COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

MARCH 28, 2008

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Certificate

THE COMMISSIONER:
Q. Please be seated. Mr. Crosbie?
MS. JOAN DAWE, EXAMINATION BY CHESLEY CROSBIE, Q.C.
CROSBIE, Q.C.:
Q. I'm just admiring this rubber mat here, Commissioner. I don't know if it's to make standing more comfortable or to prevent the person at the podium from being electrocuted.
THE COMMISSIONER:
Q. Maybe a little of both.
CROSBIE, Q.C.:
Q. They could use a few of these down at the Courthouse. Thank you, and good morning, Ms. Dawe.
MS. DAWE:
A. Good morning, Mr. Crosbie.
THE COMMISSIONER:
Q. Mr. Crosbie, I've been provided with the second exhibit which you referred to yesterday which you wished to use, as I understand it.
CROSBIE, Q.C.:
Q. Yes.
THE COMMISSIONER:
Q. And that would be Exhibit P-0119.
CROSBIE, Q.C.:

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Q. Thank you.
THE COMMISSIONER:
Q. Entered.
EXHIBIT ENTERED AND MARKED EXHIBIT P-0119
CROSBIE, Q.C.:
Q. Ms. Dawe, first I'd like to express for myself, and I'm sure the sentiment is echoed by everybody here, that my admiration for you for taking on the onerous duties of the volunteer position that you occupy and I'm sure the community in general is thankful to you for all the good efforts on the volunteer side you've made over the years.
MS. DAWE:
A. Thank you. I appreciate your comment.
CROSBIE, Q.C.:
Q. I'd like to talk about the issue of the review panel and the establishment of the review panel.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Remember the panel that made treatment recommendations, I'd like to start with that. Mr. Coffey showed you the minute which noted a

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panel composed of two surgeons and three oncologists, at least that's how it started out, right? That's what you recall?
MS. DAWE:
A. That's my understanding.
CROSBIE, Q.C.:
Q. And this panel was established to recommend changes to treatment or to consider and make recommendations where appropriate, that's your understanding, and he asked you if the Board discussed the propriety of this, of this setup.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. And I think your answer was the Board had not discussed the propriety of it?
MS. DAWE:
A. To my knowledge, no. Yes, correct.
CROSBIE, Q.C.:
Q. Right, that's what I recall.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. I'm just sort of making sure we're on the same

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ground here. You, yourself, have a background in clinical health care?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. And perhaps I could ask you, is it the generally accepted model of physician/patient relationship to treat patients by recommendations of panels?
MS. DAWE:
A. Well, physicians routinely--I shouldn't say routinely, but physicians often consult with their peers for advice. So for me, it would not be something completely unusual.
CROSBIE, Q.C.:
Q. Yes, I'm sure that happens and I'm sure we're all glad that it happens that issues are taken to colleagues to get input, but that would usually happen in a situation where--well, let me put it this way. The actual treatment decision is discussed with the patient, correct? In other words, a clinician might take an issue to colleagues, but they would go back to the patient with the clarification in their own mind and the treatment decision

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would ordinarily be made in a clinical relationship in which discussion can happen between the clinician and the patient being treated. Is that a correct description?
MS. DAWE:
A. I think to again keep it in context, Mr. Crosbie, and with respect, the information that I have, the clinicians, at that time, acted in the best interest of patients to make sure that every patient was given the advantage of whatever treatment was available, and I think it would be very unfair for me to comment on a matter, a clinical matter of that nature, and I would suggest to you it would be more appropriate to wait until these people have an opportunity to be witness to speak for themselves. I think it's certainly beyond my ability to comment on the rationale for this, but I accept, as traditional practice would, I think, demonstrate that it's not unusual at all for physicians or nurses or others to consult with their peers in the best interest of providing the very best possible care for patients.
CROSBIE, Q.C.:

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Q. How usual is it for a panel to rely on a chart review and no clinical discussion with the patient?
MS. DAWE:
A. Yeah.
CROSBIE, Q.C.:
Q. In the process of making treatment recommendations?
MS. DAWE:
A. I'm suggesting to you, I'm here representing a Board of Trustees and to respond at that level, sir, you know, I think would be very inappropriate for me.
CROSBIE, Q.C.:
Q. You don't want -
MS. DAWE:
A. Beyond what I've indicated to you.
CROSBIE, Q.C.:
Q. So you'd prefer not to comment on whether that's usual or unusual?
MS. DAWE:
A. This--no, I'm not suggesting that either. This circumstance was a very, very unusual situation, and I think as we've all learned, there was no experience that these people

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could draw on elsewhere in this country or otherwise to help determine the way they were going to deal with this very difficult situation, and I guess that's what I'm suggesting to you. It's not--you can't go to a textbook or on the internet and have it clearly defined what the procedure should be in this sort of circumstance. So I'm suggesting to you, I would--it would be most inadequate for me to provide that level of a clinical response to you. I'm suggesting -
CROSBIE, Q.C.:
Q. Are you suggesting that an unusual situation required an unusual response?
MS. DAWE:
A. No, I'm suggesting to you it's a very unusual situation and I really would prefer that you address that question to the clinicians when they have an opportunity to be here to provide their testimony, sir.
CROSBIE, Q.C.:
Q. Then we will do that. Later we see that a risk manager was added to the panel. Is that right?
MS. DAWE:

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A. Yes, I understand, yes.
CROSBIE, Q.C.:
Q. Is that usual?
MS. DAWE:
A. This set of circumstance was not usual and I really--again, I'm not able to go beyond what I've suggested to you earlier, unfortunately. The risk manager has, in part of the investigation, has a role to play. I really and truly can't speak in any more detail than I have.
CROSBIE, Q.C.:
Q. In your capacity as a Board member and Board Chair -
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. - when this method of proceeding and making treatment recommendations was made known to you -
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. - did you think to raise the question that the patient and the treating oncologist were

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assumed to be fully capable to decide on treatment after the initial hormone receptor tests between 1997 and cessation in 2005, why could they not be trusted to make treatment decisions together after testing was repeated?
MS. DAWE:
A. I would suggest to you, sir, that when the information was provided to the Board, and that would have been September/October, in that level of detail, about the panel and so on, that the Board would very much take into consideration the advice from its clinicians, the physicians, the specialists. Again, it is all directed at what is in the best interest of the patient, and I don't--I'm pretty confident in saying that the Board did not challenge that structure at that time because we accepted this was in the best interest of the patients.
CROSBIE, Q.C.:
Q. And I have no trouble accepting that. So you would agree that excellence in cancer care is always the goal?
MS. DAWE:
A. Absolutely.

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CROSBIE, Q.C.:
Q. And the accepted clinical model normally of excellence in cancer care is a clinical relationship between the patient and the treating physician.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. You agree with that?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. And this model, would you agree, is based on the paramountcy of the patient's own values and priorities?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. For example, a younger woman with small children might want to do everything possible to extend life, even at the expense of quality of life?
MS. DAWE:
A. Um-hm.
CROSBIE, Q.C.:

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Q. A possible example of that decision making could be Peggy Deane, whose case we heard about earlier in these proceedings. Did you question why a panel could be assumed to do an excellent job of recommending treatment without a clinical interaction with the patient?
MS. DAWE:
A. No, sir. We accepted the advice of the clinicians.
CROSBIE, Q.C.:
Q. Did you question why five doctors were needed to make a treatment recommendation after the retest when the usual model is one doctor can give excellent recommendations after the original test?
MS. DAWE:
A. My answer would be the same, no.
CROSBIE, Q.C.:
Q. Change topics somewhat. Do you think patients should have the right to request and receive a second opinion in ER/PR testing?
MS. DAWE:
A. A patient has the right to request in any set of circumstances.

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CROSBIE, Q.C.:
Q. A second opinion?
MS. DAWE:
A. Yes, absolutely. That's a patient's right in any event.
CROSBIE, Q.C.:
Q. So would you extend that to pathology services in general?
MS. DAWE:
A. I think--and you're asking an opinion. You're asking me an opinion. I'm suggesting -
CROSBIE, Q.C.:
Q. Well, you're able--you have an overview from a policy level.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. So within the constrictions on your role, I am asking.
MS. DAWE:
A. Yes, but I would also suggest to you, based on my background, I would say to you, a patient always has the right to request a second opinion.
CROSBIE, Q.C.:

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Q. And that includes in matters of pathology?
MS. DAWE:
A. In any matter.
CROSBIE, Q.C.:
Q. I'd like to pass on to the--what we can call the Ejeckam memos.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. The first time you read the Ejeckam memos was--these memos being written in 2003, is I think was mentioned in February this year when you were interviewed by Commission lawyers? You were shown those memos then?
MS. DAWE:
A. I believe I heard about the memo, I think. Was this the--I have to clarify. Was this the memo that I referred to that the Premier used in the House of Assembly?
CROSBIE, Q.C.:
Q. That's the memo.
MS. DAWE:
A. Well, that, I had heard about it, yes. That was the first time I had heard about that. I think I indicated that.

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CROSBIE, Q.C.:
Q. So the first time you actually read them was yesterday?
MS. DAWE:
A. No, I'm not sure when--now there were several, were there not? You know, I'm trying to recall here now.
CROSBIE, Q.C.:
Q. Yes, there's not just one. There's a couple.
MS. DAWE:
A. Yes, but okay, the first time I had heard of Dr. Ejeckam's name and the matter was, as I indicated, was when the Premier used the document in the House of Assembly.
CROSBIE, Q.C.:
Q. I just want to clarify the first time you read them was when?
MS. DAWE:
A. Now you're asking "them" and I would really have to see the "them"
CROSBIE, Q.C.:
Q. Or any of them.
MS. DAWE:
A. I'm not sure if after we had--it had been shown--released in the House of Assembly,

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whether we had seen them between that period, but much of what I saw yesterday or the day before I had seen for the first time. So I'd really have to--as I said, as I looked at these, as they were presented the last two days, and the information that I presented, that I gave then was to the best of my knowledge accurate. If I said, as I saw the letter, I hadn't seen this before, that's truth to the best of my knowledge.
THE COMMISSIONER:
Q. Mr. Crosbie, I don't know if it's any assistance to the witness, but as I understand it, you're referring to P-0113.
CROSBIE, Q.C.:
Q. I am. That could be brought up there.
THE COMMISSIONER:
Q. And so if we could -
MS. DAWE:
A. Okay.
THE COMMISSIONER:
Q. Yes, it's in your book and it's before you, so if you want to -
MS. DAWE:
A. Yes, it would be helpful.

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THE COMMISSIONER:
Q. - look at them to be more precise about what you recall, you can do so.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Well, why don't you take a moment then, and have a look, either on the screen or in the book you have there.
MS. DAWE:
A. 0113.
THE COMMISSIONER:
Q. It'll be towards the end of the book.
MS. DAWE:
A. Okay.
CROSBIE, Q.C.:
Q. Could I ask, Madame, to bring up to the bottom of the memo on the screen there?
THE COMMISSIONER:
Q. Now there are a number of--is this the page you want though, Mr. Crosbie, because there are a number of pages in that?
CROSBIE, Q.C.:
Q. Yes, I know. Another page, please.
THE COMMISSIONER:

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Q. Page two. Scroll down, please.
CROSBIE, Q.C.:
Q. And a bit further down.
MS. DAWE:
A. These, I had not seen these until I saw them here. That's why I needed to see what you were referring to.
CROSBIE, Q.C.:
Q. When you saw them yesterday?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Okay. You're aware then when the Premier produced those memos, which are the ones, we all believe, I think, or at least some of them anyway, in the House of Assembly in May 2005 -
MS. DAWE:
A. No.
CROSBIE, Q.C.:
Q. No, but the question is, you could gather from that that these might be important documents, from the fact that they were produced by the Premier?
MS. DAWE:
A. My understanding, when the Premier produced

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the--there was one document that was produced in the House of Assembly. That's all I knew at that time. What I saw here yesterday, these are new documents for me.

CROSBIE, Q.C.:

Q. Yes. One of which may have been produced?

MS. DAWE:

A. One of -

CROSBIE, Q.C.:

Q. By the Premier?

MS. DAWE:

A. Yes, in May of 2007.

CROSBIE, Q.C.:

Q. So it appeared that these documents, or one of them anyway, could be important?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. You assumed, I take it, that the CEO would bring any of these memos that were important to your attention if they involved policy matters?

MS. DAWE:

A. If they related to policy, yes.

CROSBIE, Q.C.:

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Q. Yes. You would assume the CEO would bring that to your attention or bring them or it to your attention?

MS. DAWE:

A. If it were a matter of importance, such as to engage or inform the Board on matters related to in policy, yes, sir.

CROSBIE, Q.C.:

Q. Could I ask you to bring up the memo that--we're looking at the June 19th, just bring it up so I can see the balance of it.

THE COMMISSIONER:

Q. You have your own mouse there, if you want to be in control, Mr. Crosbie. Right there, in front of you, there's a mouse.

REGISTRAR:

Q. You can use the little wheel on the mouse and scroll down through.

CROSBIE, Q.C.:

Q. Oh, great; didn't know that. Yes, it's paragraph six that I'm looking at.

THE COMMISSIONER:

Q. So, that would be page seven of the -

CROSBIE, Q.C.:

Q. Page seven.

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THE COMMISSIONER:

Q. - document, paragraph six.

CROSBIE, Q.C.:

Q. Do you have that there, Ms. Dawe?

MS. DAWE:

A. Yes, sir, I do.

CROSBIE, Q.C.:

Q. You can see in paragraph six, the statement--there are several provocative statements made in this particular memo, but the one I'll direct your attention to here is "diagnosis based on inappropriate immuno stain will surely jeopardize patient care and may even expose the Health Care Corporation of St. John's to litigation," and you see that statement?

MS. DAWE:

A. Yes, I do.

CROSBIE, Q.C.:

Q. And we're aware, I think, that Dr. Ejeckam halted IHC testing for about five weeks back in 2003.

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

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Q. And this memo relates to the halting of the testing in 2003. Is that correct?

MS. DAWE:

A. That's--the date of this memo is again? The date of this memo?

CROSBIE, Q.C.:

Q. June 19th.

MS. DAWE:

A. Of 2003?

CROSBIE, Q.C.:

Q. Yes.

MS. DAWE:

A. That's correct, yes. That's my understanding.

CROSBIE, Q.C.:

Q. My question is, does this describe, this memo and this statement in particular that I read out, does it describe a problem of the nature that you would expect management to bring to the attention of the Board?

MS. DAWE:

A. In 2003 to the Health Care Corporation Board, you're asking?

CROSBIE, Q.C.:

Q. I'm actually asking about when the existence of the memo became common public knowledge.

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MS. DAWE:
A. 2007.
CROSBIE, Q.C.:
Q. When the Premier brought them out into the public in May of 2007. I may have said 2005 before, but it was May 2007, wasn't it, that he -
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. - that the Premier made them public?
MS. DAWE:
A. Last May.
CROSBIE, Q.C.:
Q. So the question is, in May 2007 or thereabouts, does--almost--I don't know if she doesn't like this line of questioning or what. Others might not have seen, but the glass of water almost went that way. I spent a lot of time in Court with Sandra, so I know some of her tricks. I'm sorry, we're sort of off topic a little, so I'll repeat the question.
In the middle of 2007, what I just read out, and so we're not confused now, I'll read it out again. "Diagnosis based on

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inappropriate immuno stain will surely jeopardize patient care and may even expose the Health Care Corporation of St. John's to litigation." And my question is, does this describe a problem of the nature that you would expect management to bring to the attention of the Board?
MS. DAWE:
A. Yes. Remember, this was a 2003 memo. I'm not sure of the amount of information in this memo that we were aware of then after the Premier release. Because I know that there was questioning what was that letter that the Premier released in the House of Assembly. That would be the first knowledge that I have.
CROSBIE, Q.C.:
Q. However, it seems the document itself was never taken to the Board.
MS. DAWE:
A. No, I had never--no, if that's your question, sir -
CROSBIE, Q.C.:
Q. Or to you?
MS. DAWE:
A. No. If that's your question, the answer is

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no.
CROSBIE, Q.C.:
Q. And to pick up on something you raised earlier, and we will find out in due course whether Mr. Tilley or Dr. Williams or who outside of the immediate pathology and oncology people knew about these memos back in 2005. Maybe Mr. Tilley didn't know about it.
MS. DAWE:
A. That's -
CROSBIE, Q.C.:
Q. Maybe he did. But we'll find that out in due course.
MS. DAWE:
A. And that--and I'm very happy to hear you say that, because as I'm presented with these documents, I really don't understand the context around who was involved, and so it's really important for both Dr. Williams and Mr. Tilley, in particular, it's Mr. Tilley who reports to the Board, but Dr. Williams would be given the details about the ER/PR circumstances. He's the person who was reporting. They would have to determine whether they even knew these documents

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existed, in order for the Board to be aware obviously. So I'm happy to hear you say that. They'd have to speak for themselves in this matter.
CROSBIE, Q.C.:
Q. So that's why I'm going to put the question this way. If Mr. Tilley were privy to these memoranda back in 2005, do they appear to describe a problem, the dimensions of which is something that ought to have been brought to the attention of the Board?
MS. DAWE:
A. I believe, under the circumstances and the discussion around the matter.
CROSBIE, Q.C.:
Q. Your answer is yes?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. I'd like to turn now to P-0112, please, page one, fourth paragraph. So this is a memo, I don't have the date there. If you could just give us the date? From George Tilley -
MS. DAWE:
A. 31st of May.

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CROSBIE, Q.C.:
Q. - sent to the trustees, 31st of May 2007, fourth paragraph, please. So if we look down in the fourth paragraph, Mr. Tilley poses, this is for the benefit of the Board, and answers the question--going from my notes, I just want to find it again. Yes, okay. So it's the--it's down where he says, toward the bottom of the screen, "the questions of the media were many, including: why was something not done about this in 2003?" You see that?
MS. DAWE:
A. Yes, sir.
CROSBIE, Q.C.:
Q. "Why was something not done about this in 2003?" and he gives the Board the following answer, quote, "the focus at that time was about tissue staining and there was no indication of a results concern." You see that?
MS. DAWE:
A. Yes, I do.
CROSBIE, Q.C.:
Q. Now we've just looked at the Ejeckam memo, or at least one of them anyway, where it stated

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that "diagnosis based on inappropriate immuno stain will surely jeopardize patient care," and you remember that?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Does the advice Mr. Tilley gave to the Board seem consistent with the Ejeckam memorandum?
MS. DAWE:
A. Based on these two comments, if there's no other information, not 100--not totally consistent.
CROSBIE, Q.C.:
Q. Not totally consistent.
MS. DAWE:
A. Um-hm.
CROSBIE, Q.C.:
Q. Of course, it may be that Mr. Tilley relied on someone else for interpretation of the concerns in 2003.
MS. DAWE:
A. Well, that's my point here all along.
CROSBIE, Q.C.:
Q. Sure.
MS. DAWE:

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A. I can't speak--I know what Mr. Tilley informed the Board. I have no doubt, absolutely no doubt, that Mr. Tilley had any other motive but to keep the Board informed as he knew and saw fit.
CROSBIE, Q.C.:
Q. And you -
MS. DAWE:
A. And maybe this is the information he had available to him at that time.
CROSBIE, Q.C.:
Q. And that may be.
MS. DAWE:
A. That may be.
CROSBIE, Q.C.:
Q. We'll hear from him in due course.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Which won't be too long from now.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. So taking--you know, taking that as a given that we're going to hear from Mr. Tilley, and

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he may have gotten his information from someone else, and passed it on to the Board in good faith?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. We can--let's make that assumption. Nonetheless, did Mr. Tilley's advice suggest that there was no issue of patient care involved or arising in 2003? He's saying "the focus at that time was about tissue staining and there was no indication -
MS. DAWE:
A. No indication of results change.
CROSBIE, Q.C.:
Q. - of a results concern."
MS. DAWE:
A. That's the way I would interpret that.
CROSBIE, Q.C.:
Q. So you would agree then with the statement that Mr. Tilley's advice did suggest, in this memorandum we're looking at here, 0112, that there was no issue of patient care in 2003?
MS. DAWE:
A. "There was no indication of result change,"

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that's his wording, yes.
CROSBIE, Q.C.:
Q. How do you interpret that? Does that seem to suggest that issues of patient care and treatment were not involved?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Yes.
MS. DAWE:
A. Well, if there was no indication of results concern that you would be led to understand then that there was not a significant issue related to patient care. That's my -
CROSBIE, Q.C.:
Q. And yet, so when we contrast that with the Ejeckam statement, "will surely jeopardize patient care," there does seem to be an inconsistency?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. And you've already -
MS. DAWE:
A. I've said that.

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CROSBIE, Q.C.:
Q. - agreed.
MS. DAWE:
A. I've said that. I'm not a lawyer.
CROSBIE, Q.C.:
Q. I don't think you have to be to -
MS. DAWE:
A. But that's understandable.
CROSBIE, Q.C.:
Q. - to see that one.
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Was Mr. Tilley's advice to the Board less than accurate? And I'm not talking about his motives, just his advice on the face of it here.
MS. DAWE:
A. The information, if I contrast these two pieces of information, it's not complete.
CROSBIE, Q.C.:
Q. It's not complete, and it's not accurate?
MS. DAWE:
A. It doesn't 100 percent reflect the seriousness as I see in Dr. Ejeckam's letter.

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CROSBIE, Q.C.:
Q. You would not describe it as accurate advice?
MS. DAWE:
A. No.
CROSBIE, Q.C.:
Q. So we can say it is inaccurate? You agree?
MS. DAWE:
A. It's the opposite.
CROSBIE, Q.C.:
Q. You agree?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. Was it misleading advice?
MS. DAWE:
A. I have to say again, I don't think there was any intention to mislead the Board.
CROSBIE, Q.C.:
Q. I've agreed with you, it doesn't imply anything about the man's motives.
MS. DAWE:
A. Yes. But it wasn't complete or accurately reflecting the contents of Dr. Ejeckam's letter, if that's what you're asking me to speak to specifically.

