback from the department.
 9 That's the only thing that comes to mind when
 10 I look at this relationship issue.

11 COFFEY, Q.C.:

12 Q. So, on this point, okay, do you have any
 13 recollection of any disagreement between
 14 yourself and John Abbott involving
 15 communications issues and ER/PR? I understand
 16 we're going to have more testimony on this.

17 MR. TILLEY:

18 A. Sure. No, I don't.

19 COFFEY, Q.C.:

20 Q. Okay.

21 THE COMMISSIONER:

22 Q. Mr. Tilley, can you tell me generally, outside
 23 the context of ER/PR, whether Eastern Health
 24 or indeed the prior organization in which you
 25 were involved regularly was expected to run

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1 press releases past the Department of Health
 2 or was this something new?

3 MR. TILLEY:

4 A. It was an evolving process. Certainly in our
 5 earlier days it was done through their
 6 exclusion. And any inclusion would be more by
 7 coincidence. But clearly, as time went on,
 8 there was a greater expectation that things
 9 would be shared and advice and opportunity for
 10 advice to be given.

11 THE COMMISSIONER:

12 Q. Now, was there a communication with you that
 13 this reflected change in view from the
 14 department as to how things should be run or
 15 were you advised if the department was unhappy
 16 as to how communications was being held or
 17 being dealt with within Eastern -

18 MR. TILLEY:

19 A. No, I certainly wasn't getting an indication
 20 about the department being unhappy. More a
 21 reflection of how they expected things to be
 22 done.

23 THE COMMISSIONER:

24 Q. Okay. Does that--is communications unique in
 25 that respect?

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1 MR. TILLEY:

2 A. As opposed to other services within the
 3 organization?

4 THE COMMISSIONER:

5 Q. Yes. Did you find that this--for want of
 6 another term, I would call closer
 7 relationship, vis-a-vie, communications with
 8 the Department of Health. I understand that's
 9 what you're telling me.

10 MR. TILLEY:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. Compare to your prior experience, you're now
 14 getting to the point where, in respect at
 15 least of communications coming out of Eastern
 16 Health, you were expected to have more contact
 17 with the department. They were expecting to
 18 see your press releases before they went out.
 19 Were they telling you why?

20 MR. TILLEY:

21 A. I can't say specifically why, but there were
 22 times that suggestions came back in terms of
 23 how things might have been phrased.
 24 Sometimes, I think the greatest frustration
 25 that I was being spoken to was the amount of

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1 time it took them to reply. So, it made us
 2 wonder what process they might be going
 3 through in their circles to assess what we had
 4 sent over. But, Madam Commissioner, back to
 5 your earlier point, was this unique to the
 6 organization? All health facilities would
 7 have had a connection with the Department of
 8 Health over the years. What I did notice
 9 though in recent years is that that
 10 relationship tended to be increasing. And
 11 comes to my mind more is consultants from the
 12 Department of Health coming in and actually
 13 meeting with our finance people and having a
 14 dialogue as to their comfort level on where
 15 our costs were, where they were changing, what
 16 we would do to get control of it? So, it
 17 seemed to be happening in a lot of places in
 18 the organization. So, contact was not
 19 restricted to a single source. So, it's not
 20 something I could readily measure.

21 THE COMMISSIONER:

22 Q. And I understood from what you had said in one
 23 of the prior days that you were also
 24 discovering that there was communication that
 25 you didn't know about at lower levels in your

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1 organization.
 2 MR. TILLEY:
 3 A. Yes. Now, later in the day, sort of, in the
 4 year, I'm sure Mr. Coffey may have it and you
 5 may, in fact, spoke to it--I did make a
 6 request to the organization -
 7 THE COMMISSIONER:
 8 Q. Yes, you did speak about that last time.
 9 MR. TILLEY:
 10 A. Okay, thank you.
 11 THE COMMISSIONER:
 12 Q. That you be copied on any communications so
 13 that you'd be aware of what went -
 14 MR. TILLEY:
 15 A. Because all of a sudden I realized that there
 16 could be information coming from any source
 17 here. And number one, I was expected to speak
 18 to it, but number two, you know, should there
 19 have been other people involved in signing off
 20 on any of those particular documents?
 21 THE COMMISSIONER:
 22 Q. Now, did you have any reason to believe that
 23 Eastern Health was treated any differently
 24 than any other of the authorities in this
 25 respect?

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1 MR. TILLEY:
 2 A. I would not expect so, but I really had no
 3 information to think otherwise.
 4 COFFEY, Q.C.:
 5 Q. Thank you, Commissioner. If we could, please,
 6 Exhibit 0418, page 3, actually page--yeah.
 7 This is an excerpt again from a notebook of
 8 yours. Let's go back a bit, if I could
 9 please. And it's a reference to John Abbott,
 10 pathology, oncology, Kara Laing.
 11 MR. TILLEY:
 12 A. This would be my telephone log.
 13 COFFEY, Q.C.:
 14 Q. Yes. And then there's John Abbott, number
 15 one, "briefing,"--is that brief?
 16 MR. TILLEY:
 17 A. Yeah, brief, briefing in ER/PR. Sorry, what
 18 date was this again?
 19 COFFEY, Q.C.:
 20 Q. Well -
 21 MR. TILLEY:
 22 A. We don't know, sorry.
 23 COFFEY, Q.C.:
 24 Q. No, no, sometimes we; sometimes we don't. You
 25 see that number one?

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1 MR. TILLEY:
 2 A. Yeah.
 3 COFFEY, Q.C.:
 4 Q. And you'll notice here, Volume 46, page 340.
 5 Now we go on to the next page of the exhibit,
 6 page three of the exhibit, which is Volume 46,
 7 page 341, number of things redacted, but we
 8 have that little--we have a number six
 9 circled, like we had the number one, and could
 10 you just read this out, please?
 11 MR. TILLEY:
 12 A. Yes. "Minister works differently than others.
 13 Must respect Minister's approach. Makes up
 14 his own mind."
 15 COFFEY, Q.C.:
 16 Q. Yes, and to help put this in some temporal
 17 context, if we go on to the next page of the
 18 exhibit, which is page--Volume 46, page 342,
 19 there is a date, November 28th '06, suggesting
 20 that what we just read there about the
 21 Minister was probably written before November
 22 28th.
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. What was this about, with reference to? This
 2 would have been Tom Osborne -
 3 MR. TILLEY:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. - if it's in 2006.
 7 MR. TILLEY:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. And you got, I think, four different
 11 questions. But below the first three bullets,
 12 the fourth bullet, which is a bit separated,
 13 says, "We hoped to wait to only disclose to
 14 those impacted." See that?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And what were you trying to convey to the
 19 audience?
 20 MR. TILLEY:
 21 A. That there were a lot of people who would have
 22 been a recipient of this particular test and
 23 its results and that our intention was to
 24 focus in on those who would have been impacted
 25 by the change as opposed to those that would

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1 not have been.
 2 COFFEY, Q.C.:
 3 Q. And what then would have happened with respect
 4 to those who were retested and had no change?
 5 MR. TILLEY:
 6 A. My presumption--I can't answer that, Mr.
 7 Coffey, now that I think about it. It would
 8 be more of a speculation than an actual piece
 9 of information.
 10 COFFEY, Q.C.:
 11 Q. Okay.
 12 THE COMMISSIONER:
 13 Q. Mr. Coffey, can we explore what this witness
 14 sees as by the change?
 15 COFFEY, Q.C.:
 16 Q. Yes, in terms of that.
 17 MR. TILLEY:
 18 A. I'm sorry?
 19 THE COMMISSIONER:
 20 Q. I'm interested where you say that your
 21 intention was to focus only on those who would
 22 have been impacted by the change.
 23 MR. TILLEY:
 24 A. Right.
 25 THE COMMISSIONER:

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1 Q. And what do you mean by, "by the change"?
 2 MR. TILLEY:
 3 A. Well, any person whose results would have
 4 changed were certainly the ones that we were
 5 focused in on as opposed to those who would
 6 not have been impacted by the retest.
 7 THE COMMISSIONER:
 8 Q. Okay. But what's impacted? The point I'm
 9 getting at is that when you look at the
 10 materials that have been provided in respect
 11 of the persons who have had their retest done,
 12 they fall into not neat categories.
 13 MR. TILLEY:
 14 A. Right.
 15 THE COMMISSIONER:
 16 Q. And perhaps those who can be stated most
 17 clearly are those for whom the original test
 18 results were negative in the sense of zero and
 19 the retests were negative in the sense of
 20 zero. Everyone beyond that there are little
 21 ifs connected.
 22 MR. TILLEY:
 23 A. Right.
 24 THE COMMISSIONER:
 25 Q. So when you talk about people who had been

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1 impacted by the change, does that mean only
 2 those who had their treatment changed, for
 3 example?
 4 MR. TILLEY:
 5 A. Right. Well, the focus right from the very
 6 beginning was to make a difference for those
 7 who we actually could have a change in
 8 treatment. I don't know if we got more
 9 precise than that other than that's what we
 10 kept saying as to the reason we're doing this.
 11 COFFEY, Q.C.:
 12 Q. So the initial plan, I take it, was to tell--
 13 initial, initial plan was to have a press
 14 release and tell the public at large?
 15 MR. TILLEY:
 16 A. For what we were going to do, yes.
 17 COFFEY, Q.C.:
 18 Q. Yes. You were in the midst of doing a
 19 retesting?
 20 MR. TILLEY:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. That was the initial plan?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And then it became, and you've already
 3 elaborated upon this, wait for the retest
 4 results to come back and then we have
 5 something to tell the patients?
 6 MR. TILLEY:
 7 A. Right. That was the oncologists -
 8 COFFEY, Q.C.:
 9 Q. Oncologists.
 10 MR. TILLEY:
 11 A. - who were making us aware of that situation.
 12 COFFEY, Q.C.:
 13 Q. So what is your memory in terms of that, were
 14 the oncologists saying for the patients whose
 15 results come back, retest results come back at
 16 zero, zero, they were zero, zero to begin with
 17 and they're now zero, zero?
 18 MR. TILLEY:
 19 A. Right.
 20 COFFEY, Q.C.:
 21 Q. What was your understanding about the
 22 oncologists' best advice in that regard?
 23 MR. TILLEY:
 24 A. I can't recall it specifically because it was
 25 more of a technical issue that I wouldn't have

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1 been able to interpret.
 2 COFFEY, Q.C.:
 3 Q. Okay. I take it, though, if the results
 4 changed, ie, they went from zero, zero to,
 5 say, 80 and 80 -
 6 MR. TILLEY:
 7 A. Certainly if--yes.
 8 COFFEY, Q.C.:
 9 Q. Then you understood that certainly the
 10 oncologists thought that they should be told
 11 this?
 12 MR. TILLEY:
 13 A. Well, the oncologists said we want something
 14 to disclose and if, in fact, there is
 15 something there to disclose, then we will.
 16 COFFEY, Q.C.:
 17 Q. For the patients who for whatever reason were
 18 retested but were already on Tamoxifen or the
 19 equivalent, for whatever reason, they
 20 converted, the retest converted but they were
 21 already on Tamoxifen, what was your
 22 understanding in the early stages as to
 23 whether or not they were going to be told,
 24 because there'd be no treatment change?
 25 MR. TILLEY:

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1 A. No.
 2 COFFEY, Q.C.:
 3 Q. Arguably no treatment change.
 4 MR. TILLEY:
 5 A. I really don't recall.
 6 COFFEY, Q.C.:
 7 Q. Okay. Sir, with respect to--just looking at
 8 this exhibit, who prepared this slide show?
 9 MR. TILLEY:
 10 A. Well, there was a combination of input. I
 11 certainly would have obviously been a main
 12 contributor. I would have drawn upon others.
 13 Susan Bonnell was very useful in terms of
 14 getting the graphic pieces done. I'm sure I
 15 would have had some input from quality.
 16 COFFEY, Q.C.:
 17 Q. Input in the sense of they vetted it or -
 18 MR. TILLEY:
 19 A. Yeah, look and say--I was asked to do this
 20 presentation and then sought some input in
 21 terms of who would help or shape the ideas as
 22 to what we put in it.
 23 COFFEY, Q.C.:
 24 Q. The decision as to who should be the person
 25 that should disclose the fact that patients

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1 were being retested to the patients.
 2 MR. TILLEY:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Not the results but the fact that they were
 6 being retested.
 7 MR. TILLEY:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. Which occurred, I gather, in October of 2005.
 11 Whose decision was that?
 12 MR. TILLEY:
 13 A. I felt that I was a major contributor to that.
 14 There was question that was going on at the
 15 time about issuing a letter -
 16 COFFEY, Q.C.:
 17 Q. Yeah. And my second question was -
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. - the methodology.
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. Phone call or letter, but -

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1 MR. TILLEY:
 2 A. Well, let me just speak to the letter -
 3 COFFEY, Q.C.:
 4 Q. Sure.
 5 MR. TILLEY:
 6 A. - versus the other. I think I had mentioned
 7 before that in my assessment of this, I
 8 thought it was better for patients to have the
 9 benefit of talking to somebody who could at
 10 least provide some elaboration if there were
 11 questions. As to whose decision was it to
 12 notify the patients that they were going to be
 13 pretested.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 MR. TILLEY:
 17 A. I think we looked at last week at a
 18 combination of documents, one of which we had
 19 indicated that we were going to consult Dr.
 20 Laing with regards to that. I don't have any
 21 other note which suggests there was a fine
 22 point in time that I can recall when that
 23 decision was made other than it was made and
 24 we acted upon it.
 25 COFFEY, Q.C.:

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1 Q. Now, in terms--and the method used was phone
 2 calls?
 3 MR. TILLEY:
 4 A. That's correct.
 5 COFFEY, Q.C.:
 6 Q. The choice as to what sort of individual
 7 should make the call?
 8 MR. TILLEY:
 9 A. That would be a clinical person within or
 10 coordinated by the quality initiatives
 11 department.
 12 COFFEY, Q.C.:
 13 Q. I see. And the choice not to use physicians
 14 to do that was whose?
 15 MR. TILLEY:
 16 A. I know in some cases physicians actually made
 17 the contact because they had the information.
 18 COFFEY, Q.C.:
 19 Q. I'm talking here about the retest.
 20 MR. TILLEY:
 21 A. Oh, sorry.
 22 COFFEY, Q.C.:
 23 Q. The fact of the retest.
 24 MR. TILLEY:
 25 A. I'm not sure that even entered the equation to

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1 think that we could get enough physicians who
 2 were willing to sit down and take on this very
 3 time extensive task.
 4 COFFEY, Q.C.:
 5 Q. And the choice of methodology, ie, phone call
 6 versus letter, you've told us about your own
 7 views on that.
 8 MR. TILLEY:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. We do know, based upon looking at the
 12 exhibits, that there's an e-mail that Dan
 13 Boone sent one day saying "Don't send a
 14 letter" and he says why, okay. The next day
 15 you send an e-mail yourself to all of the
 16 trustees saying "We are beginning today to
 17 contact the patients by phone."
 18 MR. TILLEY:
 19 A. Okay.
 20 COFFEY, Q.C.:
 21 Q. Were you at the time you made the decision to
 22 use the phone to contact the patients, were
 23 you aware of Mr. Boone's views arguing against
 24 a letter, were you aware of them?
 25 MR. TILLEY:

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1 A. There was a letter around that time, you say?
 2 COFFEY, Q.C.:
 3 Q. No, it's an e-mail from him -
 4 MR. TILLEY:
 5 A. No, the e-mail that I'm thinking of is the one
 6 that referenced the views of HIROC, but that
 7 was much earlier in the game.
 8 COFFEY, Q.C.:
 9 Q. That was much earlier, it's July 10th, yeah.
 10 MR. TILLEY:
 11 A. I can't recall specifically if I was aware of
 12 it. I guess the minutes -
 13 THE COMMISSIONER:
 14 Q. (Inaudible - microphone not on) Mr. Coffey?
 15 COFFEY, Q.C.:
 16 Q. Yes, I can, and I'll do that right away.
 17 THE COMMISSIONER:
 18 Q. Or e-mail, I guess it is.
 19 COFFEY, Q.C.:
 20 Q. It's Exhibit P-0092, it's October 19th, 2005.
 21 And this is the one that you see down below
 22 here, Mr. Boone has sent it to Heather Predham
 23 and she redistributed it the next day,
 24 next morning to Ms. Pilgrim, Dr. Williams and
 25 Susan Bonnell. And then if we could look at

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1 Exhibit P-0093, please? Approximately 25
 2 hours later you are e-mailing the board
 3 members. The last paragraph in this you'll
 4 note "As well, today we will start calling all
 5 patients who are being retested to advise them
 6 of when their results can be expected." You
 7 see that?
 8 MR. TILLEY:
 9 A. No. You say the last paragraph?
 10 COFFEY, Q.C.:
 11 Q. The last paragraph. It's right here. "As
 12 well," the second -
 13 MR. TILLEY:
 14 A. Okay, I got you now. "As well".
 15 COFFEY, Q.C.:
 16 Q. "As well".
 17 MR. TILLEY:
 18 A. Um-hm.
 19 COFFEY, Q.C.:
 20 Q. So that's at 9:30, approximately, on the 20th
 21 of October. And if we could go back to P-
 22 0092?
 23 MR. TILLEY:
 24 A. And that was the day before?
 25 COFFEY, Q.C.:

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1 Q. Well, the distribution to Patricia Pilgrim,
 2 Dr. Williams and Susan Bonnell occurred at
 3 8:30, approximately, the morning before,
 4 "Here's Dan's view on the feedback." And when
 5 you look at Dan's view, we've looked at this
 6 before, this is his view on the ill
 7 advisability from his perspective of a letter.
 8 So I'm just asking you, at the time the
 9 decision was made to use the phone as opposed
 10 to a letter were you aware of Mr. Boone's--
 11 whether you saw the e-mail or not, were you
 12 made aware of Mr. Boone's position?
 13 MR. TILLEY:
 14 A. I can't say that I was. I'm just looking at
 15 the letter and there's a reference there
 16 that's--I'm just trying to get my head around.
 17 "There's a possibility that we could be sued
 18 in a class action by those people who receive
 19 this proposed correspondence whose test
 20 results do not change."
 21 COFFEY, Q.C.:
 22 Q. Isn't that the sort of thing that would be
 23 brought to a CEO's attention?
 24 MR. TILLEY:
 25 A. Well, I guess we've ignored it because by