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CROSBIE, Q.C.:
Q. Thank you. I'd like to turn now to questions of patient safety. Does the Board have a responsibility for patient safety?
MS. DAWE:
A. Yes.
CROSBIE, Q.C.:
Q. There's no doubt about that in your mind?
MS. DAWE:
A. No, no, absolutely.
CROSBIE, Q.C.:
Q. Do you agree that the hospital board should take its responsibility for patient safety at least as seriously as it takes the hospital's financial condition?
MS. DAWE:
A. Absolutely, and I think we demonstrate that by the quality and safety improvement committee of the Board.
CROSBIE, Q.C.:
Q. Do you agree--I'm sorry.
MS. DAWE:
A. I'm sorry, no, but that's a demonstration of how seriously we take our mandate in that area, and I think I provided the detail

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yesterday of how important this issue was to us, and I took it to the national level where we sought best practices in the area before we fully implemented the committee. So I have no hesitation in providing you with that information.

CROSBIE, Q.C.:

Q. Do you agree that the patient has a right to hospital safety?

MS. DAWE:

A. Absolutely.

CROSBIE, Q.C.:

Q. Could we bring up item, a recent exhibit, I guess it's 0119? I received this information late last year from your organization, from Eastern Health, by way of a Freedom of Information request. So thank you to Eastern Health for providing this interesting information. Does the Board receive reports on the status of legal claims arising out of patient injuries?

MS. DAWE:

A. I would not have seen these figures in the past.

CROSBIE, Q.C.:

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Q. You don't get any regular reporting about the progress or resolution of legal claims arising out of patient injuries normally?

MS. DAWE:

A. Not in any great detail, no.

CROSBIE, Q.C.:

Q. Not in great detail?

MS. DAWE:

A. No, no. There may be, through the Safety and Improvement Committee, report on numbers of incidents or so, but you know, there's no--as I said, I have never seen this kind of information before.

MR. SIMMONS:

Q. Excuse me, Commissioner.

THE COMMISSIONER:

Q. Yes.

MR. SIMMONS:

Q. If I may, Dan Simmons for Eastern Health, the particular exhibit, P-0119, is one that's just been entered and we had not seen before. And although it's an Eastern Health document, it's released as part of information release and Mr. Crosbie is free to use it as he wishes, and Ms. Dawe has not had an opportunity to

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review it. On the face of it, I'm just wondering if we might--if Mr. Crosbie might explain what relevance it has to the Terms of Reference of the Inquiry, if any, to determine whether its anything arising out of it that's an appropriate line of questioning for Ms. Dawe.

THE COMMISSIONER:

Q. Mr. Simmons seems to think you're off on a frolic of your own here, Mr. Crosbie. What's the response?

CROSBIE, Q.C.:

Q. The response is that we've already seen that litigation-driven concerns seemed to be behind some, at least, of the decision making on how to go about patient disclosure or communication, as the Terms of Reference put it, and there's also a suggestion or at least a suspicion in some of the materials that with the presence of a risk manager on this treatment recommending panel that I talked to Ms. Dawe about just a moment ago, that litigation-driven concerns may have been behind the setting up of the panel itself. Commissioner, law suits are sometimes blamed

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in the public mind, and bearing in mind that we're going through this exercise ultimately as an exercise to restore public confidence in an institution which is of great importance to the people of Newfoundland. It's sometimes argued or alleged that litigation, in fact, draws away funds which would be more valuable being applied to more important aspects of patient care within Eastern Health or the health care system in Newfoundland. The purpose of this questioning is to attempt to demonstrate that the amount of resources actually devoted to financial responsibility with respect to patient injuries is minuscule, and that's the relevance of it. It has to be seen in the context of patient confidence in the system and the suspicion that fears of litigation drove the decision making in how Eastern Health chose to deal with this crisis.

THE COMMISSIONER:

Q. All right. Are you content or do you -

MR. SIMMONS:

Q. I just point out, Madam Commissioner, that if the concern is to explore the issue of whether litigation concerns drove the decision making

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here at all, that's certainly a matter that Mr. Crosbie would be free to explore to see what knowledge Ms. Dawe might have, if any, about that. I still wonder whether this particular document which deals with generally financial information is going to be helpful in any way in exploring the topic.

THE COMMISSIONER:

Q. Well, I'm assuming, on the basis of the responses, Mr. Crosbie, that it will establish just how small a percentage this is in terms of the budget of the corporation. Is that -

CROSBIE, Q.C.:

Q. That's the objective. And I'll really spend no more than one more minute on it. So as a matter of proportionality it may take less time than the objection.

THE COMMISSIONER:

Q. Does anybody else wish to weigh in on this matter? No. Mr. Crosbie, carry on with your question. I do think you've raised a valid point.

CROSBIE, Q.C.:

Q. Thank you. Next piece of paper in the document, please?

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THE COMMISSIONER:

Q. Page 2?

CROSBIE, Q.C.:

Q. Please. And actually -

THE COMMISSIONER:

Q. Now, you'll have to--thank you. Now, I don't know that everybody is going to be able to see that, but do you have a paper copy, were you given a paper copy of this, Ms. Dawe? It would be -

MS. DAWE:

A. I can -

CROSBIE, Q.C.:

Q. It's actually the next -

THE COMMISSIONER:

Q. You can see it? All right.

CROSBIE, Q.C.:

Q. The next one on from that.

THE COMMISSIONER:

Q. Oh, so it's page 3?

CROSBIE, Q.C.:

Q. It's entitled "Liability Insurance Costs as a Percentage of Expenses, Eastern Health and Legacy Organizations."

THE COMMISSIONER:

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Q. Okay.

CROSBIE, Q.C.:

Q. And the percentage there, if you go to Column C, Ms. Dawe.

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. Eastern Health, it says, and the numbers for 2006 and 7 are amalgamated for across the board, all those organizations that were brought into the ages of Eastern Health. And we can see there a number, average, and it's .22?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. So that given the title of this document, the expenditure or the percentage of total expenditures for liability insurance costs would be less than a quarter of one percent, on average, for this period? Does that seem to be the case?

MS. DAWE:

A. Well, if this was provided through Eastern Health, then I'm assuming it's accurate. As I

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said, this is the first time I've seen this information, so.

CROSBIE, Q.C.:

Q. Can we pass to the next sheet? The second paragraph, I'll just read this out here because it explains that what we're looking at is not just liability costs or--let's see how they put it. Liability insurance costs in the sense of injured patients, but a much broader category of liability insurance cost. It says, "In general, the coverage stated is the amount per occurrence and covers bodily injury, property damage, professional liability, transfusion legal liability, contingent employer's liability, employee benefits liability, errors and omissions liability, environmental impairment, non owned auto liability." So the whole gamut. So, in summary, it would appear that well--and I suppose it's a reasonable inference that some of these premiums would go into matters of overhead and administration. You may or may not have knowledge of that. But it would appear that well less than .22 percent of expenditures is what it takes for the

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organization to be financially responsible toward injured patients?

MS. DAWE:

A. That's what it appears to be from the document.

CROSBIE, Q.C.:

Q. Excuse me. Has anyone been subjected to discipline proceedings as a result of these testing failures?

MS. DAWE:

A. Not to my knowledge. You know, I would be certainly happy to check, but my immediate response would be not to my knowledge.

CROSBIE, Q.C.:

Q. Thank you. Issues of disclosure, see whether you agree with this or not, to patients are primarily ethical issues?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. The advice of clinicians would be relevant to management of disclosure issues, I suppose?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

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Q. The advice of ethical specialists would be relevant?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. And Eastern Health had ethical specialists available to it?

MS. DAWE:

A. We do.

CROSBIE, Q.C.:

Q. In fact, you have a position, Director of Pastoral Care and Ethics?

MS. DAWE:

A. Yes, we do.

CROSBIE, Q.C.:

Q. And you have other consultants available to be brought in as the case demands?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. Consultants in ethics?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. In your view, should liability concerns be

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given significant weight in deciding issues of disclosure?

MS. DAWE:

A. I think there are many factors that have to be taken into consideration. And I would not at all infer that the only factor or the significant factor that was taken into consideration on disclosure would be related to liability or legal advice; I don't believe that to be the case.

CROSBIE, Q.C.:

Q. So I guess I hear you saying that in general you wouldn't rule out the relevance of liability concerns -

MS. DAWE:

A. But it's not -

CROSBIE, Q.C.:

Q. - but you'd have to look at it case by case?

MS. DAWE:

A. You know there are many, many factors, many factors -

CROSBIE, Q.C.:

Q. Many factors could be relevant to putting together an approach to disclosure in a given case?

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MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. Can we turn to Exhibit P-0092? This is something we looked at yesterday from Heather Predham sent on October 19, 2005 to Patricia Pilgrim. And she is?

MS. DAWE:

A. She's the Vice President within Eastern Health and one of her areas of responsibility is the quality program. And -

CROSBIE, Q.C.:

Q. On risk management?

MS. DAWE:

A. Heather Predham would be part of the risk management quality program.

CROSBIE, Q.C.:

Q. We know who Dr. Williams is and we know now who Susan Bonnell is?

MS. DAWE:

A. Yes, sir.

CROSBIE, Q.C.:

Q. I think. So this is from Ms. Predham to those three individuals. And she's saying, "Here's Dan's view on the feedback." So this is from

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a lawyer. And do we know this lawyer, if you could bring up the body of the letter a bit, do we know this lawyer as being a lawyer acting on behalf of the insurance company?

MS. DAWE:

A. My understanding, yes.

CROSBIE, Q.C.:

Q. The insurance company here being?

MS. DAWE:

A. HIROC.

CROSBIE, Q.C.:

Q. HIROC. And without getting into details, they're a reciprocal insurance organization, is that your understanding?

MS. DAWE:

A. That's my understanding.

CROSBIE, Q.C.:

Q. So that your institution is actually a member in that reciprocal?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. Does the gentleman who wrote this e-mail appear to be acting on behalf of HIROC?

MS. DAWE:

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A. That's my understanding.

CROSBIE, Q.C.:

Q. Because another indicator there is "cc" and there's a gentleman's name there, I guess, and his e-mail address is at hiroc.com and then there's somebody else at hiroc.com.?

MS. DAWE:

A. Um-hm, yes.

CROSBIE, Q.C.:

Q. So they're certainly privy to this e-mail of the lawyer on the subject of patient letter? It's being copied to them?

MS. DAWE:

A. Yes.

CROSBIE, Q.C.:

Q. Take whatever time you wish, but can you tell the Commission what ethical consideration or content do you see in the body of the letter from, the e-mail, I guess, letter, e-mail, from the insurance company lawyer?

MS. DAWE:

A. This is a letter from a lawyer, and I don't see the word "ethics", I wouldn't expect that to be seen in this letter. And my understanding, again, from reading this

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yesterday and seeing it again today, is that what Mr. Boone is suggesting that he does not agree with sending this letter at this time. Not suggesting anything more than "at this time" and then he elaborates there. And appreciate again, sir, I don't--I'm not privy and I haven't been privy and I shouldn't be privy to the discussions that would be surrounding this type of correspondence, so -

CROSBIE, Q.C.:

Q. The broad thrust of the letter appears to be advice on how to proceed with disclosure and communication to patients?

MS. DAWE:

A. One piece of advice, I would think. You know, I mean, maybe -

CROSBIE, Q.C.:

Q. This is one piece.

MS. DAWE:

A. - Heather--no, no, no.

CROSBIE, Q.C.:

Q. This is one piece of advice.

MS. DAWE:

A. Yes, but maybe Heather Predham has other pieces of correspondence about the same matter

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that I haven't seen either. You know, I'm referring, I'm answering your question based on Mr. Boone's correspondence.

CROSBIE, Q.C.:

Q. Yes.

MS. DAWE:

A. And I see the first sentence says, "I do not agree in sending this letter," "this letter", whatever "this letter" is at this time. So I would look at this as one piece of advice to Heather Predham. And you really have to speak with her to understand the context surrounding -

CROSBIE, Q.C.:

Q. Okay, maybe there were other bits of advice.

MS. DAWE:

A. Yeah, that I wouldn't -

CROSBIE, Q.C.:

Q. Maybe there are other bits of advice from this lawyer?

MS. DAWE:

A. And maybe there is advice from the ethicists. I don't know, sir. I'm responding to the letter as I see it here.

CROSBIE, Q.C.:

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Q. We'll all find out in due course.
MS. DAWE:
A. Yes, yes.
CROSBIE, Q.C.:
Q. And okay, admitting that maybe there is other advice, looking at this document do you see, do you see where it is informed by considerations of ethics?
MS. DAWE:
A. No, I don't.
CROSBIE, Q.C.:
Q. In whose interest do you think this lawyer was working when this was written?
MS. DAWE:
A. It appears that he's representing HIROC.
CROSBIE, Q.C.:
Q. Was he working in the interests of Eastern Health, the health care provision organization?
MS. DAWE:
A. I would interpret from this that he is representing HIROC. I would be happy for somebody else to provide me with information otherwise, but I have no more than that to say, sir.

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MR. SIMMONS:
Q. Commissioner, I hesitate to be -
CROSBIE, Q.C.:
Q. That's all I have for the witness, Commissioner, actually.
THE COMMISSIONER:
Q. Those are all of your questions?
CROSBIE, Q.C.:
Q. They are.
MR. SIMMONS:
Q. I would place on the record, though, Commissioner, that areas which began to-- questioning which begins to get into the area of the relationship between a lawyer and the lawyer's client, solicitor/client relationship like that area areas of which we have to be very careful to the extent to which it's explored.
THE COMMISSIONER:
Q. Well, this, but this document was revealed, was it not, by -
MR. SIMMONS:
Q. Yes, that's right.
THE COMMISSIONER:
Q. - Eastern Health. Does it not come from--I mean, the source, I'm looking at the document itself and the source of it is Eastern Health.
MR. SIMMONS:
Q. Yes, you are quite correct, milady (sic.). I have not objected to the examination of Ms. Dawe on the document or Mr. Crosbie's questions up to that point, but when it gets into the area of exploring a lawyer's retainer and it gets to the terms of that retainer, who it's with, that may be an area in which we might in future have to exercise some care.
THE COMMISSIONER:
Q. Well, raise it when it becomes a problem. For the moment I see no impediment to an examination on the content of this particular document. And it would seem to be relevant as to whether or not this was a person who was giving advice to your client or giving an opinion in the interest of another source. Thank you. Thank you, Mr. Crosbie. Now, you're next, yes. Mr. Simmons.

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MS. JEAN DAWE, EXAMINATION BY MR. DANIEL SIMMONS
MR. SIMMONS:
Q. Ms. Dawe, you're into your third day in that seat, so I do have a number of things I have to go over with you, but I'm going to try to make sure that we can get you out of here by lunchtime if there's any way to do that.
MS. DAWE:
A. Thank you.
MR. SIMMONS:
Q. First of all, I'd just like to follow up on several things that came out of the questions that Mr. Crosbie just asked you. Mr. Crosbie had some questions about the Physician Review Panel.
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And questions concerning the relationship between a patient and a treating physician. And I took his questions to be wondering whether it was appropriate to have a physician review panel giving recommendations that could be seen as interfering with the relationship between the patient and the treating physician. And first of all, I know you weren't directly involved in the arrangements for the Physician Panel, but do you know who the recommendations went to from the Panel?

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MS. DAWE:
A. To the attending physician.
MR. SIMMONS:
Q. To the attending physician?
MS. DAWE:
A. Yes. But this was part of, and I would consider that part of seeking the best advice for patient treatment.
MR. SIMMONS:
Q. Yes. So what went to the attending physician, then, was recommendations from a panel consisting of a group of oncologists, pathologists and others who were putting their heads together to give some advice and recommendations to the physician who, in turn, was going to deal with the patient?
MS. DAWE:
A. Yes, in the best interest of the patient.
MR. SIMMONS:
Q. And do you have any understanding of where the actual decisions about patient care would be made in that process, at what point?
MS. DAWE:
A. By the attending physician.
MR. SIMMONS:

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Q. Presumably in consultation with the patient and involvement with the patient?
MS. DAWE:
A. With the patient, obviously, yes.
MR. SIMMONS:
Q. Right. So is that any different, really, than the situation, the ordinary situation that you've described where a treating physician will seek the advice of their colleagues and take that into account?
MS. DAWE:
A. Absolutely not.
MR. SIMMONS:
Q. Okay. Now you were also asked about the presence of Ms. Predham, who is described, been described to us as a Risk Manager on that Panel. Well, first of all, do you--in your position as Board Chair, would you be familiar with Ms. Predham's job description, the breadth of her duties, the types of things she does in the Quality Department?
MS. DAWE:
A. No, I'm sorry. I remind you there are 12,000 employees in Eastern Health.
MR. SIMMONS:

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Q. Right.
MS. DAWE:
A. No, I wouldn't.
MR. SIMMONS:
Q. And would you know if she does things in addition to managing claims by patients?
MS. DAWE:
A. I wouldn't be aware of the details of an employee's -
MR. SIMMONS:
Q. Do you have any idea what her role actually was on the Panel or why she was there?
MS. DAWE:
A. Not in any great detail, no.
MR. SIMMONS:
Q. Okay. And we'll have to hear from her and others -
MS. DAWE:
A. From her.
MR. SIMMONS:
Q. - in due course as to what her role was?
MS. DAWE:
A. Yes, yes, precisely.
MR. SIMMONS:
Q. Now, Mr. Crosbie asked you some questions,

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too, concerning ethical considerations and how ethical considerations come into bear in decision making such as concerning disclosure to the patients?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And he mentioned that Eastern Health does have a Director of Pastoral Care and Ethics?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And there are other services available from ethicists who can be called upon?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And I think you're generally aware of that yourself, are you?
MS. DAWE:
A. Yes, I am.
MR. SIMMONS:
Q. In an organization like Eastern Health and Eastern Health in particular, is that the only way ethical considerations get taken into

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account, by involving an ethicist or the director?
MS. DAWE:
A. No, no. Each professional, obviously, would have an ethical standard.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. So, you know, in physician practice, in nursing practice, social work, all of these people engaged in presenting the ethical review, the ethical view with respect to patient care. So not--you know, routine decisions affecting patient care would not involve an ethicist.
MR. SIMMONS:
Q. Um-hm.
MS. DAWE:
A. For example. That's part of professional practice.
MR. SIMMONS:
Q. Right. So would you expect then that clinicians dealing with patients and clinicians involved in issues like the disclosure of ER/PR results, would you expect

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that they would have had to take ethical considerations into account themselves?
MS. DAWE:
A. They do that every day in their practice.
MR. SIMMONS:
Q. Would you consider them to be equipped to do that, to have the kind of knowledge that they need to -
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. - recognize ethical issues?
MS. DAWE:
A. It's part of being a professional.
MR. SIMMONS:
Q. Um-hm. Aside from the physicians, others in executive and administrative positions within Eastern Health, do they have any mandate or any role in taking ethical considerations into account themselves?
MS. DAWE:
A. Well, administrators have, you know, as part of their education and their working responsibilities, you know, it's each person in the organization, obviously, takes ethics

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into consideration in decision making. It's not--you know, it's not only clinicians, I guess, that's what I'm saying, is every level of the work situation.
MR. SIMMONS:
Q. Okay. Now, I know you're not involved in the operations and the running of Eastern Health, but do you know whether the organization provides any kind of resources to its executive and its managers and its administrators to educate or assist them in recognizing, dealing with ethical issues?
MS. DAWE:
A. Well, I think one of the best practices, I should say, in Eastern Health, was recognized recently by the Accreditation Council that I referred to maybe the day before yesterday. I've lost track of time now. But in September past Eastern Health was accredited for the first time, just after two years in its being, by the National Accreditation Council. And I attended the wrap-up session after a full week of intense investigation and one of the areas that I was honoured to be part of an organization, this organization, when the

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accreditor spoke so highly of the ethical program and the standards, the ethical standards of Eastern Health. That's well documented, sir, and it's an area that I'm extremely proud of with respect to our organization.
MR. SIMMONS:
Q. Good.
MS. DAWE:
A. It's a best practice in Canada and it's been referred to as that.
MR. SIMMONS:
Q. Thank you. Ms. Dawe, I want to -
THE COMMISSIONER:
Q. Excuse me, Mr. Simmons, but are you moving on from ethics now?
MR. SIMMONS:
Q. Yes, I am.
THE COMMISSIONER:
Q. I do have a question and since it's in my mind -
MR. SIMMONS:
Q. Sure.
THE COMMISSIONER:
Q. - and I don't want to interrupt you. Was

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there not an ethicist involved in one aspect?
MS. DAWE:
A. Yes. My understanding that they were involved. Dr. Singleton, I read -
THE COMMISSIONER:
Q. Do you know generally or was it only in respect of one aspect?
MS. DAWE:
A. I can't speak to that. I know that along the way with the information that had been provided certainly Dr. Singleton, the Director, was engaged in the discussions. I can't be sure about what level of involvement. I'd be happy to check on that, but I recognize, I recall his name.
THE COMMISSIONER:
Q. All right. Thank you. We'll get that information from somebody else, I'm sure.
MS. DAWE:
A. Yes.
THE COMMISSIONER:
Q. Sorry, Mr. Simmons.
MR. SIMMONS:
Q. Thank you. Ms. Dawe, I want to, I want to get a little bit of background and history from

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you because you're a person who's been involved in the health care system at different levels, including administration, for some time, so you've been present to see some of the events and evolution of, in particular, the funding of the system over the last couple of decades. Now, I believe you've told us, you had mentioned this earlier in your direct examination by Commission counsel that there had been cutbacks and restraint in the system beginning in the '80s and continuing into the 1990s. And I wonder if you could maybe start and tell me when, in your career, you first began to see the era of restraint start, when you came to see that?
MS. DAWE:
A. How much time do I have?
MR. SIMMONS:
Q. Well, as much time do we need in order to, in order to present the background on this issue.
MS. DAWE:
A. Because it generally is decades, as you've said. My first experience was in 1981, '82 at St. Clare's Mercy Hospital where we had to lay off staff for periods of time, I think it's

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sort of like six week or eight weeks periods in order to deal with a funding issue, a deficit budget. So that was my first experience. In 1982 to '84 there was a royal commission on hospital and nursing home costs which was appointed specifically to deal with the funding issues with respect to the health system. I was part of the implementation of the recommendations of that royal commission for four or five years through the '80s. And the objective in the '80s was, again, to streamline the system to accommodate budget shortfall, so it was very much driven by the inability of the province to fund the system based on the needs and the demands and the expectations of the public. So that was throughout the 1980s. The 1980s, as well, saw the first phase of regionalization because there were 70, I think, 70 or 80 independent boards at that time. And so every effort or the efforts were started in the '80s to consolidate administrations because that's where it was felt you could achieve savings in the first instance and support services. That's the 1980s. It became much more severe

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in the 1990s, certainly the first half of the 1990s, and I'm sure most people in this room would recall the cod moratorium, there were major changes at the federal level in the funding of health and social service programs. And -
MR. SIMMONS:
Q. And would that be changes in the funding that would come to the province from the federal government?
MS. DAWE:
A. Yes. Well, which I was going to suggest then they had a significant impact on the transfers for these programs to the province.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. And, you know, I certainly recall being involved in the middle of that, both in the system and that was the period when I was involved in the Department of Health. And the province lost hundreds of millions of dollars in transfer payments from Ottawa to Newfoundland and Labrador. So as a result of that the next wave of regionalization

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occurred, and that's where 54 boards were merged to 14 boards in the 1995 to the latter part of the '90s. The goal again was to find funding to try to stabilize the system because the ability to fund compared with the needs of the community, the expectations of the population and the demands were mismatched, no question. So that was another significant wave of--and I'm not pointing fingers here, I'm indicating the reality, the province did not have the ability to fund the needs and the demands and the public expectations.