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1 contacting everybody we've, in fact, done the
 2 same thing, that's what I'm thinking about.
 3 COFFEY, Q.C.:
 4 Q. Did you ignore it, know of it and ignore it,
 5 know of it and accept half of it, don't use
 6 the letter, but contact the patients anyway -
 7 MR. TILLEY:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. - or did you know of it at all? And that's, I
 11 guess, that's really what I'm -
 12 MR. TILLEY:
 13 A. And that's, I can't sort of say that I was
 14 aware of this or not at that point in time.
 15 COFFEY, Q.C.:
 16 Q. Now with respect to--sorry. Look again at
 17 0396, please? If we could look, please, at
 18 page 7? Here you've said, the second--
 19 "Getting the message across." And you said,
 20 "Compensation." What does compensation have
 21 to do with this?
 22 MR. TILLEY:
 23 A. It certainly doesn't fit in with the other
 24 points and I can't, I can't speak to it. By
 25 this time I know the Labrador reference had

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1 been made in 2005.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. It could be through that connection that it
 6 was referenced.
 7 COFFEY, Q.C.:
 8 Q. In the sense that -
 9 MR. TILLEY:
 10 A. The method -
 11 COFFEY, Q.C.:
 12 Q. - the disclosure methodology could involve
 13 exposing you to having to pay compensation?
 14 MR. TILLEY:
 15 A. Yeah.
 16 COFFEY, Q.C.:
 17 Q. Is that the -
 18 MR. TILLEY:
 19 A. That's the only thing that occurs to me at the
 20 moment.
 21 COFFEY, Q.C.:
 22 Q. If we could go on then to--then there are a
 23 series of slides here and, you know, again, I
 24 don't know if there's any significance or not,
 25 to the shapes of the signs. I don't want to

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1 read too much into it.
 2 MR. TILLEY:
 3 A. I don't think so.
 4 COFFEY, Q.C.:
 5 Q. Otherwise I'm not going to--just because they
 6 are different, at least certain of them are.
 7 You have patients and their families and then
 8 physicians and staff and the different types
 9 of physicians. Now in terms of disclosure
 10 physicians and staff, fee for service
 11 physicians, surgeons, oncologists,
 12 pathologists who I take it are salaried and
 13 laboratory staff. Mr. Tilley, in November, by
 14 November of '06 certainly the idea of, you
 15 know, addressing the issue of communicating
 16 with your staff about what had happened was
 17 front and centre, at least you're about to
 18 hold these seminars, as it were.
 19 MR. TILLEY:
 20 A. Um-hm.
 21 COFFEY, Q.C.:
 22 Q. Okay. Decisions about how much staff should
 23 or shouldn't know or be told, who made those
 24 decisions, at what level in your organization?
 25 MR. TILLEY:

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1 A. Well, it was certainly not an area that I was
 2 involved in. In terms of my direction it
 3 would have been to the extent that these
 4 reports and the recommendations had to be
 5 followed up on them. So beyond that, how that
 6 was delivered would have been more within the
 7 leadership team of the lab.
 8 COFFEY, Q.C.:
 9 Q. And there's a reference to "Other hospitals
 10 labs outside the province, what -
 11 MR. TILLEY:
 12 A. I think my intent there was in talking about
 13 how complicated this was, was the multiple
 14 stakeholders that were connecting with this
 15 issue, so it just wasn't one particular
 16 patient and one particular staff or one
 17 particular hospital.
 18 COFFEY, Q.C.:
 19 Q. And in terms then of, as you've indicated, at
 20 times you spoke to a couple of CEOs and maybe
 21 a lab director or two about this?
 22 MR. TILLEY:
 23 A. That's correct.
 24 COFFEY, Q.C.:
 25 Q. Over time. Outside the province, that is. In

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1 terms of other hospitals and labs inside the
 2 province, who was responsible for dealing with
 3 them?
 4 MR. TILLEY:
 5 A. Would have been the pathology--sorry, the
 6 chief, clinical chief of the laboratory, they
 7 would link up with them. And of course, we
 8 did arrange some briefing sessions for the
 9 CEOs and the vice-presidents of medical
 10 services.
 11 COFFEY, Q.C.:
 12 Q. Provincial government?
 13 MR. TILLEY:
 14 A. Well -
 15 COFFEY, Q.C.:
 16 Q. The next -
 17 MR. TILLEY:
 18 A. Yes. Obviously you know the extent that they
 19 were there and were very interested in how
 20 this was unfolding.
 21 COFFEY, Q.C.:
 22 Q. And in terms of control, or ultimate control
 23 of the process, from your perspective, was it-
 24 did it rest on your shoulders or Mr.
 25 Abbott's?

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1 MR. TILLEY:
 2 A. Well, I think it rests -
 3 COFFEY, Q.C.:
 4 Q. As a civil servant, I mean, both of you in one
 5 sense are civil servants.
 6 MR. TILLEY:
 7 A. No, no. I guess in terms of control I felt it
 8 rested on my shoulders. I certainly was
 9 sharing and would have been open to any advice
 10 that would be forthcoming.
 11 COFFEY, Q.C.:
 12 Q. Do you have any recollection in this whole
 13 process of Mr. Abbott giving you advice that
 14 you chose to reject?
 15 MR. TILLEY:
 16 A. Not having or not being able to see items two
 17 to five
 18 COFFEY, Q.C.:
 19 Q. Well, we could arrange to do that
 20 MR. TILLEY:
 21 A. Yes, I know.
 22 COFFEY, Q.C.:
 23 Q. If Mr. Simmons wants to.
 24 MR. TILLEY:
 25 A. So there must have been other issues talked

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1 about than just this.
 2 COFFEY, Q.C.:
 3 Q. Yes, oh yeah.
 4 MR. TILLEY:
 5 A. The way I interpret that was just mere fact
 6 that we had just been through Minister
 7 Ottenheimer and Minister Ottenheimer was
 8 certainly very hands on in this issue, and I
 9 was just getting the message that the Minister
 10 worked differently than his predecessor, and
 11 if he had a particular thing that he wanted
 12 done, if it was a change for the department,
 13 then you know, they were certainly going to be
 14 making every effort to accommodate him.
 15 COFFEY, Q.C.:
 16 Q. This message you were getting, I take it, was
 17 from Mr. Abbott?
 18 MR. TILLEY:
 19 A. That's correct.
 20 COFFEY, Q.C.:
 21 Q. And when you say "must respect Minister's
 22 approach. Makes his own mind," I take it
 23 this wasn't your conclusion. This was
 24 something you were being told. You were just
 25 making -

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1 MR. TILLEY:
 2 A. That's correct, yes.
 3 COFFEY, Q.C.:
 4 Q. Okay. This is Mr. Abbott's observations and
 5 to you?
 6 MR. TILLEY:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. What did you understand from the "makes up his
 10 own mind" comment?
 11 MR. TILLEY:
 12 A. There's nothing that comes to my mind,
 13 unfortunately, that I could give any detail as
 14 to what the intent was.
 15 COFFEY, Q.C.:
 16 Q. Suggesting perhaps that others in his position
 17 don't make up their own mind, they accept what
 18 they're told. Is that--was that a possible -
 19 MR. TILLEY:
 20 A. I really couldn't say.
 21 COFFEY, Q.C.:
 22 Q. If we could, please, page five of this
 23 exhibit. Thank you, Registrar. This is again
 24 telephone logs, I gather, from--this is John
 25 Abbott. It's referenced November 30th '06.

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1 ER/PR, and what's this?
 2 MR. TILLEY:
 3 A. That looks like "Tara responds" but I'm
 4 thinking it might be Tansy. That's the only
 5 thing that I can equate it to. And the
 6 reference "deceased" and "messages" and then
 7 underneath that, it says "Susan, heads up,
 8 Minister's style (political style)" and then I
 9 have an arrow shooting down towards "budget"
 10 and from the budget, there's sort of two sub
 11 ones which says "political." I've looked at
 12 that one a thousand times. The only thing I
 13 can come up with is "hook" and then "plans"
 14 and that looks like "lined" but it may not be
 15 that.
 16 COFFEY, Q.C.:
 17 Q. Now what would this--Tara is written there.
 18 It's probably Tansy, as you indicated, and
 19 bearing in mind this is, I gather, John Abbott
 20 calling you. The reference on November 30th
 21 then to the deceased and messages, what's this
 22 about?
 23 MR. TILLEY:
 24 A. My assumption is that it would refer to the
 25 discussion that was held on the 23rd about the

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1 deceased.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. And what could be said about those people who
 6 are--who have family members that are in that
 7 category.
 8 COFFEY, Q.C.:
 9 Q. So why was John Abbott contacting you on the
 10 30th about this?
 11 MR. TILLEY:
 12 A. I have no trigger as to why that might be or
 13 why that might be so.
 14 COFFEY, Q.C.:
 15 Q. To say, there's an arrow--does it suggest,
 16 arguably, John Abbott's--the message you're
 17 being asked to convey to Susan, heads up?
 18 MR. TILLEY:
 19 A. Yes, that's a reasonable interpretation.
 20 COFFEY, Q.C.:
 21 Q. And so that suggests that at the end of
 22 November, the deputy minister is asking you,
 23 as CEO, to give your director of
 24 communications a heads up about the minister's
 25 style?

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1 MR. TILLEY:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. That's--do you recall what in particular it
 5 was about the minister's style that you were
 6 supposed to bring to Susan's attention?
 7 MR. TILLEY:
 8 A. Not a clue, sir.
 9 COFFEY, Q.C.:
 10 Q. Now this is all under the context, until we
 11 get down to the word "budget" with its own
 12 arrow, is all under the heading, arrow ER/PR.
 13 MR. TILLEY:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. Tara or Tansy responds, then to Susan. So what
 17 did this--do you recall, is that helpful, in
 18 terms of your memory of what message you were
 19 supposed to convey to Susan about ER/PR?
 20 MR. TILLEY:
 21 A. I don't recall anything from that note which
 22 says that there's any ER/PR other than--for
 23 Susan, other than just to talk about the
 24 minister's particular style. For some reason
 25 or another--this again is the end of November?

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1 COFFEY, Q.C.:

2 Q. It's November 30th.

3 MR. TILLEY:

4 A. So we're getting into budget processes or in

5 the middle of budget processes at that time,

6 and I'm wondering if that political hook would

7 be, you know, if there's anything in the

8 budget process that might be particularly of

9 interest for the minister to be supporting.

10 COFFEY, Q.C.:

11 Q. And this does--the heading here, sir, is ER/PR

12 and a week before you had met with the

13 minister about ER/PR and your organization is

14 about to do a press conference.

15 MR. TILLEY:

16 A. Right. The only issue is that you see the

17 arrow pointing to the ER/PR, there's another

18 arrow pointing to budget.

19 COFFEY, Q.C.:

20 Q. Yes.

21 MR. TILLEY:

22 A. Not to say that I'm perfect at it, but usually

23 that, for me, means, you know, we've switched

24 on to another topic.

25 COFFEY, Q.C.:

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1 Q. Okay, and in terms of though the "heads up,

2 Susan," wouldn't it be unusual for the deputy

3 minister to call the CEO of an organization

4 like Eastern Health and to give some kind of a

5 message about, you know, ER/PR, talk to your

6 director of communications, give her a heads

7 up? Wouldn't that be unusual, first of all?

8 MR. TILLEY:

9 A. Yes, and I guess it's possible that I've

10 misstated it here, but that's the way it

11 reads.

12 COFFEY, Q.C.:

13 Q. Was there--do you recall, at this point in

14 time, and in fact all the way through the

15 December 11th briefing, was John Abbott or

16 Moira Hennessey or Tansy Mundon ever told, to

17 your knowledge, that Eastern Health was not

18 going to release certain information to the

19 public?

20 MR. TILLEY:

21 A. I can't recall any discussion of that nature.

22 COFFEY, Q.C.:

23 Q. There is--if we could, please, Exhibit P-0421,

24 page seven? Again, this is--some of this is

25 redacted, but again, this is from Volume 53,

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1 page 306. The date is December 6th '06, and

2 we go on to the next page. This full page is

3 redacted, with the exception of the date.

4 This is Volume 53, page 307. It's page eight

5 of the exhibit, Commissioner, Exhibit 0421,

6 and there's--we pick up a numbering system.

7 You see this, Mr. Tilley?

8 MR. TILLEY:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. 14, 15, and so on, and get down to number 19,

12 there's a name, Oscar, and above that, there's

13 a name Pat Pilgrim and then the name here is -

14 MR. TILLEY:

15 A. Louise.

16 COFFEY, Q.C.:

17 Q. Louise, that would be Louise Jones, I take it?

18 MR. TILLEY:

19 A. Yes.

20 COFFEY, Q.C.:

21 Q. And then Oscar, I take it these are the people

22 who are speaking to certain points?

23 MR. TILLEY:

24 A. Yes, and my guess would be these are--this

25 would have been occurring during an executive

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1 meeting.

2 COFFEY, Q.C.:

3 Q. Yes.

4 MR. TILLEY:

5 A. So doing a round the table -

6 COFFEY, Q.C.:

7 Q. Items on an agenda, as it were.

8 MR. TILLEY:

9 A. Yeah.

10 COFFEY, Q.C.:

11 Q. Possibly. And it says Oscar, number 19. Is

12 that oncology?

13 MR. TILLEY:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Could you just read out what's there then,

17 below the oncology?

18 MR. TILLEY:

19 A. Below oncology, "ER/PR technical review,

20 Monday. Media, Dan Boone reluctant." But

21 then a reference to "public trust." Then

22 under that, talks about "med oncologists,

23 resignation of Siddiqui, Laing and Ganguly.

24 Kara okay. Others job description to define.

25 Gyne oncologists, three times. Two M,"

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1 perhaps. "ML," which is possibly maternity
 2 leave. "Question on call fee."
 3 COFFEY, Q.C.:
 4 Q. Yes, and then it goes on with some other
 5 material. So with respect to ER/PR, technical
 6 review would be Monday. I take it that's
 7 probably that technical media briefing that
 8 ended up being held?
 9 MR. TILLEY:
 10 A. Um-hm.
 11 COFFEY, Q.C.:
 12 Q. Bear in mind that this is a page before, dated
 13 December 6th.
 14 MR. TILLEY:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. What were you given to understand at the time
 18 about "media. Dan Boone reluctant." What was
 19 he reluctant about?
 20 MR. TILLEY:
 21 A. Well, I seem to remember conversations that
 22 were being repeated to me about you can't
 23 dissect this issue one piece at a time in the
 24 media. There was a lot of discussion amongst
 25 the executive team that really said that

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1 there's a bigger issue here that's going to
 2 cause us to be responding to. I'm not sure if
 3 I'm confusing this meeting with a subsequent
 4 e-mail, but there was a reference to what is
 5 an error and the fact as you can't make an
 6 assumption that because a change has occurred,
 7 it's an error. So that's my general
 8 recollection around it.
 9 COFFEY, Q.C.:
 10 Q. So do you recall what Mr. Boone was said to be
 11 reluctant about?
 12 MR. TILLEY:
 13 A. Well, as I go back to -
 14 COFFEY, Q.C.:
 15 Q. And to go back to, you know, the follow up
 16 question will be, and why would it matter?
 17 MR. TILLEY:
 18 A. Well, right from the very beginning, of
 19 course, the recommendation is that we should
 20 be talking to those for which there's actually
 21 been a change, and that we shouldn't be going
 22 out and making a open public statement. I
 23 think that goes back to early 2005.
 24 COFFEY, Q.C.:
 25 Q. That was the initial view was tell those

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1 who've had a change?
 2 MR. TILLEY:
 3 A. Right.
 4 COFFEY, Q.C.:
 5 Q. And those who haven't had a change, they
 6 wouldn't be told. The initial assumption was
 7 perhaps even they wouldn't be told.
 8 MR. TILLEY:
 9 A. The initial assumption is that we were going
 10 to issue a release to the public.
 11 COFFEY, Q.C.:
 12 Q. Sure.
 13 MR. TILLEY:
 14 A. So that's what he was, I think, speaking to.
 15 COFFEY, Q.C.:
 16 Q. And then he--and so you'd understand, big
 17 public announcement and he intervened and said
 18 what, in '05?
 19 MR. TILLEY:
 20 A. I'm just trying to--there was an e-mail that
 21 Heather Predham, I believe, had written and
 22 basically it was saying it's not that they're
 23 against disclosure. It's more it should be
 24 with the people who are actually impacted
 25 here.

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1 COFFEY, Q.C.:
 2 Q. So actual impact in this context meant what?
 3 MR. TILLEY:
 4 A. Well, whose results would have changed.
 5 COFFEY, Q.C.:
 6 Q. Would change.
 7 MR. TILLEY:
 8 A. Yeah.
 9 COFFEY, Q.C.:
 10 Q. Suggesting that those whose results hadn't
 11 changed, at least the initial thought would be
 12 they wouldn't be told?
 13 MR. TILLEY:
 14 A. That's quite possible.
 15 COFFEY, Q.C.:
 16 Q. Okay.
 17 MR. SIMMONS:
 18 Q. Excuse me, Commissioner. If we're talking
 19 about that e-mail, it may be important to make
 20 sure that there's an understanding of exactly
 21 what it says. I mean, it was referred to
 22 earlier before. I'm not sure that this
 23 exchange right now actually reflects
 24 accurately the content of that e-mail, which I
 25 think is the one back from July -

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1 THE COMMISSIONER:
 2 Q. I thought we had moved on from the e-mail to
 3 what was the earlier plan.
 4 COFFEY, Q.C.:
 5 Q. Yes. I'm very conversant with what the e-mail
 6 says versus what the witness has told me, and
 7 -
 8 MR. SIMMONS:
 9 Q. But I'm not sure that -
 10 THE COMMISSIONER:
 11 Q. Okay, but I--wait now.
 12 MR. SIMMONS:
 13 Q. - this conversation reflects that. So if
 14 we're talking about -
 15 THE COMMISSIONER:
 16 Q. Yes, except that I thought the witness -
 17 MR. SIMMONS:
 18 Q. - Heather Predham -
 19 THE COMMISSIONER:
 20 Q. - was describing, and you can correct me if
 21 I'm wrong, Mr. Tilley, but I thought that at
 22 this time, you were describing--you had said
 23 you were unsure whether you were harkening
 24 back to Ms. Predham's e-mail or not and then
 25 you and Mr. Coffey got on what I thought was

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1 going to be a continuum of initially we were
 2 looking at it this way, and.
 3 MR. TILLEY:
 4 A. Yes.
 5 THE COMMISSIONER:
 6 Q. Now was I wrong? Did I -
 7 MR. TILLEY:
 8 A. I guess I was trying to deal with Mr. Boone's
 9 reluctance
 10 THE COMMISSIONER:
 11 Q. Okay.
 12 MR. TILLEY:
 13 A. And that reluctance had sort of started -
 14 THE COMMISSIONER:
 15 Q. Earlier.
 16 MR. TILLEY:
 17 A. - much earlier.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 COFFEY, Q.C.:
 21 Q. Perhaps you could just elaborate on that, your
 22 memory of it, in terms of how--what it was and
 23 how it evolved, if it evolved?
 24 THE COMMISSIONER:
 25 Q. We will go back to your--we will give the

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1 witness an opportunity to look at the
 2 document, be assured, Mr. Simmons, but I
 3 didn't think he was referring to the document
 4 when he was answering the question.
 5 MR. SIMMONS:
 6 Q. I think there was actually two different e-
 7 mails at two different points in time and I
 8 think the reference to the July e-mail was the
 9 one where it might be useful to look at the
 10 document, July '05.
 11 THE COMMISSIONER:
 12 Q. All right. I'll make sure the witness gets a
 13 look at both of the e-mails.
 14 COFFEY, Q.C.:
 15 Q. Go ahead.
 16 THE COMMISSIONER:
 17 Q. But for the moment, the witness is giving us
 18 his recollection of the progress of events.
 19 MR. TILLEY:
 20 A. Yes.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 MR. TILLEY:
 24 A. And -
 25 THE COMMISSIONER:

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1 Q. As best you can without the aid of it and then
 2 we'll go to the e-mails and have a look at
 3 those.
 4 MR. TILLEY:
 5 A. Sorry, Commissioner, but my brain cells are
 6 really -
 7 THE COMMISSIONER:
 8 Q. It's almost lunch time.
 9 COFFEY, Q.C.:
 10 Q. Yes, it is, actually. Actually, what I'm
 11 going to suggest is this, if we could, because
 12 it is actually one minute beyond lunch time,
 13 or the usual break, if we could break and we
 14 can come back and when Mr. Tilley is a bit
 15 fresher after lunch, we can just take this up
 16 and go on.
 17 THE COMMISSIONER:
 18 Q. All right.
 19 COFFEY, Q.C.:
 20 Q. I would suggest that.
 21 THE COMMISSIONER:
 22 Q. Okay.
 23 COFFEY, Q.C.:
 24 Q. Thank you.
 25 THE COMMISSIONER:

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1 Q. All right, 2:05.
 2 (LUNCH BREAK)
 3 THE COMMISSIONER:
 4 Q. Please be seated. Mr. Coffey.
 5 COFFEY, Q.C.:
 6 Q. Thank you, Commissioner. Mr. Tilley, just
 7 before the lunch break, I had asked you about
 8 your memory of how the input from Mr. Boone or
 9 HIROC's lawyers occurred in the context of
 10 this matter.
 11 MR. TILLEY:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And evolved as time went on, your memory of
 15 this. Could you just tell us please?
 16 MR. TILLEY:
 17 A. Right. Well, during the lunch break, I sort
 18 of had Mr. Simmons dig out the memo for me and
 19 reminded myself that that in fact memo that I
 20 was referring to was referencing HIROC rather
 21 than Dan Simms.
 22 MR. SIMMONS:
 23 Q. Boone.
 24 MR. TILLEY:
 25 A. Who did I say? Boone, sorry. Too many Dans.

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1 MR. SIMMONS:
 2 Q. (Inaudible).
 3 MR. TILLEY:
 4 A. So he wasn't there. There were meetings that
 5 Mr. Simms--sorry, Mr. Boone had been in, but I
 6 don't recall him speaking to any of this
 7 issue. The other issue that I mentioned was
 8 in regards to the forthcoming technical
 9 debriefing, and I know, while I didn't speak
 10 to him at that time either, that he was in
 11 fact copied on the presentation that was being
 12 used.
 13 COFFEY, Q.C.:
 14 Q. So what was your--as a CEO of Eastern Health,
 15 what was your understanding of what input, if
 16 any, Mr. Boone had in this matter from
 17 beginning to end? And again, I don't--the
 18 Commission doesn't want to hear, you know, the
 19 actual legal advice, in terms of defence of -
 20 MR. TILLEY:
 21 A. Right.
 22 COFFEY, Q.C.:
 23 Q. - you know, the class action or anything.
 24 MR. TILLEY:
 25 A. The way I would coin it is that Mr. Boone was

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1 a reputable lawyer who was, from time to time,
 2 sharing an opinion, but not one that we felt
 3 obligated to accept. But one that we were
 4 certainly not going to discourage his presence
 5 because of that.
 6 COFFEY, Q.C.:
 7 Q. And who was arranging to have him present at
 8 various points in time?
 9 MR. TILLEY:
 10 A. The contact, as I understand it, would have
 11 been through the quality initiatives and in
 12 particular the risk manager.
 13 COFFEY, Q.C.:
 14 Q. That should be Heather Predham?
 15 MR. TILLEY:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Well, and again, this may or may not assist
 19 you. If we could bring up, please, Exhibit P-
 20 0396? Look at page 11, please, of the
 21 exhibit. If you look at this first--first in
 22 the sense of on this page in the exhibit. You
 23 posited a question, "how do we disclose?"
 24 MR. TILLEY:
 25 A. Nothing comes to mind, no.

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1 COFFEY, Q.C.:
 2 Q. Okay. There's a triangle here on this one,
 3 "Liability Insurer"?
 4 MR. TILLEY:
 5 A. Uh-hm. That would have been HIROC.
 6 COFFEY, Q.C.:
 7 Q. And what -
 8 MR. TILLEY:
 9 A. Well other than they are a stakeholder
 10 throughout the whole process and we would,
 11 obviously they have a responsibility in this
 12 process if in fact that was proven to be
 13 appropriate.
 14 COFFEY, Q.C.:
 15 Q. And "Legal Team".
 16 MR. TILLEY:
 17 A. Well you don't go through something like this
 18 without having someone advise you in that way,
 19 so yet again, another group that were part of
 20 the puzzle.
 21 THE COMMISSIONER:
 22 Q. Once again, I'm not interested in any legal
 23 advice you may have received, but when you're
 24 saying "legal team" is that over--is that
 25 separate from your insurer?

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1 MR. TILLEY:
 2 A. No, no, Commissioner, that was the one that I
 3 would have been referring to -
 4 COFFEY, Q.C.:
 5 Q. HIROC's lawyer.
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Or lawyers.
 10 THE COMMISSIONER:
 11 Q. While we're on the subject of theses, can I
 12 just get one point straight?
 13 COFFEY, Q.C.:
 14 Q. Sure.
 15 THE COMMISSIONER:
 16 Q. Mr. Tilley, all of these little signs, as I
 17 understand it, relate to parties to whom
 18 certain information had to be conveyed?
 19 MR. TILLEY:
 20 A. Yes, or they connected with the issue at some
 21 point in time.
 22 THE COMMISSIONER:
 23 Q. All right. In the process of conveying
 24 information to others, for example, other labs
 25 throughout the province, was there a script

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1 for telling labs about this, as opposed to a
 2 script for telling CEOs about this, as opposed
 3 to a script for telling your insurer about
 4 this or was everybody conveyed essentially the
 5 same information?
 6 MR. TILLEY:
 7 A. The latter primarily. There were a couple of
 8 stakeholders, like the directors of the other
 9 labs that actually got letters.
 10 THE COMMISSIONER:
 11 Q. Uh-hm.
 12 MR. TILLEY:
 13 A. The connections with the CEOs of the other
 14 health authorities, they were poled as a group
 15 and were updated by conference calls.
 16 Government, of course, would have been through
 17 the regular meetings and briefing notes. So
 18 it would be multiple individuals involved.
 19 THE COMMISSIONER:
 20 Q. With multiple different versions, presumably.
 21 I mean, in the sense of one might anticipate
 22 that the interest of lab directors would be
 23 somewhat different than perhaps the interest
 24 of CEOs, in that lab directors at least would
 25 probably want more detail than a CEO would

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1 want.
 2 MR. TILLEY:
 3 A. Sure.
 4 THE COMMISSIONER:
 5 Q. But I suppose what I'm asking is whether or
 6 not in this process your organization said,
 7 okay, this is the information we have to send
 8 to this group, we'll move that to their side;
 9 this is the information we should give to this
 10 group, or was it kind of on an ad hoc basis?
 11 MR. TILLEY:
 12 A. What I found, Commissioner, that there's a lot
 13 of repeat of information because even in my
 14 own notes I'm finding that I was documenting
 15 things several times, so there seemed to be a
 16 fairly consistent message being delivered to
 17 groups, regardless of their standing.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 COFFEY, Q.C.:
 21 Q. Commissioner, if we could, the interest
 22 groups, which I take it would be, for example,
 23 the Canadian Cancer Society.
 24 MR. TILLEY:
 25 A. Yes, I would put them there.

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1 COFFEY, Q.C.:
 2 Q. As an example. Media, local provincial and
 3 national.
 4 MR. TILLEY:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. Now this is November of '06, probably, that
 8 you're speaking -
 9 MR. TILLEY:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. - in Halifax. Other than the initial two or
 13 three weeks after the news first broke in
 14 October of '05, it's now a year later.
 15 MR. TILLEY:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. And other than giving a one-page summary to
 19 "The Current", do you know if there had been
 20 any further dealings with the media?
 21 MR. TILLEY:
 22 A. No, other than to say that there was obviously
 23 interest on the part of the media in the
 24 issue.
 25 COFFEY, Q.C.:

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1 Q. And in the intervening--well in the passage of
 2 that year, between say November of '05 until
 3 November of '06, was there a consistent policy
 4 within Eastern Health to make no comment to
 5 the media?
 6 MR. TILLEY:
 7 A. I'm sorry, December?
 8 COFFEY, Q.C.:
 9 Q. November of '05 to November of '06, was there
 10 a consistent policy known within Eastern
 11 Health that you would make no comment to the
 12 media?
 13 MR. TILLEY:
 14 A. I'm not sure it was a policy, but we were into
 15 a period of time when even ourselves didn't
 16 feel comfortable that we really had a good
 17 handle on the situation. So we weren't
 18 encouraging it at all.
 19 COFFEY, Q.C.:
 20 Q. Now was it that you didn't have a good handle,
 21 is that really the--just reflect upon it, is
 22 that really the case or is it you didn't want
 23 to talk about it?
 24 MR. TILLEY:
 25 A. Well, I mean, the thing is when there were

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1 issues, we did speak, we spoke in the December
 2 conference, we did "The Current" issue when
 3 the Ejeckam letter did come, grant it's
 4 outside that timeline, it was spoken to then,
 5 you know, it was really a balance call. For
 6 me, it was still not having as good as an
 7 appreciation as I would have liked to, in
 8 terms of trying to get an explanation of this,
 9 recognizing the national contacts and all the
 10 issues that that was driving, and again, our
 11 focus in the organization was to move this
 12 thing forward and put all the recommendations
 13 that were there, that were practically to be
 14 implemented.
 15 COFFEY, Q.C.:
 16 Q. And in terms of the reasons, rightly or
 17 wrongly, identified by Dr. Banerjee and Trish
 18 Wegrynowski in the fall of '05, would that
 19 ever have become public if this process hadn't
 20 started, the Commission?
 21 MR. TILLEY:
 22 A. Well, I don't have a good answer and it's easy
 23 to look back at it now and say yes, it would
 24 have, but -
 25 COFFEY, Q.C.:

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1 Q. Could you identify when it would have or how?
 2 MR. TILLEY:
 3 A. It certainly had not been specifically
 4 addressed during the time. You had raised a
 5 question about the Canadian Patient Safety
 6 Institute and trying to learn from one
 7 another, you know, I think part of that
 8 process would have to be sharing of
 9 information. But the peer review process has
 10 that element to it of confidentiality and it
 11 is really at a bit of a dichotomy in terms of
 12 how do you disclose this, because in many
 13 ways, the whole reason that you get people to
 14 participate in the peer review process is that
 15 you give that cloak of confidentiality to it
 16 and not as much, perhaps for this particular
 17 case, but undoubtedly we would look to do more
 18 peer reviews in the future.
 19 COFFEY, Q.C.:
 20 Q. So I take it then that, you know, unless
 21 somehow it got conveyed in some, I gather,
 22 anonymous sort of fashion or edited fashion to
 23 CPSI, the nature of the problems or at least
 24 problems that Dr. Banerjee and Trish
 25 Wegrynowski purported to identify would never

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1 become known.
 2 MR. TILLEY:
 3 A. And hence the reason that we kept focussing in
 4 on the recommendations because I guess in
 5 focussing on the recommendations, you were
 6 some way acknowledging the issues that the
 7 recommendations were driving.
 8 COFFEY, Q.C.:
 9 Q. On that point, okay, who was it, if anyone,
 10 was suggesting to you that somehow the
 11 recommendations were in a different category
 12 than what I'll refer to as say findings?
 13 MR. TILLEY:
 14 A. I don't know if anybody specifically mentioned
 15 that, other than the focus was to make
 16 whatever improvement opportunities there might
 17 be.
 18 COFFEY, Q.C.:
 19 Q. But in terms of the idea that you could talk
 20 about recommendations and specific ones, do
 21 you remember who -
 22 MR. TILLEY:
 23 A. No, no specific recommendation other than a
 24 feeling that that was the right thing to do.
 25 COFFEY, Q.C.:

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1 Q. Okay. I'm sorry, just move on at the top of
 2 the next page, "How do we disclose?" and "News
 3 conference and supporting hotline", and we've
 4 seen that in, I believe, early on and the
 5 approach Eastern Health was thinking about
 6 adopting and you've explained why you were
 7 dissuaded from that.

8 MR. TILLEY:
 9 A. Uh-hm.

10 COFFEY, Q.C.:
 11 Q. "Contact all patients by registered letter."
 12 The idea of a registered letter, when did that
 13 come up?

14 MR. TILLEY:
 15 A. I'm not sure of the word "registered" twigs to
 16 me because I hadn't seen it up until that
 17 point in time. I presume we would have done
 18 it by registered letter.

19 COFFEY, Q.C.:
 20 Q. Just to be able to keep track of whether
 21 somebody got it, I presume.

22 MR. TILLEY:
 23 A. Uh-hm.

24 COFFEY, Q.C.:
 25 Q. But in terms of contacting all patients by

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1 letter, registered or otherwise, the--I take
 2 it that that came up in the summer of '05 with
 3 the minister. You've talked about that.

4 MR. TILLEY:
 5 A. Yes.

6 COFFEY, Q.C.:
 7 Q. And you've told us about October of '05, your
 8 own views and we seen Mr. Boone's e-mail.
 9 Ultimately the decision not to use a letter,
 10 who bears responsibility for the decision not
 11 to send letters?

12 MR. TILLEY:
 13 A. Well, I can't remember a moment in time, but I
 14 do know that I was a very strong supporter of
 15 personal contact.

16 COFFEY, Q.C.:
 17 Q. So are you saying that if somebody has to wear
 18 it, as it were, in assume responsibility, it
 19 would be yourself?

20 MR. TILLEY:
 21 A. Yes, then I'll have to accept that.

22 COFFEY, Q.C.:
 23 Q. Okay. And as you say, you've put your own
 24 views forward strongly and you're the CEO -

25 MR. TILLEY:

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1 A. Uh-hm.

2 COFFEY, Q.C.:
 3 Q. Ergo unless you change your mind, that's going
 4 to be it, that would be the -

5 MR. TILLEY:
 6 A. I don't recall any major disagreement to that
 7 effect.

8 COFFEY, Q.C.:
 9 Q. And then it says, "A disclosure to only those
 10 affected, panel results and make
 11 recommendations to treating physician." And
 12 the Commissioner was asking about this sort of
 13 thing earlier, "disclosure to only those
 14 affected" and then you go on to say, "we hope
 15 to wait on--to only disclose to those
 16 impacted" and you've explained what you
 17 thought what you meant by impacted, but
 18 disclosure to only those affected, what was it
 19 you intended to convey to the audience?

20 MR. TILLEY:
 21 A. Looking back, I would have to say that it was
 22 anybody who would have experienced a change,
 23 as opposed to anybody who had not experienced
 24 a change.

25 COFFEY, Q.C.:

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1 Q. And ultimately that expanded to anybody who
 2 was retested?

3 MR. TILLEY:
 4 A. Yes.

5 COFFEY, Q.C.:
 6 Q. Okay, whether they had a change or not,
 7 ultimately I gather people were -

8 MR. TILLEY:
 9 A. Yes, because I think by this time obviously we
 10 would have just created a question mark for
 11 anybody who has had that test, and rather than
 12 have everybody call the organization to find
 13 out if they've been retested or not, then if
 14 the results had come back no change, that
 15 would have been appropriate to advise them of
 16 that.

17 COFFEY, Q.C.:
 18 Q. Sir, and you point out the best laid plans,
 19 we've heard about that, "since that time, we
 20 have retested almost 1000 patients", you've
 21 got on this slide. "Every patient was
 22 contacted by telephone", now this would have
 23 been November probably of '06. Who had given
 24 you that understanding?

25 MR. TILLEY:

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1 A. Well that would have been the office that had
 2 co-ordinated the phoning and that would have
 3 been Quality Initiatives.
 4 COFFEY, Q.C.:
 5 Q. And who is that?
 6 MR. TILLEY:
 7 A. Well it could have come from multiple sources,
 8 I would expect certainly it would have come
 9 from the risk manager, Heather Predham,
 10 possibly from the director, which would have
 11 been Pamela Elliott.
 12 COFFEY, Q.C.:
 13 Q. Now under "Results" it says "Panel all
 14 patients and write physicians." What was your
 15 understanding about how or who or what type of
 16 patients this panel actually examined?
 17 MR. TILLEY:
 18 A. My understanding was for patients who had
 19 converted from negative to positive.
 20 COFFEY, Q.C.:
 21 Q. And what was your understanding with respect
 22 to patients who had not converted who were
 23 confirmed negative, confirmed 00?
 24 MR. TILLEY:
 25 A. This is in 2006?