MR. SIMMONS:

Q. And was it in that wave of amalgamations that the Health Care Corporation of St. John's was created?

MS. DAWE:

A. It was. And it was, that was Health Care Corporation resulted from the merger of all the acute care facilities in St. John's and the Bell Island hospital, as well. That's how the Health Care Corporation was created. So that's the 1990, mid 1990 period.

MR. SIMMONS:

Q. Right.

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MS. DAWE:

A. There were other changes on the community side of health, as well, with reorganization of the social service programs and they were all integrated in the late '90s. So that's the second wave. So now we're into 2000.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. And the third wave of restructuring, which resulted in the consolidation of the 14 former boards to now four regional authorities.

MR. SIMMONS:

Q. Now this would be 2000 and?

MS. DAWE:

A. 2005.

MR. SIMMONS:

Q. 2005.

MS. DAWE:

A. So for the last three decades the system, the health system in Newfoundland and Labrador at each decade has undergone considerable change and reorganization to accommodate pressures and primarily, primarily financially driven. Now, we have focused on, in this climate, how

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can we also improve services to people by bringing them together and putting--you know, bringing the continuum of services, as we call, together. So we're looking for and we've done our best, I believe, as a system, to focus on services and programs, but quite often the motive in all these changes was a financial difficulty. So -

MR. SIMMONS:

Q. So in the mid '90s, then, it was the second wave of amalgamations you referred to and the Health Care Corporation of St. John's was created?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And you've told us at the beginning of your testimony that when you were the Chair of the, is it the Community Services Board?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. You also had the opportunity for, in an ex officio capacity, to sit on the Board of the Health Care Corporation?

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MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Yeah. And when did that begin?

MS. DAWE:

A. I believe the spring of 2002.

MR. SIMMONS:

Q. Okay. So and that continued, I believe, until 2005 when Eastern Health was created?

MS. DAWE:

A. When we merged.

MR. SIMMONS:

Q. So during that time period although only ex officio, did you have some opportunity to see and be aware of how the Health Care Corporation was managing these issues of budgeting and funding and dealing with resources?

MS. DAWE:

A. Yes. And with great difficulty, the Health Care Corporation had to deal with these matters. And it actually, there was a report, a Hay Report, which was, I believe it was mandated by government.

MR. SIMMONS:

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Q. Yes.
MS. DAWE:
A. By the department.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. But a report which focused on identifying clinical and operational efficiencies within the Health Care Corporation. And I had just joined the board when the final report was given to the Board, so I have some general knowledge about it, but I was not there during the review component.
MR. SIMMONS:
Q. Now, the HayGroup, do I understand the HayGroup to be an external agency that came in in order to conduct this review?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. At the Health Care Corporation?
MS. DAWE:
A. From, I believe, Toronto, but that's -
MR. SIMMONS:
Q. Do you know what precipitated retaining the

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HayGroup to do that?
MS. DAWE:
A. Deficit, budget deficits at the Health Care Corporation.
MR. SIMMONS:
Q. Okay.
MS. DAWE:
A. And the need to then do something to match available resources to the demands for services.
MR. SIMMONS:
Q. Yes. Now, I believe the Hay Report has been put in as an exhibit here before the Commission. You haven't been referred to it yet in your evidence.
MS. DAWE:
A. No.
MR. SIMMONS:
Q. You have had some opportunity, if not to review it in detail, at least to generally familiarize yourself with it again, have you?
MS. DAWE:
A. Yes, I have.
MR. SIMMONS:
Q. Okay. Can we look at Exhibit P-0033, please?

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THE COMMISSIONER:
Q. I suspect that's one of those exhibits that's so large it will only turn up on the screen. There are portions of it here--no. P-0033, all right.
MR. SIMMONS:
Q. This is the third page of that exhibit in the Executive Summary. And I'd just like to refer you here to part 1.1, which is the background and the objectives. And if we look this, it describes the objectives of the operational review by saying, "The Minister of Health and Community Services decided to engage an external consulting team to conduct this operational review because of the deteriorating financial position of the Health Care Corporation of St. John's and its apparent inability to operate within available funds." Is that consistent with your understanding?
MS. DAWE:
A. Yes. I guess that's what I was saying earlier, um-hm.
MR. SIMMONS:

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Q. Yes. And there's a paragraph there that, the next paragraph, the Health Care Corporation of St. John's. It describes the formation and the merger of seven predecessor health organizations, which you've told us about, as well. And then the paragraph under "Operating Deficits" describes there being an operating deficit of 12.2 million in the 2000 and 2001 fiscal year and another projected deficit projected of 4.1 million for the next year and for the following year a projected deficit of 13 million. So this is consistent with your recollection of the reasons for which this report was commissioned, is it?
MS. DAWE:
A. Absolutely. And I think I referred at the first day to the fact that when Eastern Health assumed its responsibility, we have a $ 79 million debt that we're carrying. This is an example of where that accumulated debt came from.
MR. SIMMONS:
Q. Right.
MS. DAWE:
A. This is one of the organizations.

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MR. SIMMONS:
Q. Okay. Now, do you know what the outcome of the HayGroup Report was in general terms, what types of things they came back and said to do to solve that deficit problem?
MS. DAWE:
A. The focus was clearly on seeking efficiencies, clinical efficiencies and operating efficiencies. And I believe it was, you know, more than $20 million was targeted for reduction with probably up to 300, maybe, 300 positions, full-time-equivalent positions to be reduced or removed from the system. But the focus was on achieving efficiencies.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. As opposed to quality initiatives or improvements in patient care services. And I do--and I'm recalling now, but there was a considerable public debate after this report was released among physicians, and it was very, very public because the people in the organization, both clinical and administrative people were concerned about the data that had

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been used for this report and the comparability of the data and the interpretation and so on. So there was, there was considerable, considerable internal and public debate on the implications of implementing recommendations from this report, that they would have a negative impact on patient care.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. So that's, I'm just sort of generally recalling it was not well received, for sure.
MR. SIMMONS:
Q. Okay. I've brought up on the screen here now page 14 of this document, which is Section 1.6, "Implementation Plan." And there's a number of bullets there and they describe the proposed implementation plan as involving initiatives related to organizing for change: redesigning care processes to achieve savings from clinical efficiencies; redesigning work processes and systems to achieve savings from improvements in functional centre productivity that can be achieved without a facilitating

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capital investment; implementing recommended improvements in management processes; implementing recommended improvements in governance structure and processes; implementing savings from improvements in functional centre productivity that require a facilitating capital investment. So those, that implementation plan seems consistent, does it not, with your recollection -
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. - that the focus of this report was on achieving those savings through efficiencies?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Rather than a focus on the quality side of the work of the Corporation?
MS. DAWE:
A. I'm not sure that the word "quality" is even used in this report.
MR. SIMMONS:
Q. Okay. Exhibit P-0039, please? Ms. Dawe, this is another section of the report, and it is

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the recommendations for change in Section 6. And it begins here on this page with the first recommendation, No. 1. And if I run right down to the end, it looks like we're at 119. So there are 119 separate recommendations here encapsulated in this portion of the report. Now, I don't know if you've had much opportunity to refresh your memory with those?
MS. DAWE:
A. No, no, I haven't.
MR. SIMMONS:
Q. But do you know generally what sorts of issues were captured in these recommendations? Because I can refer you to some examples if you'd like me to?
MS. DAWE:
A. Yes, because I really, I don't recall the detail here.
MR. SIMMONS:
Q. Okay. Well, I'll bring you right down to ones that concerned laboratory services, and those begin at Recommendation 89. Recommendation 89 deals with implementing a core laboratory at one hospital.
MS. DAWE:

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A. Um-hm.
MR. SIMMONS:
Q. 90 is for consolidation of services at the General site. 91 is for consolidation of services at St. Clare's, at a St. Clare's site, a different service. 92 is to implement a process to review budget and charge out laboratory services. 93 is to consolidate management positions in two of the laboratory services. 94 is to establish a productivity target of 0.0238 worked hours per patient care workload unit and another productivity target. 95 also sets a productivity target for another area in the laboratory. 96 calls to reduce staffing in pathology by two FTEs. Do you know what FTEs are?
MS. DAWE:
A. Full-time equivalent.
MR. SIMMONS:
Q. So this would be a full-time position?
MS. DAWE:
A. Two people.
MR. SIMMONS:
Q. Two people?
MS. DAWE:

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A. Yeah, two positions, full-time positions.
MR. SIMMONS:
Q. In cytology and one in histopathology and then make investments to train pathology assistants. So the recommendations that were made by the HayGroup, did they include in other areas reducing these FTEs, full-time equivalents, that is, taking people out of the system?
MS. DAWE:
A. Yes. They're really, you know, as I recall now in reading these, they're driven by achieving efficiencies.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. Efficiencies.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. So it's output and not outcomes, meaning the quality issue, again.
MR. SIMMONS:
Q. Okay. Now then, by April of 2005 Eastern Health was created?

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MS. DAWE:
A. Um-hm.
MR. SIMMONS:
Q. And you became the first chair?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And you've had great stamina to still be here. What, if anything, did Eastern Health find when it assessed what had, the--what had been given to it, which was these amalgamated operations from a number of different boards, what did you find, if anything, related to the effect of this history of funding of the health care system?
MS. DAWE:
A. In addition to the $97 million debt that we're carrying and the burden that is and the impact, I think I referred in--at the first day that one of the, one of the prime strategic directions of the Board was to understand the state of the infrastructure of all our buildings. We have over 80 buildings, some, you know, whether it's hospital or nursing home, a clinic or an office. Because,

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I mean, I had knowledge of a number of these because of my previous positions, but being very aware that through the '80s and the '90s with the inability of the province to even maintain the existing buildings, there was a deterioration to the point of great concern, personally.
MR. SIMMONS:
Q. Um-hm.
MS. DAWE:
A. And I could relate that to the Board.
MR. SIMMONS:
Q. Um-hm.
MS. DAWE:
A. So we felt it necessary to embark upon, and actually, I think it had been probably started to some degree when I was with the Health Corporation, as well.
MR. SIMMONS:
Q. Um-hm.
MS. DAWE:
A. But we expanded it to the full region such that we have a very comprehensive, now, understanding of the capital needs, the infrastructure needs of all our buildings and

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we're really talking several hundred million dollar needs that we discovered there. The second piece was with respect to our capital equipment. Each year, and it's up to the present, we present the needs for capital equipment from our organizations -

MR. SIMMONS:

Q. And what do you mean by capital equipment, maybe you can give us an example so we know the sorts of things that we're talking about?

MS. DAWE:

A. Oh, cardiac monitors, x-ray equipment, laboratory, you know, microscope.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. Any, any piece of capital equipment that is used in the provision of services for patients. So that was our second major review. And again, we are very much aware that over the years we have not been able to support clinicians and employees, based on their advice to us, on the need. Because, you know, it's not at the Board level that we determine the need. We seek input from the

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community, from the people who deliver services. So based on the input that we have had over the years is how we present our budget to government. And I am personally am very much aware that we have never been able to respond adequately to the information that is given to us.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. And I'm suggesting again it's because it's not in any way reflective of any one administration, it is a fact that the province did not have the ability to fund.

MR. SIMMONS:

Q. So is it fair to say, then, that at the outset of Eastern Health's creation that it was recognized that there was an accumulated deficit in the maintenance and upkeep of the buildings?

MS. DAWE:

A. Absolutely.

MR. SIMMONS:

Q. And in the provision of the capital equipment?

MS. DAWE:

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A. Yes.

MR. SIMMONS:

Q. The sort of things that you described. And over the, what I'll call the restraint period, preceding that, from your involvement in the system where had the priority for the use of resources been given, what had been given the priority?

MS. DAWE:

A. The number one priority, which is direct patient care.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. So our struggle, and it continues today, is to maintain front-line services.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. We exist to provide a public service, so that's our number one priority. So over time such matters as information systems, for example, and I think I referred to that over the last few days, even though we all recognize the need to have adequate timely,

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complete information, we don't have that. That's one of the reasons we are here today.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. Because of that inadequacy. So that's another factor, you know, in addition to the equipment and the buildings.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. Our systems are less than adequate for us to provide the comprehensive service that we're expected.

MR. SIMMONS:

Q. Right. What about things like the capacity for new quality assurance initiatives?

MS. DAWE:

A. It certainly wasn't there to the degree that you would want that through the '80s and the '90s and the early 2000s.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. I think it's fair to say that since Eastern

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Health is created we've put much more emphasis on safety and improvements to the point that we have resources, you know. And I'm not saying they're 100 percent adequate, but we certainly have very, very good resources now directed to safety and quality improvement.

MR. SIMMONS:

Q. Okay.

MS. DAWE:

A. But it's just starting.

MR. SIMMONS:

Q. Now, in relation to the funding of the system, it's publicly known that in the last, within the last few years there's been I think what's been referred to as the First Minister's Funding?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Some additional money for health care from the Federal Government that's been negotiated by the provinces?

MS. DAWE:

A. Yes.

MR. SIMMONS:

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Q. And you're familiar with that, are you?

MS. DAWE:

A. I am, um-hm.

MR. SIMMONS:

Q. What can you tell me about how that funding works and how in Newfoundland, how Eastern Health benefits from that?

MS. DAWE:

A. First of all, this was, it's federal funding, which was agreed to by the First Ministers, but it was very much targeted to respond to Canadian's concerns about access to services, so wait lists. And this came about following the Romano Commission and all--you know, that was the trigger. So it's targeted to address wait times, it's targeted to cardiac programs, orthopaedics, diagnostic imaging and vision care, I believe, these, and there may be one other. But the money cannot be used for any other purpose than these targeted areas. And one of the complications in addressing that is obviously you have to have the capacity. If you're going to expand a program, for example, if you're going to expand an orthopaedic program and bringing in new physicians,

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specialists, you have to have beds, you have to have clinic time, you have to have OR time, operating room time. So you must have the physical resources to be able to expand a program, to begin with. And I think I've demonstrated our constraints in that area.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. So we're not able to access, even though that money may be there, ten or twelve million dollars, to improve access to services, you have to have the ability to expand that service to be able to access the money. It cannot be used for any other purpose.

MR. SIMMONS:

Q. Do you know if any of that money is targeted towards laboratory services?

MS. DAWE:

A. No.

MR. SIMMONS:

Q. Including the services of pathologists?

MS. DAWE:

A. No, not to my knowledge, unless, unless there could be a direct link to one of the programs,

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but I wouldn't be aware of that. So my immediate response to you would be, no.

MR. SIMMONS:

Q. Okay. Do you know if having this targeted money available, for example, for cardiac care, if having that available frees up other money that would otherwise be used from the provincial -

MS. DAWE:

A. No.

MR. SIMMONS:

Q. - budget on cardiac care to move to another service like laboratory services?

MS. DAWE:

A. No, because I don't, I don't think that we would be able to address the wait list if it were left to provincial resources in the last few years. And I have to say that I'm so encouraged by the Premier's comments over the last few weeks, now that the province is in a different financial position, I was delighted to hear the Premier saying that now is the time or he plans to address some of our capital and infrastructure needs, as well. But, you know, I don't want to go beyond this

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point by saying the only concerns relate to capital and--or infrastructure and equipment. We are in the process of throughout the organization of having the development of a human resource plan. Unless we have people to provide services, obviously. That's the third critical piece to all of this.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. And I believe I've demonstrated over the last few years the problem, the past few days, it feels years, but the past few days the difficulties that we have with recruitment and retention of pathologists.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. It's all interrelated. You need buildings, you need technology and you need the human resource to be able to provide the services, and they're all challenging areas.

MR. SIMMONS:

Q. Right, okay. I have some questions for you about the budget process.

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MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. First of all, what can you tell me about how the budget process works within the administrative side of the organization, separate and apart from the Board, in a general sense, what are the types of steps that lead to the preparation of a budget for submission to government?

MS. DAWE:

A. Well, the first is the organization receives guidelines from the Department of Health as to what we're permitted, you know, how the budget process is going to unfold this year, so there may be some guidelines.

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. Which would suggest these are the priority areas for the Department of Health, so factor these into your plans.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

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A. Could be something like that. But so the administration would take that, then they would engage right down to the department levels, to the managers, and the same would happen on the clinical side, so the MAC and the clinical chiefs would have an opportunity for input. So there's considerable amount of input at many levels within the organization which would then work their way up to the executive.

MR. SIMMONS:

Q. Do you know if at the level of programs and departments if, as part of the budget process, they generate their own lists of requests for budget increases or -

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. - capital and operating budgets?

MS. DAWE:

A. That's where it starts.

MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. So they have the first input and then it works

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its way from the department and involving the clinical practice, then to the managers and then to the executive. So, for example, by the time it would get to the Executive Committee, and I'm still talking operational.

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. Even though that's not my area, but I'm talking about process. By the time it gets to the executive of the organization, it's the requirements as seen through the eyes of the people providing the services.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. And then it has to be prioritized from an other perspective.

MR. SIMMONS:

Q. And who does that?

MS. DAWE:

A. That's then left at the executive level. There's a great deal of--there's considerable amount of time and effort into this process. So, for example, by the time the whole list is

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complete, there may be a requirement for $60 million new money this year for operating, as an example. And then the executive would go through this and set priorities. And so, they may say, well, we know we're not able, through government, to fund something this year, so we'll move that on to year two if it's not a priority for year one. It's still, the information is used in bringing the budget together. Then the budget comes from the executive to the Finance Committee of the Board.

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. And a considerable amount of time, considerable, hours and hours are devoted to analysing the budget requirements at the Finance Committee. And then it works its way, as recommendations, to the Board and there's another level of discussion. When it's finally approved at the Board, then it goes to the Department.

MR. SIMMONS:

Q. When it reaches the point where it's approved

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at the Board, do you know whether all the requests that are originated with the departments and programs are still part of that proposal or if there's been a process of reducing even at that point?

MS. DAWE:

A. No, it would be reduced, as I said, because quite often--and it would also be based on the guidelines that come from the Department.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. Because we may not, even though we see a need within the organization, we may have a direction which says this year you cannot do A, B, C or D, so we have to table that for the moment. It's not lost, but it may be put aside for next year, for example.

MR. SIMMONS:

Q. Now, Eastern Health, since it's been in existence, I presume, has submitted budgets for several years, at least a couple of years so far?

MS. DAWE:

A. Yes.

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MR. SIMMONS:

Q. And once those budgets are submitted to government through the Department of Health, I presume?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. What happens then?

MS. DAWE:

A. Then there's discussion at--between usually the executive group of the organization and officials of the Department. And when the Department then finishes its process, it goes on to Treasury Board and incorporated through the budget process. When finally the Department--when finally government announces its budget and then the information goes back to the Department of Health in terms of what's approved, because something may be requested from the Department of Health which really is not funded through Treasury Board, either, so there's still another step once it gets in government.

MR. SIMMONS:

Q. Um-hm.

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MS. DAWE:

A. So when the Department of Health knows its approved budget, then the information is given back to the system, to each of the boards. And if there are variances, which quite often there are in what we've requested and what the Department is able to fund, then we have to go through another process of reconciling how are we going to make the changes necessary to live within our budget, because we have to live within the budget.

MR. SIMMONS:

Q. And with the budgets submitted by Eastern Health and the responses of government, have there been variances?

MS. DAWE:

A. Absolutely.

MR. SIMMONS:

Q. Can you tell me some scale or range of what those have been?

MS. DAWE:

A. Well, as an example, 2006, 2007 the operating request was about $86 million and the approval was $50 million on the operating side.

MR. SIMMONS:

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Q. That would be the request for increase, is it?
MS. DAWE:
A. New money.
MR. SIMMONS:
Q. Increase in--new money?
MS. DAWE:
A. New money, new money.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. That would include inflation and so on, but in total that would be our request.
MR. SIMMONS:
Q. Right.
MS. DAWE:
A. On the capital side for renovations and new projects and so on that same year our request was close to $81 million and our approved was close to 5 million.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. And on the equipment request, same year, 2006, '07, the request was $18 million and the approval was 5.7.