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1 COFFEY, Q.C.:
 2 Q. Yes, this is November of '06.
 3 MR. TILLEY:
 4 A. That they would be contacted to indicate that
 5 there was no change.
 6 COFFEY, Q.C.:
 7 Q. And that contact would be carried out by?
 8 MR. TILLEY:
 9 A. By the Quality Initiative staff.
 10 COFFEY, Q.C.:
 11 Q. Now the last bullet here says "Patients with
 12 no change have been contacted by letter." Now
 13 is that correct?
 14 MR. TILLEY:
 15 A. No, it's not.
 16 COFFEY, Q.C.:
 17 Q. Were you under that impression at the time you
 18 gave this?
 19 MR. TILLEY:
 20 A. No, no I was not, it was clearly by that time
 21 we had indicated that people with no change
 22 would be advised of that.
 23 COFFEY, Q.C.:
 24 Q. And by phone, I take it?
 25 MR. TILLEY:

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1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Why then was that here, do you know?
 4 MR. TILLEY:
 5 A. No, I don't know, no.
 6 COFFEY, Q.C.:
 7 Q. The third bullet in that particular screen or
 8 slide says "Slides sent to Mount Sinai for
 9 independent retesting." Now, were you under
 10 the impression that slides were actually being
 11 sent to Mount Sinai?
 12 MR. TILLEY:
 13 A. No, it was the blocks. I think when we talked
 14 back in December I had indicated that it was
 15 the blocks that had gone, yes.
 16 COFFEY, Q.C.:
 17 Q. Now the next page, there is a reference to the
 18 Baker Norton Adverse Events Study, I take it
 19 that is, that's is, it's well known within the
 20 health executive community of acute care
 21 hospitals?
 22 MR. TILLEY:
 23 A. I wouldn't put it only in the executive
 24 community and it really was that study that
 25 resulted in the creation of the Canadian

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1 Patient Safety Institute.
 2 COFFEY, Q.C.:
 3 Q. Yes, you've referred to that earlier. Here
 4 you've said, "Today, disclosures continue.
 5 Analysis has not yet been complete.
 6 Litigation, media scrutiny, national advocacy,
 7 over one year later the issue is still
 8 ongoing." Now at that point in time, were the
 9 disclosures to the patients still continuing
 10 or did you understand that they were
 11 concluded? Or did you know?
 12 MR. TILLEY:
 13 A. I can't say with confidence. I think that my
 14 recollection was that there were a number of
 15 people that were going through the panel,
 16 there were some that had been incorrectly
 17 diagnosed that was separate from the ER/PR
 18 issue, so I think my understanding was that
 19 everybody had been contacted, whether everyone
 20 had been followed up, was still, I guess, the
 21 question in my mind.
 22 COFFEY, Q.C.:
 23 Q. Now before I get to the, in the rearview
 24 mirror, which I take it is from your
 25 perspective, your observations as to

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1 potentially lessons learned or at least, you
 2 know, otherwise things done right. When did
 3 you get the understanding, first come to the
 4 understanding that everyone had been contacted
 5 about the retests results?
 6 MR. TILLEY:
 7 A. Well, there was a lot of briefing notes that
 8 had been going back and forth to suggest that
 9 the, all of the patients had been contacted.
 10 COFFEY, Q.C.:
 11 Q. Briefing notes from whom to whom?
 12 MR. TILLEY:
 13 A. Well, occurring between Eastern Health and
 14 government and between me and individuals
 15 within the organization. There were
 16 individuals that would come up in the
 17 community from time to time indicating that
 18 they hadn't been contacted and I recall making
 19 some telephone calls within the organization
 20 and looking for a better elaboration or just
 21 trying to address the question as to whether
 22 people had in fact been contacted. And I
 23 remember talking to the director, Mrs. Elliott
 24 in particular on one occasion and said that
 25 there were people who had called in and

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1 indicated they weren't called, but either had
 2 misinterpreted the original call or had been
 3 called by a physician and weren't seen to be
 4 somebody from Eastern Health. So, it gave
 5 them or they gave me the assurance that, look,
 6 everybody's been contacted here. That
 7 subsequently didn't prove to be the case and I
 8 don't think anybody deliberately withheld
 9 information from me, but I think they had a
 10 sincere belief that they had everybody. Now,
 11 I know in the early stages, they were doing a
 12 number of things to try to eliminate the
 13 potential that somebody had fallen between the
 14 cracks, with a newspaper ad, with letters to
 15 the physicians. But for whatever reason, it
 16 turned out that in a meeting that I held with
 17 Minister Wiseman, Acting Deputy Minister
 18 Thompson and possibly, the board chair, that
 19 became--and that's some time in May of '07--
 20 that became the topic of the conversation.
 21 COFFEY, Q.C.:
 22 Q. Okay. And I'll be getting to that, but what
 23 I'm trying to ascertain for the Commissioner
 24 is, is do you recall when it was or can you
 25 point us to something in writing as to the

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1 date on which, now, as CEO, I sat at my desk
 2 and I was satisfied that every patient now
 3 knows the retest results.
 4 MR. TILLEY:
 5 A. Uh-hm, I can't point you to something
 6 specifically, no.
 7 COFFEY, Q.C.:
 8 Q. You referred to briefing notes, like, internal
 9 ones. What type of document are you referring
 10 to?
 11 MR. TILLEY:
 12 A. Well, the briefing notes that would have been
 13 prepared for government.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 MR. TILLEY:
 17 A. You know, where patients would have been
 18 contacted.
 19 THE COMMISSIONER:
 20 Q. (Inaudible - microphone not on).
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 MR. TILLEY:
 24 A. That would have been through the Quality
 25 Initiatives Department.

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1 COFFEY, Q.C.:
 2 Q. If you could bring up, please, Exhibit P-0126,
 3 I think it is. No, I apologize, it should be
 4 0125. We looked at this earlier, this is P-
 5 0125, page 42, this was the briefing for the
 6 Department of Health and Community Services,
 7 November 23, 2006. And can you point to
 8 anywhere on that that it actually says that
 9 everybody has been contacted? Take your time.
 10 MR. TILLEY:
 11 A. Sorry. I don't see it on this page.
 12 COFFEY, Q.C.:
 13 Q. By the time you met with Tom Osborne and the
 14 Department of Health staff at the House of
 15 Assembly premises on November 23, what was he
 16 told about whether everybody had been
 17 contacted?
 18 MR. TILLEY:
 19 A. I'm thinking by that time we were working on
 20 the understanding that the patients had been
 21 contacted either on the first contact or in
 22 terms of follow-up.
 23 THE COMMISSIONER:
 24 Q. You mean all patients, do you?
 25 MR. TILLEY:

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1 A. Yes, one either because their tests had been
 2 sent out or the tests had been back.
 3 COFFEY, Q.C.:
 4 Q. I'm thinking about somewhat more of the point,
 5 tests are back and being told about the
 6 results.
 7 MR. TILLEY:
 8 A. Okay, uh-hm.
 9 COFFEY, Q.C.:
 10 Q. What was your understanding about that at this
 11 point in time? This is the end of November of
 12 '06.
 13 MR. TILLEY:
 14 A. My assumption had been that we had the tests
 15 back and had followed up on them.
 16 COFFEY, Q.C.:
 17 Q. I mean, this is--and this particular page,
 18 Commissioner, is to help Mr. Tilley--it's P-
 19 0125, page 43, it's a question and answer
 20 briefing note, Department of Health and
 21 Community Services and Mr. Tilley--this was
 22 one November 27, '06.
 23 MR. TILLEY:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

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1 Q. If you note that there, it's drafted by
 2 Beverley Griffiths approved by Moira
 3 Hennessey. And the anticipated question,
 4 second bullet, "have all affected been
 5 notified of their test results"? And the key
 6 message is, the second one says, "more than
 7 900 test samples were sent to Mt. Sinai
 8 Laboratory and all the test results are back.
 9 Eastern Health has made every effort to
 10 contact the patients or families involved.
 11 This review is in the final stages and should
 12 be concluded in the near future. Eastern will
 13 provide a briefing to the public within a week
 14 or two". And it says, "has made every effort
 15 to contact the patients or families involved".
 16 And if you just go down then to the final one
 17 for that year. This is page 46, Commissioner,
 18 P-0125. This is a briefing note of December
 19 12, 2006 which is the day after Eastern Health
 20 held the media technical briefing. And can
 21 you see, just looking through that--I stand to
 22 be corrected, but I'll just bring you up to
 23 the top of this, right there, can you point
 24 the Commissioner anywhere in that where
 25 there's an assertion that everybody's been

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1 contacted? You can scroll down through -
 2 MR. TILLEY:
 3 A. Thank you. Just seen here, "all retesting has
 4 been completed and then Eastern Health did
 5 initially advise patients of the retesting and
 6 many learned of it from the media before they
 7 were contacted.
 8 COFFEY, Q.C.:
 9 Q. Sure.
 10 MR. TILLEY:
 11 A. "Eastern intended to wait for the results
 12 before disclosing actual information to the
 13 patients instead of having them, that they may
 14 or may not be impacted by the review. And
 15 that's why Eastern didn't know what this would
 16 mean for them. Eastern also did not want to
 17 unnecessarily raise alarm".
 18 Other than that, I don't see those
 19 references, Mr. Coffey.
 20 COFFEY, Q.C.:
 21 Q. Okay. In fact, as of the December 12, '06 in
 22 the internal Department of Health briefing
 23 note, we looked at the one before November 27,
 24 now the December 12 one, it's not actually an
 25 assertion there that everybody's been

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1 contacted.
 2 MR. TILLEY:
 3 A. No, no, and in fairness, I do recall
 4 discussions about having difficulty reaching
 5 people, either because their addresses had
 6 changed or something, but you know, for the
 7 most part, I think we were working on the
 8 assumption that the bulk of the patients had
 9 been followed up on.
 10 COFFEY, Q.C.:
 11 Q. Just in terms of that then, I appreciate
 12 there's a lot of written material that exists,
 13 and in your preparation to come and testify
 14 here, I take it, you have not been, as of yet
 15 anyway, in a position to say, look, you know,
 16 Madam Commissioner, this is--the director of
 17 risk management wrote me on such and such a
 18 date to say, they're all done; they're all
 19 contacted. There hasn't been any such document
 20 that you can think of anyway or be able to
 21 identify?
 22 MR. TILLEY:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. And in terms of a note, like you have--you

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1 know, even if they didn't write it out, they
 2 told you and you wrote it down -
 3 MR. TILLEY:
 4 A. You have all of my notes.
 5 COFFEY, Q.C.:
 6 Q. Okay, and I appreciate that. If we could,
 7 please, a look at Exhibit P-0183. And this is
 8 an e-mail, December 7, '06, 8:45 a.m. from
 9 Susan Bonnell to a number of people, senior
 10 people in your organization and some not so
 11 senior perhaps; Oscar Howell, Nash Denic, Kara
 12 Laing, Heather Predham and Leona Barrington.
 13 The subject is error rate and attachments are
 14 technical briefing agenda, key messages, a
 15 draft press release and a technical briefing.
 16 And says, "attached to this e-mail you'll see
 17 Heather's explanation of our error rate. This
 18 is not to be shared with the media, but I
 19 thought you would like to see it for your own
 20 understanding". And she goes on to talk about
 21 whose working on various things and will
 22 handle certain things. Toward the bottom of
 23 the page, there's a reference to this e-mail.
 24 It says, "we'll begin the briefing session
 25 with an explanation that this is an

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1 unprecedented event because of the"--I
 2 presume--"last"--some kind of action.
 3 MR. BROWNE:
 4 Q. Class action.
 5 COFFEY, Q.C.:
 6 Q. Class, sorry, thank you very much, Mr. Browne--
 7 "class action that we"--that's how far it is
 8 from my mind actually--"because of the class,
 9 but we believe have an obligation to inform
 10 the general public about our outcomes and to
 11 provide the reporters with an opportunity to
 12 fully understand the test procedure and our
 13 actions since May 2005, so that they can
 14 report effectively on the issue. However,
 15 because of a lawsuit, we are limited on what
 16 we can talk about in terms of causative
 17 factors. This will be dealt with by the
 18 courts. Secondly, we will not be talking
 19 about any individual cases. This information
 20 is protected and can only be disclosed between
 21 the patient and care provider". And she ask
 22 that people review the attached and she's open
 23 to any advice and concerns, suggestions. She
 24 says, "following our meeting with Dan I think
 25 I have a sense of how far we can go, but

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1 Heather will be sharing all of this as well as
 2 a Q. and A. with him and I hope to get his
 3 feedback as well".
 4 Now, Mr. Tilley, this is about four days
 5 before the media technical briefing. How much
 6 in the loop were you kept as to what was going
 7 to happen at the media technical briefing?
 8 MR. TILLEY:
 9 A. My recollection on getting involved here was
 10 actually a little bit later. Because I
 11 remember replying to an e-mail with a slide
 12 deck some time over a weekend, but in terms of
 13 this, I don't recall any involvement in that
 14 part of the discussion.
 15 COFFEY, Q.C.:
 16 Q. So then, and this is a Thursday, so the
 17 intervening weekend would be the slide deck.
 18 MR. TILLEY:
 19 A. It looks to be.
 20 COFFEY, Q.C.:
 21 Q. Okay, yes, and the idea that Mr. Boone, who
 22 presumably is the Dan here, in the last
 23 paragraph, so was providing advice as to how
 24 far we can go, which is what Ms. Bonnell
 25 refers to. Were you aware that that was going

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1 on? That that sort of advice was being given?
 2 MR. TILLEY:
 3 A. I wasn't specifically aware, though it doesn't
 4 surprise me.
 5 COFFEY, Q.C.:
 6 Q. Oh no, I'm not suggesting it would. I just--
 7 okay, but you--in terms of--I'm trying to get
 8 some sense of how much kind of, as I said,
 9 that you were in the loop, as it were.
 10 MR. TILLEY:
 11 A. Um-hm.
 12 COFFEY, Q.C.:
 13 Q. If we could just turn the page--I'm sorry, I
 14 apologize. Can't turn the page.
 15 Metaphorically, turn the page, page two of P-
 16 0183, and this is an e-mail from Heather
 17 Predham, December 7th, 2006, 8:14 a.m., to
 18 Susan Bonnell. The subject is error rate, and
 19 she says "Hi, Susan. Sorry about not getting
 20 this to you yesterday, but I needed some quiet
 21 and a cup of tea to get it clear in my head.
 22 Here's my explanation" and there is an
 23 explanation that has a lot of numbers and
 24 percentages, and a certain rationale, text
 25 rationale. Were you ever made aware of this,

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1 the explanation of error rate?
 2 MR. TILLEY:
 3 A. Well -
 4 COFFEY, Q.C.:
 5 Q. At least according to Heather Predham.
 6 MR. TILLEY:
 7 A. - I did see this e-mail through Mr. Simmons in
 8 the past couple of weeks.
 9 COFFEY, Q.C.:
 10 Q. Okay. Well, no, and I appreciate -
 11 MR. TILLEY:
 12 A. Okay, so you don't mind that?
 13 COFFEY, Q.C.:
 14 Q. Not so much that, no.
 15 MR. TILLEY:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. I'm not -
 19 MR. TILLEY:
 20 A. In terms of the calculation, I'm not sure if
 21 this is the same thing, but I remember very
 22 early in this process, Dr. Williams talking
 23 about positivity rates and the expected
 24 increase in the positivity rates post testing.
 25 I'm not sure, unless I took some time to try

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1 to figure this out, if this is the reverse way
 2 of dealing with that.
 3 COFFEY, Q.C.:
 4 Q. Having the end numbers and working your way -
 5 MR. TILLEY:
 6 A. Right, having the negativity rate versus the
 7 positivity rate.
 8 COFFEY, Q.C.:
 9 Q. But in terms of, you know, Heather's
 10 rationale, whatever it might be, do you ever
 11 remember, as a CEO, being exposed to it in
 12 December or late November, early December of
 13 '06?
 14 MR. TILLEY:
 15 A. No, I don't recall that.
 16 COFFEY, Q.C.:
 17 Q. Okay. Now in terms of yourself, if we could
 18 go, please, to Exhibit P-0184, and again, in
 19 terms of her rationale, if you were never
 20 exposed to it, I'm not going to ask you, you
 21 know, looking back now years, several years
 22 later as to whether you agree or disagree.
 23 This is an e-mail from Susan Bonnell,
 24 Saturday, December 9th, 2006, 6:21 p.m. It's
 25 to many of the same individuals as the e-mail

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1 we just looked at, but added here are J.
 2 Bussey, that would be Jane Bussey, I presume,
 3 and D.Boone.
 4 MR. TILLEY:
 5 A. I'm sorry, Jane Bussey would be who?
 6 COFFEY, Q.C.:
 7 Q. Okay, I have you at a disadvantage. She works
 8 with the same law firm as Mr. Boone.
 9 MR. TILLEY:
 10 A. Okay, thank you.
 11 COFFEY, Q.C.:
 12 Q. And George Tilley.
 13 MR. TILLEY:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Yourself here. Subject is materials for
 17 tomorrow and attachments, technical briefing
 18 agenda and so on are listed there. She says
 19 "hello again, everyone. Following
 20 conversations with Nash, Heather, Dan and
 21 Oscar, I have revised the original drafts in
 22 anticipation of our meeting at one p.m.
 23 tomorrow. We can make further revisions at
 24 that point. I will bring copies with me.
 25 Please note that I have added speaking points

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1 to the slides, especially for Oscar, less so
 2 for Kara and Nash. I guess the most
 3 significant change you will note from the
 4 original material is the lack of reference to
 5 a rate of error. We can anticipate that this
 6 will be a major pressing point with the media,
 7 but the approach we will be taking here is
 8 that A. we can indicate that an error has
 9 actually occurred and B. the whole process
 10 wasn't about identifying a rate of error
 11 anyways. It was about identifying patients
 12 whose treatment would change as a result of
 13 the review and the panelling. Hence, the
 14 number of patients impacted has changed from
 15 104 to 117, taking into account the 13
 16 individuals who had no change in their
 17 results, but because of the new definition of
 18 positivity should have been offered Tamoxifen.
 19 We won't be spelling that out like that
 20 though. Re: the dead, we must also be
 21 prepared. Our statement would need to be that
 22 in this almost ten-year period individuals
 23 have died either as a result of their breast
 24 cancer or for any one of numerous reasons. We
 25 did not retest these patient individuals

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1 because the purpose of the test was to provide
 2 opportunities for individuals who could
 3 potentially benefit from a retest. However,
 4 if families would like to have their
 5 relatives' samples retested, we can arrange
 6 that for them. We have no way of predicting
 7 how many, if any, of these individuals would
 8 not have died had they not been--had they been
 9 offered Tamoxifen after their initial
 10 treatment for cancer. Hope all this helps.
 11 See you tomorrow."
 12 I take it then, if we look through this,
 13 there is then attached to this--well, I gather
 14 is the attachments to that e-mail.
 15 MR. TILLEY:
 16 A. Okay.
 17 COFFEY, Q.C.:
 18 Q. You would have received this e-mail presumably
 19 on Saturday. Do you recall, is this the e-
 20 mail you're talking about, the one on the
 21 weekend?
 22 MR. TILLEY:
 23 A. Yes, and I think I replied to it the following
 24 day.
 25 COFFEY, Q.C.:

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1 Q. Do you recall what your reply was?
 2 MR. TILLEY:
 3 A. It wasn't extensive. I think I made some
 4 reference to appreciate everybody's work here.
 5 I seem to recall saying that, you know, we
 6 need to go ahead and do this, despite how the
 7 media might choose to present it, and that in
 8 the end something about, you know, we've
 9 always done this with the best interest of the
 10 patient in mind, and that's my recollection of
 11 it.
 12 COFFEY, Q.C.:
 13 Q. And in terms of the second point, we're going
 14 to go ahead and do this despite how the media
 15 might portray it, I take it you anticipated
 16 what?
 17 MR. TILLEY:
 18 A. Well, I guess our record, as an organization,
 19 in terms of dealing with the media, is that we
 20 would often have difficulty in getting the
 21 messages, all of the messages out. Certain
 22 messages would be selected and then folded
 23 into other things. So just the fact that that
 24 was a reality of the environment in which we
 25 dealt with.