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MR. SIMMONS:
Q. Okay.
MS. DAWE:
A. Now, I'm trusting with, as the Premier has indicated, that funds, that the province has the ability to respond so that this year we're looking forward to a much more favourable response to our requests, particularly in the areas of infrastructure and equipment, but also the human resource side.
MR. SIMMONS:
Q. Okay.
THE COMMISSIONER:
Q. Mr. Simmons, if this is a convenient spot?
MR. SIMMONS:
Q. It is, Commissioner.
THE COMMISSIONER:
Q. - we should take the morning break. Fifteen minutes.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Mr. Simmons.
MR. SIMMONS:
Q. Thank you, Commissioner. Ms. Dawe, before the break I'd been asking you some questions about

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the budget process and you told me the results of the 2006, '07 budget process and the responses from government. The other question I had for you in relation to that was, I had understood from your evidence at the outset that one of the mandates given to Eastern Health by government was to maintain a balanced operating budget?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Is that correct?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And that Eastern Health has been successful in doing that?
MS. DAWE:
A. The last two years.
MR. SIMMONS:
Q. Okay. And, in fact, have there been small surpluses achieved on the operating budget?
MS. DAWE:
A. Very small, very small, but nonetheless, yes, like $2 million, I think, our first year and 5

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million last year, which have both gone towards that debt, that $79 million debt. So we would love to be able to have that money to put it back into programs and respond to some of the other needs, but it goes directly to servicing the debt.
MR. SIMMONS:
Q. Okay. And why could that, that small surplus on the operating budget not be accessed in order to put towards programming?
MS. DAWE:
A. That's not within the, I think, the Financial Administration Act of the province. We wouldn't have the ability to do that. Could I just make a comment before you leave?
MR. SIMMONS:
Q. Sure.
MS. DAWE:
A. Because I think anybody who would know or whom would have dealt with me over the years would clearly understand that when I talk about looking for more money for the health system to respond to the needs, I don't do that without an understanding that there is--we are only one part of a public service.

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MR. SIMMONS:
Q. Um-hm.
MS. DAWE:
A. The needs of other sectors of society, education, the environment, the economy, economic development, all of these areas impact on a person's health. So without adequate funding in these areas, you know, we have another problem in the health area. So, I appreciate the difficulties at the provincial level in balancing and responding to the needs of society, but that's the reality, that's what we're dealing with. When you're at a provincial level, you have to ensure funding is appropriately directly, not only to health but to education and to these other sections. So that is critical; but nonetheless, we have needs and we have to continue to pursue and to put forth our needs to the provincial government, that's our responsibility.
MR. SIMMONS:
Q. Okay, thank you. Now, based on what you have told us so far this morning, up to, we'll say 2005 when Eastern Health was formed, would it

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be fair to say that in that era where there was a degree of fiscal restraint in the Health Care system, that the priorities were at various times achieving efficiencies within the system and that front-line services were the areas that had to be given the top priority for available money and other things became secondary?
MS. DAWE:
A. Absolutely.
MR. SIMMONS:
Q. Okay, now since Eastern Health has been formed, since 2005, has there been any opportunity or any move towards changing those priorities and moving in different directions?
MS. DAWE:
A. Well I think I indicated earlier we've increased our emphasis on quality and safety in particular.
MR. SIMMONS:
Q. Yes, uh-hm. And has that been something that's been unique to Eastern Health or to Newfoundland in that time period?
MS. DAWE:
A. You mean the -

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MR. SIMMONS:
Q. A move to greater emphasis on patient safety?
MS. DAWE:
A. No, this is national, this is really--and I think, for example, the Canadian Patient Safety Institute and I've referred to that organization several times over this last few days, they are--it's only recent that they have talked about disclosure and their policies for disclosure and new information. So this is a national initiative. We are not unique in this area and I certainly wouldn't want to leave that impression either.
MR. SIMMONS:
Q. Okay, thank you. Early in your evidence you described for some of the aspects of the Policy Governance Model adopted by this Board of Eastern Health and how it worked. And I want to take a little bit of time to try and explore that a bit further because I think it's important for the Commission to understand how that model is structured and what it means for the way Eastern Health's Board and Administration carry out their functions.

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MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And my first question for you concerning it is that, is there a difference between the traditional differentiation of roles with a board having a policy function and the administration having an operational function. Is there a difference between that type of model and the Policy Governance Model?
MS. DAWE:
A. Yes, yes.
MR. SIMMONS:
Q. Okay, and in generally how do you compare the two? Is there more or less in one model or the other?
MS. DAWE:
A. Clearly the lines of responsibility, the accountabilities and the monitoring of accountabilities are very well defined in policy governance, in the model. And I should say the model that we are operating under, okay, it's a modified type of policy governance. But it is much more in keeping with our legislative requirements, the

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Transparency and Accountability Act and our new Regional Authorities Act. So from both perspectives and I've sat as a CEO in my years as well, so from both perspectives, it provides clearer identification and delineation of roles and responsibilities and it removes opportunities for assumptions and let me just explain that. Under a traditional model, a chief executive officer would have a legislative mandate, as defined by the Legislation, but a job description and goals and objectives and so on. But quite often you operate on the basis of assuming that what you're doing is in keeping with the Board's mandate and the direction and so on. With a model that we have adopted and it's still evolving, as you would appreciate, we set very specific goals, "ends" as we call them and perimeters around which the chief executive officer operates. So it's very much more-- there's much more accountability, much more accountability in the system that we are using and which is evolving as we proceed. And we have a well-defined monitoring process, so I feel and I think I really speak on behalf of

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the Board because the Board has fully endorsed our continuation of this direction, that there's much more of an understanding of roles and responsibilities at the Board level and the executive level and that we have our directions and our accountabilities clearly defined and we fulfil that.

MR. SIMMONS:

Q. Immediately before the creation of Eastern Health, you were involved in the Community Services Board and ex officio on the Health Care Corporation of St. John's. From your experience with those organizations, was there a recognition there that the Board role was primarily a policy one and that the CEO would be responsible for the operations.

MS. DAWE:

A. Yes, and that's historical, that's not Newfoundland, that's the way health boards across the country operate, so there's nothing new about that.

MR. SIMMONS:

Q. In those two examples, were the kind--was the kind of structure that you just described in the Policy Governance Model around the

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differentiation of the roles of the Board and CEO, was that kind of structure present in the same way, in those two earlier boards that you were involved in?

MS. DAWE:

A. No, not at all.

THE COMMISSIONER:

Q. Can I have an example of what the difference would be?

MR. SIMMONS:

Q. Well what I was intending to do next, Madam Commissioner, is actually go to the policies adopted by Eastern Health and use those policies to illustrate, perhaps a bit better the way the model actually works.

THE COMMISSIONER:

Q. Carry on, okay.

MR. SIMMONS:

Q. So, could we bring up P-0053 please?

MS. DAWE:

A. While you're doing that, I wonder--I think to illustrate the importance of the direction we've pursued, I believe in the Hay Report there was a reference to the lack of accountabilities -

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MR. SIMMONS:

Q. You are correct. If we go back to Exhibit P-0033, please, and -

MR. BROWNE:

Q. 1.1.

THE COMMISSIONER:

Q. Thank you, Mr. Browne.

MS. DAWE:

A. And I'm only suggesting this because there was, I would say a criticism because of the lack of accountability as noted here.

MR. SIMMONS:

Q. Okay, there's a reference here on page 7 of Exhibit P-0033 under monitoring effectiveness of management and I wonder if that might be what you're referring to?

MS. DAWE:

A. That's it, that's what I'm--yes. "Although the Corporation's strategic directions communicate to management the Board's desire regarding the focus of management activities, management has not established a framework for formally and systematically reporting on its activities in relation." The Board is not receiving, you know, the reports on their

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overall performance, so that's another reason and I just recall that as flipping through, that's--the model that we adopted is also responding to that concern that was raised.

MR. SIMMONS:

Q. Yes, yes.

MS. DAWE:

A. Through our monitoring processes and so forth

MR. SIMMONS:

Q. And I believe you've told us earlier that the creation of Eastern Health was an opportunity to put into effect this model that people had been aware of previously.

MS. DAWE:

A. Yes, uh-hm.

MR. SIMMONS:

Q. Okay, if we could go back to P-0053 please? Okay, now this document is a Board of Trustees Governance Policies and this is one you would be familiar with, Mrs. Dawe?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And these are policies that have been approved by the Board of Trustees of Eastern Health,

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are they?

MS. DAWE:

A. Yes, and I think there's a date, it's the spring of 2006, I believe or May of 2006.

MR. SIMMONS:

Q. Okay, I'm just going through the first policy here which is on page 3 and there's an approved date there of May 24th, 2006. Now before I actually look at these, would it be correct that the Policy Governance Model has a number of features, including the identification of what's called ends, E-N-D-S?

MS. DAWE:

A. Ends, yes.

MR. SIMMONS:

Q. And that then there are policies adopted by the Board that are a feature of it.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And that there is then monitoring reports that come back that address the adherence to the policies that are set by the Board, that's a very general outline of the way the model works?

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MS. DAWE:

A. That's correct.

MR. SIMMONS:

Q. Okay, now what can you tell me about what these ends are supposed to be and how you address, determine those:

MS. DAWE:

A. The ends are the results that the Board wants to achieve. The means to achieving these ends are operational.

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. So that's the clear distinction. The what we want to achieve, the goal, is the Board responsibility. How to achieve that what is the organization's responsibility.

MR. SIMMONS:

Q. Okay. Where is the organization right now in determining and defining the ends to be met?

MS. DAWE:

A. It's still work-in-progress. We have--I had indicated earlier we actually started working with a facilitator in the fall of 2005 and then we worked through the winter and what you

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see here is the first level of approval of the policies, and we are working now--and it's hand-in-glove with our strategic plan, of course.

MR. SIMMONS:

Q. Uh-hm.

MS. DAWE:

A. Because the strategic directions of the organization have to be linked with the ends or what we want to achieve.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. So they continue to evolve with our strategic directions.

MR. SIMMONS:

Q. Okay. I'm just going to go here to the table of contents of this document and these policies are grouped into three, under three headings: governance process, board staff relationship and executive limitations. Do you see those?

MS. DAWE:

A. Yes.

MR. SIMMONS:

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Q. So I'm going to start just by referring you to one of the first governance policies, which is the one that's identified as GP-0002 which is on page 4 of this document. And in this policy, it begins with a statement listing seven points and then goes on to prescribe some additional description of how those goals are to be achieved, is that -

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And among those seven points that are listed, the first is that there should be outward vision, rather than an internal preoccupation; second is encouragement of diversity and viewpoints and by the way, this policy is governing style.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. So this speaks to the approach to be taken by the Board, does it?

MS. DAWE:

A. Yes, yes.

MR. SIMMONS:

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Q. And number three is "strategic leadership more than administrative detail".

MS. DAWE:

A. Uh-hm.

MR. SIMMONS:

Q. Now what is intended by that?

MS. DAWE:

A. So it's at the high level, as I refer, establishing the strategic plan, the strategic directions of the organization.

MR. SIMMONS:

Q. Uh-hm.

MS. DAWE:

A. So it's at the strategic level and future, as opposed to internal or retrospective.

MR. SIMMONS:

Q. Right.

MS. DAWE:

A. And then the administrative detail refers to the operations. So that's clearly the distinction in policy and operations.

MR. SIMMONS:

Q. Right. And does Item 4 there reinforce that idea -

MS. DAWE:

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A. Yes.

MR. SIMMONS:

Q. Clear distinction of board and chief executive roles.

MS. DAWE:

A. Yes, yes. And all of these, number one, number six and number seven are reflected in the Board's activities over this last three years with our outreach to the community and the community engagement and the needs assessment and so on that I've referred to several times.

MR. SIMMONS:

Q. Okay, now paragraph number two here says, "The Board will establish written policies reflecting its values and perspectives about ends to be achieved and the means to be avoided." Why would the Board want to avoid establishing policies about the means to achieve those things?

MS. DAWE:

A. Because the means to achieve these are operational in matter and so therefore, you know, we are trying to clearly identify the role of the Board, verses the role of

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Administration. How the goals are to be achieved is really the staff. The Board is a board of governance, not a board of operations.

MR. SIMMONS:

Q. Okay, I'll bring you over to the next policy, GP-0003 and Commissioner, I won't be going through them all. This one is entitled policy name "Board Responsibilities" and I just wanted to note in here that in paragraph two, there are several, what appear to be definitions there. In a) it describes ends and in b) executive limitations, and in c) the governance process. These are the ends that you referred to earlier, correct?

MS. DAWE:

A. Uh-hm.

MR. SIMMONS:

Q. And it says "Organizational products, impacts, benefits, outcomes, consumers and their relative worth. What--good for which recipients at what cost?" So, that's a description of the objective -

MS. DAWE:

A. Yes, and so it's the outcome is the goals

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really.
MR. SIMMONS:
Q. Right, okay. Now executive limitations, what are those and what role do they play?
MS. DAWE:
A. They are constraints that are placed around the functioning for the chief executive officer, as our employee, just the one person. So and maybe it will be helpful to go to an example in due time just to explain that, but instead of having a chief executive officer assume that what he or she understands to be the case and so there is a great territory and there are opportunities for misunderstanding, misrepresentation -
MR. SIMMONS:
Q. Uh-hm.
MS. DAWE:
A. That this more clearly defines what the expectations are in a sense and you can go so far, but you can't go beyond that.
MR. SIMMONS:
Q. Right, okay. I want to quickly refer you to policy GP-0007 which is on page 11 of this document and it says, "Board Committee

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Principles".
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And it begins by saying "Board committees, when used, will be assigned so as to reinforce the wholeness of the Board's job and so as to never to interfere with delegation from board to chief executive officer." And paragraph one says, "Board committees are to help the Board fulfil its role, they are not to help or advise the staff." And paragraph three says, "Board committees cannot exercise authority over the staff because the chief executive officer works for the full board, he or she will not be required to obtain approval of a board committee before an executive action."
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. So then even though the Board may establish committees, is the intent of that not to have those committees become involved in the operations of the organization either.
MS. DAWE:

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A. Correct. No, correct, it's to assist the Board.
MR. SIMMONS:
Q. Uh-hm, okay. Now the next group of policies are the ones that, where it says "Policy type is board staff relationship." And this one is global governance, management connection, BS-0001 and it says, "The Board's sole official connection to the operational organization's achievements in conduct will be to the president and chief executive officer." Simply stated.
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And the next one then addresses the issue of delegation to the chief executive officer. So this is the policy that sets out, it says "The Board will instruction the chief executive officer through written policies which prescribe the organizational ends to be achieved and describe organizational situations and actions to be avoided, allowing the chief executive officer to use any reasonable interpretation of these policies."

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MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. So there is then a freedom of movement given to the CEO is there, to take interpretations of those policies that have been set by the Board and to act within those interpretations?
MS. DAWE:
A. Yes, within a reasonable person's interpretation and you will see that then as we move on to an example.
MR. SIMMONS:
Q. Okay. And along with delegation, of course, comes the next policy which is number four, policy BS-0004, "Accountability of the Chief Executive Officer." So how then is the chief executive officer made accountable to the Board for the fulfilment of those responsibilities?
MS. DAWE:
A. Through the monitoring process and reports.
MR. SIMMONS:
Q. Okay. And is the CEO accountable to the organization, to the Board for the whole organization and everybody in it?

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MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Is there anyone else in the organization who is directly accountable to the Board?
MS. DAWE:
A. No.
MR. SIMMONS:
Q. Now, BS-0005 is entitled "Monitoring Executive Performance". Now perhaps you could tell us a little bit more here now about what means are used to monitor the executive performance under this model.
MS. DAWE:
A. Okay, we have developed a reporting, a monitoring reporting process. Some--depending on the policies, sometimes we have a report--for example, financially there may be a report, a monitoring report that would come through monthly. Some others may be quarterly, some others may be yearly, it really depends on the policy itself, but--and they're not all reported at the same time, so we built into our agenda a section on monitoring and reporting so that at each

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meeting the chief executive officer would present a monitoring report based on a pre-determined agenda.
MR. SIMMONS:
Q. Uh-hm. And those monitoring reports, do they come from anyone other than the CEO?
MS. DAWE:
A. No, because I have to continue to say the only person, the only employee of the Board is the chief executive officer. Now, the development of that monitoring report obviously would--the information contained therein, would come from multiple sources within the organization, but the report itself, comes from the chief executive officer. That's the only person held accountable for that.
MR. SIMMONS:
Q. 2(a) of this policy refers to "Internal Report". Is that the monitoring report that you are talking--the report you're talking about?
MS. DAWE:
A. Yes, I am. And then there's an external component and that could be, well from any number of sources. It could include the

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audited financial statement, it could include our accreditation report that I referred to, you know, previously, or any other report that the Board may request from an audited or performance review or anything else. So there are two sources: internal and external.
MR. SIMMONS:
Q. So following the adoption then of these policies on May 24th, 2006, the Board has expected the CEO to provide these monitoring reports on a regular basis?
MS. DAWE:
A. Yes, and we've identified the times that these reports, okay, we have an agenda.
MR. SIMMONS:
Q. And the Board policy has the ability to look to either external reviews as well?
MS. DAWE:
A. Oh yes, uh-hm.
MR. SIMMONS:
Q. And at the paragraph four of this policy, there's a reference to the standard of compliance which it says "shall be any reasonable chief executive officer interpretation of the Board policy being

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monitored." So is it correct then to say that the standard of compliance is not the interpretation that the Board would necessarily place upon the policy, it is what the CEO would place, as long as it is a reasonable one?
MS. DAWE:
A. Reasonable, yes, correct.
MR. SIMMONS:
Q. Okay. Now the next group of policies, the last one, are the ones that are of the policy type, executive limitations.
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And I'm just going to take one of those to use as an example, and I'm going to go down to EL10, which is on page 31 of the exhibit. The policy name is safety and quality improvement. See that there?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And there's a paragraph at the beginning, and below that then, there are a number of

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numbered paragraphs. Can you tell me how these executive limitations are structured in these policies? What's the format they take?

MS. DAWE:

A. Well, there's always a general statement of what the expectation is, and if I might just refer to this one, that "the chief executive officer shall not fail to implement and support a safety culture within the organization." So it's a definition of what the expectation is, and then you move on to more clearly define the generality, sort of. So what does that actually mean? This then indicates that "the chief executive officer shall not cause or allow conditions, procedures or circumstances which are unsafe; allow any service area to operate without functioning equipment," and so on. So it's more specific than--you know, the general statement is there at the beginning to give an indication, but then you move on to provide the details.

MR. SIMMONS:

Q. Now these are called executive limitations?

MS. DAWE:

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A. Yes.

MR. SIMMONS:

Q. So the opening paragraph there makes a statement about what the CEO shall not fail to do in general senses.

MS. DAWE:

A. In a general sense.

MR. SIMMONS:

Q. And then the detail goes on to present limitations, the things that the CEO shall not do?

MS. DAWE:

A. Shall not do.

MR. SIMMONS:

Q. And otherwise then, is the CEO left to have the freedom to meet those objectives as the CEO sees fit?

MS. DAWE:

A. Within the reasonable person perspective.

MR. SIMMONS:

Q. Okay, good. Now you'd mentioned the monitoring reports. I'm going to show you an example of a monitoring report, since we're working through this, and could I have Exhibit P-0019, please? And when it comes up, I'd

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like to go to--the page numbers have changed on this one?

THE COMMISSIONER:

Q. That is the one where the page numbers have changed, but we'll do our best to find it, if you can tell us what it relates to.

MR. SIMMONS:

Q. I'll see if I can -

REGISTRAR:

Q. What was the old page number?

MR. SIMMONS:

Q. The old page number was 209. That may correspond to-

MS. DAWE:

A. I think you just passed it there.

THE COMMISSIONER:

Q. Can you give us a title or a -

MR. SIMMONS:

Q. It's an external -

MS. DAWE:

A. There it is. There it is. Here it is.

MR. SIMMONS:

Q. We've got it.

THE COMMISSIONER:

Q. Okay.

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MR. SIMMONS:

Q. We've got it.

THE COMMISSIONER:

Q. And the new page number is 175?

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Mrs. Dawe, do you recognize this as being an actual example of one of the monitoring reports that you've referred to?

MS. DAWE:

A. Yes, it is. It's on 22nd of November 2006 and it's Mr. Tilley's monitoring report on the financial condition and activities, that policy.

MR. SIMMONS:

Q. So it begins on referring to the policy type, executive limitations, the title of the policy and identifying it as, in this case, policy EL8, and here Mr. Tilley had signed off on this report as being his report to the Board?

MS. DAWE:

A. And it covers the six-month period and so on.

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So it's specific to the time frame.
MR. SIMMONS:
Q. Right, and the format, it begins with a statement of the global policy limitation, and is that statement taken directly from the Board policy?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And then it addresses number one, two, three and so on. Are those the numbered paragraphs from the Board policy that describe the limitation?
MS. DAWE:
A. Yes, you can refer back to the policies, yes.
MR. SIMMONS:
Q. And it appears that there's a quote from the Board policy of the policy limitation, for example, failed to settle payroll and debts in a timely manner.
MS. DAWE:
A. Yes, so it's -
MR. SIMMONS:
Q. A quote or a summary of it, and then there's interpretation and report. What are those

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parts of the monitoring report?
MS. DAWE:
A. So there again would be the Chief Executive Officer's interpretation, that's the reasonable person test, interpretation of that policy. So he would state that upfront. Now, if I could, as these reports are presented and discussed at the Board and whether we accept them or not, because that's the next step, if there are questions with respect to interpretation, then that's our opportunity to clarify with the Chief Executive Officer to say "well, that may be your understanding, but here, in addition to that, is what we are expecting." So this is our opportunity to clarify and to come to terms and agree that his interpretation is correct.
MR. SIMMONS:
Q. Right. So presumably then, if the Board determined or felt that the CEO's interpretation was not what the Board wanted to implement, there would be an opportunity then to revisit the Board policy, would there?
MS. DAWE:
A. Absolutely, yes, or clarify with the CEO that

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"that might be your interpretation, but let's discuss that because we need to refine it," or so, okay?
MR. SIMMONS:
Q. Okay. So we've just reviewed that, the policies there and gone as far as the monitoring report. You'd told us before that the intention or objective of the policy governance model was to put more structure around the -
MS. DAWE:
A. Accountability.
MR. SIMMONS:
Q. - the division between the Board's role and the CEO's role and the accountability of the Board to the CEO, and this process we've just looked at, is that a fair description of how that works on the ground?
MS. DAWE:
A. It is, yes, and we've never had this before. We've never had this clearly defined, documented process.
MR. SIMMONS:
Q. What, to date, has been the Board's experience with this and what's your intentions in going

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forward with this model?
MS. DAWE:
A. It's been a positive one, and remember that we are--it's still work in progress, but we, in the fall, after one year of implementation of the policies and the monitoring processes, we assessed ourselves. We had a discussion. We brought back the facilitator in the fall and reviewed where we were, "do we need to make changes? Do we need to add to this?" and so on. So to this point, in the fall, we're very happy. We still have work to do because this is changing the culture as well of how we--how the organization reports to the Board. So there's much work that's still ongoing at the operational level to make sure we are there.
MR. SIMMONS:
Q. Okay.
THE COMMISSIONER:
Q. Just out of curiosity, is there any difference in saying to a CEO "thou shalt not fail to settle payroll and debts in a timely manner," and saying to a CEO "thou shalt pay?"
MS. DAWE:
A. Yes.

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THE COMMISSIONER:
Q. So what's the difference?
MS. DAWE:
A. It's to provide more territory, because if you say "you shall do," there may be a point that you forgot to say you shall do something, okay. It's more--it's not seen to be as inclusive as this approach, which allows the CEO to have broader understanding and opportunity as well. That area--I understand your point, Commissioner, because we all had that discussion about should we have the positive versus the negative, and the experience historically elsewhere where people have used this for many, many years is this provides more capacity for interpretation for the CEO as well.
THE COMMISSIONER:
Q. Which is seen as a positive.
MS. DAWE:
A. Oh, absolutely, absolutely, because it would be constraining and very much constraining and a fear that you would forget to identify something that's expected that maybe the Board wouldn't understand, but the CEO certainly

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would. So this is seen to be much more positive.
MR. SIMMONS:
Q. Okay. In 2005, through the summer and fall of 2005, these policies were not in effect?
MS. DAWE:
A. No, no, no.
MR. SIMMONS:
Q. The Board, by that time, had it embarked on the process of examining the policy governance model and even beginning to implement it?
MS. DAWE:
A. We had--no, we had discussions in the summer of 2005 and we brought the facilitator in, I think it might have been July month, June or July, but it was clearly an exploration of what model of governance would be appropriate for us, given the new legislation and given the breadth and the mandate that this Board had been given.
MR. SIMMONS:
Q. Now Mr. Tilley was the CEO of Eastern Health from the creation of the organization, correct?
MS. DAWE:

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A. Yes.
MR. SIMMONS:
Q. And he was through 2005?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Where would he have been able to look then to know where the lines would be drawn between the Board's role and his responsibilities?
MS. DAWE:
A. More the traditional way of operating, so you know, however he operated at the Health Care Corporation was pretty typical of how all the CEOs in this province would have operated. So he would not--well, there would be no expectation, certainly we had never developed this, there would be no expectation that he'd be reporting in this framework.
MR. SIMMONS:
Q. Right. So this level of structure around defining what the level of freedom of operation that the CEO had and what the limits on that were and when things had to come back to the Board, the level of structure that we see now around that, did that exist back in

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2005?
MS. DAWE:
A. No, not at all. We were just exploring concepts then.
MR. SIMMONS:
Q. Okay. In relation to policies, I'd like to quickly show you P-0057, please, because you were referred to this document earlier. This is an Eastern Health policy named Disclosure of Adverse Events from the Quality and Risk Management, and it's got a number there and an issue date and so on. It's from 2007. Is this the type of policy that the Board would be involved in at all?
MS. DAWE:
A. No, this is an operational policy.
MR. SIMMONS:
Q. Would it be prepared and adopted and monitored entirely within the operations of the organization?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Okay. Does the Board have to approve policies like this?

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MS. DAWE:
A. No, no, we provide--our policies are those that you've seen, and then they are operationalized throughout the organization.
MR. SIMMONS:
Q. Would the Board expect to even be aware or informed of exactly which policies of this nature exist within the organization?
MS. DAWE:
A. No, there would be hundreds, literally, in Eastern Health. There would be hundreds of policies at different levels within the organization. What we would expect would be, as we've talked earlier, the monitoring report of the Chief Executive Officer to assure the Board that policies exist at an operational level to accommodate the governance policies.
MR. SIMMONS:
Q. Okay. Now you were asked a number of questions about this and other policies in your examination earlier over the last couple of days, questions concerning specific sections of the policies, some definitions in them and so on. Is that the sort of thing that you, as a member of the Board of

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Trustees, would ever involve yourself in, in the ordinary course?
MS. DAWE:
A. No, no.
MR. SIMMONS:
Q. Okay.
MS. DAWE:
A. Not at all.
MR. SIMMONS:
Q. In your capacity as the Board, would you feel comfortable even being able to reliably interpret the intent behind policies like this?
MS. DAWE:
A. No, and that's been--that's a level of discomfort that I've had over the last two or three days in responding to some of these operational issues. I'm not the person who can appropriately or would have the level of detail to respond to some of these matters.
MR. SIMMONS:
Q. Okay, thank you. I have a couple questions for you on some of the Board minutes.
MS. DAWE:
A. Yes.

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MR. SIMMONS:
Q. I'd like to go first to the September 2005 Board meeting at P-0018, please, and if we go specifically to page nine. You were referred to this portion of the minutes by Mr. Coffey and had a number of questions asked of you about it, and if I understand correctly, this part of the presentation--well, maybe we'll just go back and see where it fits in first. I'm going to take you back to the top of the section which is page four, if I can get there. Section five in the minutes is Committee reports.
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And then as you go down in Committee reports to page eight, I bet I've gone too far, Section 5.3 is the report of the Medical Advisory Committee of the former Health Care Corporation of St. John's.
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And it is under this section that we see

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"review of system ER/PR testing for breast screening."
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. So this particular report came to the Board as part of the report of the MAC under the committee reports that were coming to the Board?
MS. DAWE:
A. And I think I referred to that yesterday, that that would be an expectation as well, to have--yes.
MR. SIMMONS:
Q. Now is this report actually presented by Dr. Williams though?
MS. DAWE:
A. I recall, because that was the September--Mr. Tilley would have just introduced the subject.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. And then asked Dr. Williams to provide the detail. That's generally how this--we operate.

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MR. SIMMONS:
Q. And Dr. Williams made a number of reports to you, to the Board, about this issue until his retirement?
MS. DAWE:
A. Yes, and I have to say that, you know, our minutes are detailed compared to many other sets of minutes of organizations, but they are only reflective of a summary discussion. I think I had indicated earlier that there was-- Dr. Williams, at that meeting, presented a fairly comprehensive report and what you see captured in the minutes would be the highlights, but they wouldn't be all the discussions obviously around the topic.
MR. SIMMONS:
Q. And what would your recollection be about the level, the extensiveness of Dr. Williams' reports generally when he reported things to the Board?
MS. DAWE:
A. Very extensive. Very extensive, and I think I did reference yesterday or the day before that I know he, at various points, provided numbers of tests and tests that were back. They're

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not captured in the minutes, and I have--you know, I have no record available to me, but I know that he did. That's why I very much recall the ten percent that I referred to over time.
THE COMMISSIONER:
Q. So is this Dr. Williams as somehow representing the MAC?
MS. DAWE:
A. Yes, he's the Vice President of Medical Services. He is the link with the medical operations, and attends the Medical Advisory Committee, and Dr. Inkpen, as Chair of the Medical Advisory, would also report directly to the Board.
THE COMMISSIONER:
Q. My point, why wasn't Dr. Inkpen doing this and not---why would Dr. Williams be doing it?
MS. DAWE:
A. Because Dr. Williams is at the table, at the Board table regularly, as an executive member, and reports on medical matters, all medical matters. So he, as an operational person, he is the person who would normally--who would be reporting on this. Until we have the regional

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structures and the regional MAC bylaws that I referred to the last few days, until that's all defined, we're not--we haven't arrived at having the Chair of the MAC as an ex officio member of the Board yet. We bring that person in as necessary, and if she wants to come to meet with the Board, we--you know, there's opportunity to do that, but not--it's not a regular basis. Dr. Williams has always reported on this.
THE COMMISSIONER:
Q. Is the MAC unique?
MS. DAWE:
A. No. You mean to this province?
THE COMMISSIONER:
Q. No. Is it unique in your structure?
MS. DAWE:
A. No, no.
THE COMMISSIONER:
Q. In the sense of it seems to be one group within the organization who funnels directly to the Board?
MS. DAWE:
A. That is -
THE COMMISSIONER:

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Q. Are there other Boards that have a similar -
MS. DAWE:
A. Oh, they all -
THE COMMISSIONER:
Q. - are there other groups, sorry, not boards?
MS. DAWE:
A. No, no, the MAC, because many of these-- remember, excuse me, but they're not employees of the organization, okay. They're, you know, independent.
THE COMMISSIONER:
Q. Are we talking about fee-for-service doctors?
MS. DAWE:
A. Yes, yeah, many of these are.
THE COMMISSIONER:
Q. But some of the MACs are--oh, I'm sorry, I'm making the assumption. I had somehow understood that, for example, pathologists might either--might be, in fact employees.
MS. DAWE:
A. They are. I was going to explain. There are--the majority of the physicians would be fee-for-service. There are some specialists, in particular, and general practitioners, who would be salaried employees of the

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organization. But this model, nothing unique to Eastern Health, the model of an MAC is pretty standard across the country. It reports directly up through to the Board through its own structure. But on a day-to-day basis, the Vice President of Medical Services would be the person who is responsible for medical administration, as an employee of an organization and would be reporting to the Board. In time, if with the new set of bylaws, if there is the decision that the Chair of the Medical Advisory Committee would sit on the Board of MAC--sorry, the Chair of MAC would sit on the Board, if that becomes the case in the next year or so, then that person will be reporting directly on MAC matters.

THE COMMISSIONER:

Q. Now back to my original question, the MAC is unique in the sense of it is the one player that gets directly to the Board?

MS. DAWE:

A. Yes, yes, and that's not unique to Newfoundland. That's the way the -

THE COMMISSIONER:

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Q. Oh, I understand your point on that, but in terms of the people that Eastern Health deals with on--and you've pointed out that employee-wise, you've got a lot of people in your organization, which contain a lot of, I'm sure, professional groups, aside from doctors.

MS. DAWE:

A. Absolutely.

THE COMMISSIONER:

Q. But the doctors are the group that gets directly to the Board?

MS. DAWE:

A. Yes.

THE COMMISSIONER:

Q. All right, thank you. Sorry, Mr. Simmons. I've done it to you again.

MR. SIMMONS:

Q. Thank you, Commissioner. There are three additional exhibits that I ask to have made available this morning, that I could put to Mrs. Dawe. I don't think they've been entered yet. They would be number 0120, 0121 and 0122, all P exhibits.

THE COMMISSIONER:

Q. Somebody did provide me with a copy of those,

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if you'd just wait a moment. So that's P-0120, 0121 and 0122?

MR. SIMMONS:

Q. Yes.

THE COMMISSIONER:

Q. All right. Those exhibits will be entered.

EXHIBITS ENTERED AND MARKED EXHIBITS P-0120, P-0121, P-0122

MR. SIMMONS:

Q. Now Mrs. Dawe, you've been shown already, in your examination, a lot of documents from within the operation of the organization that you hadn't seen before.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And many of those, I think, are ones that you would not normally see.

MS. DAWE:

A. Correct.

MR. SIMMONS:

Q. Now I'm going to do the same thing with a couple.

MS. DAWE:

A. Thank you.

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MR. SIMMONS:

Q. One of those is P-0122, bring that up, please? And this is an excerpt from some--I think we'll hear when Mr. Tilley gets here, that these are notes that he kept in a book he had of meeting notes, and it starts out "Board of Trustees, September 21st 2005," which is the same date as the minutes of the meeting that we were looking at a few moments ago.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And Mr. Tilley, of course, will have to tell us what all this means--let me see if I got the right page here. But on the second page of this exhibit -

MS. DAWE:

A. Okay.

MR. SIMMONS:

Q. - there's a section that's headed ER/PR.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And the handwriting is often difficult to read, but if we look at it, it starts out with

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some description of tests and various information there, including, in the middle, what looks like something that says positivity rates with numbers, numbers for Newfoundland, reference to changes in therapy.

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. And you've told us that the minutes capture important points from Dr. Williams' presentation. Would these sorts of things that appear to be in these minutes be consistent with the type of additional information that you would think Dr. Williams presented?

MS. DAWE:

A. And I would recognize some of this, because Mr. Tilley sat next to me at Board meetings, and I know that he had his black book, and this would be capturing highlights of presentations.

MR. SIMMONS:

Q. Right, okay. So -

THE COMMISSIONER:

Q. Wait now. We're thinking that this is Mr.

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Tilley's noting of what was said at the Board meeting, as opposed to something Mr. Tilley was going to bring to the Board?

MR. SIMMONS:

Q. That's -

MS. DAWE:

A. Yes.

THE COMMISSIONER:

Q. Or do we know?

MR. SIMMONS:

Q. Well, we'll--we don't know. We can only draw assumptions based on it. I can tell you, Commissioner, that if we go back to the beginning and we look at the headings, he'd start out "community needs assessment, mental health, policy governance, Kingston, budget," and if we go to the minutes of the meeting, you'll find that those seem to correspond with many of the headings in the same order.

THE COMMISSIONER:

Q. Correspond with, okay.

MS. DAWE:

A. I believe this was--this is his account of more detailed discussions at the meeting.

MR. SIMMONS:

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Q. Right, and we don't know, of course, whether his notes are any kind of a complete record of what went on at the meeting, but they nevertheless are more notes of what went on.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And the reason, main reason I'm showing them to you is to ask you if the fact that Mr. Tilley had taken notes which have more detail than the minutes, would that be consistent with your recollection of Dr. Williams having made a more detailed presentation?

MS. DAWE:

A. Yes, because as you're showing me some of this, I recall. I recall some of that detail, yeah.

MR. SIMMONS:

Q. Okay. Now I'd like to take you back to the minutes now, P-0018 please. In the third paragraph of the portion that says "review of system, ER/PR testing for breast screening," it says "patient safety and confidentiality are of paramount importance. The organization made a decision not to release any information

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publicly until the results of the retests were available." Now do you know, at this stage, if that was the only statement made to the Board or if there was more description and explanation of the reasons behind that decision?

MS. DAWE:

A. My recollection, as I've accounted over time and repeated, is the reason, it was on the advice of the clinicians that they wanted--the clinicians wanted to have the details with respect to the results of the retest before they communicated with patients, and that's been--that's my consistent understanding from the beginning.

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. That's the intent here.

MR. SIMMONS:

Q. So based on the information provided by Dr. Williams then at that meeting -

MS. DAWE:

A. Yes.

MR. SIMMONS:

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Q. - you had no reason to think that there would have been any other factor?
MS. DAWE:
A. Well, no.
MR. SIMMONS:
Q. Okay. Now you were presented with a number of other documents to review that you hadn't seen before, that made references to the involvement of a lawyer in the process, and I believe there was only one of them that predated this meeting date of September 21st, and that is P-0073, if we could bring that up? Thank you.
You've previously been shown this. It's an email message from Heather Predham to a number of parties on July 19th 2005, and in the body of it, there's an email message from Heather Predham to Dr. Williams, Dr. Cook and a number of others, same date. I have it up there right now. And it reports on a conversation with representatives of HIROC, and you were shown this earlier, you recall?
MS. DAWE:
A. Yes.
MR. SIMMONS:

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Q. Okay. There's a description there of having been informed about a class action law suit that was then under way concerning the way in which Health Labrador had disclosed some issues to patients. See that?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. And then the paragraph, the fourth paragraph there, says "this leads us to our situation. It's not that they don't want us to disclose. They just don't want us to disclose until we are sure of our facts," and that reports a quick voice mail from Dan. Now take your time and have a look at this. Is there anything in here to lead you to believe that the organization was prevented from disclosing information to patients because of the involvement of the insurers at this point?
MS. DAWE:
A. No, it was--no.
MR. SIMMONS:
Q. Okay. Now this is one piece of information. Have you had any involvement or do you have any means of knowing the extent of the

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discussion that went on in the organizational side of Eastern Health leading up to the decision to wait until test results were known before notifying patients?
MS. DAWE:
A. Not at all, and if you look here, this communication was July the 19th.
MR. SIMMONS:
Q. Right.
MS. DAWE:
A. My first email was July the 20th advising, and we would not, in any way, be involved in any of this or have knowledge of any of this discussion.
MR. SIMMONS:
Q. Right, right, so are you in any position to say what, if any, influence any advice from insurers or others had on the decision made within the operational side of the organization about disclosure?
MS. DAWE:
A. I'm not in a position and the fact that I have independent documents to look at from time to time, I've indicated the last two days, I'm concerned about the context that I would never

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have around the discussion, and that's why it's so important to wait and get the true story and the complete story from these people who are the authors of the documents.
MR. SIMMONS:
Q. Good, thank you. Now from the perspective of the Board and your position as the Chair of the Board, would there be anything regarded as inappropriate in any way in reporting a potential occurrence to the organization's insurer?
MS. DAWE:
A. I believe that there's a responsibility to report.
MR. SIMMONS:
Q. Okay. Would there be anything inappropriate in any way in the organization seeking legal advice on how to manage issues such as the disclosure?
MS. DAWE:
A. No, that would be an expectation, and I'm sure it's an ongoing practice.
MR. SIMMONS:
Q. Okay. Now you mentioned a moment ago that it was in the email of July 20th that you were

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first informed by Mr. Tilley of the existence of an issue surrounding hormone receptor testing at Eastern Health. When you were examined, I guess the day before yesterday, and shown that email for the first time, one of the things, I believe, you were asked was your reaction to the fact that the issue had first come up within Eastern Health as early as April or May of 2005 and you heard it on July 20th, 2005.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. You were asked that question. Now later, you were also shown, I think, a copy of some notes that were presented to you as being Mr. Tilley's notes that referred to the 7th of July.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Now I'm just going to put a proposition to you now. I'm going to put the proposition that if we hear here that Mr. Tilley first became aware of the issue himself within the

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organization on the 7th of July -

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. - what would be your reaction to you not hearing of it until the 20th of July?

MS. DAWE:

A. Well, that would be--I'd have a very different response again, if Mr. Tilley--and I think I indicated this yesterday, that I was beginning to wonder whether Mr. Tilley knew about this matter in the spring because the working relationship that we have had from the beginning has been very open and transparent and I have never had any reason to doubt that Mr. Tilley was in any way not sharing appropriately with the Board. I have no--I've never had any doubt about that because it doesn't reflect the kind of working relationship that we've had. So hence, that's why I made the comment yesterday.

MR. SIMMONS:

Q. Back to P-0018, please. Okay, this is back to the minutes now, the Board minutes of September 21st. The first paragraph under

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review of system there says "there is an intensive investigation ongoing of the relative accuracies of two systems used to detect estrogen and progesterone receptors in breast cancer tissue." You were asked about this earlier and I understood you to say that the impression was certainly formed by you and by the Board that there was a technological issue here that was being addressed.

Now I'd like to refer you to another document you haven't seen before, and that's P-0081, please. This is a--it's a typewritten letter addressed to Dr. Williams and Dr. Cook. It's a handwritten note on the top, August 8th, 2005. So it precedes the Board meeting that we just looked at the minutes from, and if you go down to the bottom, the signature there, I'm going to suggest, is the signature of Beverley Carter.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Who is a pathologist within Eastern Health, working out of St. Clare's, and it starts out by saying "the following are, to the best of

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my current knowledge, the figures I have compiled with respect to estrogen receptor and progesterone receptor testing for cases seen at Health Care Corporation of St. John's in 2002," and there goes down then to be some technical evaluation, and if you go to the last paragraph, it says "from these very preliminary and very raw numbers, I believe that the idea that the DAKO system, both its performance and interpretation, greatly underestimated the number of women who would benefit from hormonal manipulation of their breast cancer and should be investigated. From these numbers it would also appear that the Ventana system," which is the second, the newer piece of technology, "is over estimating the number of patients who are ER positive. Could this finding with the recent 60 percent disagreement with Mount Sinai, etcetera, and it appears that we have another system that needs investigating." So I know you don't know the background and you've never seen this before, but would this appear to suggest that one of the pathologists at this point is concerned that there's a difference between

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the way the two systems performed in carrying out these tests?

MS. DAWE:

A. It's clear.

MR. SIMMONS:

Q. Now if we go back to P-0018 again, the Board minutes, and you look at that first paragraph again, is that consistent with what the minutes record was reported to the Board at that time?

MS. DAWE:

A. Yes. "Intensive investigation ongoing of the relative accuracies."

MR. SIMMONS:

Q. Yes.

MS. DAWE:

A. So it doesn't say, necessarily, that it's one or the other, but they're comparing the accuracies of the two systems.

MR. SIMMONS:

Q. Right, okay. And that letter we'd just seen had been directed to Dr. Williams and it's Dr. Williams who presented this report to the report?

MS. DAWE:

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A. Was reporting, yes.

MR. SIMMONS:

Q. I'm going to bring you forward now a little bit to after that September 21st Board meeting. You've already been, I think, reminded that the news about the ER/PR retesting which was undergoing became public on October 2nd by a story in the Independent?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And we can look at it if you wish, but it's at P-0086 is the document that you'd been shown, which was the Independent news story. So that was the 2nd of October. We don't need to go to it right now, thank you. You were also shown a couple of other e-mail messages at various points in your examination and I want to take the two of them in sequence now following that. The Independent story as the 2nd of October. And let's go to P-0088, please? You were shown this e-mail message from Heather Predham on October 6th, which would now be four days after the public disclosure?