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1 COFFEY, Q.C.:
 2 Q. Now I take it that the plan was not to have
 3 you participate?
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Why is that?
 8 MR. TILLEY:
 9 A. Well, I've always felt that this was a
 10 clinical issue and could best be spoken to by
 11 the people who understood it best. The vice-
 12 president in charge of the physician group and
 13 in charge of the lab would be present, and
 14 that was sort of the thinking from the very
 15 beginning.
 16 COFFEY, Q.C.:
 17 Q. Sir, in terms of Ms. Bonnell's e-mail, now Ms.
 18 Bonnell had been at the briefing with Tom
 19 Osborne, hasn't she?
 20 MR. TILLEY:
 21 A. She had.
 22 COFFEY, Q.C.:
 23 Q. As had Oscar Howell?
 24 MR. TILLEY:
 25 A. Yes.

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1 COFFEY, Q.C.:
 2 Q. And I think some others there. Was the--in
 3 this last paragraph in this e-mail of December
 4 9th, she refers to "re: the dead, we must also
 5 be prepared." She talks about what our
 6 statement will need to be. Now Eastern Health
 7 actually had the results of 101 -
 8 MR. TILLEY:
 9 A. That's correct.
 10 COFFEY, Q.C.:
 11 Q. -tests from the deceased. What was planned to
 12 be said about the deceased, period? You
 13 weren't going to say that you had retested
 14 some? I mean, you'd been in telling the
 15 minister two weeks before.
 16 MR. TILLEY:
 17 A. Right, that we already had. My initial
 18 comment was going to be I thought we had
 19 mentioned that at some point in time, that we
 20 had actually had some of the deceased, but
 21 maybe it's information and dates folding into
 22 one another. The issue of the deceased
 23 patients was certainly the major topic of
 24 conversation with the minister. I think the
 25 perspective put by--put forward by Dr. Laing

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1 suggested that it was not something that was
 2 going to be able to be completed to the point
 3 of being able to discuss in the press
 4 conference, but I'm assuming this is an
 5 attempt to deal with it in light of that
 6 restriction.
 7 THE COMMISSIONER:
 8 Q. I'm sorry, I didn't think I followed that.
 9 Could you say that again?
 10 MR. TILLEY:
 11 A. The issue of the deceased was a topic of
 12 conversation -
 13 THE COMMISSIONER:
 14 Q. In that meeting with the minister.
 15 MR. TILLEY:
 16 A. - meeting with the minister, and the eventual
 17 resolution that I recall is that there was no
 18 way that we could really bring that issue to
 19 completion to be able to speak to it. So my
 20 assumption is, is that that was recognizing
 21 that that issue would come up, then that's
 22 what they could with it in the meantime.
 23 COFFEY, Q.C.:
 24 Q. - i.e. effectively say nothing about it?
 25 MR. TILLEY:

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1 A. Well -
 2 COFFEY, Q.C.:
 3 Q. Is that -
 4 MR. TILLEY:
 5 A. Nothing, not to say it's nothing, but
 6 obviously it would be to speak to it to the
 7 extent that they felt comfortable.
 8 THE COMMISSIONER:
 9 Q. So, wait now. I understood from the
 10 conversation this morning that there was the
 11 meeting with the minister and generally how
 12 that ran. You're confirming that it was a
 13 major part of the topic of the meeting with
 14 the minister?
 15 MR. TILLEY:
 16 A. It was.
 17 THE COMMISSIONER:
 18 Q. When you came out of that meeting, were you of
 19 a clear understanding if you were going to
 20 have to have all of the deceased retested?
 21 MR. TILLEY:
 22 A. No.
 23 THE COMMISSIONER:
 24 Q. No?
 25 MR. TILLEY:

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1 A. That was sort of--the bulk of them were
 2 retested. There were others that weren't
 3 retested.
 4 THE COMMISSIONER:
 5 Q. By then, we knew there were 101 retested
 6 already.
 7 MR. TILLEY:
 8 A. Right, but actually getting them panelled to
 9 the point of being able to assess whether in
 10 fact their treatment might have been
 11 different.
 12 THE COMMISSIONER:
 13 Q. Okay, you physically couldn't do that in the
 14 period of time?
 15 MR. TILLEY:
 16 A. No.
 17 THE COMMISSIONER:
 18 Q. But when you came out of the meeting, did--
 19 were you either instructed by the minister or
 20 did the minister make the kind of suggestion
 21 that CEOs don't ignore, to the effect that
 22 retest the rest of the deceased, get them
 23 panelled, get it done? Or did he have any
 24 other kind of message or no message at all?
 25 MR. TILLEY:

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1 A. Well, I suspect my interpretation would be
 2 somewhere in the middle.
 3 THE COMMISSIONER:
 4 Q. Okay.
 5 MR. TILLEY:
 6 A. He certainly recognized or expressed an
 7 interest in following that information
 8 through, but also recognized it's not
 9 something that we were going to be able to
 10 have completed prior to this event happening.
 11 THE COMMISSIONER:
 12 Q. Okay, and when you came out of that meeting,
 13 had you and the minister or you, with the
 14 minister's officials, or anybody else to your
 15 knowledge with the minister addressed the
 16 issue of what, if anything, would be said
 17 about the deceased patients at the conference?
 18 MR. TILLEY:
 19 A. Not specifically, no.
 20 THE COMMISSIONER:
 21 Q. Had anybody said well, we can't say anything
 22 about them or we can't do anything about them
 23 or we'll tell it as it is, or -
 24 MR. TILLEY:
 25 A. To the extent that I shared with you the

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1 discussion about our limits, in terms of being
 2 able to know the details, I can't recall any
 3 other comments that might have been mentioned.
 4 COFFEY, Q.C.:
 5 Q. Now Mr. Tilley, you know, when you got this e-
 6 mail on December 9th and, as you said, you
 7 replied, was it your understanding that
 8 Eastern Health, on December 11th, was not
 9 going to tell the media the number of changed
 10 results or conversions?
 11 MR. TILLEY:
 12 A. There was this reference here to an error
 13 rate.
 14 COFFEY, Q.C.:
 15 Q. Yes. No, I'm not -
 16 MR. TILLEY:
 17 A. And I fully agree that we were not in a
 18 position to identify whether an error
 19 occurred, and you know, in terms of the actual
 20 number of people that were changed, I recall
 21 reference here to this--here it is. It was all
 22 about identifying patients whose treatment
 23 would change as a result of the review and the
 24 panelling. When I subsequently met with the
 25 oncologists, there was a discussion about the

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1 fact that you needed to take these results and
 2 put them, first of all in the clinical
 3 context, and secondly, that I needed to
 4 understand about the probabilistic nature of
 5 it. So to that end, the feeling was to focus
 6 in on those where it actually made a
 7 difference.
 8 Now as you know, several months later, I
 9 came out, on behalf of the organization, and
 10 spoke to that. That information was factual
 11 information. It would have been information
 12 that was going to be shared as a part of the
 13 Court process, and while it was everyone's
 14 belief that the most important piece of
 15 information was the one that was shared, that
 16 I had indicated that, no, in fact that's
 17 something that should have in fact been
 18 shared.
 19 THE COMMISSIONER:
 20 Q. Mr. Coffey, at a convenient place.
 21 COFFEY, Q.C.:
 22 Q. Sure. Thank you, Commissioner. You've just
 23 made reference to at a meeting with
 24 oncologists. When was that?
 25 MR. TILLEY:

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1 A. Well, I can't say exactly when, but it seems
 2 to me to be around the time that I was
 3 speaking to this issue, later in May.
 4 COFFEY, Q.C.:
 5 Q. Oh, May '07, okay.
 6 MR. TILLEY:
 7 A. Yeah.
 8 COFFEY, Q.C.:
 9 Q. I'm thinking about just before December 11th.
 10 MR. TILLEY:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. On or before December 11th.
 14 MR. TILLEY:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. It has been posited to you on the evening of
 18 December 9th that this will--we anticipate the
 19 error, rate of error, anticipate this will be
 20 a major pressing point with the media, the
 21 approach, it's spelled out there, and there's
 22 a--when one reads through this, there's a
 23 conclusion and the actual reasoning is spelled
 24 out there, the number of individuals impacted
 25 has changed from 104 to 117, etcetera. "We

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1 won't be spelling that out like that though."
 2 What did that--what did you understand that
 3 referred to? "We won't be spelling that out
 4 like that though."
 5 MR. TILLEY:
 6 A. Well, I understood that the 13 patients who
 7 were impacted because there was a change in
 8 the criteria for the administration of
 9 Tamoxifen.
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. TILLEY:
 13 A. So I think it needed more elaboration than
 14 just that in order to be truly understood.
 15 COFFEY, Q.C.:
 16 Q. When you read this, what did you understand
 17 would not be spelled out like that though?
 18 MR. TILLEY:
 19 A. The issue with regards to the new definition
 20 of positivity.
 21 COFFEY, Q.C.:
 22 Q. That was your understanding, was it?
 23 MR. TILLEY:
 24 A. Yes.
 25 COFFEY, Q.C.:

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1 Q. Okay.
 2 MR. TILLEY:
 3 A. Thinking back now.
 4 COFFEY, Q.C.:
 5 Q. Oh yes, and from that perspective, why?
 6 Wasn't that going to be talked about?
 7 MR. TILLEY:
 8 A. It was, yeah.
 9 COFFEY, Q.C.:
 10 Q. So I'm just -
 11 MR. TILLEY:
 12 A. I can't speak on behalf of the author.
 13 COFFEY, Q.C.:
 14 Q. And I understand that, and I appreciate that.
 15 I'm just asking from your perspective as a CEO
 16 reading it at the time.
 17 MR. TILLEY:
 18 A. Right, yeah.
 19 COFFEY, Q.C.:
 20 Q. When you get something where a subordinate is
 21 telling you, or telling you and a group of
 22 senior people, "we won't be spelling that out
 23 like that though." Did that ever raise any
 24 antenna on your part? I mean, because it
 25 suggested that well, you know, there's a down

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1 side to actually spelling it out in the way
 2 she just has.
 3 MR. TILLEY:
 4 A. Yeah. I mean, I just looked at it in terms of
 5 this is a short e-mail and just cryptic
 6 description of it.
 7 COFFEY, Q.C.:
 8 Q. And if I could, just before we break,
 9 Commissioner, if we could just look at P-0184,
 10 page nine, please, and towards the bottom of
 11 the page? Would you have read all the
 12 attachments? I take it you would have, would
 13 you?
 14 MR. TILLEY:
 15 A. I would like to think I would have, Mr.
 16 Coffey, yes.
 17 COFFEY, Q.C.:
 18 Q. And question nine, what is the rate of error?
 19 How many people converted? And the answer
 20 nine is there, and in fact the reference to
 21 the definition of negative having changed is
 22 spelled out there. She says, or whoever, the
 23 group here, I suppose the consensus answer was
 24 "the numbers of individual conversions are not
 25 relevant and turn the process into a numbers

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1 game." See that? And there's an assertion at
 2 the bottom, what is relevant is the number of
 3 people whose care may change as a result of
 4 the process, and that was 117.
 5 Mr. Tilley, at the time you were involved
 6 in this, December 9th, 10th, 11th, bearing in
 7 mind that you had been warned and you
 8 understood that there'd be a major pressing
 9 point with the media, in terms of the number
 10 whose results converted or changed, you had
 11 told the minister in a one-page document the
 12 number of people whose results changed on
 13 retest. There's no hedging in that document.
 14 It's all spelled out.
 15 MR. TILLEY:
 16 A. That's correct.
 17 COFFEY, Q.C.:
 18 Q. Looking back at it now, do you--you know, what
 19 are your feelings about or thoughts about
 20 whether it should have been apparent to you at
 21 the time, and the people around you? You
 22 know, really what you were inviting here?
 23 MR. TILLEY:
 24 A. Right. Well, you know, Mr. Coffey, I've
 25 thought about that issue a million times and

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1 I've had a lot of time to think about it.
 2 And, of course, during that press conference I
 3 acknowledged the fact that in retrospect that
 4 number, by not having it there, just added
 5 more complications to this issue than should
 6 have been the case. So, if I had known and
 7 had the benefit of hindsight then, there's a
 8 lot of things that one would do differently.
 9 COFFEY, Q.C.:
 10 Q. Whose idea was it to leave it out?
 11 MR. TILLEY:
 12 A. I'm not sure, other than when I got it -
 13 COFFEY, Q.C.:
 14 Q. I ask, was it your idea?
 15 MR. TILLEY:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Okay. I'm sorry, go ahead, you were going to
 19 say when you -
 20 MR. TILLEY:
 21 A. You know, again, here goes my broken record.
 22 This is on a weekend, which is a time when I
 23 spent a lot of time in the office because of
 24 things going on in that organization. There's
 25 probably another 40 or 50 issues that I'm

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1 juggling at the same time. So while I'll
 2 fully acknowledge that this was a critical
 3 issue that the organization and I were trying
 4 to deal with, I dealt with this as a part of
 5 many other things. And if one had the time to
 6 sit down and ponder and then sit on it, sleep
 7 on, go back and challenge yourself, then it
 8 might be a different outcome. But I have no
 9 way, life has no way of putting us back to
 10 make those reassessments.

11 COFFEY, Q.C.:

12 Q. If I could, Commissioner, just one--if I could
 13 just look at P-0183, please? Page 2. Yeah,
 14 that's it right there. This is what's
 15 described as Heather Predham's explanation of
 16 the error rate, of our error rate. And on
 17 that one page, sir, can you anywhere see 117
 18 or 113?

19 MR. TILLEY:

20 A. I can't see it on my eyeball here, no.

21 COFFEY, Q.C.:

22 Q. Can't, I appreciate, okay. Thank you,
 23 Commissioner.

24 THE COMMISSIONER:

25 Q. We'll take that 15 minute break. But, Mr.

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1 Coffey, were you supposed to enter a couple of
 2 exhibits?

3 COFFEY, Q.C.:

4 Q. I'll do that right after.

5 THE COMMISSIONER:

6 Q. I am supposed to advise, I've been instructed
 7 by our administrator and I always follow Ms.
 8 Connors' instructions, to advise those of you
 9 who do not have your computers with you that
 10 there will be paper copies for you at the
 11 break. Thank you. We'll take 15.

12 (RECESS)

13 THE COMMISSIONER:

14 Q. Thank you, please be seated. Mr. Coffey?

15 COFFEY, Q.C.:

16 Q. Thank you, Commissioner. Exhibit P-0183
 17 again.

18 THE COMMISSIONER:

19 Q. P-0183.

20 COFFEY, Q.C.:

21 Q. Page, I spoke to page 1. Here. Now, Mr.
 22 Tilley, and I try and get your understanding
 23 as the CEO of Eastern Health now circa
 24 December, 2006. In the second-last paragraph
 25 of what Ms. Bonnell wrote, I appreciate this

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1 did not come to you, but there's something
 2 here I want to ask you about your
 3 understanding as the CEO at the time. She
 4 says here, "However, because of the lawsuit we
 5 are limited in what we can talk about in terms
 6 of causative factors. This will have to be
 7 dealt with by the courts." See that?

8 MR. TILLEY:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. Now, what was your understanding at the time
 12 as to whether or not you could talk about
 13 causative factors?

14 MR. TILLEY:

15 A. Well -

16 COFFEY, Q.C.:

17 Q. And, you know, what if any relationship that
 18 bore to whether there was a lawsuit going on?

19 MR. TILLEY:

20 A. First of all, in my mind I wasn't definitively
 21 clear in terms of what the causative factors
 22 were.

23 COFFEY, Q.C.:

24 Q. Okay.

25 MR. TILLEY:

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1 A. With all that's out there, in my mind that was
 2 still outstanding. The issue with regards to
 3 the fact that we were clearly going to court
 4 on this.

5 COFFEY, Q.C.:

6 Q. Um-hm.

7 MR. TILLEY:

8 A. And it was just our general sense that we
 9 should not be openly discussing issues other
 10 than factual issues because of that.

11 COFFEY, Q.C.:

12 Q. And factual issues might be causation?

13 MR. TILLEY:

14 A. Well -

15 COFFEY, Q.C.:

16 Q. At times causation can be factual, I take it?

17 MR. TILLEY:

18 A. It could be in time, but in my mind they were
 19 not definitive.

20 COFFEY, Q.C.:

21 Q. So in terms of if a matter was before the
 22 courts, as it were, ie, we're being sued.

23 MR. TILLEY:

24 A. Yes.

25 COFFEY, Q.C.:

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1 Q. The organization was being sued. Could you
 2 talk about facts?
 3 MR. TILLEY:
 4 A. Yes. Like the number of patients whose
 5 results had converted.
 6 COFFEY, Q.C.:
 7 Q. So what characteristics did something have to
 8 have that it would become non-factual such
 9 that it couldn't be talked about?
 10 MR. TILLEY:
 11 A. Well, I guess interpretative issues, you know,
 12 I guess whether something was an error or not.
 13 I didn't feel comfortable that it was clear,
 14 particularly when I was hearing things like
 15 "You're the middle of the pack." or that, you
 16 know, "There's no national standards."
 17 COFFEY, Q.C.:
 18 Q. That has to do with standard of care, doesn't
 19 it, middle of the pack would have to do with
 20 whether you meet the kind of generally
 21 accepted, you know?
 22 MR. TILLEY:
 23 A. Well, the standard of service that you have.
 24 COFFEY, Q.C.:
 25 Q. Sure.