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MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. And it will be for Ms. Predham to, I guess, explain what was going on here. In the lower part of it there's a message from Mr. Boone. And it's been read to you before, you can take a look at that paragraph there again now.

MS. DAWE:

A. Okay.

MR. SIMMONS:

Q. Okay. And then we see what Ms. Predham has written in her e-mail that went to Patricia Pilgrim, which appears to contain a draft of some wording for a letter. Would that be an inference we could draw from that?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Yes? And it ends by saying, "I checked with Dan and he's okay with this."

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. So is there anything about that suggesting

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that there is any kind of legal advice which is saying not to inform patients of anything at this stage?

MS. DAWE:

A. No, not, certainly not to not inform patients, no.

MR. SIMMONS:

Q. Okay. And then the other one that you were shown is a little bit later but it's still in October and it's P-0092, please? Again from Ms. Predham to a number of people. And it has a message from Mr. Boone to Ms. Predham. And it does start out saying, "My initial reaction is that I do not agree with sending this letter at this time." Now, you've already been asked about this this morning by Mr. Crosbie and you've identified that we don't know what this letter is and it was referring to "at this particular time", right. Now, this was the 18th of October. You may recall also that it was put to you that by the 20th of October the organization was contacting patients?

MS. DAWE:

A. Yes.

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MR. SIMMONS:
Q. Yes.
THE COMMISSIONER:
Q. Sorry, the organization was?
MR. SIMMONS:
Q. Was contacting patients.
THE COMMISSIONER:
Q. Thank you.
COFFEY, Q.C.:
Q. She was phoning them.
MR. SIMMONS:
Q. Phoning, yeah. And not--and is your understanding that the patients who were being contacted were not just those who had changed results back but the patients who were going to be retested and for whom there were not yet results?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Were being contacted by telephone?
MS. DAWE:
A. That they were being--that they were being retested.
MR. SIMMONS:

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Q. Yes, okay. But they were being contacted and informed of that fact?
MS. DAWE:
A. Of that.
MR. SIMMONS:
Q. Yes.
MS. DAWE:
A. And then as the results came back, that they would be contacted again.
MR. SIMMONS:
Q. Right. Which was a change in approach from what had been reported to you as the plan in September?
MS. DAWE:
A. Yes.
MR. SIMMONS:
Q. Right. So regardless of whatever was communicated on October 18th by this e-mail we do know, do we not, that by two days later the organization was contacting -
MS. DAWE:
A. Yes, was contacting -
MR. SIMMONS:
Q. - those patients?
MS. DAWE:

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A. Um-hm.
MR. SIMMONS:
Q. Okay. Now, the next one I want to bring you to then is P-0095, please. This one you haven't been shown before on the--here. It's a little bit later, it's now October 26th, which is eight days after the e-mail we looked at before. It's from Heather Predham, it's to Dr. Williams and Ms. Pilgrim. The subject is "Current tally for ER/PR" and it starts out saying, "Here are the latest numbers from the ER/PR contacting. I just wanted to note that Nancy Parsons, Janet Laidley and Deanne Emberley have done a tremendous job with this task. It is extremely draining and they have done all this notification in the day and in the evenings with the utmost of compassion and professionalism." And then there's a report there under a heading, "Confirmed Negative" which says "41 patients." It gives the number contacted, the number of no answers and one from another region. You see that?
MS. DAWE:
A. Yes.
MR. SIMMONS:

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Q. And then there's a heading, "Results Not Received, total 292 patients." And it has a number there for the number that have been contacted, the number no answer, the number deceased and so on. So from this report, again, and you haven't seen it before and you weren't involved?
MS. DAWE:
A. No.
MR. SIMMONS:
Q. But could you infer from this that by October 26th, the organization was well under way to contacting -
MS. DAWE:
A. To contacting.
MR. SIMMONS:
Q. - those patients who either had results back or were to be retested, yet to be retested?
MS. DAWE:
A. Yes, clearly.
MR. SIMMONS:
Q. Now, from the information available to you at the Board level throughout this entire time, up to your evidence here at this Commission, has there ever been any indication or concern,

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aside from things that might have been raised in the media, about whether the involvement of lawyers or insurance companies or legal advice interfered in any adverse way in the decisions surrounding disclosure of information to patients?

MS. DAWE:

A. Absolutely not. The--and actually, I have to say and I think I gave evidence of this earlier, when Minister Wiseman made the comment last May, May of 2007, that the organization had carried out its activities for fear of, you know, I'm paraphrasing, but inferred that it was based on legal advice, I took strong exception to that because that's not, that's not the philosophy of the organization, it's not the philosophy of the Board, so--and I don't know whether I spoke to him directly then, but I certainly raised it at the Board level because I was so disturbed that that would be said publicly about the organization.

MR. SIMMONS:

Q. Okay.

MS. DAWE:

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A. That's not, that's not clearly the way we operate.

MR. SIMMONS:

Q. Okay. I'd like to show you the minutes from the November Board meeting, please? That's back to P-0018 again. And let me see. They start here on page 16--on, no, I've got the wrong ones, I'm sorry. 34, I need. Thank you. Okay. Here are the minutes from November 25th, 2005, Board of Trustees meeting. And there is a report here which if I'm lucky, I'll find in a moment. You were referred to this earlier. This begins on page 37, item 4.2 ER/PR retesting update.

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. And it said "Dr. Williams provided an update on the ER/PR retesting as follows." And one of the points noted here on the second paragraph on page 5 of the minutes, page 38 of the document is, "Reports are being prepared by the two external consultants we invited to undertake an assessment. The reports will outline recommendations and a plan of action."

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And I believe in your examination you were presented with the fact that those reports had been received within the organization at that time?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Okay. Now, I'd like to refer you to another set of Mr. Tilley's notes at page--document P-0120, please? And I'm going to go to the--these notes start out saying, "Board meeting, November 25th, 2005" which I believe is the same date as the minutes we just looked at?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And, Madam Commissioner, if you look at some of the subject matter, it does generally correspond with issues that are in the minutes. If you go to the top of the second page of this document, which is marked as page 85 of the notes, there's a section there that says, "ER/PR, meeting with Deputy Minister," or "DM", "Tests reported, 172 back. Mount Sinai automated stainer. NL" something "on

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Monday. National" something, "Canadian Association of Pathologists." And if we just flick back to the P-0018 for a moment again now, keeping some of those things in mind, we can see here that Dr. Williams' report starts with meeting the Minister, which is an item from the notes we just saw. You see that?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And it says, "Successful in making it a national issue." Reference to Canadian Association of Pathologists?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. An item we just saw?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Mr. Tilley's notes had said 172 back, but we don't see that in the minutes?

MS. DAWE:

A. No.

MR. SIMMONS:

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Q. And if we can go back to Mr. Tilley's minutes again, P-0120? The next item after "Canadian Association of Pathologists" says, it appears to say, and Mr. Tilley will have to tell us for sure, "Consultant reports," it looks like "staining interpretation, $280,000" and it looks like "of staff training." And it says "Follow up on consultant report." You see those items?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Okay. Now, Mr. Tilley, of course, will have to tell us.

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. But from looking at these minutes, does it appear that there might have been some discussion at this point about the consultant reports, not just the fact that they were coming but some discussion about outcome from them?

MS. DAWE:

A. The content of.

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MR. SIMMONS:

Q. Um-hm.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Okay. Now, there's a reference there to $280,000. And I want to refer you to one other document, and that's just about it, and that's P-0121, please? This is called a "Review of Immunohistochemistry Lab, General Hospital Site, St. John's, Eastern Health. Prepared for Dr. B. Williams, VP. Prepared by Mr. Gulliver, Program Director, and Dr. Cook, Clinical Chief of Laboratory Medicine" dated October 13th, 2005.

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. This is not a document you would normally see in the course of your duties?

MS. DAWE:

A. No.

MR. SIMMONS:

Q. As Chair of the Board, no, okay. And I'm going to go here to the second page, and in

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particular, to paragraph marked as 1.4 . As background there 1.2 says, "The objective of this proposal is to identify the requirements needed to implement a complete quality assurance program for the immunohistochemistry lab, ensuring that we provide a standardized and reliable service equivalent to the Mount Sinai referenced lab in Toronto." And under 1.4 "Methodology" it says, "Work processes were reviewed internally by the lab program, including the pathology manager, technologists," etcetera. "Additionally, suggestions in the QI review by Heather Predham and the on site visits by Dr. Banerjee from B.C. Cancer Agency and Trish Wegrynowski from Mount Sinai were also incorporated in this proposal." So this proposal makes a reference to those two external reports that you -

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. - have seen more recently?

MS. DAWE:

A. Yes.

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MR. SIMMONS:

Q. And then if you go down to, we'll go to page 6 of the report. It's actually page five of this document. There's a reference there to "all recommendations by Trish Wegrynowski be implemented," and it's got some detail there. So there's a reference in this report to implementing recommendations, and then when you go down near the end, we have--I want to get this here, a section that says "Five, overall impact analysis of recommendations," which appears to start to tally up the cost of doing these things, and we go down to the end, conclusion, "the cost is $282,200."

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. Now if we go back to Mr. Tilley's note at P-0120, under consultants reports, there's a figure there of $280,000, which is very close.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Now I don't know if that triggers any recollections in your mind, but from looking

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at those documents, could we just as easily infer that the reports were referenced at the Board meeting?

MS. DAWE:

A. I think that Mr. Tilley's notes, as I said, he sat next to me and I know he was recording discussions, and follow up, more particularly what was relevant and then any follow up that he would be engaged in. So I would have to take his notes as pretty factual, because they would be reflective of the discussions as they occurred.

MR. SIMMONS:

Q. Good. We'll hear from Mr. Tilley, so we don't have to rely on you to be able to confirm that.

MS. DAWE:

A. No, but I -

MR. SIMMONS:

Q. But I wanted to just present that to you. And I have only one other document, you'll be glad to know, that I want to refer you to. And that is P-0106 please. You were shown this email message from Ms. Predham to Mr. Tilley dated May 16th 2007, and it's--you may want to

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take a read down through it again there, but I remind you that it was May 15th 2007 that there was the first news report which contained the retesting numbers that had come from the affidavit that had been filed with the Supreme Court in the class action proceeding.

MS. DAWE:

A. Um-hm.

MR. SIMMONS:

Q. So this is just following that event. Okay, and do you recall that it was very shortly after that announcement that Mr. Tilley held his press conference.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. Where he did speak publicly on the ER/PR issue.

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. So regardless of what, if any, advice came to the Corporation on May 16th from lawyers or any other sources, we do know, do we not, that

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Eastern Health, through Mr. Tilley, did speak publicly and respond to questions within a couple days of this happening?

MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. So from your knowledge, at that point, from your involvement of what you know from what happened, do you know anything about what role, if any, any legal advice played or didn't play in those decisions -

MS. DAWE:

A. No. No, but we -

MR. SIMMONS:

Q. - to give the public information at that time?

MS. DAWE:

A. Not at all, because we wouldn't be aware, again, of that level of discussion and the context around any of that, no.

MR. SIMMONS:

Q. Okay. You'd been asked a number of questions and you'd explained to us about how the reports to the Board, over time, had been that all the patients who were affected by the ER/PR testing had been notified.

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MS. DAWE:

A. Yes.

MR. SIMMONS:

Q. And that I believe you've told us already, that you believed that Mr. Tilley and the other people within Eastern Health perhaps, believed that to be true when they made that report to you? Is that correct?

MS. DAWE:

A. Yes, I have no reason to doubt.

MR. SIMMONS:

Q. My question is, have you ever had any reason to suspect that Mr. Tilley or anyone else, in any way, intended to mislead the Board about contact with patients?

MS. DAWE:

A. Absolutely not. Absolutely not. I think, as I said again yesterday, I believe they acted on the basis of the information that was available to them at that time. We know now, we know after the fact, that some of that information wasn't accurate for any number of reasons, including the lack of sophistication and completeness of the databases. But I don't--I have no hesitation in saying I don't

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believe there's a person in that organization who withheld, consciously withheld information or didn't act appropriately, based on the information they had at that time.

MR. SIMMONS:

Q. You've now read the reports from the two external reviewers, Dr. Banerjee and Ms. Wegrynowski. You've told us already that you were--expressed some disappointment that the Board did not have more knowledge of some of the detail of those reports beforehand, and my question is a similar one to you. Do you have any reason to suspect, in any way, that Mr. Tilley or Dr. Williams intended to withhold any information from the Board that--or mislead the Board in any way about those reports?

MS. DAWE:

A. No. I truly believe they were acting on the basis of past practice with other organizations and with--even with our organization at that time, because of the concept of peer review and the confidentiality around there. You know, I mentioned yesterday particularly, Mr. Tilley and Dr. Williams are

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men of integrity, and I have no reason to ever doubt. Their activities were directed always at the best interest of patients.

MR. SIMMONS:

Q. My final point, you started your evidence, sometime ago now, with a statement that included an apology, which you presented, and my question is, why did you consider this, two days ago, to be the time to speak to those patients who had been affected?

MS. DAWE:

A. As I indicated, I think to the media at that time, I had been listening, as well as other, the Board trustees have been listening to patients express their concerns and not only their concerns, but the impression that we let them down. That we did less than was necessary to respond to people who came to us for service. That was always a concern of mine, but I knew I would have a day here. I didn't think I would have three days, but I knew I would have an opportunity to speak from my perspective and from the Board, to speak to people directly. So I felt that all along, for quite a while, but listening to the

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stories of patients and their families last week reenforced for me my resolve to speak to patients and their families and to the staff of Eastern Health, and so I have to say, I'm not a lawyer, don't aspire to be a lawyer, but the sentiment that I expressed this week, they were my sentiments. They were not crafted by a lawyer or anybody else. They were my sentiments and they were meant as expressed and that was truly and honestly, and I would repeat them today to the patients and families. I'm sorry, and we are here to find the answers to some very difficult and complex questions. I certainly don't have the answers to many of these questions.

MR. SIMMONS:

Q. Thank you very much. I don't have any other questions, Ms. Dawe.

MS. DAWE:

A. Thank you.

THE COMMISSIONER:

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

COFFEY, Q.C.:

Q. I'm going to suggest we come back this afternoon, Commissioner.

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THE COMMISSIONER:

Q. All right. I might be inclined to press on if Mr. Coffey was willing to do so, but frankly, I have a conference call in a few moments, which I must take, and which is going to take some time. So we'll adjourn until two. I'm afraid it'll be a little bit longer, Mrs. Dawe.

MS. DAWE:

A. Thank you.

THE COMMISSIONER:

Q. Thank you.

(LUNCH BREAK)

THE COMMISSIONER:

Q. Please be seated. Mr. Coffey.

MS. JOAN DAWE, RE-EXAMINATION BY BERNARD COFFEY, Q.C.

COFFEY, Q.C.:

Q. Thank you, Commissioner. Ms. Dawe, you began by--you know, with an opening statement in which you apologized and when Mr. Simmons--one of the last questions Mr. Simmons asked you was about that apology, and you said, of course, you drafted it yourself. Did you have to vet it past anybody?

MS. DAWE:

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A. No.
COFFEY, Q.C.:
Q. Okay, I just want to be clear on that.
MS. DAWE:
A. They're my sentiments, and I'm representing Eastern Health in my sentiments.
COFFEY, Q.C.:
Q. Ms. Newbury asked you about the issue of potential disconnect between what you understood about patient contact from the administration, all patients had been contacted and yet what you were hearing in the media, remember that?
MS. DAWE:
A. Yes, I do.
COFFEY, Q.C.:
Q. And in fact, one of the people you referenced that you were hearing in the media talking about problems with patient contact was Peter Dawe?
MS. DAWE:
A. I heard that, yes.
COFFEY, Q.C.:
Q. And so you were hearing one thing through the media from people, including Peter Dawe?

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MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. The representative of--local representative of the Canadian Cancer Society?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. The administration is telling you something else?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. You've--I gather you were getting assurances from the administration that their version was correct?
MS. DAWE:
A. I think I've said several times, I'd still believe that the information that they were providing was based on what they felt at the time to be accurate. We know now that that's not the case.
COFFEY, Q.C.:
Q. Did you ever consider picking up the phone and calling Peter?

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MS. DAWE:
A. Me, personally?
COFFEY, Q.C.:
Q. Yes.
MS. DAWE:
A. No, no.
COFFEY, Q.C.:
Q. Any reason why not?
MS. DAWE:
A. I wouldn't normally do that, no.
COFFEY, Q.C.:
Q. Do you know if, you know, in terms of--because you said this was discussed a fair amount at the Board level, this disconnect between the issue of everybody being told and people asserting and it being reported that they had not been told. How far, if at all, did the Board challenge the administration in that regard?
MS. DAWE:
A. You mean on the numbers?
COFFEY, Q.C.:
Q. No, the assertion. You've told us that the Board was being told by the administration that all the patients had been notified.

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MS. DAWE:
A. Yes. Yes, correct.
COFFEY, Q.C.:
Q. And that was repeated and repeated, correct?
MS. DAWE:
A. Any time that we asked and yes, I have -
COFFEY, Q.C.:
Q. You were also though, every--when that was going on, and we can look through -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. I could, if necessary, look through quite a number of media reports to the contrary.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. So your memory of that being a concern in the media is certainly accurate.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Hearing one--on the left, you're hearing one thing. On the right, you're hearing something else?

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MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. The Board was concerned about it?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. It was a repeated topic.
MS. DAWE:
A. It was discussed a number of occasions, yes.
COFFEY, Q.C.:
Q. Yes. How much, if at all, did the Board challenge Mr. Tilley or Dr. Williams, or whoever else was there, about this disconnect?
MS. DAWE:
A. Quite often, Mr. Coffey. You know, I'm repeating but any time that this became an issue to discuss at the Board because we were hearing of this disconnect, it was discussed, and we--and the question was "are you sure?" Well, I can only -
COFFEY, Q.C.:
Q. See, ma'am, I appreciate they keep saying to you, yes, it was.
MS. DAWE:

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A. Yes.
COFFEY, Q.C.:
Q. That's fine. But would there ever be a follow up question about "well, what about the lady we saw in the news a week ago? What about her? What's different about her?"
MS. DAWE:
A. I can't -
COFFEY, Q.C.:
Q. Was that--did that ever occur? I'm trying to get some sense, you know, for the Commissioner -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. - of you say discuss, yes, discuss, but what was actually discussed?
MS. DAWE:
A. That in fact that we were hearing a different story in the media, and we were advised that as the process--now you know, in October it had commenced, but any time that I saw in a document, and they were in the media as well, that all patients were notified, I would challenge that, and to the best of my

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knowledge, every time that we questioned that, we were advised that patients were notified. I don't think for a moment Mr. Tilley would have, or any--you know, certainly I wouldn't-- I don't think Mr. Tilley would have issued a press release if he truly didn't believe that the patients had been notified. Like why would he do that?
COFFEY, Q.C.:
Q. Did the administration ever advise the Board that there were exceptions to that assertion, that they were aware of exceptions to that assertion?
MS. DAWE:
A. It may have been after the fact, when the questions would go back and forth, as the new information became available down the line. But certainly not in the early stage.
COFFEY, Q.C.:
Q. Okay. Well, this is what I'm getting at is this, is that the first assertion, everybody is notified, being except--the media, in the media, there'd been an exception or two or three.
MS. DAWE:

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A. Yes.
COFFEY, Q.C.:
Q. The Board would then--the administration would then assert, "well now we've notified everybody" and then more time would go on and then there'd be another exception. Is that the sort of -
MS. DAWE:
A. No, well, it's the sort of as I refer to the database and the inadequacies of the database, and you know, that they thought they had the names of all the patients and so therefore it was on that basis, and then I understand, Mr. Coffey, that even after the public announcements were made, that some patients called in. Okay, now all of this I'm saying after the fact.
COFFEY, Q.C.:
Q. In terms of that, because you did, I think, in answering I think it was a question again of Ms. Newbury's, that you indicated that you were certainly aware of, yourself personally, of inadequacies in relation to information management.
MS. DAWE:

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A. Yes.
COFFEY, Q.C.:
Q. And you were aware of that for years?
MS. DAWE:
A. Well, generally.
COFFEY, Q.C.:
Q. As a general rule.
MS. DAWE:
A. As a general statement, I would never assert that our information systems are accurate so that they're timely and--no, would never assert that.
COFFEY, Q.C.:
Q. Do you know, in light of your knowledge, did you ever, you know, when the Board was sitting, when the executive was there, bring up with the executive "well, ladies and gentlemen, I know there are problems with the information systems. There are people in the public saying they haven't been notified. How certain are you, in light of those problems that I know to exist, that you've got everybody?"
MS. DAWE:
A. Because -

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COFFEY, Q.C.:
Q. Was that ever brought up?
MS. DAWE:
A. Yes, but again, understanding or at least we understood there was a lot of--there were a number of people engaged, but there was manual extracting of information, I think, you know, okay, so that yes, indeed, there was a very general understanding that we do not have an adequate or near adequate system for information gathering and retrieval and analysis, and I think I've given evidence the last few days, this has been recognized. It's been requested as part of the budget process and all of this. It's not that it has not been attended to.
COFFEY, Q.C.:
Q. And I appreciate that, ma'am. I understand that, and frankly, you know, there'd be no issue taken with that. In light of that knowledge, what I'm curious about is that this disconnect that you've indicated that you'd had all along, you know, at least from early on, that you saw the disconnect, you knew there was a problem with information

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management systems?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Because they had been inadequately funded?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. I'm asking you, in light of that knowledge of the inadequacy that you knew -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. - did you discuss that with the executive, in terms of "well, how really certain are you, because ladies and gentlemen, I know that there's a problem with it." I'm just asking--did this come up with the Board? Is that the -
MS. DAWE:
A. Mr. Coffey, I have to again, every time this matter was raised to question is what has been said--is the information that's been provided to the Board about all patients, is that accurate? And I can only tell you again, to

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the best of the knowledge--that's what we were advised.
COFFEY, Q.C.:
Q. Okay.
MS. DAWE:
A. Okay, I'm sorry, but that's--I'm trying to be as honest in recalling to you.
COFFEY, Q.C.:
Q. I'm not taking any issue. If you're asserting that you weren't told anything any different than that everybody was told -
MS. DAWE:
A. That I wasn't told any -
COFFEY, Q.C.:
Q. No, that you were told -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. - by George Tilley and whomever else that when I, George, say everyone was told, I mean it.
MS. DAWE:
A. Yes. Well, I mean -
COFFEY, Q.C.:
Q. And that's what you were told.
MS. DAWE:

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A. I would have--if I asked the question, I have to trust the man that he knows his responsibility to the Board.
COFFEY, Q.C.:
Q. And did he ever, at any time, tell you that there were exceptions? That I, George, have been made aware that there are exceptions, there were people we missed?
MS. DAWE:
A. It would only have been after the fact when maybe it was made public that some patients called in, for example.
COFFEY, Q.C.:
Q. Okay.
MS. DAWE:
A. Okay, but not anytime that the information--that we would question back and forth, why is this happening.
COFFEY, Q.C.:
Q. So when -
MS. DAWE:
A. I can't--you know -
COFFEY, Q.C.:
Q. Do you recall when it was that Mr. Tilley would have kind of first alerted you to the

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fact, and you and the Board, that "actually, we did miss people?"
MS. DAWE:
A. No, I can't. I would have to go and research records, but it would only have been when it became public, okay.
COFFEY, Q.C.:
Q. Public?
MS. DAWE:
A. Publicly discussed that people, patients actually saying "I was not called," or "I was not contacted. I contacted Eastern Health." It's in that context, Mr. Coffey, that I would be expressing the concerns that how come this is being said publicly and we hear something else.
COFFEY, Q.C.:
Q. And was the Board then offered explanations as to how particular people were missed?
MS. DAWE:
A. Based on the database.
COFFEY, Q.C.:
Q. This is the database since May of 2007? Is that the--see, I'm trying to get some sense of is it -

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THE COMMISSIONER:
Q. Are we talking about the database or the information system?
MS. DAWE:
A. Sorry, I'm -
COFFEY, Q.C.:
Q. I apologize. The Commission was called May of '07.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Established May of '07. Established, but certainly announced. Is it since then that you've learned that people weren't contacted?
MS. DAWE:
A. No. No, no, no, because it's prior to that that the patients were speaking publicly. I'm saying it goes--probably the first time I would have raised these matters, I'm not sure if it was the latter part of '05, but it was certainly into '06, and it really happened because of the public discussion. I would have to go back and look at some of the media coverage to really be able to give you an indication of when we would start to have

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raised that.
COFFEY, Q.C.:
Q. Okay. With respect to Mr. Crosbie was asking you some questions about legal liability concerns and how they might, if at all, play a part in disclosure of adverse events.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Do you know, and I appreciate that Mr. Simmons had you point out that the guidelines on disclosure of adverse events, located at P-0056, page 18, and the one at Exhibit P-0057, page one, the two I showed you yesterday.
MS. DAWE:
A. Yes, yeah.
COFFEY, Q.C.:
Q. Disclosure of Adverse Events, the one that dates back to '04 and then the current one. Mr. Simmons had you indicate that you're not familiar actually with their contents. Do you have any reason to believe that legal considerations or liability concerns are addressed or play any part in those?
MS. DAWE:

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A. I'm aware, because I've seen the policy since I've become engaged here. I couldn't tell you who was involved at the operational level in the development of these policies.

COFFEY, Q.C.:

Q. No, I'm not -

MS. DAWE:

A. Could I see it?

COFFEY, Q.C.:

Q. Yes, ma'am, sure.

MS. DAWE:

A. Please.

COFFEY, Q.C.:

Q. Bring it up, please, P-0056, page 18. Here we are. You can scroll through it. Ma'am, in fact, you have the mouse, in fact you can actually scroll down through it, ma'am, and if you can see any reference to legal considerations, liability considerations.

MS. DAWE:

A. Is this--legal ethics you mean?

COFFEY, Q.C.:

Q. No, not ethics, no. Legal concerns, legal issues, liability concerns.

MS. DAWE:

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A. Could I understand your question again, please?

COFFEY, Q.C.:

Q. My question is, do you see any reference to legal liability or liability in a legal sense playing any part in those?

MS. DAWE:

A. I don't see the word "legal" there.

COFFEY, Q.C.:

Q. Okay. The only thing I'm going to suggest to you that could in any way remotely relate to it is if you look up, go up the page a little bit further, just scroll back a bit, you'll see under J, "7J, accept responsibility for outcomes, but avoid attributions of blame." But that doesn't say whether or not there should be disclosure or not should play any part in it. Like the concern for legal liability should play no part in this, should it?

MS. DAWE:

A. And my understanding, these would have been modelled as well with the national standards from the Canadian Patient Safety Institute would the prior concerns.

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COFFEY, Q.C.:

Q. So what I'm getting at is this, is that in relation to complying with the then prevalent guidelines on disclosure of adverse events, legal liability concerns would have played no part because they're not referred to?

MS. DAWE:

A. I don't see them referred to.

COFFEY, Q.C.:

Q. Now you were asked about the difference between or potential difference between the physician review panel process and the--I'll refer to it as the regular or routine physician patient process. Mr. Crosbie asked you about that.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. And you indicated that there's--I think, if I got your words correctly, you said there's absolutely not any difference that you could see between the physician review panel process and the regular physician patient relationship?

MS. DAWE:

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A. I don't recall precisely what I said. I guess you have it recorded then what -

COFFEY, Q.C.:

Q. I'm -

MS. DAWE:

A. I'm sorry.

COFFEY, Q.C.:

Q. I'm going to suggest, is that really your position, that there was absolutely no difference here?

MS. DAWE:

A. Not, not--no, not absolutely. I guess the message I was trying to convey is that on a regular basis, physicians consult with their colleagues in the best--in the interest of making sure patient care is at a level that can be provided. In this situation, with this panel, this was a very unusual circumstance, and within the organization, the clinicians, with other people, determined this was the best way of handling the situation. But it's not--the normal practice is physician client relationship. This was not a normal situation.

COFFEY, Q.C.:

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Q. So then, there is a distinction because this was an unusual situation?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. There was an unusual method adopted to address it?
MS. DAWE:
A. It appears, with the goal of ensuring patient care is at the level that is necessary.
COFFEY, Q.C.:
Q. Okay. Could you bring up, please, P-0039? Page 10 and 11, or 10, say. Thank you. Now, ma'am -
THE COMMISSIONER:
Q. This is the Hay Report?
COFFEY, Q.C.:
Q. Yes, it is, Commissioner.
THE COMMISSIONER:
Q. Hay Group on the bottom, but just to confirm.
COFFEY, Q.C.:
Q. Yes. Recommendation 96, and Mr. Simmons referred you to this -
MS. DAWE:
A. Yes.

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COFFEY, Q.C.:
Q. - was that "the Director of Laboratory Services should reduce staffing in pathology by 2.0 full-time equivalents in cytology and 1.0 full-time equivalent in histopathology and make investments to train three pathology assistants."
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Now this is 2002.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. My questions are as follows. Do you know whether or not that reduction in histopathology ever actually occurred?
MS. DAWE:
A. I can't tell you for sure. That's the Health Care Corporation days.
COFFEY, Q.C.:
Q. Yes.
MS. DAWE:
A. I couldn't--I was not -
COFFEY, Q.C.:

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Q. And in terms of the training of the three pathology assistants, do you know, first of all, whether that occurred, and if so, when it began?
MS. DAWE:
A. I couldn't answer that. I couldn't answer that. I'd have to get the detail. Be happy to do so.
COFFEY, Q.C.:
Q. Okay. Actually, I, from the documentation -
MS. DAWE:
A. You know.
COFFEY, Q.C.:
Q. - could tell you.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. But I'm more interested in the fact that, in fact, you were referred to it this morning, but you don't know.
MS. DAWE:
A. I know that there was a recommendation.
COFFEY, Q.C.:
Q. Recommendation, yes.
MS. DAWE:

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A. Yes. If you would like, I'd be happy to provide the detail.
THE COMMISSIONER:
Q. I'm sure there will be a witness along who knows about that.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Yes, more than one. Mr. Simmons did ask you a number of questions about budgetary matters, and I appreciate the information that that provided to the Commission. I think it was very helpful, and in relation to this matter, and you have had a chance to review Dr. Banerjee's two reports and Trish Wegrynowski's two reports?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. And I, in fact, showed you Dr. Banerjee's October 17th 2005 report. I have that. It's P-0046, and I'll just refer to it now, just in case you do wish to avail of it, and I'm not going to take you through myself the actual commentary because we looked at those before,

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but do you know if there's anything in Dr. Banerjee's report, in terms of the issue of-- under the heading conclusions about the reasons for test failure, and if you wish, it is on page four, and goes into page five. Do you know if any of those, or to your knowledge, do any of those involve monetary matters, lack of funding, that you're aware of?

MS. DAWE:

A. Could you just refer me, please, to the issues again?

COFFEY, Q.C.:

Q. Okay, right here. They're right here, just if we could, right there. Conclusions about the reasons for test failure.

MS. DAWE:

A. Okay.

COFFEY, Q.C.:

Q. Is the DAKO system faulty? It's unlikely. So presumably that doesn't have a whole lot to do with money. You can have a look down through them and see if there's anything there that you can identify that you have reason to believe involves lack of money.

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MS. DAWE:

A. You could relate number three and four.

COFFEY, Q.C.:

Q. So inadequate attention paid by the grossing pathologist?

MS. DAWE:

A. No, I'm saying to quality issues.

COFFEY, Q.C.:

Q. Oh yes, to the quality.

MS. DAWE:

A. No, no, no, but bear with me, okay.

COFFEY, Q.C.:

Q. Fair enough, sure.

MS. DAWE:

A. As I had given in the information this morning to the Hay Report and the focus of the Hay Report on operational and clinical efficiencies and little emphasis given on ensuring quality. So the outcome side.

COFFEY, Q.C.:

Q. Yes.

MS. DAWE:

A. So if you're asking me if there's any relationship here between funding and some of these recommendations, I would have to say to

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you, on the quality side, yes, that's what-- you know, it's reflected here.

COFFEY, Q.C.:

Q. Well, I'm not -

MS. DAWE:

A. Because--no, because I understand and my reading of both reports, I had indicated to you on Wednesday the concerns about the inadequacies in the area of quality and control.

COFFEY, Q.C.:

Q. Well -

THE COMMISSIONER:

Q. Wait now, I'm not sure that--I think there's a question--you're answering a different question than he's asking, I think.

COFFEY, Q.C.:

Q. Yes. I'm asking you about these particular -

THE COMMISSIONER:

Q. Do they--are you inquiring as to whether or not those particular items are ones that demand the expenditure of money?

COFFEY, Q.C.:

Q. Yes. That's what I'm -

MS. DAWE:

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A. Well, in terms of quality -

COFFEY, Q.C.:

Q. Ms. Wegrynowski's report, yes, that's a different issue.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. I'm asking about these.

MS. DAWE:

A. Well, see, I--in order to ensure quality programs, you have to have a system of quality controls. That involves people and money.

COFFEY, Q.C.:

Q. If I could just refer you to this -

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. - do you know what tissue fixation is?

MS. DAWE:

A. It's preparing the tissue for the analysis of the pathologist. So there's a whole--it's quite a procedure. I can't go beyond that, but I know generally what it is, I think.

COFFEY, Q.C.:

Q. And has anyone told you that in addressing

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that concern that we, Eastern Health, have actually spent extra money to do so?

MS. DAWE:

A. No.

COFFEY, Q.C.:

Q. They haven't? Oh -

MS. DAWE:

A. But now, because I have not asked the question.

COFFEY, Q.C.:

Q. Okay, fair enough.

MS. DAWE:

A. Okay, I'm seeing the--I'm responding to you as I'm reading here.

COFFEY, Q.C.:

Q. The four is "inadequate or no attention paid by the reporting pathologist to the status of internal controls," and it goes on from there.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. So do you have any reason to believe that that involves a lack of money?

MS. DAWE:

A. Only in as much as I'm not sure that there

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were--well, obviously there weren't adequate controls within the system.

COFFEY, Q.C.:

Q. This is not internal controls within the system, ma'am.

MS. DAWE:

A. In this lab, in this system.

COFFEY, Q.C.:

Q. No, this is not--that's not what this is referring to, or do you understand -

MS. DAWE:

A. I understand.

COFFEY, Q.C.:

Q. What's your understanding of what the status of internal controls is?

MS. DAWE:

A. The control, I know it's--you have one specimen and you have a control to ensure the consistency and the reliability.

COFFEY, Q.C.:

Q. That's an external control actually.

MR. SIMMONS:

Q. Commissioner -

COFFEY, Q.C.:

Q. So I'm just curious in terms of -

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THE COMMISSIONER:

Q. Mr. Coffey, if you wouldn't mind, there are two other gentlemen on their feet. Mr. Simmons, Mr. Browne, which of you is -

MR. BROWNE:

Q. Mr. Simmons can go first. I may go after.

THE COMMISSIONER:

Q. All right.

MR. SIMMONS:

Q. Commissioner, Ms. Dawe, I questioned Ms. Dawe about budgeting and the history of restraint in the health care system for the purpose of putting some background before the Commission that we thought would be useful when it comes to considering root causes here. I don't believe that in questioning Ms. Dawe either I, nor she, asserted any direct connection between any particular item of financial restraint and specific contributors towards the problems with the ER/PR testing, and I get the feeling here that Ms. Dawe is being cross-examined as if she had drawn that connection and that the questions are directed towards -

THE COMMISSIONER:

Q. So wait now, Mr. Simmons, because I'm--perhaps

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I went down the same road as Mr. Coffey, because this morning when you were asking your questions around budgeting, I assumed it was because you wanted to make a point that the lack of expenditure in quality control in Eastern Health related to their budgetary problems and the amount of money that they were getting from the Provincial Government, etcetera, etcetera, etcetera.

MR. SIMMONS:

Q. And it will relate, I believe, to root causes behind the development of the environment in which these events occurred. But we were not relating them specifically to items in Dr. Banerjee's report or to the -

THE COMMISSIONER:

Q. Oh yes, but the -

MR. SIMMONS:

Q. - internal controls -

THE COMMISSIONER:

Q. - but the premise of your -

MR. SIMMONS:

Q. - or to fixation.

THE COMMISSIONER:

Q. With respect, Mr. Simmons, it seems to me that

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the premise of your questions goes to whether the relationship between the particular problem and issues related to budget. I'm not challenging at all in respect of whether or not that's a legitimate concern. I think it is. I think it has to go into the mix. But if, in the process of investigating these matters it is established that budgetary restraints are not relevant to the particular problem, then that's relevant to what I have to determine.

MR. SIMMONS:

Q. My concern right now is not so much that issue as it is just that the approach and the questioning of Ms. Dawe is more in the manner of cross-examining her as if she had made a statement that needed to be challenged, and I'm pointing out that the questions that I had asked, she responded to by providing that general information. If that topic needs to be explored and it's appropriate to explore it, I would hope that it can be done in way that is not challenging Ms. Dawe as if she had already given an answer which needs to be, which needs to be questioned in that way.

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It's some concern about the tenor of the way the questions are being put to Ms. Dawe, who is the Commissions' witness.

THE COMMISSIONER:

Q. Thank you. Mr. Browne, do you want to add?

MR. BROWNE:

Q. Yes, just one point. Thank you, Commissioner. I just on reflecting on Mr. Simmons' comments want to add the additional point, is this an appropriate line of questioning for this witness? This witness was not involved, and I think it will be acknowledged by Commission counsel, in any of the briefing meetings with Dr. Banerjee. We don't being asked questions which are not--we don't know the context of which these conclusions are being made and she's asked to draw inferences which may be inappropriate when put into the context of--through other witnesses. So my concern is is this witness an appropriate person to be asked these types of questions.

THE COMMISSIONER:

Q. All right. Thank you.

MR. BROWNE:

Q. Thank you.

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THE COMMISSIONER:

Q. Mr. Coffey?

COFFEY, Q.C.:

Q. Commissioner, perhaps what I'll--I've heard my two colleagues. Perhaps I could phrase the question this way, other than general quality control issues in a general sense, has anyone in your role as Chair of the Board of Trustees told you that a lack of money caused the problems identified under "Conclusions About the Reasons for Test Failure" in Dr. Banerjee's report?

MS. DAWE:

A. No.

COFFEY, Q.C.:

Q. No.

MS. DAWE:

A. The answer to that question would be in--you know, other than what I've -

COFFEY, Q.C.:

Q. In a general way -

MS. DAWE:

A. - commented earlier, that obviously a quality, and to ensure quality you need resources. That was not the focus of the Hay Report, for

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sure, okay. So that really is the context in which I responded this morning and to you this afternoon.

COFFEY, Q.C.:

Q. Okay.

MS. DAWE:

A. I, you know, if I might, I don't--I'm not a clinician. I don't have that background, either--I don't understand and neither should I, I have not the context around any of these discussions in the organization. And it's very difficult to be presented with a piece of information and to draw conclusions. That is beyond my role, beyond my ability to do so.

COFFEY, Q.C.:

Q. Okay. And the response that you just gave to my question was that no one had drawn, to your knowledge, to your attention, a connection between lack of money, except in a very general way?

MS. DAWE:

A. Yeah.

COFFEY, Q.C.:

Q. And Dr. Banerjee's conclusions?

MS. DAWE:

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A. You recall again, I saw Dr. Banerjee's conclusions several weeks ago. We have not even had the opportunity at our Board to pursue these--to have any discussion so that I wouldn't have had the opportunity to even have that kind of dialogue, sir.

COFFEY, Q.C.:

Q. Okay. Mr. Simmons introduced you to Exhibits P-0120 and P-0122. If we could bring up, please, P-0122? And I appreciate, as he pointed out to you, these are handwritten notes that apparently Mr. Tilley took of the Board meeting of September 21st, 2005. That's at page 1. On page 2 there's a list of, I suppose, topics under "ER/PR". And we get down to the bottom of the page there's a word, "independent review." Thank you. "Cancer, B.C. Institute." And "DR" I suspect is doctor. And "Mount Sinai-tech." You see that?

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. And we turn the page, thank you, to "Doctor's report." And there are references there to

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that. And then there's a "Chief tech." and there are certain references under "Chief tech." And then it goes on to "Montreal." Again, I just want to be clear on this because when I was asking you questions about the external reviewers, who we now know to be Banerjee and Wegrynowski.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. You indicated that you had no recollection of ever being told what they had found?

MS. DAWE:

A. Um-hm.

COFFEY, Q.C.:

Q. And/or even what--until the very end what their recommendations were?

MS. DAWE:

A. And that, you asked me the question and absolutely that would be my response. And that's why there was such a concentration on the technology. I saw these notes this morning for the first time, as well, and I see that there's greater detail. There was none of this reflected in our minutes or any other

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records that I would have had.

COFFEY, Q.C.:

Q. Does this refresh your memory in any way?

MS. DAWE:

A. Well, you know, if these are -

COFFEY, Q.C.:

Q. If they're accurate?

MS. DAWE:

A. I have no reason to doubt their accuracy if, you know, they are reflective of Mr. Tilley's--of any discussion. But I couldn't honestly tell you that I recall all of these items being discussed in detail because I had indicated to you and to others that there was a detailed presentation given by Dr. Williams, but this--if you ask me the same question today, do you remember the discussion around that, I'd have to say to you, no.

COFFEY, Q.C.:

Q. Because looking at these, and again, we'll ultimately have to hear from Mr. Tilley on this -

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

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Q. - but it seems to suggest that the Board was told by Dr. Williams about certain of the things the doctor had found, doctor's report, and certain of the things the chief technologist had found.

MS. DAWE:

A. Yeah. And I -

COFFEY, Q.C.:

Q. And that would suggest, ma'am.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. That, in fact, the Board was being told about the findings by the Dr. Banerjee and the findings by Trish Wegrynowski during a meeting of September 21st, 2005.

MS. DAWE:

A. And I have to tell you again absolutely precisely if that I had no recollection or else my response to you and to others, because I have had discussion with trustees since the Banerjee--since the two reports were complete, to determine whether people recall this, and there is no recall, for sure.

COFFEY, Q.C.:

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Q. And so I take it then you're telling us, you're telling the Commissioner, look, I know that Williams, Dr. Williams provided us with a detailed account, you have that recollection?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Certainly the formal minutes of the Board meeting don't have any -
MS. DAWE:
A. Don't reflect that.
COFFEY, Q.C.:
Q. Don't reflect that at all?
MS. DAWE:
A. No.
COFFEY, Q.C.:
Q. They just refer to these two independent reviewers and that's it?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. You're not saying that we weren't told this sort of material that's in Mr. Tilley's notes because you have no memory of it?
MS. DAWE:

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A. I'm not, no, I'm not saying--I'm not denying them, but I really couldn't confirm for you that the Board had knowledge and understood what I see here today.
COFFEY, Q.C.:
Q. If, indeed, if they are.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Notes as to what they purport to be, a doctor's report and a chief technologist's report, including, apparently, "the arrow shows specimens poorly fixated," if indeed they are those and do reflect what was actually said by Dr. Williams to the Board on September 21st, 2005, doesn't that suggest that at the time those reports were not considered peer review or quality assurance because you've told us -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. - that you would not actually, as a Chair of the Board of Trustees, expect to receive that?
MS. DAWE:

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A. Correct.
COFFEY, Q.C.:
Q. So this suggests, if indeed this happened, and we'll hear eventually.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. If indeed this happened, this suggests that, in fact, at least in the minds of those present, it wasn't being treated -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. - as a peer review or a quality assurance. And you would agree with that?
MS. DAWE:
A. I would agree with that.
COFFEY, Q.C.:
Q. Yet, certainly, and I understand your evidence of the past two days, certainly your understanding, looking back on it, was--whether you understood what was going, or really being said to you on September 21st of not, forever afterward -
MS. DAWE:

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A. Absolutely.
COFFEY, Q.C.:
Q. - until Judge Diamond came to a contrary conclusion, you had always thought of these are peer review, quality assurance?
MS. DAWE:
A. These reports?
COFFEY, Q.C.:
Q. These reports.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Okay.
MS. DAWE:
A. And, you know, it's, now that I'm presented with handwritten notes, which are much greater detail -
COFFEY, Q.C.:
Q. Okay.
MS. DAWE:
A. You know.
COFFEY, Q.C.:
Q. Ma'am, with respect to the model, and Mr. Simmons took you through that in some detail and I appreciate his doing so, he put it in

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phrasing a question to you, he said, Policy Governance Model, and I'm just going to--I think you actually said, I think you said Modified Policy Governance Model.