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1 MR. TILLEY:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And that's what comes up in lawsuits, you
 5 know, there's a racket over whether or not you
 6 meet the standard of care?
 7 MR. TILLEY:
 8 A. Oh.
 9 COFFEY, Q.C.:
 10 Q. Or minimum standard of care, that's -
 11 MR. TILLEY:
 12 A. I confess, I'm not that knowledgeable to be
 13 able to speak to it that way.
 14 COFFEY, Q.C.:
 15 Q. Okay. On this point, if there was, in your
 16 mind there was no issue involving, you know,
 17 peer review or quality assurance, in terms of
 18 those Ejeckam and Wegrynowski reports,
 19 Banerjee, I'm sorry, I apologize, Banerjee and
 20 Wegrynowski reports, could their findings or
 21 their commentary have been made public?
 22 MR. TILLEY:
 23 A. Sorry, if?
 24 COFFEY, Q.C.:
 25 Q. If there was no issue of peer review or

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1 quality assurance.
 2 MR. TILLEY:
 3 A. Well, there would be no protection for them
 4 that we had seen.
 5 COFFEY, Q.C.:
 6 Q. Yeah, okay, you say there's no protection,
 7 okay, I just wanted to -
 8 MR. TILLEY:
 9 A. Yeah. Well, you know, I am not adverse to
 10 admitting if a mistake had been made.
 11 COFFEY, Q.C.:
 12 Q. Um-hm.
 13 MR. TILLEY:
 14 A. There have been occasions in the past when
 15 adverse events have occurred that we've openly
 16 acknowledged it and moved on. For me I just
 17 didn't feel that that was what I was seeing
 18 here.
 19 COFFEY, Q.C.:
 20 Q. And so what, if anything, did the fact that
 21 there was an outstanding lawsuit have to do
 22 with the matter?
 23 MR. TILLEY:
 24 A. Well, other than we wouldn't be picking apart
 25 different pieces of this in the media. This

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1 was as complicated as an issue that I can
 2 imagine and having it dissected and spoken to,
 3 people saying the middle of the pack, well,
 4 you know, that was one person's opinion, is
 5 that true, you know, I guess all of those
 6 things would be adding to the complexity of
 7 this.
 8 COFFEY, Q.C.:
 9 Q. So I'm clear then, as of December of '06 the
 10 idea or notion that the '05 external reviews
 11 were peer review or quality assurance, from
 12 your perspective, prevented Eastern Health
 13 from talking publicly about the findings in
 14 those reports?
 15 MR. TILLEY:
 16 A. They were a component to the extent that we
 17 decided to talk about the recommendations
 18 anyway.
 19 COFFEY, Q.C.:
 20 Q. Okay. That's what I was going to go--but the
 21 findings you couldn't talk about because they
 22 were peer review or quality assurance?
 23 MR. TILLEY:
 24 A. Well -
 25 COFFEY, Q.C.:

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1 Q. Is that -
 2 MR. TILLEY:
 3 A. In our minds we didn't segregate those. I
 4 mean, we knew they were peer review, but at
 5 the same time we knew that we needed to talk
 6 about this. I'm not sure we got legal advice,
 7 I'm not aware of any legal advice which says
 8 you can talk about one component versus the
 9 other. For me our energies had to be not
 10 going back to hold somebody accountable, to--
 11 but rather to move forward and make whatever
 12 recommendations we could to bring this lab up
 13 to a level that we could all feel confident
 14 in.
 15 COFFEY, Q.C.:
 16 Q. So if I could, in terms of that, you were--had
 17 arrived at a considered decision by December
 18 of '06, you were prepared to talk publicly
 19 about what these external reviewers
 20 recommendations were?
 21 MR. TILLEY:
 22 A. Yes, we had during that technical debriefing.
 23 COFFEY, Q.C.:
 24 Q. Yes. During the media technical briefing in
 25 December 11th, '06?

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1 MR. TILLEY:
 2 A. Well, I understand that there were issues
 3 shared with measures that we were -
 4 COFFEY, Q.C.:
 5 Q. Okay. That's the one you're talking about?
 6 MR. TILLEY:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. That's what I'm getting at, okay. In terms of
 10 the then existing lawsuit, that inhibited you
 11 from talking about causation?
 12 MR. TILLEY:
 13 A. Right, and identifying error -
 14 COFFEY, Q.C.:
 15 Q. For anything about which people--error?
 16 MR. TILLEY:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. In terms of attributing error, labelling
 20 something with error?
 21 MR. TILLEY:
 22 A. Yes, that was certainly a part of it. And
 23 like most things in health care, nothing is
 24 straight lined. I was firmly working in a
 25 direction of a blameless culture and it is

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1 true that mechanism that we had the greatest
 2 potential of individuals who discover those to
 3 come forward quickly and get them potentially
 4 rectified without any harm to the patient or
 5 at least to benefit future patients.
 6 COFFEY, Q.C.:
 7 Q. In the blameless culture approach when, if
 8 ever, is there any accountability?
 9 MR. TILLEY:
 10 A. Well, if, in fact, somebody is found to be
 11 deliberately mishandling an issue, then
 12 obviously there is an intent that needs to be
 13 dealt with. I mean, there's -
 14 COFFEY, Q.C.:
 15 Q. Leaving aside, that's almost--deliberately
 16 mishandling something in this context would
 17 almost be or potentially would be a crime.
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. So, I mean, you know, let's leave aside
 22 somebody doing that.
 23 MR. TILLEY:
 24 A. No. So, you know, in terms of accountability,
 25 every one of those professionals who are

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1 involved in this process has to be made aware
 2 of the learnings associated with their
 3 particular areas. And in that end, you know,
 4 through their job descriptions, to the quality
 5 management process, to the ongoing monitoring
 6 done by their supervisors, that's where the
 7 accountability issue is dealt with.
 8 COFFEY, Q.C.:
 9 Q. But how is it dealt with? I mean, in a
 10 practical sense how is it--in this context how
 11 was anyone ever, you know, how was their
 12 accountability here, could you point us to
 13 anything?
 14 MR. TILLEY:
 15 A. Well, there's got to be a relationship between
 16 the pathologists and the chief pathologist,
 17 there's got to be a relationship between the
 18 technologists and the manager -
 19 COFFEY, Q.C.:
 20 Q. But what I'm--but here, like in terms of
 21 accountability, has there been anyone, and I
 22 use the phrase advisedly, held accountable
 23 from an administrator's perspective?
 24 MR. TILLEY:
 25 A. No, we have not gone and held--Eastern Health

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1 has not gone, to my knowledge, and held
 2 somebody accountable and said, "You are" or
 3 "You, this group, are held responsible for
 4 this particular action."
 5 COFFEY, Q.C.:
 6 Q. I come back to the point of, you know, the
 7 blameless culture approach, which you've
 8 indicated you advocate, you know, under what
 9 circumstances short of a crime, like
 10 intentional misconduct or intentionally, you
 11 know, flouting rules, you know, short of that
 12 where and when is there any accountability?
 13 MR. TILLEY:
 14 A. I mean, I guess there is always
 15 accountability.
 16 COFFEY, Q.C.:
 17 Q. Okay. Could you -
 18 MR. TILLEY:
 19 A. In terms of individuals that may have been
 20 identified to be using less than current or
 21 available protocols for this, I mean, the
 22 accountability process occurs back in the
 23 education of them to bring in new practices.
 24 But in terms of holding them at fault, that's
 25 not the focus of what a blame-free culture is

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1 trying to achieve.
 2 COFFEY, Q.C.:
 3 Q. And then in this context here can you point to
 4 any point in time while you were still CEO
 5 that accountability occurred in the educative
 6 process for the people involved in this?
 7 MR. TILLEY:
 8 A. I can't speak to it directly.
 9 COFFEY, Q.C.:
 10 Q. Have you ever been told that, in fact, that it
 11 actually occurred?
 12 MR. TILLEY:
 13 A. I can't recall.
 14 COFFEY, Q.C.:
 15 Q. Whose responsibility, from your perspective,
 16 in terms of Eastern Health, whose
 17 responsibility was it to ensure that it, in
 18 fact, did occur?
 19 MR. TILLEY:
 20 A. Well, it would be -
 21 COFFEY, Q.C.:
 22 Q. In theory it's yours as CEO, but I mean,
 23 leaving that aside, I'm talking about in
 24 practice.
 25 MR. TILLEY:

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1 A. I mean, you're right to point it out. But
 2 directly it would be the leadership team for
 3 laboratory medicine and I know that they were
 4 being monitored by the vice-president for
 5 medical services.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 THE COMMISSIONER:
 9 Q. Mr. Tilley, I just want to make sure I just, I
 10 understood the conversation that you and Mr.
 11 Coffey just had. I think I did understand
 12 that your view as CEO is consistent with the
 13 current thinking in that you were attempting
 14 to establish a blameless culture in the
 15 organization. And in answer to Mr. Coffey's
 16 question regarding accountability, I heard you
 17 to say, and perhaps, I don't think, Mr.
 18 Coffey, I heard the same answer, so that's why
 19 I'm asking the question.
 20 COFFEY, Q.C.:
 21 Q. Sure.
 22 THE COMMISSIONER:
 23 Q. I heard you to say that accountability is
 24 reflected in the fact that somebody is
 25 educated. Is that what you were trying to

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1 say?
 2 MR. TILLEY:
 3 A. That's a part of it, Commissioner.
 4 THE COMMISSIONER:
 5 Q. But shouldn't you be educating everybody
 6 anyway, so why is that accountability?
 7 MR. TILLEY:
 8 A. Well, in terms of follow-up one of the
 9 recommendations with regards to the front-line
 10 staff is furthering their education. So I'm
 11 saying there's an accountability process that
 12 both the care or the technologists or the
 13 pathologists have to accept and take on as a
 14 part of the process. But I'm also saying that
 15 in terms of the accountability process there's
 16 a relationship between the technologists and
 17 their manager, between the pathologists and
 18 the clinical chief and it's part of their
 19 quality monitoring program. Those are pieces
 20 that should be insuring that people are doing
 21 their jobs appropriately and to insure that
 22 any new developments in the field are being
 23 adapted into practice.
 24 THE COMMISSIONER:
 25 Q. But what you have described to me would seem

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1 to be the kind of thing that I would imagine
 2 somebody would say to me should happen in any
 3 well-run lab. So why would you put the
 4 accountability label on it? Because it seems
 5 to me that's what you should be doing, in any
 6 event, and whether somebody was involved in
 7 this or not should be receiving education and
 8 updates when there's new things happening.
 9 MR. TILLEY:
 10 A. I don't disagree with you, Madam Commissioner.
 11 That's a part of the normal running, not only
 12 of a lab, but of any part of any organization.
 13 THE COMMISSIONER:
 14 Q. Well, we would hope particularly when it has
 15 to do with medicine which seems to be
 16 advancing at rapid rates in, particularly in
 17 some branches of medicine.
 18 MR. TILLEY:
 19 A. That's correct.
 20 THE COMMISSIONER:
 21 Q. I don't doubt that it's difficult to keep pace
 22 with what's happening for some people.
 23 MR. TILLEY:
 24 A. Um-hm.
 25 THE COMMISSIONER:

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1 Q. But what you're describing on accountability
 2 side, to me, is just a good management, good
 3 professional behaviour, you're describing
 4 accountability in terms that I would say would
 5 be the kinds of things that the people who are
 6 properly professional would be doing in any
 7 even and, frankly, an organization would be
 8 providing opportunities for their professional
 9 to be engaged in.
 10 MR. TILLEY:
 11 A. That's correct and what I was trying to
 12 explain in response to the question, I think
 13 and I stand to be corrected, Mr. Coffey was
 14 asking in a blameless culture where is your
 15 accountability.
 16 THE COMMISSIONER:
 17 Q. Uh-hm.
 18 MR. TILLEY:
 19 A. And I was referring to those issues as where I
 20 would see the process of people being held
 21 responsible and accountable for their
 22 particular role in the organization.
 23 COFFEY, Q.C.:
 24 Q. Which is really nothing extra than what should
 25 have been carrying on anyway.

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1 MR. TILLEY:
 2 A. Oh no, I agree.
 3 COFFEY, Q.C.:
 4 Q. Okay, that's what I had understood,
 5 Commissioner.
 6 THE COMMISSIONER:
 7 Q. All right, thank you.
 8 COFFEY, Q.C.:
 9 Q. And in relation to that, if the leadership
 10 team or team members' earlier activities might
 11 have involved them in the very matter in
 12 respect of which accountability, you know, was
 13 at least thought to be appropriate, okay, how
 14 does that fit into this? I mean, if they're
 15 all involved, the whole department is
 16 involved?
 17 MR. TILLEY:
 18 A. In terms of whether they would not follow up
 19 on the -
 20 COFFEY, Q.C.:
 21 Q. I'm not saying they wouldn't at all, I'm not
 22 suggesting, I'm just--in terms of like
 23 accountability, because you're suggesting -
 24 MR. TILLEY:
 25 A. Well, I think I understand your question. In

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1 the end, the vice-president for Medical
 2 Services oversees that. As well as the
 3 Medical Advisory Committee oversees that. So
 4 there's a little bit of a check and valve
 5 there, but I also will confess or acknowledge,
 6 I'm not sure how best to frame it, I have
 7 people in that organization that I trust and I
 8 have never come across any of the individuals
 9 that we have referred to here that would do
 10 anything other than what's in the best
 11 interest of the patient.
 12 COFFEY, Q.C.:
 13 Q. Uh-hm.
 14 MR. TILLEY:
 15 A. And in an organization, you have to rely on
 16 that significant amount.
 17 COFFEY, Q.C.:
 18 Q. And in terms of this, if the problem or root
 19 causes of the problem and I cut across a wide
 20 group of people, okay, assume for the moment
 21 that it does, within a particular part of your
 22 organization, as it then was in Eastern
 23 Health, and it involves managers, okay, how
 24 did you envisage then--what would be the
 25 appropriate way of addressing the issue?

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1 MR. TILLEY:
 2 A. Well -
 3 COFFEY, Q.C.:
 4 Q. And this is then, something could happen
 5 tomorrow or the next day.
 6 MR. TILLEY:
 7 A. Right and it's not to suggest that a manager
 8 has never been disciplined in Eastern Health
 9 or Health Care Corporation.
 10 COFFEY, Q.C.:
 11 Q. And I'm not suggesting necessary discipline at
 12 all, I'm asking about how it should be handled
 13 from your perspective in the most effective
 14 manner.
 15 MR. TILLEY:
 16 A. Between the employee, in this case a manager
 17 or clinical chief and their respective
 18 supervisor, which would be the vice-president
 19 of Medical Services and/or in the case of the
 20 clinical chief, the Medical Advisory
 21 Committee.
 22 COFFEY, Q.C.:
 23 Q. Okay, that would be the--and if I could ask
 24 you this, do you know if this whole matter of
 25 ER/PR has ever been taken up with the MAC in

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1 that kind of a context?
 2 MR. TILLEY:
 3 A. I know it's been talked about at MAC. I have
 4 not been an attender at MAC.
 5 COFFEY, Q.C.:
 6 Q. I appreciate, but in terms of were you ever
 7 advised that MAC had taken it up as a matter
 8 of something to be looked at by the MAC in
 9 that capacity.
 10 MR. TILLEY:
 11 A. My recollection is that there's been
 12 discussion at MAC on this. And if we wanted
 13 to know about that, we should talk to the VP
 14 Medical, I take it, or the head of the MAC?
 15 MR. TILLEY:
 16 A. Right.
 17 COFFEY, Q.C.:
 18 Q. And in terms of the technologists, if there's
 19 something that, you know, should have been
 20 addressed with them arising out of this and
 21 the technologists' supervisors.
 22 MR. TILLEY:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. Who would we -

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1 MR. TILLEY:
 2 A. They would come through the vice-president of
 3 Medical.
 4 COFFEY, Q.C.:
 5 Q. Which would be, depending upon the timeframe,
 6 Dr. Williams or Dr. Howell?
 7 MR. TILLEY:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. Finally then in terms of that, because the
 11 leadership team does involve, at times there's
 12 a separate individual of the medical school?
 13 MR. TILLEY:
 14 A. That's correct.
 15 COFFEY, Q.C.:
 16 Q. And their programs, particularly the residency
 17 program. How in this matter would you have
 18 envisaged, you know, that should be taken up
 19 with the medical school and its representative
 20 or representatives, in terms of whether or not
 21 they should or should not have had more
 22 involvement in this? As a CEO looking at it,
 23 I'm asking you that.
 24 MR. TILLEY:
 25 A. Right, well we have an affiliation agreement

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1 which provides for a liaison with the
 2 university. There is a mechanism whereby the
 3 dean and the VP Medical meet from time to
 4 time. There's a provision that if there are
 5 issues that are outstanding from there, it
 6 gets moved up to the president of the
 7 university and the CEO of Eastern Health, and
 8 the feature of the program base model of
 9 having the discipline chair representing the
 10 university at the same table as the managers,
 11 both medical and technical managers, is seen
 12 to be a way of keeping everybody in the loop
 13 and getting more of a responsive prompter
 14 strategy.
 15 COFFEY, Q.C.:
 16 Q. And I raise it because you recall that in that
 17 June 19th, 2003 memo of Dr. Ejeckam -
 18 MR. TILLEY:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. One of the people who was copied that, I think
 22 it's Dr. Robb, if I recall correctly and I'll
 23 be corrected if I'm not, was discipline chair
 24 at the time, in that particular department, in
 25 lab medicine. So in terms of, from the

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1 organization's perspective by taking it up
 2 with or making inquiries of the medical
 3 school, in terms of well what, if anything,
 4 did Dr. Robb do about this? Did anyone ever
 5 think to kind of go down that trail, I mean,
 6 because he did get copied on that e-mail, the
 7 June 19th memo.
 8 MR. TILLEY:
 9 A. I can't speak to that specifically, but there
 10 is that mechanism there and secondly, the dean
 11 is an ex officio member of the Board of
 12 Trustees. So there's a couple of ways that
 13 the opportunity could present itself, but
 14 certainly if there were implications for the
 15 teaching program, the expectation is that the
 16 teaching program would be modified if there
 17 were found to be -
 18 COFFEY, Q.C.:
 19 Q. Possible improvement -
 20 MR. TILLEY:
 21 A. Standards, yes.
 22 COFFEY, Q.C.:
 23 Q. Do you know in this context if that was ever
 24 done?
 25 MR. TILLEY:

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1 A. I can't speak to that.
 2 COFFEY, Q.C.:
 3 Q. If we could, please, Exhibit P-0104. This is
 4 an e-mail from Susan Bonnell to Tansy Mundon,
 5 December 11th, 2006 at 8:52 a.m., Monday.
 6 There are a number of attachments and this is,
 7 this was the material for the December 11th
 8 media technical briefing. Well, first of all,
 9 did you know that a copy of this was being
 10 sent by your communications director to the
 11 department's communications director?
 12 MR. TILLEY:
 13 A. I know that it's an expectation that it be
 14 shared.
 15 COFFEY, Q.C.:
 16 Q. You'd be saying the converse, if it wasn't
 17 sent, I'd be surprised?
 18 MR. TILLEY:
 19 A. That's correct.
 20 COFFEY, Q.C.:
 21 Q. And the purpose in doing that would be what?
 22 MR. TILLEY:
 23 A. The department wanted to know about any
 24 messages that were being delivered before they
 25 were and I keep thinking about the meeting

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1 that was held -
 2 COFFEY, Q.C.:
 3 Q. December 4th.
 4 MR. TILLEY:
 5 A. Where just the four of us were there.
 6 COFFEY, Q.C.:
 7 Q. Yes, that's the December 4th.
 8 MR. TILLEY:
 9 A. Recalling that was something that was a part
 10 of that conversation.
 11 COFFEY, Q.C.:
 12 Q. And Mr. Abbott was asking that your
 13 organization ensure that that was done, at
 14 least they were given a heads up as to what
 15 was being said.
 16 MR. TILLEY:
 17 A. Right.
 18 COFFEY, Q.C.:
 19 Q. How about in terms of, were they to be given a
 20 veto on what was to be said? It's one thing
 21 to tell somebody this is what I'm going to
 22 say, it's another thing entirely to ask them
 23 can I say it. And what was your understanding
 24 after that December 4th meeting?
 25 MR. TILLEY:

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1 A. I can't specifically recall the outcome of the
 2 meeting, but in general if the deputy of the
 3 minister came over and said "George, we have a
 4 problem with regards to what's in there or
 5 what's not in there" then I would expect it to
 6 come to my attention and that we would resolve
 7 it before we made the next move.
 8 COFFEY, Q.C.:
 9 Q. And if there's silence, you send it over and
 10 there's silence?
 11 MR. TILLEY:
 12 A. I guess--I remember times that there was
 13 silence, I can't remember if it was that issue
 14 or not and I thought we waited, but it's not
 15 to say we waited in all times.
 16 COFFEY, Q.C.:
 17 Q. But if you didn't get any feedback, negative
 18 feedback or any expression or concern, would
 19 you take that as approval?
 20 MR. TILLEY:
 21 A. Well after a reasonable period of time, I
 22 think we would, yes.
 23 COFFEY, Q.C.:
 24 Q. Now this particular one got sent 8:52 that
 25 morning, if we go to page 35, please of this

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1 exhibit, P-0104, it indicates on this that
 2 media technical briefing was apparently to
 3 occur Monday, December 11th, 2006 at 11:30
 4 a.m., which would be two and a half hours
 5 after Ms. Bonnell sent her e-mail. Did you
 6 have any communication with the Department of
 7 Health that day about this?
 8 MR. TILLEY:
 9 A. I don't recall off the top of my head, unless
 10 my telephone log specifically mentions it.
 11 COFFEY, Q.C.:
 12 Q. And what I'm getting at is from the
 13 perspective of being told yes, it's fine,
 14 George or, you know, are you--we have
 15 misgivings, you don't have any recollection
 16 either way?
 17 MR. TILLEY:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. If we could, please, if we could bring up,
 21 please, Exhibit P-0196? This is an e-mail
 22 from Tansy Mundon to Ms. Bonnell that morning,
 23 9:50 a.m., thanking her and indicating she'd
 24 be in Moncton on Friday and Saturday. She's
 25 responding at 8:52, you'll see it there, an e-

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1 mail. If we could go to page two of this
 2 exhibit, this is from Tansy Mundon to a number
 3 of people in the department that morning at
 4 10:25 a.m. It's an EMBARGO news release and
 5 it's a news release and if you look at the
 6 bottom of the page, Mr. Tilley, it's--the
 7 media contact is Leona Barrington.
 8 MR. TILLEY:
 9 A. Uh-hm.
 10 COFFEY, Q.C.:
 11 Q. What was your understanding in terms of this
 12 news media technical briefing as to how
 13 closely the Department of Health was following
 14 this? Did you anticipate that they were
 15 following this closely?
 16 MR. TILLEY:
 17 A. I would have expected them to by the mere
 18 number of meetings that we've had on this
 19 issue.
 20 COFFEY, Q.C.:
 21 Q. Now see that phrase "media technical briefing"
 22 what did that mean to you? What connotations
 23 did that have, as opposed to a press
 24 conference, as opposed to whatever, did it
 25 have any particular meaning or significance?

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1 MR. TILLEY:
 2 A. I didn't particularly see it any differently.
 3 When you're into an environment where you have
 4 a number of media outlets there, I think one
 5 could pretty much expect that the questions
 6 could be from multiple directions. I guess
 7 what it does, it sort of sends a signal
 8 perhaps that you're going to be doing some
 9 basic review, as opposed to making only an
 10 announcement.
 11 COFFEY, Q.C.:
 12 Q. Sir, how many technical media briefings were
 13 held that day, do you know?
 14 MR. TILLEY:
 15 A. No, I don't know. I assume there was only
 16 one.
 17 COFFEY, Q.C.:
 18 Q. In terms of the media's ability to publish
 19 what was said, to record or publish what was
 20 said, did you have any understanding about
 21 whether there were any restrictions on what
 22 the media could and couldn't record?
 23 MR. TILLEY:
 24 A. That rings a bell, but I can't--something
 25 about what footage they could take or

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1 something.
 2 COFFEY, Q.C.:
 3 Q. Yes, and things like that, what they could--
 4 what parts of the briefing that could or
 5 couldn't be recorded, you know, electronically
 6 recorded, for example.
 7 MR. TILLEY:
 8 A. It rings a bell but I confess I can't pull the
 9 specifics out of my head.
 10 COFFEY, Q.C.:
 11 Q. Whether there were to be any such
 12 restrictions, from your perspective, as CEO,
 13 were you imposing them or were you consulted
 14 about it?
 15 MR. TILLEY:
 16 A. No, I wouldn't get involved in that level of
 17 detail on it.
 18 COFFEY, Q.C.:
 19 Q. And what level would you expect those, any
 20 such decisions would be made?
 21 MR. TILLEY:
 22 A. I assume it would be with the team that's
 23 involved in the briefing itself.
 24 COFFEY, Q.C.:
 25 Q. Just a moment, please, Commissioner. Could we

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1 bring up, please, Exhibit--let's go back a
 2 bit. There are a number of exhibits. I'm not
 3 going--they're internal to the government.
 4 What I am going to ask you concerning and the
 5 technical briefing on December 11 and several
 6 days following it. Okay? Were you getting
 7 regular updates from your own media people
 8 about the media coverage?
 9 MR. TILLEY:
 10 A. I'd be surprised if I wasn't. Periodically, I
 11 would get an e-mail clip of stories.
 12 COFFEY, Q.C.:
 13 Q. And the purpose in that would be what?
 14 MR. TILLEY:
 15 A. Just to hear about what's going on with the
 16 organization and, I think, in terms of this
 17 one, you know, it's an important issue, would
 18 be useful to know.
 19 COFFEY, Q.C.:
 20 Q. If I could, please, just a moment, please,
 21 Commissioner. Overall then in terms of the
 22 December 11 media briefing, by the time
 23 Christmas rolled around, looking back on it,
 24 what was your perception at the time, in terms
 25 of how it had gone?

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1 MR. TILLEY:
 2 A. My general assessment is that the briefing
 3 itself had gone okay, but the outstanding
 4 question with regards to what was the
 5 causative factor was still being raised.
 6 COFFEY, Q.C.:
 7 Q. Publicly, wasn't it?
 8 MR. TILLEY:
 9 A. Pardon?
 10 COFFEY, Q.C.:
 11 Q. Publicly, wasn't it?
 12 MR. TILLEY:
 13 A. So, clearly, we hadn't satisfied the appetite
 14 for information.
 15 COFFEY, Q.C.:
 16 Q. And were you aware of whether or not, the
 17 issue about the number of--the failure to
 18 comment on the number of conversions or
 19 changed results had received some media
 20 attention or commentary?
 21 MR. TILLEY:
 22 A. That rings a bell. I'm thinking as I'm
 23 talking here about the fact that before this
 24 briefing was taking place, it was anticipated
 25 that that was going to be referenced. And the

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1 decision to say no, we wouldn't be providing
 2 that at the time, but it's clear that that was
 3 another issue.
 4 COFFEY, Q.C.:
 5 Q. Mr. Tilley, when did you become aware that
 6 information concerning the total number of
 7 changed results was going to be filed in an
 8 affidavit in the Trial Division here in St.
 9 John's? When did you become aware that that
 10 was so?
 11 MR. TILLEY:
 12 A. Around the time the affidavit was being filed
 13 seems to be my recollection.
 14 COFFEY, Q.C.:
 15 Q. So, that would probably be February, I guess.
 16 MR. TILLEY:
 17 A. Yes. I just remember thinking back and
 18 saying, well, that's information that was
 19 obviously going to be public information.
 20 COFFEY, Q.C.:
 21 Q. And at the time, that it occurred, we just
 22 filed this information and yet, back in
 23 December, we went to some trouble not to use
 24 those numbers.
 25 MR. TILLEY:

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1 A. Right. Did it occur to me?
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 MR. TILLEY:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. There is a disconnect there, isn't there?
 8 MR. TILLEY:
 9 A. Yes, there is. And I'd like to be able to
 10 say, there's the reason why, but other than
 11 the things that happen to be occurring at that
 12 time, I don't recall anybody specifically
 13 referencing it.
 14 COFFEY, Q.C.:
 15 Q. If we could look, please, at P-0166. And just
 16 before we get into this, you know, as we go
 17 into '07, your understanding as CEO of Eastern
 18 Health was what in terms of where the ER/PR
 19 matter stood?
 20 MR. TILLEY:
 21 A. As we go into '07?
 22 COFFEY, Q.C.:
 23 Q. Yes, broad strokes, yeah, broad strokes,
 24 overall. You got your press conference done.
 25 MR. TILLEY:

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1 A. Yes. The certification process would happen.
 2 THE COMMISSIONER:
 3 Q. So, it'd be in the court.
 4 MR. TILLEY:
 5 A. Yes, that the media were still very interested
 6 in finding out more, that by this time the
 7 patients were being dealt with.
 8 COFFEY, Q.C.:
 9 Q. The patients, by this point, would have all
 10 been notified and presumably were -
 11 MR. TILLEY:
 12 A. Right.
 13 COFFEY, Q.C.:
 14 Q. - told of you--you understood--had been all
 15 notified and treatment -
 16 MR. TILLEY:
 17 A. Right. I mean, there was always issues that
 18 were going around, I'm sure, and those are the
 19 ones that stick in my mind.
 20 COFFEY, Q.C.:
 21 Q. So then, with the press conference over, was
 22 it envisaged that there would be any more
 23 press conferences?
 24 MR. TILLEY:
 25 A. I can't say that with total assurity because

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1 this thing was really a big issue and there
 2 was a lot of interest in it.
 3 COFFEY, Q.C.:
 4 Q. But, I mean, with the matter before the
 5 courts, as it were, what did you expect to
 6 next happen in this? The court process, I
 7 take it, and that was really it?
 8 MR. TILLEY:
 9 A. Well, in terms of external environment -
 10 COFFEY, Q.C.:
 11 Q. Yes.
 12 MR. TILLEY:
 13 A. - but, of course, internally, there was also a
 14 responsibility to make sure that we were
 15 acting upon this and we were able to restore
 16 confidence in the system, but also amongst the
 17 system.
 18 COFFEY, Q.C.:
 19 Q. We understand from the documentation that
 20 ER/PR did restart in St. John's anyway, for
 21 the St. John's hospitals, February 1, 2007.
 22 MR. TILLEY:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Were you aware beforehand that that was

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1 happening?
 2 MR. TILLEY:
 3 A. I can't say. The only thing that I can speak
 4 to in that issue is that it came up
 5 subsequently, I think, that the minister was
 6 responding in the House of Assembly and -
 7 COFFEY, Q.C.:
 8 Q. And that's in May, about where the tests -
 9 MR. TILLEY:
 10 A. Okay.
 11 COFFEY, Q.C.:
 12 Q. - but at the time -
 13 MR. TILLEY:
 14 A. No, I just said to Dr. Howell and the clinical
 15 chiefs, when you guys are comfortable that
 16 this thing is ready to go, then it's your
 17 call.
 18 COFFEY, Q.C.:
 19 Q. Were you aware that they were only going to
 20 do, or made aware that they were only going to
 21 do the St. John's ones and not then take on,
 22 at that point, the rest of Newfoundland?
 23 MR. TILLEY:
 24 A. No, I didn't and that's my connection with
 25 May. That's when I learned about that issue.

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1 And, you know, whether I was expected to have
 2 been told that, it's a large organization, so
 3 it's possible that it may have been
 4 overlooked.
 5 COFFEY, Q.C.:
 6 Q. If we could, please, P-0166. Now, sir, this
 7 is a couple of e-mails, one from John Abbott
 8 to yourself, January 17, '07, 5:46 p.m.. The
 9 subject is Dr. Ganguly and he just simply
 10 says, "thanks for this". But what he's
 11 thanking you for is an e-mail from yourself to
 12 Tom Osborne copied to Oscar Howell and to John
 13 Abbott, January 17 at 5:32 p.m.. The subject
 14 again, of course, is Dr. Ganguly. And then
 15 there is a text which extends into the second
 16 page. It's signed by yourself and it's copied
 17 to Cathy Bradbury or, at least--I don't think,
 18 I suspect you didn't copy it to Cathy
 19 Bradbury, it was copied by John Abbott's
 20 response to Ms. Bradbury. But in terms of
 21 this e-mail, do you recall, did you type this
 22 yourself?
 23 MR. TILLEY:
 24 A. Oh, I likely did. I don't use anybody--errors
 25 and all, I got to take responsibility for

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1 them.

2 COFFEY, Q.C.:

3 Q. Okay. And it says, begins, "Minister"--and

4 you say--"I was speaking to John Abbott to

5 learn that Dr. Ganguly has been in touch with

6 you about his resignation from his

7 administrative duties in our cancer care

8 program. During the fall, representatives

9 from the NLMA met with Dr. Howell et al to say

10 that they were going to take on the issue of

11 compensation for the administrative work that

12 three of our oncologists were providing for

13 our cancer care program (Laing - clinical

14 chief; Ganguly, Division Chief of Radiation

15 Oncology; and Siddiqui - Division Chief of

16 Medical Oncology). Interestingly, shortly

17 before that I met with Rob Ritter where he

18 gave me an indication that they were going to

19 use oncology as the medical field to talk

20 about in relation to the upcoming

21 negotiations, feeling the public support would

22 be there. Back in November with issues

23 surrounding ER/PR about to be dealt with in

24 the media, I asked Oscar Howell to resolve the

25 compensation issue for Dr. Laing as it was

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1 different from the others (retroactivity) and

2 we needed her full support when we moved

3 forward in the ER/PR discussions. That left

4 the Divisions Chiefs outstanding". And you go

5 on and talk about the details of that.

6 COFFEY, Q.C.:

7 Q. Sir, the reference to, "I asked

8 (unintelligible) back in November"--which

9 would be November, presumably of '06, "with

10 the ER/PR about to be dealt with in the media.

11 I asked Dr. Howell to resolve the compensation

12 issue for Kara Laing and we needed her full

13 support when we move forward on the ER/PR

14 discussions." Now what was that about?

15 MR. TILLEY:

16 A. Well first of all let me say that I don't

17 write a minister unless I'm invited, so either

18 Mr. Abbott had directed me to reply to him on

19 this issue or not -

20 COFFEY, Q.C.:

21 Q. Because you had said "I was speaking to John

22 Abbott" -

23 MR. TILLEY:

24 A. Right and I know there were some e-mails that

25 the minister had written me on this pharmacy

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1 issue or nursing issue at the same time.

2 There is an arrangement that, a funding

3 arrangement that exists for some of the

4 oncologists who have taken on additional work

5 load, non-clinical work load to get paid for

6 it, and Dr. Laing and Ganguly and Siddiqui

7 were three people that were involved and there

8 was a suggestion that they were going to work

9 the rule, so to speak, so that they would not

10 do any of the administrative tasks, that was

11 one element of it. The second element of it

12 is that these things, with the exception of

13 the clinical chief position, I understand are

14 part of the collective bargaining process

15 between the NLMA and government. So two

16 things, one, I have known from many years that

17 if I was to wait until that went through those

18 channels, I'd be waiting a long time. The

19 second thing is is that there was no

20 acknowledgement on Eastern Health's part that

21 government or the NLMA had any involvement in

22 what we were going to do to negotiate the

23 compensation that we paid to our clinical

24 chiefs. So I said to Dr. Howell, we can

25 settle one of these very quickly because it's

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1 within our power to make and usually the

2 compensation for clinical chiefs is based upon

3 a standard amount and the question is really

4 how much time do they commit? In terms of the

5 language, we needed her full support when we

6 moved forward on ER/PR discussions. I

7 couldn't imagine that I would have let this be

8 ignored and have a physician leader stand to

9 the wayside while we were addressing a very

10 significant clinical issue. So you learn over

11 the years to say resolve what you can and move

12 on. Nothing other than that. It was

13 certainly not intended to try to buy her

14 opinion or support, it had only been through

15 this process that I got to meet Dr. Kara Laing

16 and if I was ever in a situation where I

17 needed an oncologist, she's the person I would

18 go to. She is very knowledgeable, very

19 credible, very well spoken and she stood out

20 amongst any other oncologists that I have seen

21 in terms of being a leader and I'm saying I'm

22 not letting that one slip through my fingers,

23 so let's resolve it and let the other two go

24 through the normal processes.