MS. DAWE:

A. Yes, I did.

COFFEY, Q.C.:

Q. Actually. With respect to that, and just, just so we're clear, the actual model adopted by the Board, and I appreciate it's evolving.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. And the policies, governance policies that you have adopted and will adopt.

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. Are entirely the choosing of the Board itself within the legislative framework, but the actual policies you adopt are your own?

MS. DAWE:

A. Yeah.

COFFEY, Q.C.:

Q. In terms of -

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MS. DAWE:

A. As opposed to?

COFFEY, Q.C.:

Q. Presumably if you're adopting policy A, that means that's in contradistinction to trying B, so you choose your own policies?

MS. DAWE:

A. Yes. I guess what I'm asking, are you--you're not suggesting that somebody is directing us or government is directing us to do that?

COFFEY, Q.C.:

Q. Yes.

MS. DAWE:

A. Is that what you're suggesting?

COFFEY, Q.C.:

Q. Yes, I'm asking, are you being directed to?

MS. DAWE:

A. No.

COFFEY, Q.C.:

Q. Well, that's what I'm--okay, so this is--that's where I was going with it.

MS. DAWE:

A. Okay.

COFFEY, Q.C.:

Q. Thank you. Which is that then the policies

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adopted are those that the Board chooses to adopt and the Board assumes responsibility for?

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. And the wisdom or potential lack of wisdom of those policies are the Board's responsibility?

MS. DAWE:

A. Yes.

COFFEY, Q.C.:

Q. Okay.

MS. DAWE:

A. And it's based on, you know it's based on the legislation, the Transparency and Accountability legislation and so on.

COFFEY, Q.C.:

Q. Is there anything to prevent you, under the legislation, from adopting an operational model?

MS. DAWE:

A. It's a Board of Trustees -

COFFEY, Q.C.:

Q. I'm going to suggest to you that there's nothing actually legislatively.

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MS. DAWE:

A. There's nothing, but the practicality of a board of operation with an organization of this size with volunteer trustees, the practicality of that.

COFFEY, Q.C.:

Q. And I'm not suggesting otherwise. I'm just saying, it's ultimately the Board makes its own decision?

MS. DAWE:

A. Yes, it chooses its policy framework and policies to fulfil its legislative mandate.

COFFEY, Q.C.:

Q. Sure. Is there a written governing policy that allowed the Board to intervene as it did on May 23rd, 2007 on a communications issue?

MS. DAWE:

A. Well, if you go back to the policy on communication about keeping the Board well informed and it relates, I think, as well, to public information and public discussion.

COFFEY, Q.C.:

Q. Yeah. If I could, because I want to assist you on that, Mr.--I believe it's probably, let's see, Commissioner, it's--just one

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moment. I apologize, Commissioner, I apologize, Ms. Dawe. I know I had it here.

THE COMMISSIONER:

Q. While Mr. Coffey is going down that road, I had a couple of questions and maybe we can deal with those. And this comes back to the matter of your involvement as a Board with-- and the matter of priorities in the budget context.

MS. DAWE:

A. Yes.

THE COMMISSIONER:

Q. I think I understood your explanation of how the organization gets its budget. But I'm just wondering, when you get to the point where you have to start deciding what the priorities are going to be, and inevitably I'm sure that happens. You recognize you're not going to get your wish list every year?

MS. DAWE:

A. Um-hm.

THE COMMISSIONER:

Q. And that somebody has to make a decision about whether or not one puts an extra ten beds in your cardiac ward or buys a new piece of

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equipment for lab, for example, although equipment may be separate, I'm not sure.

MS. DAWE:

A. Yes, it is.

THE COMMISSIONER:

Q. Is that an operational decision or does the Board get involved at any level in setting the priorities for where any discretionary funding or money that you expect by way of increase in your budget would go within any one of the institutions that you operate?

MS. DAWE:

A. These decisions are, the input for these decisions very much at the department level and with input from the physicians, the clinical people and so on. That level of decision making would be more or less left to the executor in--they make recommendations to the Board and they're all taken into consideration. So the Finance Committee would have some level of involvement in the priorities based on the strategic directions of the Board.

THE COMMISSIONER:

Q. Okay.

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MS. DAWE:

A. Okay. I've referred several times to our strategic plan. So we've gone out to the community, we hear from the community what the needs are. We have a set of recommendations based on that. So we would want to be assured that the strategic directions that we've agreed upon, that the resources are there to deal with these.

THE COMMISSIONER:

Q. Okay, so -

MS. DAWE:

A. So it's a high level again.

THE COMMISSIONER:

Q. All right. So you might anticipate that the Board might puts its oar in, as it were?

MS. DAWE:

A. Yes.

THE COMMISSIONER:

Q. If you felt that the proposals for the budget were inconsistent with your strategic plan?

MS. DAWE:

A. Strategic directions, absolutely.

THE COMMISSIONER:

Q. Is there in that process--are the institutions

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kept separate or is there any, if you will, trade off between whether you put money into one building, Miller Centre versus some home care institution -

MS. DAWE:

A. You mean -

THE COMMISSIONER:

Q. - versus active hospital?

MS. DAWE:

A. You mean on an operational, operational budget?

THE COMMISSIONER:

Q. Yeah, well, are they considered part of the massive budget all together or are they funded separately?

MS. DAWE:

A. No, they're part of the total budget, but then they're programs within the total budget.

THE COMMISSIONER:

Q. Okay, but in the budgetary process does one say I know we should be putting, you know, five extra people in the Miller Centre, but as well they need X number in the Janeway.

MS. DAWE:

A. Yes.

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THE COMMISSIONER:
Q. And is somebody sitting there saying we got to make a choice, we're going with one or the other?
MS. DAWE:
A. And that's happening at the operational level.
THE COMMISSIONER:
Q. Okay.
MS. DAWE:
A. For sure. And an example of that, I think a very good example, would be now that the full system is under the one board, there is an ability with the working--in dealing with government to transfer money from the acute care system or the--into the community to better service the needs, all right.
THE COMMISSIONER:
Q. Okay.
MS. DAWE:
A. Because we have for so long felt that there were needs in the community that were never addressed. So that if we can find ways within the global budget to address particular areas that are of priority, there's the ability to do that.

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THE COMMISSIONER:
Q. Okay.
MS. DAWE:
A. At the operational level. That wouldn't be -
THE COMMISSIONER:
Q. That wouldn't go to the Board?
MS. DAWE:
A. It wouldn't be, no.
THE COMMISSIONER:
Q. Okay. Thank you. Now, Mr. Coffey, have you found
COFFEY, Q.C.:
Q. Yes, I have, thank you, Commissioner. If we could, please, P-0053, page 11? Thank you. Is this the one you were--I was asking you about whether there is a policy of the Board pursuant to which it would purport to give direction to Mr. Tilley as it did on May 23rd, 2007. And Mr. Simmons had taken you through the various policies.
MS. DAWE:
A. There's one here on, I believe it's informing the Board or communication with Board. If you could find that there?
COFFEY, Q.C.:

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Q. Well, there is one here, it's--if you could. If I could just for a moment move up a bit here. I'm sorry. Keep the Board--I'm sorry.
MS. DAWE:
A. No, I think there's one specifically that uses communications, so.
COFFEY, Q.C.:
Q. Just a moment, please? Okay. Just a moment, please, Commissioner, I'm just--maybe I--just a moment, I apologize. Here we are.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. This is, yes, it was--I apologize. This is page 21. I'm sorry, ma'am, you were--if you can just see here, this is executive limitations. And is there something here that -
MS. DAWE:
A. "Let the Board be unaware of relevant trends." No. 2. "Anticipated".
COFFEY, Q.C.:
Q. "He or she shall not let the Board be unaware of relevant trends."
MS. DAWE:

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A. Yeah. "Anticipated adverse media coverage," and so on. So, and then No. 4, "Fail to marshal", "points of view on issues and opinions so that the Board is fully informed," and "fail to provide a mechanism for official Board office or committee communications."
COFFEY, Q.C.:
Q. So, ma'am, what does any of those have to do with the preparation of a fact sheet and the Board vetting it prior to its release to the public? I appreciate the preparation of a fact sheet for the Board, I understand that.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. But what about vetting -
MS. DAWE:
A. But if you could, keep it in the context again. I had indicated to you the concern of this disconnect.
COFFEY, Q.C.:
Q. Yeah.
MS. DAWE:
A. And -
COFFEY, Q.C.:

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Q. I'm not suggesting the Board shouldn't have intervened at all. I'm just asking is there anything in the policy, just so, you know, just so we understand, because there is a written policy?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. And I heard you say to Mr. Simmons that anything within a reasonable person bounds -
MS. DAWE:
A. You leave -
COFFEY, Q.C.:
Q. - Mr. Tilley can carry on in that way?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. I'm just wondering, is there anything in particular that you can point to that says, well, you know, we can intervene, we can overrule and step in or would it be on the basis that you're not being reasonable and therefore we are intervening?
MS. DAWE:
A. Well, we've intervened because we obviously

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felt the need.
COFFEY, Q.C.:
Q. Thank you. If we could, see, it's--yes. I'm going to go to EL--I apologize, I got--I'm sorry, could you -
THE COMMISSIONER:
Q. Yes. Do you know the page number you're looking for, Mr. Coffey?
COFFEY, Q.C.:
Q. What it is on the one I have--I'm (unintelligilbe).
UNKNOWN SPEAKER:
Q. (Inaudible).
COFFEY, Q.C.:
Q. Sorry? Okay. I'll remember that. It's--okay, I'm sorry, Commissioner, it's just further down here. EL 11, which is at page 31 of 32, Commissioner, thank you. Now, this is a policy that Mr. Simmons referred you to and in relation to a certain type of monitoring report, I believe. Do you know if there was ever any, or there ever has been a monitoring report given to the Board about ER/PR?
MS. DAWE:
A. Not in this context.

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COFFEY, Q.C.:
Q. Okay.
MS. DAWE:
A. No, certainly.
COFFEY, Q.C.:
Q. Now, I appreciate this was only in place February 28th, '07.
MS. DAWE:
A. Yes, that's what I'm saying.
COFFEY, Q.C.:
Q. I understand that.
MS. DAWE:
A. You know that this is still under development and we have not gone through the whole set of policies to receive monitoring reports. We have not received all monitoring reports yet based on these policies and they're--as you see there, that policy has been revised twice.
COFFEY, Q.C.:
Q. Yes.
MS. DAWE:
A. So you can see the development.
COFFEY, Q.C.:
Q. And in respect of EL 2, has there been any monitoring report in respect of ER submitted -

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MS. DAWE:
A. No.
COFFEY, Q.C.:
Q. ER/PR submitted?
MS. DAWE:
A. No.
COFFEY, Q.C.:
Q. Okay. And this is one that's been a Board policy in force since May 24th, 2006?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. And there hasn't been?
MS. DAWE:
A. No.
COFFEY, Q.C.:
Q. Is there any reason -
MS. DAWE:
A. On the ERs in particular, you mean?
COFFEY, Q.C.:
Q. No, on ER/PR.
MS. DAWE:
A. Yes, no.
COFFEY, Q.C.:
Q. Or in relation to where it would be covered?

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MS. DAWE:
A. No, there hasn't been one yet.
COFFEY, Q.C.:
Q. It's now--we're getting on toward two years, is there any reason why not?
MS. DAWE:
A. No, I can't give you an explanation.
COFFEY, Q.C.:
Q. If we could please, Mr. Simmons did ask you about Mr. Tilley's handwritten notes in relation to--they have the entry for July 19th, the one I referred you to, and he's pointed out that there is one for July 7th, earlier on that page, it's the handwritten notes.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Suggesting that perhaps Mr. Simmons posited it and I thank him for it that that's perhaps when Mr. Tilley first learned, at least that's what we understand he will say, and Mr. Simmons asked you to assume that that was the case.
MS. DAWE:

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A. Yes.
COFFEY, Q.C.:
Q. In the same Board--in those Board minutes that we've looked at, the first report on ER/PR to the Board in September of '05 suggests or says that the organization first learned of the problem in the spring of 2005.
MS. DAWE:
A. Yes, I understand that, uh-hm.
COFFEY, Q.C.:
Q. Do you believe it would be acceptable or is it acceptable, if indeed that's true, it was the spring of 2005 -
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. I'm going to suggest in fact it will go back to April of 2005 and certainly by May of 2005 that it would be acceptable for Mr. Tilley not to find out until July 7th, 2005? As a Board Chair, do you think that that would be acceptable?
MS. DAWE:
A. No, I don't.
COFFEY, Q.C.:

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Q. Now Mr. Simmons did ask you whether you thought or had any reason to believe that provision or the providing of legal advice or any legal advice that Eastern Health may have received in any way adversely affected the patient disclosure in this matter?
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. How much do you actually know about that issue?
MS. DAWE:
A. And I think my response was based on the philosophy -
COFFEY, Q.C.:
Q. Oh, the philosophy, oh yeah but that -
MS. DAWE:
A. No, but I can't tell you any level of detail and I think I've indicated that as I see this new information, I said I'm seeing it for the first time. My response to the question to Mr. Simmons was clearly based on the philosophy of the organization and certainly that of the Board, okay, it would not--it would not be -

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COFFEY, Q.C.:
Q. It should not play a part.
MS. DAWE:
A. Well it shouldn't be the--absolutely, I mean the disclosure to the--we exist for patient care.
COFFEY, Q.C.:
Q. Well I'm getting at that point. Should it play any part?
MS. DAWE:
A. I believe our prime concern is to service patients.
COFFEY, Q.C.:
Q. Should it play any part?
MS. DAWE:
A. And I don't--I think no, I think we should be servicing people, that's why we exist.
COFFEY, Q.C.:
Q. So it should not play any part, is that your view?
MS. DAWE:
A. If you're asking me my view and I'm saying yes, it should not play any part.
COFFEY, Q.C.:
Q. Thank you ma'am. That's what I understood

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from the questions I had for you.
MS. DAWE:
A. And from the beginning, absolutely, it's not the philosophy of the organization, it's not what we would expect. In other words, I might say that if the Board were asked directly what it should do, I'm pretty sure I could speak with confidence on behalf of the Board, that the Board would say, patients need to be notified. If you recall my immediate response to Mr. Tilley on July 20th when I received my e-mails, I responded to him in a hour and a half and I said, "I'm sorry about this situation. I agree that patients need to be notified ASAP when you receive the detail." So I'm reflecting the philosophy of the organization and the Board, certainly.
COFFEY, Q.C.:
Q. Oh yes, and I understand that, ma'am. Mr. Simmons did ask you about the press conference that Mr. Tilley held on May 18th, 2007.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Remember you answered a question about that.

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MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Do you have any knowledge as to who was involved in deciding that there should be such a press conference? Has anybody told you how that actually came about?
MS. DAWE:
A. I certainly--I didn't know at the time, okay. I certainly didn't know at the time and I'm not even sure today that I could say to you a), b), c), d) or e) advised to do that.
COFFEY, Q.C.:
Q. So you're not in a position to say that it was Mr. Tilley's idea?
MS. DAWE:
A. No, I couldn't honestly say to you that--how precisely it occurred.
COFFEY, Q.C.:
Q. And we will be hearing, of course, on how that occurred.
MS. DAWE:
A. Yes.
COFFEY, Q.C.:
Q. Commissioner, thank you very much. Ms. Dawe,

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thank you for your patience.
THE COMMISSIONER:
Q. Thank you, Mr. Coffey.
MS. DAWE:
A. Thank you very much.
MS. JOAN DAWE, EXAMINATION BY THE COMMISSIONER
THE COMMISSIONER:
Q. Ms. Dawe, I just have--I know it's been a long three days for you and I just have one more question. What I'm interested in is your view of the relationship between government and the Board?
MS. DAWE:
A. Yes.
THE COMMISSIONER:
Q. And, for example, I think your new legislation, which will become effective next week, says that you are--specifies that you are an agent of the Crown.
MS. DAWE:
A. Uh-hm.
THE COMMISSIONER:
Q. Does the Board view itself as a totally independent body? Does it view itself as a partner with government? Does it view itself

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in some other light--what do you see as your relationship with government?
MS. DAWE:
A. Certainly not an independent board. We do not have the ability to make decisions beyond certain--I think the new legislation is even more specific with respect to the role of the Minister and the role of the Board.
THE COMMISSIONER:
Q. But it does, at least from a first glance, it does appear that it's specified more clearly what every one might argue about what it is under the old legislation.
MS. DAWE:
A. Yes, but we are not autonomous, there is in many respects, certainly the whole budgetary process is dependant upon government approval. The determination of services and programs and I'm calling it again, but I think it's very specific in this piece of legislation that the Minister may determine services and programs and the like. So as much as we would like to think that we are autonomous, that we have a great deal of autonomy, truly we don't. We work within a framework that has to seek

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approval of the Minister, even to engage in leases and, I could go on and on, but I think that gives a flavour, we are--there are many constraints within how we operate. What we are--and we've been working on for many years, so it's not unique to Eastern Health, is to try to better define the rules of engagement between a board and the minister. And I think I went through with Mr. Coffey yesterday that I had asked Minister Ottenheimer and this was the first time, because of the magnitude of the responsibilities we were assuming as volunteers, that I wanted to understand clearly what was expected of me and the Board and that's how we have this two-pagers from Mr. Ottenheimer that we went through yesterday. So we're working on more clearly defining roles and responsibilities and rules of engagement. We are nowhere near where I believe we need to be and I sometimes use the word "partner", but we're really not truly partners because at the end of the day, the Minister of Health is ultimately responsible for the provision of services and programs, so the word "agent" is probably much more

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appropriate.

THE COMMISSIONER:

Q. I know I promised it was one question, but this is really a follow-up one. So then for example, if the Department of Health--I keep calling it that, I realize it has a much longer name, but wanted information, I presume either the Minister would call you or the Deputy Minister would call Mr. Tilley and accordingly, probably depending on the nature of the information which was being sought.

MS. DAWE:

A. Yes.

THE COMMISSIONER:

Q. Leaving aside personal information about patients, would there be any kind of information which Easter Health would say to the Department of Health, "you can't have that"?

MS. DAWE:

A. I don't think we have the ability, beyond the patient confidentiality -

THE COMMISSIONER:

Q. Yes, yes.

MS. DAWE:

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A. I don't think we have the ability to say no, and I think that's again, if I'm correct and I'm struggling here to recall because I have so many--but I think the new Regional Health Authorities Act more clearly defines information, that the Minister has the right to request information. I think that's contained in the new legislation as well, but beyond that information protected through the privacy legislation -

THE COMMISSIONER:

Q. Uh-hm.

MS. DAWE:

A. I wouldn't see that we would have the ability to say no.

THE COMMISSIONER:

Q. Well, perhaps we could go so far as is protected by legislation or law or some kind.

MS. DAWE:

A. Yes, yes.

THE COMMISSIONER:

Q. I'm not expecting you to answer the fine points of what's solicitor/client privilege or anything of that nature.

MS. DAWE:

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A. No, but in that context, obviously -

THE COMMISSIONER:

Q. But in a general sense, I'm talking about the ability of the Department of Education if it needs or feels it needs or even if it doesn't need, if it wants, sorry, the Department of Health wants information from your organization, then the appropriate person can call his or her equivalent and say we'd like to know.

MS. DAWE:

A. Yeah.

THE COMMISSIONER:

Q. And would expect to receive the information.

MS. DAWE:

A. And for example, it's certainly not uncommon for an official within the Department of Health to make contact with an official within Eastern Health on a complaint if the Minister or if the Department were contacted because of some complaint by an individual, it's not unusual, it's common practice, actually, that somebody in the Department would make contact with an official and ask for, you know, what is the status, what is this, investigate this,

let me know the status, that kind of thing.

THE COMMISSIONER:

Q. Perhaps stuff like how many appendectomies did you do last year or -

MS. DAWE:

A. Whatever or -

THE COMMISSIONER:

Q. Or what's the waiting list for cardiac -

MS. DAWE:

A. Or why is there, and you know, we have complaints about this nature, what is the reason for this. That's not uncommon. And then, of course, all matters related to financial and statistical information would be exchanged on a regular basis.

THE COMMISSIONER:

Q. I know it's been a long three days. I do very much appreciate your coming to give us your assistance in this matter. Thank you very much.

MS. DAWE:

A. Thank you very much. I look forward to the outcome of the Commission and its findings and I have to restate, I believe that Newfoundlanders and Labradorians will not only

benefit from the outcome of this, but Canadians and I thank you very much and look forward to the results.

THE COMMISSIONER:

Q. Thank you Mrs. Dawe.

COFFEY, Q.C.:

Q. Thank you, Ms. Dawe, it has been very helpful.

MS. DAWE:

A. Thank you.

COFFEY, Q.C.:

Q. Commissioner, if there's nothing further, Monday at 9:30?

THE COMMISSIONER:

Q. Monday at 9:30 it is.

COFFEY, Q.C.:

Q. And we'll begin with Mr. Ottenheimer.

THE COMMISSIONER:

Q. Thank you.

CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 28th day of March, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.

Dated at St. John's, Newfoundland and Labrador this 28th day of March, A.D., 2008

Judy Moss

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