25 COFFEY, Q.C.:

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1 Q. And so what then does your reference to "we
 2 needed her full support when we move forward
 3 on the ER/PR discussions" mean? What did you
 4 mean when you typed that? Because you linked
 5 it, it is linked here, I mean rightly or
 6 wrongly it's linked with ER/PR discussions.
 7 MR. TILLEY:
 8 A. I got to confess, I didn't read it the way you
 9 were reading it, but our minds read very
 10 differently -
 11 COFFEY, Q.C.:
 12 Q. I'm just reading what's there.
 13 MR. TILLEY:
 14 A. I couldn't imagine us going into the future
 15 dealing with this major issue and having Dr.
 16 Laing, because of a bargaining strategy say,
 17 boys, I'm not meeting with you fellows to talk
 18 to through this or I'm not going to be part of
 19 your press conference because, you know, we've
 20 got a dispute with government. So that was
 21 simply a way of saying this is an important
 22 person here and I'm not going to dilly dally
 23 around with this waiting for approval that I
 24 don't think I need to resolve it.
 25 COFFEY, Q.C.:

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1 Q. And I take it you had understood at the time
 2 in November that Dr. Laing was playing a more
 3 prominent role in the group addressing this
 4 ER/PR issue than Dr. Ganguly or Dr. Siddiqui?
 5 MR. TILLEY:
 6 A. That's true.
 7 COFFEY, Q.C.:
 8 Q. Now, sir, with respect to, there's also the
 9 reference to, in the first paragraph, "I had
 10 met with Rob Ritter when he gave me an
 11 indication"--"they" presumably is the NLMA--
 12 "were going to use oncology as the medial
 13 field to talk about in relation to the
 14 upcoming negotiations, feeling a public
 15 support would be there." Suggesting that
 16 oncology in contradistinction to perhaps other
 17 areas of medicine, so what did--I mean, you
 18 typed this out, what did you understand from
 19 your conversation with Mr. Ritter at the time?
 20 MR. TILLEY:
 21 A. Well that they were going to use as part of
 22 their promotional campaign to build public
 23 support of the value of oncologists and, I
 24 guess every organization that is in that
 25 position chooses strategy wisely. I can't say

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1 I was blown away by it, but I was certainly
 2 disappointed by it if we were going to this
 3 issue and this was going to get caught up in
 4 the middle of a bargaining process, it was--it
 5 didn't have a good taste to it.
 6 COFFEY, Q.C.:
 7 Q. Now with respect to that, if we could look at
 8 the second page of this--well first of all,
 9 just before I leave this page, I just want to
 10 be clear, there had never been any suggestion,
 11 I take it, by Dr. Laing that she would not co-
 12 operate on the ER/PR matter?
 13 MR. TILLEY:
 14 A. No.
 15 COFFEY, Q.C.:
 16 Q. I just want to be fair to -
 17 MR. TILLEY:
 18 A. No, I don't think so, I mean, this was being
 19 told to me as we're going to be asking these
 20 people not to, that's how I recall it.
 21 COFFEY, Q.C.:
 22 Q. Never any reluctance on Dr. Laing's part to
 23 take, as you're aware of -
 24 MR. TILLEY:
 25 A. No, in fairness to her.

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1 COFFEY, Q.C.:
 2 Q. Yes.
 3 THE COMMISSIONER:
 4 Q. Can we resolve just one point you made
 5 regarding clinical chiefs?
 6 MR. TILLEY:
 7 A. Yes.
 8 THE COMMISSIONER:
 9 Q. What was the distinction in respect to them?
 10 MR. TILLEY:
 11 A. The clinical chiefs were those positions that
 12 the organization put in when it put in a
 13 program-based management to have a leadership
 14 team.
 15 THE COMMISSIONER:
 16 Q. Uh-hm
 17 MR. TILLEY:
 18 A. We always kept the establishment and the
 19 compensation level for those positions out of
 20 any bargaining process.
 21 THE COMMISSIONER:
 22 Q. Okay, so that's determined internally by
 23 Eastern Health as a part of your normal
 24 process.
 25 MR. TILLEY:

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1 A. That's correct, right, and the NLMA at the
 2 time, I think were thinking that maybe it
 3 should be included in it.
 4 THE COMMISSIONER:
 5 Q. Uh-hm, something you were not in favour of?
 6 MR. TILLEY:
 7 A. No, they were managing position, we didn't see
 8 them as being appropriate to fall into a non-
 9 management group.
 10 THE COMMISSIONER:
 11 Q. Yes, all right, thank you.
 12 COFFEY, Q.C.:
 13 Q. And now the second last paragraph says, "While
 14 we have received their resignations for
 15 January 1, they did give us a two-week
 16 extension to January 15th." Now I take it
 17 that's Dr. Ganguly and Dr. Siddiqui's
 18 resignations as division chiefs?
 19 MR. TILLEY:
 20 A. I'm assuming so, Mr. Coffey, but I stand to be
 21 corrected.
 22 COFFEY, Q.C.:
 23 Q. Sir, what's your experience with respect to
 24 whether or not, as a CEO of the Health Care
 25 Corporation and Eastern Health, a threat by

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1 physicians to resign from, you know, a
 2 position or particular duties? I mean, was
 3 this the first time you encountered this?
 4 MR. TILLEY:
 5 A. We had a physician strike.
 6 COFFEY, Q.C.:
 7 Q. A strike may be different than a mass
 8 resignation, but -
 9 MR. TILLEY:
 10 A. I'm sorry.
 11 COFFEY, Q.C.:
 12 Q. - maybe not. I mean, I -
 13 MR. TILLEY:
 14 A. But up until that moment I would have never
 15 said it was possible.
 16 COFFEY, Q.C.:
 17 Q. Yes. Up to the time of the strike, yes.
 18 MR. TILLEY:
 19 A. Right. I mean, that was obviously very bold
 20 decision to make.
 21 COFFEY, Q.C.:
 22 Q. In terms of just the idea of, you know,
 23 people, you know, would resign from particular
 24 positions or duties and I appreciate people
 25 routinely resign from things, but the idea of,

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1 you know, unless something happens, I will
 2 resign?
 3 MR. TILLEY:
 4 A. I can't be specific, but I can tell you over
 5 the years I've heard it a few times.
 6 COFFEY, Q.C.:
 7 Q. Okay. The point being this wasn't the first
 8 time that you -
 9 MR. TILLEY:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. - encountered that. If we could, please,
 13 Exhibit P-0278? This is a pathology workload
 14 review, Newfoundland and Labrador. It's the
 15 Dr. Maung report, I believe, if we look down
 16 right there. See that?
 17 MR. TILLEY:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. And it's commissioned by John Abbott, the
 21 deputy minister. And it's pathology workload
 22 review, January 22nd, 2007. And it is 43
 23 pages long, including a number of footnoted--
 24 or not footnoted but certainly references.
 25 Were you aware that this was going on and of

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1 its being having being submitted in the winter
 2 of '07?
 3 MR. TILLEY:
 4 A. I don't remember seeing it because this is the
 5 first time I've seen something with two flags
 6 on it and I'm curious about what the right
 7 flag is.
 8 MR. SIMMONS:
 9 Q. (Inaudible).
 10 MR. TILLEY:
 11 A. Okay, so it's not St. Pierre or anything,
 12 okay. Well, I knew that--and I referenced St.
 13 Pierre because obviously we have a
 14 relationship with them.
 15 COFFEY, Q.C.:
 16 Q. Sure.
 17 MR. TILLEY:
 18 A. I was aware about the compensation issue with
 19 pathologists and where we could made
 20 representation to government. I think, Madam
 21 Commissioner, we did speak about this the
 22 other day.
 23 COFFEY, Q.C.:
 24 Q. We did speak about that, so that's why I'm
 25 just about the Dr. Maung report itself.

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1 MR. TILLEY:
 2 A. Okay.
 3 COFFEY, Q.C.:
 4 Q. I mean, you've explained -
 5 MR. TILLEY:
 6 A. No. I mean, Dr. Williams, I think, played a
 7 very major role in the work in that report, so
 8 could obviously speak to it. But I think one
 9 of the frustrating parts of this for me is
 10 that we had a major compensation issue and
 11 instead of fixing the compensation issue, we
 12 send it off for another study. And I'm here
 13 thinking Rome is burning down and this process
 14 has been shelved would be inappropriate, but
 15 unnecessarily deferred would be. I would have
 16 sooner that we would have aired on the
 17 compensation side and dealt with the workload
 18 afterwards.
 19 COFFEY, Q.C.:
 20 Q. If we could, Commissioner, if you look at
 21 Exhibit P-0432? Now, this--0432, thank you.
 22 Now, Mr. Tilley, this is an e-mail from Susan
 23 Bonnell to Oscar Howell, Denise Dunn, Heather
 24 Predham, yourself and Leona Barrington. The
 25 subject is "Key Messages", Thursday, January

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1 25, 2007 at 12:35 p.m. And it says, "Hi,"
 2 that would be Susan, "I've spoken with George
 3 and he's good with the following messages.
 4 Leona has spoken to Stephanie. She apologized
 5 for the short notice, but can only extend her
 6 deadline to 2 p.m., otherwise they would be
 7 willing to do a follow-up story next week but
 8 we don't want that. Rather than speak to
 9 Stephanie directly we can send this to her and
 10 attribute it to you so as to avoid opening up
 11 another line of questioning which we would
 12 rather not. Leona can explain to Stephanie
 13 that given the short notice we are unable to
 14 do an interview but can provide the short
 15 statements: We are surprised," and below,
 16 that's a colon after the word "statements"
 17 And then several lines below, "We are
 18 surprised by this information. It is our
 19 understanding that all individuals impacted by
 20 the review had been contacted. The process of
 21 notifying individual patients has involved
 22 numerous individuals, physicians and
 23 specialists both within and outside the
 24 organization. Eastern Health is now
 25 rechecking the list to verify with the

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1 physicians and specialists involved that these
 2 patients have all been contacted. We
 3 encourage any individuals who are in the
 4 retesting group and have not heard from their
 5 physician or from our organization to call our
 6 client services officer at the 777-6500
 7 number." So in terms of the issue of whether
 8 or not everybody had been, all the patients
 9 had been notified about the retest results,
 10 this is January 25th, '07. Do you recall,
 11 does that help you or assist you in any way in
 12 recalling what was going on with respect to
 13 that, what had happened here? And if we could
 14 while we're at it, Exhibit P-0431? Page 2.
 15 There's some notes of yours, I gather, Mr.
 16 Tilley, this one is January 25, '07, "Susan
 17 Bonnell", "Independent", "Patient Missed",
 18 something "Dr. Laing". Do you recall what
 19 that is, can you see?
 20 MR. TILLEY:
 21 A. I can see it, sir, but I can't -
 22 COFFEY, Q.C.:
 23 Q. Can't pick it out?
 24 MR. TILLEY:
 25 A. Can't pick it out.

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1 COFFEY, Q.C.:
 2 Q. Does that--any recollection then of what had
 3 happened here and, you know, what, if
 4 anything, Eastern Health did at the time
 5 concerning it, specifically and general?
 6 MR. TILLEY:
 7 A. Independent makes a call and references a
 8 patient who had not been followed-up on. This
 9 says the patient missed by Dr. Laing. I don't
 10 know if it was in terms of missed coming from
 11 the panel and supposed to be contacted or
 12 whether it was missed in terms of identifying,
 13 so I'm assuming it's the former. As the
 14 letter implies, we were working on the
 15 assumption that all of this information from
 16 the panel was out there and being followed up
 17 on.
 18 COFFEY, Q.C.:
 19 Q. Um-hm.
 20 MR. TILLEY:
 21 A. So beyond that I'm not able to recall
 22 specifics.
 23 COFFEY, Q.C.:
 24 Q. Do you recall what, if anything, you know, as
 25 the CEO, I mean, upon learning of this, Susan

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1 quotes you as having spoken with you and
 2 you're good with the following messages, which
 3 is at the bottom of the page.
 4 MR. TILLEY:
 5 A. Um-hm.
 6 COFFEY, Q.C.:
 7 Q. The last three paragraphs. Yes, please.
 8 Thank you. It runs down here. You indicated
 9 you're good with, or she says you're good with
 10 saying Eastern Health is now rechecking the
 11 list. I mean, do you recall what was done in
 12 relation to that and if you ever heard
 13 anything further about it?
 14 MR. TILLEY:
 15 A. I remember discussions about we need to follow
 16 up with the physicians to make sure that
 17 they've actually followed up with the
 18 patients. I also think I recall, now because
 19 it comes back to me, that if it wasn't for bad
 20 luck, I'd have no luck. Because here we were
 21 embarking on a process that everyone of us
 22 felt we were going to be making a significant
 23 statement, in terms of follow up, but we kept
 24 running into these execution errors or
 25 challenges, you know. But I can't tell you

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1 specifically what conversations there might
 2 have been with Dr. Laing on that.
 3 COFFEY, Q.C.:
 4 Q. And -
 5 THE COMMISSIONER:
 6 Q. At a convenient spot, Mr. Coffey.
 7 COFFEY, Q.C.:
 8 Q. Yes. If we could, please, Exhibit P-0280?
 9 This is an e-mail from Sharon Smith to
 10 Beverley Griffiths, March 7, 2007. Subject is
 11 re: some info yet again, and in terms of the
 12 issue of having potentially missed a patient,
 13 the second paragraph says "there have not been
 14 many issues since the technical briefing. We
 15 did have one individual who had not seen a
 16 doctor to get her results. A number of
 17 attempts had been made to contact her, but she
 18 was missed and she did go to the press in
 19 January. We know the Court case is proceeding
 20 under Ches Crosbie and I have no further word
 21 on that and can't contact"--sorry, "connect
 22 with our risk manager at this point. In terms
 23 of lab accreditation, they will be surveyed in
 24 September as part of a pilot project with the
 25 Canadian Council on Health Services

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1 Accreditation" and it goes on from there.
 2 Now Mr. Tilley, can you tell the
 3 Commissioner, please, when this one incident
 4 occurred in January of '07, you know, and was
 5 brought to your attention as a CEO that "we
 6 missed at least one," we in the larger sense,
 7 missed at least one patient, did you order or
 8 instruct or direct that any concerted effort
 9 occur to ensure we've got everybody? And if
 10 so, what was the--who did it and who reported
 11 back to you?
 12 MR. TILLEY:
 13 A. Well, on a couple of occasions, I would have
 14 talked to the quality initiatives department,
 15 and I would repeat what everybody else was
 16 hearing in the media. There are people who
 17 are coming forward and saying they haven't
 18 been identified. The feedback that I had
 19 gotten is that they feel that they have gotten
 20 everybody. What process they went through
 21 other than their own logs, I can't tell you.
 22 This is in March. I know in a subsequent
 23 conversation that Mrs. Pilgrim and I were
 24 involved in where she actually went down and
 25 reviewed the documents that were being kept

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1 there, which showed how everybody had been
 2 contacted and so on. But the reports that I
 3 was getting back in this point in time is, as
 4 far as they were concerned, they had everybody
 5 contacted.
 6 COFFEY, Q.C.:
 7 Q. And you were getting this report from who?
 8 MR. TILLEY:
 9 A. Mrs. Elliott, the director of quality
 10 initiatives department, and I'm not sure as to
 11 whether Heather Predham would have given me
 12 that, but I definitely remember talking to
 13 Mrs. Elliott about it.
 14 COFFEY, Q.C.:
 15 Q. Okay. Just one final point before I forget
 16 it, on a completely different topic. Susan
 17 Bonnell has been referred to a number of
 18 times. She's sending you e-mails and so on.
 19 She doesn't report--does she report to you
 20 directly throughout all this or who is her
 21 nominal boss?
 22 MR. TILLEY:
 23 A. She would report to the vice-president for
 24 people and informations, which would be
 25 Stephen Dodge.

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1 COFFEY, Q.C.:

2 Q. In practice, in terms of ER/PR?

3 MR. TILLEY:

4 A. Oh, in terms of ER/PR, she would come into my

5 office. She would speak to Dr. Williams, Dr.

6 Howell. She was really floating around in

7 numerous areas.

8 COFFEY, Q.C.:

9 Q. Okay. Commissioner.

10 THE COMMISSIONER:

11 Q. Okay. We're adjourning for the week.

12 Reconvene on Monday morning at 9:30. Thank

13 you.

14 CROSBIE, Q.C.:

15 Q. Commissioner, were there documents to be

16 entered? Did I understand that?

17 COFFEY, Q.C.:

18 Q. Yes.

19 THE COMMISSIONER:

20 Q. There were, but Mr. Coffey hasn't mentioned

21 them, so I presume he's put them off again.

22 COFFEY, Q.C.:

23 Q. Well, actually, the--while I'm at it, why not.

24 THE COMMISSIONER:

25 Q. Did you get your copies electronically, Mr.

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1 Crosbie, or did they provide them for you?

2 CROSBIE, Q.C.:

3 Q. I have a disk.

4 THE COMMISSIONER:

5 Q. All right.

6 COFFEY, Q.C.:

7 Q. Exhibit P-0375. Thank you, Mr. Crosbie. I

8 appreciate that. P-0375 and this is, Mr.

9 Crosbie, and I've told counsel before, if

10 there's something that they wish entered, I'll

11 certainly accommodate them.

12 THE COMMISSIONER:

13 Q. All right.

14 COFFEY, Q.C.:

15 Q. There is, as well, Exhibit P-0394. This is

16 Mr. Pritchard asked about this. They'll be

17 talking about them eventually, but they just

18 asked -

19 THE COMMISSIONER:

20 Q. They be entered today?

21 COFFEY, Q.C.:

22 Q. Yes, please. And -

23 THE COMMISSIONER:

24 Q. So that's--yes, is there a third?

25 COFFEY, Q.C.:

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1 Q. No, the Registrar is nodding that's it.

2 THE COMMISSIONER:

3 Q. I think we should take the Registrar's advice.

4 COFFEY, Q.C.:

5 Q. Oh yes.

6 THE COMMISSIONER:

7 Q. All right then.

8 COFFEY, Q.C.:

9 Q. I've learned not to -

10 THE COMMISSIONER:

11 Q. Enter P-0375 and P-0394, all right.

12 EXHIBITS ENTERED AND MARKED EXHIBITS P-0375 AND P-0394

13 THE COMMISSIONER:

14 Q. Thank you all. Monday at 9:30.

15 (UPON CONCLUSION AT 4:57 P.M.)

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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 24th 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 24th day of April, A.D., 2008

13 Judy Moss

Inquiry on Hormone Receptor Testing

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